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## Search and Seizure: Stender v. City of Albany

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home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.<sup>2956</sup>

Using these considerations, the Court determined that the defendant's barn and the area immediately surrounding it were not within the curtilage and it was proper to enter upon it.<sup>2957</sup>

Because the New York Court of Appeals refused to follow the 'open fields' doctrine enumerated in *Oliver v. United States*,<sup>2958</sup> defendants' curtilage under state law is given greater protection.

Stender v. City of Albany<sup>2959</sup>  
(decided December 31, 1992)

Plaintiffs brought this action for a declaratory judgment to determine the constitutionality of the city of Albany's housing code, the Residential Housing Occupancy Permit Provisions.<sup>2960</sup> The plaintiff asserted that these provisions violated the Fourth Amendment of the United States Constitution<sup>2961</sup> and article I,

<sup>2956</sup>. *Id.*

<sup>2957</sup>. *Id.*

<sup>2958</sup>. 466 U.S. at 178-79 (holding that there is no legitimate expectation of privacy in "open fields").

<sup>2959</sup>. 188 A.D.2d 986, 592 N.Y.S.2d 70 (3d Dep't 1992).

<sup>2960</sup>. *Id.* at 986, 592 N.Y.S.2d at 71; ALBANY HOUSING CODE, art. III, §14-129. This code provision provides in pertinent part:

The Building Department shall have the right to inspect all or any part of the rental dwelling, including any unit or apartment or entire multiple residence, except that the owner, agent or person in charge thereof shall have the right to insist upon the procurement of a search warrant from a court of competent jurisdiction by the Commissioner of Buildings in order to enable such inspection. The officials charged with conducting the housing inspection pursuant to this ordinance shall be required to obtain a search warrant whenever an owner, agent or person in charge refuses to permit a warrantless inspection of the premises after having been advised that he or she has a constitutional right to refuse entry of the officials without a search warrant.

*Id.* at 14-131(b).

<sup>2961</sup>. U.S. CONST. amend. IV. The provision states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,

section 12 of the New York State Constitution.<sup>2962</sup> The challenged code section required that all rental property be inspected by the Building Department prior to each rental to new tenants.<sup>2963</sup> The court determined that there was no constitutional violation because the statute expressly required a search warrant or a landlord's consent before an inspection could be made.<sup>2964</sup> Since the code did not "authorize a warrantless inspection," it did not constitute an unreasonable search and seizure.<sup>2965</sup>

The two plaintiffs were charged with violating the Albany Housing Code because they did not obtain rental permits and allow the Building Department to physically inspect their property prior to rental.<sup>2966</sup> Plaintiff Stender eventually agreed to have his premises inspected.<sup>2967</sup> Plaintiff Haddad, however, made no such concession and as a result, at the time of this decision there were housing code violation charges pending against him.<sup>2968</sup> Both sought declaratory relief, and challenged the constitutionality of the statute as being inconsistent with the mandates of the search and seizure provisions of the Federal and New York State Constitutions.<sup>2969</sup>

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supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

*Id.*

2962. *Stender*, at 986, 592 N.Y.S.2d at 71; N.Y. CONST. Art. I, § 12. The statute states in relevant part:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

*Id.*

2963. *Stender*, 188 A.D.2d at 986, 592 N.Y.S.2d at 71. *See also* ALBANY HOUSING CODE, art. III, §14-131(b).

2964. *Id.* at 987, 592 N.Y.S.2d at 72.

2965. *Id.*

2966. *Id.* at 987, 592 N.Y.S.2d at 71.

2967. *Id.*

2968. *Id.*

2969. *Id.* Because the exact disposition of the charges against Haddad were not known at the time of this lawsuit, the court refused to "speculate" about the application of the statute but determined that if the penalty provisions of the

The court analogized this case to an earlier court of appeals decision, *Pashow v. Town of Babylon*.<sup>2970</sup> In that case, as in the present case, the ordinance required either the owners consent or a warrant, except in emergencies.<sup>2971</sup> The court upheld the ordinance as constitutional because it did not authorize a warrantless search.<sup>2972</sup>

The court also considered *Sokolov v. Village of Freeport*,<sup>2973</sup> another decision of the New York Court of Appeals. The court determined that there was a constitutional violation because the ordinance authorized a warrantless inspection of residential real property.<sup>2974</sup> The court held “[a] property owner cannot be regarded as having voluntarily given his consent to a search where the price he must pay to enjoy his rights under the Constitution is the effective deprivation of any economic benefit from his rental property.”<sup>2975</sup> The court stated that “‘except in certain carefully defined classes of cases, a search of private

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ordinance required an owner to consent to a warrantless entry or else face a penalty, such provisions would be struck down as unconstitutional. *Id.* at 987, 592 N.Y.S.2d at 72.

2970. 53 N.Y.2d 687, 421 N.E. 2d 498, 439 N.Y.S.2d 103 (1981).

2971. *Id.* at 688, 421 N.E.2d at 498, 439 N.Y.S.2d at 103.

2972. *Id.*

2973. 52 N.Y.2d 341, 420 N.E.2d 55, 438 N.Y.S.2d 257 (1981). The appellants in *Sokolov* brought an action for a declaratory judgment challenging the constitutionality of a Town of Freeport Ordinance which required that landlords obtain a permit before leasing their property. *Id.* at 344, 420 N.E.2d at 56, 438 N.Y.S.2d at 258. Each permit demanded a detailed inspection of the premises and the permit had to be renewed either before each re-rental or every two years, whichever came first. *Id.* at 343-44, 420 N.E.2d at 56, 438 N.Y.S.2d at 258. A person was required to notify the town about vacancies; the town was obligated to inspect the premises within two days. *Id.* at 344, 420 N.E.2d at 56, 438 N.Y.S.2d at 258. An individual who did not have his rental premises inspected risked fines of up to \$250 per day. *Id.* The court found this code provision unconstitutional because it required a landlord to submit to a warrantless search in order to obtain a rental permit. *Id.* at 343, 420 N.E.2d at 56, 438 N.Y.S.2d at 258.

2974. *Id.* at 345-346, 420 N.E.2d at 57, 438 N.Y.S.2d at 259.

2975. *Id.* at 346, 420 N.E.2d at 57, 438 N.Y.S.2d at 259.

property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant."<sup>2976</sup>

The Supreme Court in *Camera v. Municipal Court*,<sup>2977</sup> determined that warrantless administrative housing inspections could not be upheld as constitutional.<sup>2978</sup> It explained that these inspections did in fact directly violate important Fourth Amendment interests.<sup>2979</sup> The court acknowledged the important societal objective of maintaining safe housing, but determined that these important goals could be maintained "within the confines of a reasonable search warrant requirement."<sup>2980</sup> Therefore, under federal law, in order for an inspection to take place, a housing authority had to either have a search warrant or the owner's consent to enter the premises.

*Stender* is consistent with both the New York and Federal law. Both stress that in situations where there is no pending emergency, there must be a search warrant issued in order for any government agent to enter and inspect private property.

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2976. *Id.* at 345, 420 N.E.2d at 56, 438 N.Y.S.2d at 258 (quoting *Camera v. Municipal Court*, 387 U.S. 523, 528-29 (1967)).

2977. 387 U.S. 523 (1967).

2978. *Id.* at 534.

2979. *Id.* at 530-33. The Court did agree that administrative inspections were less intrusive than searches for evidence in a criminal proceeding, nevertheless, it was determined that "these inspection cases are [not] merely peripheral." *Id.* at 530. The Court also pointed out that because administrative code violations were often backed by criminal penalties, there was an equally important interest of protecting the property owner against such a search. *Id.* at 531. The Court held: "We simply cannot say that the protections provided by the warrant procedure are not needed in this context; broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked at the risk of criminal penalty." *Id.* at 533.

2980. *Id.*