**Singh v City of New York**

2019 NY Slip Op 34976(U)

April 5, 2019

Supreme Court, Queens County

Docket Number: Index No. 701402/2017

Judge: Kevin J. Kerrigan

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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J KERRIGAN IA Part 10
Justice

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,

Plaintiffs,

- against -

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

Defendants.
x

Index Number 701402 2017

Motion Dated: March 4, 2019

Motion Seq. No. 10

FILED
MAY 14 2019
COUNTY CLERK
QUEENS COUNTY

The following papers EF numbered below read on this motion by defendant City of New York and defendant New York City Taxi and Limousine Commission for an order, inter alia, compelling documentary disclosure

| | Papers Numbered |
|---|---|
| Notice of Motion - Affidavits - Exhibits | 269-287 |
| Answering Affidavits - Exhibits | 337-341 |
| Reply Affidavits | 342-345 |
| Memoranda Of Law | 286 336, 346 |

Upon the foregoing papers it is ordered that the branch of the motion which is for an order directing documentary disclosure is granted except as to tax returns. The plaintiffs are directed to make the requested documentary disclosure within 45 days of the service of a copy of this order with notice of entry. The branch of the motion which is for an order compelling the continued deposition of Richard Chipman or another appropriate individual "to testify regarding the documents that are the subject of this motion." is denied without

prejudice to moving again for the same relief after the plaintiffs have made documentary disclosure.

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. In February, 2014, plaintiff Daler Singh d/b/a Gilzian Enterprise LLC successfully bid for an independent wheelchair accessible taxi medallion at a public auction. 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.

Plaintiff Singh formed Gilzian Enterprise LLC for the purpose of owning the taxi medallion, which cost the company $821,215. Richard Chipman organized Danielle Eve Taxi LLC, EAC Taxi LLC, DEC Taxi LLC, EC Taxi LLC, Chips Ahoy Taxi LLC, ECDC Taxi LLC, and Dyre Taxi LLC (the Chipman companies) for the purpose of owning two yellow taxi medallions each (a company with two medallions is called a minifleet). The purchase price for the mini-fleets ranged from $2,118,000 to $2,518,000 and totaled $16,426, 000.

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 plaintiff's third cause of action is for breach of the contractually implied covenant of good faith and fair dealing. The plaintiff's 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.Pursuant to the order of this Court issued on September 21, 2017, the motion was denied with respect to the third cause of action, granted as to that part of the fifth cause of action which was based on fraud, and granted as to the remaining causes of action.(*See, Singh v. The City of New York*, 2017 WL 4791469.)

II. The Present Discovery Dispute

On November 2, 2018, the defendants sent a letter to the plaintiffs for the purpose of, inter alia, requesting the production of certain financial documents. On November 16, 2 018, the plaintiffs responded by, inter alia, objecting to most of the requests as improper. At a Complianee Conference held on November 26, 2018, the plaintiffs again refused to comply with the document requests. Subsequent communications between the attorneys failed to produce an agreement concerning the document requests.

CPLR 3101 provides in relevant part: " (a) Generally. There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof ***." ( *See, Allen v. Crowell-Collier Pub. Co.*, 21 NY2d 403 [1968].) "The words, 'material and necessary', are, *** to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason." (*Allen v. Crowell-Collier Pub. Co., supra*, 406.)

As stated in the defendants' reply memorandum of law, their motion to compel seeks discovery of three classes of documents:

"(1) financial statements ( balance sheets, income statements, and cash flow statements), tax returns, or other documents showing the annual income and expenses of each plaintiff from the time of their purchase of the medallions at the November 2013 and February 2014 auctions to the present;

(2) all loan agreements and other documents relating to the purchase, financing, refinancing, assignment, transfer, or foreclosure of the medallions or the security interests or ownership interests in the medallions purchased by plaintiffs at the November 2013 and February 2014 auctions; and

(3) all loan agreements and other documents relating to the purchase, financing, refinancing, assignment, transfer, or foreclosure of the medallions or the security interests or ownership interests in the medallions purchased by any purchaser of taxi medallions at the

auctions in 2013 and 2014 ( the putative 'Class" as defined in the Amended Class Action Complaint)."

As the moving party,the defendants had the burden of demonstrating that the discovery sought "will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims." (*Crazytown Furniture v. Brooklyn Union Gas Co.*, 150 AD2d 420, 421[2d Dept.1989]; *Celani v. Allstate Indem. Co.*, 155 AD3d 1524 [4th Dept . 2017]. ) The court finds that, as a general matter ,the defendants successfully carried this burden as to all three classes of documents sought. On the other hand, the plaintiffs failed to convince the court that the documentary discovery sought has no other purpose than harassment and the like because, e.g., the defendants are seeking information available to them in other form. "If there is any possibility that the information is sought in good faith for possible use as evidence-in-chief or for cross-examination or in rebuttal, it should be considered evidence 'material' in the action." (*Shutt v. Pooley*, 43 AD2d 59, 60, 349 [3rd Dept 1973]; *Vargas v. Lee*. -AD3d- 2019 WL 1271883, {2nd Dept, 2019[)

In regard to the first class, since the plaintiffs are seeking "damages based upon the loss in value of the medallions sold by Defendants at the 2013/2014 auctions," the income earned and costs incurred from the use of the medallions are relevant to this case. The income approach is a widely accepted method of calculating the value of an asset. (*See, e.g., 41 Kew Gardens Rd. Assocs. v. Tyburski*, 70 NY2d 325, 331[1987] ["The income capitalization approach is generally regarded as the preferred method for determining the value of income-producing property, which is what is at issue in this case."]; *W.O.R.C. Realty Corp. v. Bd. of Assessors*, 100 AD3d 75[2012].) The fact that the plaintiff has chosen a different approach to valuation "does not foreclose other avenues of proof." (*DG & A Mgmt. Servs., LLC v. Sec. Indus. Ass'n Compliance & Legal Div.*, 78 AD3d 1316, 1319,[3rd Dept 2010].) The plaintiffs rely on market transactions known to the TLC to establish the value of the medallions. (*See, Allied Corp. v. Town of Camillus*, 80 NY2d 351, 356[1992] ["Evidence of comparable sales is generally the preferred measure of a property's value for assessment"].) But for taxi medallions, there may be conditions in the market, e.g. foreclosure, bankruptcy, panic, which have affected the reliability of market transactions as an indicator of actual value. The selection of the most reliable method of valuation will be made after the presentation of evidence from experts. (See, e.g., .*W.O.R.C. Realty Corp. v. Bd. of Assessors*, *supra*.) Moreover, in the case at bar, the plaintiffs are seeking the remedy of rescission, and, thus, income or other benefits derived from the medallions is relevant to the determination of what adjustments or calculations must be made in returning the parties to the status quo ante. ( *See, Vitale v. Coyne Realty, Inc.*, 66 AD2d 562[4th Dept 1979].)

In regard to the second class, the documents sought are relevant on the issue of whether rescission is a possible remedy in this case. "The equitable remedy of rescission is only to be invoked where the plaintiff has no adequate remedy at law and where the parties can be substantially restored to their status quo ante positions." ( *Habberstad Volkswagen, Inc. v. GC Volkswagen, Inc.*, 127 AD3d 1019, 1020 [2nd Dept. 2015].) The defendants correctly contend that other stakeholders may have acquired interests in the medallions that might make rescission impossible or that the plaintiffs may no longer own their medallions because of, for example, foreclosure.

In regard to the third class, this court has postponed the decision on class certification until after summary judgment motions are brought, and the discovery sought is relevant to a determination on class certification. The defendants are only seeking documents that are in the possession of the named plaintiffs.

There is, however, a heightened standard in regard to tax returns. "While New York has a broad policy of discovery, favoring disclosure, disclosure of tax returns is disfavored because of their confidential and private nature, requiring the party seeking to compel production to make 'a strong showing of necessity and demonstrate that the information contained in the returns is unavailable from other sources' ***," ( *Weingarten v. Braun,* 158 AD3d 519, 519–20 [1st Dept. 2018], quoting *Williams v. New York City Hous. Auth.*, 22 AD3d 315, 316[1st Dept. 2005].) The defendants in this case did not make the required showing at this time.

The defendants also seek an order compelling the continued deposition of Richard Chipman or another appropriate individual "to testify regarding the documents that are the subject of this motion." However, the defendants are incapable of showing the necessity of such a deposition until after they have reviewed the documents disclosed by the plaintiffs.

FILED
MAY 14 2019
COUNTY CLERK
QUEENS COUNTY

Dated: April 5, 2019

Kevin J. Kerrigan, J.S.C.