

Doucoure v City of New York

2025 NY Slip Op 32122(U)

May 30, 2025

Supreme Court, New York County

Docket Number: Index No. 651946/2020

Judge: Verna L. Saunders

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expenses for converting his vehicle to be wheelchair accessible. Lastly, defendants argue that plaintiff alleges unrecoverable speculative damages.

In opposition, plaintiff argues that since the court has already denied and granted, in part, a previous motion to dismiss, this second attempt at a CPLR 3211 motion is procedurally improper. To the extent the motion can be construed as one for summary judgment, defendants argue that it is untimely since it was not made within sixty (60) days from the filing of the note of issue.

Plaintiff also argues that he has established a viable claim for breach of contract and implied covenant claims, arguing that TCL's SHL program and related agreements created binding contractual obligations. He claims that the grant program agreement between plaintiff and TLC was more than a simple financial award for vehicle retrofitting. Instead, by entering into the grant agreement, plaintiff claims he made a substantial investment in retrofitting his vehicle and ensured that he met all legal standards, including ADA compliance and local law, to meet the specific requirements of the SHL program, with the expectation that he would be entitled to accessible fare dispatches. Thus, plaintiff maintains that the grant agreement was breached, not through a failure to pay but through the misclassification that deprived him of accessible fare dispatches. Plaintiff insists that, as testified to at his deposition, the misclassification was not incidental but rather was the result of TLC's reckless or negligent failure to meet its program's obligations. He testified at his deposition that he attempted to engage TLC on the misclassification issues, to no avail, depriving him of accessible dispatches for over four years. Additionally, Ginelle Klein, a representative for TLC, testified that she did not know how TLC handled cases where a license misclassification resulted in financial loss for a driver. Plaintiff claims that the claim for implied covenant of good faith and fair dealing is not duplicative of the breach of contract claim because "it targets TLC's actions that undermined the SHL program's objectives." He argues that the City's persistent misclassification of his accessible permit "goes beyond a mere failure to comply with specific terms and instead involves actions that undermine the entire purpose of the agreement", supporting a separate implied covenant claim.

As for the fraudulent inducement claim, plaintiff argues that he has sufficiently identified TLC's promotional materials as a source of the alleged misrepresentation and that, contrary to defendants' contention, the claim complies with the specificity requirements mandated by CPLR 3016(b). According to plaintiff, the fraudulent inducement claim is based on TLC's pre-contractual misrepresentations that plaintiff would receive accessible fare dispatches, which plaintiff relied upon to his financial detriment of modifying his vehicle. This, claims plaintiff, is distinct from the lost earnings he incurred by way of TLC's breach of the SHL program's implied terms, which promised dispatch opportunities in good faith.

The claim for unjust enrichment also survives, argues plaintiff, because "the unjust enrichment claim is neither speculative nor duplicative, as it derives from TLC's independent failure to perform its duties under the SHL Program, for which it received financial gains."

Addressing defendants' claim that his damages are speculative and unsupported, plaintiff argues that plaintiff's expected income from accessible fares was reasonable based on TLC's

representations and his program compliance. Therefore, he maintains that his financial loss is directly quantifiable, since his damages include both documented costs and reasonably anticipated income from accessible fare dispatches.

In reply, defendants argue that the clear intent of the parties and the circumstances of the motion shows that the motion is one for summary judgment and not a motion to dismiss. Therefore, they reject plaintiff's claim that the motion is procedurally defective. Furthermore, they contend that their motion for summary judgment was filed exactly sixty (60) days after the filing of the note of issue, in accordance with this court's January 29, 2024, status conference order. They further assert that plaintiff has failed to raise an issue of fact to warrant denial of their motion seeking dismissal of the breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment claims (NYSCEF Doc. No. 73).

As an initial matter, although defendants' notice of motion refers to CPLR 3211, the arguments made in support of the application are made pursuant to CPLR 3212. Therefore, the motion will be treated as one for summary judgment. Moreover, this court rejects plaintiff's contention that the motion is untimely.

"The proponent of a motion for summary judgment must determine that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (*Dallas-Stephenson v Waismann*, 39 AD3d 303, 306 [1st Dept 2007], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Upon the offering of evidence establishing a *prima facie* case by the movant, "the party opposing a motion for summary judgment bears the burden of 'produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact'" (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008], quoting *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable issue of fact, it must be denied (see *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

"The elements of a cause of action for breach of contract are 'the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages'" (*Noto v Planck, LLC*, 228 AD3d 516, 516 [1st Dept 2024], quoting *Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). Here, this court finds that defendant has established its *prima facie* entitlement to dismissal of the breach of contract claim on the ground that there is no contract. In opposition, plaintiff has failed to raise an issue of fact sufficient to defeat that branch of the motion. To the extent plaintiff relies on the agreement between plaintiff and TLC, the Accessible Street Hail Livery Vehicle Grant Program Agreement, authorizing TLC to award grants of up to \$15,000.00 per vehicle to licensees to retrofit vehicles for use as a wheelchair accessible street hail livery vehicle, said agreement contains no such provision guaranteeing petitioner wheelchair accessible fares. Furthermore, it is not petitioner's contention that TLC breached the terms of said agreement, since a \$15,000.00 grant was awarded to plaintiff on June 3, 2025. Moreover, plaintiff has failed to submit proof sufficient to show that participation in the SHL program created a contractual relationship guaranteeing plaintiff wheelchair accessible fares.

This court also finds that the claim premised on a breach of the implied covenant of good faith and fair dealing must also be dismissed since “the covenant of good faith and fair dealing ‘may not be used as a substitute for a nonviable claim for breach of contract’” (see *Studio 1872 Inc. v Bond St. Levy LLC*, 225 AD3d 578, 578 [1st Dept 2024], quoting *Sheth v New York Life Ins. Co.*, 273 AD2d 72, 73 [1st Dept 2000]).

“To sustain a claim for fraudulent inducement, there must be a knowing misrepresentation of material fact, which is intended to deceive another party and to induce them to act upon it, causing injury” (*Sokolow v Lacher*, 299 AD2d 64, 70 [1st Dept 2002] [citations omitted]). Here, although plaintiff claims he relied on representations made by defendants via both website and promotional materials that he would receive accessible dispatches as a licensed SHL driver, there is no admissible proof that, at the time plaintiff applied for the SHL program, defendants knowingly misrepresented to plaintiff that he would receive wheelchair accessible fares while knowing that plaintiff would be misclassified. Therefore, plaintiff has failed to proffer proof that the representations relied upon, were made with the intent to deceive him. Accordingly, the fraudulent inducement claim is hereby dismissed.

Addressing the claim for unjust enrichment, “[t]o prevail on an unjust enrichment claim, a party must show that ‘(1) the [defendant] was enriched; (2) at [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 *Allen v Zizzi Constr. Corp.*, 228 AD3d 478, 479 [1st Dept 2024]; *Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012]). Here, defendants have failed to establish their *prima facie* entitlement to dismissal of the unjust enrichment claim. There are triable issues of fact as to whether defendants were unjustly enriched, given plaintiff’s representation that he paid fees to TLC for his participation in the SHL program although he was later misclassified and not allowed to benefit from the SHL program. As such, that branch of the motion is denied.

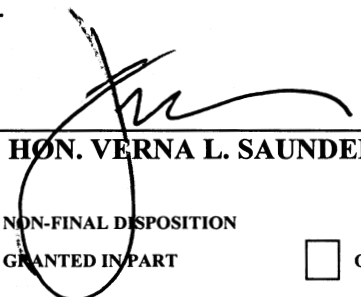
All other arguments have been considered and are either without merit or need not be addressed given the findings above. Accordingly, it is hereby

ORDERED that defendants’ motion, pursuant to CPLR 3212, is granted to the extent that all claims, except plaintiff’s unjust enrichment claim, is dismissed; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendants shall serve a copy of this decision and order, with notice of entry, upon plaintiff.

This constitutes the decision and order of this court.

May 30, 2025


HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

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<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART