

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

D18352
C/kmg

_____AD3d_____

Argued - January 24, 2008

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2006-11893

DECISION & ORDER

George N. Aronis, respondent, v TLC Vision Centers, Inc., et al., defendants, TLC Vision Corporation, et al., appellants.

(Index No. 7648/05)

Catalano Galardo & Petropoulos, LLP, Jericho, N.Y. (James P. Connors of counsel), for appellants TLC Vision Corporation, Laser Vision Centers, Inc., TLC The Laser Center (Northeast), Inc. d/b/a TLC Laser Eye Centers (Garden City) and Lori Landrio.

Martin Clearwater & Bell LLP, New York, N.Y. (Nancy A. Breslow, John A. Lyddane, and Steven A. Lavietes of counsel), for appellant Eric Donnenfeld.

Argyropoulos & Bender, Astoria, N.Y. (Susan E. Paulovich of counsel), for respondent.

In an action, inter alia, to recover damages for medical malpractice, the defendant Eric Donnenfeld appeals, and the defendants TLC Vision Corporation, Laser Vision Centers, Inc., TLC The Laser Center (Northeast), Inc., TLC Laser Eye Centers (Garden City), and Lori Landrio separately appeal, as limited by their briefs, from so much of an order of the Supreme Court, Queens County (Satterfield, J.), dated October 16, 2006, as denied those branches of their respective motions which were pursuant to CPLR 3211(a)(7) to dismiss the third cause of action to recover punitive damages insofar as asserted against each of them and pursuant to CPLR 3024(b) to strike the prejudicial and inflammatory language in the plaintiff's bills of particulars.

ORDERED that on the court's own motion, the notices of appeal from so much of the order as denied those branches of the motions which were to strike prejudicial and inflammatory

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language in the plaintiff's bills of particulars are treated as applications for leave to appeal from that portion of the order, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is reversed insofar as appealed from, on the law, those branches of the motion of the defendant Eric Donnenfeld and the separate motion of the defendants TLC Vision Corporation, Laser Vision Centers, Inc., TLC The Laser Center (Northeast), Inc., TLC Laser Eye Centers (Garden City), and Lori Landrio which were pursuant to CPLR 3211(a)(7) to dismiss the third cause of action to recover punitive damages insofar as asserted against each of them and to strike the prejudicial and inflammatory language in the plaintiff's bills of particulars are granted; and it is further,

ORDERED that one bill of costs is awarded to the appellants appearing separately and filing separate briefs.

The Supreme Court should have granted those branches of the respective motions of the defendant Eric Donnenfeld and the defendants TLC Vision Corporation, Laser Vision Centers, Inc., TLC The Laser Center (Northeast), Inc., TLC Laser Eye Centers (Garden City), and Lori Landrio (hereinafter collectively the defendants) which were pursuant to CPLR 3211(a)(7) to dismiss the plaintiff's third cause of action to recover punitive damages insofar as asserted against each of them. "New York does not recognize an independent cause of action for punitive damages" (*Randi A.J. v Long Is. Surgi-Ctr.*, 46 AD3d 74, 80; *see Rocanova v Equitable Life Assur. Socy. of U.S.*, 83 NY2d 603, 616; *Grazioli v Encompass Ins. Co.*, 40 AD3d 696, 698; *Yong Wen Mo v Gee Ming Chan*, 17 AD3d 356, 359; *Schwegel v Chiaramonte*, 4 AD3d 519, 521). Moreover, "[p]unitive damages are available for the purpose of vindicating a public right only where the actions of the alleged tort-feasor constitute gross recklessness or intentional, wanton or malicious conduct aimed at the public generally or are activated by evil or reprehensible motives" (*Gravitt v Newman*, 114 AD2d 1000, 1002; *see Nooger v Jay-Dee Fast Delivery*, 251 AD2d 307; *Spinosa v Weinstein*, 168 AD2d 32, 42-43). Here, the plaintiff's allegations amount to nothing more than allegations of mere negligence (*see Sanders v New Rochelle Hosp. Med. Ctr.*, 203 AD2d 550; *Zabas v Kard*, 194 AD2d 784; *Spinosa v Weinstein*, 168 AD2d at 43; *Gravitt v Newman*, 114 AD2d 1000) and do not rise to the level of moral culpability necessary to support a claim for punitive damages (*see Anderson v Elliott*, 24 AD3d 400; *Nooger v Jay-Dee Fast Delivery*, 251 AD2d 307; *Zabas v Kard*, 194 AD2d 784).

The Supreme Court also should have granted those branches of the defendants' respective motions which were to strike the prejudicial and inflammatory language in the plaintiff's bills of particulars, as that language was directed to his claim for punitive damages (*see* CPLR 3024[b]).

MASTRO, J.P., FISHER, DILLON and McCARTHY, JJ., concur.

ENTER 

James Edward Pelzer
Clerk of the Court