

Raach v SLSJET Mgt. Corp.
2014 NY Slip Op 33339(U)
November 25, 2014
Supreme Court, Queens County
Docket Number: 700319/2014
Judge: Allan B. Weiss
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IA PART 2

Index No: 700319 2014

Motion Date: July 15, 2014

Mot. Seq. No. 2

ORIGINAL

The following papers numbered E21 to E36 read on this motion by defendant SLSJET Management Corp. an order dismissing the amended complaint pursuant to CPLR 3211(a)(1) and (7).

Papers
Numbered

Notice of Motion-Affirmation-Exhibits.....	E21-32
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Upon the foregoing papers the motion is determined as follows:

Plaintiffs are taxi drivers who each leased a medallion and taxicab vehicle from the defendant for a twelve hour shift, pursuant to individual daily lease agreements. These agreements, by their terms, renew every time the driver leases the medallion and vehicle from the defendant. Plaintiffs allege that they shared a taxi vehicle on 12 hour shifts, and with the defendant's permission turned the vehicle over to one another. Plaintiffs allege that the defendant charged them a late fee of \$25.00 on a daily basis, in violation of the contract and the Taxi and Limousine Commission Rule (TLC). (Rules of City of NY Taxi and Limousine Commn [TLC] [35 RCNY] § 58-21 [c] [5]). They allege that the taxi vehicle was never

returned late, and in fact were never returned, as it was turned over to one another at the end of each 12 hour shift. Plaintiffs allege that defendant insisted on this arrangement in order to avoid the lower TLC limits for weekly lease limits. Plaintiffs, thus, allege that the defendant has violated the TLC weekly lease rules. Plaintiffs further allege that defendant has withheld sums in excess of what is permitted under the contract or TLC rules for fares and/or tips paid by credit card, including the late charges, for more than a year.

In their single cause of action for breach of contract, plaintiffs allege that they have performed their obligations under their contracts and that defendant breached their contracts by charging more than what is permitted under the TLC rules. In the alternative, plaintiffs allege that the late charges and additional charges are a violation of the contract, as the vehicles were never returned late.

Defendant, in this pre-answer motion seeks to dismiss the complaint on the grounds of documentary evidence and failure to state a cause of action.

It is well established that on a motion to dismiss pursuant to CPLR 3211(a)(7), “the court must afford the pleadings a liberal construction, accept the allegations of the complaint as true and provide plaintiff the benefit of every possible favorable inference” (*AG Capital Funding Partners, L.P. v State St. Bank & Trust Co.*, 5 NY3d 582, 591 [2005]; *see Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). The court’s “sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law, a motion for dismissal will fail” (*Polonetsky v Better Homes Depot, Inc.*, 97 NY2d 46, 54 [2001], *quoting Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *see also Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]; *Leon v Martinez*, 84 NY2d at 87-88; *Tom Winter Assoc., Inc. v Sawyer*, 72 AD3d 803 [2d Dept 2010]; *Uzzle v Nunzie Court Homeowners Assn. Inc.*, 70 AD3d 928 [2nd Dept 2010]; *Feldman v Finkelstein & Partners, LLP*, 76 AD3d 703 [2nd Dept 2010]). The facts pleaded are to be presumed to be true and are to be accorded every favorable inference, although bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration (*see Morone v Morone*, 50 NY2d 481 [1980]; *Gertler v Goodgold*, 107 AD2d 481 [1st Dept 1985], *affirmed* 66 NY2d 946 [1985]).

“When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one (*Guggenheimer v Ginzburg*, 43 NY2d at 275). This entails an inquiry into whether or not a material fact claimed by the pleader is a fact at all and whether a significant dispute exists regarding it (*see, id.; accord*, Siegel, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C3211:25,

at 39)” (*Gershon v Goldberg*, 30 AD3d 372 [2nd Dept 2006], *quoting Doria v Masucci*, 230 AD2d 764,765 [2d Dept 2006]; *lv. to appeal denied* 89 NY2d 811 [1997]).

A party seeking dismissal of a complaint under CPLR 3211(a)(1) must submit documentary evidence that “ ‘conclusively establishes a defense to the asserted claims as a matter of law’ ” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] *quoting Leon v Martinez*, 84 NY2d at 88; *Cives Corp. v George A. Fuller Co., Inc.*, 97 AD3d 713 [2d Dept 2012]).

The elements of a cause of action to recover damages for breach of contract are (1) the existence of a contract, (2) the plaintiff’s performance under the contract, (3) the defendant’s breach of the contract, and (4) resulting damages (*see Palmetto Partners, L.P. v AJW Qualified Partners, LLC*, 83 AD3d 804, 806 [2d Dept 2011]; *JP Morgan Chase v J.H. Elec. of N.Y., Inc.*, 69 AD3d 802, 803 [2d Dept 2010]; *Furia v Furia*, 116 AD2d 694, 695 [2d Dept 1986]).

The court declines to convert the within motion to one for summary judgment.

To the extent that plaintiffs allege that the defendant violated the TLC rules pertaining to weekly rules and the withholding of sums paid by credit card, the TLC’s legislative scheme and self-enforcement provisions do not create a private right of action (*see Desmangles v Woodside Mgt., Inc.*, 107 AD3d 551, 552-553 [1st Dept 2013]; *De La Rosa v All Taxi Mgt., Inc.*, 107 AD3d 553, 553-554 [1st Dept 2013], *motion for leave to appeal denied*, 22 NY3d 1057 [2014]; *Pervaiz v Queens Medallion Leasing, Inc.*, 107 AD3d 554, 554-555 [1st Dept 2013], *motion for leave to appeal denied*, 22 NY3d 1059 [2014]; *Rashid v B. Taxi Mgt. Inc.*, 107 AD3d 555, 555-556 [1st Dept 2013], *motion for leave to appeal denied*, 22 NY3d 1059 [2014]).

To the extent that plaintiff alleges a claim for breach of contract, it appears that plaintiffs have couched their claims of TLC violations in terms of breach of contract in order to circumvent the absence of a private right of action. It is clear from the allegations in the complaint and the lease that plaintiffs’ breach of contract claims are founded not upon defendant’s failure to comply with the terms of the lease as written. The lease provides for a 12 hour shift, “that begins at 5:00 A.M. and twelve (12) hours later at 5:00 P.M. of the same day for the day shift (Day Shift) or 5:00 P.M. and ends twelve (12) hours later at 5:00 A.M. of the next day for the night shift (Night Shift). With respect to the late fee, the lease provides that the “[d]river will be charged a late fee of \$25.00 for any shift in which the car and medallion are returned late as permitted by TLC Rule 58-21 (c)(5). Shift change must take place at the manager’s office. *In the event Driver elects to change shift away from and not at Manager’s office, as the car and medallion are not being returned to the Manager at*

the end of the Lessee's shift, a late fee of \$25.00 will be charged to Driver. The provisions of this paragraph shall be strictly enforced." (Emphasis added).

The lease agreement clearly stated that a driver would incur a late fee of \$25.00, if the driver elected to change shifts away from the manager's office, and plaintiffs do not allege that the defendant agreed to waive the late fee. As plaintiffs allege that they never returned the medallion and vehicle to the manager's office, they cannot establish that the daily imposition of the late fee constituted a breach of contract.

With respect to credit card fare receipts, the contracts provides, in pertinent part, as follows:

"As permitted by TLC Rule 58-21(c) and (f), Manager shall deduct the MTA tax collected by the Driver from debit/credit card fares due Driver, then from Driver's security deposit, if any, and then from the balance due, if any, from the Driver."

"Manager shall also deduct from the debit/credit fares due Driver authorized healthcare charges and authorized disability coverage charges."

"Lessee waives the right to be paid in cash for the Driver's credit/debit card fare receipts and also waives Driver's right to be paid daily for credit/debit card receipts and elects that such receipts be applied to obligations due Manager for Driver's shifts."

The contracts further provide that : "Notwithstanding the above, manager shall not retain credit/debit card fare receipts in excess of the lease obligations due by Driver for more than three (3) days and Driver may, at any time, request that Driver be paid the net receipts due Driver in excess of obligations owed by Driver to Manager."

Mr. Raach, in his opposing affidavit, states that although the defendant regularly issued checks to him representing credit card receipts on account of his services, sometimes monies were missing and unaccounted for, even taking into account the late fees and other charges imposed by the defendant. It is alleged that on numerous occasions a customer would pay with a credit card and he would not receive credit for the payment. He asserts that if the defendant's accounting records show that he was paid what he should have received said records are false as they omit receipts for which he should have been paid.

With respect to plaintiffs' claim that the defendant did not pay them all sums which they had earned and were entitled to receive, after permissible deductions, the court finds that the complaint sufficiently states a claim for breach of contract.

Accordingly, defendant's motion to dismiss the complaint is granted solely to the extent that plaintiffs' claims for breach of contract based upon a violation of the TLC rules, and the imposition of a daily late fee is granted.

To the extent that defendant seeks to dismiss plaintiffs' claims for breach of contract based upon the failure to pay all monies due for credit card fares, that branch of the motion to dismiss the complaint is denied.

Dated: November 25, 2014


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J.S.C.