Asghar v Melrose Credit Union
2020 NY Slip Op 32839(U)
July 7, 2020
Supreme Court, Queens County
Docket Number: 700038/2019
Judge: Joseph Risi

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JOSEPH RISI
A. J. S. C.

IA Part 3

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MUHAMMAD ASGHAR and ANCHOR CAB CORP.,

Plaintiffs,

-against-

MELROSE CREDIT UNION, THE CITY OF NEW YORK, THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, and THE METROPOLITAN TRANSPORTATION AUTHORITY,

Defendants.

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Index Number 700038/2019

DECISION/ORDER

Sequence Number 4

The following numbered papers read on this motion by defendant Melrose Credit Union ("MCU") to dismiss the complaint for failure to submit a proof of claim and exhausting administrative remedies and pursuant to CPLR §3211 (a)(7) for failure to state a cause of action.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits.....	EF 48-56
Memorandum of Law.....	EF 57
Answering Affidavits - Service	EF 61-62
Reply - Exhibit	EF 65-66
Memorandum of Law in Reply.....	EF 67

Upon the foregoing papers, it is ordered that the motion is determined as follows:

Background

Plaintiff commenced the within action on January 2, 2019 against MCU, the City of New York, the New York City Taxi and Limousine Commission, the Port Authority of New York and

New Jersey, and the Metropolitan Transportation Authority[1]. Plaintiff Muhammad Asghar ("Agshar") alleges that he is the owner of New York City Yellow Medallion Taxicab Nos. 9P28, 9P29 and 9P30. On March 30, 2016, Asghar entered into an adjustable rate loan agreement with MCU for the sum of $972,800.00, plus interest, payable each month for thirty-five (35) months, in the initial monthly amount of $4,609.27, subject to a monthly change in interest rate and a final payment of $654,384.82. Plaintiff also entered into a security agreement with MCU, pledging as collateral the NYC taxicab medallion numbers 9P28, 9P29 and 9P30 along with rate cards and any vehicles attached thereto and 200 shares of stock in corporate plaintiff Anchor Cab Corp. ("Anchor"). Anjum states that he has refinanced this loan many times, and that his current monthly payment is $5,017.49. He asserts that he leases his medallions to a garage and that the garage pays him $1,400 per medallion or $4,200 per month but that the garage has ceased paying him the $4,200 as promised; that he is unable to pay MCU and that he is three (3) months behind; and that MCU is threatening to repossess his medallions. Anjum states that in June 2017, he learned that the National Credit Union Administration ("NCUA"), a federal agency, had taken over the management of Melrose Credit Union.

The first cause of action against MCU is for breach of contract and alleges that the TLC, which regulates the taxicab industry, permitted the market price of a medallion to rise to approximately $1.1 million by 2012, but thereafter the City of New York, acting through the TLC, caused the market value of a medallion to decline steeply by allowing green taxicab medallions, and the operation of computerized businesses (app-based businesses) such as Uber, Lyft, Via, Juno and others competitors to transport passengers. It is alleged that despite the decline in the value of medallions, MCU continued to finance their purchase, and that MCU wrongfully lent plaintiff the sum of $972,800 in 2016. It is alleged that MCU acted "recklessly and an [sic] in an arbitrary and capricious fashion" in loaning money against a "rapidly deflating asset", and that the loan to the plaintiffs was "irresponsible, improper and void under the laws governing Federal Credit Unions".

The second cause of action for negligence against MCU is due to MCU's refusal to take into account the "wrongful" conduct of the other co-defendants, causing unfair additional overhead to yellow medallion taxicabs, making it difficult to make loan payments; that since taking over MCU, NCUA has refused to fairly and equitably finance new loans or refinance outstanding loans; that MCU, as administered by NCUA "failed, neglected and negligently refused to coordinate its activities" with co-defendants in connection with plaintiffs' medallions, causing plaintiffs to lose business and permitting the price of medallions to drop, so that plaintiffs are unable to pay the loan.

The third cause of action against MCU alleges a violation of General Business Law §349(a). The fourth cause of action against MCU alleges a violation of the Truth in Lending Act. In the complaint's wherefore clause, plaintiffs seek to recover monetary damages, and "a preliminary injunction and permanent injunction...directing all of these defendants, from further negligently

[1] By Order dated April 26, 2019, the action has been dismissed against The City of New York, the New York City Taxi and Limousine Commission, the Port Authority of New York and New Jersey and the Metropolitan Transportation Authority.

creating policies and rules which make it impossible to economically operate a New York City Yellow Medallion taxicab, specifically Plaintiffs' New York City Yellow Taxicab Medallion Nos. 9P28, 9P29 and 9P30".

Defendant Melrose Credit Union's motion to dismiss the complaint

The plaintiffs' first cause of action asserted against defendant MCU is for breach of contract. The plaintiffs allege that they is aggrieved because (1) "the loan was irresponsible, improper, and void und the laws governing Federal credit Unions, 12 U.S.C. Section 1766", (2) "Defendant Melrose acted recklessly and an [sic] in an arbitrary and capricious fashion in improperly loaning money against a rapidly deflating asset", and (3) "Defendant Melrose continued to lend large sums of money against rapidly deflating New York City Yellow Taxicab Medallions in violation of its fiduciary duty to its owners, shareholders, members, borrowers and the general public". "The essential elements of a cause of action to recover damages for breach of contract are (1) the existence of a contract, (2) the plaintiff's performance pursuant to the contract, (3) the defendant's breach of its contractual obligations, and (4) damages resulting from the breach." (*see Starker v Trump Vil. Section 4, Inc.,* 162 AD3d 946, 947 [2nd Dept. 2018]; *All Seasons Fuels, Inc. v Morgan Fuel & Heating Co., Inc.,* 156 AD2d 591 [2nd Dept. 2017]). The contractual obligation of the defendant credit union was to lend money to the plaintiff borrowers, and the complaint contains no allegation that the loan was not made. In regard to plaintiffs' allegation (1) above, 12 USC §1766, "Powers of Board", a lengthy statute, concerns the powers of the Board of the NCUA and the complaint contains no specific allegations showing how the statute has relevance to the making of the loan to the plaintiff. In regard to allegation (2) above, the complaint's "arbitrary and capricious" language is irrelevant to a cause of action for breach of contact against the defendant credit union and more appropriate to an Article 78 proceeding against a governmental entity. With respect to allegation (3), a violation of a fiduciary duty, a cause of action for breach of fiduciary duty differs from a cause of action for breach of contract, and in any event, there is ordinarily no fiduciary duty between a bank and its customers (*see Curtis-Shanley v Bank of Am.,* 109 AD3d 634 [2nd Dept. 2013]).

The plaintiffs' second cause of action asserted against defendant MCU is for negligence. The elements of a cause of action for negligence include a "(1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom"(*see Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]; *see also Ingrassia v Lividikos*, 54 AD3d 721,724 [2nd Dept 2008]). Plaintiffs have failed to plead any of the requisite elements needed to establish a prima facie claim for negligence and his vague allegations concerning the "wrongful" conduct of the co-defendants does not meet the pleading requirements as the action against the other co-defendants was dismissed.

The plaintiffs failed to state a valid cause of action for violation of New York General Business Law §349 against defendant MCU. General Business Law §349 "Deceptive acts and practices unlawful", a broad consumer protection statute, declares unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state." (General Business Law §349 [a]; *see North State Autobahn, Inc. v Progressive Ins. Group*

Co., 102 AD3d 5 [2nd Dept. 2012]). "The elements of a cause of action to recover for deceptive business practices under General Business Law §349 are that the defendant engaged in a deceptive act or practice, that the challenged act or practice was consumer-oriented, and that the plaintiff suffered an injury as a result of the deceptive act or practice." (*Valentine v Quincy Mut. Fire Ins. Co.,* 123 AD3d 1011, 1015 [2nd Dept. 2014]; *Nafash v Allstate Ins. Co.,* 137 AD 3d 1088 [2nd Dept.. 2016]). "A party claiming the benefit of General Business Law §349 must, as a threshold matter, charge conduct that is consumer oriented." (*see JP Morgan Chase Bank, N.A. v Hall,* 122 Ad3d 576, 581 [2nd Dept. 2014]). "[T]he defendant's acts or practices must have a broad impact on consumers at large." (*JPMorgan Chase* at 581 citing *New York Univ. v Contintental Ins. Co.,* 87 NY2d 308, 320 [1995]). In the case at bar, the dispute between the parties does not involve consumer-oriented conduct.

The plaintiffs failed to state a valid cause of action for violation of the federal Truth in Lending Act (TILA), 15 USC §1601, against defendant MCU. TILA was enacted "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." (15 USC §1601[a]). TILA provides that "(i) The adjective "consumer", used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes." (15 USC §1602[i]). Taxi medallions are not used primarily for personal, family or household purposes, but rather are used for the commercial purpose of operating a taxi business. The plaintiffs failed to sate a valid cause of action for violation of TILA, and the Court notes that a defense based on TILA has been rejected in similar cases involving taxi medallions (*see Melrose Credit Union v Galarza,* index number 707947/2017 [Sup. Ct. Queens Cty, December 5, 2017] ["TILA does not apply to commercial transactions"]; *Melrose Credit Union v Guerrier,* index number 707962/2017 [Sup. Ct. Queens Cty, March 5, 2018] [TILA "only applies to consumer credit transactions and does not apply to extensions of credit for commercial purposes]).

Accordingly, the defendant Melrose Credit Union's motion to dismiss is granted and the complaint is dismissed in its entirety.

This is the decision and order of the Court.

Date: July 7, 2020

Hon. Joseph Risi, A.J.S.C.

FILED & RECORDED
7/8/2020
10:29 AM
COUNTY CLERK
QUEENS COUNTY