

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

NEW YORK CITY TRANSIT AUTHORITY
and FLEETWASH, INC.

Plaintiffs,

-against-

OFFICE OF THE NEW YORK CITY
COMPTROLLER and
BRAD LANDER, in his official capacity as
the New York City Comptroller

Defendants.

Index No.: _____

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED TO ANSWER THE COMPLAINT in this action and to serve a copy of your answer on plaintiffs' attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York; and in the case of your failure to appear or answer, judgment will be taken against you for the relief demanded herein.

Dated: February 2, 2024
New York, New York

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TO: OFFICE OF THE NEW YORK CITY COMPTROLLER and
BRAD LANDER, in his official capacity as the New York City Comptroller
1 Centre Street #530
New York, NY 1000

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Defendants.

COMPLAINT

Plaintiff the New York City Transit Authority (“NYCTA”), by its attorneys Proskauer Rose LLP, and Plaintiff Fleetwash, Inc. (“Fleetwash”), by its attorneys Gibbons P.C., hereby allege for the Complaint against Defendants, the Office of the New York City Comptroller and Brad Lander, in his official capacity as the New York City Comptroller (the “Comptroller”), as follows:

NATURE OF THE ACTION

1. NYCTA and Fleetwash bring this declaratory judgment action pursuant § 3001 of the New York Civil Practice Law and Rules (“CPLR”) against the Comptroller for a declaration resolvable through pure statutory interpretation that Article 8 and/or Article 9 of the New York Labor Law (“Labor Law”) does not require the payment of prevailing wage and benefit rates to employees of contractors of NYCTA engaged in the work of cleaning and sanitizing subway train cars because such work is not “construction-like labor” to come within the ambit of Article 8, nor is it “building service work” as defined in Article 9 of the Labor Law.

2. In response to the COVID-19 pandemic and the need for increased cleaning and sanitation of subway train cars, NYCTA contracted with contractors, including, but not limited to, Fleetwash and Progressive Pipeline Management (“PPM”), to provide services for the cleaning and sanitizing of subway train cars.

3. The Comptroller has publicly expressed the opinion that Labor Law Article 9 applies to the “cleaning of trains” and has initiated proceedings against Fleetwash and PPM based on the allegation that these contractors have failed to pay prevailing wage and benefit rates to workers employed on contracts with NYCTA for services cleaning and sanitizing subway train cars. The proceeding against Fleetwash has resulted in a determination by an investigator that Fleetwash violated the Labor Law Article 8 and/or Article 9. The proceeding against PPM has not yet resulted in a determination by an investigator.

4. Fleetwash and PPM have both invoked the dispute resolution mechanisms in their respective contracts with NYCTA and may attempt to recover from NYCTA for any amount paid or required to be paid related to their respective proceedings with the Comptroller.

5. In light of the foregoing, there is a present and live dispute between NYCTA and Fleetwash, and the Comptroller implicating NYCTA’s and Fleetwash’s rights and resolvable through statutory interpretation regarding whether Article 8 and/or Article 9 of the Labor Law applies to contractors of NYCTA engaged in the work of cleaning and sanitizing subway train cars.

THE PARTIES

6. Plaintiff NYCTA is a public benefit corporation established pursuant to the New York Public Authorities Law, Section 1200, *et. seq.* NYCTA operates the subway and certain bus and Paratransit services in New York City. The statutory purposes of NYCTA have been declared

as “in all respects for the benefit of the people of the State of New York” and NYCTA “shall be regarded as performing a governmental function in carrying out its corporate purposes and in exercising the powers granted” to it. Pub. Auth. Law, § 1202. NYCTA’s principal place of business is 2 Broadway, New York, NY 10004.

7. Plaintiff Fleetwash is private corporation that offers, as relevant here, mobile fleet washing and disinfecting services in the New York Metropolitan Area. Fleetwash’s principal place of business is 26 Law Drive, Fairfield, New Jersey, 07004.

8. Defendant, the Office of the Comptroller of the City of New York, is responsible, as relevant here, for the setting and enforcement of prevailing wage and benefit rates for those employed on New York City public works projects pursuant to Labor Law Articles 8 and 9. The Comptroller’s principal place of business is located at One Centre Street, New York, NY 10007.

9. Defendant, Brad Lander, is the City of New York Comptroller, and is named solely in his official capacity.

JURISDICTION AND VENUE

10. Jurisdiction is proper pursuant to CPLR Sections 3001 and 302.

11. Venue is proper in New York County, pursuant to CPLR Section 503(a) since, *inter alia*, the principal office of Defendants and Plaintiff NYCTA is New York County.

FACTUAL ALLEGATIONS

The Labor Law Prevailing Wage and Benefit Rates Provisions

12. The New York Constitution, Article I, § 17, provides, as relevant here, that:

“[n]o laborer, worker or mechanic, in the employ of a contractor or sub-contractor engaged in the performance of any public work, ... shall ... be paid less than the rate of wages prevailing in the same trade or occupation in the locality within the state where such public work is to be situated, erected or used.”

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