

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

TAXIFLEET MANAGEMENT LLC, et al.

INDEX NO. 161920/18

- v -

MOT. DATE

THE STATE OF NEW YORK, et al.

MOT. SEQ. NO. 001

* INTERIM ORDER

The following papers were read on this petition to stay Article.29-C of the Tax Law and cross-motions to dismiss:

- Petition/O.S.C. — Affidavits — Exhibits — Memoranda
Notice of Cross-Motion/Answering Affidavits — Exhibits — Memoranda
1/17/19 Interim Order
Affirmation in Opp to Cross-Motion — Memoranda
Amended Petition — Memoranda
Reply Affirmation — Affidavits — Exhibits — Memoranda

- NYSCEF DOC No(s). 1-8, 19-26
NYSCEF DOC No(s). 28-32, 33-42, 43-55
NYSCEF DOC No(s). 56
NYSCEF DOC No(s). 58
NYSCEF DOC No(s). 59-60
NYSCEF DOC No(s). 61, 62-69

Upon the foregoing papers, it is ordered that the cross-motions to dismiss are decided in accordance with the accompanying memorandum decision, order and judgment.

Further, it is ordered that the amended petition is restored to the active calendar on February 21, 2019 for the submission of papers, only. No in-person appearances are required.

Dated: 1/31/19

[Signature]
HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [] CASE DISPOSED [] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
3. Check if appropriate: [] SETTLE ORDER [] SUBMIT ORDER [] DO NOT POST
[] FIDUCIARY APPOINTMENT [] REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 8**

-----X
TAXIFLEET MANAGEMENT LLC, AJB TAXI
MANAGEMENT INC., 521 WEST 21ST ST.
MANAGEMENT CORP, WINNERS GARAGE INC.,
WESTWAY TAXI MANAGEMENT LLC, CAROLYN
PROTZ, RICHARD CHOW, NICOLAE HENT and
WILLIAM GUERRA,

**DECISION, ORDER AND
JUDGMENT**

INDEX No.: 161920/18
MOT SEQ.: 001

Plaintiff(s),

-against-

THE STATE OF NEW YORK, THE CITY OF NEW
YORK, THE NEW YORK CITY TAXI &
LIMOUSINE COMMISSION, and MEERA JOSHI,
in her capacity as the Commissioner of the New
York City Taxi and Limousine Commission.

Present:
Hon. Lynn R. Kotler, J.S.C.

Respondent(s).

-----X

In this special proceeding, petitioners, New York City medallion taxicabs owners, seek to challenge both a statute and New York City Taxi and Limousine Commission's ("TLC") failure to adopt regulations in connection with the statute.¹ In addition to the TLC, respondents are The State of New York (the "State"), The City of New York (the "City") and Meera Joshi, in her capacity as the Commissioner of the TLC (the City, TLC and Joshi are collectively referred to as the "City Respondents"). The statute at issue is Article 29-C of the Tax Law (Tax Law §1299 *et seq.*), also known as the congestion surcharge, which was enacted by the New York State Legislature on April 12, 2018.

This proceeding was commenced by filing on December 19, 2018 by order to show cause. The OSC was signed by the Honorable Martin Shulman, sitting *ex parte* for this court, and it contained a temporary restraint prohibiting respondents from taking any

¹ Since commencing this proceeding, petitioners have withdrawn the latter request for relief (see *infra*).

action to enforce the congestion surcharge. The order to show cause was made returnable on January 3, 2019, and then adjourned on consent of the parties to January 17, 2019.

In the interim, Fleet Radio Dispatch Corp. moved to intervene as petitioners in this proceeding in motion sequence number 002. That motion was granted without opposition on January 17, 2019 after oral argument (see decision/order dated January 17, 2019). Meanwhile, the court continued the TRO and adjourned the petition for petitioners to submit opposition to respondents' cross-motions to dismiss filed on January 16, 2019. The petition was adjourned to January 31, 2019. Petitioners filed an amended petition on January 25, 2019 and respondents filed replies on January 29, 2019.

After the submission of all papers in this case, and after hearing oral argument on January 31, 2019, the court lifts the TRO for the following reasons.

In their amended petition, petitioners have narrowed their claims to the following five: [1] a declaration that the congestion surcharge is "unlawful, invalid, and unenforceable, as it violates the New York and United States Constitutions"; [2] the congestion surcharge violates petitioners' substantive due process rights; [3] respondents violated petitioners' federal equal protection rights by treating them differently from other vehicles that travel in Manhattan; [4] the congestion surcharge violates the New York State Constitution Article XVI, § 4 by treating medallion taxicabs and for-hire-vehicles ("FHVs") differently; and [5] the congestion surcharge violates New York State Constitution Article IX, § 2 by "repeal[ing], diminish[ing], impair[ing] and suspend[ing] the City's power to adopt, amend and repeal ordinances, resolutions and

rules and regulations.”

As the City Respondents point out in reply, petitioners have abandoned their claims arising from the TLC’s failure to enact regulations in connection with the congestion surcharge. This fact was highlighted on the record on January 31, 2019, at which time petitioners’ counsel confirmed that the request for relief pursuant to CPLR Article 78 has been withdrawn.

However, the absence of TLC regulations was a primary component of the original petition and was an issue which petitioners heavily relied upon at oral argument in support of continuing the TRO. Petitioners’ counsel then contended that absent such regulations, medallion taxicab owners would not be able to assess the congestion surcharge and would be left to bear a substantial financial responsibility, given that there is no dispute the congestion surcharge is supposed to pass directly to consumers, i.e. taxicab riders.

In light of petitioner’s abandonment of its direct claims against the City Respondents, the court must grant the City Respondents’ cross-motion to dismiss, as the court can discern no claims against them.

As for the State’s motion to dismiss, the court denies it. Petitioners have certainly stated claims against the State in connection with the congestion surcharge sufficient to survive a motion to dismiss. The State’s laches argument does not mandate outright denial of the petition before joinder of issue. In any event, the State’s concerns about their inability to collect the congestion surcharge is obviated by this order lifting the TRO. The court, therefore, directs the State to file an answer within 20 days. The petition will be restored to the calendar on February 21, 2019 for the submission of

papers, only, as outlined herein.

Finally, as for the TRO, petitioners have not demonstrated irreparable injury absent a continuation of same. The congestion surcharge is to pass directly to consumers, and to the extent that petitioners contend that their business will be affected by the same, such an effect does not mandate the continuation of a further prohibition upon the State's ability to collect on the tax. The court further finds that such a result is warranted, given that petitioners have withdrawn their claims arising from the absence of TLC regulations specific to the congestion surcharge.

In light of the foregoing, it is

ORDERED and ADJUDGED that the City Respondents' cross-motion to dismiss is granted and the petition as to the City Respondents is severed and denied; and it is further

ORDERED that the State's cross-motion to dismiss is denied and they are directed to file and serve an answer within 20 days; and it is further

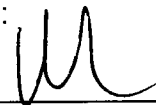
ORDERED that the amended petition is restored to the active calendar on February 21, 2019 for the submission of papers, only. No in-person appearances are required; and it is further

ORDERED that the temporary restraint granted by the order to show cause signed on December 20, 2018 is vacated and lifted.

This constitutes the decision, order and judgment of the court.

Dated: New York, New York
January 31, 2019

So Ordered:



Hon. Lynn R. Kotler, J.S.C.