

Sultana v Mega Funding Corp.
2019 NY Slip Op 33131(U)
October 21, 2019
Supreme Court, New York County
Docket Number: 161155/2018
Judge: Julio Rodriguez, III
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JULIO RODRIGUEZ, III PART IAS MOTION 62EFM

Justice

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INDEX NO. 161155/2018

NASIMA SULTANA, NASIMA SULTANA AS AGENT
(ATTORNEY IN FACT) FOR MOHAMMAD BADRUL
ISLAM, and BADRUL AND SULTANA ENTERPRISE, INC.,

MOTION DATE 09/26/2019

MOTION SEQ. NO. 002

Plaintiffs,

- v -

MEGA FUNDING CORPORATION, SAVAS
KONSTANTINIDES, and THE NEW YORK CITY TAXI &
LIMOUSINE COMMISSION

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 7, 8, 9, 10, 11, 12,
13, 14, 15, 16, 17

were read on this motion to/for DISMISSAL

Plaintiffs commenced this action seeking damages allegedly sustained in a course of
occurrences relating to a taxi medallion loan and eventual surrender of a taxi medallion to
defendant New York City Taxi & Limousine Commission ("TLC"). In their complaint, plaintiffs
allege causes of action 1) under 42 U.S.C. § 1981 (c); 2) for deceptive business practices, fraud,
fraudulent inducement and fraudulent misrepresentation; and 3) under CPLR 5015 (a) (3) to vacate
a judgment entered by Supreme Court, Queens County, on October 17, 2017. Additionally, in
plaintiffs' third cause of action, plaintiffs' request an order compelling defendant TLC to "return
ownership of the plaintiffs' taxi medallion to them or - in the alternative - to pay to the plaintiffs
full market value of the medallion on the date(s) that they purchased it" (Murray aff, Ex G,
complaint at ¶ 60). Defendant TLC now moves pursuant to CPLR 3211 (a) (2), (a) (5), and (a) (7)
to dismiss plaintiffs' complaint as against it. Defendant TLC's motion is unopposed.

Defendant TLC argues that it is entitled to dismissal of plaintiffs' complaint as against it
because 1) plaintiffs' claim for discrimination under 42 U.S.C. § 1981 (c) fails to state a claim; 2)
plaintiffs did not serve a notice of claim upon defendant TLC under General Municipal Law
("GML") 50-e; 3) plaintiffs' claim for deceptive business practices fails to state a claim; 4)
plaintiffs' claim under CPLR Article 78 is untimely; and 5) plaintiffs' mandamus claim, to the
extent stated and sought, fails because "plaintiffs do not allege that, following the 'surrender [of
the taxi medallion], they ever attempted to retrieve the medallion from TLC or that TLC refused
to return the medallion" (Murray mem in support at 9).

Defendant TLC's motion to dismiss the complaint is unopposed.

Motion to Dismiss Standard

“[O]n a CPLR 3211 motion to dismiss we ‘accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory’” (*William Doyle Galleries, Inc. v Stettner*, 167 AD3d 501 [1st Dept 2018] quoting *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, “factual allegations...that consist of bare legal conclusions...are not entitled to such consideration” (*Leder v Spiegel*, 31 AD3d 266 [1st Dept 2006]).

Discussion – Plaintiffs’ First Cause of Action

Defendant TLC argues that plaintiffs’ first cause of action, for discrimination under 42 U.S.C. § 1981 (c), fails to state a claim. To state a claim under 42 U.S.C. § 1981, a plaintiff must allege the following three elements: “(1) the plaintiff is a member of a racial minority; (2) an intent to discriminate on the basis of race by the defendant; and (3) the discrimination concerned one or more of the activities enumerated in the statute” (*Mian v Donaldson, Lufkin & Jenrette Securities Corp.*, 7 F3d 1085, 1087 [2d Cir 1993]; see *Tong v Target, Inc.*, 83 AD3d 1046, 1047 [2d Dept 2011]). Here, plaintiffs allege that defendant TLC accepted plaintiffs’ surrender of a taxi medallion in contravention of defendant TLC’s rules. It is alleged that 1) plaintiff Mohammad Badrul Islam was the sole signee of the medallion surrender form (Murray aff, Ex G, complaint at ¶ 36); 2) plaintiff Islam owned only 50% of the medallion owner-corporation, Badrul and Sultana Enterprise, Inc. (*id.*); and 3) defendant TLC’s “rules barred anyone owning less than 51% of a Corporation from surrendering a Medallion owned or co-owned by a Corporation to” defendant TLC (*id.*).

Although plaintiffs allege that defendant TLC had actual and constructive notice that plaintiff Islam owned only 50% of the corporation (*id.* at ¶ 37) and that plaintiff Islam “lacked any capacity to understand the English language information set forth on its ‘Surrender Form’ on the day he signed it” (*id.* at ¶ 39), plaintiffs fail to allege any facts upon which an “*intent* to discriminate on the basis of race” (*Mian* at 1087 [emphasis added]) is evident or can be inferred (see *Tong v Target, Inc.*, 83 AD3d 1046 [2d Dept 2011] [“conclusory and speculative assertions were inadequate to state a cause of action to recover damages for racial discrimination under 42 U.S.C. § 1981”]). The court therefore finds that plaintiffs’ first cause of action for discrimination under 42 U.S.C. § 1981 fails to state a claim and is therefore dismissed as against defendant TLC.

Discussion – Plaintiffs’ Second Cause of Action

Plaintiffs’ second cause of action is for deceptive business practices, including “fraud, fraudulent inducement, and fraudulent misrepresentation” (Murray aff, Ex G, complaint at 11).

“To state a [General Business Law] section 349 cause of action [for deceptive business practices], a plaintiff must allege that the defendant’s challenged act was consumer-oriented and materially misleading and resulted in injury to the plaintiff” (*Kickertz v New York University*, 110 AD3d 268, 273 [1st Dept 2013] citing *Stutman v Chemical Bank*, 95 NY2d 24, 29 [2000]).

“The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages” (*Epiphany Community Nursery School v Levey*, 171 AD3d 1, 8 [1st Dept 2019] citing *Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]).

“To state a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury” (*Gosmile, Inc. v Levine*, 81 AD3d 77, 8- [1st Dept 2010] citing *Sokolow, Dunaud, Mercadier & Carreras, LLP v Lacher*, 299 AD2d 64, 70 [1st Dept 2002]; see *Schumaker v Mather*, 133 NY 590 [1892]).

“To state a cause of action for fraudulent misrepresentation, ‘a plaintiff must allege a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury’” (*Gomez-Jimenez v New York Law School*, 103 AD3d 13, 17 [1st Dept 2012] quoting *Mandarin Ltd. v Wildenstein*, 16 NY3d 173, 178 [2011]).

Defendant TLC argues that plaintiffs’ second cause of action fails to state a claim. Additionally, defendant TLC contends that plaintiffs’ second cause of action should be dismissed because plaintiffs failed to include the above claims in a notice of claim served upon the City of New York within the required time period.

The court finds that plaintiffs’ complaint fails to allege a sufficient consumer-oriented context for a deceptive business practices claim under General Business Law § 349. The court further finds that plaintiffs’ complaint fails to allege that defendant TLC made a material misrepresentation of fact. Consequently, the court finds that plaintiffs’ complaint fails to state claims for deceptive business practices, fraud, fraudulent inducement, or fraudulent misrepresentation as against defendant TLC.

Additionally, insofar as there is no opposition to defendant TLC, plaintiffs have failed to rebut defendant TLC’s argument that plaintiffs failed to serve a notice of claim pursuant to GML § 50-e as to these claims.

Accordingly, whether on the basis of plaintiffs’ failure to state a claim or plaintiffs’ failure to serve a notice of claim regarding these claims, plaintiffs’ second cause of action must be dismissed as against defendant TLC.

Discussion – Plaintiffs’ Third Cause of Action

Plaintiffs’ third cause of action (misabeled as a “fourth” cause of action) requests, amongst other things, vacatur of an order of Supreme Court, Queens County, in an action to which defendant TLC was not a party. The court therefore finds that this cause of action, as it pertains to that prior order, fails to state a claim as against defendant TLC.

Defendant TLC also contends plaintiffs' third cause of action, to the extent it can be construed to assert Article 78 or mandamus relief, must similarly be dismissed. Plaintiffs' third cause of action, in relevant part, states "plaintiffs are entitled to...judgment...judicially compelling [defendant TLC] to return ownership of the plaintiffs' taxi medallion to them or – in the alternative – to pay to the plaintiffs full market value of the medallion on the date(s) that they purchased it" (Murray aff, Ex G, complaint at ¶ 60).

Pursuant to CPLR 217, "a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact, or after the respondent's refusal, upon the demand of the petitioner or the person whom he represents, to perform its duty". Consequently, insofar as this action challenges a determination of defendant TLC, the statute of limitations is four months (*see Stankevich v New York City Police Department*, 173 AD3d 507 [1st Dept 2019]; *Irace v Williams*, 173 AD3d 484 [1st Dept 2019]; *Ferrer v Appleton*, 190 AD2d 146 [1st Dept 1993]). Moreover, to the extent that plaintiffs seek mandamus relief in this action, plaintiffs must allege that, upon plaintiffs' demand, defendant TLC refused to perform its duty (CPLR 217; *see Adams v City of New York*, 271 AD2d 341 [1st Dept 2000]; *see also Stewart v New York City Department of Education*, 173 AD3d 585 [1st Dept 2019]).

Plaintiffs allege that defendant TLC wrongfully accepted the surrender of plaintiffs' taxi medallion on October 24, 2017 (Murray aff, Ex G, complaint at ¶¶ 35, 37). Plaintiffs commenced the instant action by filing of a summons and complaint on November 27, 2018. The statute of limitations on Article 78 actions, as noted *supra*, is four months (CPLR 217 [1]). Therefore, the court finds that to the extent plaintiffs seek Article 78 relief in their complaint such relief is time-barred.

Finally, to the extent that plaintiffs' third cause of action asserts mandamus relief, plaintiffs' complaint fails to allege that it has previously demanded return of the taxi medallion, that defendant TLC refused, or that defendant TLC has a nondiscretionary duty to return the medallion. Consequently, this court finds that plaintiffs' complaint fails to state a claim for mandamus relief.

Conclusion

Accordingly, and upon the submitted papers and exhibits, it is

ORDERED that defendant New York City Taxi & Limousine Commission's motion to dismiss is granted in its entirety, without opposition, and plaintiffs' complaint is severed and dismissed as to defendant New York City Taxi & Limousine Commission; and it is further

ORDERED that defendant New York City Taxi & Limousine Commission is to serve a copy of this order with notice of entry upon all parties and the General Clerk's Office within twenty days; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that, because an agency of the City of New York is no longer a party to this action, this matter be referred to a non-City IAS part.

Any argument or requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected. This constitutes the decision and order of the court.

October 21, 2019


HON. JULIO RODRIGUEZ III, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
		<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/>
				OTHER
				REFERENCE