Owner Operator Ind. Drivers Assoc. v New York State Dept. of Taxation & Fin.
2014 NY Slip Op 30226(U)
January 28, 2014
Sup Ct, Albany County
Docket Number: 5551-13
Judge: Joseph C. Teresi

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

OWNER OPERATOR INDEPENDENT DRIVERS ASSOCIATION; BRYAN SPOON, D/B/A SPOON TRUCKING; STEVE BIXLER; JACK MCCOMB; and LEWIE PUGH;

Plaintiffs,

-against-

NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, THOMAS H. MATTOX, Individually and in his Official Capacity as Commissioner of the New York State Department of Taxation and Finance; THE STATE OF NEW YORK, and ANDREW M. CUOMO, Individually and in his Official Capacity as Governor of the State of New York;

Defendants.

DECISION and ORDER
INDEX NO. 5551-13
RJI NO. 01-13-111950

Supreme Court Albany County All Purpose Term, January 9, 2014
Assigned to Justice Joseph C. Teresi

APPEARANCES:
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TERESI, J.:

Plaintiffs' complaint, which seeks a declaratory judgement, an injunction, and damages, challenges the constitutionality of "certain highway taxes in the amount of $15.00[1] for a certificate of registration ('Registration Tax'), and a $4.00[2] decal charge ('Decal Tax')." Prior to answering, Defendants move to dismiss pursuant to CPLR 3211(a)(7) and for denial of class certification. Plaintiffs oppose the motion. On this record, Defendants demonstrated only their entitlement to dismissal of Plaintiffs' second (Due Process) cause of action.

"[I]n assessing the adequacy of a complaint under CPLR 3211(a)(7), the court must give the pleading a liberal construction, accept the facts as alleged in the complaint to be true and afford the plaintiff the benefit of every possible favorable inference." (Landon v Kroll Laboratory Specialists, Inc., 22 NY3d 1 [2013], quoting J.P. Morgan Sec. Inc. v Vigilant Ins. Co., 21 NY3d 324, 334 [2013][citations and quotation marks omitted]). The dispositive inquiry is "whether the facts as alleged fit within any cognizable legal theory." (Scheffield v Vestal Parkway Plaza, LLC, 102 AD3d 992, 993 [3d Dept 2013]).

Considering first the complaint's Commerce Clause cause of action, Plaintiffs set forth a cognizable legal theory.

As clarified by their opposition, Plaintiffs' Commerce Clause theory relies heavily on the Supreme Court's Am. Trucking Associations, Inc. v Scheiner (483 US 266 [1987]) decision. There, applying Commerce Clause principals, the Supreme Court struck down two Pennsylvania

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[1] Tax Law §502(1)(a)

[2] Tax Law §502(6)(a)

flat taxes; one a marker fee for motor carrier vehicles[3] and one an axle tax.[4] These flat taxes applied to all applicable vehicles, whether registered in Pennsylvania or not. The Court recognized two distinct challenges raised. The first argument, not applicable here, was to the tax statutes' provisions that both "deemed" Pennsylvania registered vehicles to have paid the marker fee and also offset the axle tax charge with an equivalent reduction. Although such argument weighed heavily in the lower courts, it did not in the Scheiner decision. Instead, the Scheiner Court's decision was based primarily on the second argument raised: that the flat taxes were "discriminatory because both taxes imposed a much heavier charge per mile of highway usage by out-of-state vehicles." (Id. at 276). The Scheiner decision was premised on the actual impact the taxes had on intrastate and interstate vehicles. Driven by factual findings, the Court stated "[i]n practical effect, since [the challenged flat taxes] impose a cost per mile on [out-of-state] trucks that is approximately five times as heavy as the cost per mile borne by local trucks, the taxes are plainly discriminatory." (Id. at 286).

Here, accepting Plaintiffs' complaint's allegations as true, they set forth sufficient facts to state a Commerce Clause cause of action. Just as the Scheiner Court examined flat taxes, here too the Registration and Decal Taxes are flat taxes. Neither are apportioned on a vehicles' actual use of New York's highways. Although the complaint includes no data analysis, Plaintiffs allege that this flat tax structure "imposes a heavier per-mile tax burden on out-of-state trucks than on trucks which operate primarily within the State of New York." Considering such factual

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[3] These were defined as a "truck, truck tractor or combination having a gross weight or registered gross weight in excess of 17,000 pounds." (Id. at 273).

[4] Applicable to "truck, truck tractor or combinations weighing more than 26,000 pounds." (Id. at 274).

allegations in light of the Scheiner Court's Commerce Clause analysis and within this procedural posture, Plaintiffs set forth a cognizable Commerce Clause cause of action.

In addition, Defendants' attempts to distinguish Scheiner are unavailing. Contrary to Defendants' construal of Scheiner, and as explained above, that decision was not based solely upon the statute's "back-door give backs." Rather, the decision was based upon the factually demonstrated disproportionate effect of the challenged flat taxes. Defendants' reliance on case law, purported to be controlling, is similarly unavailing. (Owner-Operator Ind. Drivers Ass'n v Urbach, 279 AD2d 171, 179 [1st Dept 2000][Unlike the Registration and Decal Taxes and the taxes in Scheiner, in this decision the taxes at issue were "uniformly applied to interstate and intrastate activities."]; Am. Trucking Associations, Inc. v Michigan Pub. Serv. Com'n, 545 US 429, 437 [2005][Distinguished Schneider because the data in that action demonstrated a disproportionate tax per mile on in and out of state vehicles, whereas in this decision the fee at issue "taxe[d] purely local [i.e. intrastate] activity."]). While Defendants correctly assert that taxing statutes need not bear an exact relation to the services provided and are cloaked with a presumption of constitutionality, in this procedural context neither general proposition requires dismissal of Plaintiffs' complaint.

Defendants next failed to demonstrate their entitlement to dismissal of Plaintiffs' demand for injunctive relief. First, the preliminary injunction and breach of contract case law upon which Defendants rely does not support their motion to dismiss Plaintiffs' permanent injunction claim. Moreover, contrary to Defendants' assertion, in the event Plaintiffs prevail on their constitutional challenge they cannot be fully compensated in money damages. Rather, injunctive relief to prohibit the collection of unconstitutional taxes would be necessary.

Relatedly, because the complaint seeks prospective relief that would end Defendants' allegedly ongoing constitutional violations, Plaintiffs' 42 USC §1983 claims are viable against both the State and its officers. Contrary to Defendants' claim, the Eleventh Amendment's "persons" limitation is inapplicable. (Giaquinto v Commr. of New York State Dept. of Health, 11 NY3d 179 [2008]).

Turning to Defendants' motion to dismiss Plaintiffs' refund claim, again they failed to establish their entitlement to such relief.

While the Court of Claims' "primary jurisdiction is limited to actions seeking money damages against the State in appropriation, contract or tort cases" (Ozanam Hall of Queens Nursing Home Inc. v State, 241 AD2d 670, 671 [3d Dept 1997], where "monetary relief is incidental to the primary claim" this Court retains jurisdiction. (Madura v State, 12 AD3d 759, 760 [3d Dept 2004]; Matter of Gross v Perales, 72 NY2d 231 [1988]).

Here, Plaintiffs' refund claim is incidental to their declaratory judgment's constitutional challenge and its related demand for injunctive relief. In the event the Registration and Decal Taxes are declared unconstitutional, the aggregate sum of refunds may be substantial. However, considering the complaint in its entirety its primary concern is constitutionality. Moreover, because the "Court of Claims has no jurisdiction over claims alleging violations of the U.S. Constitution" (Carver v State, 79 AD3d 1393, 1395 [3d Dept 2010]) or the equitable relief Plaintiffs seek (Zutt v State, 50 AD3d 1131 [2d Dept 2008]), Plaintiffs properly raised their refund claim in this Court.

Accordingly, Defendants' motion to dismiss is denied to the extent it sought dismissal of Plaintiffs' first, third, fourth, and fifth causes of action. In accord with Defendants' notice of

motion's unopposed request, Defendants shall serve their answer within twenty days of the date they are served with notice of entry of this Decision and Order.

Unlike Plaintiffs' above claims, Defendants demonstrated that Plaintiffs' Due Process cause of action fits within no cognizable legal theory.

Applicable in this post-deprivation tax challenge, "[t]o satisfy the requirements of the Due Process Clause... the State must provide taxpayers with, not only a fair opportunity to challenge the accuracy and legal validity of their tax obligation, but also a 'clear and certain remedy,' for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one." (McKesson Corp. v Div. of Alcoholic Beverages and Tobacco, Dept. of Bus. Regulation of Florida, 496 US 18, 38-39 [1990], quoting Atchison, T. & S.F. Ry. Co. v O'Connor, 223 US 280 [1912]). Here, this action affords Plaintiffs both a fair opportunity to challenge the constitutionality of the Registration and Decal Taxes and also a clear and certain remedy, damages and injunctive relief, in the event they prevail. Such potential "meaningful backward-looking relief to rectify any unconstitutional deprivation" satisfies Due Process. (Moran Towing Corp. v Urbach, 1 AD3d 722, 725 [3d Dept 2003], quoting Brault v New York State Tax Appeals Trib., 265 AD2d 700 [3d Dept 1999]).

Accordingly, Plaintiffs have no cognizable Due Process claim and Defendants' motion to dismiss the complaint's second cause of action is granted.

Lastly, Defendants' motion to dismiss Plaintiffs' class certification request is premature. CPLR §902 requires Plaintiffs to move for class certification, if at all, "[w]ithin sixty days after the time to serve a responsive pleading has expired for all persons named as defendants." "A court may not determine whether an action is entitled to class action status until a plaintiff

applies for class action certification under CPLR 902." (Downing v First Lenox Terrace Assoc., 107 AD3d 86, 92 [1st Dept 2013, DeGrasse, J., concurring in part and dissenting in part]). Because issue has not yet been joined and Plaintiffs' have not moved for class certification, Defendants' motion is premature and denied without prejudice.

This Decision and Order is being returned to the attorneys for the Plaintiffs. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: January 28, 2014
Albany, New York

Joseph C. Teresi
JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, dated November 8, 2013; Affirmation of Adele Taylor Scott, dated November 8, 2013, with attached Exhibit A.