

Singh v City of New York
2019 NY Slip Op 32892(U)
August 9, 2019
Supreme Court, Queens County
Docket Number: 701402
Judge: Kevin J. Kerrigan
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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Kevin J. Kerrigan
Justice

IA Part 10

Daler Singh dba Gilzian Enterprise LLC x
Danielle Eve Taxi LLC, EAC Taxi LLC, DEC
Taxi LLC, EC Taxi LLC, Chips Ahoy Taxi LLC,
ECDC Taxi LLC and DYRE Taxi LLC,
individually and on behalf of all others
similarly situated,

Index
Number 701402 2017

Motion
Dated: May 13, 2019

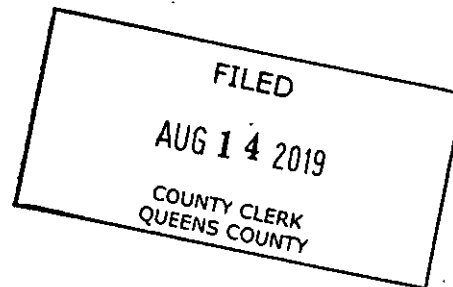
Plaintiffs,

Motion Seq. No. 13

- against -

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

Defendants.



The following papers EF numbered below read on this motion by the defendants for an order striking the plaintiffs' demand for a jury trial

Papers
Numbered

Notice of Motion - Affidavits - Exhibits	371-377
Answering Affidavits - Exhibits	
Reply Affidavits	
Memoranda of Law	378, 379, 389

Upon the foregoing papers it is ordered that the motion is granted.

I. Background

Plaintiff Danielle Eve Taxi LLC, plaintiff EAC Taxi LLC, plaintiff DEC Taxi LLC, plaintiff EC Taxi LLC, plaintiff Chips Ahoy Taxi LLC, plaintiff ECDC Taxi LLC, and plaintiff Dyre Taxi LLC successfully bid for New York City corporate wheelchair accessible taxi medallions at a public auction held on November 13, 2013. Before the auctions, defendant City of New York and defendant New York City Taxi and Limousine

Commission (TLC) (collectively the city defendants) 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.

After the plaintiffs made 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 plaintiffs began this action by the filing of a summons and a complaint on January 30, 2017. The plaintiffs' third cause of action is for breach of the contractually implied covenant of good faith and fair dealing. The plaintiffs' fifth cause of action is for rescission of the auction sales transactions. The defendants submitted a motion to dismiss the complaint on July 11, 2017. By a decision and order dated September 21, 2017 (one paper), this court, *inter alia*, denied the motion as it pertained to the third cause of action and dismissed only that part of the fifth cause of action which was based on fraud. The remaining causes of action were dismissed. (*See, Singh v. The City of New York*, 2017 WL 4791469.) The plaintiffs' demand for relief includes both a judgment for consequential monetary damages and a judgment compelling the defendants to "rescind the auction sales transactions."

On February 22, 2019, the plaintiffs filed a note of issue with a demand for a jury trial "of all issues." The relief sought included "certification as a class action, consequential damages, rescission, attorney's fees and costs."

II. Discussion

The court notes initially that "a motion to strike a demand for a jury trial may be made at anytime up to the opening of trial ***." (*Moyal v. Sleppin*, 139 AD3d 605, 605, [1st Dept. 2016].)

The plaintiffs have joined a claim for legal relief which seeks monetary damages for breach of the implied covenant of good faith and fair dealing with a claim for equitable relief which seeks rescission of their contracts to purchase the taxi medallions. “Rescission is an equitable cause of action ***.” (*Van Dussen-Storto Motor Inn, Inc. v. Rochester Tel. Corp.*, 63 AD2d 244, 250 [4th Dept 1978]), or, alternatively viewed, “[r]escission, a matter within the court’s discretion, is an equitable remedy. (*Kachkovskiy v. Khlebopros*, 164 AD3d 568, [2nd Dept 2018].) An action seeking rescission and a restoration of the status quo is equitable in nature regardless of the fact that it concerns the return of money. (*See, Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State*, 75 NY2d 175 [1990].) A plaintiff waives his right to a trial by jury by joining legal and equitable causes of action arising from the same transaction and seeking both legal and equitable relief.” (*Lief v. Hill*, 100 AD3d 836 [2nd Dept 2012]; *see, New Media Holding Co., LLC v. Kagalovsky*, 118 AD3d 68 [1st Dept 2014] [parties effectively waived their right to jury trial by joining demands for rescission with claims for legal relief].) In the case at bar, the plaintiffs’ two remaining causes of action arise out of the same transaction, i.e., the purchase of the taxi medallions. “The prevailing rule is that the deliberate joinder of claims for legal and equitable relief arising out of the same transaction amounts to a waiver of the right to demand a jury trial ***,” (*Hebranko v. Bioline Labs., Inc.*, 149 AD2d 567, 567 [2nd Dept 1989]; *Lief v. Hill, supra.*)

The demand for rescission in this case is not merely “incidental” to the demand for monetary damages. (*See, New Media Holding Co., LLC v. Kagalovsky*, 118 AD3d 68, 79[[1st Dept 2014].) The plaintiffs have made it plain on prior motions that they are seeking both the restoration of the status quo “and also compensa[tion] *** for the substantial monetary damage they have suffered as a result of Defendants’ actions.” The “ over-all nature and character of the case ,” is not legal rather than equitable, and the request for rescission in the prayer for relief is not “simply incidental to the money damages sought.” (*See, Schlick v. Am. Bus. Press, Inc.*, 246 AD2d 450, 450 [1st Dept 1998].) Indeed, this court finds that striking the jury demand is proper because the primary relief sought in this case is rescission and that the demand for damages is “incidental” to the equitable demand. (*See, Wathne Imports, Ltd. v. PRL USA, Inc.*, 129 AD3d 555[1st Dept. 2015] [motion to strike a jury demand properly granted since the primary relief sought in the complaint was equitable in nature and the claims for damages were “incidental”]; *Williams v. Eason*, 78 AD3d 935 [2nd Dept 2010] [“Since this action is primarily equitable in nature, and the damages demanded by the plaintiff are merely incidental to his claim for equitable relief, the plaintiff has no right to a jury trial.”].) The plaintiffs did not show here that this a case in which monetary damages will suffice to afford full relief and so the inclusion of a demand for equitable relief in the complaint does not constitute a waiver of the right to a jury trial.” (*See, Hebranko v. Bioline Labs., Inc., supra.*) The difficulty of proving and calculating damages

in this case, which may involve many causes for the plaintiffs' losses, is a primary reason why the court finds that rescission is the primary claim made here.

The plaintiffs' assertion that "there is no dispute that plaintiffs are seeking money damages as the primary and sufficient remedy or that money damage could provide complete relief for the wrong alleged" (memorandum of law, p. 4) is not only baseless, but it also recklessly jeopardizes their demand for rescission. "The remedy of rescission is unavailable [where] money damages are available and will make plaintiff whole." (*Romanoff v. Romanoff*, 148 AD3d 614 [1st Dept. 2017]; *Kachkovskiy v. Khlebopros*, 164 AD3d 568 [2nd Dept. 2018].)

Dated: August 9, 2019



Kevin J. Kerrigan, J.S.C.

FILED
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COUNTY CLERK
QUEENS COUNTY