

Daler Singh v City of New York
2019 NY Slip Op 30736(U)
February 5, 2019
Supreme Court, Queens County
Docket Number: 701402/2017
Judge: Kevin J. Kerrigan
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NEW YORK SUPREME COURT - QUEENS COUNTY

FILED
FEB 14 2019
COUNTY CLERK
QUEENS COUNTY

Present: HONORABLE Kevin J. Kerrigan IA Part 10
Justice

Daler Singh, dba Gilzian Enterprise LLC, x
Danielle Eve Taxi, LLC, EAC Taxi, LLC,
DEC Taxi, LLC, EC Taxi, LLC, Chips Ahoy
Taxi, LLC and Dyre Taxi LLC, individually
and on behalf of all others similarly situated,

Index
Number 701402 / 2017
Motion
Date January 7, 2019

Plaintiffs,

- against -

The City of New York and The New York
City Taxi and Limousine Commission,

Motion Seq. No. 9

Defendants.

x

The following papers ECF numbered below read on this motion by the plaintiffs for an order pursuant to CPLR 3124 compelling the defendants to produce Meera Joshi, the Chairperson of the New York City Taxi and Limousine Commission, for a deposition and on this cross motion by the defendants for a protective order pursuant to CPLR 3103(a) and 2304 precluding the deposition of Meera Joshi and quashing the subpoena ad testificandum to Ashwini Chhabra, the former TLC Deputy Commissioner

Papers
Numbered

Notice of Motion - Affidavits - Exhibits	269-287
Notice of Cross Motion - Affidavits - Exhibits	288-315
Answering Affidavits - Exhibits	
Reply Affidavits	322-335
Memoranda of Law	314, 321,

Upon the foregoing papers it is ordered that the motion by the plaintiffs is granted to the extent that Meera Joshi shall appear for a deposition at a date, time, and place to be agreed upon by the parties. Unless otherwise agreed, the deposition shall be limited to one day without further order of the court. The plaintiffs' motion is otherwise denied. The cross motion by the defendants is granted as to Ashwini Chhabra, without prejudice to an attempt by the plaintiffs to obtain his deposition after the deposition of Meera Joshi. The defendants' cross motion is otherwise denied.

I. Background

Plaintiff Danielle Eve Taxi LLC, plaintiff EAC Taxi LLC, plaintiff DEC Taxi LLC, plaintiff EC Taxi LLC, plaintiff Chips Ahoy Taxi LLC, plaintiff ECDC Taxi LLC, and plaintiff Dyre Taxi LLC successfully bid for New York City corporate wheelchair accessible taxi medallions at a public auction held on November 13, 2013. In February, 2014, plaintiff Daler Singh d/b/a Gilzian Enterprise LLC successfully bid for an independent wheelchair accessible taxi medallion at a public auction. Before the auctions, defendant City of New York and defendant New York City Taxi and Limousine Commission (TLC) (collectively the city defendants) made public statements and issued promotional materials concerning medallions, medallion prices, and price trends. In the months prior to auctions held over several years, TLC published reports on the average sale price of both individual and corporate medallions. The plaintiffs allege that the reports issued by TLC contained false, inaccurate, and misleading statements. TLC allegedly exaggerated the price of medallions in public reports while concealing the true prices and made false statements concerning the directional trend in medallion prices.

Plaintiff Singh formed Gilzian Enterprise LLC for the purpose of owning the taxi medallion, which cost the company \$821,215. Richard Chipman organized Danielle Eve Taxi LLC, EAC Taxi LLC, DEC Taxi LLC, EC Taxi LLC, Chips Ahoy Taxi LLC, ECDC Taxi LLC, and Dyre Taxi LLC (the Chipman companies) for the purpose of owning two yellow taxi medallions each (a company with two medallions is called a minifleet). The purchase price for the mini-fleets ranged from \$2,118,000 to \$2,518,000 and totaled \$16,426,000..

After the plaintiffs made their purchases, the value of their medallions allegedly fell, and the plaintiffs attribute their losses not only to alleged fraud committed by the TLC, but also to the TLC's failure to restrict the activity of companies like Uber Technologies, Inc. The plaintiffs allege that a medallion gives them the exclusive right to pick up passengers via "street hail" in certain areas of the city and that Uber infringes on this right by picking up passengers who arrange for transportation through the use of an application on their smart phones.

The plaintiff's third cause of action is for breach of the contractually implied covenant of good faith and fair dealing. The plaintiff's fifth cause of action is for rescission of the auction sales transactions. The defendants submitted a motion to dismiss the complaint on July 11, 2017. Pursuant to a decision and order dated September 21, 2017 (one paper), this court, inter alia, denied the motion as it pertained to the third cause of action and dismissed only that part of the fifth cause of action which was based on fraud. The remaining causes of action were dismissed. (*See, Singh v. The City of New York*, 2017 WL 4791469.)

II. Relevant Discovery

Meera Joshi has been the Chairperson of TLC since 2014, and she was formerly its General Counsel. The plaintiffs assert that she has relevant knowledge about the TLC's policies in regard to black cars, the general state of the for-hire vehicle industry, the medallion auctions, the surge in the number of black cars after the relevant auctions, the issuance of licenses to black cars which allegedly did not meet required standards, and the effect of the TLC's actions on the value of the medallions.

Former Deputy Commissioner Ashwini Chhabra served as TLC's Deputy Commissioner of Policy and Planning from September 2010 to May 2014 when he left to take a position with Uber.

The Honorable Joseph J. Esposito issued a Compliance Conference Order dated November 26, 2018 which provided in relevant part: "The following persons shall be deposed: Meera Joshi and Ashwani Chahabara without prejudice to the defendants' filing a motion to quash ***."

On December 7, 2018, the plaintiffs served an amended notice to take the deposition upon oral examination of Meera Joshi, and on December 14, 2018, the defendants served their objection to the amended notice.

The parties have been conducting discovery in this case since October, 2017. The parties have also agreed that depositions taken in a similar case brought in the New York State Supreme Court, County of Queens, *CGS Taxi v. City of New York* (Index No. 713014/15), could be used in this action.

Counting the depositions taken by the plaintiffs in *CGS Taxi* and in this case, the plaintiffs have already deposed seven different witnesses from the City and TLC: (1) TLC Director of Programs Daniel Timmeny, (2) TLC Director of Applicant Licensing

Christopher Tormey, (3) TLC Assistant Commissioner for Data and Technology Rodney Stiles, (4) TLC Director of Base and Business Services Angelique Meola, (5) TLC Executive Director of Client Services Allison Siegel, (6) TLC Director of Vehicle Licensing Antionette Jean-Louis, and (7) OMB Deputy Director for Revenues, Economics, and Policy Francesco Brindisi (two depositions).

“Although a municipality, in the first instance, has the right to determine which of its officers or employees with knowledge of the facts may appear for a deposition, a plaintiff may demand production of additional witnesses when (1) the officers or employees already deposed had insufficient knowledge or were otherwise inadequate as witnesses, and (2) there is a substantial likelihood that the person sought for deposition possesses information which is material and necessary to the prosecution of the case ***.” (*Walker v. City of New York*, 140 AD3d 739, 740 [2nd Dept. 2016].) The party seeking the additional depositions has the burden of making this bipartite showing. (*Walker v. City of New York*, *supra*.)

In the case at bar, the plaintiffs made the requisite showing that the witnesses already produced by the defendants had inadequate knowledge about the policies that led to the flourishing of app-based companies. According to the plaintiffs, “the City has selected seven witnesses for Plaintiffs to depose. Not one of them claimed any policy-making role for the agency and none claimed knowledge as to who devised the policies at issue.” (Reply memorandum, p 7.) For example, Timmeny testified “I am not strictly a policy expert,” and he referred policy questions to others. Tormey testified that while he did play a role in the licensing of black cars, he worked off a “checklist” and had never even read the definition of a black car stated in the City Code. Stiles did not know if the TLC had a policy of licensing Uber vehicles without regard to whether they were franchisees or members of a cooperative. Meola’s role was basically clerical.

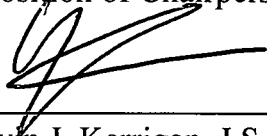
Joshi, the Chair Person of TLC, should be able to answer the questions about policy that the prior seven witnesses professed to have little or no knowledge about, particularly whether the agency deliberately licensed black cars in disregard of the applicable rules and regulations, and, if so, for what purpose. The court is mindful of cases decided by trial level courts which hold that “[g]enerally, a party seeking a deposition of a high-ranking official must show that the official has information that cannot be obtained from any other source and that a deposition would not interfere significantly with the official’s ability to perform his or her governmental duties ***,” (*Torres v. City of New York*, 39 Misc3d 558, 566, [Ct. Cl. 2013] [internal citation and quotation marks omitted].) Assuming that Joshi qualifies as a high-level government official, the plaintiffs have demonstrated that Joshi has or is likely to have information unattainable from another source. The court notes in this connection that Joshi appears to be a knowledgeable witness since, among other things, she

authored an article in 2015 entitled “ Taxis: Yellow, Green and Black: Competition & Evolution.” The title of this article alone suggests that she may information central to this case. In regard to the second requirement, the plaintiffs’ attorney states that he offered the defendants’ attorney a compromise which would limit the length of Joshi’s deposition, and the defendants did not allege sufficient facts to raise an issue concerning whether the proposed deposition of Joshi would seriously interfere with her governmental functions. Moreover, this court has the power to limit the length of her deposition to one day without a further showing by the plaintiffs of the need for additional time. (*See*, CPLR 3103[a].)

This court is not breaking any new ground. TLC Commissioners and Deputy Commissioners have previously given deposition testimony and trial testimony in civil cases (*See, e.g., Nnebe v. Daus*, 644 F3d 147, 152 [2d Cir. 2011] [“In deposition testimony, TLC Chairman Matthew Daus was unable to recall how or when the informal, pre-2006 policy of summarily suspending drivers upon arrest was first adopted”].) According to the plaintiffs’ attorney “Ms Joshi was called *by the City* as a trial witness in *Nnebe* ***.” (Emphasis in original.)

The court will not permit the taking of the deposition of former Deputy Commissioner Ashwini Chhabra, who left the TLC in 2014, without a showing that he has, or is likely to have, information not obtained from the deposition of Chairperson Joshi.

Dated: February 5, 2019



Kevin J. Kerrigan, J.S.C.