

**Freidman v New York City Taxi & Limousine
Commn.**

2014 NY Slip Op 32181(U)

August 4, 2014

Sup Ct, NY County

Docket Number: 653966/2013

Judge: Melvin L. Schweitzer

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This opinion is uncorrected and not selected for official publication.

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

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EVGENY "GENE" FREIDMAN, on behalf of himself	:
And all similarly situated persons owning New York City	:
Taxicab Yellow Medallions,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
THE NEW YORK CITY TAXI AND LIMOUSINE	:
COMMISSION, a charter-mandated agency, DAVID	:
YASSKY, in his official capacity as Chairman and	:
Commissioner of the New York City Taxi and Limousine	:
Commission, and TRANSPORTATION GENERAL,	:
INC., d/b/a Metro Taxi, Inc.,	:
	:
Defendants.	:
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Index No. 653966/2013
DECISION AND ORDER
Motion Sequence No. 001

MELVIN L. SCHWEITZER, J.:

Evgeny Freidman (plaintiff or Freidman) moves to proceed as a class in his suit against the New York City Taxi and Limousine Commission (TLC), the Chairman and Commissioner of the TLC, and Transportation General, Inc. (Metro Taxi, and collectively, defendants). Defendants cross-move for summary judgment arguing that plaintiff lacks standing to assert a claim under the contract.

Background

In 2002, the New York City Council enacted legislation that created the "wheelchair accessible medallion" to be used with a wheelchair accessible vehicle. TLC is responsible for issuing taxi medallions. As of today, over 600 wheelchair accessible medallions have been issued.

To implement a program under which mobility-impaired individuals would be able to request an accessible taxicab in Manhattan, TLC promulgated rules amending certain provisions of Title 35 of the Rules of the City of New York, and setting up a dispatch program for this purpose. The rules required (i) drivers of accessible taxicabs to accept dispatches from the Accessible Taxi Dispatcher and to provide service to passengers in wheelchairs in Manhattan, and (ii) owners of all medallion taxicabs, not just owners of wheelchair accessible medallions, to pay a fee (Owners Fee) to the Accessible Taxi Dispatcher.

In order to implement the dispatch program from wheelchair accessible medallion taxicabs for trips originating in Manhattan, TLC entered into a contract with Metro Taxi (the Agreement). TLC contracted Metro Taxi to run the dispatch program, which allows a disabled passenger to either call a telephone number, or use a website or a smart-phone application in order to arrange for a wheelchair accessible taxicab to come and pick them up.

Plaintiff is the owner of several yellow taxicab medallions. Plaintiff alleges that the parties to the Agreement, TLC and Metro Taxi have breached provisions, “relating to record-keeping and the manner in which the Owner Fee is calculated and have conspired to reap illegal profits at the expense of all medallion owners.”

Discussion

A party may move for summary judgment on any claim after issue has been joined. *See* CPLR 3212(a) (McKinney’s 2006). To prevail the movant must (1) make a *prima facie* showing that it is entitled to judgment as a matter of law, and (2) offer evidence demonstrating that there is no genuine issue of material fact. *See JMD Holding Corp. v Cong. Fin. Corp.*, 4 NY3d 373, 384 (2005). If the movant makes its *prima facie* showing, the burden then shifts to the

non-moving party to “produce evidence in admissible form to demonstrate the existence of a disputed issue of material fact sufficient to require a trial.” See *Michel M. v Bd. of Educ. of City of New York*, 3 AD3d 370, 371 (1st Dept 2004). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to demonstrate a disputed issue of material fact and do not raise issues requiring a trial. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980).

Plaintiff argues that he is a third-party beneficiary and therefore has a right to assert a claim under the Agreement. Defendants argue that plaintiff is not a third-party beneficiary and therefore lacks standing to assert any rights under the Agreement. Alternatively, defendants argue that even if plaintiff is a third party beneficiary, the Agreement specifically negates a third-party beneficiary’s ability to assert rights under the contract.

Plaintiff is not a Third-Party Beneficiary

“Parties asserting third-party beneficiary rights under a contract must establish (1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for [their] benefit, and (3) that the benefit to [them] is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate them if the benefit is lost. . . .” (*Mendel v Henry Phipps Plaza West, Inc.*, 6 NY3d 783, 786 [2006] [dismissing a claim by purported third-party beneficiaries because “plaintiffs failed to establish that the [agreement] was intended for their benefit.”] [quoting *Burns Jackson Miller Summit & Spitzer v Linder*, 59 NY2d 314, 336 [1983] [internal quotation marks omitted]). “A party, claiming to be a third-party beneficiary, has the burden of demonstrating that he has an

enforceable right.” (*Ultra Scopt Int’l v Extebank*, 158 Misc 2d 117, 25 [Sup Ct NY Co. 1992], *appeal denied*, 82 NY2d 655 [1993] [internal citations and quotation marks omitted]).

The Agreement was not created with the intention to benefit the taxi medallion owners. The Agreement expressly negates any third-party beneficiary claims. Section 8.08 of the Agreement provides, “The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor [Metro Taxi] or the City or their respective officers and employees.” TLC and Metro Taxi clearly did not intend for third parties to benefit from the contract.

Plaintiff argues that he and other medallion owners are an actual beneficiary of the Agreement because Metro Taxi and TLC agreed to a document review procedure by which TLC would review financial documents provided by Metro Taxi, determine the cost of the dispatch program, and set the Owners Fee based on the cost of the dispatch program. Plaintiff argues that this procedure was put in place to ensure that plaintiff, and other similarly situated medallion holders, did not over-pay for the system.

At most, plaintiff is an incidental beneficiary of the Agreement. The document review system was not created to benefit the medallion holders. The system was put in place so that Metro Taxi and TLC had a standardized system for determining the Owners Fee based on the operating costs of the dispatching program. The fact that the medallion owners benefit from this program by paying only as much as is required to fund the program does not make them third-party beneficiaries. There is no evidence that TLC or Metro Taxi intended to benefit the medallion holders. The court finds that the medallion owners are merely incidental beneficiaries of a system created to benefit the public, Metro Taxi, and TLC.

The Plain Language of the Agreement

Even if plaintiff and other similarly situated medallion owners were third-party beneficiaries, the Agreement expressly negates third-party beneficiaries ability to enforce rights under the Agreement. Section 8.08 of the Agreement, which “negates enforcement of the contract by third parties ... is controlling.” *Board of Managers of Alexandria Condominium v Broadway/72nd Associates*, 285 AD2d 422, 424-25 (1st Dept 2001). See also *Specialists Entertainment, Inc., v Moore*, 115 AD3d 424, 425 (1st Dept 2014) (“The agreement ... by its express terms, negates any intent to permit enforcement by third parties.”).

The court holds that plaintiff lacks standing to assert any claim under the Agreement.

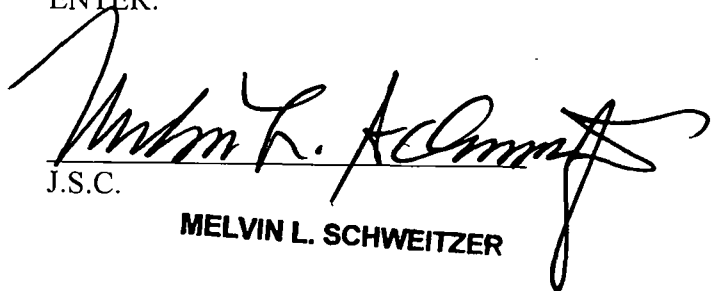
Accordingly, it is hereby

ORDERED that plaintiff’s motion to proceed as a class action is denied; and it is further

ORDERED that defendants’ cross-motion for summary judgment is granted.

Dated: August 4, 2014

ENTER:


J.S.C.
MELVIN L. SCHWEITZER