

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 126

The Alliance to End Chickens as Kaporos,
et al.,

Appellants,

v.

New York City Police Department,
et al.,

Respondents,

et al.,

Defendants.

Nora Constance Marino, for appellants.

Elina Druker, for respondents

Agudath Israel of America; Animal Legal Defense Fund, amici curiae.

MEMORANDUM:

The order of the Appellate Division dismissing the pleading against the City defendants should be affirmed, with costs.

Plaintiffs appeal the Appellate Division’s affirmance of an order denying their request for a writ of mandamus to compel the New York City Police Department and the New York City Department of Health and Mental Hygiene to enforce certain laws related to preserving public health and preventing animal cruelty (152 AD3d 113 [1st Dept 2017]).¹ Plaintiffs allege those laws are routinely violated when thousands of chickens are killed during the religious practice of Kaporos performed in certain Brooklyn neighborhoods prior to Yom Kippur.

A writ of mandamus “is an ‘extraordinary remedy’ that is ‘available only in limited circumstances’” (Matter of County of Chemung v Shah, 28 NY3d 244, 266 [2016], quoting Klostermann v Cuomo, 61 NY2d 525, 537 [1984]). Such remedy will lie “only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law” (New York Civ. Liberties Union v State of New York, 4 NY3d 175, 184 [2005]; see also CPLR 7803 [1]). While mandamus to compel “is an appropriate remedy to enforce the performance of a ministerial duty, it is well settled that it will not be awarded to compel an act in respect to which [a public] officer may exercise judgment or discretion” (Klostermann, 61 NY2d at 539, quoting Matter of Gimprich v Board of Educ. of City of N.Y., 306 NY 401, 406 [1954]). Discretionary acts “involve the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result” (New York Civ. Liberties Union, 4 NY3d at 184, quoting Tango v Tulevech, 61 NY2d 34,

¹ This action was originally brought as a plenary action and, consistent with the Appellate Division decision, this Court refers to the parties as plaintiffs and defendants.

41 [1983]). Further, mandamus may only issue to compel a public officer to execute a legal duty; it may not “direct how [the officer] shall perform that duty” (Klostermann, 61 NY2d at 540, quoting People ex rel. Schau v McWilliams, 185 NY 92, 100 [1906]).

Enforcement of the laws cited by plaintiffs would involve some exercise of discretion (see Town of Castle Rock v Gonzales, 545 US 748, 760-761 [2005]). Moreover, plaintiffs do not seek to compel the performance of ministerial duties but, rather, seek to compel a particular outcome. Accordingly, mandamus is not the appropriate vehicle for the relief sought (see Walsh v La Guardia, 269 NY 437, 440-441 [1936]).²

* * * * *

Order affirmed, with costs, in a memorandum. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur. Judge Feinman took no part.

Decided November 14, 2018

² We need not determine whether enforcement of the cited laws would infringe upon the First Amendment rights of the non-City defendants.