Central Park Sightseeing LLC v Friends of Animals, Inc.
2017 NY Slip Op 30327(U)
February 21, 2017
Supreme Court, New York County
Docket Number: 656416/2016
Judge: Arthur F. Engoron
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 37

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CENTRAL PARK SIGHTSEEING LLC,

Plaintiff,

- against -

FRIENDS OF ANIMALS, INC., NEW YORKERS FOR CLEAN, LIVABLE & SAFE STREETS, INC. d/b/a NYCLASS, EDWARD A. SULLIVAN, JILL CARNEGIE, EDITA BIRNKRANT, STACY MONTEROSA, MICHAEL ("MIKEY") DOLLING, and Does 1-100, Inclusive,

Defendants.

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Index No. 656416/2016

Sequence Number: 001

Decision and Order

Arthur F. Engoron, Justice

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1 to 3, were used on plaintiff's motion, pursuant to CPLR 6301, for a preliminary injunction enjoining defendants from, inter alia, harassing persons in Horse-Drawn Carriage Zones and blocking and interfering with the progress of horse-drawn carriages, and for other relief:

Papers Numbered:

Order to Show Cause - Affirmation - Affidavits - Exhibits (memorandum of law) 1
Affirmations - Affidavits - Exhibits (memorandum of law) 2
Reply Affirmations - Reply Affidavits - Exhibits (memorandum of law) 3

Upon the foregoing papers, the motion is granted in part as follows:

The Complaint's Allegations

Plaintiff, Central Park Sightseeing LLC ("CPS"), offers horse-drawn carriage rides in Central Park to the public (Complaint at ¶11). CPS books rides for the carriages it owns and operates, as well as for independent carriage owners/operators with which it is affiliated (Complaint at ¶12). (Apparently not wanting to appear to be a one-trick pony, CPS notes that it provides other activities besides horse-carriage rides). Defendant, New Yorkers for Clean, Livable & Safe Streets, Inc. d/b/a NYCLASS ("NYCLASS"), is protesting the rides and interfering with the public's access to and enjoyment of the rides (Complaint at ¶¶3, 4, 16-19). Individual defendants Edward A. Sullivan ("Sullivan"), Jill Carnegie ("Carnegie"), Edita Birnkrant ("Birnkrant"), Stacy Monterosa ("Monterosa"), and Michael Dolling ("Dolling"), are affiliated with NYCLASS and have been harassing members of the public and horse-drawn carriage drivers and obstructing the public's enjoyment of the rides (Complaint at ¶¶ 5-9, 16-19). CPS's complaint, filed on December 8, 2016, asserts three causes of action, to wit: public nuisance (first cause of action);

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tortious interference with contractual relations (second cause of action); and tortious interference with prospective economic advantage (third cause of action), for which plaintiff seeks injunctive relief and damages.

The Instant Motion

CPS now moves, pursuant to CPLR 6301, for a preliminary injunction enjoining defendants from, inter alia: "blocking, impeding or obstructing" horse-drawn carriage rides; "harassing or physically abusing" persons in horse-drawn carriage zones; being "within a buffer zone of 15 feet from any horse-drawn carriage"; and "engaging in demonstration activities that violate local regulations, ordinances or rules." CPS contends that defendants' conduct crosses the line from protected free speech into harassment and obstruction, which is dangerous to the public and directly interferes with CPS's business. Defendants vigorously oppose the motion.

Discussion

Love and marriage, love and marriage,
Go together like a horse and carriage.
This I tell you, brother,
You can't have one without the other.

(Lyrics by Sammy Cahn; Music by Jimmy van Heusen; Singing by Frank Sinatra, et al.)

Horses and carriages have gone together since time immemorial, but human beings are still grappling, or may be just beginning to grapple, fully with the implications.

The instant case calls on this Court to draw a line between the right of defendants to protest what they consider to be the inhumane treatment of animals, and the right of plaintiff to carry on a lawful business. Courts are often asked to draw lines, and in this case the line the Court is being asked to draw is both literal and figurative.

Let us establish a few basic principles up front. In a 1988 United States presidential debate George H. W. Bush "accused" Michael Dukakis of being a card carrying member of the American Civil Liberties Union (which Dukakis freely acknowledged). See "United States Presidential Election, 1988" at Wikipedia.org. With that absurdity in mind, ever since this Court became an ACLU member, in 1994, it has carried its membership card (#57174930) in its wallet and has had occasion to display it. On free-speech issues this Court is an absolutist in the grand tradition of Supreme Court Justices William O. Douglas and Hugo L. Black (his prior involvement with the Ku Klux Klan notwithstanding). This Court participated in huge, sometimes boisterous, Vietnam War protests and would never seek to restrict speech as such, no matter what the content. Just as strongly, this Court believes that "consenting adults" (to use a hoary phrase) should be allowed to do whatever they want to each other, including having one take the other for a horse-carriage ride. The horse-carriage trade is a lawful business and an iconic part of the Manhattan landscape.

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Both sides agree that defendants can protest, including picket, hold signs, hand out literature, bear witness, and raise their voices. Both sides agree that defendants may not harass or obstruct potential or actual patrons of the horse-carriage trade or the drivers. So what, exactly, is happening on Central Park South at the Horse-Drawn Carriage Zones and in the park itself? Fortunately, both sides have submitted videos evidencing, however imperfectly, the situation. Neither side has claimed that the videos are doctored or otherwise do not reasonably accurately depict what is happening.

Defendants have submitted evidence of bad, boorish behavior by plaintiff's principal and those aligned with him. This has included sexist and homophobic statements. However regrettable, this behavior is not at issue here. Neither is "footage" of perfectly peaceful protests. Reflecting our polarized times, both sides are vehement and vociferous.

Plaintiff claims to have submitted video evidence of what might best be described as harassment and obstruction. The evidence of harassment is clear: in-your-face shouting; yelling at patrons sitting in carriages; thrusting literature at people who have declined it; and accosting people and then persisting after it is clear that they do not wish further involvement. For example, plaintiff's videos show: protesters shouting and holding signs in the patrons' faces, prompting one patron to state she is "being verbally abused" (Hansen Affidavit, Exhibit A); a patron asking the protesters to "please leave me alone" as they shout at her to "watch out for bedbugs" and to "put on her seat belt" (id.); protesters walking alongside the carriages and trying to hand literature into the carriages, prompting one patron to state "don't touch me" (id.) and another to ask yelling protesters to "leave these children alone" (Bachom Affidavit, Exhibit A); unrelenting yelling at and arguing with the patrons from the street as patrons entered the carriages, and while walking next to the carriages, and angrily hurling epithets at patrons (such as "animal abusers," "self-centered," "good luck with your selfish lives," "you should be ashamed of yourself," "real men don't abuse animals," "you just told your daughter its okay to abuse animals," and "that's not very good parenting") (Hansen Affidavit, Exhibit A; Bachom Affidavit, Exhibit A); and shouting "shame, shame, shame, shame on you" at the patrons (Bachom Affidavit, Exhibit A). There is even one video showing protesters arguing with an old man walking down the block, who is simply asking "why are you talking to me like that?" (id.).

The protesters' actions toward the drivers are equally egregious and also include physical assaults. For example, plaintiff's videos show: Sullivan yelling in the face of drivers, picking fights, then shouting "what are you gonna do about it?" over and over (Bachom Affidavit, Exhibit A); Dollinger yelling at a driver that he was "not a real man with a real job" (id.); Sullivan, Dollinger, and Brankrant yelling in the faces of drivers (Hansen Affidavit, Exhibit A; Bachom Affidavit, Exhibit A); and Sullivan elbowing and then pushing a driver as patrons are getting in a carriage, which resulted in Sullivan's arrest (Bachom Affidavit, Exhibit A). Make no mistake: the content of the speech is not at issue here; the manner of delivery is.

The evidence of actual obstruction, as opposed to mere harassment, is more equivocal, but still convincing. For example, in one video the protesters rode alongside a carriage yelling at the two patrons therein to get out and take the e-carriage, which resulted in the patrons actually getting out of the carriage and into the protesters' e-carriage (Chaise Affidavit, Exhibit A). Another

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video shows Birnkrant physically blocking the entrance to a carriage, standing in front of it with a sign (Hansen Affidavit, Exhibit A). The videos also show protesters standing adjacent to the carriages and shouting at customers as they attempt to enter the carriages (Hansen Affidavit, Exhibit A; Bachom Affidavit, Exhibit A).

Governing Legal Principles

The New York standard for granting a preliminary injunction is well established: a movant must show (1) the likelihood of success on the merits; (2) irreparable injury absent the granting of a preliminary injunction; and (3) a balancing of the equities that favors the movant's position. Nobu Next Door, LLC v Fine Arts Hous., Inc., 4 NY3d 839, 840 (2005); Aetna Ins. Co. v Capasso, 75 NY2d 860, 862 (1990); W.T. Grant Co. v Srogi, 52 NY2d 496, 517 (1981).

Success on the Merits.

As plaintiff notes, a cause of action for "public nuisance exists for conduct that amounts to a substantial interference with the exercise of a common right of the public, thereby ... interfering with the use by the public of a public place or endangering or injuring the property, health, safety or comfort of a considerable number of people." 532 Madison Ave. Gourmet Foods, Inc. v Finlandia Center, Inc., 96 NY2d 280, 292 (2001) (emphasis added); Town of Mount Pleasant v Van Tassell, 7 Misc 2d 643, 645 (Sup Ct, Westchester County 1957) (public nuisance is one that "causes substantial annoyance or discomfort indiscriminately to many and divers persons who are continually or may from time to time be in the vicinity"). Here, defendants' loud, in-your-face shouting, particularly at riders already in carriages, clearly annoyed and discomfited the riders, as their videoed reactions demonstrated. A reasonable rider clearly would be annoyed and discomfited by someone running alongside a carriage relentlessly shouting "animal abuser" and "shame." Furthermore, a person situated within a horse carriage should no more be subject to intrusive leafleting than, say, a person sitting in an outdoor café should; in either case, the intrusion is likely to spoil the experience. In the final analysis, defendants are seeking to prevent, not persuade. Thus, plaintiffs are likely to succeed on the merits of their nuisance claim.

Whether one views "tortious interference with contractual relations" and "tortious interference with prospective economic advantage" as one-and-the-same or as distinct torts (and this Court will only address the former), plaintiff is, again, likely to succeed on the merits of its claim(s). In order to make out a cause of action for tortious interference with contractual relations, a plaintiff must demonstrate the following: (1) that a valid contract was entered into between plaintiff and another; (2) defendant's knowledge of such contract; (3) defendant's wrongful, intentional procuring of the breach of the contract without legal justification or excuse; and (4) damages. See, Israel v Wood Dolson Co., 1 NY2d 116, 120 (1956). Here, the first two elements can hardly be gainsaid. The third element is clear from the videos ... unless you think that relentless, in-your-face yelling at families with children, and at elderly couples that look like they are from Des Moines or Dubuque, is not "wrongful." Finally, defendants' conduct is simply bad for business, however "good" its motivation.

Irreparable Injury

The standard definition of irreparable injury is injury that cannot adequately be compensated by monetary damages. Of course, to be "adequately" compensated, such damages must be quantifiable. Here, there is simply no way to know how many prospective patrons defendants are

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"scaring off" (and the Court uses that phrase advisedly). See generally, People by Abrams v Anderson, 137 AD2d 259 (4th Dept 1988) (finding "irreparable injury" because proving how many prospective patrons defendants' tortious conduct deterred would be difficult). In a similar vein, "the right to carry on a lawful business without obstruction is a property right, and acts committed without just cause or excuse that interfere with the carrying on of a business constitute an irreparable injury warranting the issuance of an injunction." David Harp Rest. Mgmt. Inc. v Cromwell, 183 AD2d 423, 423 (1st Dept 1992).

Balancing of the Equines, er, Equities

The standard way to weigh the equities is to determine whether granting an injunction will help the movant more than it harms the respondent. Today's injunction will not harm defendants at all; they can continue to protest, picket, leaflet, bear witness, and raise their voices, and seek to persuade all they want, just not in the face of the carriage patrons, prospective patrons, and drivers; indeed, as plaintiff argues in its reply brief, the injunction is largely in line with defendants' own self-declared rules of conduct: no physical touching; no yelling near horses; no blocking of carriages; all of which appear on the videos.

The Court has considered defendants' other arguments, such as that plaintiff does not have standing, and finds them to be factually and/or legally unavailing. In particular, the Court rejects the argument that any restrictions are not content-neutral; the issue here is not the content of the communications; it is the harassing manner in which they are being delivered. The video evidence does not paint a pretty portrait of either side; but watching it, you cannot but feel sorry for the riders who are caught in the middle and who probably thought that, worst case scenario, they would be subject to a horse urinating or defecating in their presence.

The Remedy

As this Court suggested at oral argument, restrictions placed on pro-life/anti-abortion protestors at medical facilities might be something of a template for today's Decision and Order. See generally, Schenck v Pro-Choice Network of Western New York, 519 US 357 (1997) (upholding fixed buffer zone, but invalidating floating buffer zone, on protests) (test is "whether the challenged provisions ... burden no more speech than necessary to serve a significant government interest"); New York ex. rel. Spitzer v Cain, 418 F Supp 457 (SDNY 2006). This Court will now attempt to balance defendants' free-speech rights against plaintiff's property rights and its patrons' liberty rights.

Defendants, and/or anyone else who becomes aware of this Decision and Order, are hereby enjoined and restrained from:

1. physically blocking, impeding, or obstructing any persons from seeking or taking, or providing, as a horse or driver, a lawful horse-carriage ride disembarking from Central Park South, New York, NY;

2. physically touching, pushing, shoving, or grabbing any such persons or horses;

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3. yelling or shouting at, or aggressively accosting, any such persons, or any carriage horses, from a distance of less than nine feet (equivalent to three yards in football lingo);

4. physically blocking, impeding, or obstructing the progress of any such horse-carriage ride;

5. handing literature to persons situated within a horse carriage; and

6. counseling, facilitating, aiding, or abetting any other person from doing such things.

This Decision and Order may be enforced by a motion for criminal and/or civil contempt.

Nothing in this Decision and Order shall be construed as limiting defendants' or anyone's free-speech rights.

Nothing in this Decision and Order shall be construed to limit or interfere with the ability of law enforcement authorities to take any actions within their purview.

This Decision and Order shall remain in full force and effect until modified by further court order and/or until plaintiff's claims for final injunctive relief are resolved.

Conclusion

Motion granted in part as set forth herein. Defendants, and/or anyone else who becomes aware of this Decision and Order, are hereby enjoined and restrained as set forth immediately above.

Dated: February 21, 2017

Arthur F. Engoron, J.S.C.

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