

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

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

Plaintiffs,

v.

City of Chicago,

Defendant.

No. 08 CH 15273
Hon. James R. Epstein

FILED-3
JUN 26 AM 12:08
CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION

CITY OF CHICAGO'S MOTION TO DISMISS PLAINTIFFS' 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' Amended Petition for Injunctive Relief (the "Petition") pursuant to 735 ILCS 5/2-615. In support of its motion, the City states as follows:

BACKGROUND

As set forth in exhibit A to the Petition, on April 28, 2008 the Chicago City Council amended Section 9-112-510 of the Chicago Municipal Code to allow taxicab drivers to add a fuel surcharge to their fares when gas prices exceed a certain amount. Specifically, §9-112-510(e)(1) allows a \$0.50 surcharge when gas prices exceed \$2.70 per gallon, and §9-112-510(e)(2) allows a surcharge of \$1.00 when fuel prices exceed \$3.20 per gallon. (Petition, exhibit A, pp. 5-7). Plaintiffs allege that the ordinance amendment was an "outmoded" and "insignificant" way of addressing increases in the cost of gas. (Petition, ¶6). Plaintiffs also take issue with amendments to other sections of the municipal code relating to increased fine amounts and requirements for license suspension. (Petition ¶¶11, 12). As explained below the Petition fails to state a cause of action because it does not allege that the ordinance violates any constitutional provisions or statutes 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 well-pleaded facts are assumed to be 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

As a Home Rule unit, the City of Chicago has broad authority to "exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." Illinois Constitution of 1970, Article VII, Sec. 6(a); Crawford v. City of Chicago, 304 Ill.App.3d 818, 824-5 (1st Dist. 1999) (home rule units are to be given the broadest powers possible). Illinois courts have recognized that this broad home rule power includes the power to regulate taxi cabs. See Wellington v. City 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, "legislative enactments are presumed to be constitutional" and "reasonable doubts concerning the validity of a statute must be resolved in its favor." See O'Connor v. A & P Enterprises, 81 Ill. 2d 260, 266 (1980). This rule applies equally to statutes adopted by the General Assembly and to ordinances adopted by the City of Chicago in the exercise of its home rule power. See National Pride of Chicago, Inc. v. City of Chicago, 206 Ill. App. 3d 1090, 1101 (1st Dist. 1990). A plaintiff who attempts to establish that a home rule ordinance is unlawful has a "particularly heavy" burden. See Chicago Park District v. City of Chicago, 111 Ill. 2d 7, 14 (1986) (quoting Waller Pecket Co. v. Regional Transportation Authority, 81 Ill. 2d 221, 224 (1980)).

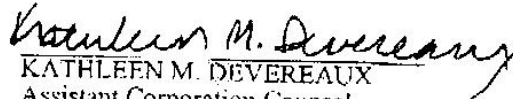
For purposes of this case, the City's broad home rule authority means that unless its power has been expressly limited by the General Assembly the City is authorized to amend its ordinances regulating taxicabs and that these amendments are presumed to be valid. See e.g. City v. Roman, 184 Ill.2d 504, 513 (1998), citing Triple A Services v. Rice, 131 Ill.2d 217, 230 (1989) ("[H]ome rule units thus have the same powers as the sovereign, except where such powers are limited by the General Assembly"); Crawford v. City of Chicago, 304 Ill. App.3d at 826 ("absent [express preemption language] the courts will not find the preemption of a home rule unit's authority"). As stated by the court in Chirikos v. Yellow Cab Company, *supra*, a court has "authority to invalidate legislation adopted by the city council only upon grounds that the enactment violates a provision of the Federal or State constitutions or violates the mandates of a State or Federal statute." 87 Ill.App.3d at 574.

In the instant case, the Petition does not allege any facts that would support a conclusion that amendments enacted by the City Council are not valid. Plaintiffs also fail to allege that the City exceeded its authority when it amended the ordinances at issue. The Petition contains no allegations that the City took any action outside of its home rule authority or that the actions the City did take had been expressly preempted by the General Assembly. Indeed, the Petition cites no constitutional provision or statute that the ordinances at issue supposedly violate. In failing to allege any action

that could be construed as a violation of the law, Plaintiffs fail to state a legally sufficient cause of action and thus, the City's motion to dismiss should be granted.

June 26, 2008

Respectfully submitted,


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