

Taxi Medallion Loan Trust III v Brown Eyes Cab Corp.

2023 NY Slip Op 30526(U)

February 21, 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

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-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 BRATSHPIS 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.

Table with 2 columns: INDEX NO., MOTION DATE, MOTION SEQ. NO. and values: 652163/2021, (blank), 005

DECISION + ORDER ON MOTION

HON. BARRY R. OSTRAGER

Before the Court is Plaintiffs' motion for an Order granting Plaintiffs partial summary judgment in this action on their First through Tenth Causes of Action in the Complaint

(NYSCEF Doc. No. 1), including an award of contractual attorneys' fees and costs, against Defendants (a) Brown Eyes Cab Corp., (b) Green Eyes Cab Corp., (c) Blue Eyes Cab Corp., (d) Lucky Seven Chicago One Inc., (e) Chicago Seven, Inc., (f) Symon Garber, (g) Roman Sapino, (h) Galina Garber-Sheinin, (i) Ruben Giacomozzi and (j) Valentina Zubok, and Defendants' cross-motion for an Order pursuant to CPLR § 3025 permitting Defendants 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, and Valentina Zubok ("Defendants") to amend their answers to include the affirmative defense of lack of standing. Brown Eyes Cab Corp., Green Eyes Cab Corp., Blue Eyes Cab Corp., Lucky Seven Chicago One Inc., and Chicago Seven, Inc. are Borrowers. Symon Garber, Roman Sapino, Galina Garber-Sheinin, Ruben Giacomozzi and Valentina Zubok are Guarantors. The transactions relate to the taxi industry, the controversy surrounding loans to purchase taxi medallions, and the impact of the pandemic on the taxi industry.

Plaintiffs commenced this action to, among other things, recover a money judgment against Defendants based on their alleged breaches of certain Loans, Settlement Agreements providing for the payment of the Loans, and related Guaranties. The Complaint names over 25 defendants and asserts 54 causes of action. In this motion, Plaintiffs argue they are entitled to summary judgment, pre-Note of Issue, on certain claims against the Borrowers "because there is no dispute that Borrowers breached the Settlement Agreements." (NYSCEF Doc. No. 221). Plaintiffs also argue that they are entitled to summary judgment on certain claims against the Guarantors "because there is no dispute that Guarantors breached the Guaranties." Plaintiffs further seek to strike all of Defendants' affirmative defenses, claiming the defenses have been waived or lack merit as a matter of law. In support of the motion, Plaintiffs have provided an

Affidavit from Lissette Castro on behalf of the loan servicer for two of the Loans (NYSCEF Doc. No. 234).

In opposition, Defendants argue that Plaintiffs have not submitted admissible evidence to support their right to summary judgment on liability or damages. (NYSCEF Doc. No. 259).

Among the deficiencies claimed are issues relating to Plaintiffs' alleged assignment of certain of its rights. Defendants further argue that triable issues of material fact preclude summary judgment in Plaintiffs' favor. For example, in the Affidavit of Defendant Galina Garber-Sheinin, an individual defendant and part-owner of the various Cab Company Defendants, Defendants assert, among other things, that "Plaintiffs never informed the Cab Company Defendants that Plaintiffs had artificially inflated the value of the medallions that were collateral for the loans." (NYSCEF Doc. No. 258).

Defendants also argue that summary judgment is premature and should be denied pursuant to CPLR 3212(f) because "facts essential to justify opposition may exist but cannot [now] be stated" because discovery is not yet complete. The deadline for filing the Note of Issue presently is August 1, 2023. Plaintiffs, of course, disagree and assert that significant discovery has been provided and that the documentation and other evidence submitted by Plaintiffs in support of the motion sufficiently establishes Plaintiffs' right to the requested relief. (NYSCEF Doc. Nos. 262 and 263). Plaintiffs also contend that "Defendants concede that all but three of their Affirmative Defenses must be dismissed."

In addition to opposing Plaintiffs' summary judgment motion, Defendants cross-move for an Order pursuant to CPLR § 3025 allowing them to amend their Answer to assert the affirmative defense of lack of standing. Specifically, the Proposed Amended Answer states as an Affirmative Defense that: "One or more Plaintiffs lack standing to maintain this action."

(NYSCEF Doc. No. 257). In their Memorandum of Law, Defendants note that leave to amend is freely granted absent prejudice, and they add the following assertions to support their claim that the proposed additional Affirmative Defense is sufficiently meritorious: “1) plaintiff Taxi Medallion Loan Trust III claims that it assigned its rights under the Blue Loan and the Lucky Loan to a non-party; and 2) Taxi Medallion Loan Trust III has submitted no evidence that it was assigned the loan from Medallion Funding, LLC. Moreover, despite demand, Plaintiffs have failed to produce any documents reflecting the assignment of the Blue Loan or the Lucky Loan.” (NYSCEF Doc. No. 259, pp 18-19).

Plaintiffs oppose the cross-motion, arguing that Defendants waived any standing defense pursuant to CPLR 3025(b) by having failed to raise it in their Answers or by way of pre-Answer motion. (NYSCEF Doc. No. 262, pp 15-16). They add that the proposed defense lacks merit because: “1) Plaintiffs have established that TMLT [Plaintiff Taxi Medallion Loan Trust] is a proper plaintiff pursuant to CPLR § 1018 and (2) proof of the assignment of the underlying contracts by Medallion Funding, LLC to plaintiff TMLT is irrelevant because the Blue and Lucky Settlement Agreements—the documents on which Plaintiffs now seek summary judgment—were executed directly to TMLT.”

Defendants dispute any claim of waiver, noting that they could not have asserted the defense any earlier because “Plaintiffs failed to disclose that Taxi Medallion Loan Trust III allegedly assigned loans to TML IV, LLC until filing their motion for summary judgment. Therefore, Defendants would have no reason to know about this alleged transfer and plead in response to it.” (NYSCEF Doc. No. 267, p 3). Further, Plaintiffs have not claimed prejudice.

The Court denies Plaintiffs’ motion for summary judgment, without prejudice to renewal following the completion of all discovery and within sixty days of the filing of the Note of Issue.

Defendants have raised sufficient arguments that the motion is premature and that, in any event, triable issues of fact exist. Further, the Court declines to parse through the various claims and defenses to ascertain at this time which may be ripe for decision and which may be premature, as the deadline for filing the Note of Issue is not until August 1, 2023, and much discovery remains before this multi-party, multi-claim action will be trial ready.

The Court grants Defendants' cross-motion to amend their Answers to add the Affirmative Defense of lack of standing. Plaintiffs concede that certain of their rights have been assigned, so the defense may indeed be meritorious. On a motion for leave to amend, the movant need only demonstrate that the claim is not palpably improper, which Defendants have done. The information was not provided to Defendants until Plaintiffs filed the summary motion that is being determined here, and Defendants then moved promptly. Further, Plaintiffs do not claim any prejudice resulting from the proposed amendment. Thus, the Court declines to find any waiver and grants leave to amend. Certainly, plaintiffs may move for summary judgment dismissing the defense upon the completion of discovery.

Accordingly, it is hereby

ORDERED that Plaintiffs' motion for summary judgment is denied without prejudice to renewal upon the completion of discovery within sixty days of the filing of the Note of Issue; and it is further

ORDERED that Defendants' cross-motion for leave to amend is granted, and the Amended Answers shall be efiled within seven days of the date of this Order; and it is further

ORDERED that discovery shall proceed and the parties shall appear for a Status Conference on March 2, 2023 at 2:00 p.m. via Microsoft Teams.

Counsel are urged to pursue a consensual resolution of this heavily litigated matter and shall appear at the March 2, 2023, Status Conference with full knowledge of the case and settlement authority.

Dated: February 21, 2023


BARRY R. OSTRAGER, J.S.C.

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