

**CGS Taxi LLC v City of New York**

2016 NY Slip Op 30907(U)

April 8, 2016

Supreme Court, Queens County

Docket Number: 713014/2015

Judge: Kevin J. Kerrigan

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This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Kevin J. Kerrigan IA Part 10  
Justice

CGS Taxi LLC, Akal Taxi NYC LLC, D&P Baidwan, LLC, Jaspreet Singh, C&R Bhogal LLC, and PEG Taxi NYC LLC, individually and on behalf of all others similarly situated, x

Index  
Number 713014/2015

Plaintiffs,

- against -

Motion  
Date March 16, 2016

The City of New York and The New York City taxi and Limousine Commission,

Motion  
Cal. Number 36

Defendants. x

Motion Seq. No. 1

The following papers numbered 1 to 6 read on this motion by defendant City of New York and defendant New York City Taxi and Limousine Commission for an order pursuant to CPLR 3211(a)(1), (5), and (7) dismissing the complaint against them

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1
Answering Affidavits - Exhibits.....	2
Reply Affidavits.....	3
Memoranda of Law .....	4-6

Upon the foregoing papers it is ordered that the motion is granted to the extent that the defendants may re-calendar this motion as one for summary judgment upon appropriate notice to the plaintiffs. The parties are directed to work out a schedule for the service of additional papers, if any.

Plaintiff Jaspreet Singh, plaintiff CGS Taxi LLC, plaintiff D&P Baidwan, LLC, plaintiff C&R Bhogal, LLC, and plaintiff PEG Taxi, NYC, LLC successfully bid for New York City taxi medallions at public auction. Before the auction, defendant City of New York and defendant New York City Taxi and Limousine Commission (TLC) made public statements and issued promotional materials concerning medallions, medallion prices, and price trends. In the months prior to auctions held over several years, TLC published reports on the average sale price of both individual and corporate medallions. The plaintiffs allege that the reports issued by TLC contained false, inaccurate, and misleading statements. TLC allegedly exaggerated the price of medallions in public reports while concealing the true prices and made false statements concerning the directional trend in medallion prices.

The plaintiffs bid at the auctions held in 2013/2014, and they successfully purchased medallions at prices ranging from \$803,000 to \$ 875,000. After their purchases, the value of their medallions allegedly fell, and the plaintiffs attribute their losses not only to alleged fraud committed by the TLC, but also to the TLC's failure to restrict the activity of companies like Uber Technologies, Inc. The plaintiffs allege that a medallion gives them the exclusive right to pick up passengers via "street hail" in certain areas of the city and that Uber infringes on this right by picking up passengers who arrange for transportation through the use of an application on their smart phones.

The relevant regulatory background and distinctions concerning yellow cabs, black cars (which Uber vehicles supposedly are), and other types of vehicles for hire are given in three decisions issued by the Honorable Allan Weiss, a Justice of the New York State Supreme Court, County of Queens, in three cases : (1) *Glyca Trans LLC v. City of New York*, Index No. 8962/15 ( September 8, 2015), (2) *XYZ Two Way Radio Service, Inc. v. The City of New York*, Index No. 5693/15 ( September 8, 2015), and (3) *Melrose Credit Union v. The City of New York*, Index No. 6443/15 (September 8, 22015).

The cases decided by Justice Weiss were largely Article 78 in nature, the petitioners, who were parties with interests in medallions, essentially seeking to compel TLC to enforce laws and regulations protecting the exclusive rights of medallion holders. (Justice Weiss granted the respondents' CPLR 3211 dismissal motions.) The instant action, which purports to be a class action, is very different..

The first cause of action is for violation of General Business Law §349 which prohibits "deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service." The second cause of action is for fraud. The third cause of action is for breach of the implied covenant of good faith and fair dealing. The fourth cause of action is for negligent misrepresentation. The fifth cause of action is for rescission of the auction sale transactions. The sixth cause of action, apparently for damages and/or rescission,

is labeled “violation of licensing statutes and regulations.” The seventh cause of action, also apparently for damages and/or rescission, is labeled “failure to enforce codes and rules pertaining to black car operations.” The plaintiffs demand consequential damages, punitive damages, rescission of the auction sale transactions, costs and attorney’s fees, but they do not demand Article 78 relief.

CPLR 3211 provides in relevant part: “(c) Evidence permitted; immediate trial; motion treated as one for summary judgment. Upon the hearing of a motion made under subdivision (a) or (b), either party may submit any evidence that could properly be considered on a motion for summary judgment. Whether or not issue has been joined, the court, after adequate notice to the parties, may treat the motion as a motion for summary judgment.” (See, *Nonnon v. City of New York*, 9 NY3d 825; *Fedele v. Qualified Pers. Residence Trust of Doris Rosen Margett*, -AD3d- , - NYS3d-, 2016 WL 1035296; *Sgambelluri v. Ironman*, 78 AD3d 924.)

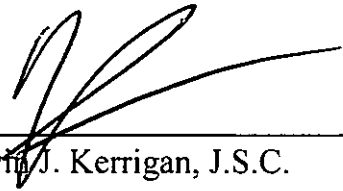
CPLR 3211(c) empowers the court to treat a motion to dismiss as a motion for summary judgment after adequate notice to the parties when the proof submitted to the court is as complete as it usually is on a motion for summary judgment pursuant to CPLR 3212. (See, Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:44).

In the case at bar, the parties have submitted extensive evidentiary materials which indicate that the record is complete or nearly complete. If the parties wish to make a further evidentiary showing, this order constitutes notice to the parties “of their obligation to make a complete record and to come forward with any evidence that could possibly be considered \*\*\*.” (*Nonnon v. City of New York*, *supra*, 827.)

The parties have reached matters pertaining to, inter alia, fraud and damages that are better scrutinized on a motion for summary judgment. Evidentiary materials have only limited use on an unconverted CPLR 3211(a) motion. For example, affidavits can only be used as “connecting links” pursuant to CPLR 3211(a)(1). (See, *Crepin v. Fogarty*, 59 AD3d 837; *Realty Investors of USA Inc. v. Bhaidaswala*, 254 AD2d 603; *Standard Chartered Bank v. D. Chabbott, Inc.*, 178 AD2d 112; For a further example, as a general rule, where a CPLR 3211(a)(7) motion is not converted into one for summary judgment, affidavits are generally intended to remedy pleading defects. (See, *Nonnon v. City of New York*, *supra*.) While parties may submit evidentiary materials in connection with a CPLR 3211(a)(7) motion (see, *Hallwood v. Incorporated Village of Old Westbury*, 130 AD3d 571, 572; *Agai v. Liberty Mut. Agency Corp.*, 118 AD3d 830; *Fishberger v. Voss*, 51 AD3d 627), a line

remains between a motion to dismiss and a motion for summary judgment. In the case at bar, the parties have crossed that line.

Dated: April 18, 2016

  
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Kevin J. Kerrigan, J.S.C.

**FILED**  
**APR 27 2016**  
**COUNTY CLERK**  
**QUEENS COUNTY**