SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 8

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TAXIFLEET MANAGEMENT LLC, et al.,

Plaintiff(s),

-against-

THE STATE OF NEW YORK et al.,

Defendant(s).

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DECISION/JUDGMENT
INDEX NO.: 161920/18
Mot Seq.: 001

Present:
Hon. Lynn R. Kotler, J.S.C.

This is a special proceeding brought by New York City medallion taxicab owners. In their amended petition, petitioners seek a declaration that Article 29-C of the Tax Law (Tax Law § 1299 *et seq.*), also known as the congestion surcharge, is unlawful and unenforceable as a matter of law and alternatively, a permanent injunction preventing the enforcement of Article 29-C until such time that the New York City Taxi and Limousine Commission (the "TLC") adopts rules and regulations that address the administration of the tax and all aspects of the medallion taxicab drivers and operators' responsibilities with respect to the tax. This proceeding was originally commenced against The State of New York (the "State"), the City of New York (the "City"), the TLC and Meera Joshi, in her capacity as the Commissioner of the TLC (the City, TLC and Joshi are collectively referred herein to as the "City respondents"). By decision/order dated January 31, 2019, the court dismissed the petition against the City respondents.

Procedural history

Originally, this proceeding was commenced on December 19, 2018 by way of petition pursuant to CPLR Article 78 and CPLR 3001. At that time, petitioners not only alleged that the congestion surcharge was unconstitutional, but also asserted that

petitioners' actions were arbitrary and capricious. Petitioners generally alleged that: "the Respondents failed to carry out their duty to enforce Article 29-C, a duty specifically required under New York Law, insomuch as they failed to implement the regulatory framework necessary to regulate and enforce Article 29-C." In that vein, petitioners sought an order enjoing enforcement of the congestion surcharge until TLC "approves and enacts rules and regulations necessary to administer, control and enforce Article 29-C." Petitioners therefore sought not only a declaration that the congestion surcharge was irrational, but also a judgment pursuant to CPLR § 7803(1) that the TLC's failure to enact rules and regulations in connection with the surcharge was arbitrary and capricious.

When the petition was originally filed, petitioners sought a temporary restraining order prohibiting respondents from taking any action to enforce the congestion surcharge. The Honorable Martin Shulman heard the application for the TRO because this court was unavailable, and granted same, making the petition returnable January 3, 2019. The parties stipulated to adjourn the petition to January 17, 2019 with the temporary restraint continuing. The court heard oral argument on January 17, 2019, at which time the court continued the TRO and adjourned the petition for petitioners to submit opposition to respondents' cross-motions to dismiss. The petition was therefore adjourned to January 31, 2019. On January 25, 2019, petitioners filed an amended petition whereby petitioners withdrew their request for Article 78 relief.[1] Petitioners also filed a memorandum in opposition to the cross-motions to dismiss.

[1] Petitioners reaffirmed that position at oral argument in open court on January 31, 2019.

Pursuant to the Court's 1/31/19 Order, the court vacated the TRO and granted the City respondents' cross-motion to dismiss "[i]n light of petitioner's abandonment of its direct claims against the[m]... as the court can discern no claims against them." Further, as per that order, the court denied the State's cross-motion, directed the State to file an answer, and restored the petition to the active calendar for submission of papers only on February 21, 2019. The court also advised the parties to submit copies of the transcript to the court, which the parties did not do until after a further order directing them to do so which re-calendared the petition for June 18, 2019.

Meanwhile, on March 12, 2019, petitioners filed a request for production of documents by the State. It is unknown whether the State has complied with that request.

On May 30, 2019, petitioners filed with the court a proposed order to show cause (motion sequence 3) requesting that the court so-order a subpoena upon now non-party TLC. Although filed on May 30, 2019, the order to show cause was only presented to this court for signature on June 19, 2019.

In support of the motion for a so-ordered subpoena, petitioners' counsel explains in an affirmation in support that the target documents will "demonstrate[e] that the Congestion Surcharge does not serve a rational legislative purpose, and improperly denies medallion taxicab owners their basic due process rights." Meanwhile, counsel for TLC has already submitted opposition to the order to show cause.

Relevant Facts

There can be no dispute that the New York City yellow taxicab industry is in crisis. Headlines abound on that point. Petitioners elaborate on their dire situation and

explain the effects app-based transportation companies have had on their own livelihood. In all, the monetary value of yellow taxicab medallions has plummeted in recent years, while yellow taxicab drivers earn far less than they used to in the face of competition from Uber, Lyft and other app-based for-hire drivers.

Meanwhile, vehicular traffic in New York City also poses a serious threat to health, safety and welfare. Both the City and State have taken measures to address vehicular congestion in Manhattan, specifically. The present challenge relates to the congestion surcharge, which was to be part of a comprehensive regulatory scheme designed to decrease motor vehicle congestion in the most densely populated portions of Manhattan. The State explains that the congestion surcharge "is a meaningful attempt to prevent conditions in [Manhattan below 60th Street] from becoming increasingly congested and unlivable."

This law was passed on April 12, 2018. Tax Law § 1299-A provides in relevant part as follows:

> (a) In addition to any other tax or assessment imposed by this chapter or other law, there is hereby imposed, beginning on January first, two thousand nineteen, a surcharge on for-hire transportation trips of two dollars and seventy-five cents for each such trip that originates and terminates in the congestion zone, for each such trip that originates anywhere in the state and terminates within the congestion zone, for each such trip that originates in the congestion zone and terminates anywhere in this state, and for each such trip that originates anywhere in the state, enters into the congestion zone while in transit, and terminates anywhere in the state. …
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> (b) In addition to any other tax or assessment imposed by this chapter or other law, beginning on January first, two thousand nineteen, there is hereby imposed on transportation provided by pool vehicles a surcharge of seventy-five cents for each person that both enters and exits the pool vehicle in the state, and who is

picked up in, dropped off in, or travels through the congestion zone.

There is no dispute that revenue from the congestion surcharge will flow to the New York City Transportation Assistance fund, which in turn will be used by the Metropolitan Transportation Authority ("MTA") to fund, *inter alia*, "imperative ongoing maintenance to preserve the improvements to date, renovations to the signaling system, improvements to subway cars, and modern communications." The MTA's budget for 2019 relied upon projected revenues from the congestion surcharge of $415 million.

After the congestion surcharge was passed, TLC proposed new rules and regulations concerning the law. Petitioners allege that the proposed rules "wholly fail[ed] to address many issues that medallion taxicab drivers face on a daily basis, leaving large gaps in the application and enforcement of the proposed tax." Petitioners point to the credit card surcharge, a five percent surcharge affiliated with processing a credit card fare, and wonder whether the credit card surcharge on the congestion surcharge should pass to the passenger "consistent with the mandates of Article 29-C". Petitioners further argue that there is confusion about shared rides, as well.

On November 28, 2018, TLC held a hearing on the proposed rules. According to petitioners, "[t]he public showed up to the hearing in staggering numbers." Petitioners represent that "[i]n light of the negative views of the proposed rules and the numerous issues presented during the meeting", a vote was not then held and to date, TLC has not passed any regulation concerning the congestion surcharge. According to petitioners, the TLC's failure to impose regulations was the trigger for this instant proceeding, although they also seek to challenge the constitutionality and enforceability

of the congestion surcharge itself and have withdrawn their Article 78 challenge against the TLC due to its inaction.

In their amended petition, petitioners have asserted five causes of action. The first seeks a declaration pursuant to CPLR § 3001 *et seq.* that the congestion surcharge "is unlawful, invalid, and unenforceable, as it violates the New York and United States Constitutions" because the State "acted arbitrarily and capriciously by imposing a tax on medallion taxicabs – and not all vehicles traveling on the streets of New York – even though data conclusively demonstrates that medallion taxicabs are not a contributing factor to increased congestion in New York State."

The second cause of action is for violation of substantive due process rights under the State and Federal Constitutions. Petitioners argue that the congestion surcharge, to the extent that it targets taxicab medallion owners whose number is capped, is irrational. Petitioners further maintain that the congestion surcharge is an unconstitutional Bill of Attainder that singles out Petitioners and FHVs for punishment in connection with increased traffic congestion in New York City and prejudges the guilt of Petitioners and FHVs."

The third cause of action is for violation of equal protection on the basis that petitioners have impermissibly been treated differently from other vehicles that travel in Manhattan, without any rational basis.

The fourth cause of action alleges that the congestion surcharge violates Article 16, § 4 of the New York State Constitution because it attempts to impose different taxes upon medallion taxicabs and FHVs.

The final cause of action is for violation of Article 9, § 2 of the New York State

Constitution, also known as the Home Rule provisions.

The State's answer asserts a number of general denials. It denies petitioners claim that medallion taxicabs do not contribute to traffic congestion in Manhattan. The State also avers that another distinction between medallion taxis, green cabs or affiliated livery vehicles and for-hire-vehicles is that the latter must pay sales tax on all trips, while medallion taxis do not. The State has asserted three substantive affirmative defenses: [1] the petition fails to state a cause of action; [2] the congestion surcharge is constitutional; and [3] this proceeeding is barred by laches.

The State also points to a report rendered by a "Fix NYC" Advisory Panel appointed by Governor Cuomo. The report is entitled "Fix NYC Advisory Panel Report: January 2018". According to that report, as of 2017, transportation app companies accounted for about 43% of for-hire vehicle trips in Manhattan south of 60th Street. The Fix NYC report further states that the number of rides provided by medallion taxicabs on an average weekday in Manhattan south of 60th Street fell by over 100,000 between 2013 and 2017. Finally, the State points to Fix NYC Advisory Panel's recommendations in the report. The panel recommended a cordon-based zone pricing system for all vehicles entering Manhattan south of 60th Street be implemented as part of its "Phase Three" recommendations, following the "Phase Two" recommendation of a surcharge on trips by for-hire vehicles. A copy of the report has been provided to the court.

Since the petition was orally argued, the State legislature has passed a congestion pricing plan on all vehicles entering Manhattan south of 60th Street (VTL § 1701 *et seq.*). This plan is expected to go into effect in 2021.

Discussion

At the outset, the court declines to sign the order to show cause for three reasons. First, the court finds that the congestion surcharge is not unconstitutional (see *infra*). Further, the production which petitioners seek by way of motion sequence 3 is not likely to yield any information which would support their claims. Finally, this is a special proceeding and petitioners have not demonstrated entitlement to ordinary disclosure devices, especially in light of the relevant procedural history.

The court now turns to the amended petition. First, the States' laches argument informed the court's decision on the temporary restraint. That argument, however, does not warrant outright denial of the petition. The court will therefore consider petitioners' claims on the merits.

Statutes like the congestion surcharge are presumptively constitutional (*Overstock.com, Inc. v. New York State Dept. of Taxation and Finance*, 20 NY3d 586 [2013]). In order to prevail in this proceeding, petitioners must shoulder a heavy burden; they must establish that the congestion overcharge is unconstitutional beyond a reasonable doubt. (*Id.*)

The first cause of action simply alleges that the congestion surcharge generally "violates the New York and United States Constitutions" and claims that the tax is arbitrary and is an "unlawful exercise of the State's taxing power." This claim lacks a substantive legal basis for relief and therefore does not state a cause of action. However, to the extent that it overlaps, amplifies and/or is duplicative of the remaining causes of action, the court will consider it in tandem.

Substantive due process

To state a claim for violation of their substantive due process rights, petitioners must allege: [1] the challenged governmental action deprived petitioners of a cognizable, vested property interest; and [2] that the governmental action depriving petitioners of that interest "was wholly without legal justification" (*Raynor v. Landmark Chrysler*, 18 NY3d 48, 59 [2011] quoting *Bower Assoc. v Town of Pleasant Val.*, 2 NY3d 617 [2004]).

There is no dispute that petitioners have a property interest which is affected by the congestion surcharge, to wit, the medallions. However, as to the second element of this claim, petitioners have failed to state sufficient facts to show that the congestion surcharge was without legal justification. Petitioners assert that the congestion surcharge "is so arbitrary that, in reality, the tax ... involves the exercise of unlawful means targeted at eliminating the medallion taxicab industry." However, this claim is conclusory and lacks any facts to substantiate it. The record before this court reveals that taxicab medallion owners and other for-hire vehicles were indeed targeted before the rest of motor vehicles, but they are certainly not the only targets of congestion pricing in New York City. Indeed, a comprehensive cordon-based congestion pricing plan was passed several months ago, one year after the congestion surcharge was enacted. The reality is that it is easier to impose a surcharge on medallion taxicabs and other for-hire vehicles because of existing regulation, which informed the Fix NYC Advisory Panel's recommendation that these vehicles be targeted first by a congestion tax.

That medallion taxicabs should pay a congestion surcharge on trips originating, traveling through or ending below 60th Street in Manhattan is not so arbitrary so as to

"constitute a gross abuse of governmental authority" (*Bowen v. Nassau County*, 135 AD3d 800 [2d Dept 2016]; *see also Natale v. Town of Ridgefield*, 170 F3d 258 [2d Cir 1999]). Indeed, the congestion surcharge is rationally related to decreasing vehicular traffic, insofar as higher prices will reduce demand for all taxis within Manhattan south of 60th Street. The congestion surcharge is legitimately justified by the demonstrated and undisputed need for a reduction in vehicular traffic.

Petitioners reprobation of the congestion surcharge does not warrant the relief they seek. Rather, petitioners' recourse can only come from the legislature. For example, the credit card processing fee issue can be appropriately addressed by amendments to existing laws and/or regulations, and there appears to be a bill before pending in the legislature to that effect (New York Sponsors Memorandum, 2019 S.B. 5962, May 18, 2019).

As the Fix NYC panel noted, current TLC regulations may need to be updated to reflect the changing taxi industry. That is not an issue before this court. Petitioners and other taxicab medallion owners are struggling in the face of competition from app-based transportation. While this court is sympathetic to petitioners' plight, this is also not an issue which the court can provide redress for.

The court further notes that petitioners have wholly failed to demonstrate what effect, if any, the congestion surcharge will have on them in terms of their competitiveness with app-based transportation. Indeed, the surcharge on app-based for-hire vehicles $0.25 higher than it is on medallion taxicabs. Nor is there any mention by petitioners of the distinction between medallion taxicabs and other for-hire vehicles in terms of sales tax treatment.

To the extent that petitioners argue that the $0.75 surcharge on shared-rides, or rides where multiple passengers essentially carpool, is improper, the court can discern no viable challenge stemming therefrom. The surcharge on shared-rides is cumulative. Indeed, medallion taxicabs appear to be unable to offer shared-rides, which goes to the issue of whether existing TLC regulations should be revisited. In any event, the practicality of medallion taxicabs offering shared-rides is undeveloped on this record. Finally, shared-rides certainly are not something to be discouraged, given that such transportation necessarily reduces congestion by encouraging more efficient trips for multiple persons. That the legislature chose to minimize the impact of the congestion surcharge on shared-rides is also not arbitrary.

Finally, that the legislature decided revenue from the surcharge should pass to the MTA is of no moment. In light of the well-documented subway crisis, there can be no legitimate dispute that the MTA needs funds to maintain, repair and build its facilities and enhance the service it provides. The surcharge not only discourages vehicular traffic in Manhattan below 60th Street, but also encourages people to use alternative forms of transportation. On these undisputed facts, petitioners cannot demonstrate that the congestion surcharge was enacted without legal justification. Indeed, "a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare and to enforce that policy by legislation adapted to its purpose" (*Nebbia v. People of New York*, 291 US 512 [1934]).

For all these reasons, petitioners cause of action asserting violation of their substantive due process is dismissed.

Equal protection

Next, petitioners assert that the congestion surcharge violates the equal protection guarantees of the Fourteenth Amendment of the United States Constitution. Petitioners allege that they were improperly treated differently from other vehicles that travel in Manhattan. The court disagrees. In order to state a claim for violation of equal protection violation, petitioners must allege that they have been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment (*Willowbrook v. Olech*, 528 US 562 [2002]).

Assuming *arguendo* that petitioners are similarly situated to all other vehicles entering Manhattan which are not subject to the congestion surcharge, this claim fails. Indeed, it bears repeating that by 2021, all vehicles entering Manhattan south of 60th Street will be subject to a congestion tax. That petitioners have been targeted first is rational given the ease of collecting a tax from them without the installation of any specific tolling devices or gateways, etc.

Petitioners cannot compare themselves to shared-ride drivers, since they are not similarly situated. Otherwise, petitioners' customers are subject to a $2.50 surcharge whereas for-hire vehicles must pass at $2.75 surcharge onto their customers. This different treatment works in petitioners favor and therefore does not support a claim for violation of equal protection.

Accordingly, the third cause of action for violation of equal protection is dismissed.

The remaining causes of action

Petitioners' fourth claim alleges that the congestion surcharge violates Article 16,

§ 4 of the New York State Constitution, which provides:

> Where the state has power to tax corporations incorporated under the laws of the United States there shall be no discrimination in the rates and method of taxation between such corporations and other corporations exercising substantially similar functions and engaged in substantially similar business within the state.

Petitioners argue that the congestion surcharge violates the subject provision because it attempts to impose different taxes upon medallion taxicabs and for-hire vehicles. Meanwhile, the State maintains that this provision is inapplicable and cites *In re Bank of Manhattan Co.,* 293 NY 515 [1944]. The court agrees with the State. Certainly, neither respondents nor for-hire vehicles are "incorporated under the laws of the United States".

Accordingly, the fourth claim is dismissed.

Finally, petitioners' fifth cause of action asserts that the congestion surcharge violates the Home Rule provisions of the New York State Constitution (Article 16, § 4 of the New York State Constitution). These provisions "were intended to prevent unjustifiable state interference in matters of purely local concern" (*Empire State Chapter of Associated Builders and Contractors, Inc. v. Smith*, 21 NY3d 309 [2013]). The court rejects petitioners' argument that transportation and mass transit in New York City is purely a matter of local concern as without any legal support (see i.e. 1942 NY Op Atty Gen No 316, 1942 WL 53399 ["[t]ransportation in cities is a matter of State concern and the Legislature may act with relation, thereto by other than general laws without local request"].

Indeed, petitioners do not cite any authority for the proposition that the State has no business passing legislation which regulates traffic in New York City. Accordingly, the

fifth cause of action is dismissed.

Ancillary relief

Although petitioners still seek an injunction preventing enforcement of the congestion surcharge until the TLC adopts rules and regulations addressing its implementation, petitioners have failed to allege any legal basis for such a request. Article 78 is the proper method to challenge an agency's determination, or in this case, failure to act. Petitioners withdrew that portion of the petition. Therefore, there is no substantive basis for relief from the TLC's inaction. Accordingly, that branch of the petition is denied.

Finally, petitioners ask that this court convert this special proceeding into a declaratory judgment action. Because petitioners cannot demonstrate a cognizable cause of action, the court denies this request.

Conclusion

In accordance herewith, it is hereby **ADGJUGED** that the petition is denied and this proceeding is dismissed.

This constitutes the Decision and Judgment of the court.

Dated: New York, New York
6/25/19

So Ordered:

Hon. Lynn R. Kotler, J.S.C.

HON. LYNN R. KOTLER
J.S.C.