

Paliotta v De Blasio
2019 NY Slip Op 30323(U)
February 13, 2019
Supreme Court, New York County
Docket Number: 159692/2018
Judge: Arthur F. Engoron
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

-----X

INDEX NO. 159692/2018

GIOVANNI PALIOTTA, GOLDEN HORSES AND THOSE
SIMILARLY SITUATED AND AFFECTED,

MOTION DATE _____

Plaintiffs,

MOTION SEQ. NO. 001

- v -

MAYOR BILL DE BLASIO, NEW YORK CITY, NEW YORK CITY
PARKS DEPARTMENT, THE CITY OF NEW YORK, NEW YORK
CITY DEPARTMENT OF TRANSPORTATION, MAYOR BILL DE
BLASIO, NEW YORK CITY, NEW YORK CITY PARKS
DEPARTMENT, THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, NEW YORK CITY TAXI
AND LIMOUSINE COMMISSION, MEERA JOSHI, NORA
MARINO, NEW YORK CITY PARKS AND RECREATION, NEW
YORK STATE DEPARTMENT OF TRANSPORTATION, NEW
YORK CITY DEPARTMENT OF HEALTH AND MENTAL
HYGIENE, NEW YORKERS FOR CLEAN, LIVABLE AND SAFE
STREETS DBA NY CLASS, STEPHEN NISLICK,

DECISION AND ORDER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 1-78,
were read on this motion and cross-motion for PRELIMINARY INJUNCTION/DISMISSAL.

Upon the foregoing documents, it is hereby ordered that plaintiffs' motion for a preliminary
injunction is denied, and defendants' cross-motion to dismiss is granted.

DICTA

This case does not pose the following question: if you were a horse, would you rather be in
traffic near a park, or in a park near traffic? However, you would never know that from some of
the submissions and comments this case has engendered. If this Court itself knows anything
about horses, having ridden them a few times, it knows more than the City knows, because
according to plaintiffs, the City knows nothing. One person who, indisputably, knows a lot
about horses is Chief Phillip Whiteman, Chief of the Cheyenne Nation, who addressed this Court
at plaintiffs' request. Outfitted in full tribal regalia, Chief Whiteman offered a moving, poignant,
heartbreaking speech about what (mostly European) immigrants to America have done to its
native peoples and its environment, and about the importance of animals, particularly horses,
buffalo, and dogs. Although Chief Whiteman's words cannot triumph as a matter of law, this
Court believes them worthy of deep thought and consideration.

DECISION

Background

Plaintiff Giovanni Paliotta is the owner of a “horse and carriage” business that provides rides to customers, often tourists, in and around Manhattan’s Central Park. He commenced this proceeding by filing a summons and complaint against defendants (hereafter, the “City”) that alleges 61 causes of action in response to the City’s plan to move the permissible carriage pick-up locations currently located just outside Central Park to within the park. Plaintiffs moved preliminarily to enjoin the enactment and enforcement of the City’s proposed rule and requested a temporary restraining order (“TRO”) pending the hearing of the motion. The City cross-moved for dismissal. This Court granted a TRO, preventing implementation pending determination of these motions.

The City’s proposed rule, which is scheduled to go into effect February 15, 2019, moves the permissible passenger pick up and discharge stations for all horse-drawn carriages from their current locations outside the perimeter of Central Park (on Central Park South and Grand Army Plaza) to locations inside the park. Although the physical distances of the new locations are only a few hundred feet, at most, from the previous locations, plaintiffs argue that moving the stations inside the park will irreparably damage their business, and the business of other carriage drivers, as many rides originate or terminate outside the park.

Plaintiffs’ sincere, colorful and creative counsel propounds a plethora of inventive constitutional, legal, regulatory, and “natural law” arguments. His client and his client’s colleagues, many of whom have, upon information and belief, decades of experience working with their stallions, geldings and mares, have vast knowledge, experience, and expertise in the well-being of horses. The Department of Transportation’s expertise lies elsewhere.

However, ironically, this case is not about animal welfare, nor is it about the income of the drivers; it is about power and authority, the power and authority to regulate the horse-drawn carriage trade in New York City. The City’s opposition and cross-motion to dismiss primarily contends that the Administrative Code of the City of New York (“Administrative Code”), drafted by the City Council and codified by the State Legislature, grants to the Department of Transportation (“DOT”) that power and authority, and that the proposed rule properly exercises such authority. The City further argues that plaintiffs have failed to state a valid, supportable claim in any of its 61 assorted causes of action. For the reasons set forth herein, this Court agrees with the City.

Statutory Framework

City regulations governing horse drawn carriages are numerous and diversified and fall within the ambit of many different city agencies, from the Department of Consumer Affairs (Admin. Code §§ 20-373, 20-380) to the Department of Health (Admin. Code § 17-330) to the Department of Transportation (Admin. Code § 19-174).

Section 19-174(a) of the Administrative Code is titled “Passengers Boarding Horse Drawn Cabs” and states, as here relevant:

The commissioner [of the Department of Transportation] shall designate by rule specific locations on the streets, avenues and roadways which shall be the sole locations where passengers may board horse drawn cabs...

Discussion

Although plaintiffs initiated this matter by filing a summons and a complaint sounding in, inter alia, tort, contract, and constitutional law, they are essentially challenging administrative rule-making, which falls under the rubric of CPLR Article 78 proceedings. Consequently, this Court will deem this “action” to be an Article 78 “special proceeding” and analyze the case accordingly. CPLR 103(c); See Clissuras v City of New York, 131 AD2d 717, 718 (2nd Dep’t 1987).

Although generally one may not challenge legislative acts in an Article 78 proceeding, an exception exists for challenging quasi-legislative acts of administrative agencies. New York City Health & Hosps. Corp. v McBarnette, 84 NY2d 194, 203-204 (1994). Specifically, “with respect to the exercise of an administrative agency’s legislative rule-making power, ‘the party seeking to nullify such a regulation has the heavy burden of showing that the regulation is unreasonable and unsupported by any evidence.’” Big Apple Food Vendors’ Ass’n v Street Vendor Review Panel, 90 NY2d 402, 408 (1997). Setting the burden high is consistent with the general principles of legislative deference, as an agency being challenged is exercising power that the Legislature specifically granted to it. Id. Additionally, a court may not substitute its own judgment for that of an agency as to matters entrusted by law to the agency’s specialized expertise. See Antell v Board of Ed. of the City of New York, 21 Misc 2d 119, 125 (Sup Ct, NY County 1959), aff’d, 10 AD2d 699 (1st Dep’t 1960).

The City asserts that the purpose of this proposed change is to “reduce the amount of time that horses spend alongside vehicular traffic, thereby limiting horses’ interaction and potential conflict with vehicular traffic and thus promoting the safety and well-being of the horses, the occupants of horse drawn cabs, and the occupants of motor vehicles.” See Exhibit G, annexed to the City’s cross-motion. Even assuming, arguendo, that plaintiffs are correct that DOT has no expertise in horses and, accordingly, that the Court need not defer to the regulation at issue, plaintiffs’ argument misses the mark, as DOT indisputably has expertise in traffic.

“Generally, the determination of an [Article 78 proceeding] is based not on the resolution of factual issues, but on the purely legal consideration of whether the challenged determinations were reached in accordance with applicable statutory and regulatory provisions and have a rational basis.” Save Our Forest Action Coal. Inc. v City of Kingston, 246 AD2d 217, 220 (3rd Dep’t 1998) (holding that “[a]pplying traditional administrative law analysis, it makes no difference whether there was conflicting evidence or opinion which, if credited by the agency, might have supported a contrary conclusion, for a court has no authority to substitute its judgment for that of the agency so long as the agency’s determination has a rational basis in fact”).

The City has demonstrated that, through its public comment period, it considered and weighed the interests of various other City agencies, lawmakers, and members of the public. Notably, the

proposed rule has the support of the Department of Health, the Department of Parks and Recreation, lawmakers who represent the citizens who live on the streets surrounding Central Park, and last, but certainly not least, the American Society for the Prevention of Cruelty to Animals. Furthermore, § 19-174(a) unambiguously empowers the Commissioner of the Department of Transportation with authority to, as quoted above, “designate by rule specific locations on the streets, avenues and roadways which shall be the sole locations where passengers may board horse drawn cabs.” This explicit grant of authority to DOT, viewed in connection with DOT’s stated intent of mitigating the amount of time horses spend mingling with, and presumably impeding, traffic, renders its proposed rule beyond judicial reproach or second-guessing. See Consolation Nursing Home, Inc. v Comm’r of New York State Dep’t of Health, 85 NY2d 326, 331 (1995); Howard v Wyman, 28 NY2d 434 (1971). This Court cannot say that the City’s proposed rule is arbitrary, capricious, unreasonable, or unsupported by any evidence.

Plaintiffs’ reliance on Boreali v Axelrod, 71 NY2d 1 (1987), is unavailing. Unlike in Boreali, the grant of authority at issue here is not so broad that it can be categorized as impermissible policy making. The state legislature, in a very narrow delegation of authority, vests the Commissioner of DOT with the express, explicit authority to designate pick-up and drop-off locations for passengers street-hailing horse-drawn carriages. This is just what the City’s proposed rule does.

Finally, this Court has considered all 61 of plaintiffs’ causes of action, from the mundane to the fantastical to the unrecognizable, and finds that none of them embodies a valid cause of action upon which relief can be granted.

Conclusion

For the reasons set forth herein, the plaintiffs’ motion for a preliminary injunction is denied, the City’s cross-motion to dismiss the complaint is granted, and the Clerk is hereby directed to enter judgment accordingly.

2/13/2019

DATE



ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE