

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - December 12, 2007

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2007-02187

DECISION & ORDER

Peter Pellegrini, etc., respondent, v Richmond
County Ambulance Service, Inc., appellant,
et al., defendants.

(Index No. 8399/05)

Silverman Sclar Shin & Byrne PLLC, New York, N.Y. (Vincent Chirico and Mikhail
Ratner of counsel), for appellant.

Reingold & Tucker, Brooklyn, N.Y. (Jordan W. Tucker of counsel), for respondent.

In an action, inter alia, to recover damages for medical malpractice and wrongful death, the defendant Richmond County Ambulance Service, Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (Agate, J.), entered January 10, 2007, as granted that branch of the plaintiff's motion which was pursuant to CPLR 3025(b) for leave to amend the complaint to add a demand for punitive damages in the ad damnum clause.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Leave to amend a complaint is to be freely granted, provided that the proposed amendment does not prejudice or surprise the defendants, is not patently devoid of merit, and is not palpably insufficient (*see* CPLR 3025[b]; *Lucido v Mancuso*, _____AD3d_____ [2d Dept, Feb. 1, 2008]; *Glassman v ProHealth Ambulatory Surgery Ctr., Inc.*, 23 AD3d 522; *Pirrotti & Pirrotti, LLP v Estate of Warm*, 8 AD3d 545; *Ortega v Bisogno & Meyerson*, 2 AD3d 607, 609).

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An award of punitive damages is warranted where the conduct of the party being held liable “evidences a high degree of moral culpability, or where the conduct is so flagrant as to transcend mere carelessness, or where the conduct constitutes willful or wanton negligence or recklessness” (*Buckholz v Maple Garden Apts., LLC*, 38 AD3d 584, 585).

Here, the evidence submitted by the plaintiff was sufficient to support his allegations that there was gross negligence or recklessness on the part of the appellant’s employees, and that management authorized, participated in, consented to, or ratified the employees’ conduct, or deliberately retained the unfit employees (*see Loughry v Lincoln First Bank*, 67 NY2d 369, 378; *Sultan v Kings Highway Hosp. Ctr.*, 167 AD2d 534, 535). Furthermore, the appellant did not argue that it was prejudiced or surprised by the proposed amendment (*see Pirrotti & Pirrotti, LLP v Estate of Warm*, 8 AD3d 545). Accordingly, the Supreme Court properly granted that branch of the plaintiff’s motion which was pursuant to CPLR 3025(b) for leave to amend the complaint to add a demand for punitive damages.

MASTRO, J.P., SANTUCCI, DILLON and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court