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Statutes: Despite Ambiguity, New York City Law Requires Vendors to Remain within Three Feet of Curb

Crescenzi v. City of New York, no. 18-2002 (2d Cir. Oct. 3, 2019).

Disagreeing with the district court, the Second Circuit finds that, despite some ambiguities between two sections of a law regarding veterans' rights to operate vending carts on city sidewalks, that law cannot be construed to mean that carts can be operated more than three feet away from a curb.

New York's General Business Law entitles "any honorably discharged member of the armed forces of the United States who is physically disabled as a result of injuries received while in the service of said armed forces" to vend in "any street, avenue, alley, lane or park" of the City, so long as he or she has been issued a license to do so. (GBL § 35). A subsection thereof GBL § 35-a(7)(i), provides that no disabled veteran vendor "shall occupy more than eight linear feet of public space parallel to the curb in the operation of a vending business." A second clause provides that "in addition, no [disabled veteran vendor] operating any vending business on any sidewalk shall occupy more than three linear feet to be measured from the curb toward the property line."

Five disabled veterans (Plaintiffs) were issued a total of 298 summonses between 2011 and 2013 while vending in front of the Metropolitan Museum of Art, in each case because they were operating. their carts more than three feet from the curb. In February 2013, Plaintiffs-sued the City of New York (City) under 42 U.S.C. § 1983 in the Southern District of New York., alleging false arrest. They claimed that they were in compliance with § 35-a(7)(i), because the second clause, if properly interpreted, merely meant that

carts could not be wider than three feet. They alleged that there was no probable cause to issue the summonses. Their complaint also alleged a claim of selective enforcement.

In July 2017, the district court dismissed the selective-enforcement claim but ruled for Plaintiffs-on the false arrest issue. It deemed the "central question" to be "whether Section 35-a(7)(i) restricts a . . . cart's distance from the curb, or whether it simply restricts the size and dimensions of the cart." The court determined that § 35-a(7)(i) restricts only the dimensions of vending carts, reasoning primarily that because the provision's first clause restricts only "the *length* of a cart and not its placement," it is therefore "logical that the next clause . . . should be interpreted in the same manner—that is, restricting only a cart's *width* between the curb and the property line and not its distance from the curb."

Based on this interpretation, the court concluded that Plaintiffs-had "plausibly alleged that the officers who issued [the] summonses lacked probable cause to believe a violation" of § 35-a(7)(i) had occurred.

The Second Circuit reversed. It viewed the second clause differently—while the language stating that no vendor "shall occupy more than three linear feet to be measured from the curb toward the property line," presented some ambiguity, the City's reading was the more plausible. "According to the City, § 35-a(7)(i) does two things simultaneously: first, it limits the dimensions of vending carts to eight feet in length by three feet in width; second, it requires that carts be positioned lengthwise *alongside the curb*, out of the way of pedestrians." In other words, carts could only occupy the three feet nearest the curb.

The Circuit found Plaintiffs' interpretation implausible: "If all the legislature had wanted to do was limit the dimensions of vending carts, it could have written a straightforward provision reading "no vendor's operation shall occupy more than eight feet in length by three feet in width. . . . [Plaintiffs] offer no rationale for why the legislature would use such convoluted language if all it intended to do was limit cart width, and their interpretation renders the phrase 'to be measured from the curb toward the property line' meaningless."

Plaintiffs' primary textual argument was that § 35-a(7)(i)'s two clauses used "similar expressions," meaning that the legislature intended the second clause to operate "in the same manner" as the first. But the two clauses were not similarly phrased— the first clause expressly measured *parallel* to the curb; therefore, in order to be consistent the second clause should have explicitly measured *perpendicular* to the curb.

Dissent: Chief Judge Katzman dissented. He opined that the statutory provision at issue was ambiguous, and involved an unsettled question of state law. He found Plaintiffs' interpretation of clause 2 to be plausible: "The legislature could have written a straightforward provision stating explicitly that vending must occur within three feet of the curb or that vendors are prohibited from vending farther than three feet from the

curb. The simple fact is that subsection (i) is unclear, and, while both parties' interpretations could explain the words used, neither renders the phrasing natural."

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