

Desanges v All Taxi, Inc.

2023 NY Slip Op 33123(U)

August 23, 2023

Supreme Court, Kings County

Docket Number: Index No. 516426/2023

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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JEAN DESANGES,

Plaintiff, Decision and order

- against -

Index No. 516426/2023

ALL TAXI, INC., PIERRE FUNDING CORP.,
VICTORIA FUNDING CORP.,

Defendants, August 23, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

The defendant All Taxi Inc., has moved pursuant to CPLR §3211 seeking to dismiss the complaint on the grounds the complaint fails to state any cause of action. The plaintiff opposes the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

According to the verified complaint the plaintiff financed the purchase of a taxi medallion with defendant Pierre Funding Corporation. Further, the plaintiff entered into another agreement with defendant All Taxi Inc., "to lend the Plaintiff's Taxi Medallion for usage under specified terms and conditions evidenced herein as well; the Defendant All Taxi Inc. was to use the medallion of the Plaintiff and in exchange the Defendant All Taxi Inc. would maintain the expenses of the lending agreement pertaining to the medallion in the sum of \$3,400.00 per month as well as other obligations pertaining to the same" (see, Verified Complaint, ¶ 12 [NYSCEF Doc. No. 2]). The verified complaint asserts that when the plaintiff attempted to retrieve the

medallion from storage it was discovered the medallion had been transferred to another entity. Further, the plaintiff discovered that Pierre Funding Corp., assigned the lending agreement to Victoria Funding Corp. The plaintiff asserts he was never notified of any impending foreclosure sale and instituted this action. The verified complaint alleges causes of action for violations of the Uniform Commercial Code, breach of contract, wrongful conversion, unjust enrichment, a declaratory judgment, injunctive relief and the breach of the covenant of good faith and fair dealing. As noted, the defendant All Taxi has moved seeking to dismiss the action on the grounds it fails to state any causes of action. As noted, the motion is opposed.

Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the party can succeed upon any reasonable view of those facts (Ripa v. Petrosyants, 203 AD3d 768, 160 NYS3d 658 [2d Dept., 2022]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (BT Holdings, LLC v. Village of Chester, 189 AD3d 754, 137 NYS2d 458 [2d Dept., 2020]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course,

plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, Redwood Property Holdings, LLC v. Christopher, 211 AD3d 758, 177 NYS3d 895 [2d Dept., 2022]).

The defendant All Taxi did not initiate any foreclosure proceedings at all and thus cannot be sued for any improprieties that allegedly occurred thereby. Thus, the motion seeking to dismiss the first, fifth and seventh causes of action alleging violations of the Uniform Commercial Code, a declaratory judgement and the breach of the covenant of good faith and fair dealing, which all relate to the foreclosure sale is granted as to defendant All Taxi.

Concerning the remaining causes of action, it is well settled that to succeed upon a claim of breach of contract the plaintiff must establish the existence of a contract, the plaintiff's performance, the defendant's breach and resulting damages (Harris v. Seward Park Housing Corp., 79 AD3d 425, 913 NYS2d 161 [1st Dept., 2010]). Further, as explained in Gianelli v. RE/MAX of New York, 144 AD3d 861, 41 NYS3d 273 [2d Dept., 2016], "a breach of contract cause of action fails as a matter of law in the absence of any showing that a specific provision of the contract was breached" (*id.*).

In this case the verified complaint alleges that the medallion had been transferred to a third party. Consequently, the plaintiff alleges that "it is indisputably that some form of

breach of the agreement between the Plaintiff and Defendant All Taxi, Inc. took place which caused the unlawful transfer of the medallion in the instant matter more likely than not due to the Defendant's failure to maintain their obligations under the agreement with the Plaintiff thereby causing the unlawful transfer of the same" (see, Verified Complaint, ¶ 31 [NYSCEF Doc. No. 2]). However, vague and speculative allegations unsupported by any facts are insufficient to establish a claim of breach of contract (Jones v. Voskresenskny, 125 AD3d 532, 5 NYS3d 16 [1st Dept., 2015]). Thus, the complaint does not describe the alleged breach with any factual information and rather merely contains a legal conclusion. Further, the plaintiff has not pointed to any specific provision of the contract that was allegedly breached.

Such complaint is insufficient to establish a cause of action (see, Four Cees Jewelry Inc., v. 1537 Realty LLC, 11 Misc3d 1056(A), 815 NYS2d 492 [Supreme Court New York County 2005]). Therefore, the motion seeking to dismiss the breach of contract cause of action is granted.

The next causes of action allege conversion and unjust enrichment. It is well settled that to establish a claim for conversion the party must show the legal right to an identifiable item or items and that the other party has exercised unauthorized control and ownership over the items (Fiorenti v. Central Emergency Physicians, PLLC, 305 AD2d 453, 762 NYS2d 402 [2d

Dept., 2003]). As the Court of Appeals explained "a conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession...Two key elements of conversion are (1) plaintiff's possessory right or interest in the property...and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights" (see, Colavito v. New York Organ Donor Network Inc., 8 NY3d 43, 827 NYS2d 96 [2006]). Therefore, where a defendant "interfered with plaintiff's right to possess the property" (Hillcrest Homes, LLC v. Albion Mobile Homes, Inc., 117 AD3d 1434, 984 NYS2d 755 [4th Dept., 2014]) a conversion has occurred.

The elements of a cause of action to recover for unjust enrichment are that "(1) the defendant was enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (see, GFRE, Inc., v. U.S. Bank, N.A., 130 AD3d 569, 13 NYS3d 452 [2d Dept., 2015]). Thus, "the essential inquiry in any action for unjust enrichment or restitution is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (see, Paramount Film Distributing Corp., 30 NY2d 415, 344 NYS2d 388 [1972]).

In this case the verified complaint specifically alleges

that defendant Victoria Funding committed the conversion and any unjust enrichment and not All Taxi at all (see, Verified Complaint, ¶ 16 [NYSCEF Doc. No. 2]). Therefore, the motion of All Taxi seeking to dismiss the conversion claim and the unjust enrichment claim is granted.


Lastly, the motion seeking to dismiss the claim for injunctive relief is granted. As noted repeatedly, there is no allegation that defendant All Taxi transferred the medallion. Thus, no injunction against All Taxi is proper.

Therefore, based on the foregoing, the motion of the defendant All Taxi to dismiss the entire complaint is granted.

So ordered.

ENTER:

DATED: August 23, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC