

**Pervaiz v Queens Medallion Leasing, Inc.**

2013 GNY Slip Op 3HGJ(U)

August 14, 2013

Sup Ct, New York County

Docket Number: 450220/12

Judge: Melvin L. Schweitzer

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: MELVIN L. SCHWEITZER
Justice

PART 45

KHALID PERVAIZ

450220/12

INDEX NO. 450220/12

-v-

MOTION DATE

QUEENS MEDALLION LEASING, INC.

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
to 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 14, 2012

Melvin L. Schweitzer
J.S.C.
MELVIN L. SCHWEITZER

- 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	
KHALID PERVAIZ, Individually and on behalf of all other similarly situated,	:
	:
Plaintiff,	:
	:
-against-	:
	:
QUEENS MEDALLION LEASING, INC.,	:
	:
Defendant.	:
-----X	

Index No. 450220/12  
DECISION AND ORDER  
Motion Sequence No. 004

**MELVIN L. SCHWEITZER, J.:**

The core questions in this case are whether the plaintiff, Khalid Pervaiz (Taxi Driver), states 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 Queens Medallion Leasing, Inc. (Medallion Owner) moves to dismiss the complaint pursuant to CPLR 3211 (a) (7).

**Background**

The plaintiff is a Taxi Driver who leased a medallion from the defendant for a taxi cab that is operated within the City of New York. As alleged in the Third Amended Complaint (Complaint), pursuant to a written contract, defendant and plaintiff agreed that 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 Driver who leased the medallion, leading to weekly payments in excess of \$800. The Taxi Driver paid the alleged overcharges that the Medallion Owner demanded.

The Taxi Driver alleges 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 the Taxi Driver in excess of the lease cap.

### Discussion

Queens Medallion Leasing's motion to dismiss the complaint is pursuant to CPLR 3211 (a) (7).

In assessing a pleading under CPLR 3211, 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 taken as "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 plaintiff asserts an unjust enrichment argument against the defendant (Third Cause of Action), alleging 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 Driver also asserts a contract claim concerning the lease cap (First Cause of Action), his 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 Driver's 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 Driver never claims to have been charged more than 5% on credit card transactions, which fatally harms this cause of action.

Additionally, the Taxi Driver's 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 plaintiff fails 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. The plaintiff states a sufficient number of facts in his complaint to set forth a clear breach of this provision.

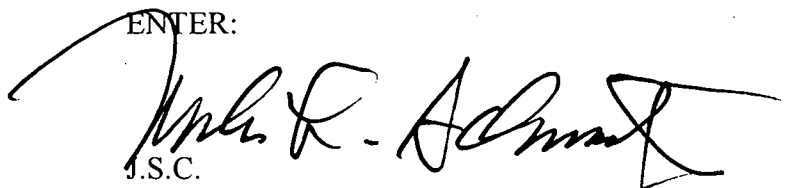
**Conclusion**

Accordingly, it is

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

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

Dated: August 14, 2012

ENTER:  
  
J.S.C.  
**MELVIN L. SCHWEITZER**  
J.S.C.