

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Tuesday, May 5, 2015

No. 54 Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. &c. v Herrera Navarro

Francisco Javier Herrera Navarro (Herrera) was a director of Agra Services of Canada, Inc. (Agra Canada) and its subsidiary Agra USA in 2004, when the companies entered into a Receivables Purchase Agreement (RPA) with Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., Rabobank International, New York Branch (Rabobank). In 2005, Herrera and Eduardo Guzman Solis (Guzman), who controlled Agra Canada and Agra USA, executed personal guarantees in favor of Rabobank, including "the punctual payment when due ... of all obligations and liabilities of [Agra USA] to [Rabobank] now or hereafter existing, including without limitation under the [RPA], whether for principal, interest, fees, expenses or otherwise." Herrera's guaranty provided that his liability "shall be absolute and unconditional irrespective of ... any lack of validity or enforceability of any such agreement [or] any other circumstance which might otherwise constitute a defense available to, or a discharge of, [Agra Canada] or a guarantor." Agra USA also guaranteed Agra Canada's obligations to Rabobank.

After Guzman died in 2011, Rabobank learned he had been running a Ponzi scheme and Agra Canada owed Rabobank nearly \$42 million. The bank took control of Agra Canada, placed it into receivership in January 2012, and arranged the appointment of a receiver. In March 2012, Rabobank brought a federal action against Agra USA, Herrera and others to recover under their guaranties. Agra USA did not respond. On April 11, 2012, Agra Canada removed all officers and directors of Agra USA, including Herrera, and put an employee of the receiver in charge of the subsidiary. Five days later, Rabobank moved for a default judgment against Agra USA. Agra USA did not appear at the hearing, and the federal court entered a \$41,991,980 default judgment against it on April 30, 2012. Rabobank brought this state action against Herrera to recover the amount of the judgment under his guaranty.

Supreme Court denied Rabobank's motion for summary judgment, saying, "Herrera argues that the default judgment is not a legitimate 'obligation' covered by the Guaranty because Rabobank controlled Agra [Canada] and Agra USA at the time of the [federal court] action and caused Agra USA to default.... Given the facts available at this time, it is unclear who controlled Agra USA during the course of the [federal court] action, at the time of default, and when judgment was entered. These are material questions of fact that preclude summary judgment."

The Appellate Division, First Department reversed on a 3-2 vote and granted summary judgment for Rabobank based on Herrera's waiver of all defenses. "[N]o matter how labeled, Herrera's assertion of collusion is, in fact, a defense to his guaranty inasmuch as he offers it in an effort to avoid performance under the guaranty.... Herrera cannot avoid his agreement simply by declaring that a defense is not really a defense because it actually calls into question the validity of the obligation. This exception would swallow the rule whole...."

The dissenters said, "[T]he 'obligation' plaintiff seeks to enforce -- a federal court default judgment of more than \$41 million that plaintiff arguably obtained by collusion -- would not, if the collusion is ultimately proven, constitute a valid obligation of Agra USA under defendant's guarantee. An issue of fact exists as to whether plaintiff unfairly brought about the very condition upon which it relies to trigger defendant's guarantee.... The waiver of defenses provision cannot confer on plaintiff the absolute right to recover what it has unilaterally deemed to be an 'obligation,' if in fact no such obligation exists."

For appellant Herrera: T. Barry Kingham, Manhattan (212) 696-6000

For respondent Rabobank: Jonathan D. Pressment, Manhattan (212) 659-7300

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To be argued Tuesday, May 5, 2015

No. 87 People v Hakim B. Scott

On December 7, 2008, Hakim Scott, Keith Phoenix and a third man were driving home from a party in Phoenix's SUV when they stopped at a red light on Bushwick Avenue in Brooklyn. Two brothers, Jose and Romel Sucuzhaney, crossed the street in front of them. Romel was supporting Jose, who was heavily intoxicated. When Phoenix shouted homophobic and ethnic epithets from the window, Jose kicked at the vehicle. Scott got out and struck Jose on the head with an empty beer bottle, knocking him to the ground, then chased after Romel with the broken bottle. Phoenix retrieved a baseball bat from the rear of his SUV and used it to beat Jose. Scott returned several minutes later and the three men fled in the SUV. Jose died of his injuries the next day.

Scott was charged, on a theory of accessorial liability, with various homicide counts for the death of Jose and with attempted assault for chasing Romel with the bottle. At trial, Supreme Court denied his motion to dismiss the charges for insufficient evidence, saying the prosecution "established by sufficient evidence [that Scott and Phoenix] were acting in concert as to each and every crime as to each and every victim." The court initially instructed the jury that the crime was alleged to have occurred between December 6 and 7, 2008. The next day, the court told the deliberating jury -- in the absence of Scott, defense counsel and the prosecutor, but with defense counsel's consent -- that the correct dates were December 7 and 8, 2008. Scott was convicted of first-degree manslaughter and attempted assault, and acquitted of murder and hate crime charges.

The Appellate Division, Second Department reduced Scott's aggregate prison sentence to 29 years (25 years for manslaughter and a consecutive term of 4 years for attempted assault), and otherwise affirmed. "Viewing the evidence in the light most favorable to the prosecution..., we find that it was legally sufficient to establish beyond a reasonable doubt that the defendant committed the crime of murder in the first degree ... in connection with the death of Jose." The court also found Scott "was not deprived of his right to be present at all material stages of his trial when the Supreme Court, after discussing an error in the jury charge with counsel for both sides, but without counsel or the defendant present in the courtroom, instructed the jury as to the correct dates that that the crimes were alleged to have been committed...."

Scott argues he "was clearly not guilty of manslaughter as a principal, since the medical examiner testified that Jose died as a result of multiple blows with a heavy object -- clearly the baseball bat -- and not from a single blow with a beer bottle. Nor was there any evidence that appellant shared a 'community of purpose' with Phoenix since there was no evidence of communication of any kind, verbal or otherwise, between Phoenix and appellant. Nor was there any evidence that appellant acted with the intent to have Phoenix cause Jose serious physical injury." Scott says the trial court's correction of its jury charge in his absence "was a 'mode of proceedings' error" requiring reversal "without regard to prejudice."

For appellant Scott: Steven R. Bernhard, Manhattan (212) 693-0085

For respondent: Brooklyn Assistant District Attorney Seth M. Lieberman (718) 250-2516