

Frias v City Winery N.Y., LLC

2024 NY Slip Op 33738(U)

October 11, 2024

Supreme Court, New York County

Docket Number: Index No. 651284/2024

Judge: Margaret A. Chan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

-----X

| | | |
|---|----------------------------|--------------------|
| MIGUEL FRIAS, individually and on behalf of all others similarly situated, | INDEX NO. | <u>651284/2024</u> |
| Plaintiff, | MOTION DATE | <u>07/03/2024</u> |
| - v - | MOTION SEQ. NO. | <u>002</u> |
| CITY WINERY NEW YORK, LLC, | DECISION + ORDER ON | |
| Defendant. | MOTION | |

-----X

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (MS002) 12, 13, 14, 15, 16, 17, 18, 19, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for DISMISS.

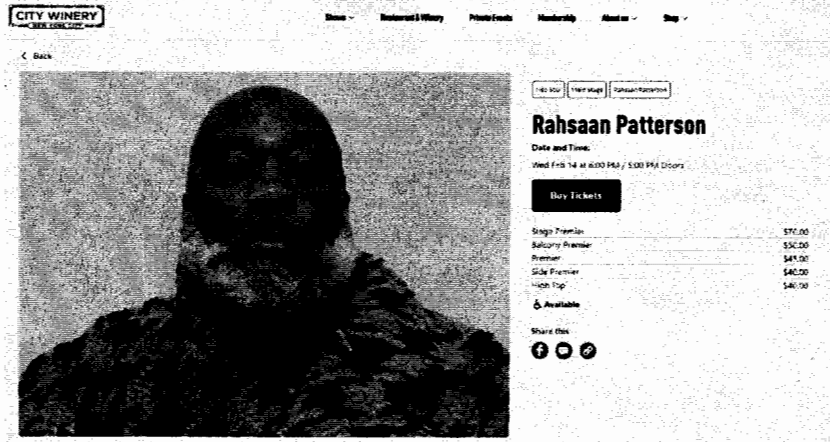
Plaintiff Miguel Frias (plaintiff or Frias) brings this putative class action against defendant City Winery New York, LLC (defendant or City Winery) based on defendant’s purported failure to properly disclose the total cost of event tickets, inclusive of ancillary fees, on its website in violation of New York Arts and Cultural Affairs Law (NYACAL) § 25.07(4) (see NYSCEF # 1 – Complaint or compl). Presently before the court is defendant’s motion, pursuant to CPLR 3211(a)(3) and (a)(7), for an order dismissing the Complaint (NYSCEF # 12). Plaintiff opposes the motion.

For the following reasons, the motion is granted.

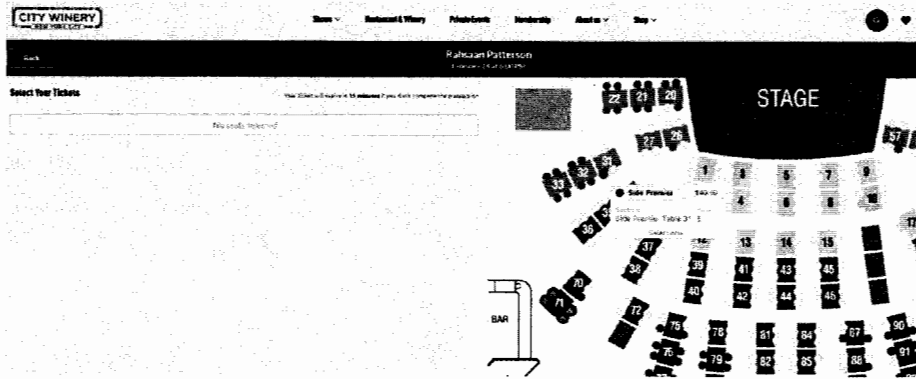
Background¹

This action concerns the manner by which City Winery discloses ticket fees to customers on its website during the ticket purchase process (see compl ¶¶ 1-5). According to the Complaint, when customers visit City Winery’s website to purchase an event ticket, they are presented with the following webpage that displays the “Date and Time” of the event and a corresponding list of ticket prices, without reference to any fees, for that event:

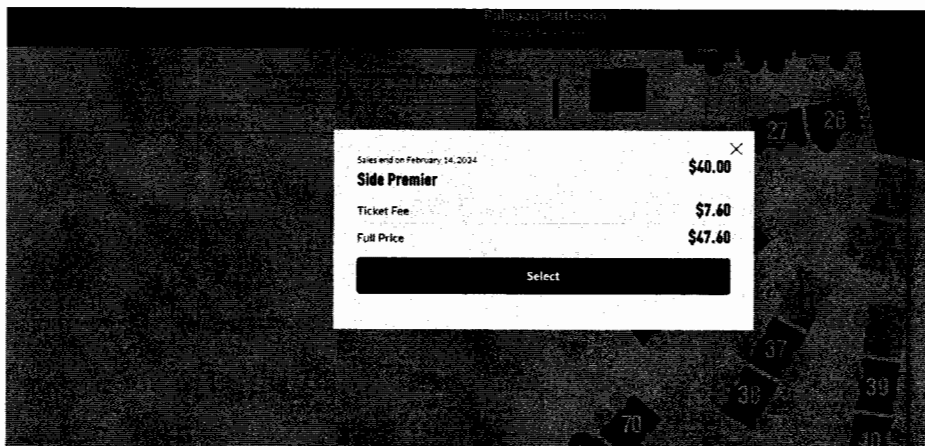
¹ The following facts are drawn from the Complaint and are assumed true solely for purposes of resolving this motion.



(*id.* ¶ 10). On this page, customers can select the “Buy Tickets” link and are taken to the next page of the website to “Select Your Tickets” (*id.* ¶ 11). As depicted below, that page presents customers with a seating chart from which seats from specific areas of the venue can be selected (*id.*). When hovering over a particular seat, customers then see a ticket price for that specific seat (*id.*). Again, no ticket fee is listed on the website (*id.*).



(*id.*). After a customer clicks on a specific seat on the seating chart, the following popup appears on the screen:



(*id.* ¶¶ 13-14). This website popup is the first time that a per-ticket “Ticket Fee” is disclosed (compl ¶¶ 13-14). That “Ticket Fee” is then added to the previously disclosed ticket price to establish the “Full Price” of the ticket for the event (*id.* ¶¶ 15). With this “Full Price” disclosed, the customer may click “Select” and move forward with the transaction (*see id.* ¶¶ 14-15).

Frias alleges that, on January 13, 2023, he encountered the above-referenced webpages and popups while purchasing a ticket for an upcoming event at City Winery’s New York City venue (*see* compl ¶ 9). He now brings this action, individually and on behalf of all others similarly situated, challenging City Winery’s purported practice of failing to disclose total ticket prices upfront because it allegedly violates the statutory requirement that vendors list the total cost of tickets, inclusive of fees, before a customer selects that ticket for purchase (*see id.* ¶¶ 2-3, 16, 25-31).

Legal Standards

Pursuant to CPLR 3211(a)(7) a party may move to dismiss when a pleading “fails to state a cause of action.” On such a motion, the court “must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord [the non-movant] the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory” (*Whitebox Concentrated Convertible Arbitrage Partners, L.P. v Superior Well Servs., Inc.*, 20 NY3d 59, 63 [2012] [internal quotation omitted]; *accord Pavich v Pavich*, 189 AD3d 548, 549 [1st Dept 2020]). Whether a plaintiff can ultimately establish its allegations is not taken into consideration in determining a motion to dismiss (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]). However, dismissal of a complaint is warranted if “the factual allegations and inferences to be drawn . . . do not allow for an enforceable right of recovery” (*Holder v Jacob*, 216 NYS3d 134, 141 [1st Dept 2024]; *accord Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 134 [1st Dept 2014] [holding that a CPLR 3211(a)(7) motion may be used to dispose of an action in which plaintiff (1) “has not stated a claim cognizable at law” or (2) “identified a cognizable cause of action but failed to assert a material allegation necessary to support the cause of action”]).

Meanwhile, dismissal under CPLR 3211(a)(3) is warranted if the party asserting the cause of action lacks the “legal capacity to sue.” This type of motion “concerns a litigant’s power to appear and bring its grievance before the court” (*see Community Bd. 7 of Borough of Manhattan v Schaffer*, 84 NY2d 148, 155 [1994]). Capacity, or lack thereof, “often depends purely on the litigant’s status, such as that of an infant, an adjudicated incompetent, a trustee, certain governmental entities or . . . a business corporation” (*Sec. Pac. Natl. Bank v Evans*, 31 AD3d 278, 279 [1st Dept 2006]).

Discussion

Frias alleges that City Winery's practice of failing to disclose the total ticket price of events upfront on its website is a violation of the recently enacted amendments to NYACAL § 25.07(4) (*see* compl ¶¶ 2-5, 16, 27-31). That statutory provision provides, in relevant, part that

[e]very operator or operator's agent of a place of entertainment, any licensee or other ticket reseller, or platform that facilitates the sale or resale of tickets shall disclose the total cost of the ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket and disclose in a clear and conspicuous manner the portion of the ticket price stated in dollars that represents a service charge, or any other fee or surcharge to the purchaser. Such disclosure of the total cost and fees shall be displayed in the ticket listing prior to the ticket being selected for purchase.

(NYACAL § 25.07[4]). The statute further states that “[t]he price of the ticket shall not increase during the purchase process” (*id.*).

City Winery now moves to dismiss. It primarily argues that Frias fails to allege that City Winery did not comply with NYACAL's disclosure requirements (*see* NYSCEF # 19 – MOL at 5-9; NYSCEF # 29 – Reply at 2-5). Specifically, City Winery explains, when a customer clicks on the seating chart for an event listed on its website, they are presented with the full price, including fees, for a ticket, at which point the customer can “Select” the ticket and proceed with the checkout process (MOL at 6; Reply at 2-3). So, as City Winery puts it, its website is, under the plain terms of NYACAL § 25.07(4), disclosing the total cost and fees prior to the ticket being selected for purchase (MOL at 6; Reply at 2).

In opposition, Frias counters that NYACAL imposes a “one-price requirement” mandating that the price of a ticket shall not increase through the entire purchase process (NYSCEF # 23 – Opp at 7). As Frias explains, this means that the full price of a ticket, including fees, must be disclosed in the first instance a ticket price is shown on a website (*id.* at 7-8). As a result, Frias contends, it does not matter that City Winery discloses the full price of a ticket after it is selected for purchase because any change in price from the initial price that was shown to the on City Winery's website amounts to a violation of NYACAL § 25.07(4) (*id.* at 1-2).

To resolve the parties' dispute, the court must interpret the statutory text of NYACAL § 25.07(4). When interpreting a statute, the court's primary consideration is to “ascertain and give effect to the intention of the Legislature” (*Riley v County of Broome*, 95 NY2d 455, 463 [2000]). Generally, the “clearest indicator of legislative intent is the statutory text,” and therefore “the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning

thereof” (*Kuzmich v 50 Murray St. Acquisition LLC*, 34 NY3d 84, 91 [2019], quoting *Majewski v Broadalbin-Perth Cent. Sch. Dist.*, 91 NY2d 577, 583 [1998]).

Under these rules of interpretation, “[w]hen the Legislature has failed to assign [a] definition to a statutory term, the courts will generally construe that term according to ‘its ordinary and accepted meaning as it was understood at the time’” (*People v Eulo*, 63 NY2d 341, 354 [1984]). Courts may also look to “dictionary definitions [] as ‘useful guideposts’” in determining the word’s ordinary meaning (*People v Aleynikov*, 148 AD3d 77, 84 [1st Dept 2017], citing *People v Ocasio*, 28 NY3d 178, 181 [2016]; accord *Matter of Walsh v N.Y. State Comptroller*, 34 NY3d 520, 524 [2019] [“In the absence of a statutory definition, we construe words of ordinary import with their usual and commonly understood meaning, and in that connection have regarded dictionary definitions as useful guideposts in determining the meaning of a word or phrase”]). If statutory language is unambiguous, courts “need not resort to legislative history” (*Walsh*, 34 NY3d at 524, citing *Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d 167, 173 [2019]). Conversely, courts “may examine the statute’s legislative history” in such cases where a statute’s language is ambiguous (*Roberts v Tishman Speyer Properties, L.P.*, 13 NY3d 270, 286 [2009]).

Here, Section 25.07(4) provides that “disclosure of the total cost and fees shall be displayed in the ticket listing prior to the ticket being selected for purchase” (*see* NYACAL § 25.07[4]). From that point forward, the ticket prices cannot increase during the “purchase process” (*id.*). Although the statute does not define “purchase,” the Black’s Law Dictionary defines that term to mean the “act or instance of buying” (*see* Black’s Law Dictionary [12th ed 2024], purchase [defining “Purchase” as “[t]he act or an instance of buying”]). Therefore, ascribing the statute’s plain and unambiguous terms their usual and commonly understood meaning, the disclosure requirements of NYACAL § 25.07(4) can be stated as follows: an operator or operator’s agent must disclose the entire cost of a ticket, including fees, at some point prior to the customer choosing to buy the ticket on the website and proceeding with the ticket sales transaction.

Reference to the legislative history of the statute, although unnecessary to consult given the unambiguous nature of the statute, confirms this statutory interpretation. In particular, the Senate Sponsors Memorandum, dated June 4, 2022 (Sponsors Memo), explains that, to address “concerns about potentially unfair, deceptive, and anti-consumer practices,” the legislation addressing NYACAL § 25.07[4] sought to “amend the arts and cultural affairs law, in relation to requiring ticket prices to be disclosed prior to a customer purchasing such ticket and requiring such price to remain the same during the purchase process” (Senate Mem in Support, Bill Jacket, L 2022, ch 358 at “Title of Bill” and “Justification”). The Sponsor Memo then makes it clear that the amendments to Section 25.07(4) would ensure that “[t]he total price of a ticket” was disclosed to consumers at the “first instance a price is shown” at the “beginning of a transaction” (*id.* at Summary of Provisions”; *see also* NYSCEF # 17). The Sponsors Memo therefore corroborates

the conclusion that NYACAL § 25.07(4) simply mandates full disclosure of ticket prices no earlier than the first point that the customer initiate the ticket-buying process.²

Given this statutory framework and language, Frias has failed to allege any violation of NYACAL § 25.07(4). The Complaint establishes that City Winery discloses its “Ticket Fee” after a customer clicks on a seat from an interactive seating chart on its website (*see* compl ¶¶ 11-15). It is at that point that a customer can “Select” the to buy it and proceed with the purchase process (*see id.* ¶ 14). Thus, consistent with the requirements of the statute, City Winery has, as alleged, plainly disclosed to customers the total cost and fees for a ticket “prior to the ticket being selected for purchase” (*see* NYACAL § 25.07[4]). That the “Ticket Fee” is not displayed on an events’ landing page or interactive seating chart does not alter this conclusion (*see* compl ¶¶ 10-13). At this stage, visitors of the website are merely prospective purchasers browsing a selection of ticket options available for an event. It is only once the visitor has the option to select a specific seat that this prospective customer starts the act of buying the ticket under the statute. And at that point the customer is doing so with full disclosure of the “total cost of tickets” required under NYACAL § 25.07(4) (*see* compl ¶ 14).

To avoid this outcome, Frias maintains that this interpretation of the statute is “at odds with every relevant New York law authority” (Opp at 3). Specifically, Frias points to interpretations offered by (1) New York State Senator James Skoufis in a letter submitted in connection with a lawsuit filed before the Southern District of New York, captioned *Charles v Color Factory, LLC*, No. 1:24-cv-322-JSR, and (2) the “Report from the New York State Senate” issued by the Committee on Investigations and Government Operations on May 18, 2021 (the Senate Report) (*id.* at 3-4, 7-8). Frias’s reliance on these documents is misplaced.

As an initial matter, insofar as these interpretations are at odds with the plain, unambiguous text of the statute, the court is not free to consider them in assessing legislative intent (*see Matter of Albano v. Bd. of Trustees of N.Y.C. Fire Dept., Art. II Pension Fund*, 98 NY2d 548, 553 [2002] [explaining that when the issue presented to the court is one purely of statutory interpretation, “there is little basis to rely on any special competence or expertise of the administrative agency,” and the court “need not accord any deference to the agency’s determination”]

² In its moving papers, City Winery notes that the proposed language set forth in Senate Bill S6716B, which had been introduced during the 2021-2022 Legislative Session to amend NYACAL § 25.07(4), would have required that disclosures of full ticket prices “occur at the beginning of a transaction before a ticket is selected for purchase” (*see* MOL at 7, quoting 2021-S6716B, Part F). Yet the bill that actually amended NYACAL § 25.07(4) in 2022 revised this language so as to only require that disclosure “be displayed in the ticket listing prior to the ticket being selected for purchase.” As explained above, the clause “beginning of a transaction” comports with reading of NYACAL § 25.07(4) that only requires full disclosure of ticket prices, inclusive of fees, at the time the customer initiates the ticket-buying process. Regardless, this statutory revision further underscores the court’s interpretation of the plain language.

[quotation marks and citation omitted]]; *see generally Perez v Mtge. Bankers Assn.*, 575 US 92, 97 [2015] [explaining that “[i]nterpretative rules ‘do not have the force and effect of law’”]. At any rate, neither Senator Skoufis’s letter nor the Senate Report are inconsistent with the court’s interpretation of statute or its assessment of how the statute applies to the facts of this case.

For example, Senator Skoufis asserts in his letter that the “unmistakable objective” of amending NYACAL § 25.07(4) was to ensure that “the first price you see for a ticket” is “the price you pay for a ticket” NYSCEF # 25 at 1). This objective was accomplished by requiring removal of “all ‘clicks’ and subsequent page views from the purchasing process” so that consumers do not “have to go past the initial map or listing page for a given event in order to see the full purchase price and associated breakdown of fees” (*id.* at 1-2). Meanwhile, the Senate Report explains that the Senate’s goal in recommending “all-in pricing” was to ensure that the “total price of a ticket, as well as the portion representing a service charge or fee” is disclosed “at the earliest stage of a transaction (i.e. when tickets are first viewed on a website)” (NYSCEF #27 at 26-27).

Indeed, in *Charles v Color Factory, LLC*—the lawsuit for which Senator Skoufis submitted his letter explaining the intent underlying the NYACAL § 25.07(4) amendments—plaintiff did not see the full price of a ticket, including ancillary fees, until the “final checkout screen” wherein plaintiff was then required to “input her payment information’ within eight minutes to reserve the ticket” (2024 WL 1693236, at *1 [SD NY Apr. 19, 2024, No. 24-cv-322 (JSR)]). To get to that point, plaintiff had to (1) “first select[] ‘BUY TICKETS,’” (2) navigate to page displaying “the cost of an admission ticket for various times and dates,” (3) select a date and time for the ticket, (4) click a “Book Now” button,” (5) “input her name, phone number, and email address to continue the purchase process,” (6) answer “two questions [that] popped up on the screen,” and (7) click “Continue” to reach the “final checkout screen” (*id.*). Notably, these are the same type of disclosure issues alleged in *Patterson v Wildlife Conservation Society*, another lawsuit upon which Frias relies (*see* No. 1:24-cv-171-JMF [SD NY 2024], ECF Dkt. No. 1, Complaint ¶¶ 9-15).

Contrary Frias’s position, these interpretations are entirely in accord with an interpretation of the statute that requires the entire cost of a ticket, including fees, to be disclosed prior to the customer choosing to buy the ticket on the website and proceeding with the ticket sales transaction (*see* NYACAL § 25.07[4]). Further, these stated goals and interpretations are fully aligned with City Winery’s actual website disclosures. Indeed, as explained above, customers see the “Full Price” of a ticket without them having to leave the initial seating chart for an event. Consequently, customers do, in fact, receive “all-in pricing” at the “earliest stage of [the] transaction” and without any of the “extra ‘clicking and scrolling’” that concerned Senator Skoufis and his committee (*compare* compl ¶¶ 10-14 *with* NYSCEF # 25 at 2 *and* NYSCEF # 27 at 26-27).

In sum, Frias has failed to allege that City Winery’s disclosure of “Ticket Fees” on its website amounted to a violation of NYACAL § 25.07(4). City Winery’s motion to dismiss is therefore granted and the complaint is dismissed.

Conclusion

For the foregoing reasons, it is hereby

ORDERED that defendant’s motion to dismiss (MS001) is granted and the complaint is dismissed; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for defendant is directed to serve a copy of this order, together with notice of entry, upon plaintiff and the Clerk of the Court within 10 days of this order.

This constitutes the Decision and Order of the court.

10/11/2024
DATE


MARGARET A. CHAN, J.S.C.

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