NEW YORK COURT OF APPEALS ROUNDUP

COURT OF APPEALS: TAXI COMPANIES CAN'T SUE NYC AND TLC FOR DROP IN VALUE OF MEDALLIONS

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May 16, 2023

The Court of Appeals is back to its full complement of seven judges. The Senate confirmed Gov. Kathy Hochul's nominations to elevate Associate Judge Rowan D. Wilson to chief judge, and Caitlin Halligan of Selendy Gay Elsberg to fill the associate judge vacancy created by Wilson's elevation. Wilson is the first Black chief judge in the history of New York state.

In a 5-0 decision in Singh v. City of New York, written by Judge Anthony Cannataro and joined by Chief Judge Wilson and Judges Michael Garcia, Madeline Singas and Shirley Troutman, the Court of Appeals last month affirmed an Appellate Division, Second Department decision and held that taxicab companies could not sue the city of New York (NYC) and the Taxi and Limousine Commission (TLC) for the diminished value of their taxicab medallions because the TLC never promised to take steps to protect the value of the medallions. Judges Jenny Rivera and Halligan took no part in the decision.

The plaintiffs in Singh purchased yellow cab medallions from the TLC. Medallions are government licenses that authorize the owner to operate yellow taxicabs in New York City. The TLC is charged with regulating and supervising yellow taxicabs and other for-hire vehicles in New York. Prior to 1996, the number of medallions was capped by NYC at fewer than 12,000. Between 1996 and 2008, NYC increased the total of available medallions by approximately 12%. In 2012, the State Legislature enacted the HAIL Act, requiring the TLC to issue up to 18,000 licenses authorizing green cabs to accept street hails outside Manhattan's central business district. Yellow and green taxicabs are the only for-hire vehicles permitted to accept street hails from passengers in New York.

So-called "black cars" may only accept passengers via telephone contacts or other prearrangements. In 2011, the TLC determined that the use of smartphone applications to arrange transportation fit the regulatory definition of prearrangement making Uber Technologies, Inc. (Uber) and Lyft, Inc. (Lyft) vehicles "black cars" for regulatory purposes. Prior to 2018, there was no legal cap on the number of black car licenses. The number of cars affiliated with app-based companies now exceeds the number of yellow taxicabs in New York and the resulting market share has significantly diminished the value of taxi medallions. In 2018, NYC responded by placing a one-year moratorium on new black car licenses and granting the TLC authority to cap black car licenses going forward. A cap has been in place ever since. Plaintiffs commenced this action in 2017 after the medallions they purchased in 2013 dropped significantly in value. Plaintiffs allege that TLC distributed materials to potential purchasers of the medallions that misrepresented the medallions' value. Moreover, they allege that TLC authorized app-based companies to operate black cars in New York even though those companies did not comply with all regulations and that this led to an influx of illegal black cars competing with plaintiffs' taxicabs and diminishing the value of the medallions. Accordingly, plaintiffs allege that NYC and the TLC breached the implied covenant of good faith and fair dealing by refusing to enforce certain licensing requirements against competitors of yellow taxicabs such as Uber and Lyft. Additionally, plaintiffs allege that defendants violated General Business Law Section 349 by engaging in deceptive business practices in their promotion of the medallions for purchase.

The defendants moved to dismiss and pointed to disclaimers acknowledged by the plaintiffs in connection with the sale of the medallions, including "I certify that I have not relied on any statements or representations from [NYC] in determining the amount of my bid …" and "I understand and agree that [NYC] has not made any representations or warranties as to the present or future value of a taxicab medallion … or as to the present or future application or provisions of the rules of TLC or applicable law … ." The Supreme Court, Queens County found that there were unresolved issues of fact precluding denial of the motion to dismiss the implied covenant claim. No. 701402/2017, 2017 N.Y. Misc. LEXIS 4010 at *19 (N. Y. Sup. Ct. Sept. 21, 2017). The court dismissed the Section 349 deceptive practices claim on the grounds that the plaintiffs failed to provide the requisite notice required by General Municipal Law 50-e and on the grounds that Section 349 does not apply to municipal defendants and the sale of taxicab medallions is not a consumer-oriented transaction. Both parties appealed, and the Second Department affirmed in part and reversed in part. 189 A.D.3d 1697, 1697-98 (2d Dep't 2020). With respect to the Section 349 claim, the Appellate Division agreed with that portion of the Supreme Court's decision dismissing the claim on notice grounds. With respect to the implied covenant claim, the Appellate Division reversed and found that the claim was based on an alleged contractual promise that was not compatible with the disclaimers the plaintiffs acknowledged in connection with the sales. The court of appeals granted leave to appeal.

The court first analyzed whether the plaintiffs had adequately pled a claim for breach of the implied covenant of good faith and fair dealing. The court reasserted the general principle that "in New York, all contracts imply a covenant of good faith and fair dealing in the course of performance." The covenant "embraces a pledge that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." The court noted, however, that there are limits to this doctrine. For example, "courts will imply an obligation of good faith only in aid and furtherance of other terms of the agreement of the parties. Thus, the covenant cannot be used to imply obligations inconsistent with other terms of the contractual relationship and encompasses only those promises which a reasonable person in the position of the promissee would be justified in understanding were included." The burden of proof is "heavy" and rests on the party who asserts the existence of an implied promise.

In this case, the plaintiffs conceded that the disclaimer language making no representations or warranties as to the present or future value of a taxicab medallion is inconsistent with any suggestion that the defendants guaranteed the value of the medallions. Moreover, according to the court, the disclaimer that the defendants made no representations or warranties as to the present or future application of the rules of the TLC or applicable law put the plaintiffs on notice of the risk that the TLC's rules or its application of the rules—including rules relating to black car licensing and related regulations—might change after the sale of the medallions. Finally, the court concluded that no reasonable person in the plaintiffs' position could justifiably have expected that the defendants were contractually committing themselves to enforce their rules for the plaintiffs' benefit when those rules were changing regularly during the relevant time period. Accordingly, the court affirmed the dismissal of the implied covenant claim because "the alleged promise was not reasonably inferable under the circumstances."
The court also affirmed the dismissal of the deceptive business practices claim, but for a different reason than the Second Department. The court explained that "Section 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state," and "is directed at wrongs against the consuming public."

As a threshold matter, parties claiming the benefit of Section 349 must allege that the challenged conduct is consumer-oriented and "has a broad impact on consumers at large." Finally, the only transactions that qualify are "modest" transactions as opposed to "complex or unique arrangements in which each side was knowledgeable and received expert representation and advice."

In this case, the court held that the issuance of a taxicab license is not a consumer-oriented transaction protected by Section 349 because "a taxi medallion is not analogous to a consumer good or product—it is a highly conditioned government license to operate a taxi business."

Additionally, TLC did not act as a seller of a consumer good when it promoted and handled the sale of the medallions. Instead, it acted as an authorized governmental regulator of the for-hire vehicle industry. And the transaction itself was far from "modest." To the contrary, it was a multimillion dollar transaction between sophisticated parties with knowledge and experience in the for-hire vehicle industry. Because the court held that the Section 349 claim failed due to a lack of consumer-oriented activity, the court did not opine on the other bases for the Supreme Court and Second Department's Section 349 rulings, including whether Section 349 applies to municipal defendants.

This case is an important example of how the court views the boundaries of the implied covenant of good faith and fair dealing claim in New York. Five judges reaffirmed that New York courts will not read any additional promises into an agreement that are inconsistent with the language of the agreement, including disclaimer language, even if that means that a party to the agreement will not earn what it expected to be the fair return for entering into the agreement.

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