

Sapoznik v Progressive Credit Union

2019 NY Slip Op 35087(U)

September 26, 2019

Supreme Court, Queens County

Docket Number: Index No. 707734/2019

Judge: Kevin J. Kerrigan

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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Kevin J. Kerrigan
Justice

IA Part 10

Alan T. Sapoznik, Clara Sapoznik and x
ACGSA Transit, Inc.,
Plaintiffs,

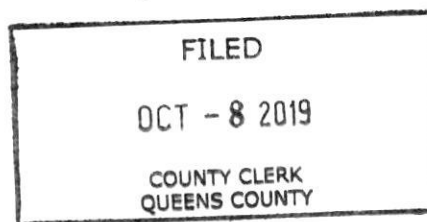
Index
Number 707734 2019

- against -

Motion
Date July 15, 2019

Progressive Credit Union a/k/a PEN FED Credit
Union, City of New York, New York City Taxi
and Limousine Commission, Port Authority of
New York and New Jersey and The Metropolitan
Transportation Authority,
Defendants.

Motion Seq. No. 4



_____ x

The following papers EF numbered below read on this motion by defendant City of New York and defendant New York Taxi and Limousine Commission for an order pursuant to CPLR 3211(a)(2), (5) and (7) dismissing the complaint against them

	<u>Papers</u> <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits	47-55
Answering Affidavits - Exhibits	41-44
Reply Affidavits	
Memorandum of Law	56

Upon the foregoing papers it is ordered that the motion is granted.

I. The Allegations of the Complaint

Plaintiff Alan T. Sapoznik and plaintiff Clara Sapoznik own plaintiff ACGSA Transit, Inc. (ACGSA) which purchased New York City yellow taxi medallions numbered 3K70 and 3K73. Defendant Progressive Credit Union (Progressive) is a corporation licensed to operate a credit union by the New York State Department of Financial Services

and/or the National Credit Union Administration (NCUA). The NCUA has taken over the management of Progressive and has assigned its assets and liabilities to defendant Pen Fed Credit Union. (Progressive and Pen Fed are collectively referred to herein as Progressive/Pen Fed or the defendant credit unions.) Defendant New York City Taxi and Limousine Commission (TLC) is an agency of defendant City of New York. Defendant Metropolitan Transit Authority (MTA), a public benefit corporation, operates subways, buses, and commuter trains.

In previous years, the TLC restricted the number of yellow taxi medallions so that their market value rose to approximately \$1,300,000 each by 2014. Subsequently, the City of New York, through the TLC, authorized the creation of a new class of taxi medallions, the green New York City taxi medallions, which flooded the market with additional taxicabs. At the same time, New York City , through the TLC, allowed the operation of computerized taxi services, such as Uber and Lyft, which enabled passengers to summon a vehicle through app-based devices.

Despite its knowledge of these circumstances and of the decreasing value of yellow taxi medallions, defendant Progressive/Pen Fed continued to finance the purchases of taxi medallions. The plaintiffs borrowed \$1,146,621.88 from defendant Progressive/Pen Fed in or about 2016. The defendant credit unions have demanded that the plaintiffs make monthly payments, and the loan has a five year balloon due on November 9, 2021, The defendant credit unions have caused the plaintiffs, who were not represented by an attorney, to sign confessions of judgment.

The value of the plaintiffs' taxi medallions was diminished because of (1) a fifty-cent surcharge imposed by the MTA on a yellow medallion taxicab ride but not on a ride in an app-based vehicle, (2) the MTA's refusal to allow yellow taxicabs to pick up passengers at suburban rail road stations, and (3) the MTA's wrongful and negligent refusal to coordinate its activities with the other defendants. The value of the plaintiffs' taxi medallions was also diminished because the Port Authority "forbids the New York City Medallion Taxicabs to pick up passengers at Newark Airport and to return said passengers to New York City," and "[t]his causes New York City Yellow Taxicabs to lose money on every required trip to Newark Airport as they must return to New York City with no passengers." As for the city defendants, in addition to permitting green taxis and app-based vehicles to compete with yellow taxis, the TLC charges yellow medallion cabs thirty cents per ride for "driver improvement," but does not impose the same charge on app-based vehicles. and the TLC does not regulate app-based taxis the way it regulates yellow medallion cabs. "The TLC, acted in concert with [other defendants] has wrongfully permitted the price of [yellow medallions] to drop precipitously, thus causing Plaintiffs to be unable to pay the subject loan."

II. Discussion

A. Notice of Claim

The plaintiffs have asserted a cause of action for negligence against the defendant city and defendant TLC (collectively the city defendants) seeking to recover damages. The defendants state without contradiction that the plaintiffs failed to file a notice of claim against them, and they demand the dismissal of the complaint against them pursuant to CPLR 3211(a)(7) for failure to state a cause of action. Their defense has merit for the reasons extensively discussed by this court in *CGS Taxi LLC v The City of New York* (Index No. 713014/2015, 2017 WL 2734862 [Sup. Ct. County of Queens May 2, 2017) and in *Singh v The City of New York* (Index No. 701402/2017, 2017 WL 4791469 [(Sup. Ct., County of Queens Sep. 28, 2017].) The service of a notice of claim within ninety (90) days after the accrual of a claim is a condition precedent to actions seeking monetary damages against the city defendants. (See, General Municipal Law §50-e [1][a]; General Municipal Law § 50-i [1] ; NYC Admin. Code §7-201 (a); *Maxwell v City of New York*, 29 AD3d 540 [2nd Dept. 2006].)

The plaintiffs' attorney argues that that the notice of claim statutes do not apply to ongoing negligence. He did not support his argument with relevant authority, and there is case law to the contrary. (See, e.g., *Stone v. Town of Clarkstown*, 82 AD3d 746 [2nd Dept. 2011] [“the plaintiffs' third cause of action alleging negligence should have been dismissed as against the Town to the extent it alleged conduct which occurred prior to the 90–day period preceding the filing of the plaintiffs' notice of claim”].) The plaintiffs in this case do not allege that they filed a notice of claim at any time, and, thus, the notice of claim statutes read together require the dismissal of the entire complaint. The additional argument made by the plaintiffs' attorney that notice of claim statutes do not apply when the municipal entity is a third party defendant also has no merit. The municipal defendants in this case are not third party defendants or similar to third party defendants, and, moreover, this is not a case concerning a statutory duty to indemnify. (See, *Montalto v. Westchester St. Transp. Co.*, 102 AD2d 816 [2nd Dept 1984]; *Melrose Credit Union v Matatov*, Index No 714295/2016, 2017 WL 5659516[Sup. Ct. Queens County, Oct. 30, 2017].)

The failure to comply with statutory notice of claim requirements can result in the dismissal of a complaint pursuant to CPLR 3211(a (5) and)(7). (See, e.g., *Mosheyev v. New York City Dept. of Educ.*, 144 AD3d 645 [2nd Dept 2016]; *Bertolotti v. Town of Islip*, 140 AD3d 907 [2nd Dept 2016]; *Belpasso v. Port Auth. of New York & New Jersey*, 103 AD3d 562[2013].) “The law is clear that when a notice of claim requirement is statutorily


imposed it is usually deemed an element of the substantive cause of action and as such its satisfaction must be pleaded in the complaint ***.” (*Fratto v. W. Reg'l Off-Track Betting Corp.*, 147 Misc.2d 577 [Sup. Ct. 1990].) The city defendants are entitled to the dismissal of the complaint against them for failure to allege the service of a notice of claim.

B. Immunity from Suit for Discretionary Acts

“Although the State long ago waived sovereign immunity on behalf of itself and its municipal subdivisions, the common-law doctrine of governmental immunity continues to shield public entities from liability for discretionary actions taken during the performance of governmental functions ***.” (*Valdez v. City of New York*, 18 NY3d 69, 75–76 [2011].) “A public employee's discretionary acts—meaning conduct involving the exercise of reasoned judgment—may not result in the municipality's liability even when the conduct is negligent ***.” (*Lauer v. City of New York*, 95 NY2d 95, 99 [2000]; *Valdez v. City of New York*, 18 NY3d 69[2011].) The city defendants are also entitled to the dismissal of the complaint against them pursuant to CPLR 3211(a)(7) because of their immunity from suit for discretionary acts.

Accordingly, the complaint is dismissed as against The City of New York and The New York City Taxi and Limousine Commission.

Dated: September 26, 2019



Kevin J. Kerrigan, J.S.C.

