New York County Clerk's Index No. 653012/19
Appellate Division, First Department Case No. 2022-01029

Court of Appeals

STATE OF NEW YORK

TAXI TOURS INC.,

—against— *Plaintiff-Counterclaim Defendant,*

GO NEW YORK TOURS, INC.,

Defendant-Appellant.

GO NEW YORK TOURS, INC.,

Counterclaim Plaintiff-Appellant,

—against—

BIG BUS TOURS LIMITED, GO CITY LIMITED, GRAY LINE NEW YORK TOURS, INC., TWIN AMERICA, LLC, SIGHTSEEING PASS LLC,

Counterclaim Defendants-Respondents,

—and—

GO CITY NORTH AMERICA, LLC, GO CITY, INC., TAXI TOURS INC., OPEN TOP SIGHTSEEING USA, INC.,

Counterclaim Defendants.

MOTION FOR LEAVE TO APPEAL

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PLEASE TAKE NOTICE that Go New York, Inc. ("Go New York" or "Appellant") will move this Court, pursuant to CPLR §5602(1)(i) and Rule 500.22 of the Rules of Practice of the Court of Appeals, upon the record of the prior appeal in this case to the appellate division, and upon the papers submitted herein, at the Court of Appeals Hall, 20 Eagle Street, Albany, New York, on December 19, 2022, at 9:30 a.m., for an order granting permission to appeal from a Decision and Order of the Appellate Division of the New York State Supreme Court, First Department, entered on November 3, 2022, (the "Decision and Order") affirming the Order of the Supreme Court, New York County (Jennifer G. Schecter, J.S.C.), dated December 13, 2021, dismissing Appellant Go New York's First and Second Counterclaims against respondents Gray Line New York Tours, Inc., Twin America, LLC, and Sightseeing Pass LLC (collectively, "Gray Line") and Taxi Tours, Inc., Open Top Sightseeing USA, Inc., Go City, Inc. and Go City North America, LLC (collectively, "Big Bus", and together with Gray Line, "Respondents"), and for such other and further relief as this Court finds just and proper.

Respondents are hereby given notice that the motion will be submitted on the papers and personal appearance in opposition there is neither required nor permitted.

Answering papers, if any must be served and filed in the Court of Appeals with proof of service on or before the return date of this motion.

Dated: December 7, 2022

Respectfully submitted

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By: _____

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

Cases

Statutes

Rules

The First Department Order affirmed the lower court's dismissals of: 1) Appellant's First and Second Counterclaims against Gray Line and Big Bus seeking recovery under the Donnelly Act, General Business Law § 340, for failure to state a claim; 2) Appellant's counterclaim against Gray Line Respondents and Big Bus Respondents for tortious interference with prospective business relations for failure to state a claim; and 3) all of Appellant's counterclaims against Big Bus Tours Limited and Go City Limited for lack of long-arm personal jurisdiction. Appellant now seeks permission to appeal the portions of the order dismissing Appellant's counterclaims under the Donnelly Act and for tortious interference with prospective business relations.[1] *See* Exhibit A, Decision and Order of First Department, Case No. 2022-01029 (Index No. 653012/19), dated November 3, 2022 (the "Decision and Order"), at 2.

This appeal presents issues of great public importance concerning the scope of antitrust enforcement within this State, which indisputably has historically long and consistent policies supporting maintenance of competitive free markets. The two issues are as follows: First, review is needed to clarify that the Donnelly Act has a greater reach than the Sherman Act. By its very language and structure, the New York Legislature did not intend to limit the Donnelly Act to the Sherman Act's

[1] The First Department dismissed Go New York's claims for tortious interference, because they were predicated on the Donnelly Act claims. If Go New York's antitrust claims under the Donnelly Act are reinstated, then so too should Go New York's claims for tortious interference.

definition of "conspiracy," and the Donnelly Act applies to anti-competitive "arrangements" which are not reached in the Sherman Act. Second, review is needed to clarify the factual allegations required for pleadings of Donnelly Act claims under New York's "notice pleading" standard, a standard long recognized in this Court's jurisprudence as being more liberal and less demanding than federal pleading standards.

PROCEDURAL HISTORY

I. Timeliness of the Motion

Appellee served the Notice of Entry of the First Department's Decision and Order on November 8, 2022. *See* Ex. A, Decision and Order, at 1. This motion was served on December 7, 2022, and thus is timely. *See* CPLR §§ 2103(b)(1), 5513(b).

II. The Parties and Underlying Conduct

This case pertains to anti-competitive conduct within the New York City hop-on, hop-off sightseeing tour bus market (the "New York City Hop-on, Hop-off Market"). New York City Hop-on, Hop-off Market buses transport tourists along fixed routes stopping at New York City's top tourist attractions ("New York City Key Attraction(s)") to allow customers to "hop off" to visit New York City Key Attractions and then "hop on" a different bus of the same company to visit the next New York City Key Attraction.

The three main competitors operating in the New York City Hop-on, Hop-off Market during the relevant time period are Appellant Go New York and Respondents Gray Line and Big Bus through various subsidiaries and affiliates. (R. 63). Respondents Gray Line and Big Bus have affiliated companies that negotiate and enter "trade partner" agreements with New York City Key Attractions ("Trade Partner Agreements") in order to create bundled packages that include admission to certain New York City Key Attractions in combination with tickets for hop-on, hop-off tour bus services ("Multi-Attraction Passes"). Multi-Attraction Passes have become a primary and essential means for tour buses to compete in the New York City Hop-on, Hop-off Market. (R. 65-66) Multi-Attraction Passes are mutually beneficial for Hop-on, Hop-off tour busses and New York City Key Attractions in that bundling allows the busses and New York City Key Attractions to increase the numbers and quality of customers. The hop-on, hop-off tours operators benefit additionally by earning commissions from Multi-Attraction Passes. Most importantly, Multi-Attraction Passes provide substantial benefits to consumers, who have access toa wider variety of attractions at a lower cost than they would pay without the bundling together of attractions and tour bus services.

Visitors to New York City, however, have not been able to fully reap the benefits of the Multi-Attraction Pass model, because, as alleged in Go New York's Counterclaims, Respondents Big Bus and Gray Line have entered into exclusive

Trade Partner Agreements with many major New York City Key Attractions, and disparaged Go New York in the marketplace, even threatening to refuse to do business with many New York City Key Attractions if they also contract with Go New York. (R. 67-70). Big Bus and Gray Line have each entered into "exclusive" Trade Partner Agreements with various New York City Key Attractions (identified specifically by Go New York in its pleadings) which specifically require such New York City Key Attractions to agree that they will not do business with Go New York or allow Go New York to include such attractions in its bundled attraction passes. *Id.* As alleged by Go New York in its pleadings, notwithstanding their respective rights of exclusivity with respect to certain of New York City Key Attractions, both Big Bus and Gray Line have waived their exclusive rights so as to share access to certain of New York City Key Attractions, while agreeing with each other and such attractions to forbid Go New York from access to such attractions. *Id.*

For example, Big Bus has exclusive rights for access to Madame Tussauds Wax Museum, which is owned by a corporate affiliate of Big Bus. (R. 70) Yet, Big Bus has waived its exclusivity so as to allow Gray Line to include Madame Tussauds Museum in Gray Line's Multi-Attraction Pass, and Big Bus, Madame Tussauds Museum and Gray Line have at least implicitly agreed to shut out Go New York from access to Madam Tussauds' Museum. (R. 70-71) Likewise, Gray Line has exclusive rights to access to One World Observatory at the World Trade Center for

its Multi-Attraction Pass, but has waived exclusivity to allow only Big Bus access to One World Observatory in Big Bus's Multi-Attraction Pass. But Gray Line, One World Trade Center and Big Bus have at least implicitly agreed to exclude Go New York from access to One World Observatory. (R. 69)

By working together and with various New York City Key Attractions to deny Go New York access to them for Go New York's Multi-Attraction Pass, Respondents and the attractions entered into agreements and implicit arrangements to shut out Go New York from access to the attractions, and in so doing, give themselves unfair competitive advantages in the New York City Hop-on, Hop-off Market. (R. 65-70) This causes substantial harm to consumers, who are denied lower cost Multi-Attraction Passes which would otherwise have been provided to consumers by Go New York. *Id.* As explained in Go New York's pleadings, Go New York could have offered consumers lower cost Multi-Attraction Passes because Go New York's efficient and high technology tour bus operations allow it to reduce prices to consumers while providing service of comparable quality to its competitors. (R. 64)

III. Relevant Procedural History and State Court's Final Order

A. Appellant's Federal Sherman Act Claims

On March 29, 2019, Go New York filed a federal court action in the Southern District of New York against Gray Line, Big Bus, and their respective subsidiaries

and affiliates, asserting claims for antitrust violations under Sections 1 and 2 of the Sherman Act and the Clayton Act, 15 U.S.C. §§ 1, 2, and 15; antitrust violations under New York's Donnelly Act, Gen. Bus. L. § 340; and various common law claims (the "Federal Action").

On November 7, 2019, the federal court, by the Hon. Lewis A. Kaplan, granted the defendants joint motion to dismiss Go New York's First Amended Verified Complaint for failure to plead a valid claim under the §§ 1 and 2 of the Sherman Act and the Clayton Act without prejudice, and granted leave for Go New York to amend its pleading. Judge Kaplan based dismissal of Go New York's §1 of the Sherman Act claims on Go New York's failure to plead facts demonstrating respondents Gray Line and Big Bus formed an express agreement to conspire with one another to exclude Go New York from participating in Multi-Attraction Pass Trade Partnership Agreements or circumstantial evidence and "plus factors" under *Mayor & City Council of Baltimore, Md. v. Citigroup, Inc.*[2] and *Twombly v. Bell Atl. Corp.*:[3]

> Absent direct evidence of a horizontal agreement, which is lacking here, a court may infer a conspiracy based on "conscious parallelism, when . . . interdependent conduct is accompanied by circumstantial evidence and plus factors." "Plus factors" can include a "common motive to conspire, evidence that shows that the parallel acts were against the apparent individual economic self-interest of the alleged

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2 *Mayor & City Council of Baltimore, Md. v. Citigroup, Inc.*709 F.3d 129, 136 (2d Cir. 2013)(quoting *Todd v. Exxon Corp*., 275 F.3d 191, 198 (2d Cir. 2001).

3 *Twombly v. Bell Atl. Corp*., 425 F. 3d 99, 114 (2d Cir. 2005)

> conspirators, and evidence of a high level of interfirm communications." On a generous reading of the FAC, the existence of any plus factors or similar indicia of a conspiracy is implausible.

Go New York Tours, Inc. v. Gray Line New York Tours, Inc., et al., 2019 WL 8435369 (S.D.N.Y. Nov. 7, 2019), *aff'd*, 831 F. App'x 584 (2d Cir. 2020), *cert. denied*, 141 S. Ct. 2571 (2021). Go New York filed a Second Amended Complaint, alleging additional facts in support of violation of Section 1 of the Sherman Act and dropping its claim under Section 2 of the Sherman Act. As is clear from Go New York's Second Amended Complaint, Go New York could have alleged that certain New York City Key Attractions were co-conspirators but it elected not to do so. On March 4, 2020, the federal court granted the defendants joint motion to dismiss the Second Amended Complaint to the extent of dismissing the Sherman Act §1 claim with prejudice. Declining to exercise supplemental jurisdiction over the remaining Donnelly Act and common law claims, Judge Kaplan dismissed those claims without prejudice. The dismissal was affirmed on appeal. Ex. B, Memorandum and Order of the Honorable Lewis Kapan, Docket No. 19-cv-2832, (S.D.N.Y March 4, 2020).

B. Appellant's New York State Donnelly Act Claim

Two months after Go New York filed the above federal action, on May 21, 2019, Taxi Tours, Inc. ("Taxi Tours"), the Big Bus affiliate which operates Big Bus tour buses in New York City, commenced an action in the Supreme Court of the State of New York, County of New York against Go New York, asserting causes of

action for alleged violations of New York's consumer fraud statutes, unfair competition, defamation, and injurious falsehood. On February 6, 2020, Go New York filed its initial answer and counterclaims in the State Action asserting counterclaims against Taxi Tours for violations of the Donnelly Act, Gen. Bus. L. § 340; violations of New York's consumer fraud statutes, Gen. Bus. L. §§ 349 and 350; and common law tortious interference claims. Subsequently, Taxi Tours voluntarily dismissed all of its causes of action.

On May 25, 2021, Go New York filed (with leave of the motion court) an Amended Verified Answer and Counterclaims (the "Counterclaims"). (R. 54-83) The Counterclaims added the remaining Big Bus respondents, their parent companies based in the United Kingdom, and Gray Line as additional defendants in Go New York's First Counterclaim for violations of the Donnelly Act and Second Counterclaim for tortious interference with business relations. The Counterclaims also added the remaining Big Bus Respondents as additional defendants in Go New York's Third and Fourth counterclaims for violations of the consumer fraud statutes. Once again, Go New York elected that it would not name various New York City Key Attractions as parties and co-conspirators, although it could have reasonably done so. On July 16, 2021, Taxi Tours and Open Top Sightseeing USA filed their joint reply to the Counterclaims. (R 101-116) On the same date, Go City North

America LLC and Go City Inc. filed their joint reply to the Counterclaims. (R. 84-100)

C. Respondent's Motions to Dismiss

On July 22, 2021, Gray Line, Twin America, and Sightseeing Pass (referred to herein collectively with Gray Line NY and Twin America as the "Gray Line Defendants") moved to dismiss the Counterclaims under CPLR 3211(a)(7) for failure to state a cause of action. (R. 188-89).

D. The Motion Court's Final Order Dismissing Appellant's Claims

On December 2, 2021, the motion court heard oral argument remotely on both motions to dismiss and ruled from the bench as set forth in the hearing transcript. (R. 9-32)

In dismissing Plaintiff's counterclaim under the Donnelly Act,[4] the motion court explicitly relied on the federal Sherman Act language and federal court's analysis, specifically referencing Sherman Act language of "conspiracy" and "concerted actions:"

> [F]or much the same reasons as articulated by Judge Kaplan, and in the context of New York's very liberal pleading standard of [CPLR] 3013, I am going to grant dismissal of the counterclaims.

[4] The Supreme Court also dismissed Go New York's claim for tortious interference because it was predicated on Go New York's Donnelly Act claims, so "There being no allegation of any statutory violation that survives or allegation of any tort committed by these movants, the [tortious interference] counterclaims …have to be dismissed." (R. 30-31).

> I am going to do both of them, the tortious interference of business relations and, in addition, the Donnelly Act claim.
>
> . . . . there are *no allegations of unlawful concerted actions* by any particular counterclaim defendants. . . .. And it's not a function of giving specific detail, but *it's really essential* to assessing whether there is a cause of action itself. So the failure to identify any specific participants when it comes to allegations that could support a *conspiracy*, they are just not there. It's just not true that there is no rational basis for third-parties to do business with defendants and not plaintiffs other than a conspiracy. Conspiracy can't be the only reason, and it's just not sufficient to support a Donnelly Act claim

E. Supreme Court Appellate Division, First Department's Affirmation of Dismissal

On June 28, 2022, Go New York appealed to the Appellate Division of the Supreme Court, First Judicial Department, seeking reversal of the motion court's dismissal of the Counterclaims under the Donnelly Act and tortious interference for failure to state a cause of action and reversal of the motion court's dismissal of the Counterclaims against Big Bus Tours, Ltd. And Go City Ltd. for lack of personal jurisdiction.

On November 3, 2022, the Appellate Division of the Supreme Court, First Department, affirmed the motion court's dismissal of Appellant's Donnelly Act and tortious interference claims for the same reasons that the lower court dismissed those claims. Specifically, the First Department stated that "Given the lack of any allegations concerning *specific conspiratorial acts* or discussions by the alleged coconspirators, the court properly declined to infer the existence of a conspiracy or

an unlawful anticompetitive arrangement among Gray Line, Taxi Tours, and the attractions…" (Ex. A, Decision and Order, at 3) applying the same incorrect standard the motion court did. Furthermore, the First Department specifically denied Go New York's contention regarding the heightened pleading standard, stating: "Nor does the record support Go New York's contention that Supreme Court applied the more restrictive federal pleading standard to the Donnelly Act claim." *Id.*

IV. Jurisdictional Statement

This action originated in the Supreme Court, New York County. The First Department's Decision and Order is a final determination that completely disposes of Go New York's Donnelly Act and tortious interference Counterclaims. *See* Ex. A, at 4. Accordingly, this Court has jurisdiction over Go New York's motion for leave to appeal and its proposed appeal. *See* CPLR § 5602(a)(1)(i).

V. Statement of Issues Presented for Appellate Review

1. Did the First Department err by failing to hold that the Donnelly Act prohibits a greater range of anti-competitive conduct than that prohibited by the Sherman Act, including anti-competitive arrangements?

2. Did the First Department and the motion court err by failing to apply the appropriate standard at the pleading stage to evaluate whether the pleadings adequately state and provide notice of claims under the Donnelly Act?

As discussed below, the public interest would be served by granting Go New York's Motion for Leave to Appeal. The questions raised here were preserved below. Go New York specifically argued that the Donnelly Act implicated a broad amount of anticompetitive conduct and that New York courts should not adopt the heightened federal pleading standards in evaluating whether pleadings have sufficiently alleged Donnelly Act antitrust claims. (R. 567-575).

VI. Reasons for Granting Leave

Both of the above questions are of critical public importance, as they directly implicate the antitrust protections afforded to the people of the State of New York. As demonstrated, *infra*, the motion court, affirmed by the First Department, wrongly limited the reach of those protections by mistakenly relying on Federal statutory and common law. When they dismissed Go New York's antitrust claims, the lower courts incorrectly evaluated Go New York's antitrust claims using the federal Sherman Act standards, and wrongly applied the heightened federal pleading standard elucidated in *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007) and *Ashcroft v. Iqbal* 556 U.S. 662 (2009), when they should have used New York's long established more liberal pleading standard for Donnelly Act claims, which focus on "notice pleading", namely, whether the pleadings provide fair notice of the claims. CPLR §3013. This misapplication of the law, if allowed to withstand scrutiny by this Court, would unreasonably and substantially dilute the protections provide by

New York's antitrust rights for maintaining free and competitive markets, which benefits consumers.

A. By the Donnelly Act's Very Language and Structure, the New York Legislature Did Not Intend to Limit its Scope to the Sherman Act's Definition of "Conspiracy."

While the federal Sherman Act is limited in scope to anti-competitive commercial conduct arising from an agreement or conspiracy between or among competitors, the Donnelly Act is not. The Sherman Act, as written, addresses exclusively restraints of trade created through contract, combination, or conspiracy between two or more parties:

> Every *contract*, *combinatio*n in the form of trust or otherwise, or *conspiracy*, *in restraint of trade or commerce* among the several States, or with foreign nations, is declared to be illegal.

15 U.S.C §1 (emphasis added). It does not address other anti-competitive conduct: "Because the Sherman Act does not prohibit unreasonable restraints of trade as such -- but only restraints effected by a contract, combination, or conspiracy -- it leaves untouched a single firm's anti-competitive conduct (short of threatened monopolization) that may be indistinguishable in economic effect from the conduct of two firms subject to §1 liability." *Copperweld v. Independence Tube*, 467 U.S. 752, 775 (1984).

In contrast, the language of the Donnelly Act is broader in scope, prescribing more methods of restraining trade than those brought by conspiratorial agreements

between two parties. The Donnelly Act condemns any "arrangement" or "combination" resulting in a monopoly or restraint on free trade or commerce, as well as unitary actions that do or may restrain "competition or the free exercise of any activity in the conduct of any business trade, or commerce":

> Every contract, agreement, *arrangement* or combination whereby a *monopoly in the conduct of any business, trade or commerce* or in the furnishing of any service in this state, is or may be established or maintained, *or whereby competition or the free exercise of any activity in the conduct of any business, trade or commerce* or in the furnishing of any service in this state is or *may be restrained* or whereby for the purpose of establishing or maintaining any *such monopoly or unlawfully interfering with the free exercise of any activity in the conduct of any business, trade or commerce* or in the furnishing of any service in this state *any business, trade or commerce or the furnishing of any service is or may be restrained,* is hereby declared to be against public policy, illegal and void.

N.Y. Gen. Bus. L. §340 (2014) (emphasis added). In limiting the Donnelly Act by exclusively relying on the "conspiracy" requirement of §1 of the Sherman Act and subsequent case law, the motion court essentially rewrote the Donnelly Act. (R. 30-31) In fact, in reviewing Appellant's Donnelly Act counterclaim, the motion court went so far as to pull language straight from the federal Sherman Act rather than the actual language of the Donnelly Act as pleaded by Appellant, and even directly cited Judge Kaplan's reasoning in dismissing Go New York's federal claim under the Sherman Act:

> [F]or much the same reasons as articulated by Judge Kaplan, and in the context of New York's very liberal pleading standard

> of [CPLR] 3013, I am going to grant dismissal of the counterclaims.
>
> . . . . there are *no allegations of unlawful concerted actions* by any particular counterclaim defendants. . .And it's not a function of giving specific detail, but *it's really essential* to assessing whether there is a cause of action itself. So the failure to identify any specific participants when it comes to allegations that could support a *conspiracy*, they are just not there.

(R. 30-31) (emphasis added). In ignoring the expansive language of the Donnelly Act, the motion court left out one of its most important roles: protecting consumer access to competitive prices based on free trade rather than those created through a market controlled by bad actors. The instant case is a prime example where an overly narrow interpretation of the Donnelly Act allows two of the three main competitors in the New York City Hop-on, Hop-off Market to squeeze out the third competitor.

It is well-settled New York law that "the sweep of the Donnelly Act is broader than the Sherman Act. *People v. Schwartz,* No. 1557/86, 1986 WL 55321, at *2 (Sup. Ct. Queens County Oct. 17, 1986) (*citing State v. Mobil Oil Corp*. 38 NY2D 460, 464 (Ct. App. 1976)). Even federal courts recognize that the Donnelly Act may impose liability where federal law does not, such as when the S.D.N.Y dismissed a Sherman Act claim with prejudice, but refused to dismiss a Donnelly Act claim on the grounds that:

> It is not clear that the heightened standard for demonstrating an antitrust conspiracy that governs claims under § 1 of the Sherman Act also applies to the Donnelly Act. The parties have not identified a case from

> the New York state courts that establishes such a principle, and I have found none. It is therefore prudent to dismiss the Donnelly claims without prejudice.

U.S. Information Systems, Inc. v. International Brotherhood of Electrical Workers Local Union No. 3, AFL-CIO, No. 00-civ-4763, 2007 WL 2219513, 15 (S.D.N.Y. Aug. 3, 2007).

Indeed, even Judge Kaplan recognized the broader scope of Donnelly Act claims, when he dismissed Go New York's Donnelly Act claims without prejudice, allowing Go New York to bring Donnelly Act claims in New York state court based on the allegations that were contained in Go New York's federal pleadings. *See* Ex. B, Memorandum and Order of March 4, 2020.

Indeed, unlike the Sherman Act, the Donnelly Act is not restricted to restraints of trade based on "conspiracy" between respondents. N.Y. Gen. Bus. L. §340 (2014). Rather, to sustain an action under the Donnelly Act, a plaintiff merely must allege facts demonstrating respondents (whether acting alone or in parallel) effectuated or "may" have effectuated a "restraint" in the "competition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state. . . ." N.Y. Gen. Bus. L. §340 (2014). Clearly, the Gray Line Defendants and Big Bus Defendants joint coordination with multiple New York City Key Attractions to deny access to Go New York for purposes of bundled packages, is exactly the type of "arrangement" that the Donnelly Act was designed to prevent.

In confining claims alleging violations of the Donnelly Act to the narrower scope of the Sherman Act, and therefore condemning only parties who "conspire" by way of joint, direct "concerted actions", the motion court and the First Department ignore critical language in the text of the Donnelly Act. This leaves consumers exposed to restraints on the free market by individuals or parties acting together that do not quite satisfy the "concerted action" requirement to sustain Sherman Act claims, but which cause substantial harm to competition in the New York market.

B. The Donnelly Act Includes Additional Anti-Competitive "Arrangements" Which Are Not Included in the Sherman Act

Of critical importance here, the lower courts failed to recognize that the Donnelly Act extends to "arrangements," a broader category of cooperative actions which to not require the existence of smoking gun conspiracies or formal agreements. Implicit agreements, such as those alleged in the pleadings in this case, are sufficient. In *People v. American Ice Co*., decided shortly after the Donnelly Act's enactment in 1899, the defendant was criminally charged with attempting to monopolize the ice industry by acquiring ice producers and distributors and obtaining non-compete agreements from them. Explaining the term "arrangement" in a jury charge, the trial court wrote:

> In our judgment it has a broader meaning than either the word "contract," "agreement," or "combination." It may include each and all of these things, and more. . . . It is []defined as: "The disposition of measures for the accomplishment of a purpose; preparation for successful performance." [or] "A

> structure or combination of things in a particular way for any purpose."
>
> It is the theory of the people in this case (and the indictment is drawn accordingly) that all the various contracts, agreements, acquisition of property and rights, by purchase or merger of other corporations, and the various acts set forth in the indictment and proven on this trial, constituted an "arrangement" within the meaning of the statute whereby a monopoly was created, or attempted, and competition restrained or attempted to be restrained.

People v. American Ice Co 29 120 N.Y.S. 443, 4449 (N.Y. Sup. Ct. 1909). Similarly, in *Eagle Spring Water Co. v. Webb & Knapp, Inc*., the trial court granted an injunction against the defendant landlord, who sought to exclude the plaintiff's water delivery and installation personnel from entering its buildings because the landlord had an exclusive agreement with a rival water provider. The court said that "arrangement" "has a broader meaning than the words 'contract,' 'agreement' or 'combination,' and it may include each and all of these things and more – that is, all of the various acts, devices and agreements under which the participants are operating for the accomplishment of their purpose." *Eagle Spring Water Co. v. Webb & Knapp, Inc*., 236 N.Y.S.2d 266, 275 (N.Y. Sup. Ct. 1962). *See also H.L. Hayden Co. of NY, Inc. v. Siemens Medical Sys. Inc.*, 672 F. Supp. 724, 745 n.28 (S.D.N.Y. 1987), aff'd, 879 F.2d 1005 (2d Cir. 1989) ("the word "arrangement" in section 340 may include relationships beyond the "contract[s], combination[s], or conspirac[ies]" proscribed by section 1 of the Sherman Act, and, to that extent, the

Donnelly Act may be slightly broader in scope."); *Harlem River Consumers Co-op., Inc. v. Associated Grocers of Harlem, Inc*., 408 F. Supp. 1251, 1283 (S.D.N.Y. 1976) ("The term 'arrangement' has been interpreted in a way which gives the Donnelly Act a scope somewhat broader than that of Section 1 of the Sherman Act.") (*citing American Ice*, 120 N.Y.S. 443).

Notably, in both *American Ice* and *Eagle Spring Water*, the defendant seemingly had actually made one or more agreements with co-conspirators, which likely could have satisfied the Sherman Act's "concert of action" element. Nevertheless, each court explicitly affirmed that the term "arrangement" covered conduct beyond "agreements." *See People v. American Ice Co*., 120 N.Y.S. 443, 449 (Sup. Ct. N.Y. County 1909). *See also Eagle Spring Water Co. v. Webb & Knapp, Inc.*, 236 N.Y.S.2d 266, 275 (Sup. Ct. N.Y. County 1962). In *Alexander's Department Stores v. Ohrbachs, Inc*., the court similarly concluded that "[a]n arrangement condemned by these statutes is unlawful even if it does not rise to the dignity of a contractual obligation." *Alexander's Department Stores v. Ohrbachs, Inc*., 180 Misc. 18, 26 (Sup. Ct. N.Y. County 1943), rev'd on other grounds, 266 A.D. 535 (1st Dep't 1943), appeal dismissed, 291 N.Y. 707 (1943).

Evidence gathered from New York City Key Attractions reveals that the Big Bus Defendants and the Gray Line Defendants worked together at least implicitly to exclude Go New York from offering Multi-Attraction Passes by using their

combined market power to pressure, persuade, dissuade, and even so far as to intimidate New York City Key Attractions from entering Trade Partnership Agreements with Go New York. Multiple New York City Key Attractions, such as Top of the Rock, the Empire State Building Observatory, the Intrepid Museum, and various others, have told Go New York that they cannot or can no longer work with Go New York, even though they continue to work with both Gray Line and Big Bus Tours. (R. 67-71) In many instances, the attractions have expressly justified their refusals to work with Go New York as being necessary to preserve their relationships with Gray Line, Big Bus Tours, or both of them. *Id.* Some New York City Key Attractions with existing relationships with Go New York report that the Big Bus Defendants and/or the Gray Line Defendants conveyed to them that if they participated in Go New York's Multi-Attraction Passes, the Big Bus Defendants and/or the Gray Line Defendants would cease to include them in their own Multi-Attraction Passes. (R. 72, at ¶46).

It is all the more troubling that the lower courts found that Go New York had not adequately pled an "arrangement" for the purposes of the Donnelly Act, as Go New York alleged *actual agreements* between certain New York City Key Attractions and the Big Bus Defendants and Gray Line Defendants. For instance, Madame Tussauds, which shares common ownership with the Big Bus Defendants, severed ties with Go New York owing to an allegedly "exclusive" relationship with

Big Bus. (R. 70-71) However, despite its allegedly exclusive relationship with Big Bus, Madame Tussauds continues to partner with Gray Line with knowledge and at least implicit consent of Big Bus, which waived exclusivity to allow Gray Line to have access to Madam Tussauds. *Id.* ***The Lower Courts inexplicably and erroneous failed to recognize that this constituted allegations of an implicit agreement among Gray Line, Big Bus and Madame Tussauds to exclude Go New York***. At the very least, this should have qualified as an anticompetitive "arrangement".

The same is true of One World Observatory at the World Trade Center, except in reverse. Indeed, representatives of One World Observatory even cited its exclusive relationship with Gray Line when refusing to do business with Go New York. (R. 69) However, One World Observatory continues to do business with Big Bus, with at least implicit consent of Gray Line, which waived its exclusive rights to allow Big Bus to have access, while Gray Line, Big Bus and One World Observatory have at least implicitly agreed among themselves to exclude Go New York from access to this attraction. *Id.*

These waivers of exclusivity by Big Bus and Gray Line in connection with agreements with certain attractions to forbid Go New York from having access for purpose of Go New York's Multi-Attraction Pass are anticompetitive arrangements that fall squarely within the scope of the Donnelly Act, and the lower courts committed a clear abuse of discretion by deciding otherwise.

"[A]ntitrust laws are meant to protect competition and not competitors... To demonstrate harm to competition, a plaintiff must show that there has been an adverse effect on prices, output, or quality of goods in the relevant market as a result of the challenged actions." *Aventis Envtl. Sci. USA LP V Scotts Co.,* 383 F. Supp. 2d 488, 503 (S.D.N.Y 2005). Go New York has demonstrated *substantial* harm to the consuming public and the free market based on Defendants anticompetitive coercion and threats to eliminate competition in the New York City Hop-on, Hop-off market. The Court of Appeals should not allow this harm to the people of the state of New York to go unchecked by the lower courts.

C. The Lower Courts Improperly Restricted Go New York's, and All New York Citizens', Right to Bring Antitrust Claims Under the Donnelly Act.

Under New York Law, upon a motion to dismiss for failure to state a cause of action the pleading is assessed as to "whether the facts alleged fit within *any cognizable* legal theory." *Porco v. Lifetime Ent. Servs., LLC*, 147 A.D.3d 1253, 1254 (3d Dep't 2017) (emphasis added). Pleadings are to be "liberally construed in favor of the plaintiff." *E. Consol. Properties, Inc. v. Lucas*, 285 A.D.2d 421, 421–22 (1st Dep't 2001) (emphasis added). The "Court must . . . accept as true the allegations contained therein, accord the plaintiff the benefit of every favorable inference . . ." *Porco,* at 1253 (internal citations and quotation marks omitted). "[I]f 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. Ginzburg*, 43 N.Y.2d 268, 275 (Ct. App. 1977). *See Leon v. Martinez*, 84 N.Y.2d 83, 87–88 (Ct. App. 1994) (holding same). Notice is the ultimate test of sufficiency at the pleading stage. CPLR §3013.

Therefore, under the Donnelly Act, at the pleading stage, Appellant "only needs to allege enough facts so suggest there was an agreement… to satisfy the Donnelly Act requirements of a conspiracy." *Telerep v U.S. Intl. Media, LLC,* No. 600831/2019, slip. op. at 15-16 (N.Y. Sup. Ct. April 11, 2011) (*citing Starr v Sony BMG Music Entm't,* 592 F.3d 314, 321 (2nd Cir. 2010)). Probability is not required, rather, "there must be enough facts 'to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct].'" *Id.* (*quoting Starr,* 592 F.3d at 321) Plausible conspiracy for purposes of pleadings includes "[A]llegations of parallel conduct . . . placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action" *Id.* Parallel conduct that satisfies the pleading requirements would "include parallel behavior that would probably not result from chance, coincidence, independent responses to common stimuli, or mere interdependence unaided by an advance understanding among the parties… allegations of parallel conduct must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action" *Id.* [internal quotations omitted].

The motion court acknowledged that Go New York's Donnelly Act claim specifically identified New York Key Attractions who reported Respondents as the reasons behind their refusals to enter into or continue Multi-Attraction Pass Trade Partnership Agreements with Go New York. (R. 25, 31) However, rather than apply the proper standard, the motion court explicitly referenced the actual "concerted action" federal standard:

> …there are *no allegations of unlawful concerted actions* by any particular counterclaim defendants…And it's not a function of giving specific detail, but *it's really essential* to assessing whether there is a cause of action itself. So the failure to identify any specific participants when it comes to allegations that could support a *conspiracy*, they are just not there.

(R. 30-31) (emphasis added). In other words, the motion court went beyond the requirement of demonstrating "plausible" concerted action, to require "actual concerted" action. The motion court went on to state:

> [M]uch like Judge Kaplan, I don't understand and have gone through . . . all of the different attractions that are listed. For example, for Top of the Rock the allegations are that Top of the Rock consistently rejects Go New York and that there is no rational reason other than the counterclaim defendants required it not to do business with Go New York . What I don't have is the who or the how. What did Go New York do? I mean, *there are other rational reasons, much like Judge Kaplan said*.

In dwelling on whether an antitrust conspiracy was the *only* or even the *most* rational explanation for the Attractions' refusals to deal with Go New York, the motion court improperly adopted the federal pleading standard articulated in

Twombly. *See, e.g.*, *Twombly*, 550 U.S. at 545. This was a clear error of law, as stated in the seminal First Department case on the issue, *Williams v. Citigroup, Inc.,* "dismissal with prejudice of plaintiff's Sherman Act claim at the pleading stage has no preclusive effect, in light of the heightened pleading requirements for antitrust claims in federal court." *Williams v. Citigroup, Inc.*, 104 A.D.3d 521, 522, 962 N.Y.S.2d 96 (1st Dep't 2013). Instead, what the court should have looked at is if from the "four corners [of the counterclaims, any] factual allegations are discerned which taken together manifest *any cause of action cognizable* at law..." *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (Ct. App. 1977). *See also Leon v. Martinez*, 84 N.Y.2d 83, 87–88 (Ct. App. 1994) (holding same).

Go New York alleged that Respondents conspired to monopolize the New York City Hop-on, Hop-off Market by horizontally excluding Go New York from offering Multi-Attraction Passes as part of its offerings. This was effectuated by including exclusivity provisions in Trade Partnership Agreements with New York Key Attractions and discouraging New York Key Attractions from doing business with Go New York through disparagement and threats. (R. 69-72) Consequently, each Respondent was able to control the New York City Hop-on, Hop-off Market prices by controlling access to Key Attractions. *Id.* Furthermore, Go New York alleges actual arrangements between the Gray Line Defendants, the Big Bus Defendants, and certain attractions, such as One World Observatory and Madame

Tussaud's, whereby one of the Big Bus Defendants or the Gray Line Defendants would enter into allegedly exclusive relationships with said attraction, but allow the other Hop-On, Hop-Off Tour Bus company into the "exclusive" relationship, while at least implicitly agreeing with each other and the attraction to forbid access for Go New York. (R. 69-71) These attempts at monopolizing the New York City Hop-on, Hop-Off market clearly give rise to a "cognizable action at law."

In these circumstances, the First Department abused its discretion when it found: "Nor does the record support Go New York's contention that Supreme Court applied the more restrictive federal pleading standard to the Donnelly Act claim." Ex. A, Decision and Order, at 2. These clear errors substantially impact the rights of the citizens of New York to bring antitrust claims and are thus of matters of great public interest which should be corrected by the Court of Appeals.[5] If left unchecked, New Yorkers will be powerless to bring claims where there is plausible evidence of anticompetitive conduct, simply because a reviewing court can find "another rational reason" behind attempts at monopolization. Such judicial overreach greatly narrows the bundle of rights justly given to the citizens of New York by the state legislature in the Donnelly Act.

[5] If this Court deems it proper to overturn the First Department's dismissal of Go New York's Donnelly Act claims, it should also reinstate Go New York's claims for tortious interference, as those claims are predicated on the Donnelly Act claims.

CONCLUSION

For the foregoing reasons, the Court of Appeals should grant leave to Go New York to Appeal the Decision and Order of the Appellate Division of the Supreme Court, First Department.

Dated: New York, NY
December 7, 2022

BARTON LLP

By: _____

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Plaintiff Go New York Tours, Inc.

Rule 500.1(f) Corporate Disclosure Statement

Defendant/Counterclaim-Plaintiff/Petitioner/Appellant Go New York, Inc., is not a publicly held corporation and has no subsidiaries or affiliates.

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TAXI TOURS INC., Plaintiff, -against- GO NEW YORK TOURS, INC., Defendant.	Index No. 653012/2019 I.A.S. Part 54 Hon. Jennifer G. Schecter, J.S.C.
GO NEW YORK TOURS, INC., Counterclaim-Plaintiff, -against- BIG BUS TOURS LIMITED, OPEN TOP SIGHTSEEING USA, INC., TAXI TOURS, INC., GO CITY LIMITED, GO CITY NORTH AMERICA, LLC, GO CITY, INC., GRAY LINE NEW YORK TOURS, INC., TWIN AMERICA, LLC, and SIGHTSEEING PASS LLC, Counterclaim-Defendants.	

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true copy of the Appellate Division, First Judicial Department's Decision and Order (Renwick, J.P., Kern, Moulton, Mendez, Pitt, JJ.) signed by the Honorable Susanna Molina Rojas, Clerk of the Court on November 3, 2022 and entered in the Office of the Clerk of the Supreme Court of the State of New York, County of New York, on November 3, 2022.

Dated: November 8, 2022

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Company

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Counsel for Respondents Gray Line New York Tours, Inc., Twin America, LLC, and Sightseeing Pass LLC

TO (via NYSCEF):

All Counsel of Record

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Renwick, J.P., Kern, Moulton, Mendez, Pitt, JJ.

16592 TAXI TOURS INC.,
Plaintiff-Counterclaim Defendant,

Index No. 653012/19
Case No. 2022-01029

-against-

GO NEW YORK TOURS, INC.,
Defendant-Appellant.

_____

GO NEW YORK TOURS, INC.,
Counterclaim Plaintiff-Appellant,

-against-

BIG BUS TOURS LIMITED et al.,
Counterclaim Defendants-Respondents,

GO CITY NORTH AMERICA, LLC, et al.,
Counterclaim Defendants.

Barton LLP, New York (Maurice N. Ross of counsel), for appellant.

Olshan Frome & Wolosky LLP, New York (Peter M. Sartorius of counsel), for Big Bus Tours Limited and Go City Limited, respondents.

Wilson Sonsini Goodrich & Rosati, P.C., New York (Kenneth M. Edelson of counsel), for Gray Line New York Tours, Inc., Twin America, LLC, and Sightseeing Pass LLC, respondents.

Order, Supreme Court, New York County (Jennifer Schecter, J.), entered January 3, 2022, which, to the extent appealed from as limited by the briefs, granted the motion of counterclaim defendants Gray Line New York Tours, Inc., Twin America, LLC, and Sightseeing Pass LLC (collectively, Gray Line) to dismiss the counterclaim seeking recovery under the Donnelly Act (General Business Law § 340 *et seq.*) and the

counterclaim for tortious interference with prospective business relations for failure to state a claim, and granted the motion of counterclaim defendant Big Bus Tours Limited to dismiss the counterclaims for lack of personal jurisdiction, unanimously affirmed, without costs.

The antitrust counterclaim under the Donnelly Act failed to state a cause of action, as it did not contain facts sufficient to support the allegations that Gray Line conspired with defendant Taxi Tours, a nonparty to this appeal, to disrupt the tour bus market by pressuring various popular New York City tourist attractions to forego partnerships with counterclaim plaintiff Go New York. Given the lack of any allegations concerning specific conspiratorial acts or discussions by the alleged coconspirators, the court properly declined to infer the existence of a conspiracy or an unlawful anticompetitive arrangement among Gray Line, Taxi Tours, and the attractions (*see Thome v Alexander & Louise Calder Found.*, 70 AD3d 88, 111 [1st Dept 2009], *lv denied* 15 NY3d 703 [2010]). Nor does the record support Go New York's contention that Supreme Court applied the more restrictive federal pleading standard to the Donnelly Act claim.

Likewise, the counterclaim for tortious interference with prospective business relations, which is based on allegations of wrongful economic pressure, fails to state a cause of action. The "wrongful means" underlying the counterclaim is based upon counterclaim defendants' alleged violations of the Donnelly Act – specifically, that with the goal of reducing competition in the tour bus market, they falsely disparaged Go New York to the various tourist attractions and threatened to stop doing business with them if the attractions did business with Go New York (*see Guard-Life Corp. v Parker Hardware Mfg. Corp.*, 50 NY2d 183, 191 [1980]). However, as noted above, and as

Supreme Court found, Go New York failed to state a claim under the Donnelly Act. Further, there were no other allegations that counterclaim defendants' conduct amounted to a crime or an independent tort, or that the means they allegedly used to interfere with Go New York's business were sufficiently "extreme and unfair" so as to constitute wrongful means (*see Carvel Corp. v Noonan*, 3 NY3d 182, 192 [2004]). The counterclaims also did not allege that the sole purpose of counterclaim defendants' actions was a desire to intentionally inflict harm on Go New York (*see id.* at 190).

As to the jurisdictional issues, Go New York's allegations against Big Bus Tours Limited failed to set forth facts sufficient to support the exercise of long-arm jurisdiction under CPLR 302. In addition, Supreme Court providently exercised its discretion in denying jurisdictional discovery. Go New York offered no tangible evidence constituting a "sufficient start" to a showing that jurisdiction could exist against Big Bus Tours Limited, which is a UK company (*SNS Bank N.V. v Citibank, N.A.*, 7 AD3d 352, 354 [1st Dept 2004]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: November 3, 2022

Susanna Molina Rojas
Clerk of the Court

EXHIBIT B

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/4/2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GO NEW YORK TOURS, INC.,

Plaintiff,

-against-

19-cv-02832 (LAK)

GRAY LINE NEW YORK TOURS, INC., TWIN AMERICA, LLC, SIGHTSEEING PASS LLC, BIG BUS TOURS GROUP HOLDINGS LIMITED, BIG BUS TOURS GROUP LIMITED, BIG BUS TOURS LIMITED, OPEN TOP SIGHTSEEING USA, INC., TAXI TOURS, INC., LEISURE PASS GROUP HOLDINGS LIMITED, LEISURE PASS GROUP LIMITED, LEISURE PASS GROUP, INC.,

Defendants.

----------x

MEMORANDUM AND ORDER

LEWIS A. KAPLAN, *District Judge.*

The Court previously dismissed plaintiff's Sherman Act § 1 claim because the first amended complaint failed to allege the necessary "plus factors" amounting to a horizontal conspiracy between defendants. The second amended complaint, which is virtually identical in relevant part, contains no new allegations that cure this defect. The claim is dismissed with prejudice.

Plaintiff has abandoned the previously dismissed Sherman Act § 2 claim by not asserting it in the second amended complaint. Thus, the Court does not reach this claim.

The remaining claims in this action, all of which previously were dismissed under Rule 12(b)(6) or withdrawn by plaintiff, arise under New York law. The only jurisdictional basis plaintiff asserts for these claims is supplemental jurisdiction.[1] Other than the previous motion, there have been no substantial proceedings in this case. No useful purpose would be served by retaining the state law claims.

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[1] The complaint cites to 28 U.S.C. § 1337, which does not confer supplemental jurisdiction. Dkt. 84 at 6. The Court presumes this is a clerical error and plaintiff intended to refer to 28 U.S.C. § 1367.

The motion to dismiss [DI-87] is granted to the extent that the federal claims are dismissed with prejudice.[2] The Court exercises its discretion to dismiss the remaining state law claims for lack of supplemental jurisdiction.

SO ORDERED.

Dated: March 4, 2020

Lewis A. Kaplan
United States District Judge

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[2] Defendants have consented to personal jurisdiction by opting not to renew their motion to dismiss on that ground, which the Court previously denied as moot. *See* Dkt. 88 at 3 n.3 ("The [so-called] Foreign Defendants are not filing a renewed motion to dismiss the [second amended compliant] on jurisdictional grounds . . . ."); *see also* Fed. R. Civ. P. 12(h)(1) (stating that a defense under Rule 12(b)(2) is waived when a party fails to assert it in a responsive pleading).

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

TAXI TOURS INC., Plaintiff/Counterclaim-Defendant, -against- GO NEW YORK TOURS, INC., Defendant/Counterclaim-Plaintiff	Index No. 653012/2019 Hon. Jennifer G. Schecter Part 54 **Motion Sequence No. 006** **NOTICE OF ENTRY**
GO NEW YORK TOURS, INC., Counterclaim Plaintiff, -against- BIG BUS TOURS LIMITED, OPEN TOP SIGHTSEEING USA, INC., TAXI TOURS INC., GO CITY LIMITED, GO CITY NORTH AMERICA, LLC, GO CITY, INC., GRAY LINE NEW YORK TOURS, INC., TWIN AMERICA, LLC, and SIGHTSEEING PASS LLC, Counterclaim Defendants.	

PLEASE TAKE NOTICE that a Decision + Order on Motion, dated December 2, 2021 (NYSCEF 238), of which the attached Exhibit A is a true copy and pursuant to which Counterclaim Defendants Big Bus Tours Limited and Go City Group Limited (f/k/a Leisure Pass Group Limited) were dismissed from the action for lack of personal jurisdiction (*see* attached as Exhibit B, Oral Arg. Tr. at 12:8-16, NYSCEF 241), was duly entered in the office of the Clerk of the Court, Supreme Court of the State of New York, County of New York, on December 2, 2021.

Dated: December 22, 2021
New York, New York

Respectfully submitted,

LATHAM & WATKINS LLP

By: /s/ *Michael Lacovara*

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JENNIFER SCHECTER** **PART 54**

Justice

----------X

INDEX NO 653012/2019

MTN SEQ NOS 006 007

TAXI TOURS INC.,OPEN TOP SIGHTSEEING USA, INC.,BIG BUS TOURS LIMITED,

Plaintiffs,

- v -

GO NEW YORK TOURS, INC.,GRAY LINE NEW YORK TOURS, INC.,TWIN AMERICA, LLC,SIGHTSEEING PASS LLC,GO CITY LIMITED, GO CITY NORTH AMERICA, LLC,GO CITY, INC,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 149, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 203, 204, 205

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 206

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is ORDERED that, for the reasons stated on the record, the motions by Big Bus Tours Limited and The Leisure Pass Group Limited and by Gray Line New York Tours, Inc., Twin America, LLC, and Sightseeing Pass LLC to dismiss the counterclaims asserted against them by Go New York Tours, Inc. are GRANTED, the Clerk is directed to enter judgment accordingly, and the remaining counterclaims are hereby severed and shall continue. Movants are to e-file the transcript within 45 days.

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12/2/2021
DATE

CHECK ONE: [ ] **CASE DISPOSED** [X] **NON-FINAL DISPOSITION**

[X] **GRANTED** [ ] **DENIED** [ ] **GRANTED IN PART** [ ] **OTHER**