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MUNICIPAL ORDINANCE - NEW YORK

Dua v. New York City Department of Parks and Recreation

**Supreme Court, Appellate Division, First Department, New York - August 20, 2019 -
N.Y.S.3d - 2019 WL 3913574 - 2019 N.Y. Slip Op. 06154**

Artists brought action against city parks department challenging rules placing restrictions on sales by expressive matter vendors (EMVs) in parks.

Trial court denied artists' motion for preliminary injunction, and artists appealed. The Supreme Court, Appellate Division affirmed, finding that rules were content-neutral part of comprehensive vendor regulation scheme that addressed city's significant interests. Parks department moved and artists cross-moved for summary judgment, and artists moved for leave to amend complaint to add separation of powers claim. The Supreme Court, New York County granted summary judgment in favor of parks department on claim that rules were unconstitutionally vague, granted summary judgment in favor of artists on claim that rules violated vendor regulation provision of city administrative code, enjoined enforcement of rules, denied summary judgment as to all other claims, and granted artists leave to amend complaint. Parks department appealed.

The Supreme Court, Appellate Division, held that:

- EMV rules did not conflict with city council's legislative intent;
- EMV rules served legitimate government interest outweighing resulting interference with free expression;
- Parks department did not impose disparate treatment on EMVs relative to general vendors;
- Artists' failure to present evidence that reasons for adopting EMV rules were pretextual mandated dismissal of Human Rights Law claims; and
- Trial court could not grant artists leave to amend complaint to assert separation of powers claim.