

De La Rosa v All Taxi Mgt., Inc.

2012 NY Slip Op 33212(U)

August 21, 2012

Sup Ct, New York County

Docket Number: 653424/11

Judge: Melvin L. Schweitzer

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: MELVIN L. MARKOWITZ A.J.C. Justice

PART 45

Diego De La Rosa, et al.
-v-
All Taxi Management, Inc.

INDEX NO. 653424/11
MOTION DATE
MOTION SEQ. NO. 004

The following papers, numbered 1 to , were read on this motion to/for
Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).
Answering Affidavits — Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is by defendant to dismiss is GRANTED in part and DENIED in part per the attached Decision and Order

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: August 24, 2012

Melvin L. Markowitz, J.S.C. (Signature)

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

-----X	
DIEGO DE LA ROSA and OTAR KUKHALASHVILI,	:
Individually and on behalf of all other similarly situated,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
ALL TAXI MANAGEMENT, INC.,	:
	:
Defendant.	:
-----X	

Index No. 653424/11
 DECISION AND ORDER
 Motion Sequence No. 004

MELVIN L. SCHWEITZER, J.:

The core questions in this case are whether the plaintiffs, Diego De La Rosa and Otar Kukhalashvili (together referred to as Taxi Drivers), state valid causes of action for breach of contract, unjust enrichment and violations of TLC Rules 58-21(C)(4) and 58-21(F)(3). Defendant All Taxi Management, Inc. (Medallion Owner) moves to dismiss the complaint pursuant to CPLR 3211 (a) (7).

Background

Plaintiffs are Taxi Drivers who leased medallions from the defendant for cabs that are operated within the City of New York. As alleged in the Third Amended Complaint (Complaint), pursuant to written contracts with each plaintiff, defendant and plaintiffs agreed that each plaintiff would pay defendant a weekly rate of \$800, with the amount being slightly higher for hybrid vehicles. As further alleged in the Complaint, the defendant systematically overcharged the Taxi Drivers who leased medallions, leading to weekly payments in excess of \$800. The Taxi Drivers paid the alleged overcharges that the Medallion Owner demanded.

The Taxi Drivers allege that the basic lease fees at issue were capped in the form contract at \$800, as set by the rules of the New York City Taxi and Limousine Commission (TLC). TLC rules place a cap, which apply to weekly leases and driver-owned-vehicle leases, on the amount a taxi medallion owner, broker or agent can charge when leasing a taxi medallion. The Medallion Owner, on a systematic basis, has allegedly charged drivers in excess of the lease cap.

Discussion

In assessing a pleading under CPLR 3211 (a) (7), the court must determine whether “from the complaint’s four corners, ‘factual allegations are discerned which taken together manifest any cause of action cognizable at law.’” *Gorelik v Mount Sinai Hosp. Ctr.*, 19AD3d 319, 319 (1st Dept 2005) (quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977)). Also, under this rule, the facts alleged in the complaint are “true and accorded every favorable inference.” *Quatrochi v Citibank, N.A.*, 210 AD2d 53 (1st Dept 1994). However, allegations that “consist of bare legal conclusions” or are “inherently incredible or flatly contradicted by documentary evidence” are inadequate to sustain a complaint. *Ullman v Norma Kamali, Inc.*, 207 AD2d 691, 692 (1st Dept 1994); *accord Delran v Prada USA, Corp.*, 23 AD3d 308 (1st Dept 2005); *HT Capital Advisors, LLC v Optical Res. Group, Inc.*, 276 AD2d 420 (1st Dept 2000).

The Taxi Drivers assert an unjust enrichment argument against the Medallion Owner (Third Cause of Action), specifically that “by overcharging and by circumventing the lease cap, [the Medallion Owner has] been enriched at plaintiff’s expense . . .” The unjust enrichment theory “lies as a quasi-contract claim. It is an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties concerned.” *IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 142 (2009). Since the Taxi Drivers also assert a

contract claim concerning the lease cap (First Cause of Action), their unjust enrichment claim is dismissed, as it is duplicative of the contract claim. *See Katz v American Mayflower Life Ins. Co. of N.Y.*, 5 NY3d 561.

Likewise, the Taxi Drivers' claim related to excessive credit card fees (Second Cause of Action) fails. The parties do not dispute that the TLC rule concerning credit card fees authorizes a fee of up to 5%. In the Complaint, the Taxi Drivers never claim to have been charged more than 5% on credit card transactions, which fatally harms this cause of action.

Additionally, the Taxi Drivers' claims (Fourth and Fifth Causes of Action) regarding how the Medallion Owner violated TLC Rule 58-21(C)(4) and (F)(3) regarding express vehicle fees and credit card overcharges are dismissed for lack of standing. This court agrees with the Medallion Owner's argument that there is no explicit private right of action for a violation of the TLC rules. When a statute does not contain a provision allowing for civil damages, a potential litigant may only recover damages if a private right of action can be implied. *See Sheehy v Big Flats Cmty. Day, Inc.*, 73 NY2d 629, 633-34 (1989). A private right of action can be implied if each prong of a three-part test is satisfied, in which a plaintiff must demonstrate: (1) that he is a member of the class that the statute was enacted to benefit; (2) that the recognition of a private right of action would promote the legislative purpose; and (3) that the creation of such a right would be consistent with the legislative scheme. *Carrier v Salvation Army*, 88 NY2d 298, 302. This court agrees with the defendant's contention that the plaintiffs fail to satisfy the second and third prongs.

However, the defendant's contention that the breach of contract claim concerning the violation of the express vehicle fees (First Cause of Action) should be dismissed pursuant to CPLR 3211(a)(7) is untenable. A signed contract exists with a lease rate of \$800, as specified in

the Complaint. Further, the plaintiffs state sufficient facts in their Complaint to allow this action to reach discovery.

Conclusion

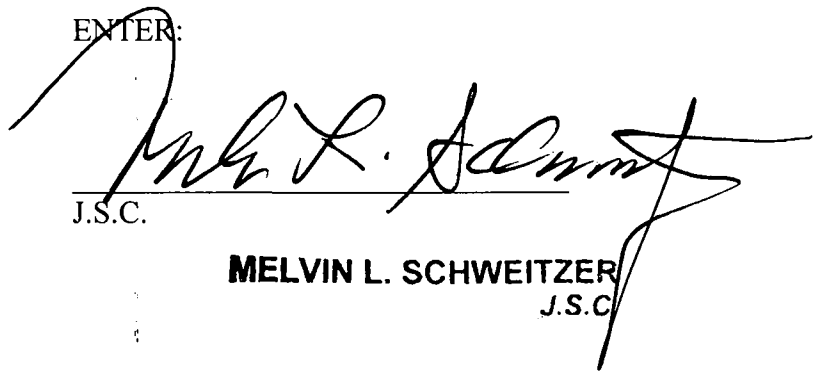
Accordingly, it is

ORDERED that Medallion Owner's motion to dismiss the First Cause of Action pursuant to CPLR 3211 (a)(7) is denied; and it is further

ORDERED that Medallion Owner's motion to dismiss the Second, Third, Fourth and Fifth Causes of Action pursuant to CPLR 3211 (a)(7) is granted.

Dated: August 21, 2012

ENTER:



A handwritten signature in black ink, appearing to read 'Melvin L. Schweitzer', is written over a horizontal line. The signature is stylized and extends above and below the line.

J.S.C.

MELVIN L. SCHWEITZER
J.S.C.