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District Court, Suffolk County New York, People v. NYTAC Corp.

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DISTRICT COURT OF NEW YORK

People v. NYTAC Corp.[1]
(Decided August 27, 2004)

NYTAC Corp., a criminal defendant in a prosecution by the Town of Huntington, was charged with collecting solid waste in the township without a permit.[2] The defendant, a small closely held corporation,[3] made a motion to the district court asking to waive the requirements of Section 600.20 of the Criminal Procedure Law, which requires corporate criminal defendants to appear by counsel.[4] The court granted the defendant's motion and declared Section 600.20 unconstitutional on the grounds that it violated the Equal Protection Clause of the Fourteenth Amendment.[5] The court found that the statute denied corporate defendants their fundamental right to defend themselves as afforded both by Article I, Section 6 of the New York Constitution[6] and by the Sixth Amendment of the United States

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[1] 783 N.Y.S.2d 775 (N.Y. Dist. Ct. 2004).

[2] *Id.* at 777.

[3] *Id.*

[4] *Id.*; N.Y. CRIM. PROC. LAW § 600.20 (Consol. 2004) states:

> At all stages of a criminal action, from the commencement thereof through sentence, a corporate defendant must appear by counsel. Upon failure of appearance at the time such defendant is required to enter a plea to the accusatory instrument, the court may enter a plea of guilty and impose sentence.

[5] *NYTAC Corp.*, 783 N.Y.S.2d at 776; U.S. CONST. amend. XIV states in pertinent part: "No State shall . . . deny any person within its jurisdiction the equal protection of the laws."

[6] N.Y. CONST. art. I, § 6 provides in pertinent part: "In any trial in any court whatever the party accused shall be allowed to appear and defend in person with counsel as in civil actions . . . ."

Constitution.[7] The court held that the denial of this right was not justified by a compelling state interest, but rather was arbitrary in light of its inconsistent application in criminal and civil cases.[8]

On April 27, 2004 the Department of Environmental Control for the Town of Huntington issued three summonses to NYTAC Corp., "for allegedly violating section 117-2 B (2) of the Huntington Town Code."[9] The Code prohibits "engaging in the collection of solid waste in the township without a permit."[10] The President of NYTAC Corp. in the interest of resolving the matter and entering into a plea agreement with the People, indicated that he wished to waive the statutory requirement of appearance by counsel, and dispose of the matter pro se on behalf of the corporation.[11] The corporation had already engaged in preliminary discussions with the People, and indicated that a plea arrangement had been tentatively reached.[12] The People made no objection to NYTAC's motion.[13]

The court was faced with the issue of whether Section 600.20, which requires corporate criminal defendants to appear through counsel, was constitutional.[14] Specifically, the court addressed whether the requirement under Section 600.20 that corporations appear through counsel in a *criminal* prosecution, was

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[7] U.S. CONST. amend. VI states in pertinent part: "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defense."
[8] *NYTAC Corp.*, 783 N.Y.S.2d at 781.
[9] *Id.* at 777.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *NYTAC Corp.*, 783 N.Y.S.2d at 777.

constitutional either under the New York Constitution or the Federal Constitution.[15] The court held that Section 600.20 was unconstitutional under the Federal Constitution.[16] After placing the statute under the "strict scrutiny analysis" required by the Federal Constitution's Equal Protection Clause, the court concluded that the statute failed to provide equal protection to corporations in criminal prosecutions because it infringed upon a fundamental right, which was not supported by a compelling state interest, and was arbitrary in its application.[17]

First, the court scrutinized the statute and its impact on the rights of a corporate criminal defendant.[18] As per the statute, a corporate defendant who fails to appear by counsel "is required to enter a plea to the accusatory instrument, [and] the court may enter a plea of guilty and impose a sentence.[19] The court explained that the "presumption of innocence" and the "burden of proof" are fundamentally protected rights in a criminal prosecution.[20] Yet under the statute, when a corporate defendant wishes to appear and defend the action pro se, the corporation loses the right to defend itself through the "de facto statutory imposition of a guilty plea."[21]

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[14] *Id.*
[15] *Id.*
[16] *Id.* at 776.
[17] *Id.* at 781.
[18] *NYTAC Corp.*, 783 N.Y.S.2d at 777.
[19] N.Y. CRIM. PROC. LAW § 600.20.
[20] *NYTAC Corp.*, 783 N.Y.S.2d at 777-78. "Are these not fundamentally protected concepts? This Court believes they are . . . ." *Id.*
[21] *Id.*; *see also* People v. Erin Constr. Corp. 519 N.Y.S.2d 466, 469 (N.Y. Crim. Ct. 1987) (stating that the court was authorized to enter a guilty plea and impose a sentence for the corporate defendant because he failed to appear with counsel); N.Y. CRIM. PROC. LAW § 600.20.

In addition, the statute, through this "de facto statutory imposition," forces the corporation to give up the benefit afforded by the presumption of innocence in a criminal prosecution, thereby, relieving the prosecution of its burden of proving the defendant guilty beyond a reasonable doubt.[22]

In light of the court's conclusion that the burden of proof and the presumption of innocence in a criminal prosecution are fundamentally protected rights, the court proceeded to review the constitutionality of Section 600.20 "as it relates to the Federal Constitution's requirement of equal protection under the law."[23] Pursuant to the Equal Protection Clause of the Fourteenth Amendment, when a statute "appears to discriminate against a suspect class or infringe upon a fundamental right, the statute is subject to a strict scrutiny analysis" and will only be upheld if it furthers a compelling state interest.[24] However, if the statute does not discriminate against a suspect class or infringe upon a fundamental right, a facially discriminatory statute is subject to a rational basis analysis.[25] This analysis is less rigorous than the "strict scrutiny" analysis because the statute is afforded a strong presumption of validity.[26] Under the rational basis analysis "a

[22] *NYTAC Corp.*, 783 N.Y.S.2d at 778.
[23] *Id.*
[24] *Id.* (citing Loving v. Virginia, 338 U.S. 1 (1967); Alevy v. Downstate Med. Ctr., 348 N.E.2d 537 (N.Y. 1976)).
[25] *Id.* (citing Heller v. Doe, 509 U.S. 312 (1993)).
[26] *Id.*

statute is unconstitutional if its discriminatory classification is found to be arbitrary."[27]

The court rejected the distinction between corporations and "persons" for purposes of establishing fundamental rights afforded under the Constitution and concluded that corporations are "persons" under the law, and therefore should be given the same constitutional rights.[28] In light of this, the court reiterated the "settled" rule that "defendants in criminal proceedings have a [fundamental] right to defend pro se."[29]

Likewise, New York courts have held that the right to defend oneself is recognized by Article I, Section 6 of the New York State Constitution.[30] In aligning the fundamental right afforded a criminal defendant with the established principle that corporations are persons, the court concluded, "if the right to defend pro se is fundamental, then there is no reason why this right should not be interpreted to apply to all persons, individuals and corporations, brought to trial in the State of New York."[31]

The court concluded that Section 600.20 was unconstitutional under the Federal Constitution because it failed under both the strict scrutiny and the rational basis test of the Equal

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[27] *NYTAC Corp.*, 783 N.Y.S.2d 778.

[28] *Id.* "Consequently, when examining the constitutional rights of corporations, it is appropriate to view corporate entities, not as akin to persons, but as persons." *Id.*

[29] *Id.*

[30] *See* People v. McIntyre, 324 N.E.2d 322, 324 (N.Y. 1974) (asserting that the New York State Constitution clearly recognizes a criminal defendant's right to defend pro se).

[31] *NYTAC Corp.*, 783 N.Y.S.2d at 779 n.2.

Protection Clause.[32] The court did not find a compelling state interest that justified infringement upon a corporate criminal defendant's fundamental right to defend pro se.[33] In addition, the court held that the requirement was arbitrary.[34] The various statutory provisions governing situations in civil court, where corporate defendants can defend themselves pro se illustrated the inconsistencies in treatment of corporate defendants in civil as compared to criminal cases.[35] These inconsistencies proved the statute's arbitrary nature, and supported a conclusion that in light of such relaxation in civil cases, the requirement of counsel "failed to pass even the less rigorous rational basis test."[36] A corporation can bring a commercial action without having to appear by counsel.[37] In small claims court, a corporation can sue and be sued without having to appear with counsel.[38] A corporate defendant is allowed to assign a cause of action, even if for the sole purpose of avoiding the statutory requirement of appearance by counsel in a civil action.[39] These examples, when compared to the strict requirement that corporations *must* appear by counsel in a criminal action, illustrate the arbitrary nature of 600.20. Moreover, the court held that these inconsistencies, in addition to demonstrating that

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[32] *Id.* at 779-80.
[33] *Id.* at 779.
[34] *Id.* at 780.
[35] *Id.*
[36] *NYTAC Corp.*, 783 N.Y.S.2d at 780.
[37] *Id.*
[38] N.Y. UNIFORM DIST. CT. ACT § 1809 (2) (Consol. 2004).
[39] *NYTAC Corp.*, 783 N.Y.S.2d at 780 (citing Traktman v. City of New York, 182 N.Y.S.2d 814, 815 (N.Y. App. Div. 1992)).

the requirement was arbitrary, also proved that the requirement of counsel failed to serve a compelling state interest.[40]

The court in *NYTAC Corp.*, rejected the rationale in support of the rule that a corporate criminal defendant must appear through counsel.[41] The rule was defended on the grounds that corporate defendants are not subject to the same loss and stigma imposed on an individual who is convicted of a crime.[42] In addition, it has been argued that since corporations enjoy the privilege of limited liability, the court requires representation by counsel so there is someone to hold accountable for the corporation's acts.[43] The court wholly rejected these arguments as "good faith attempts to rationalize a wholly arbitrary rule."[44] The court found that a corporation is subject to the same scrutiny and loss of liberty that an individual faces when receiving a criminal conviction, or being found liable for a civil wrong.[45] As such, a corporation is "responsible for paying the fines it owes, and its assets can be used as a source of collateral."[46] Furthermore, "like individuals, when a corporation is found guilty of a crime, it is subject to public condemnation and risks gaining a negative reputation."[47] According to the court, the various procedural rules enacted in

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[40] *Id.* at 779-80 ("That no compelling interest is served by forcing corporate defendants in criminal cases to appear by counsel is . . . evidenced by the fact that the general rule has been relaxed somewhat in civil cases.").
[41] *Id.* at 780
[42] *Id.* (quoting *Erin Constr. Corp.*, 519 N.Y.S.2d at 812).
[43] *Id.* (citations omitted).
[44] *NYTAC Corp.*, 783 N.Y.S.2d at 780.
[45] *Id.*
[46] *Id.*
[47] *Id.*

civil actions, which allow corporate defendants to appear pro se, were evidence that the "State Legislature itself has determined the need to dispense with [the] rational [sic] for requiring corporate attorneys on repeated instances" and that therefore, "the separate corporation classification serves at best a questionable government purpose."[48] Thus, the court concluded that there was no justification for treating corporations differently from individuals in the rights afforded to them during both criminal and civil actions. Such disparate treatment of corporations served no compelling state interest, and was arbitrary in its application.[49] Therefore, the court held that the criminal statute requiring a corporate criminal defendant to appear by counsel or risk a plea of guilty[50] violated the Equal Protection Clause of the Constitution.[51]

In *United States v. Faretta*, the United States Supreme Court recognized the fundamental right to defend oneself pro se.[52] The Court held that, although not plainly stated in the Sixth Amendment, the right to defend pro se is implied by its structure.[53] In *Faretta*, the Court explained that "[t]he right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails."[54] However, in federal court, a corporate

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[48] *Id.*
[49] *NYTAC Corp.*, 783 N.Y.S.2d at 781.
[50] *Id.* at 779 n.3. Since the issue before the court involved a criminal defendant, the courts holding was limited to *criminal* cases, and did not apply to the requirement that a corporation appear by counsel in a civil matter.
[51] *Id.* at 780-81.
[52] United States v. Faretta, 422 U.S. 806, 834 (1974).
[53] *Id.* at 819-20.
[54] *Id*

defendant does not enjoy this fundamental right.[55] Courts have been adamant about articulating this as "well-established" and support it with the rationale that allowing a corporation to defend itself would negatively impact upon the administration of justice, resulting in poorly-drafted pleadings.[56] Also, the flow of the trial would not be as smooth as it would otherwise be if the corporation appeared through counsel.[57] The court in *Simbraw Inc. v. United States* stated that the rationale for the rule was to protect the court from the "confusion that has resulted . . . from pleadings awkwardly drafted and motions inarticulately presented."[58]

Whereas *Simbraw* and many other federal cases addressing this issue concern civil matters, there is a lack of case law regarding the constitutionality of requiring a corporate defendant to appear through counsel in a criminal prosecution. In *In re Holliday's Tax Services Inc.*, Judge Weinstein addressed the issue of whether a corporation can appear pro se in a bankruptcy matter, and explained that in many instances, a company incorporates to limit liability.[59] Therefore, in the interest of limiting liability, a corporate officer is not likely to take on the personal burden of

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[55] Simbraw Inc. v. United States, 367 F.2d 373, 374 (3d Cir. 1966).

[56] *Id.* at 374 (stating that "[t]he rule is well established that a corporation can appear in a court of record only by an attorney at law."); *see also In re* Holliday's Tax Services Inc., 417 F. Supp. 182, 183 (E.D.N.Y. 1976) (stating that "[a] virtually unbroken line of state and federal cases has approved the rule that a corporation can appear in court only by an attorney.") (citations omitted).

[57] *See In re Holliday's Tax Services Inc.*, 417 F. Supp. at 183 (holding that courts require that counsel represent corporations for the "protection of the courts and the administration of justice.") (citations omitted).

[58] *Simbraw Inc.*, 367 F.2d at 375.

[59] *In re Holliday's Tax Services Inc.*, 417 F. Supp. at 185.

appearing pro se and defending the corporation.[60] In addition, given the fact that most of the litigation over this matter concerns civil cases, the Sixth Amendment would not be triggered in an analysis addressing whether such practice is constitutional, because the Sixth Amendment deals only with criminal and not civil prosecutions.[61] Thus, the federal courts have not recognized a corporate defendant as having a Sixth Amendment right to defend itself in a criminal prosecution.

While federal courts do not acknowledge a corporate criminal defendant's right to defend pro se, some federal courts do recognize that in some instances the rule is unreasonable. In *In re Holliday Tax Services Inc.*, the district court acknowledged that the rule that a corporation is required to appear by counsel is "unnecessarily harsh and unrealistic when applied in bankruptcy to small, closely-held corporations."[62] In its explanation, the court found that the justification of the general rule by reason of court convenience and efficiency was inadequate to outweigh the concerns that a corporate defendant may be denied access to the courts.[63] In addition, the court expressed a due process concern with the rule that a corporation appear by counsel or be forced to enter a guilty plea, because it effectively denied a corporate

[60] *Id.* "The problem is not likely to arise often since, in most instances, the individual has incorporated precisely so that he or she can walk away from the business without personal liability should it fail." *Id.*

[61] U.S. CONST. amend VI states: "In all *criminal* prosecutions . . . ." (emphasis added).

[62] *In re Holliday's Tax Services Inc.*, 417 F. Supp. at 184.

[63] *Id.*

defendant "his day in court."[64] Furthermore, the court took umbrage with the fact that unlike individual defendants, a corporate defendant is not provided counsel by the court if it is unable to afford it.[65] However, the court did not find a violation of due process because the corporate defendant chose limited liability when he incorporated and therefore, should be required to accept the burdens of court appearances.[66]

In *Oliner v. Mid-Town Promoters*, the New York Court of Appeals addressed the issue of whether under the New York State Constitution a corporate defendant has the right, in a civil matter, to defend itself pro se.[67] In *Oliner*, the court held that the Civil Practice Law and Rules, Section 321,[68] requiring corporations to appear through counsel in a civil action, was constitutional.[69] However, the court's constitutional inquiry differed from that in *NYTAC Corp.*, because *Oliner's* holding was based on Article X, Section 4 of the New York State Constitution, which provides that "all corporations shall have the right to sue and be subject to be sued in all courts in like cases as natural persons."[70] The *Oliner* court did not address whether the requirement that a corporation defend itself in a civil action was constitutional under the Federal

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[64] *Id.* at 183.

[65] *Id* at 183-84. "But the lack of a guarantee of counsel to persons of modest means like Mr. Holliday remains one of the scandals of our judicial system." *Id.*

[66] *Id.* at 184.

[67] Oliner v. Mid-Town Promoters Inc., 138 N.E.2d. 217 (N.Y. 1956).

[68] N.Y. C.P.L.R. § 321 (Consol. 2004) provides in pertinent part: "[A] corporation or voluntary association shall appear by attorney . . . ."

[69] *Oliner*, 138 N.E.2d at 217.

[70] *Id.*; N.Y. CONST. art. X § 4.

Constitution or other provisions of the New York state constitution.[71]

Previous lower court decisions have been in line with the federal court's reluctance to afford a corporate defendant a fundamental right to appear pro se. In *People v. Erin Construction Corp.*, the defendant construction corporation was charged with building code violations that caused an apartment building wall to collapse and required the building to be vacated.[72] On appeal, the corporation sought to withdraw the guilty plea entered on its behalf and instead claimed that the corporation had done all it could to comply with the law, and that at most it should be fined a minimum amount.[73] The court found no merit in the corporation's argument and held that the principle that an individual defendant has the right to counsel has no application where the defendant is a corporation.[74] The court did not address whether the requirement was constitutional, instead the court held that the corporation had an affirmative obligation to appear by counsel, which it failed to do, and therefore, a guilty plea was appropriate as per the de facto statutory imposition under Section 600.20.[75]

On the other hand, the *NYTAC Corp.* court based its holding on the due process concern that the statute effectively

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[71] *NYTAC Corp.*, 783 N.Y.S.2d at 777.
[72] People v. Erin Constr. Corp., 519 N.Y.S.2d 466, 467 (N.Y. Crim. Ct. 1987).
[73] *Id.*
[74] *Id.* at 468-69.
[75] *Id.* at 469.

denied the corporate defendant his day in court.[76] This was the same concern expressed in *In re Holliday's Tax Services, Inc.*[77] However, unlike in *In re Holliday's Tax Services, Inc.*, the court in *NYTAC Corp.*, held that this concern was enough to warrant recognizing a corporate defendant as having a fundament right to defend itself pro se in a criminal action.

An important distinction between the state court's approach to this issue in *NYTAC Corp.*, and the federal court's handling of the issue in *In re Holliday's Tax Services Inc.*, is that the federal court in *Holliday's Tax Services Inc.* did not take its constitutional inquiry beyond the Court of Appeals' holding in *Oliner*.[78] The court cited *Oliner* and concluded, "[w]e need not now consider whether the rule requiring corporate representation by counsel violates the Constitution."[79] Thus, the federal court did not inquire whether the general rule violated any other provisions of the New York Constitution, or whether it violated the Equal Protection Clause of the Federal Constitution. Although not articulated in the *NYTAC Corp.* decision, the explanation for the distinction between the approaches in *NYTAC Corp.*, and *Holliday's Tax Services Inc.*, lies in the fact that the federal courts do not recognize the right to

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[76] *NYTAC Corp.*, 783 N.Y.S.2d at 780 n.4 ("The Court agrees with Judge Weinstein that the bottom line justification is the 'convenience of the Court' rationale. This rationale always loses the balancing test against the right to participate in Court.") (citations omitted).

[77] *In re Holliday's Tax Services Inc.*, 417 F. Supp. at 185 ("Suppose a corporation were too impoverished to employ a lawyer to defend it, or suppose it had a large claim it believed to be just but could find no lawyer who would take the case, believing it to be hopeless, should the corporation be denied its day in Court?") (citations omitted).

[78] *Id.* at 184 (citing *Oliner*, 138 N.E.2d at 217).

appear pro se as fundamental under either constitution. Consequently, in federal court, its infringement does not trigger the rigorous strict scrutiny analysis under the Equal Protection Clause.

In conclusion, according to the New York state court in *NYTAC Corp.*, a corporate criminal defendant in state court is afforded the right under both the Sixth Amendment of the United States Constitution and Article I, Section 6 of the New York State Constitution, to defend itself pro se.[80] However, the federal courts do not recognize this right. The key factor in determining the constitutionality of denying a corporate criminal defendant this right is whether the court recognizes it as a fundamental right afforded by the federal and state constitutions. While there is a lack of case law on the matter in federal court, the rule has continually and consistently been stated throughout federal and state court decisions that a corporation *must* appear through counsel.[81] Yet, under *NYTAC Corp.*, the court recognized a corporation as a "person" under the Federal and State Constitution, and accordingly afforded a corporate criminal defendant all the rights afforded a "person" in a criminal prosecution under both the Federal and State Constitutions. Thus, if the New York courts follow the holding in

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[79] *Id.*

[80] *NYTAC Corp.*, 783 N.Y.S.2d at 780-81.

[81] *See* Simbraw Inc. v. United States, 367 F.2d at 374 (3d Cir. 1966) (stating "[t]he rule is well established that a corporation can appear in a court of record only by an attorney at law."); *see also In re Holliday's Tax Services Inc.*, 417 F. Supp. at 183 (stating "[a] virtually unbroken line of state and federal cases has approved the rule that a corporation can appear in court only by an attorney.") (citations omitted).

NYTAC Corp., they will provide more rights to a corporation who wishes to defend itself in a criminal proceeding.

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FREEDOM OF SPEECH

United States Constitution Amendment I:

Congress shall make no law . . . abridging the freedom of speech, or of the press . . . .

New York Constitution Article I, Section 8:

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.