At a Special Term of New York State Supreme Court held in and for Erie County at 50 Delaware, Part 29, Buffalo New York.

PRESENT: **HON. MICHAEL A. SIRAGUSA, A.J.S.C.**
Justice Presiding

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

In the Matter of the Application of:

PARTNERSHIP FOR THE PUBLIC GOOD, INC., et al.,

Petitioners-Plaintiffs,

vs.

Index No. 809862/2024
DECISION AND ORDER

CITY OF BUFFALO, et al.,

Respondents-Defendants,

For a Judgment Pursuant to § 3001 and Articles 9 and 78 of the Civil Practice Law and Rules.

PRELIMINARY STATEMENT

Petitioners-Plaintiffs ("Plaintiffs"), have brought this instant Verified Petition and Class-Action Complaint ("Petition"), by and through their attorneys, whereby they seek relief in the nature of mandamus pursuant to CPLR §7803(1) to compel the Respondents-Defendants ("Defendants"), namely the Commissioner of Permit and Inspections Services for the City of Buffalo (hereinafter referred to as the "Commissioner"), to comply with the City of Buffalo's Proactive Rental Inspection Law ("PRI Law"). Plaintiffs also seek a declaratory judgment pursuant to CPLR §3001 declaring, among other things, that the Defendants', namely the Commissioner's, failure to enforce the PRI Law violates New York State's Green Amendment.

See NYSCEF Doc. Nos. 1-35. Lastly, the Plaintiffs ask this Court to certify this instant action and proceeding, pursuant to CPLR Article 9, as a class action. *See NYSCEF Doc. No. 32.* In that regard, the Plaintiffs have brought a Motion for Class Certification which the parties and the Court have agreed to adjourn until the Court issues its ruling with respect to the Defendants' Motion to Dismiss the Petition. *See NYSCEF Doc. Nos. 42-47.*

Defendants, by and through their attorney, have filed a Motion to Dismiss the Petition. *See NYSCEF Doc. Nos. 36-41.* Plaintiffs submitted a Memorandum of Law in Opposition to Respondents-Defendants' Motion to Dismiss. *See NYSCEF Doc. No. 48.* The Defendants then submitted a Reply Memorandum of Law in further support of their Motion to Dismiss.

In reaching its determination, this Court has reviewed and considered *NYSCEF Doc. Nos. 1-41 & 48-49*, as well as the oral arguments made by counsel for the parties, with respect to Respondents'-Defendants' Motion to Dismiss. *See NYSCEF Doc. No. 49.*

DEFENDANTS' MOTION TO DISMISS

1. Second Cause of Action – Declaratory Judgment

Defendants initially address Plaintiffs' second cause of action wherein Plaintiffs seek a declaratory judgment that the Defendants' (i.e. Commissioner's) failure to enforce the PRI Law violates New York's Green Amendment, which is the January 1, 2022 amendment to the New York State Constitution, and which provides that "[E]ach person shall have a right to clean air and water, and a healthful environment." NY Const., Art. 1, §19; s*ee also NYSCEF Doc. No. 41 at pp. 1-3.*

Defendants assert that the second cause of action should be dismissed on the grounds that the Petition does not allege that the Commissioner engaged in any conduct that violated the Green Amendment. *See NYSCEF Doc. No. 41 at p. 3.* It is not alleged that she affirmatively caused any lead paint injuries, but only that she violated the Green Amendment as a result of her failure to enforce the PRI Law. *Id.* In support of their argument, Defendants cite to *Fresh Air for the Eastside, Inc. v. State, 2022 WL 18141022, *3 [Sup. Ct., Monroe County, 2022].* In that case, on appeal, the Fourth Department held that the complaint failed to state a cause of action against New York City because "the complaint alleges that plaintiff's members have been deprived of clean air and a healthful environment as a result of WM's inadequate operation of

the landfill, not through any improper action by the City." *See Fresh Air for the Eastside, Inc. v. State, 229 A.D.3d 1217, 1219 [4th Dept. 2024].* The Court agrees with Defendants that the same can be said in the case at bar, as the Plaintiffs are asking the Court to impose liability on the Defendants because the Commissioner failed to abate lead-based paint hazards caused by the actual wrongdoers, the landlords who fail to maintain healthy housing. *See NYSCEF Doc. No. 41 at p. 4.*

The Defendants also argue that the plain text of the Green Amendment shows that it is not self-executing. The Court agrees. New York's Green Amendment does not expressly require state or local governments to enforce the amendment, nor does it expressly authorize members of the public to enforce the amendment through legal proceedings. *Id.* The plain language of the amendment is clear that the legislature did not want to expose state and local governments to liability for Green Amendment violations. If it wanted to, it would have explicitly said so, as other jurisdictions have done. *See Cruz v. TD Bank, N.A., 22 N.Y.3d 61, 72 [2013].*

Defendants also argue that because the phrases "clean air," "clean Water," and "healthful environment" are not detailed or defined, the Green Amendment on its face is not self-executing. This Court agrees. *See Dorsey v. Stuyvesant Town Corp., 299 N.Y. 512, 531 [1949]* (holding that New York Constitution's civil rights clause was not self-executing because it did not declare what civil rights it would protect). As pointed out by the Defendants, the legislature would later pass enabling statutes to implement the civil rights clause. *See Brown v. State, 89 N.Y.2d 172, 190 [1996]* (citing the enabling statutes). Moreover, constitutional provisions are self-executing where the right at issue "is evidenced by the insertion of operational details." *See People v. Carroll, 3 N.Y.2d 686, 691 [1958].* The Green Amendment is devoid of same.

It is clear from its face that the Green Amendment does not create a private right of action.

Accordingly, for the reasons and authorities set forth above, the Plaintiffs' second cause of action must be dismissed.

2. First Cause of Action – Mandamus

Defendants, in their Motion to Dismiss, next address Plaintiff's first cause of action seeking mandamus to compel pursuant CPLR 7803(1) for Defendants' alleged failure to comply with the PRI Law. Plaintiffs allege that the PRI Law mandates that the Commissioner shall, among other things, make an inspection of each rental dwelling unit that is the subject of an application for a license issued pursuant to Chapter 264 of the Buffalo Code to determine whether or not such rental dwelling unit is in substantial compliance with the chapter and all other applicable housing and building codes. *See NYSCEF Doc. No. 1 at pp. 26-27, citing Buffalo Code* §264-8(A). Plaintiffs assert that the obligations set forth in the PRI Law are ministerial and non-discretionary duties. *Id.* Defendants disagree.

As asserted by Defendants, mandamus to compel "is an extraordinary remedy" that is available only where the petitioner has demonstrated a "clear legal right" to require a public official "to perform a duty enjoined by law." *All. To End Chickens as Kaporos v. New York City Police Dept., 32 N.Y.3d 1091, 1093 [2018].* Mandamus to compel is an appropriate remedy "to enforce performance of a ministerial duty," but it will not be awarded "to compel an act in respect to which a public officer may exercise judgment or discretion." *Id.* Importantly, 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." *Id.* Moreover, as asserted by Defendants, if there is any "reasonable doubt or controversy" about the right to performance, mandamus must be denied. *Ass'n of Surrogate & Supreme Ct. Reps. Within City of New York v. Bartlett, 40 N.Y.2d 571, 574 [1976].*

This Court agrees with Defendants that the PRI Law requires the Commissioner to inspect a rental unit "that is the subject of an application for a license issued pursuant to this Chapter." *See Buffalo Code §264-2.* "[L]icenses are represented by certificates" and a "certificate of rental compliance" issued pursuant to the PRI Law expires three (3) years after its issuance, not annually as asserted by Plaintiffs. *Id. at §§264-2 & 264-21.* A rental swelling unit registration is not a certificate. As pointed out by Defendants, the prior law required a "rental dwelling unit registration certificate." *Id. at §264-3(A).* In contrast, the PRI Law removed the

word "certificate" in the same section of the law, now renumbered *§264-16(A)*. Accordingly, the PRI Law requires an inspection by the Commissioner every three years, and not annually.

Where a public officer is required to perform an act within a specific time, as here, "it will be considered as discretionary only, unless the nature of the act to be performed or the language used by the Legislature shows that the designation of the time was intended as a limitation of the power of the officer." *Sullivan v. Siebert, 70 A.D.2d 975 [3rd Dept. 1979] (denying mandamus to compel where an Assembly member sought to compel heads of executive departments to make timely annual reports to the legislature as required by statute).* As asserted by Defendants, "even assuming, arguendo, that the Commissioner has a nondiscretionary ministerial duty to perform inspections, the time period in which to do so is directory, not mandatory, and petitioners therefore have 'no clear legal right' to any relief." *See NYSCEF Doc. No 41 at p 8.* Plaintiffs allege that the Commissioner has failed to act in a timely manner, not that she has totally abdicated her responsibility. *See NYSCEF Doc. No. 1 at ¶65.* As asserted by Defendants, the Plaintiffs are seeking to require the Commissioner to act in a certain way. Mandamus may not direct how the officer shall perform her duty. *See Kaporos, 32 N.Y.3d at 1093.*

The purpose of the PRI Law is to prevent lead-based paint poisoning through code enforcement. The Court cannot impose mandamus relief to compel an act in respect to which the administrative agency may exercise judgment or discretion, such as an enforcement proceeding. *See Fresh Air, 229 A.D.3d at 1220; see also Cmty. Action Against Lead Poisoning v. Lyons, 43 A.D.3d 201 [3rd Dept. 1974].* As stated in *Fresh Air*, "an agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, unless the administrative agency has consciously and expressly adopted a general policy that is so extreme so as to amount to an abdication of its statutory responsibilities, the responsibility for balancing those factors is lodged in a network of executive officials, administrative agencies and local legislative bodies, and private parties – however well-intentioned – may not interpose themselves and the courts between the agencies and the difficult policy determinations they must make regarding whether and when to take regulatory action." *Id. at 1219.* As stated by Defendants, and as demonstrated by the record, the Commissioner is

not refusing to perform inspections. The Commissioner's decision-making ability has been affected by a number of factors, and the timely completion of inspections depends on discretionary determinations made by her. *See NYSCEF Doc. No. 41, Ex. "A".*

Plaintiffs have not established a "clear legal right" to the relief requested or a corresponding "nondiscretionary duty" imposed upon the Commissioner. Accordingly, Plaintiffs are not entitled to the relief sought in the nature of a mandamus to compel.

Therefore, for the reasons and authorities set forth above, the Plaintiffs' first cause of action must be dismissed.

Accordingly, after due deliberation having been had, for the reasons and authorities set forth above, it is hereby ORDERED and DECREED that: (1) the Respondents'-Defendants' Motion to Dismiss is granted in its entirety; (2) the Petitioners'-Plaintiffs' Verified Petition and Class Action Complaint is dismissed in its entirety; and (3) the Petitioners'-Plaintiffs' Motion for Class Certification is denied, *sua sponte,* as moot.

SO ORDERED

DATED: January 10, 2025

Hon. Michael A. Siragusa, A.J.S.C.