

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
SECOND 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 ("DTF") in the above-captioned matter.

2. I submit this affirmation in opposition to plaintiffs' second, successive motion to for leave to amend their original complaint ("Complaint") pursuant to CPLR 3025(b), filed on September 24, 2017 ("Second Motion to Amend") (Dkt. Nos 41) – nearly two years after commencement of this action.

3. Plaintiffs' first motion for leave to amend the Complaint ("First Motion to Amend"), filed on February 21, 2017 (Dkt. No. 27) is still pending and has yet to be decided.

4. Procedurally, it is nonsensical and improper for plaintiff to maintain two pending, and potentially contradictory, motions for leave to amend the same Complaint in different ways,

particularly when the Second Motion to Amend does not attach a copy of the proposed amended complaint, unfairly prejudicing the defendants' and the Court's ability to meaningfully address the propriety of any proposed amendment.

5. It is black letter law that under CPLR 3025(b) that “[a]ny motion to amend . . . pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.” Scialdone v. Stepping Stones Associates, L.P., 148 A.D.3d 950, 952 (2d Dept. 2017) (quoting CPLR 3025(b)) (denying leave to amend for failure to attach a proposed amend complaint); Chang v. First American Title Ins. Co. of New York, 20 A.D.3d 502, 502 (2d Dept. 2005) (“the Supreme Court providently exercised its discretion in denying the plaintiff's motion for leave to serve an amended complaint since she did not provide a copy of her proposed amended complaint”).

6. Furthermore, plaintiffs' Second Motion to Amend is as futile as “their” First Motion to Amend. The only support provided by plaintiffs for “their” purported motion for leave to amend the Complaint is a 5-page affirmation provided by Mr. Freidman (Dkt. No. 43), the animating force behind this action since its inception. Although Mr. Freidman's motion is styled as a Second Motion to Amend the Complaint, the relief he explicitly actually seeks is that the Court “dismiss” all of the 400+ plaintiff medallion holders, leaving only Mr. Freidman and four “Management Plaintiffs” that he still controls remaining in the action. See, e.g., id. ¶¶ 2-3, 11, 14.

7. Contradictorily, Mr. Freidman purports to seek dismissal on behalf of plaintiff medallion holders, while at the same time finally admitting that he is not authorized to represent them – a fact that DTF has raised repeatedly for over a year. Id. ¶¶ 1, 6-7. Although recent events in the public record have made it impossible for Mr. Freidman to maintain the fiction that he may legally or ethically continue to claim authority to act on behalf of the plaintiff medallion holders, he

nonetheless continues to whitewash his repeated failures during the last two years that this action has been pending to fully and accurately describe the nature of that relationship. Although plaintiff demands specific and detail information from the defendants, his own averments in support of his sudden request to dismiss over 400 plaintiffs from this action are characteristically non-specific, vague, conclusory and contradictory. For example:

- a. Despite repeatedly alleging that he was the “authorized representative” of the plaintiffs (Complaint, Verification, Dkt. No. 1), Mr. Freidman now claims he is the authorized representative of “certain plaintiffs,” although tellingly fails to identify which plaintiffs, and that “certain taxicab medallion management licenses were not renewed.” Dkt. No. 43 ¶ 1, 7.
- b. Mr. Freidman explains his sudden decision to seek dismissal of plaintiffs he has claimed to represent for two years on the basis that “many events occurred.” *Id.* ¶ 6.
- c. Mr. Freidman has repeatedly claimed that he acts “on behalf of all plaintiffs” who he alleges are “parties united in interest,” (Complaint, Verification, Dkt. No. 1), and yet now admits that “some of the plaintiffs have commenced litigation against other plaintiffs.” Dkt. No. 43 ¶ 1. Notable, he does not admit the most pertinent fact: that numerous plaintiff medallion holders have commenced litigation against him personally.
- d. Mr. Freidman cites the fact that “dozens” of the plaintiff medallion holders are in bankruptcy (although does not identify which ones) as a basis for dismissal, despite the fact that Mr. Freidman had already placed “dozens” of the plaintiff medallion holders in bankruptcy prior to the commencement of this action, which DTF has repeatedly identified as deeply problematic and rife with impropriety. *Id.* ¶ 7; See also Dkt. No. 5.
- e. Mr. Freidman again contradicts himself and claims that pursuant to “New York City Taxicab and Limousine Rules and Regulations, the Management Plaintiffs had valid and enforceable powers of attorney at the inception of this litigation and at times relevant to this action that permitted the Management Plaintiffs to act as the duly authorized agents for each of the remaining plaintiffs with respect to all matters relating to the operation of the subject taxicabs, including the filing of this lawsuit.” Dkt. No. 43 ¶ 10 (emphasis added). Tellingly, Mr. Freidman does not actually identify a single specific provision of the TLC rules that purportedly provided him with a “power of attorney” to bring this action on behalf of the plaintiff medallion owner (let alone authorizing him to commence and maintain it in the presence of unwaivable conflicts of interest).¹

¹ To the contrary, the TLC Rules make it clear the a licensed agents scope of authority is limited to certain actions before the TLC only, and do not grant plenary authority to represent any medallion holder outside the scope of the TLC, let alone commence civil actions on behalf. A true and correct copy of Chapter 63 of TLC’s Rules, entitled “Taxicab Agent

Moreover, he does not explain what he means by the “remaining” plaintiffs; the Complaint has not been amended, so all of the plaintiffs are “remaining.” Notably, although DTF has questioned Mr. Freidman’s authority to represent the plaintiffs since the inception of this action, he has never provided the alleged “powers of attorney” he claims cloak him with broad, undefined authority on behalf of plaintiffs.

8. Plaintiff’s half-hearted and incomplete admissions that he lacks authority to represent the plaintiff medallion holders and has interests that are divergent interests to them is long overdue, but not necessary as there has been a growing public record for months or years in some cases that:

(1) Freidman did not have lawful control over numerous plaintiff medallion holders who had been placed in bankruptcy and under control of the trustee; (2) any authorization that Freidman may have had as an agent for any of the plaintiffs in proceedings before TLC has been terminated; (3) many plaintiff medallion holders have, in fact, brought actions against Mr. Freidman, alleging that he failed to fulfill his obligations to them, including, *inter alia*, taking their money but failing to pay their MTA taxes, for which they are now jointly and severally liable; and (4) Mr. Freidman has been indicted in an ongoing criminal proceeding for criminal tax fraud and grand theft in connection with, *inter alia*, the taxes he failed to pay on behalf of plaintiff medallion holders, and nonetheless seeks to maintain this action to improperly seek discovery of plaintiff medallion holders’ confidential tax information. See Dkt Nos. 5; 13-15; 33-35; 40.

9. For example, as identified by DTF early in this action (Dkt. No 5), 22 of the plaintiff medallion holders had already filed for bankruptcy prior to commencement of this action, and have been under control of the bankruptcy trustee for some time. On September 20, 2017, these plaintiffs filed an adversary proceeding against Mr. Freidman seeking, *inter alia*, repayment of over

Rules” is attached hereto as Exhibit A, and is also available at <http://www.nyc.gov/html/tlc/html/rules/rules.shtml>. Moreover, TLC rules mandate suspension or revocation of an agent’s authority for improper conduct such as “material misrepresentation or omission” and for failure to “remit to the appropriate party all taxes and surcharges collected on behalf of a Medallion Owner.” §§ 63-08 (a)(1), 63-11(g).

\$1 million dollars in MTA taxes, for which they are jointly and severally liable, that Mr. Freidman collected but never remitted to DTF. See Messer v. Freidman, Index No. 1-17-01143, Dkt. No. 1 (Bankr. E.D.N.Y), a true and correct copy of which is attached hereto as Exhibit B.

10. In another case, other plaintiff medallion holders sued Mr. Freidman in Nassau County Supreme Court for, inter alia, failing to remit over \$100,000 in taxes due in connection with the operation and management of their medallions. Mr. Freidman never appeared in the lawsuit, and the Court ultimately entered a default judgment for nearly \$500,000. See Freemont Taxi et al v. Woodside Management, Inc and Eveygeny A. Freidman, Index No. 607386 (Sup Ct. Nassau Cty), Dkt. Nos. 2, 40.

11. Mr. Freidman illogically and repeatedly conflates his authority to represent the plaintiff medallion holders with “plaintiffs’ ability to proceed in this action.” Dkt. 43 ¶ 8. The Court should not countenance any request by Mr. Freidman to seek any sort relief, including “amendment” of the Complaint, on behalf of the plaintiff medallion holders, with whom he likely has serious, active conflicts of interest. Contradictorily, he nonetheless continues to ask this Court to “permit the Management Plaintiffs to proceed on behalf of all parties,” (id. ¶ 13) despite having admitted he has no such authority, and having produced no evidence, in nearly two years, that he ever had any authority to represent any of the plaintiff medallion holders or bring this action on their behalf.

12. The Court need not resolve the issue of Mr. Freidman’s lack of authority to represent the plaintiff medallion holders or seek relief on their behalf, because removing them from the caption or the case does not resolve the fatal defects in the Complaint, which must be dismissed in any event. The Complaint’s fatal defects have already been detailed extensively in DTF’s still-pending motion to dismiss to the Complaint (the “MTD”). See Dkt. Nos. 12-25. These motion

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