

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

28th Street Management et al.,

Plaintiffs,

-against-

New York State Department of Tax and Finance and the New York
City Taxi and Limousine Commission,

Defendants.

Index No. 514542/15

**AFFIRMATION OF D.
STAN O'LOUGHLIN IN
OPPOSITION TO THE
PLAINTIFFS' MOTION
TO AMEND THE
COMPLAINT**

D. STAN O'LOUGHLIN, an attorney admitted to practice in the courts of the State of New York, affirms under penalty of perjury pursuant to CPLR 2106:

1. I am an Assistant Attorney General in the Office of Eric T. Schneiderman, Attorney General of the State of New York, attorney for defendant New York State Department of Taxation and Finance in the above-captioned matter.

2. I submit this affirmation in support of DTF's opposition to plaintiffs' motion to amend the Complaint.

3. In January 2017, plaintiffs' counsel requested that DTF consent to plaintiffs' to amending their complaint. We informed plaintiffs' counsel that we would only consider such a request after reviewing the proposed amendments, including and exhibits incorporated by reference, to determine whether the proposed amendments would cure any of the numerous fatal deficiencies in the Complaint.

4. On or around January 12, 2017, counsel provided us with the proposed amendments and the new documents proposed to be incorporated by reference into the proposed amended

Complaint.

5. On January 23, 2017, we informed counsel that we would not consent to the proposed amendments. Because the proposed amendments do not cure or even attempt to cure the fatal defects present in the Complaint, amendment would be futile.

6. On February 21, 2017, plaintiffs filed the instant motion seeking leave to amend the Complaint pursuant to CPLR 3025, and to replace it with the proposed amended complaint.

7. A true and correct copy of the affirmation of David Demeter in support of DTF's order to show cause, dated October 31, 2016 (Dkt. No. 5) is attached hereto as Exhibit A.

8. A true and correct copy of DTF's memorandum of law in support of its motion to dismiss ("MTD Mem."), dated December 20, 2016 (Dkt. No. 13) is attached hereto as Exhibit B.

9. A true and correct copy of the affirmation of David Demeter in support of DTF's motion to dismiss ("Demeter MTD Aff."), dated December 20, 2016 (Dkt. No. 14) is attached hereto as Exhibit C.

10. A true and correct copy of the affirmation of D. Stan O'Loughlin in support of DTF's motion to dismiss ("O'Loughlin MTD Aff."), dated December 20, 2016, together with exhibits thereto (Dkt. Nos. 15-25) is attached hereto as Exhibit D.

Wherefore, DTF requests that the plaintiffs' motion to amend the Complaint be denied and that the Complaint be dismissed.

Dated: New York, New York
March 7, 2017

/s D. Stan O'Loughlin
D. Stan O'Loughlin

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

28th Street Management et al.,

Plaintiffs,

-against-

New York State Department of Tax and Finance and the New York
City Taxi and Limousine Commission,

Defendants.

Index No. 514542/15

**AFFIRMATION OF
DAVID DEMETER IN
SUPPORT OF THE
ORDER TO SHOW
CAUSE**

DAVID DEMETER, an attorney admitted to practice in the courts of the State of New York, affirms under penalty of perjury pursuant to CPLR 2106:

1. I am a Director in the Office of Counsel for defendant New York State Department of Taxation and Finance ("DTF") in the above-captioned matter. I submit this affirmation based on my personal knowledge and the records of DTF, in support of DTF's motion by order to show cause for an order pursuant to CPLR §§ 2004 and 3012(d) extending defendants' time to respond to the complaint from November 1, 2016, to December 15, 2016, and staying defendants' time to respond to the complaint pending the determination of this order to show cause.

2. This action, which was commenced on November 30, 2015, was purportedly brought by hundreds of New York Taxi Medallion owners, who seek an "accounting" of the "MTA taxes" owed by them; to compel the DTF and the Taxi and Limousine Commission ("TLC") (which is not represented by this Office) to provide plaintiffs with all documents relating to their MTA tax obligations from 2010 to the present, including all amounts owed by each plaintiff; and "an Order commanding [TLC] to review and work with Plaintiffs and [DTF] with respect to issues surrounding Plaintiffs' MTA Tax Obligations." Complaint, Wherefore Clause.

3. Plaintiff has provided no legal basis to support any entitlement to such extraordinary relief, or any justification why plaintiffs, like every other taxpayer, cannot consult and rely on their own tax records and any bills, assessments, warrants or notices of determination already provided to them by DTF, to conduct their own “accounting” and determine any amounts of tax due and owing.

4. Since this action was commenced more than 11 months ago, plaintiffs have taken no action to meaningfully prosecute this case. It has been DTF’s understanding that plaintiffs brought this action primarily for the purpose of preserving their purported rights, and that they had no present intention to move forward prosecuting this action without further notice to DTF, in the hopes that their tax liabilities could be resolved by other means.

5. Accordingly, DTF and plaintiffs engaged in a course of conduct of regularly extending the time to respond to the complaint, most recently, on July 19, 2016, extending DTF’s time to respond to November 1, 2016. Without warning, on October 28, 2016, plaintiffs rejected DTF’s request for a further extension of the time to respond to the complaint.

6. As a threshold matter, because plaintiffs have allowed this action to languish for almost a year, many of the allegations of the complaint are now stale, raising questions, *inter alia*, about the authorization to proceed with respect to a number of the plaintiffs.

7. In particular, on information and belief, some of plaintiffs in this action are entities owned or controlled by Evgeny Freidman, which own one or more taxi medallions. However, on information and belief, many of the plaintiffs are entities that Freidman does not own or control, but for which he has held himself out as the “authorized representative.” See Complaint, Verification.

8. On information and belief, Mr. Freidman is no longer the authorized representative of many of these plaintiffs, as these representations have been terminated. This means that Mr.

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