IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JANE DOE,	)	
Plaintiff,	)	
v.	)	**No. 2017 L 11355**
	)	
LYFT, INC.; LYFT ILLINOIS, INC.;	)	
ANGELO MCCOY; and	)	
STERLING INFOSYSTEMS, INC. d/b/a	)	
STERLING TALENT SOLUTIONS,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Before the Court is defendant Lyft's 2-615 partial motion to dismiss. The matter is fully briefed, including supplemental briefing at the request of the parties. The Court has reviewed all submitted materials and has considered the well-articulated arguments made by counsel on both sides. As reflected in the extensive briefing, this case raises several significant issues of first impression. Following the hearing, the Court invited the parties to propose questions for Supreme Court Rule 308 certification, and then certified two questions.

Plaintiff then brought an emergency motion to clarify the Court's order, seeking clarity on whether the Court, in certifying questions of law under Rule 308, had intended to grant or deny the 2-615 motion. The Court offered an additional opportunity to provide supplemental authority on whether questions could be certified under Rule 308 without issuing a ruling on an underlying motion. As a result of the additional briefing, the Court vacated the order of April 17, 2019, took plaintiff's motion to clarify under advisement, and continued this matter for ruling to today.

Although neither side was able to identify Illinois authority that specifically addresses the necessary content for "an interlocutory order not otherwise appealable" under Rule 308 to certify a question to the Appellate Court, the guidance provided by the Court's footnote in *Moore v. Chicago Park District*, 2012 IL 112788, persuades this Court, in an abundance of caution and for the sake of judicial economy, to issue the following ruling on defendant's 2-615 motion and re-certify questions of law under Rule 308.

While defendant's partial motion to dismiss is brought under section 2-615, the parties have substantially litigated issues that include affirmative matter, including 625 ILCS 57/25. A court considering a 2-615 motion may consider "matters of which the court may take judicial notice," *Pooh-Bah Enters., Inc. v. Cty. of Cook*, 232 Ill. 2d 463, 473 (2009). Public government records, including statutes, are within the realm of those matters. *In re W.S.*, 81 Ill. 2d 252, 257

(1980). *See also Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002) (ruling on the merits of a 2-615 motion that should have been brought under 2-619 where the improper designation did not prejudice the plaintiff). Thus, the Court provides its findings and ruling as follows.

I.

This case arises from a heinous criminal act. The Court's analysis proceeds with the gravity of the underlying facts at the forefront of the Court's attention.

On the night of July 7, 2017, Jane Doe was abducted, driven to a dark alley, zip-tied, and sexually assaulted at knife-point in the back seat of a vehicle operated by defendant Angelo McCoy, who was a driver for Lyft at the time. Jane Doe used Lyft's app to hail a ride. Through the Lyft app, Lyft provided McCoy to be her driver.

In its motion, Lyft seeks dismissal of counts III (assault and battery) and IV (false imprisonment), asserting that plaintiff has failed to state a legally sufficient claim upon which relief can be granted. This Court previously granted Lyft's motion to dismiss the counts against Lyft Illinois, Inc. with prejudice, as "Lyft Illinois" was an assumed corporate name used by Lyft, Inc. pursuant to 805 ILCS 5/4.15.

II.

In Illinois, a plaintiff bringing a claim for vicarious liability under the doctrine of *respondeat superior* must plead: 1) that a principal/agent relationship existed; 2) that the principal controlled or had the right to control the conduct of the alleged employee or agent; and 3) that the alleged conduct of the agent or employee fell within the scope of the agency or employment. *Wilson v. Edward Hosp.*, 2012 IL 112898. Lyft argues that counts III and IV of plaintiff's complaint are legally deficient because an employer cannot be held liable for acts that are beyond the scope of employment or agency as a matter of law.

Our Supreme Court held in *Deloney v. Board of Education*, 281 Ill. App. 3d 775 (1996), that an employee who had committed sexual assault did so "solely for his personal benefit," and that "as a matter of law, his alleged actions were outside the scope of employment." *Id.* at 786-788. Applying *Deloney*, the court in *Doe v. Lawrence Hall Youth Services*, 2012 IL App (1st) 103758, affirmed the 2-615 dismissal of a claim for *respondeat superior* liability because "sexual assault *by its very nature* precludes a conclusion that it occurred within the employee's scope of employment under the doctrine of *respondeat superior*." *Id.* at ¶28 (emphasis added). Illinois courts have consistently held that the criminal acts of false imprisonment and sexual assault are beyond the scope of employment; as a general matter, the doctrine of *respondeat superior* does not expose principals to liability for criminal acts committed by their agents where those acts are "solely for the benefit of the employee." *Deloney*, 281 Ill. App. 3d at 783 (*citing Gambling v. Cornish*, 426 F. Supp. 1153 (N.D. Ill. 1977)).

III.

An exception to the general scope of employment rule exists where an agent's employer owes an individual a heightened duty of care. Under such circumstances, an employer may be liable for the torts of its agent, even if committed outside the scope of actual or apparent employment. *McNerney v. Allamuradov*, 2017 IL App (1st) 153515, ¶76. The issue of whether plaintiff's complaint is legally sufficient therefore turns on whether she has sufficiently pleaded that Lyft owed her a heightened duty of care.

Plaintiff states in her complaint that Lyft is a common carrier. Compl. ¶101 ("Lyft, Inc., as a common carrier, owed the highest duty of care to provide a safe environment for its patrons that were lawfully in its vehicles."). "Courts have historically held that a hotel or common carrier ... must exercise the 'highest degree of care.'" *Gress v. Lakhani Hospitality*, 2018 IL App (1st) 170380, ¶16. Plaintiff cites to *Illinois Highway Transp. Co. v. Hantel*, 323 Ill. App. 364 (1944) to support her claim that pleading alone, at the 2-615 stage, is sufficient to establish such status. But the facts in *Illinois Highway*, decided in 1944, are distinguishable from those in the instant case. *Illinois Highway* dealt with a question of common carrier status to determine whether an alleged carrier was subject to regulation. Here, the question of whether Lyft is a common carrier is a question about the duty of care that it owes its passengers.

A question about the existence of a tort duty is a question of law. *Doe v. Sanchez*, 2016 IL App (2d) 150554, ¶¶20-21. Moreover, entities are often specifically designated as common carriers – or not – by various statutes. *See e.g.* 625 ILCS 57/25(e). Plaintiff's assertion, therefore, is a legal conclusion that is not automatically deemed admitted for the purposes of Lyft's motion.

In its reply, Lyft cites to Illinois' Transportation Network Providers Act ("TNPA"), 625 ILCS 57/1, *et seq.*, which regulates "[t]ransportation network[ing] compan[ies]" ("TNCs"). The TNPA defines a TNC as "an entity ... that uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers." 625 ILCS 57/5. The TNPA was enacted in 2015. It expressly states that "TNCs or TNC drivers are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle services." 625 ILCS 57/25(e).

There is no dispute that Lyft is a transportation networking company. Plaintiff pleads in her complaint that "LYFT is a *transportation networking company* that provides a mobile application as an online enabled platform connecting passengers with drivers using personal vehicles." Compl. at ¶6 (emphasis added). Section 25(e) of the TNPA, plainly read, is a carve-out for TNCs. It establishes, as a matter of law, that Lyft is not a common carrier.

IV.

Following Lyft's argument in its reply that the TNPA specifically exempts it from common carrier status, plaintiff filed an emergency motion to allow supplemental briefing, which the Court granted. In this briefing, the parties dispute yet another layer of analysis: whether the TNPA, and specifically Section 25(e) thereof, is constitutional.

"Lyft's argument that [it] is specially protected from common carrier status by the TNPA," plaintiff argues at page 2 in her sur-reply, "nonetheless fails because the provision of that statute upon which it relies - Section 25(e) - violates the ban on special legislation found in article IV, section 13 of the Illinois Constitution, and should therefore be struck down by this Court and disregarded for purposes of Lyft's potential liability."

As a procedural matter, Illinois Supreme Court Rule 19 requires that "in any cause or proceeding in which the constitutionality ... of a statute ... is raised, and to which action or proceeding the State or the political subdivision, agency, or officer is not already a party, the litigant raising the constitutional ... issue shall serve an appropriate notice thereof on the Attorney General, State's Attorney, municipal counsel or agency attorney, as the case may be."

Illinois Supreme Court Rule 18 requires "that the notice required by Rule 19 has been served, and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute, ordinance, regulation, or other law challenged," and that in lieu of this, "a court shall not find unconstitutional a statute, ordinance, regulation, or other law. Rule 19 notice was not served upon the Attorney General's office prior to the February 8, 2019 hearing on this motion.

Where a plaintiff has failed to comply with the Supreme Court Rules, courts are barred from finding the TNPA – or any statute – unconstitutional. The Rules, however, only prevent a Court from finding that a statute is *unconstitutional*. That restriction is not at issue in this ruling; for the reasons that follow, this Court finds that the TNPA, including Section 25, is constitutional.

Regardless of the procedural issues, a LexisNexis Shepard's report created this morning, June 4, 2019, lists neither a single citing decision nor other citing source for Section 25 of the TNPA, which leads this Court to believe that this issue is a seminal matter of first impression.[1] Accordingly, a detailed analysis of the relevant issues is appropriate.

Plaintiff's contention is that Section 25(e) "on its face ... sets ridesharing companies like Uber and Lyft apart from other transportation companies," and that it therefore violates the special legislation clause of the Illinois Constitution. That clause provides that "[t]he General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, § 13. This clause "expressly prohibits the General Assembly from

[1] https://advance.lexis.com/api/permalink/218bff5d-026e-4bed-a2e6-039fe23a5c83/?context=1000516

conferring a special benefit or exclusive privilege on a person or group of persons to the exclusion of others similarly situated." *Best v. Taylor Mech. Works*, 179 Ill. 2d 367, 391 (1997).

In support of her assertion that the TNPA violates the special legislation clause, plaintiff points to various aspects of the statute's legislative history. She argues, for example, that "the rewritten bill ... favored rideshare companies at the expense of all other persons and interests." Plaintiff's Sur-Reply, p. 7.

The Illinois Supreme Court held in *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12 (2003), that "where ... the statute under consideration does not affect a fundamental right or involve a suspect classification, it will be judged under the rational basis test." *Id.* at 22. Neither plaintiff nor Lyft disputes the applicability of the rational basis test in this instance. "Under this test, the statute is constitutional if the legislative classification is rationally related to a legitimate state interest." *Id.*

The rational basis test is a very low threshold; statutes "carry a strong presumption of constitutionality, and the party challenging a statute has the burden of rebutting the presumption." *Crusius v. Ill. Gaming Bd.*, 216 Ill. 2d 315, 324 (2005). Because courts should defer to the legislature's policy decisions, courts have a "duty to uphold the constitutionality of a statute if it is reasonably possible to do so." *Id.* Recognizing that courts are not lawmakers, the special legislation clause of the Illinois Constitution permits striking down legislation only in those rare circumstances where a statute "mak[es] classifications that arbitrarily discriminate in favor of a select group." *Id.* at 325. Accordingly, the question before the Court is whether the TNPA discriminates arbitrarily. For the reasons that follow, this Court finds that it does not.

A statute is not arbitrary when it "is based upon some real and substantial difference in kind, situation or circumstance in the persons or objects on which the classification rests, and which bears a rational relation to the evil to be remedied and the purpose to be attained by the statute." *Grasse v. Dealer's Trans. Co.*, 412 Ill. 179, 194 (1952). If the "Court can reasonably conceive of any set of facts that justify a distinction between the class the statute benefits and the class outside its scope, [it] will uphold the statute." *GMC v. State Motor Vehicle Review Bd.*, 224 Ill. 2d 1, 31 (2007).

Counsel for Lyft noted at oral argument that 21 other states thus far have held that TNCs are not common carriers. Transcript p. 36 at 3-14. The TNPA's legislative history, contrary to plaintiff's claims, provides a wide array of justifications like those contemplated in *GMC*. While plaintiff correctly notes that the procedural hook the legislature used to pass the TNPA was abnormal, she does not allege that the legislature itself violated any legislative or constitutional procedural rules. Such a process is uncommon – but not disallowed – and the record explains *why* the legislature took this route. Indeed, the record before the Court contains "about five pounds of legislative history." Transcript p. 37 at 10-12.

During floor discussions, Rep. Ives questioned "why ... is there a rush to get this done," giving voice to what appear to be concerns similar to those raised by plaintiff in her briefing. Rep. Zalewski answered: "There [are] two reasons why I want to do it now. The first is because we said we would. When we agreed not to call the Motion, we said we would work this out

before the expiration of this General Assembly. ... The second reason[] behind it is this is ... a very hard issue to deal with in terms of legislation and statute making. And I don't feel as though this issue can linger on, because it's just hard to get agreement on these issues. ... My feeling is that if we have agreement we should pass a Bill and not risk having this regulatory vacuum in the state of Illinois."

Following the period of discussion, SB 2774 passed the General Assembly by overwhelming majority. In total, 105 "yes" votes, 7 "no" votes, and 2 "present" votes were recorded. The Senate's vote on the bill was 52 "aye," 2 "nay," and 1 "present." By any metric, the legislation now before the Court had mass approval by both chambers of the legislature. Such a wide margin runs contrary to plaintiff's concerns that the legislature itself faced great internal conflict about the bill picking "winners and losers." But it was not just the legislature that supported the bill. Critically, the Illinois Transportation Trade Association is indicated as a proponent on the witness slip records for the TNPA. *See* Lyft's Sur-sur-reply Ex. 12. The ITTA is more commonly known as the leading taxicab lobbying organization in Illinois. Taxicabs, of course, are the most obvious economic opponents of TNCs. Their support for the TNPA is a strong sign that the Act avoids picking economic winners and losers.

The taxicab lobby's support for the bill should be accorded heightened significance, given the lobby's opposition to the differential regulation of TNCs in other legal arenas. In 2016, the 7th Circuit issued its opinion in *Illinois Transportation Trade Association v. City of Chicago*, 839 F.3d 594 (7th Cir. 2016). Writing for the majority, now-retired Judge Richard Posner opined as follows:

> "The plaintiffs argue that the City has discriminated against them by failing to subject Uber and the other [TNCs] to the same rules about licensing and fares (remember that taxi fares are set by the City) that the taxi ordinance subjects the plaintiffs to. That is an anticompetitive argument. Its premise is that every new entrant into a market should be forced to comply with every regulation applicable to incumbents in the market with whom the new entrant will be competing." *Id.* at 597.

In *Illinois Transportation*, the ITTA sued the City of Chicago over its ordinance regulating companies like Lyft. That ordinance was new and separate from the existing and long-standing ordinance governing taxicabs. The ITTA argued, in essence, that such disparate treatment would be disadvantageous to them. Put in terms similar to those alleged by plaintiff here, they believed that the ordinance would disrupt their market by impermissibly and unconstitutionally picking winners and losers. Unlike Judge Posner, however, the Court is not currently tasked with determining whether TNCs and taxis are so distinguishable in kind as to warrant different governance. The Illinois legislature has made that decision already, answering the question of whether such a difference exists with a resounding "yes." One significant difference between *Illinois Transportation* and the instant case, of course, is that the taxicab companies are not contesting this legislation; rather, they supported it.

V.

An important aspect of plaintiff's argument is that she believes Subsection 25(e) ought to be treated by this Court as severable from the rest of the statute, or at least from the rest of Section 25. She argues that the purpose of the statute was to promote "safety." Safety alone, however, was not the legislature's sole intent in enacting the TNPA. The record establishes that the legislature saw a strong need to promote and enable the growth of TNCs in the state of Illinois. 25(e) is consistent with this goal. HB 4075, the original iteration of an attempt to regulate TNCs, was in fact vetoed by Governor Quinn on the grounds that it may have been too restrictive – potentially quashing healthy competition.

The General Assembly, in evaluating SB 2774 during hearings, was incredibly concerned with whether the various TNCs themselves would be in favor of the legislation. It is also not surprising that a term excluding TNCs from common carrier status would be included under a section regulating safety. After all, as plaintiff argues, a common carrier owes its passengers a heightened duty of care. As Judge Posner noted in *Illinois Transportation*, it is equally permissible for a government to choose "the side of deregulation, and thus of competition" when it decides how to regulate various entities and activities. *Ill. Transp.*, 839 F.3d at 599. Here, the legislature made such a choice when it voted to pass the TNPA, including Subsection 25(e). The obligation of the Court is to give effect to legislative intent wherever possible. Holding that Lyft ought to be treated like a common carrier despite this legislation would undermine that intent.

VI.

The record before the Court establishes multiple lengthy and detailed justifications for the TNPA, and its enactment was supported by a wide variety of entities and individuals. As difficult as it may be under the circumstances of this case, it would be an abrogation of this Court's duty given such a record to find that the statute is unconstitutional. But the arguments presented by plaintiff in her briefing and by her counsel at oral argument are not unpersuasive:

> "They advertise they take the most vulnerable passengers. They have commercials on TV that say if you drink too much, get in a Lyft car. We will take care of you. Well, this driver ... brutally raped this woman who was asleep in the back because she had been drinking. Exactly the type of person they advertise for, and then their driver commits this heinous crime." Transcript p. 46 at 11-19.

Lyft does not dispute that it advertises its services to potential customers who are intoxicated. Lyft also does not dispute that transportation network companies are similar to common carriers; they take any member of the public who would hail them, and in the absence of the TNPA, it is likely that they would owe a heightened duty to their passengers. However, where the legislature has spoken, the Court is bound to follow the rule it creates. The TNPA explicitly designates TNCs as being exempt from common carrier status, and Lyft is therefore so exempted.

Certainly, the TNPA creates a recovery gap for both plaintiff and for others who are similarly situated. An individual Lyft driver is much less likely to be able to adequately

compensate a victim of sexual assault for the harm that the driver imposes. Similarly, if the statute fully shields transportation network companies from liability from the worst harms that its drivers impose on its riders, the company is less incentivized to protect against those harms. The legislature may find this case and others like it to be an appropriate catalyst for revisiting the Transportation Network Providers Act.

For the reasons given, the Court finds that subsection 25(e) of the Transportation Network Providers Act, 625 ILCS 57/1 *et seq.*, is rationally related to a legitimate state interest. The statute specifically designates that Transportation Network Companies, which the parties agree Lyft is accurately categorized as, are not common carriers. Thus, Section 25(e), as applied to the pleadings now before the Court, bars recovery against Lyft under a vicarious liability theory that relies on Lyft's alleged status as a common carrier. That said, Plaintiff's arguments both in her briefing and at oral argument, including those based on *Doe v. Sanchez*, 2016 IL App (2d) 150554, are well-taken, and the Court does not hold at this time that different theories of liability brought in an amended complaint would be similarly barred.

Accordingly, defendant Lyft's partial motion to dismiss is GRANTED and counts III and IV are dismissed without prejudice. Counts I and II, not at issue in this motion, remain standing. Whether plaintiff can plead around the TNPA by pleading a heightened duty of care under common law is an issue of first impression. Because counts III and IV are dismissed without prejudice, this is an interlocutory order not otherwise appealable. The Court finds that the order involves questions of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from today's order may materially advance the termination of the litigation. The Court hereby certifies the following two (2) questions for immediate appeal pursuant to Illinois Supreme Court Rule 308:

1. Does Section 25(e) of the Transportation Network Providers Act, 625 ILCS 57/25(e), which states that transportation network companies (TNCs) "are not common carriers," preclude TNCs, such as Lyft, from otherwise being subject to the highest duty of care under common law, like that of a common carrier's elevated duty to its passengers?

2. If TNCs are precluded from being subject to a common carrier's elevated duty of care to passengers, is the Transportation Network Providers Act, including Section 25(e), a constitutional exercise of the legislature's power?

Plaintiff is granted leave to file her first amended complaint as to the count against Sterling only, over Sterling's objection, for the reasons stated in open court and incorporated into the record. Plaintiff is given 7 days, until June 11, 2019, to file her first amended complaint. As of June 11, 2019, this case is placed on the Appellate Stay Calendar until further notice. It is agreed by the parties that plaintiff's amended complaint will not change allegations against Lyft while this matter is on appeal.

IT IS SO ORDERED:

Date: June 4, 2019

Judge Patricia O'Brien Sheahan
JUN -4 2019
Circuit Court - 2136

Judge Patricia O'Brien Sheahan