

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

INGRID CUMMINGS,

Plaintiff,

-against-

THE CITY OF NEW YORK and
RAYMOND W. KELLY, Commissioner of
the New York City Police Department,

Defendants.

COMPLAINT

Index No.:

1. Ingrid Cummings, by her attorneys the Urban Justice Center and Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., for her complaint alleges as follows:

NATURE OF THE ACTION

2. Plaintiff Ingrid Cummings (“Plaintiff”) is a licensed mobile food vendor who, since 1996, has parked and sold West Indian food from her truck outside the SUNY Downstate Medical Center (the “Medical Center”) in Brooklyn. Plaintiff brings this suit because defendants have wrongfully prevented her from continuing to sell food in her long-held, preferred location, thereby injuring her business, which is her primary means of support.

3. Plaintiff brings this action for declaratory and injunctive relief, damages and attorneys’ fees pursuant to the laws of the State of New York and 42 U.S.C. §§ 1983 and 1988. Defendants have violated Plaintiff’s constitutional rights under color of state law by applying §§ 4-08(n)(4) and 4-12(g) of Chapter 34 of the Rules of the City of New York (the “School Parking Rule”) to prevent her from parking her mobile food truck within 200 feet of the Medical Center. The School Parking Rule bars vendors from parking vehicles to sell food within 200 feet

of a “public or private school” where children are educated, not within 200 feet of medical centers or universities.

4. Defendants have also misapplied the School Parking Rule to prohibit Plaintiff from parking in legal parking spaces that are more than 200 feet away from any entrance to the Medical Center merely because they are within 200 feet of the walls of the Medical Center, even though measurements made pursuant to laws that are intended to protect school children from vendors should be made from the entrance of the school building.

PARTIES

5. Plaintiff Ingrid Cummings is a licensed mobile food vendor, resident in Brooklyn, New York, and a naturalized citizen of the United States.

6. Defendant City of New York is a municipal corporation within the State of New York.

7. Defendant Raymond W. Kelly is Commissioner of the New York City Police Department (the “Police Department”). Commissioner Kelly is responsible for the administration of the Police Department, which enforces the rules of the New York City Department of Transportation.

8. Defendant Kelly is sued in his official capacity. At all relevant times, he and the police officers under his control have acted within the scope of their employment and under color of state law, to wit, the statutes, ordinances, regulations, policies, customs and usages of the State and City of New York.

VENUE

9. Venue is proper in Kings County pursuant to CPLR § 504 because the cause of action arose here.

FACTS

10. Plaintiff is a 51 year-old licensed mobile food vendor who has sold West Indian food from her vending truck since 1996.

11. Until the summer of 2001, Plaintiff regularly parked her truck in legal parking spaces on the portion of Clarkson Avenue between New York Avenue and East 37th Street in Brooklyn, in front of the Medical Center and across the street from Kings County Hospital (the “Block”).

12. During the period that she parked on the Block, most of Plaintiff’s sales were to individuals entering or leaving the Medical Center.

13. In the summer of 2001, a Police Department officer notified Plaintiff that she could no longer park on the Block. This officer did not inform Plaintiff of the reason for his instruction to her.

14. On several occasions during the winter of 2001-2002 and repeatedly thereafter, officers of the Police Department told Plaintiff that she could not park on the Block in front of the Medical Center because she was within 200 feet of a school in violation of the School Parking Rule. The police officers stated that the Medical Center was the school in question and, on each occasion, required Plaintiff to move her truck from her otherwise legal parking space.

15. The School Parking Rule states, in relevant part: “No peddler, vendor, hawker or huckster shall permit his cart, wagon or vehicle to stand on any street . . . within 200 feet of any public or private school.”

16. In April 2002, the police gave Plaintiff a traffic ticket for vending within 200 feet of a school. On April 29, 2002, a police officer threatened to arrest Plaintiff if she returned to the Block. The next day, on April 30, 2002, three other mobile food vendors informed Plaintiff that police officers had handcuffed, arrested, and carried them away because they had failed to obey an order to park their trucks more than 200 feet away from the Medical Center.

17. Plaintiff risks ticketing and arrest by the Police Department if she parks her truck on the Block in front of the Medical Center. Accordingly, the police officers’ threats of arrest and ticketing have prevented Plaintiff from attempting to vend on the Block in front of the Medical Center since April 30, 2002.

18. For more than four months, defendants’ improper application of the School Parking Rule has required Plaintiff to vend outside the Block, typically on New York Avenue between Clarkson Avenue and Parkside Avenue. This area is approximately four hundred feet away from Plaintiff’s prior location and is out of sight of the entrances to the Medical Center. From this location, any potential customers from the Medical Center or Kings County Hospital must cross Clarkson Avenue or New York Avenue, or both, to reach her.

19. Vendors operating from pushcarts on the sidewalk immediately in front of the Medical Center continue to operate their businesses without interference from the police. These sidewalk vendors now operate much closer to potential customers than does Plaintiff. As a result, Plaintiff’s business has declined substantially since defendants have prohibited her from parking in front of the Medical Center.

20. Since defendants have forced her to move away from the Medical Center, Plaintiff's revenues from her food vending business have declined by more than 50%. Plaintiff and her business cannot sustain this continued loss in revenues. If she is not permitted to park on the Block, she may be forced to close her business.

21. Plaintiff's loss of income has had a devastating impact on her ability to care for herself and her two children. Plaintiff's income from her mobile food vending business is a vital means of support for herself and her two children. Because Plaintiff is unable to pay the tuition bill, Plaintiff's younger daughter has been forced to drop out of college. In addition, the utility company has threatened to turn off her gas and electricity because Plaintiff can no longer afford to pay her bills.

22. Due to the location of the entrances to the Medical Center, and the fact that the entrances are set far back from the street, Plaintiff would be able to vend from at least some parking places on the Block in front of the Medical Center if the 200 foot requirement of the School Parking Rule were measured from the entrances to the Medical Center instead of from its walls.

COUNT I
(42 U.S.C. § 1983)

23. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 22 as if set forth at length herein.

24. Defendants have acted under color of state law in prohibiting Plaintiff from parking on the Block.

25. The actions of the Police Department and its officers have been pursuant to an official policy of the City of New York.

26. Defendants' actions have been wrongful because they have improperly applied a vague and inapplicable rule to prevent Plaintiff from engaging in lawful conduct, specifically, from parking her food truck in legal, available parking spaces.

27. Defendants have wrongfully deprived Plaintiff of rights secured by the Fourteenth Amendment to the United States Constitution, by prohibiting her from earning her living by selling food from legal, available parking spaces on the basis of an inapplicable or, at a minimum, an impermissibly vague rule.

28. Defendants' unlawful actions have caused Plaintiff to suffer damages in an amount to be determined at trial, but not less than \$10,000.

29. Because defendants' wrong is continuing, Plaintiff is entitled to an order enjoining defendants, their agents and employees from enforcing, or threatening to enforce, the Traffic Rule against the Plaintiff to prevent her from selling food on the Block.

COUNT II
(DECLARATORY AND INJUNCTIVE RELIEF)

30. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 29 as if set forth at length herein.

31. Defendants have improperly interpreted and relied upon the School Parking Rule to prohibit Plaintiff from parking within 200 feet of the Medical Center.

32. Plaintiff is entitled to a judgment pursuant to CPLR § 3001 declaring that the Medical Center is not a "public or private school" for purposes of the School Parking Rule.

33. Defendants have improperly interpreted and relied upon the School Parking Rule to prohibit Plaintiff from parking more than 200 feet from an entrance to a building which they improperly describe as a "public or private school."

34. Plaintiff is entitled to a judgment pursuant to CPLR § 3001 declaring that the School Parking Rule only prohibits parking within 200 feet of an entrance to an elementary or secondary school building.

35. Because defendants' wrong is continuing, Plaintiff is entitled to an order enjoining defendants, their agents and employees from enforcing, or threatening to enforce, the Traffic Rule against the Plaintiff to prevent her from selling food on the Block.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ingrid Cummings demands against defendants:

1. A judgment declaring that the phrase “public or private school” as it is used in the School Parking Rule does not include universities, hospitals, or medical centers;
2. A judgment declaring that the Medical Center is not a “public or private school” as that phrase is used in the School Parking Rule;
3. A judgment enjoining defendants, their agents and employees from enforcing, or threatening to enforce, the School Parking Rule against Plaintiff to prevent her from parking her truck and selling food on the Block;
4. Damages in an amount to be determined at trial, but not less than \$10,000;
5. An award of the costs and expenses of this action, including attorneys’ fees pursuant to 42 U.S.C. § 1988 and state law; and
6. Such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 26, 2002

**GIBBONS, DEL DEO, DOLAN,
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