Melrose Credit Union v Matatov
2017 NY Slip Op 32424(U)
October 17, 2017
Supreme Court, Queens County
Docket Number: 714295/16
Judge: Rudolph E. Greco, Jr.
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Short Form Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS IAS Part 32

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MELROSE CREDIT UNION,

Plaintiff,

-against-

SPIRO MATATOV, SHELL EXPRESS CAB CORP., MICHAEL, ADAM, JESSE EXPRESS CAB CORP a/k/a MICHAEL ADAM JESSE EXPRESS CAB CORP.,

Defendants.
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SPIRO MATATOV, SHELL EXPRESS CAB CORP., MICHAEL, ADAM, JESSE EXPRESS CAP CORP., a/k/a MICHAEL ADAM JESSE EXPRESS CAB CORP.,

-against-

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION AND THE CITY OF NEW YORK,

Third-Party Defendants,
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Index No. 714295/16

Motion Date: August 21, 2017
September 20, '17
Motion Seq. No's. 2 & 3
Motion Cal. No's. 112 & 82

The following papers E40 to E67 and E68- E79 were read on this motion to dismiss by third-party defendants pursuant to CPLR 3211(a)(2) and (7) (*sequence 2*), and plaintiff's motion to reargue a prior decision of this Court pursuant to CPLR §2221(d) (*sequence 3*).

	Papers Numbered
Notice of Motion, Affirmation, Exhibits, Memo of Law (*seq. 2*).....	E40-46
Affidavit in Opposition, Affirmation, Memo of Law.....	E63-66
Memo of Law in Reply.....	E67
Notice of Motion, Affirmation, Exhibits, Memo of Law (*seq. 3*).....	E68-73
Affirmation in Opposition, Exhibit.....	E74-76
Affidavit in Reply, Memo of Law.....	E77-79

This Court's previous order scheduling motion sequence two (2) for a conference/hearing

dated September 1, 2017 (J. Greco) is hereby vacated *sua sponte,* and, upon the foregoing papers as well as oral arguments, the following is this Court's decision on same, as well as on motion sequence three (3) fully submitted thereafter.

The court has addressed this matter previously in connection with plaintiff's motion for severance and/or summary judgment, and highlighted the timing of same against a backdrop of tumulT in the New York City taxi industry caused by the introduction of electronic application ("app") driven services such as Uber, Inc. ("Uber") and Lyft, Inc. ("Lyft") (*see Short Form Order,* July 26, 2017, J. Greco). The action in chief is one for replevin and breach of contract due to defendants' alleged failure to repay loans obtained to finance the purchase of their taxi medallions. Shortly after commencement of that action defendants commenced their own third-party action against the New York City Taxi and Limousine Commission and the City of New York, ("the city" or "movants") alleging claims pursuant to the Equal Protection and Takings Clause of the United States Constitution, as well as a state law takings claim under Article 1, §7 of the New York State Constitution, and misrepresentation and tortious interference with a business opportunity. Defendants/third-party plaintiffs ("respondents") seek monetary damages in connection with all claims.

Movants seek to dismiss the third-party action arguing that defendants/third-party plaintiffs did not file or plead the requisite Notice of Claim, that the equal protection claim fails as a matter of law, and that the federal takings claim is not ripe. Defendants/third-party plaintiffs oppose, arguing that their action is an exception to the notice of claim filing requirement and that the cited authority is not dispositive at least with respect to the state law takings claim. The opposition fails to respond to arguments relative to the federal claims save drawing a distinction between the medallion as a license and its market value being property. This argument has been addressed in other cases and is discussed below.

With respect to respondents' third, fourth, and fifth causes of action, the filing of a Notice of Claim within ninety (90) days after the accrual of the claim is a condition precedent to actions seeking monetary damages against the City of New York[1], (*see* Admin. Code §7-201(a), General Municipal Law §50-e; *see also Maxwell v City of New York*, 29 AD3d 540, 541 [2nd Dept. 2006], *Perry v City of New York*, 238 AD2d 326 [2nd Dept. 1997]). Failure to satisfy this condition requires dismissal, (*see id* at 327; *see also Small v New York City Tr. Auth.*, 14 AD3d 690, 691 [2nd Dept. 2005], *Kaufman v Village of Mamaroneck*, 286 AD2d 666, 667 [2nd Dept. 2001], *Thomas v Town of Oyster Bay*, 190 AD2d 731 [2nd Dept. 1993]). Defendants/third-party plaintiffs fail to plead that they have filed such a notice. Movants assert that a search of the City's database indicated that none were filed by the named respondents. These parties, do not dispute this.

They argue that the requirement of General Municipal Law §50-e does not apply to third

[1]Courts have held that this requirement is applied to both claims sounding in tort, as in defendants/third-party plaintiffs' claims for misrepresentation and tortious interference, as well as claims for New York State constitutional torts, (*see Pflaum v Town of Stuyvesant*, 937 F Supp 2d 289, 303 [ND NY 2013]).

party actions like theirs. For this proposition they cite *Matter of Valstrey Serv. Corp. v Board of Elections, Nassau County* (2 NY2d 413 [1957]), as affirmed by *Bay Ridge Air Rights v State of New York*, (44 NY2d 49 [1978]). These cases make it clear that the exception applies only in third party actions for indemnification (*see Matter of Valstrey, supra; see also San Marco Constr. Corp. v Aetna Cas. & Sur.* Co., 162 AD2d 514 [2nd Dept. 1990], *Dutton v Mitek Realty Corp.*, 95 AD2d 769 [2nd Dept. 1983], *Zillman v Meadowbrook Hosp.*, 45 AD2d 267 [2nd Dept. 1974], *Accredited Demolition Constr. Corp. v City of Yonkers*, 37 AD2d 708 [2nd Dept. 1971]). Respondents' action is not such an action so the exception does not apply as they have failed to meet the condition precedent and the third, fourth, and fifth causes of action must be dismissed.[2] Their first and second causes of action based on the Equal Protection and Takings Clauses of the U.S. Constitution are dismissed for respondents' failure to refute the movants' meritorious arguments.

On respondents' distinction that medallions are property and not a license as it relates to the state law takings claim: movants are not disputing or denying respondents' classification of their medallion as property. They are arguing that the protection of the medallion as property does not extend to its market value. This position has become widely accepted, (*see Melrose Credit Union v City of New York*, 247 F Supp 3d [SD NY 2017] *citing inter alia Minneapolis Taxi Owners Coal., Inc. v City of Minneapolis*, 572 F3d 502, 510 8th Cir 2009], *Gebresalassie v District of Columbia*, 170 F Supp 3d 52, 70 [DC 2016], *Boston Taxi Owners Ass'n, Inc. v City of Boston,* 84 F Supp 3d 72, 79-80 [D Mass 2015]; *see also Newark Can Ass'n v Newark*, 235 F Supp 3d 638, 645 [D NJ 2017], *Glyca Trans LLC v City of New York*, 2015 NY Slip Op 31703 [Sup Ct, Queens County 2015]). The property interest in the medallion "does not include a right to be free from competition" (*Illinois Transp. Trade Ass'n v City of Chicago*, 839 F3d 594, 596 [7th Cir 2016]). Finally, defendants/third-party plaintiffs' voluntary participation in the highly regulated taxi industry precludes a takings finding, (*see e.g. Nazareth Home of Franciscan Sisters v Novello*, 7 NY3d 538, 546 [2006] *citing Garelick v Sullivan*, 987 F2d 913, 916 [2nd Cir 1993]), and even a significant diminution in property value, arguably as the one at issue here, will not typically constitute a taking, (*see e.g. Matter of New Cr. Bluebelt, Phase 4*, 122 AD3d 859, 861 [2nd Dept. 2014], *Adrian v Town of Yorktown*, 83 AD3d 746, 747 [2nd Dept. 2011][*internal citations omitted*]).

While this Court recognizes the issues created by e-hails and companies such as Uber and Lyft, and the plight of the medallion taxi industry that historically symbolizes NYC, this is not the forum to address these issues. Attacks on the app driven companies have been attempted in various states, including our own, and all have failed. It is not for this Court to rectify the lack of foresight and proper planning by NYC and its Taxi and Limousine Commission. That task is

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[2]The Court acknowledges this is a strict stance however such is required, (*see generally Berry v Village of Millbrook*, 815 F Supp 2d 711 [SD NY 2011]), and also contemplates that defendant/third-party plaintiffs sat on their rights. By their own admission, the diminution in the value of their medallions prompting the present crisis began sometime in 2014, almost three (3) years ago, when cell phone technology was introduced into the industry by companies such as Uber and Lyft. Instead of commencing an action then they choose to wait, despite that many other actions, in this and other jurisdictions were commenced and addressed this very issue, (*see body*).

best accomplished by carefully thought out administrative remedies geared to creating a proper balance of the interests of all concerned. The denial by New York City of any responsibility or role in the market value of medallions is disingenuous and irresponsible. Their authority to expand or limit the number of available medallions is the single most important factor in establishing market value. They don't shrink from exercising their authority when it suits them and they shouldn't walk away from a mess they created by poorly exercising that authority.

Third party defendants' motion to dismiss the third-party complaint is granted in its entirety.

The above decision renders plaintiff's motion to reargue this Court's prior decision denying severance moot, and as to the denial of summary judgement the motion to reargue is granted and upon consideration the Court affirms its original decision of July 13, 2017.

Dated: October 17, 2017

Rudolph E. Greco, Jr.
J.S.C.