

Matter of Taylor v Quinn
2007 NY Slip Op 31172(U)
May 7, 2007
Supreme Court, New York County
Docket Number: 0105373/2007
Judge: Leland G. DeGrasse
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. LELAND DEGRASSE

PRESENT: _____
Justice

PART 25

Robert Taylor
- v -
Christine Gunn

INDEX NO. 105373-07
MOTION DATE MAY 07 2007
MOTION SEQ. NO. 1
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is granted in accordance with
accompanying Memorandum Decision.

FILED
MAY 11 2007
NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

MAY 07 2007

Dated: _____

MS

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
In the Matter of the Application of ROBERT TAYLOR
and RUTH CARTER,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules,

-against-

Index No. 105373/07

CHRISTINE QUINN, as Speaker of the NEW YORK
CITY COUNCIL, Council Member ALAN GERSON,
Council Member DENNIS GALLAGHER, Council
Member JOSEPH ADDABO and the CITY COUNCIL
OF THE CITY OF NEW YORK,

Respondents.

FILED
MAY 11 2007
NEW YORK
COUNTY CLERK'S OFFICE

-----X
DeGrasse, J.:

Petitioners have brought this application for a judgment pursuant to CPLR Article 78 prohibiting the New York City Council from voting upon a proposed legislative enactment designated as Introduction 556-A. Respondents cross-move for an order dismissing the petition for failure to state a cause of action. If enacted as a local law, Introduction 556-A would bring about the co-naming of 51 thoroughfares and public places throughout the City of New York. Community Board Three in Brooklyn voted to have a portion of Gates Avenue co-named after Sonny Abubadika Carson. It is alleged in the petition that respondents, the Speaker and certain members of the City Council, "seek to deprive Community Board 3 of its due process and equal protection and Community Board 3 residents of their voice by summarily deciding that Sonny Carson is a 'controversial' figure and as such engineered a vote in the Parks Committee which removed Mr. Carson's name from those 51 others enumerated in Introduction 556A 2007."

Petitioners also allege that respondents' conduct is arbitrary and capricious. The relief petitioners seek is a judgment directing respondents to retract the deletion of Sonny Carson's name from Introduction 556-A and prohibiting respondents from voting on the measure or any similar measure until Sonny Carson's name has been restored.


CPLR 7803 provides as follows:

"The only questions that may be raised in a proceeding under this article are:

1. whether the body or officer failed to perform a duty enjoined upon it by law; or
2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or
3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or
4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence."

As set forth in the petition, the conduct petitioners seek to address occurred in the course of a legislative process. The remedy of mandamus lies only to compel the performance of a purely ministerial act where there is a clear right to the relief sought (*Wolff v Town / Vill. of Harrison*, 30 AD3d 432, 433 [2006]). Mandamus is not available where the act involved is a purely legislative function (*id.*). Moreover, "prohibition is not available to control or prevent legislative, executive or ministerial action" (*Matter of Law Offs. Of Andrew F. Capoccia v Spitzer*, 270 AD2d 643, 645 [2000] *lv denied* 95 NY2d 755 [2000]). Accordingly, the instant controversy is not justiciable because it clearly involves the exercise of discretion by a legislative

body. For the foregoing reasons, the application is denied and the petition dismissed. The cross motion is granted. The Clerk shall enter judgment accordingly.



Dated: May 7, 2007

J. S. C.

HON. LELAND DeGRASSE

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