

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

-----X
ALEX MORGAN BELL,

Index No.

Plaintiff,

VERIFIED COMPLAINT

-against-

UNITED PARCEL SERVICE, INC.

Defendant.
-----X

For his complaint, plaintiff, Alex Morgan Bell, respectfully shows to the court and alleges as follows:

I.

NATURE OF THE ACTION

1. Plaintiff ALEX MORGAN BELL brings this public nuisance action against defendant United Parcel Service Inc. (hereafter “UPS”) seeking changes in defendant’s bicycle lane parking practices in the City of New York, particularly in Harlem, which practices are harmful to cyclists, pedestrians and motorists, and specially harmful to plaintiff.

2. Since September 2015 UPS has caused and created a public nuisance in the City of New York, and particularly in the area of Central Harlem in Northern Manhattan, as a result of its practice of parking delivery trucks in designated bicycle lanes. Over the last four month period and ongoing, more than fifty violations have been

documented. Based on empirical evidence, commuting in a bicycle lane from 5-8pm on a weekday in Harlem has a greater than 75% chance of being blocked by a UPS truck. This practice is sanctioned by the New York City Department of Transportation, Parking Violations Bureau, and the New York City Police Department which have permitted defendant to continue its practices by payment of a nominal annual fine that fails to deter defendant's practices.

3. Bicycle ridership in Harlem and NYC in general have decreased because of UPS trucks blocking bicycle lanes and has led to increased pollution and congestion from alternative commuting options.

II. THE PARTIES

Plaintiff

4. Plaintiff ALEX MORGAN BELL is a resident of the State of New York and is over the age of eighteen (18) years. Plaintiff resides at

Defendant

5. At all times relevant to this action, defendant UNITED PARCEL SERVICE, INC. ("UPS") was and still is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Georgia. At all times relevant to this action, UPS delivered parcels throughout the United States, including the State of New York and New York City. The corporation maintains a New York City corporate address at 643 West 43rd 6th Floor, New York, NY 10036.

III.

GENERAL FACTUAL ALLEGATIONS

6. Since the 19th Century the City of New York has installed bicycle lanes in selected thoroughfares throughout New York City. As of 2015, New York City has over one thousand miles of bike lanes.

7. New York City doubled bicycle commuting between 2007 and 2011, and aims to triple it by 2017. In New York City, 10% of auto trips are under one-half mile, 22% are under 1 mile and 56% are under 3 miles - distances readily served by bicycle. The New York City Department of Transportation (“DOT”) has completed the City's ambitious goal of building 200 bike-lane miles in all five boroughs in just three years, nearly doubling the citywide on-street bike network while reshaping the city's streets to make them safer for everyone who uses them.

8. The City of New York and the Department of Transportation reviews and designs the infrastructure of each street so as to maintain usability for all people in the community. The inclusion of bicycle lanes and the associated laws protecting their operation come after lengthy process evaluating the needs of all vehicles from cars to delivery vehicles to bicyclists.

9. Bicycle lanes are efficacious for cyclists, pedestrians and motorists. For example:

On Ninth Avenue, injuries to all street users dropped by 58% after the bike lane was installed – that includes pedestrians, cyclists, and motorists.

(Source: DOT, “Measuring the Street,” 2012.

<http://www.nyc.gov/html/dot/downloads/pdf/2012-10-measuring-the-street.pdf>)

10. The City of New York has shown its support for increased bicycle lanes, “We have found when we put protected bike lanes in, it does make the roadway safer for all users — for cyclists, for pedestrians, and for motorists.” --- DOT Commissioner Polly Trottenberg (<http://newyork.cbslocal.com/2015/09/22/nyc-bike-lanes/>)

11. The blocking of bicycle lanes by vehicles forces slow moving bicyclists to merge into fast flowing traffic at a point where part of the lane is also blocked causing an enhanced likelihood of vehicle and bicycle collision.

12. Greater than 80% of bicycle fatalities in NYC were due to collisions with vehicles. Over a ten-year period, from 1996-2005 less than 1% of bicycle fatalities occurred in a marked bicycle lane. Fatalities and the risk of serious injury dramatically increase when bicyclists are forced out of marked lanes.

13. Despite the demonstrated success of bicycle lanes in reducing injuries and fatalities to cyclists, pedestrians and motorists, New York City, through its traffic control department, has failed to enforce regulations that make blocking a bicycle lane illegal, specifically, NYC Traffic Regulation Section 4-08(e), (l):

(e) General no stopping zones (stopping, standing and parking prohibited in specified places). No person shall stop, stand, or park a vehicle in any of the following places, unless otherwise indicated by posted signs, markings or other traffic control devices, or at the direction of a law enforcement officer, or as otherwise provided in this subdivision:

(9) Bicycle lanes. Within a designated bicycle lanes.

either by failing to issue parking violation tickets or permitting high volume ticketed companies drastically to reduce their fines.

14. Instead of rigorous enforcement of traffic laws, New York City, through its Department of Finance has implemented a “Delivery Solutions” Program for delivery vans, including large volume delivery companies like defendant UPS, which permits businesses to pre-pay parking tickets at a fraction of the amount of the fines actually incurred. As a result, the deterrent effect of fines is eliminated. Large volume delivery companies have no incentive to obey traffic laws, particularly, NYC Traffic Regulation Section 4-08(e), (l) governing the blockage of bicycle lanes which are “expungeable” tickets and have no additional financial penalty.

15. The NYPD Traffic Bureau has proved unable and unwilling to enforce the law and protect cyclist safety.

16. The combination of low enforcement and relatively low penalty costs have resulted in the present situation with UPS trucks parking in bicycle lanes in which the de facto policy of the company, whether written or simply understood by the drivers, is to park in bicycle lanes.

IV.

CLAIM FOR RELIEF: **PUBLIC NUISANCE**

17. Since September 2015, UPS trucks have intentionally blocked bicycle lanes in the Harlem and Greater New York City area. UPS has repeatedly been notified that its practices are unlawful and unreasonably dangerous for bicycle riders and other

vehicles on New York City streets but has failed to change its practices and policies regarding bicycle lane parking when there are other, lawful alternatives, thereby causing harm to the public at large and specific harm to plaintiff.

18. Since September 2015 defendant's delivery vehicles intentionally park and block the bicycle lanes from 110th - 125th streets on the avenues of Frederick Douglass Boulevard, Adam Clayton Powell, and Saint Nicholas Ave during all hours but particularly 7am-10am and 5pm-8pm, that is, during regular morning and evening commuting hours.

19. Since September 2015 defendant has knowingly and intentionally violated New York City Traffic Regulations Section 4-08(e), (l) by repeatedly parking its delivery vehicles in bicycle lanes. The plaintiff has documented over 50 infractions to date.

20. Since September 2015 defendant has increased cyclist, pedestrian and motorist risk of fatality and serious injury by failing to instruct its drivers, supervisors and administrators to park its delivery vehicles in areas other than bicycle lanes.

21. Since September 2015 defendant has knowingly violated New York City traffic regulations and laws by failing to penalize its drivers, supervisors, administrators for parking delivery vehicles in designated bicycle lanes.

22. Since September 2015 plaintiff has attempted via numerous channels to address the situation, these include but are not limited to

- i. calling 311 on numerous occasions, documented, with no result from law enforcement.
- ii. Requesting defendant's drivers to park other than in

cycling lane,

- iii. Notifying defendant at its corporate headquarters that delivery van drivers have repeatedly, and on documented instances, violated New York City Traffic Regulation 4-08(e), (l).
- iv. Notifying defendant's Security Division of documented instances of Violations of New York City traffic Regulation 4-08(e), (l).

All of plaintiff's requests have been ignored or met with hostility.

23. Despite notice of the violations and the ongoing danger to cyclist, the defendant has failed to implement practices or educated drivers as to the proper and legal parking methods.

24. In failing to cease its unlawful and unreasonable conduct defendant places the public and plaintiff at risk of specific harm for which there is no remedy at law.

25. As a result of defendant's unreasonable conduct in causing and continuing to cause the general public and plaintiff in particular harm due to its bicycle lane parking practices, plaintiff seeks an order abating the public nuisance caused by defendant which order would prohibit defendant's employees from parking defendant's delivery vehicles in lanes designated for bicycle travel by the New York City Department of Transportation.

26. Plaintiff has suffered specific harm as a result of the practices of defendant's employees in the operation and control of defendant's vehicles in that he has

had his life continuously endangered and been forced to stop commuting via bicycle on some days in favor of more expensive and longer commutes.

27. Plaintiff has suffered specific harm as a result of defendant's practices in that he has been forced either to alter his route to travel on non-bicycle lane streets in order to get to work, which travel is more dangerous and longer, or use public transportation.

28. Specifically the bicycle route taken by the Plaintiff is 6.3 miles and takes 35 mins each way from Harlem down Saint Nicholas Avenue and through Central Park to Midtown Manhattan. It proceeds exclusively on bicycle lanes and offers a zero carbon footprint and healthy commute which promotes cardiovascular health.

29. New York City Traffic Rules and Regulations Section 4-12(p) forbid bicyclists from traveling on any part of the roadway other than a bicycle lane where one has been provided.

30. The requested changes to parking practices of defendant's employees are minor in comparison to the risk to plaintiff and other cyclists. The requested changes are necessary in order to modify the operations of the Defendant's delivery vehicles which have led to harm to Alex Bell as an individual and harm, damages, and increased risk of serious bodily injury to other fellow citizens.

31. The Defendant's continued actions imperil the lives and safety of New York City bicyclists every day.

32. The defendant's conduct, if unabated will continue to threaten the health, safety and welfare of the public including the plaintiff's.

33. Plaintiff seeks injunctive relief including, but not limited to:

- (1) an order prohibiting defendant's employees from parking defendant's vehicles in designated bicycle lanes in the City of New York;
- (2) and for such other and further relief as this court deems just and proper.

WHEREFORE, Plaintiff Alex Morgan Bell respectfully requests this court to enter an order prohibiting defendant's employees from parking defendant's vehicles in designated bicycle lanes in the City of New York , and for such other and further relief as this Court may deem just and proper.

DATED: New York, New York
February 3, 2016

LAW OFFICE OF ELISA BARNES

BY: _____
ELISA BARNES

Office and P.O. Address
419 Park Avenue South, 7th Floor
New York, New York 10016
Tel: (212) 693-2330
ebarnesesq@gmail.com

ATTORNEY FOR PLAINTIFF

VERIFICATION

Alex Morgan Bell, being duly sworn, deposes and says:

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matter, I believe them to be true.

Alex Morgan Bell

Sworn to before me this
th day of February, 2016

Notary Public

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LAW OFFICE OF ELISA BARNES
Office and P.O. Address
419 Park Avenue South, 7th Floor
New York, NY 10016
212-693-2330
ebarnesesq@gmail.com

Statement pursuant to Section 130-1.1 of the Rules of the Chief Administrative Judge:

I affirm that to the best of my knowledge, information and belief, formed after inquiry reasonable under the circumstances, the presentation of these papers and the contentions made herein are not frivolous as defined in Subsection (c) of Section 130-1.1 of the Rules of the Chief Administrative Judge (22 NYCRR)

ELISA BARNES