

Hashmi v All Taxi Mgt. Inc
2017 NY Slip Op 31251(U)
March 2, 2017
Supreme Court, Queens County
Docket Number: 2778/16
Judge: Cheree A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Justice

IAS PART 30

FILED
MAR 08 2017
COUNTY CLERK
QUEENS COUNTY

MUHAMMAD Y. HASHMI,

Index No. 2778/16

Plaintiff,

Motion

Date: August 22, 2016

-against-

Motion Cal. No. 42

ALL TAXI MANAGEMENT INC
EDWARD L. SHEPARD
TOYOTA MOTOR SALES USA INC
HUDSON TOYOTA
SKYLINE AUTOMOBILES INC d/b/a
TOYOTA OF MANHATTAN,

Motion Sequence No. 1

Defendants.

The following papers numbered 1-9 submitted and considered on this motion by defendants All Taxi Management Inc & Edward L. Shepard pursuant to CPLR 3211 (4) (5) (7) dismissing all claims and cross-claims against them; pursuant to CPLR 3212 granting partial summary judgment in their favor against plaintiff Muhammad Y. Hashmi on its counterclaim that plaintiff breached the parties contract and setting the matter down for a trial on damages; and, pursuant to 22 NYCRR §130-1.1 sanctioning plaintiff and plaintiff's attorney for frivolous conduct.

	Papers <u>Numbered</u>
Notice of Motion-Affidavits-Exhibits.....	1-4
Affirmation in Opposition-Affidavits-Exhibits.....	5-7
Reply Affirmation-Affidavits-Exhibits.....	8-9

This action arises out of a medallion lease agreement. Plaintiff Muhamad Y. Hashmi (hereinafter "Hashmi") commenced this action on March 8, 2016 alleging that the moving defendants, All Taxi Management, Inc. ("All Taxi"), Edward L Shepard ("Shepard"). The remaining

defendants, Toyota Motor Sales USA Inc. (hereinafter "Toyota Motor"), Hudson Toyota (hereinafter "Toyota") and Skyline Automobiles Inc., d/b/a Toyota of Manhattan (hereinafter "Skyline") also joined issue with the service and filing of verified answers. Hashmi filed a supplemental summons and amended complaint on April 8, 2016. All Taxi is a taxi management company and Shepard is a New York City taxi medallion owner. Hashmi alleged that he leased Shepard's medallion from his agent, All Taxi in 2009 and also that the entered into a conditional sales agreement to purchase the vehicle from Shepard. Hashmi seeks to have the 2009 and 2014 contracts invalidated on the grounds the contracts are unconscionable; adhesive and were fraudulently induced. Hashmi alleged against Toyota Motor, Hudson and Skyline that they breached their warranty and were negligent as to the subject vehicle.

On April 23, 2009, Hasmi leased a vehicle from Shepard and purchased a vehicle from him. In 2014 they entered into new agreements under the same or similar terms. In 2013, Hashmi was involved in a car accident and he alleged that he incurred costs of \$10,000.00 to repair the vehicle. He signed a written agreement requesting All Taxi to pursue a property damage claim on his behalf, agreeing that if successful, All Taxi would recover twenty (20) percent as its fee. The claim was settled in the amount of \$6,262.58 in August 2014 and Hashmi owed \$5,010.06. However, Hashmi did not receive the money. Pursuant to paragraph 7 of the 2014 vehicle purchase agreement, Shepard and All Taxi kept the money as a lien to the extent there was any money due and owing. On August 3, 2014 the Toyota vehicle which Hashmi was operating which was the subject of the conditional lease agreement with Shepard caught afire and was destroyed. Hashmi alleged that he complained to Toyota Motor about a noise in the vehicle but the problem was not properly diagnosed by its technicians. After the fire, Toyota Motor inspected Hashmi's vehicle, however a definitive cause of the fire was not determined.

Paragraph 11 of the Medallion Lease Agreement dated April 16, 2014 states the Hashmi bore the risk of loss or damage to the vehicle, and that the lessor is not required to and had not procured any fire, theft or collision insurance unless the parties agreed to such option coverage in Section 11 A. Hashmi opted not to procure the additional coverage. Under the guidelines of the New York City Taxi and Limousine Commission ("TLC") section 58-13 fire insurance coverage is not required to operate a NYC taxi. Shepard and All Taxi alleged that Hashmi thereafter failed to pay monies due under the contracts after the fire.

Now, All Taxi and Shepard pursuant to CPLR 3211 (4) (5) (7) dismissing all claims and cross-claims against them; pursuant to CPLR 3212 granting partial summary judgment in their favor against plaintiff Muhammad Y. Hashmi on its counterclaim that plaintiff breached the parties contract and setting the matter down for a trial on damages; and, pursuant to 22 NYCRR §130-1.1 sanctioning plaintiff and plaintiff's attorney for frivolous conduct. Movants alleged that plaintiff previously initiated a lawsuit in the Civil Court, Queens County under Index number 14798/15 titled *Muhammad Y. Hashmi v Neil Greenbaum; All Taxi Management Inc.*, seeking \$17,747.00 in damages. Plaintiff alleged in the Civil Court action that the defendants breached the subject lease contract, that he lost time for work and that the defendants failed to return money. Defendants counterclaimed for \$25,000.00, alleging plaintiff owed \$25,0000 for unpaid payments due under a

medallion lease agreement and conditional sales agreement. By Order of Honorable Jodi Orlow dated May 4, 2016, the defendants were granted summary judgment and the plaintiff's action was dismissed. Justice Orlow granted defendants summary judgment on their counterclaim in the amount of \$25,000.00. In opposition, Hashmi alleged that when he initiated the Civil Court action he was self-represented and did ; that the Civil Court Order is not res judicata because he did not have a full opportunity to address all his claims in Civil Court, and also defendant Edward L. Shepard was not a party to the Civil Court action; the validity of the subject contracts was not addressed by the Civil Court; only the Supreme Court has jurisdiction over this matter; that the amended verified complaint alleged additional causes of action which were not addressed by the Civil Court Judge, such as fraud by inducement, fraud by concealment, undue influence, coercion, that the contracts were adhesive and unconscionable. Hashmi alleged that defendants are lying that he chose to buy a new car in 2014 while the car in 2009 was still in working condition, and that they threatened to take his medallion back if he did not agree. Also, he is now seeking a declaratory judgment pursuant to CPLR § 3001 which can only be adjudicated in Supreme Court.

Movant alleged that the claim must be dismissed based upon the doctrine of res judicata, since there has already been a determination by Honorable Jodi Orlow that contract is valid. Movant also claims that the commencement of this action against it was frivolous. Moreover, any claim that the subject contract was invalid or that the subject contract was procured by fraud are not barred by the applicable statute of limitations.

Ordinarily, a declaratory judgment is adjudicated in Supreme Court (CPLR § 3001). However, a declaratory judgment can be adjudicated in Civil Court under NYCCCA § 212-a where the matter involves an obligation of an insurer to defend or indemnify a defendant in an action where the amount sought to be recovered is not in excess of \$25,000 or by a party aggrieved by an arbitration award. Declaratory judgment relief is not requested in Hashmi's amended verified complaint.

"Res judicata ensures the finality of decisions. Under res judicata a final judgment on the merits bars further claims by parties or their privies based on the same cause of action" (*Brown v Felsen*, 442 US 127 [1979]). "The doctrine of res judicata precludes a party from litigation a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter" (*Josey v Goord*, 9 NY3d 386 [2007], citing *Matter of Hunter*, 4 NY3d 260 [2005]; CPLR 3211 [5]). Collateral estoppel bars a party from "an issue which has previously been decided against him in a proceeding in which he had a fair opportunity to fully litigate the point" (*Kaufman v Eli Lilly & Co.*, 65 NY2d 449 [1985]).

At the time this matter was commenced on March 8, 2016, plaintiff and All Taxi were parties in the Civil Court matter. In fact, Judge Orlow did not render a decision in the Civil Court case until May 4, 2016 (see CPLR 3211 [a] [4]; *Montalvo v Air Dock Sys.* 37 AD3d 567 [2d Dept 2007]).

Here, the amended verified complaint failed to sufficiently allege all the elements of fraud (CPLR § 3016 (b); *Eurycleia Partners, LP, v Seward & Kissel LLP*, 12 NY3d 553 [2009]; *Carbon*

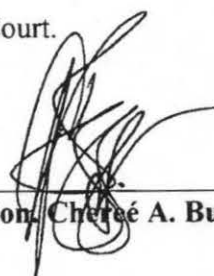
Capital Mgt. LLC v Am. Express Co., 88 AD3d 933 [2d Dept 2011]). Moreover, the statute of limitations would bar any recovery under the 2009 contract (*see* CPLR § 213 [2]). Also, the Court finds that the doctrine of res judicata applies to bar plaintiff's case. Movants are granted summary judgment on the counterclaim as to liability only against the plaintiff and the issue of movants' damages shall be addressed at the time of trial.

The amended verified complaint and any and all cross-claims are dismissed against Shepard and All Taxi pursuant to CPLR 3211 (5) & (7). Movants are granted partial summary judgment as to liability on the counterclaim and the issue of movants' damages shall be addressed at the time of trial.

The Court declines to award the movants' request for sanctions (22 NYCRR § 130-1.1).

This constitutes the decision and order of the Court.

Dated: March 2, 2017


Hon. Chereé A. Buggs, J.S.C.

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