

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

PRESENT: Hon. Nancy Bannon
Justice

PART 42

ALEX MORGAN BELL

INDEX NO. 151001/2016

- v -

MOTION DATE 11/9/2016

UNITED PARCEL SERVICE, INC.

MOTION SEQ. NO. 001

The following papers were read on this motion to dismiss the complaint

Notice of Motion/ Order to Show Cause — Affirmation — Affidavit(s) —
Exhibits — Memorandum of Law-----

No(s). 1

Answering Affirmation(s) — Affidavit(s) — Exhibits -----

No(s). 2

Replying Affirmation — Affidavit(s) — Exhibits -----

No(s). 3

In this action to permanently enjoin the defendant's truck drivers from parking in designated bicycle lanes installed adjacent to public thoroughfares in Manhattan, the defendant moves pursuant to CPLR 3211(a) to dismiss the complaint on the grounds that the plaintiff lacks standing (CPLR 3211[a][3]) and the complaint fails to state a cause of action (CPLR 3211[a][7]). The plaintiff opposes the motion. Although the complaint states a cause of action, the plaintiff lacks standing to assert it. Hence, the motion is granted.

The complaint asserts that the truck drivers of the defendant, United Parcel Service, Inc. (UPS), repeatedly flout New York City Traffic Rules and Regulations (34 RCNY) § 4-08(e), which prohibits the operator of a motor vehicle from parking the vehicle or standing in designated "no stopping" zones, including designated bicycle lanes, by standing, idling, or parking in such lanes when making deliveries. The complaint further alleges that (a) the plaintiff rides his bicycle every day through Upper Manhattan, (b) RCNY 4-12(p) prohibits him from riding his bicycle on any other paved surface where a bicycle lane has been installed, (c) UPS's failure to abide by the traffic regulation creates hazards for him and other cyclists by obstructing the bicycle lanes in Upper Manhattan, and (d) neither the Traffic Bureau of the New York City Police Department nor the New York City Department of Finance, which administers the City's parking violations program, has taken any steps to remediate the problem. The complaint thus asserts that UPS is creating a public nuisance that may only be rectified through a private action.

UPS moves to dismiss the complaint, alleging that the plaintiff does not have standing to prosecute the action, the complaint fails to state a cause of action to abate a public nuisance since any individual harm to the plaintiff is compensable with money damages, and the Traffic Rules and

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Regulations do not create a private right of action to enforce them. In opposition, the plaintiff contends that he has alleged specialized, personal harm over and above that sustained by the general public, his prior attempts to obtain small damages awards against UPS in the Civil Court were unsuccessful because the gravamen of the dispute is the need to enjoin UPS's conduct, the private, unpermitted obstruction of public thoroughfares for commercial purposes has long been recognized a basis for alleging the creation of a public nuisance, and the obstructions are more than temporary, sometimes lasting during the greater part of a day.

"A public nuisance exists for conduct that amounts to a substantial interference with the exercise of a common right of the public, thereby offending public morals, interfering with the use by the public of a public place or endangering or injuring the property, health, safety or comfort of a considerable number of persons. A public nuisance is a violation against the State and is subject to abatement or prosecution by the proper governmental authority." 532 Madison Ave. Gourmet Foods v. Finlandia Ctr., 96 NY2d 280, 292 (2002); see Copart Indus. v Consolidated Edison Co., 41 NY2d 564 (1977); Matter of Green v Miller, 249 NY 88 (1928). A public nuisance may be created where a motor vehicle owner or operator obstructs access to or travel across a public thoroughfare employed by a considerable number of persons. See Graceland Corp. v Consolidated Laundries Corp., 7 AD2d 89 (1st Dept. 1958), affd 6 NY2d 900 (1959); see also Harvey v Platten, 33 AD2d 724 (3rd Dept. 1969). "[B]ecause a public nuisance is inherently a condition for which the law provides a remedy, the proponent of [an] injunction is relieved from the general requirement to show that [he or she] lacks an adequate remedy at law." Wall St. Garage Parking Corp. v New York Stock Exch., Inc., 10 AD3d 223, 227 (1st Dept. 2004). Thus, contrary to UPS's contention, the complaint, which alleges that the manner in which its trucks repeatedly park, stand, or idle on public roadways substantially interferes with the exercise of a common right to use designated bicycle lanes, thus injuring the safety or comfort of a considerable number of cyclists, states a cause of action based on public nuisance.

UPS, however, is entitled to dismissal of the complaint based on the plaintiff's lack of standing. A plaintiff has standing to maintain an action where he or she has sustained an injury in fact and is within the zone of interests to be protected by the statute or legal principle invoked in the complaint as the basis for relief. See Bravo v State of New York, 129 AD3d 488 (1st Dept. 2015); Lotaj v City of New York, 127 AD3d 605 (1st Dept. 2015). Once the issue of standing is raised, the burden falls on the plaintiff to establish his or her standing to have his or her claims judicially considered. See Society of Plastics Indus. v County of Suffolk, 77 NY2d 761 (1991); U.S. Bank, N.A. v Weinman, 123 AD3d 1108 (2nd Dept. 2014). Where, as here, a claim for relief is predicated on a public nuisance, the claimant must show that he or she has "suffered a special injury beyond that of the community." Wall St. Garage Parking Corp. v New York Stock Exch., Inc., 10 AD3d 223, 227 (1st Dept. 2004), quoting 532 Madison Ave. Gourmet Foods v Finlandia Ctr., supra, at 293. Thus, only "one who suffers damage or injury, beyond that of the general inconvenience to the public at large, may recover for such nuisance in damages or obtain injunction to prevent its continuance." Wall St. Garage Parking Corp. v New York Stock Exch., Inc., supra, at 227-228, quoting Graceland Corp. v Consolidated Laundries Corp., supra, 7 AD2d at 91. Stated another way, "[a] cause of action alleging public nuisance, which interferes with or causes damage to the public in the exercise of rights common to all, cannot be maintained by a

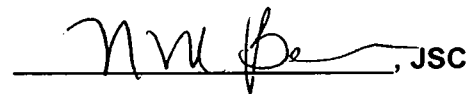
private individual absent special damages." Queens County Bus. Alliance, Inc. v New York. Racing Assn., 98 AD2d 743, 744 (2nd Dept. 1983). While the plaintiff's attempts to compel UPS to modify its conduct may be motivated by his concern for the public good, he failed to allege or demonstrate that such conduct has subjected him to inconvenience or potential danger that is different in kind from the inconvenience and potential danger to which thousands of other cyclists in Manhattan who use the same bicycle lanes are subjected. See id.; Weiss v Planning Bd. of Poughkeepsie, 130 Misc. 2d 381 (Sup Ct., Dutchess County 1985) (Rosenblatt, J.); cf. Graceland Corp. v Consolidated Laundries Corp., supra (the obstruction complained of was to a thoroughfare immediately in front of the plaintiff's property).

Accordingly, it is hereby

ORDERED that the defendant's motion to dismiss the complaint is granted, and the complaint is dismissed; and it is further,

ORDERED that the Clerk of the court shall enter judgment accordingly.

Dated: March 30, 2017

 JSC

HON. NANCY M. BANNON

1. Check one: ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION

2. Check as appropriate: MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER