

Taxi Medallion Loan Trust III v Brown Eyes Cab Corp.

2023 NY Slip Op 33013(U)

August 30, 2023

Supreme Court, New York County

Docket Number: Index No. 652163/2021

Judge: Barry Ostrager

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This opinion is uncorrected and not selected for official publication.

**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-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.

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MOTION DATE	
MOTION SEQ. NO.	007

DECISION + ORDER ON MOTION

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HON. BARRY R. OSTRAGER

Plaintiffs commenced this action to, among other things, recover a money judgment against Defendants based on Defendants’ alleged breaches of certain Loans, Settlement Agreements providing for the payment of the Loans, and related Guaranties. The Complaint names 30 defendants and asserts 54 causes of action. On April 8, 2023, defendant Edward Zubok

passed away while discovery was still proceeding (see April 12, 2023 Letter at NYSCEF No. 309). The defendants assert that Edward Zubok was a central player in the events giving rise to this case. On May 31, 2023, this Court stayed the case in its entirety as a result of Edward Zubok's death (see Status Conference Order, NYSCEF No. 320). Before the Court at this time is Plaintiffs' motion for an order, pursuant to CPLR §§ 1015(a) and 1021: (a) substituting the Estate of Edward Zubok as party-defendant for decedent defendant Edward Zubok and amending the caption accordingly; (b) appointing a temporary administrator for purposes of this action; and (c) lifting the stay imposed upon Edward Zubok's death.

Plaintiffs assert that Edward Zubok's surviving spouse Valentina Zubok, who is also a defendant in this litigation, has sought appointment in the Surrogate's Court as a permanent administrator. Specifically, on May 31, 2023, Ms. Zubok filed a petition for probate and letters testamentary in Queens County Surrogate's Court, but the petition is still pending and Defendants' counsel asserts that the matter is "not something [Defendants] can control" (see NYSCEF Doc. No. 324). Plaintiffs ask the Court to appoint Ms. Zubok as the temporary administrator and substitute the Estate for the decedent so that this two-year-old litigation involving multiple parties and claims, and which has a Note of Issue deadline of August 31, 2023, can proceed.

Defendants oppose the motion, arguing that there are no special circumstances requiring this Court to appoint a temporary administrator when a petition for probate and letters testamentary related to Mr. Zubok's Last Will and Testament is pending in the Queens County Surrogate's Court under File No. 2023-2527. Defendants further argue that where, as here, the action is not trial ready and Plaintiffs have not demonstrated that the appointment of a temporary administrator is necessary to avoid undue delay or prejudice, the Supreme Court should decline

to appoint a temporary administrator. *Kastrataj v. Blades*, 136 A.D.3d 756, 758 (2d Dep't 2016). Additionally, Defendants assert that Plaintiffs have not identified any prejudice caused by the delay in an appointment by the Surrogate, which will not be indefinite. The naming of multiple plaintiffs and defendants in this action is insufficient support for the claim of prejudice caused by delay, Defendants contend.

As further opposition to the motion, Defendants argue that Plaintiffs' motion to appoint a temporary administrator does not follow the procedures for notice and service that are set forth in the Surrogate's Court Procedures Act ("SSPA") for the appointment of a temporary administrator. To the extent Plaintiffs may suggest in the alternative that the claims against the decedent Edward Zubok be severed so the other claims can proceed, Defendants oppose, arguing that such an approach would not be feasible because one of Plaintiffs' claims seeks a declaration that Mr. Zubok is the alter ego of his wife, defendant Valentina Zubok.

In reply, Plaintiffs correctly emphasize that the Supreme Court has the authority to exercise concurrent jurisdiction with the Surrogate's Court in appointing a representative for an estate. Such an appointment of a temporary administrator – particularly the one the Estate wishes to appoint permanently --- will enable the case to proceed. Plaintiffs state in conclusory fashion that few of the claims asserted involve Edward Zubok. Further, Plaintiffs note that Defendants have cited no authority for their assertion that Plaintiffs were required to follow the Surrogate's Court Procedures Act when making this application to this Court.

Under all the circumstances, and considering in particular that a petition is pending in the Queens County Surrogate's Court for the appointment of a permanent Executor pursuant to Edward Zubok's Last Will and Testament, this Court declines to appoint a temporary administrator. However, severance remains a potentially viable option. If the Executor is not

appointed by October 31, 2023, counsel shall confer in an effort to agree upon the severance of the claims here against the decedent Edward Zubok so the balance of the claims may proceed, including those against the decedent’s spouse defendant Valentina Zubok, who apparently is also named as the Executor under the decedent’s Last Will and Testament. The parties should be prepared to discuss that issue at the next Status Conference. Should Defendants continue to oppose severance, they shall make an effort to obtain details regarding the precise status of the pending Surrogate’s Court petition and the anticipated timing of the appointment of an Executor so the parties and this Court can be fully informed as to the status of the Surrogate’s Court proceeding..

The November 1, 2023 Status Conference shall proceed at 11:00 a.m. via Microsoft Teams using the same appearances previously provided unless an updated appearance sheet is efiled by October 10, 2023.

Dated: August 30, 2023


 BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input 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