

Zehn-NY LLC v City of New York

2019 NY Slip Op 31540(U)

May 30, 2019

Supreme Court, New York County

Docket Number: 151730/2019

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

-----X	INDEX NO.	<u>151730/2019</u>
ZEHN-NY LLC,ZWEI-NY LLC,ABATAR LLC,UNTER LLC,UBER TECHNOLOGIES INC.,	MOTION DATE	<u>05/22/2019</u>
Plaintiff,	MOTION SEQ. NO.	<u>001</u>

- v -

THE CITY OF NEW YORK,

DECISION AND ORDER

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE

Samassa Tidiane, Mouhamadou Aliyu, Amara Sanogo and Tabish Syed, “Proposed Intervenor”, move this Court for an order pursuant to CPLR 1012 and CPLR 1013, allowing the Proposed Intervenor to intervene as defendants in the instant action. Plaintiffs oppose the instant motion and the defendants have no position. For the reasons set forth below the motion is granted.

Plaintiffs bring the underlying action against the City of New York to challenge the legality of Local Law 147 and its limitations on the number of “For Hire Vehicle” (FHV) licenses issued by the City. Proposed Intervenor contend that Local Law 147 was enacted for the benefit of current licensees and cite to various portions of the legislative history as well as the language of the statute itself.

The crux of the arguments set forth by the Proposed Intervenor is that its interests in defending Local Law 147 are different than that of the City and that the law was enacted for the benefit of the Proposed Intervenor. Proposed Intervenor assert that while the City has a

general governmental interest in defending Local Law 147, the City will not suffer the harm that Proposed Intervenors will if the law were invalidated, namely, the loss of income resulting from diluted fare revenue without regulation of FHV's. Proposed Intervenors argue that their livelihood is at stake, they have a substantial interest in the outcome of the litigation and there is no assurance the City would appeal any adverse judgment that might result.

Proposed Intervenors cite to an abundance of legislative history, and the legislation itself, to support its contention that over-saturation of FHV licenses was causing a decline in driver income and well-being as well as traffic congestion, two items the law specifically seeks to improve.

In opposition, plaintiffs assert that Proposed Intervenors arguments are speculative, that the City defendants can adequately defend the legislation and that the addition of the Proposed Intervenors would unduly burden and complicate the litigation.

The Court respectfully does not agree with plaintiffs' arguments. It appears to the Court that the Proposed Intervenors have sufficiently established that they are in fact intended beneficiaries of Local Law 147 as per the legislative history and consequently have a substantial interest in the outcome of the litigation. At oral argument, the Proposed Intervenors discussed how their legal strategy differs from the City defendants. Moreover, it is worth noting that the City defendants have moved to dismiss the action, and the Proposed Intervenors have also submitted a motion in this regard should they be successful in this motion, thus there does not appear to be any delay in this action should this motion be granted.

CPLR §1013 states in relevant part that intervention

"may be permitted ... when the person's claim or defense and the main action have a common question of law and fact. The court shall consider whether the intervention will unduly delay the determination of

the action or prejudice the substantial rights of any party. "

The court having determined that the movant's defense and this action have a common question of law or fact and that intervention by the movant will not unduly delay the determination of the action or prejudice the substantial rights of any party for the reasons discussed above, it is hereby

ORDERED that the motion to intervene is granted and that Samassa Tidiane, Mouhamadou Aliyu, Amara Sanogo and Tabish Syed be permitted to intervene in the above-entitled action as party defendants; and it is further

ORDERED that the summons and complaint in the above-entitled action be amended by adding Samassa Tidiane, Mouhamadou Aliyu, Amara Sanogo and Tabish Syed thereto as party defendants and listing same as the last defendants in the caption; and it is further

ORDERED that the proposed intervention pleading setting forth the defenses of the movants that accompanied the motion shall be deemed to have been served upon service of a copy of this order with notice of entry; and it is further

ORDERED that the attorney for the intervenors shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.

5/30/2019
DATE

LYLE E. FRANK, J.S.C.

**HON. LYLE E. FRANK
J.S.C.**

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: