IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHAYCERY DIVISION

Wolfgang Weiss, Samuel Kanjama, Fred Davis. Saaed Siddiqui. Stanley Shen. Qiang Chen and Chao Tan

Plaintiffs.

City of Chicago,

Defendant.

No. 08 CH 15273
Hon. James R. Epstein

CITY OF CHICAGO'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendant City of Chicago ("Chicago"+or "City"), a municipal corporation, by and through its attorney MARA GEORGES, hereby moves this Court to dismiss Plaintiffs' Second Amended Petition for injunctive Relief (the "Petition") pursuant to 735 ILCS 5/2-615 and 2-619. In support of its motion, the City states as follows:

BACKGROUND

On April 24, 2008 Plaintiffs filed a Petition for Injunctive Relief relating to amendments to sections 9-112 and 9-104 of the Chicago Municipal Code. On May 21, 2008 Plaintiffs filed an Amended Petition for Injunctive Relief. On June 26, *2008* the City moved *to* dismiss Plaintiffs' Amended Petition pursuant to 735 ILCS 52-615. On October 17,2005 this Court issued a decision dismissing Plaintiffs' Amended Petition for failure to sufficiently state a cause of action and giving Plaintiffs leave to file an amended complaint. On November 14, 2008 Plaintiffs filed *a* Second Amended Petition for Injunctive Relief. Only the allegations contained in paragraphs 10, 12 and 13 *of* the Second Amended Complaint differ in any substantive way from the allegations contained in Plaintiffs' First Amended Complaint. Therefore, the remaining paragraphs of Plaintiffs' Second Amended Comolaint are insufficient to support a cause of action for the exact reasons set. forth in this Court's October 17, 2008 decision. Moreover, the amended paragraphs of the Second Amended

Complaint fail *to* state a claim upon which relief can be granted and therefore, the City's Motion to Dismiss should be granted.

LEGAL STANDARD

A count to a complaint must state a cause of action that is both legally and factually sufficient in order to survive a motion to dismiss pursuant to 735 ILCS 5/2-615. Lykowski v. Bergman, 299 Ill.App.3d 157, 163 (1st Dist. 1998) (citing Wieseman v. Kienstra, Inc., *237* Ill.App.3d 721, 721 (5th Dist. 1992)). To be legally sufficient, a count must set forth a legally recognized claim upon which the plaintiff is entitled *to* recover damages or other relief. Id. (citing Northrop Corp. v. Crouch-Walker, Inc., 175 Ill.App.3d *203*, 205-206 (1st Dist. 1988)). In addition, a count must plead facts essential to the plaintiff's alleged cause of action in order to be factually sufficient. Id. (citing Robbins v. City of Madison, 193 Ill.App.3d 379, 379 (5th Dist. 1990)). In determining whether a motion to dismiss shall be granted pursuant *to* section 2-615(a) all \yell-pleaded facts are assumed to *he* true and all reasonable inferences to be drawn from those facts are viewed in the light most favorable to the plaintiff. Id. (citing Connick v. Suzuki Motor Co., 174 Ill.2d 482,490 (1996)). Legal and factual conclusions not supported by allegations of specific facts must be disregarded in ruling on a motion to dismiss. Cummings v. City of Waterloo, 289 Ill.App.3d 474, 479 (5th Dist. 1997). Furthermore, *a* complaint which is factually deficient cannot be corrected by liberal construction. Id. (citing Lagen v. Balcor Co., 274 Ill.App.3d 11 (2d Dist. 1995)).

ARGUMENT

A. Due Process Does Not Require the City *to* Provide Notice Prior to Amending an Ordinance

Plaintiffs allege that the City deprived them of their due process rights by failing to give them the opportunity to be heard before rhe City Council committee considering the amendments to sections 9-104 and 9-112 of the Chicago Municipal Code. (Second Amended Complaint ¶10). Illinois law is clear: however, in holding that there is no requirement "to give prior notice and a due process hearing to every individual who may be adversely affected by a regulation under consideration." Triple A Services, Inc. v. Rice, 131 Ill.2d 217, 237-8, 545 N.E.2d 706, 714 (Ill.

1989) (citing Associating of National Advertisers. Inc. v. Federal Trade Comm'n, 627 F.2d 1151, 1165 (D.C. Cir. 1979)); Philly's v. Byrne et. al., 732 F.2d 87, 92 (7th Cir. 1984) ("notice and opportunity for hearing are not constitutionally required safeguards of legislative action"): N&N Catering Company Inc. v. City of Chicago, 26 F.Supp.2d 1067 (N.D. Ill. 1998) Therefore. Plaintiffs claims about the City's process for passage of the relevant ordinances is not legally sufficient and should be dismissed pursuant to *735* ILCS 5/2-615.

Additionally, Plaintiffs' themselves admit, in paragraph 4 of their Second Amended Complaint, that they were not only given the opportunity, but did, in fact, testify? during the City Council Transportation Committee meeting during which the ordinance amendments were considered. In paragraph 4 of their complaint; Plaintiffs allege that,

> Over the course of the past several months, CABDRIVERS. have been seeking to have a revision of taxicab rates of fare so as to ameliorate these ever rising costs, several of them having appeared before the City Council of CITY to testify before its Transportation Committee **at** hearings that have been conducted at various times prior to the promulgation or enactment of any ordinance to address what CABDRIVERS had perceived as an economic crisis.

Therefore, although due process did not require it, Plaintiffs were given an opportunity to comment and be heard on City Council's actions and the Plaintiffs' own admission shows that the allegations in paragraph 10 of the complaint are not factually accurate.

Moreover, Plaintiffs' complaint should also be dismissed pursuant to 735 ILCS 2-619 because. as seen from the agenda attached as Exhibit A, the City Council Committee on Transportation and the Public Way did. in fact, provide notice on March 20. *2008* that the ordinance amendments *at* issue were to be considered at its April 7, 2008 special meeting. Additionally, as referenced by Plaintiffs in paragraph 4 of their complaint, the attached witness information forms (attached as Exhibit B) and portions of the transcript from the April 7, *2008* Transportation Committee meeting (attached as Exhibit C) show that Plaintiffs and others "similarly situated" (Second Amended Complaint ¶10) were cot only given notice that the

ordinance amendments were going to be considered, but also took advantage of the opportunity and actually testified in front of the Transportation Committee

Fur these reasons, Plaintiffs have failed to sufficiently state a cause of action and the Second Amended Complaint should be dismissed.

B. Plaintiffs Have Failed to Allege Facts Sufficient to Show the Existence of a Case or Controversy

Paragraphs 12 and 13 of Plaintiffs' complaint appeal- to request injunctive relief to prevent potential problems from arising in potential proceedings that might take place in the future at the Chicago Department of Administrative Hearings (the "DOAH"). These paragraphs, **like** the other paragraphs in the amended complaint, allege no facts showing an actual controversy. By failing to identify an actual controversy, Plaintiffs ask this court to grant an improper advisory opinion. Illinois courts have held that seeking injunctive and declaratory relief based on the possibility that a case will arise in the future is improper and does not state a justiciable cause of action. *See, e.g.*, Primeco Personal Comm., L.P. v. Illinois Commerce Comm'n, 196 Ill. 2d 70, 99-100 (2001j. For this reason: the Second Amended Complaint should be dismissed pursuant to 2-615.

C. Even if There Were a Case or Controversy, Plaintiffs' Complaint Should be Dismissed Because Plaintiffs Have Failed to Exhaust Their Administrative Remedies

Even if Plaintiffs had alleged facts showing the existence of an actual controversy. this Court would nut be the propel- forum to raise such a claim. As discussed in the City's first motion to dismiss, the City's home rule power includes the authority to regulate taxicabs. See Wellington v. Citv of Chicago, 144 Ill.App.3d 774 (upholding application of home rule transaction tax to lessors of taxicabs), Chirikos v. Yellow Cab Company, 87 Ill.App.3d 569 (Ill. App. 1st Dist. 1980) (City Council has home rule authority to set taxicab fares). Moreover, as a home rule unit the City has the authority to enforce its ordinances in administrative proceedings. 65 ILCS 5/1-2.1-2; Domprowski v. City of Chicago, 363 Ill.App.3d 420 (1st Dist. 2005) (upholding findings in administrative proceeding enforcing building code ordinance). In Illinois

the general rule is that where a party is aggrieved by the action of an administrative agency, that party cannot seek review in *the* courts unless it has already pursued all available administrative remedies. Castaneda v. Illinois Human Rights Commn., 132 Ill. 2d 304, 308 (citing Phillips v. Graham, 86 Ill. 2d 274, *259* (1981); Walker v. State Bd. of Elections: 65 Ill. 2d 543, 551-52 (1976) and Illinois Bell Tel. *Co.* v. Allphin, 60 Ill. 2d 350, 358 (1975)). Where a litigant fails *to* exhaust administrative remedies; the circuit court lacks jurisdiction to hear its claim. E.g. Stracka s. Bradlev. 243 Ill. App. 3d 771, 774-75 (2d Dist. 1993); Genzendorf v. Washburn, 207 Ill. App. 3d *397,* 400 (2d Dist. 1991); Koontz v. Pepsico, Inc., 153 Ill. App. 3d 152, 153-54 (1st Dist. 1977).

This means that in the event an actual case were to arise out of the amended ordinances. Plaintiffs' first required step would be lo pursue all of their administrative remedies at the DOAH. In the event Plaintiffs were **displeased** with the results of any DOAH proceedings their remedy would be to file an administrative review action in Cook Count:: Circuit Court pursuant to the Administrative Review Act. 735 XLCS 5/3-103. Therefore, even if this Court finds that Plaintiffs have alleged facts sufficient to show an actual controversy; Plaintiffs' complaint should nonetheless be dismissed because Plaintiffs have not exhausted their administrative remedies.

C. Proceedings in the City's Department of Administrative Hearings Do Not Violate Parties Constitutional Rights

Plaintiffs allege that the City's administrative proceedings deprive litigants of their rights because confrontation and cross-examination of witnesses is not allowed, subpoenas cannot be issued and hearsay is admitted. (Second Amended Complaint ¶12). Plaintiffs also make conclusory and entirely unsupported allegations about administrative appeals being fruitless and licenses being revoked without notice (Second Amended Complaint ¶¶12 and 13). Plaintiffs provide no factual or legal support for these allegations, which are contrary to well established Illinois law. The Illinois Municipal Code allows the City to create an administrative adjudication system for the enforcement of City ordinances. See 65 ILCS 5/1-2.1-2 (2006).

Moreover, the City's system of administrative adjudication has been upheld by the coons. Van Harken v. City of Chicago, 305 Ill. App. 3d 972, 976 (1st Dist. 1999); Van Harken v. City of Chicago, 103 F.3d 1346 (1997), cert. denied 520 U.S. 1241 (1997); SMRJ. Inc. v. Russell, 378 Ill.App.3d 563, 570-1 (1st Dist. 2007) ("It is firmly established that concepts of due process apply to both courts and administrative agencies that perform adjudicatory functions.") Plaintiffs have therefore failed to provide factual or legal support for their assertions about the City's administrative proceedings and thus; their complaint should be dismissed.

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Respectfully submitted,

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