

Taxi Medallion Loan Trust III v Brown Eyes Cab Corp.
2023 NY Slip Op 30397(U)
February 7, 2023
Supreme Court, New York County
Docket Number: Index No. 652163/2021
Judge: Barry Ostrager
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**SUPREME COURT OF THE STATE OF NEW
YORK NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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TAXI MEDALLION LOAN TRUST III, as assignee of
MEDALLION FUNDING, LLC, MEDALLION FINANCIAL
CORP., and MEDALLION
BANK,

Plaintiffs,

- v -

BROWN EYES CAB CORP.; GREEN EYES CAB
CORP.; BLUE EYES CAB CORP.; LUCKY SEVEN
CHICAGO ONE INC.; CHICAGO SEVEN INC.; SYMON
GARBER; ROMAN SAPINO GALINA GARBER-SHEINI;;
RUBEN GIACOMOZZI; VALENTINA ZUBOK; EDWARD
ZUBOK; LINA GARBER; IRENE GANS, BORIS
VOLFMAN, and MAYA ZUBOK as Trustees under THE
ZUBOK EDWARD QUALIFIED PERSONAL RESIDENCE
TRUST a/k/a EDWARD ZUBOK QUALIFIED PERSONAL
RESIDENCE TRUST; RACHEL SHEININ; MONICA
SHEININ; EDWARD SHEININ; DANIEL BRATSHPIIS and
ROMAN SAPINO, as Trustees under THE ROMAN
SAPINO 2015 QUALIFIED PERSONAL RESIDENCE
TRUST; GEMORA IN CHICAGO LLC; 2 BLUEBELL
ROAD LLC; 3210 101 WARREN STREET LLC; 22-05
43RD AVE REALTY CORP; 2617 S. WABASH AVE.
REALTY, LLC; 2635 S. WABASH AVE. REALTY, LLC;
2630-2632 S. DEARBORN AVE. REALTY, L.L.C.; 195 N.
HARBOR DR. REALTY, LLC, 2927 CONTI STREET
REALTY, LLC; 401 EAST 60TH STREET LLC; SLSJETS
HOLDINGS LLC; SYMON GARBER, as Trustee under
the GARBER DYNASTY TRUST; SYMON GARBER, as
Trustee under the LINA GARBER TRUST; XYZ CORPS.
1-10; and JOHN AND JANE DOES 1-10,

Defendants.

INDEX NO.	652163/2021
MOTION DATE	
MOTION SEQ. NO.	006

DECISION + ORDER ON MOTION

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HON. BARRY R. OSTRAGER

Before the Court is a motion by Plaintiffs for an Order pursuant to CPLR 1024 amending the case caption to reflect the true name of the following defendants: (i) SYMON GARBER, as Trustee under the SYMON GARBER FAMILY PROTECTION TRUST (previously named as “SYMON GARBER as Trustee under the GARBER DYNASTY TRUST”); and (ii) PREMIER

TRUST, INC., as Trustee under the ELINA GARBER FAMILY PROTECTION TRUST (previously named as “SYMON GARBER, as Trustee under the LINA GARBER TRUST”), and to deem all prior proceedings in this case so amended. Counsel asserts that plaintiffs have been attempting through discovery since the beginning of the case to ascertain the true name of the Garber Trusts and acted promptly upon obtaining the information to move to amend (NYSCEF Doc. No. 272). The motion is granted as follows.

CPLR 1024 provides that:

A party who is ignorant, in whole or in part, of the name or identity of a person who may properly be made a party, may proceed against such person as an unknown party by designating so much of his name and identity as is known. If the name or remainder of the name becomes known all subsequent proceedings shall be taken under the true name and all prior proceedings shall be deemed amended accordingly.

Plaintiffs have provided sufficient information to satisfy the terms of the statute. Defendants have opposed the motion, contending that the statute only applies to unknown parties named as “John Doe” defendants, that plaintiffs failed to demonstrate diligent efforts to learn the true names of the parties, and that parties may not be added without first serving them because the Complaint, as drafted, does not fairly apprise either party that it is the intended defendant. The lack of notice is particularly acute, defendants contend, with respect to Premier Trust, Inc., a Trustee that plaintiffs seek to name for the first time. (See NYSCEF Doc. No. 274). Plaintiffs in reply specify the various facts alleged in the Complaint that identified the intended defendants, and counsel adds that “Defendants’ counsel actually appeared on behalf of the two Garber Trusts in this action and a related appeal, before objecting that the Trusts had been misnamed.” (NYSCEF Doc. No. 277, p 5). Further, any delay in moving was a result of defendants’ failure to provide the correct information in response to plaintiffs’ demands. Under these circumstances, the Court finds that the terms of CPLR 1024 and due process have been satisfied. See New York Practice, §188 (6th ed. 2018).

Accordingly, it is hereby

ORDERED that the motion to substitute is granted, and SYMON GARBER, as Trustee under the SYMON GARBER FAMILY PROTECTION TRUST and PREMIER TRUST, INC., as Trustee under the ELINA GARBER FAMILY PROTECTION TRUST be substituted as defendants in the above-entitled action in the place and stead of as “SYMON GARBER as Trustee under the GARBER DYNASTY TRUST” and “SYMON GARBER, as Trustee under the LINA GARBER TRUST”), respectively, without prejudice to any proceedings heretofore had herein; and it is further

ORDERED that all papers, pleadings, and proceedings in the above-entitled action be amended by substituting the names indicated as defendants, in the place and stead of the originally named defendants, without prejudice to prior proceedings had herein; and it is further

ORDERED that the caption in this action shall read as follows:

TAXI MEDALLION LOAN TRUST III, as assignee of Medallion Funding, LLC;
MEDALLION FINANCIAL CORP.; and MEDALLION BANK,

Plaintiffs,

-against-

BROWN EYES CAB CORP.; GREEN EYES CAB CORP.; BLUE EYES CAB CORP.;
LUCKY SEVEN CHICAGO ONE INC.; CHICAGO SEVEN INC.; SYMON GARBER;
ROMAN SAPINO; GALINA GARBER-SHEININ; RUBEN GIACOMOZZI; VALENTINA
ZUBOK; EDWARD ZUBOK; LINA GARBER; IRENE GANS, BORIS VOLFMAN, and
MAYA ZUBOK as Trustees under THE ZUBOK EDWARD QUALIFIED PERSONAL
RESIDENCE TRUST a/k/a EDWARD ZUBOK QUALIFIED PERSONAL RESIDENCE
TRUST; RACHEL SHEININ; MONICA SHEININ; EDWARD SHEININ; DANIEL
BRATSHPIIS and ROMAN SAPINO, as Trustees under THE ROMAN SAPINO 2015
QUALIFIED PERSONAL RESIDENCE TRUST; GEMORA IN CHICAGO LLC; 2
BLUEBELL ROAD LLC; 3210 101 WARREN STREET LLC; 22-05 43RD AVE REALTY
CORP; 2617 S. WABASH AVE. REALTY, LLC; 2635 S. WABASH AVE. REALTY, LLC;
2630-2632 S. DEARBORN AVE. REALTY, L.L.C.; 195 N. HARBOR DR. REALTY, LLC;
2927 CONTI STREET REALTY, LLC; 401 EAST 60TH STREET LLC; SLSJETS HOLDINGS
LLC; SYMON GARBER, as Trustee under the SYMON GARBER FAMILY PROTECTION
TRUST; PREMIER TRUST, INC., as Trustee under the ELINA GARBER FAMILY
PROTECTION TRUST; XYZ CORPS. 1-10; and JOHN AND JANE DOES 1-10,

Defendants.

And it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to amend their records to reflect such change in the caption herein, and such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

Dated: February 7, 2023



BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE