

SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : HON. JOSEPH P. DORSA IAS PART 12
Justice

- - - - - x

SERGE MILORD,

Plaintiff,

Index No.: 22661/06

- against -

Motion Date: 1/24/07

FERNANDE PIERRE, ROMAN PIERRE, QUEENS
MEDALLION LEASING, INC., AND THE NYC
TAXI AND LIMOUSINE COMMISSION,

Motion No.: 20

Defendants.

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The following papers numbered 1 to 18 on this motion:

	<u>Papers Numbered</u>
Plaintiff's Order to Show Cause-Affirmation- Exhibit(s)-Service	1-4
Defendant Queens Medallion Leasing, Inc.'s Notice of Motion-Affirmation-Affidavit(s) Service-Exhibit(s)	5-8
Defendant NYC Taxi & Limousine Commission's Notice of Motion-Affirmation-Affidavit(s) Service-Exhibit(s)	9-12
Plaintiff's Notice of Cross-Motion-Affirmation- Affidavit(s)-Service-Exhibit(s)	13-16
Defendant NYC Taxi & Limousine Commission's Reply Affirmation-Exhibit(s)	17-18

Motion No. 1

By order to show cause, plaintiff seeks an order of the Court, declaring the contract of May 20, 2004, between defendants Fernande Pierre (F. Pierre) and Queens Medallion Leasing, Inc. (Medallion) and plaintiff to be null and void and directing an immediate sale of said NYC taxi medallion with the proceeds to be

divided as determined by this Court; an accounting by defendant (F. Pierre), and a preliminary injunction directing defendants to cease use of said medallion until further order of the Court.

Motion No. 2

Also considered herein, defendant, Queens Medallion Leasing, Inc. (Medallion), by notice of motion, seeks an order of the Court, dismissing plaintiff's action pursuant to CPLR § 3211(a)(7).

Motion No. 3

Also considered herein, defendant, NYC Taxi and Limousine Commission (NYC T&LC), by notice of motion, seeks an order of the Court, dismissing the complaint pursuant to CPLR § 3211(a)(7).

And, by notice of cross-motion, plaintiff opposes both defendants' motions to dismiss and seeks an order of the Court granting him a default judgment against defendants, Fernande Pierre and Roman Pierre, pursuant to CPLR § 3215(b) and § 2215.

Defendant NYC T&LC, files a reply affirmation.

Plaintiff alleges that on April 20, 2000, he and defendant, F. Pierre, entered into a partnership to purchase a NYC Taxi Medallion. (See plaintiff's Exh. A). Thereafter, as partners, they also purchased a 2000 Ford Crown Victoria, four door sedan, to use with their newly purchased medallion. To pay for these purchases, plaintiff maintains that he and F. Pierre secured a loan from Melrose Credit Union in the sum of \$193,000.00. The medallion number the partners purchased was #6B67.

Thereafter, and for reasons not explained by plaintiff, he alleges that defendant, F. Pierre's husband, R. Pierre, confronted him on September 23, 2000, and seized the taxi cab and medallion pursuant to some fraudulent "Notice of Seizure."

Plaintiff then maintains that the Pierres, more than three years later, took the taxi cab to Medallion, where they made an agreement to lease the vehicle and the medallion in exchange for monthly payments to them of \$1,650.00, for a period of three years (June 1, 2004 to June 1, 2007). (See plaintiff's Exh. E). Although the lease agreement lists plaintiff's name, he maintains he was unaware of the agreement; he did not agree to the lease or sign it.

Defendant, Medallion, seeks an order dismissing plaintiff's complaint as to them. Medallion maintains that F. Pierre, as a general partner, had full authority to lease the taxi and

medallion, and that plaintiff was aware of said lease. In support of their claim, Medallion offers a document (see defendant's Exh. A) which purports to show plaintiff, Serge Milord, agreeing to pay an additional \$268.00 per month to Medallion, over and above his lease payments for another taxi and medallion, to cover the "short fall" on the loan payments. The Court notes, however, that the "short fall" should only have amounted to \$4.00, not \$268.00, and the entity who extended the loan was Melrose Credit Union, not Medallion Funding Corp.

Plaintiff admits signing the document but claims he only did so when threatened with the loss of the taxi and medallion he was leasing from Medallion under medallion #1A49.

Defendant, NYC T&LC, also seeks dismissal, pursuant to CPLR § 3211(a)(7), claiming plaintiff fails to state a cause of action against them; that they have no statutory duty to monitor or supervise relationships between business partners. Boiadjian v. NYC Taxi & Limousine Commission, 243 AD2d 355, 356 (1st Dep't. 1997).

Moreover, the NYC T&LC, makes no use of the medallion, as claimed by plaintiff, but simply issues and regulates medallions for the benefit of the public. Current records reflect that plaintiff, Serge Milord and F. Pierre, are listed as the owners of the medallion, and that the medallion was leased to Medallion. (See, NYC T&LC's Exh. A).

In considering a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), the pleadings must be liberally construed. (CPLR 3026; Doria v Masucci, 230 AD2d 764, 765 [1996].) The sole criterion is whether the pleading states a cause of action and, if, from its four corners, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, a motion for dismissal will fail. (Guggenheimer v Ginsburg, 43 NY2d 268, 275 [1977].) The facts pleaded are to be presumed to be true and are to be accorded every favorable inference. (Palazzolo v Herrick, Feinstein, LLP., 298 AD2d 372 [2002]; Rattenni v Cerreta, 285 AD2d 636 [2001].) Further, when evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one. (Guggenheimer v Ginsburg, supra, at 275.)

Under the facts and circumstances presented herein, defendant, NYC T&LC, has made a prima facie case for dismissal of the complaint on the grounds that plaintiff fails to state a

cause of action as to them. In response, plaintiff fails to refute defendant's prima facie case.

Defendant Medallion, however, fails to convince the Court, as a matter of law, that plaintiff fails to state a cause of action with regard to them.

With respect to plaintiff's cross-motion for a default judgment as to defendant, F. Pierre and R. Pierre, said motion is granted as ordered below. Plaintiff submits proof of service of the order to show cause with summons and complaint, on November 8, 2006, and defendants have failed to answer or appear.

Accordingly, the motions are decided as follows:

Plaintiff's motion seeking a) an order declaring the lease between F. Pierre and Medallion to be null and void and directing an immediate sale of the medallion to be divided as determined by the Court; b) an accounting of the partnership by defendant, F. Pierre; and c) an injunction directing defendants to cease use of said medallion until further order of the Court, is granted to the extent that all remaining parties are directed to appear before this Court on **April 25, 2007 at 11:00 a.m.**, 88-11 Sutphin Boulevard, Jamaica, NY 11435, Courtroom 45, for a hearing on these issues.

Defendant, Medallion's motion for an order dismissing the action as to them is denied; and, it is further

ORDERED, that defendant, NYC T&LC's motion is granted and the complaint is hereby severed and dismissed as against defendant, NYC T&LC, and the clerk is directed to enter judgment in favor of said defendant; and, it is further

ORDERED, plaintiff shall have default judgments against defendants F. Pierre and R. Pierre, with inquest on damages at the time of trial; and, it is further

ORDERED, that the remainder of the action shall continue.

Dated: Jamaica, New York
March 8, 2007

JOSEPH P. DORSA
J.S.C.