

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DUANE A. HART IA Part 18
Justice

x
LOCAL 100, TRANSPORT WORKERS UNION
OF AMERICA, AFL-CIO, ROGER TOUSSAINT,
AS PRESIDENT OF LOCAL 100,
TRANSPORT WORKERS UNION OF AMERICA,
AFL-CIO,
Action No. 1
Index
Number 21364 2005
Motion
Date April 5, 2006

- against -

CITY OF NEW YORK, et al.
Motion
Cal. Number _____

x
AMALGAMATED TRANSIT UNION, LOCAL
1181, AFL-CIO; SALVATORE BATTAGLIA,
AS PRESIDENT OF AMALGAMATED TRANSIT
UNION, LOCAL 1181, et al.,
Action No. 2
Index No. 7276/05

- against -

CITY OF NEW YORK, et al.
_____x

The following papers numbered 1 to 18 read on these separate but related motions by defendant Metropolitan Transportation Authority (MTA) to dismiss the plaintiff's complaint against it in Action No. 1 and Action No. 2, pursuant to CPLR 3211(a)(2) and (7), on the grounds that the court does not have subject matter jurisdiction of the causes of action and that the complaint fails to state a cause of action upon which relief may be granted.

Papers
Numbered

Notices of Motion - Affidavits - Exhibits..... 1-18

Upon the foregoing papers it is ordered that the motion is determined as follows:

The plaintiffs, several transit labor unions and their representatives, commenced these actions against defendants the City of New York (the City), Michael Bloomberg, as Mayor of the

City of New York, Metropolitan Transportation Authority (MTA) and several privately owned bus companies. Until recently, the defendant bus companies previously operated private transit systems within the New York City pursuant to a grant of operating authority awarded to them by the City in 1975. The operating agreements have now expired and the City has recently transferred and/or remains in the process of transferring the operations of the bus companies to the MTA.

The plaintiffs seek a declaration (1) that the MTA is a successor or assign of the private bus companies and/or an entity undertaking the management or operation of the transit system covered by the 1975 operating agreement and (2) that the MTA is required to comply with and assume responsibility for certain employee protective arrangements guaranteed and required by the 1975 operating agreement and subsequent certifications.

The MTA seeks dismissal of the plaintiffs' complaints against them on the grounds that (1) the court does not have jurisdiction over the subject matter of these actions in light of the arbitration provision of the 1975 agreement and (2) the complaints fail to state a cause of action upon which relief may be granted against it because the MTA is not a signatory to the 1975 agreement and, thus, owes no contractual obligation to the plaintiffs.

Contrary to the MTA's contention, the plain language of the arbitration clause of the 1975 agreement does not strip the court of jurisdiction over the subject matter of this contract action. Rather than providing an exclusive remedy, the arbitration provisions of the 1975 agreement provide the plaintiffs with an option that they "may" exercise in their efforts to resolve a labor dispute. Moreover, although a Federal Department of Labor arbitration is currently pending, the arbitration seeks a determination as to the scope of certain rights and privileges guaranteed by the 1975 agreement whereas the present action seeks a declaration that the MTA is obligated to provide successor arrangements to protect the rights of the union employees. Thus, no conflict exists.

Accordingly, that branch of the MTA's motion to dismiss the complaint due to the alleged lack of subject matter jurisdiction is denied.

Additionally, although the MTA is not a signatory to the 1975 agreement, the court finds that it is a necessary party in this case. CPLR 1001[a] requires that a party whose interests may be adversely affected by a potential judgment is a necessary party and shall be made a party in the action (see Cybul v Village of

Scarsdale, 17 AD3d 462 [2005]). In fact, the failure or inability to join a necessary party is a ground for dismissal of the action (CPLR 1003; Horowitz v Sax, 16 AD3d 161 [2005]). Since the MTA's interests are closely related to the interests of the various parties and because it is directly affected by the outcome of this action in light of its recent takeover of the bus companies, the MTA is a necessary party to the action.

Accordingly, that branch of defendant MTA's motion to dismiss the complaint against it for failure to state a cause of action against it is denied by reason of its status as a necessary party.

Dated: July 25, 2006

J.S.C.