



1992

## Due Process

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Connecticut State Constitution.

The court omitted its discussion of the plaintiffs' claims that chapter 584 violates provisions of the New York State Constitution including the free exercise of religion clause for purposes of publication. The court concluded that PCAP was not violative of the free exercise clause.

## CIVIL COURT

### NEW YORK COUNTY

55 Avenue C Housing Development  
Fund Corporation v. Serrano<sup>256</sup>  
(published January 23, 1991)

Tenant claimed that a privately-owned cooperative's involvement with the state, constituted state action such that he was guaranteed a due process right under the New York State<sup>257</sup> and Federal<sup>258</sup> Constitutions to notice and cause of eviction before such eviction could take place. The court held, under the state constitution, that there was "meaningful State participation" with the cooperative's activities so as to constitute state action and, thus, to entitle the tenant to procedural due process of law.<sup>259</sup>

The cooperative brought this proceeding to evict a tenant on the ground that he was "holding over after termination of his term."<sup>260</sup> The tenant moved to dismiss the action because he did not receive notice for the cause of eviction.

Prior to becoming a cooperative, the building was owned and managed by the City of New York. To assist the tenants in forming a cooperative, the city funded the building's rehabilitation, gave money to the tenants to purchase the building and

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physical or mental disability.").

256. N.Y. L.J., Jan. 23, 1991, at 24 (Civ. Ct. New York County 1991).

257. N.Y. CONST. art. I, § 6.

258. U.S. CONST. amend. VI.

259. *55 Ave. C*, N.Y. L.J., Jan. 23, 1991, at 24.

260. *Id.*

granted tax exemptions. Subsequently, the tenants formed a co-operative corporation pursuant to article XI of the Private Housing Finance Law<sup>261</sup> and section 402 of the state's Business Corporation Law.<sup>262</sup> Prior to becoming a cooperative association, the group of tenants agreed with the city to provide housing for low-income people and agreed not to sell the building without approval from the city.<sup>263</sup> The cooperative asserted that the city's involvement constituted "only passive control" and therefore did not warrant state action. The cooperative claimed that once a private cooperative assumed ownership of the building, it was no longer subject to state action under the Federal Due Process Clause.<sup>264</sup>

The court, however, observing that the state constitution's due process clause provides "a more flexible standard than the one found in the Fourteenth Amendment," concluded that there was state action under the state constitutional provision.<sup>265</sup> Relying upon the state action test announced by the New York Court of Appeals in *Sharrock v. Dell Buick-Cadillac, Inc.*,<sup>266</sup> the court found that "the City is sufficiently entwined with the activities" of the cooperative so as to constitute state action.<sup>267</sup> According to the *Sharrock* court, the following factors must be considered to determine whether there is state action:

The source of authority for the private action; whether the State is so entwined with the regulation of the private conduct as to constitute State activity; whether there is meaningful State participation in the activity; and whether there has been a delegation of what has traditionally been a State function to a private

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261. N.Y. PRIV. HOUS. FIN. LAW §§ 500-508 (McKinney 1991).

262. N.Y. BUS. CORP. LAW § 402 (McKinney 1986 & Supp. 1992).

263. *55 Ave. C*, N.Y. L.J., Jan. 23, 1991, at 24.

264. *Id.* (citing *Langevin v. Chenango*, 447 F.2d 296 (2d Cir. 1971); *Reiner v. West Village Assocs.*, 600 F. Supp. 233 (S.D.N.Y.), *aff'd*, 786 F.2d 31 (2d Cir. 1985); *Argo v. Hills*, 425 F. Supp. 151 (S.D.N.Y. 1977), *aff'd*, 578 F.2d 1366 (2d Cir. 1978)).

265. *Id.* (citing *Sharrock v. Dell Buick-Cadillac, Inc.*, 45 N.Y.2d 152, 379 N.E.2d 1169, 408 N.Y.S.2d 39 (1978)).

266. 45 N.Y.2d 152, 379 N.E.2d 1169, 408 N.Y.S.2d 39 (1978).

267. *Id.*

person.<sup>268</sup>

The court based its assessment on the fact that there was state financial assistance, tax exemptions and state imposed restricted use of the building. Based on this past and present state involvement, the court concluded that the tenant was entitled to invoke his due process guarantees under the state constitution.

For private conduct to be actionable under the Fourteenth Amendment of the Federal Constitution, there must be significant state involvement with such conduct.<sup>269</sup> Private conduct, authorized by state law, is not always dispositive to a finding of state action under the Federal Constitution. For example, in *Sniadach v. Family Finance Corp.*,<sup>270</sup> the United States Supreme Court ruled that there was state action and proceeded to invalidate a statute that gave a clerk of a court the power to grant a prejudgment wage garnishment proceeding without notice or hearing.<sup>271</sup> On the other hand, in *Flagg Brothers, Inc. v. Brooks*,<sup>272</sup> the Court upheld a New York lien law that permitted warehouse owners, who had a lien on goods stored under their custody, the right to sell such goods subject to certain notice requirements.<sup>273</sup> In *Flagg*, the Court found a "total absence of overt official involvement,"<sup>274</sup> and concluded that there was no state action constituting a Fourteenth Amendment violation.<sup>275</sup>

Confronted with a similar lien law, the New York Court of Appeals observed that the state constitution's due process clause "provides a basis to apply a more flexible State involvement requirement than is currently being imposed by the Supreme Court with respect to the Federal provision."<sup>276</sup> In *Sharrock*, the court

268. *Id.* at 158, 379 N.E.2d at 1172, 408 N.Y.S.2d at 42-43.

269. *See Reitman v. Mulkey*, 387 U.S. 369, 375 (1967).

270. 395 U.S. 337 (1969).

271. *Id.* at 342.

272. 436 U.S. 149 (1978).

273. *Id.* at 151-52 (citing N.Y. U.C.C. § 7-210 (McKinney 1964)).

274. *Id.* at 157.

275. *Id.* at 166.

276. *Sharrock*, 45 N.Y.2d at 160, 379 N.E.2d at 1174, 408 N.Y.S.2d at 44. In *Sharrock*, the court noted that under the state provision instances of private discrimination were prohibited, whereas under the federal equivalent,

held that under the state constitution's due process clause, garage owners were prohibited from conducting *ex parte* sales of automobiles which were permitted under the state's Lien Law.<sup>277</sup> To reach this determination, the court reasoned that there was state action, thus entitling the automobile owners to due process, because the state was "so entwined . . . into the debtor-creditor relationship as to constitute sufficient and meaningful State participation which triggers the protections afforded by our Constitution."<sup>278</sup> In *55 Avenue C Housing Development Fund Corp.*, the court agreed with the reasoning of *Sharrock* and similarly concluded that there was significant state involvement so as to constitute state action.

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the fourteenth amendment only prohibits instances of state discrimination. *Id.* (comparing § 6 of article I of the New York State Constitution with the fourteenth amendment of the Federal Constitution).

277. *Id.* at 166-67, 379 N.E.2d at 1178-79, 408 N.Y.S.2d at 48-49; see Act of Mar. 12, 1968, ch. 30, § 3, 1968 N.Y. Laws 68, 69-70 (McKinney); Act of May 9, 1969, ch. 407, § 63, 1969 N.Y. Laws 68, 596, 621 (McKinney) (codified as amended at N.Y. LIEN LAW §§ 201, 202, 204 (McKinney Supp. 1992)).

278. *Sharrock*, 45 N.Y.2d at 161, 379 N.E.2d at 1174, 408 N.Y.S.2d at 44.