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Due Process: T.E.A. Marine Automotive Corp. v. Scaduto

The federal courts have also interpreted the Federal and State Equal Protection Clauses to grant many of the same rights. In *Burka v. New York City Transit Authority*,[583] the plaintiffs who were drug abusers alleged that they suffered equal protection violations under both the Federal and the New York State Constitutions.[584] They "claim[ed] that they "[were] not afforded the same protection as other *disabled* employees, such as alcohol users . . . ."[585] Specifically, "[t]hey contend[ed] that they [were] treated differently than others (alcohol users) similarly situated within the class, and that such disparate treatment bears no rational relationship to the [defendant's] stated objectives."[586] The court dismissed the plaintiff's federal claim stating that there existed a rational relationship between the Transit Authority's drug screening program and "its policy . . . designed to help ensure a safe and dependable public transit system."[587] As to the plaintiff's state equal protection claim, the court noted that "the equal protection clauses of the United States and New York constitutions are coextensive[,]"[588] thus mandating the dismissal of this claim.[589]

Thus, as to both the due process and equal protection claims asserted in *Manshul*, both the state and federal courts appear to be in agreement as to their handling of the issues presented.

T.E.A. Marine Automotive Corp. v. Scaduto[590]
(decided December 27, 1993)

Appellant claimed that publication of a tax lien sale violated his right to due process as provided in the State[591] and Federal[592]

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583. 680 F. Supp 590 (S.D.N.Y. 1988).

584. *Id.* at 601-02.

585. *Id.* at 601-03.

586. *Id.* at 602. The "policies in issue [in this case] prohibit[ed] drug use, requir[ed] drug testing, and disciplin[ed] or refus[ed] to hire those who test[ed] positive [for drug use] . . . ." *Id.* at 603.

587. *Id.* at 602-03.

588. *Id.*

589. *Id.*

590. ___ A.D.2d ___, 607 N.Y.S.2d 47 (2d Dep't 1993).

Constitutions.[593] This action was brought pursuant to an article 78 proceeding[594] to vacate a tax deed assessed against the appellant.[595] The appellate division held that written notice was not violative of the Due Process Clause of both the State and Federal Constitutions.[596]

In *McCann v. Scaduto*,[597] the New York Court of Appeals held that "where the interest of a property owner will be substantially affected by an act of government, and where the owner's name and address are known, due process requires that actual notice be given."[598] Furthermore, the court of appeals concluded that a "tax lien sale . . . creates 'momentous consequences' for the homeowner and that — balanced against these consequences — requiring that a notice be mailed to a person whose name and address are known imposes a minimal burden on the County. Actual notice is therefore required."[599] Thus, noting that appellant's title to the subject property was valid, the court reasoned that due process was "not offended by the fact that the municipal[ity] . . . mailed written notice of the tax lien sale to the same address as that to which the Receiver of Taxes of the Town of North Hempstead had consistently been sending the actual tax bills."[600]

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591. N.Y. CONST. art. I, § 6 provides that "[n]o person shall be deprived of life, liberty or property without due process of law."

592. U.S. CONST. amend. V states in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend. XIV § 1 similarly provides that "[n]o state shall . . . deprive to any person of life, liberty, or property without due process of law . . . ."

593. *T.E.A.*, ___ A.D.2d at ___, 607 N.Y.S.2d at 47.

594. N.Y. CIV. PRAC. L. & R. 7801-06 (McKinney 1981 and Supp. 1994).

595. *T.E.A.*, ___ A.D.2d at ___, 607 N.Y.S.2d at 47

596. *Id.* at ___, 607 N.Y.S.2d at 48.

597. 71 N.Y.2d 164, 519 N.E.2d 309, 524 N.Y.S.2d 398 (1987).

598. *Id.* at 176, 519 N.E.2d at 314, 524 N.Y.S.2d at 403.

599. *Id.* at 177, 519 N.E.2d at 314-15, 524 N.Y.S.2d at 404 (citation omitted).

600. *Id.* at ___, 607 N.Y.S.2d at 48.

Moreover, in *ISCA Enterprises v. City of New York*,[601] the court of appeals held that a municipality satisfied the minimum requirements of due process when it mailed notices of a tax lien sale to the names and addresses contained in a tax assessment record.[602] Additionally, in *Anthony v. Town of Brookhaven*,[603] the appellate division ruled that a municipalities' "use of its current assessment roll as the source of the names and addresses of property owners was appropriate under the circumstances . . . . [T]he assessment roll constitute[d] a comprehensive and generally accurate compilation of property ownership . . . ."[604]

The federal judiciary has dealt with the requirement of proper notice. For example, in *Mullane v. Central Hanover Bank & Trust*[605] the United States Supreme Court held that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[606] This standard for notice was applied to a tax lien proceeding in *Mennonite Board of Missions v. Adams*.[607] In *Mennonite*, the Court ruled that "[w]hen the mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication must be

601. 77 N.Y.2d 688, 572 N.E.2d 610, 569 N.Y.S.2d 927 (1991), *cert. denied*, 112 S. Ct. 1263 (1992).

602. *Id.* at 701-02, 572 N.E.2d at 616-17, 569 N.Y.S.2d at 933-34.

603. 190 A.D.2d 21, 596 N.Y.S.2d 459 (2d Dep't 1993).

604. *Id.* at 28, 596 N.Y.S.2d at 463. The case involved the rezoning of real property, where notice was given by publication and mail. *Id.* at 22, 596 N.Y.S.2d at 459.

605. 339 U.S. 306 (1950).

606. *Id.* at 314. In *Mullane*, the mere publication of judicial settlements was deemed an inadequate form of notice because the names and addresses of the beneficiaries entitled to such settlements were known, and providing personal notice by mail would not have created an undue hardship. *Id.* at 318.

607. 462 U.S. 791 (1983).

supplemented by notice mailed to the mortgagee's last known available address, or by personal service."[608]

Most recently, in *Weigner v. City of New York*,[609] the Second Circuit Court of Appeals used the *Mullane* standard in a foreclosure proceedings.[610] In *Weigner*, appellant owned real property and failed to pay taxes for more than four years.[611] By receiving bills and letters from the City relating to her delinquency, appellant knew foreclosure was pending.[612] The court held that "notice by ordinary mail supplemented by publication and posting was reasonably calculated to inform the parties affected. Due process does not require that notice sent by first class mail be proven to have been received."[613]

In conclusion, New York and federal case law are in accord on what type of notice is required for a tax lien proceeding to satisfy due process. Both require actual notice be mailed when the names and addresses of the parties are known to the municipality.

Unification Theological Seminary v. City of Poughkeepsie[614]
(decided February 7, 1994)

The plaintiffs claimed that the single family zoning ordinance of the City of Poughkeepsie[615] was unconstitutional because it

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608. *Id.* at 798 ("Until 1980 . . . Indiana law did not provide for notice by mail or personal service to mortgagees of property that was to be sold for nonpayment of taxes.").

609. 852 F.2d 646 (2d Cir. 1988).

610. *Id.* at 651.

611. *Id.*

612. *Id.*

613. *Id.*

614. ___ A.D.2d ___, 607 N.Y.S.2d 383 (2d Dep't 1994).

615. POUGHKEEPSIE, N.Y. CODE § 19-2.2 (1990). Definition of a Family:

(a) One (1), two (2) or three (3) persons occupying a dwelling unit; or

(b) Four (4) or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.

(2) It shall be presumptive evidence that four (4) or more persons living in a single dwelling unit who are not related by blood,