

**Best Ford Taxi, Inc. v Victory Taxi Garage**

2011 NY Slip Op 31509(U)

May 24, 2011

Sup Ct, Nassau County

Docket Number: 021271-09

Judge: Timothy S. Driscoll

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**SUPREME COURT-STATE OF NEW YORK  
SHORT FORM ORDER**

**Present:**

**HON. TIMOTHY S. DRISCOLL**  
**Justice Supreme Court**

-----X

**BEST FORD TAXI, INC.,**

**Plaintiff,**

**-against-**

**VICTORY TAXI GARAGE, POUND TAXI, LLC,  
DANUSHKA TAXI, INC., GORES TAXI, INC.,  
RIVIERA TAXI, LLC, ERMITAGE TAXI, LLC,  
BOLIVAR TAXI LLC, CUPCAKE TAXI, LLC,  
CANDY APPLE TAXI, LLC, DEVIL DOG TAXI, LLC,  
MARSHMALLOW TAXI, LLC, SMORES TAXI, LLC,  
TAXI MANAGEMENT INC., EVGENY FRIEDMAN,  
MAMED DZHANIYEV, and VLADIMIR BASIN,**

**Defendants.**

-----X

**TRIAL/IAS PART: 20  
NASSAU COUNTY**

**Index No: 021271-09  
Motion Seq. No. 1  
Submission Date: 5/9/11**

**Papers Read on this motion:**

- Notice of Motion, Affirmation in Support, Affidavit in Support and Exhibits.....X**
- Affirmation in Opposition, Affidavit of E. Friedman and Exhibits.....X**
- Reply Affirmation and Exhibits.....X**

This matter is before the Court on the motion filed by Plaintiff Best Ford Taxi, Inc. ("Best Ford" or "Plaintiff") on April 5, 2011 and submitted on May 9, 2011. For the reasons set forth below, the Court 1) denies Plaintiff's motion for summary judgment; and 2) grants Plaintiff's motion to amend to the extent that the Court directs that the name of Defendant Victory Taxi Garage, as it appears in the caption and in the body of the Verified Complaint, shall be amended to Victory Taxi Garage, Inc., and otherwise denies Plaintiff's motion to amend. The Court directs Plaintiff to serve a copy of this Order on the Nassau County Clerk who shall

**amend the caption** to correct the name of Defendant Victory Taxi Garage to read VICTORY TAXI GARAGE, INC.

BACKGROUND

A. Relief Sought

Plaintiff moves for an Order 1) pursuant to CPLR § 3212, granting Plaintiff summary judgment for the amount demanded in the Verified Complaint (“Complaint”); 2) pursuant to CPLR § 3025(b), amending the Complaint and caption to reflect the name of Defendants Victory Taxi Garage and Taxi Management Inc. to be amended to Victory Taxi Garage, Inc. and Taxi Club Management, Inc., respectively; and 3) pursuant to CPLR § 3025(b), amending the Complaint and caption to add as a defendant the corporate entity known as Downtown Taxi Management, LLC.

Defendants oppose Plaintiff’s motion for summary judgment.

Defendants do not object to Plaintiff’s motion to amend the caption to change the name of Victory Taxi Garage to Victory Taxi Garage, Inc.

Defendants object to Plaintiff’s motion to amend the caption to change the name of Taxi Management, Inc. to Taxi Club Management, Inc., based on their position that Taxi Management, Inc., as reflected by documentation provided, is a separate, unrelated corporation, and such an amendment should not be permitted, both because this action is now post-note of issue, and because the proposed new party has not been given the opportunity to respond to the allegations in the Complaint.

Defendants also object to Plaintiff’s motion to amend the caption to name Downtown Taxi Management, LLC as a party, submitting that Plaintiff has been in possession of information, since prior to the filing of this action, regarding this entity’s alleged involvement in this action and Defendants would be prejudiced by the proposed amendment.

B. The Parties’ History

The Complaint (Ex. L to P’s motion) contains sixteen (16) causes of action, which are based on Defendants’ alleged failure to make payments due with respect to vehicles (“Vehicles”), specifically Toyotas and Dodge Grand Caravans, that Plaintiff sold to Defendants in 2008.

In his Affidavit in Support, Alex Khalek (“Khalek”), the President of Best Ford, affirms that Best Ford is in the business of selling taxi cab vehicles to fleets, corporations and individual

owners. One of his major accounts was the fleet managed, owned and or operated by Defendant Evgeny Friedman (“Friedman”). Plaintiff provided vehicles for Friedman’s corporate entities for use as taxi cabs (“Taxis”) in New York City, which operated with medallions (“Medallions”) licensed through the New York City Taxi and Limousine Commission (“TLC”).

In the transactions at issue, Friedman wanted to purchase Vehicles that were wheelchair handicap accessible (“Accessible”) and complied with the American Disabilities Act (“ADA”). The TLC established an approved list of Accessible providers, which included Best Ford. In early 2008, Friedman approached Plaintiff about purchasing Accessible Vehicles, specifically Dodge Caravans and Toyota Siennas. Purchasers of Accessible Vehicles were permitted to purchase Medallions at a reduced rate for the Accessible Vehicles. Plaintiff obtained the Accessible Vehicles through the Ford Motor Credit Company and processed the necessary paperwork for Friedman.

Khalek outlines the specific Vehicles purchased by Defendants, and provides details regarding Defendants’ alleged failure to make the required payments to Plaintiff. Friedman refused to pay to Plaintiff the sums due on the grounds that Friedman was entitled to a mobility rebate (“Rebate”) of \$1,000 per Vehicle. Khalek affirms that he was unable to locate any Rebate available for the Vehicles purchased by Defendants, either from the Manufacturer or Retro-fitter for end users who were Taxi operators. Plaintiff advised Friedman that Defendants were not entitled to the Rebate in connection with the purchase of the Accessible Vehicles. Friedman has asserted counterclaims (Ex. M to P’s motion) based on these Rebates.

Khalek affirms that Friedman has provided no documentation supporting his claimed entitlement to the Rebates. Khalek submits that the Rebate program was designed for end users who were private individuals that were either disabled themselves, or relatives of disabled individuals. Best Ford did not receive any Rebate in connection with the Vehicles sold to Defendants and Khalek contends that Friedman, an experienced businessman, would have included relevant language in the sales agreements at issue if he believed he were entitled to a Rebate. Khalek cites to Friedman’s deposition testimony (Ex. K to Khalek Aff. in Supp.) in which he testified that he had no information regarding Rebates that he was entitled to as a result of purchasing the Vehicles (Tr. at p. 191) and had no documents in his possession that would demonstrate his entitlement to the Rebates (*id.* at p. 192). Khalek affirms, further, that Friedman never tendered the amounts due to Plaintiff, less the Rebates to which he was purportedly

entitled, but continues to enjoy full use of the Vehicles purchased by Defendants. Khalek also disputes Friedman's claim that the Vehicles were not covered by warranty.

With respect to Plaintiff's motion to amend, Plaintiff's counsel affirms that, during discovery, Plaintiff determined that it had not accurately named Defendant Victory Taxi Garage, whose correct name is Victory Taxi Garage, Inc., and Defendant Taxi Management, Inc., whose correct name is Taxi Club Management, Inc. Plaintiff submits that the proposed amendments would correctly identify the corporate name of Defendants Victory Taxi Garage and Taxi Management, Inc., and Defendants would suffer no prejudice by the amendments.

Plaintiff's counsel also affirms that, as a result of discovery, it learned that an entity known as Downtown Taxi Management, LLC, a limited liability company owned and managed by Friedman, has played a "pivotal and significant role" in the purchase of the Vehicles (Grunwald Aff. in Supp. at ¶ 104), including paying the cash deposit for certain Vehicles, and subsequently stopping payment after the Vehicles were delivered. Plaintiff provides copies of cancelled checks ("Cancelled Checks") (Ex. F to Grunwald Aff. in Supp.) from July of 2008. Plaintiff submits that there would be no prejudice or surprise to Defendants as a result of this amendment. Plaintiff provides a copy of the proposed amended complaint (Ex. O to Grunwald Aff. in Supp.) and asks that the Court deem that amended complaint served.

In opposition, Friedman affirms that he was an officer of Victory, and officer or member of some of Victory's corporate clients, which entered into agreements with corporations that owned Medallions. These arrangements typically involved the Medallion owners entering into a lease whereby Victory agreed to pay a flat monthly fee to the owner of the Medallion and, in return, would be permitted to manage and operate the Medallion. That arrangement included Victory obtaining a vehicle that was associated with the Medallion. The monthly fee paid to the Medallion owner remained fixed, irrespective of the price that Victory paid for the vehicle to which the Medallion was affixed, as was customary in the industry. Best Ford was in the business of selling taxis to taxi management companies and, Friedman submits, was "well aware" of this industry practice (Friedman Aff. in Opp. at ¶ 2).

The contracts at issue in this litigation were for the purchase of vehicles by Victory from Plaintiff. Although the vehicles that Victory purchased from Plaintiff would ultimately be registered and titled in the name of the Medallion owner, the actual purchase was through Victory, and any subsequent transfer would be between Victory and the Medallion owner. There

was never an agreement, or even discussion, that the Medallion owners would be responsible for payment of the vehicles that Victory purchased from Plaintiff.

Friedman avers, further, that it was “well known” (Friedman Aff. in Opp. at ¶ 5) that Dodge and other automakers were offering Rebates for Accessible vehicles, and the TLC disseminated this information at seminars to encourage the purchase of Accessible vehicles. Khalek advised Friedman that Victory could avail itself of the Dodge Rebates, even though the Vehicles were being purchased from Ford Motor Company, and Friedman relied on this representation in agreeing to purchase the Vehicles from Plaintiff. After the Vehicles were purchased, however, Plaintiff denied knowledge of any Rebates, as well as any promises made regarding the Rebates. Friedman then contacted Dodge/Chrysler and learned that the Rebates were not available because the Vehicles were not sold through a Dodge/Chrysler dealership.

Friedman also disputes Plaintiff’s claims regarding Defendants’ alleged failure to pay monies due upon delivery of the Toyota Vehicles purchased from Plaintiff. Friedman affirms that it was Khalek and/or Best Ford that improperly insisted on these payments in an effort to “steer” (Friedman Aff. in Opp. at ¶ 6) more funds directly to Best Ford, rather than to Ford Motor Credit Company, a separate corporation.

Defendants do not object to Plaintiff’s application to amend the name of Defendant Victory Taxi Garage to Victory Taxi Garage, Inc.

With respect to Plaintiff’s application to amend the name of Defendant Taxi Management, Inc. to Taxi Club Management, Inc., counsel for Defendants notes that Taxi Management, Inc. is a separate, unrelated corporation as reflected by the Department of State documentation provided (Ex. C to Mulholland Aff. in Opp.). This proposed amendment, particularly given that this action is now post-note of issue, would be prejudicial because it would introduce a new party that has not had the opportunity to defend itself.

Defendants also oppose Plaintiff’s motion to amend the caption to add Downtown Taxi Management, Inc. as a party. Defendants contend, first, that if this proposed party played a “pivotal” role, as alleged, then Plaintiff should have been aware of this entity as a result of its involvement in the transactions at issue. Moreover, Plaintiff logically would be expected to be in possession of the Cancelled Checks on which it relies prior to the commencement of this action. In light of the foregoing, Defendants submit that the Court should deny Plaintiff’s application to add this party.

### C. The Parties' Positions

Plaintiff submits that it has demonstrated its right to summary judgment by establishing Plaintiff's sale of the Vehicles and the terms of those sales, and demonstrating Defendants' failure to make the required payments in connection with those sales. Plaintiff contends, further, that Defendants have not disputed Plaintiff's allegations, and have provided no proof of their entitlement to the Rebates on which they rely.

Plaintiff submits, further, that the Court should permit the requested amendments which, Plaintiff argues, will not prejudice Defendants.

Defendants oppose Plaintiff's motion submitting that Defendants have raised issues of fact including 1) the enforceability of the agreements at issue in light of the fact that Plaintiff did not sign the retail installment contracts on which Plaintiff relies, 2) Best Ford's alleged fraudulent inducement by falsely promising to obtain Rebates for the Accessible Vehicles purchased, 3) which parties the contracts may be enforced against, given that Victory is the sole designated buyer on the retail installment contracts, and 4) the lack of evidence in support of Plaintiff's claims that it is appropriate to pierce the corporate veil.

## RULING OF THE COURT

### A. Summary Judgment Standards

To grant summary judgment, the court must find that there are no material, triable issues of fact, that the movant has established his cause of action or defense sufficiently to warrant the court, as a matter of law, directing judgment in his favor, and that the proof tendered is in admissible form. *Menekou v. Crean*, 222 A.D.2d 418, 419-420 (2d Dept 1995). If the movant tenders sufficient admissible evidence to show that there are no material issues of fact, the burden then shifts to the opponent to produce admissible proof establishing a material issue of fact. *Id.* at 420. Summary judgment is a drastic remedy that should not be granted where there is any doubt regarding the existence of a triable issue of fact. *Id.*

### B. Leave to Amend

Leave to amend is to be freely given, absent prejudice or surprise directly resulting from the delay in seeking leave, unless the proposed amendment is palpably insufficient or patently devoid of merit. *Aurora Loan Services, LLC v. Thomas*, 70 A.D.3d 986, 987 (2d Dept. 2010), citing CLR § 3025(b) and *Lucido v. Mancuso*, 49 A.D.3d 220, 222 (2d Dept. 2008).

C. Application of these Principles to the Instant Action

The Court denies Plaintiff's motion for summary judgment based on its conclusion that there exist issues of fact, including which Defendants may be held responsible for the agreements at issue and the appropriateness of piercing the corporate veil, that make the granting of summary judgment inappropriate.

The Court grants Plaintiff motion for leave to amend the caption and body of the Complaint to change the name of Defendant Victory Taxi Garage to Victory Taxi Garage, Inc., in light of Defendants' consent to that application and the Court's conclusion that Defendants would not be prejudiced by the proposed amendment. The Court directs Plaintiff to serve a copy of this Order on the Nassau County Clerk who shall **amend the caption** to correct the name of Defendant Victory Taxi Garage to read VICTORY TAXI GARAGE, INC.

The Court denies Plaintiff's motion for leave to amend the caption and Complaint 1) to change the name of Taxi Management, Inc. to Taxi Club Management, Inc.; and 2) to name Downtown Taxi Management, LLC as a party. The Court concludes that, given the procedural posture of this litigation, which is scheduled for a pre-trial conference on June 17, 2011, the fact that Taxi Management, Inc. is the name of an existing entity unrelated to this litigation, and Defendants' opposition, these amendments would prejudice Defendants.

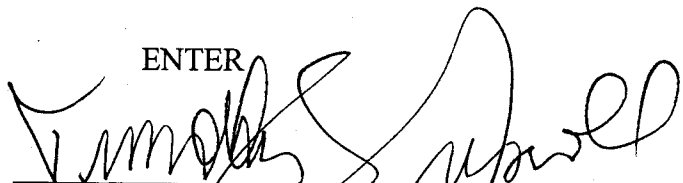
All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

The Court reminds counsel of their required appearance for a Pre-Trial Conference before the Court on June 17, 2011 at 9:30 a.m.

DATED: Mineola, NY  
May 24, 2011

ENTER



HON. TIMOTHY S. DRISCOLL

J.S.C.

**ENTERED**  
MAY 27 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE