
ZONING - NEW YORK

Union Square Park Community Coalition, Inc. v. New York City Dept. of Parks and Recreation

Court of Appeals of New York - February 20, 2014 - N.E.3d - 2014 N.Y. Slip Op. 01207

Plaintiffs brought action against New York City Department of Parks and Recreation, its Commissioner, the City, and restaurant operator, challenging an agreement by the Department to allow the operation of a restaurant in a city park. The Supreme Court, New York County, granted plaintiffs' request for a preliminary injunction and denied the City's cross motion to dismiss. The Supreme Court, Appellate Division, reversed, denied the motion for a preliminary injunction and granted dismissal of the complaint, and the plaintiffs appealed.

The Court of Appeals of New York held that:

- The agreement did not violate the public trust doctrine, and
- The agreement constituted a license agreement, rather than a lease of parkland requiring legislative approval.

Under the public trust doctrine, dedicated parkland cannot be converted to a non-park purpose for an extended period of time absent the approval of the State Legislature. City Department of Parks and Recreation did not violate the public trust doctrine by entering into a licensing agreement with a restaurant operator that allowed the operator to operate a seasonal restaurant in the pavilion of a city park, without the approval of the State Legislature, absent showing that the type and location of the restaurant were unlawful.

City Department of Parks and Recreation's agreement with restaurant operator, permitting operation of restaurant in city park pavilion, constituted a license agreement, rather than a lease of parkland requiring legislative approval. Although agreement had 15-year term, Department retained significant control over restaurant's operations, including months and hours of operation, staffing plan, and menu prices, operator's use of premises was only seasonal and was not exclusive even in summer, as outdoor seating was required to be available to general public and operator had to open pavilion for weekly community events, agreement contained environmental and community-based provisions, and it broadly allowed Department to terminate license at will so long as termination was not arbitrary and capricious.

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