

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

D31773
W/nl/prt

_____AD3d_____

Argued - May 31, 2011

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2010-07055

DECISION & ORDER

Elaine Felton, appellant, v George W. Tourtoulis,
et al., respondents.

(Index No. 1197/09)

Sakkas, Cahn & Weiss, LLP, New York, N.Y. (Matthew Sakkas of counsel), for appellant.

Martin, Fallon & Mullé, Huntington, N.Y. (Richard C. Mullé of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Nassau County (Adams, J.), entered July 1, 2010, as granted that branch of the defendants' motion which was pursuant to CPLR 3211(a)(7) to dismiss the plaintiff's demand for punitive damages insofar as asserted against the defendant Melissa A. Tourtoulis.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the defendants' motion which was pursuant to CPLR 3211(a)(7) to dismiss the plaintiff's demand for punitive damages insofar as asserted against the defendant Melissa A. Tourtoulis is denied.

The plaintiff alleged that the defendant Melissa A. Tourtoulis (hereinafter the defendant driver) was driving while intoxicated and failed to stop at a stop sign, causing a two-car motor vehicle collision in which the plaintiff was injured. In her complaint, the plaintiff, inter alia, demanded an award of punitive damages from the defendant driver.

September 13, 2011

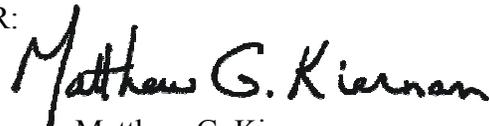
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The Supreme Court improperly granted that branch of the defendants' motion which was pursuant to CPLR 3211(a)(7) to dismiss the plaintiff's demand for punitive damages insofar as asserted against the defendant driver. "Punitive damages are available to vindicate a public right only where the actions of the alleged tortfeasor constitute either gross recklessness or intentional, wanton, or malicious conduct aimed at the public generally, or were activated by evil or reprehensible motives" (*Boykin v Mora*, 274 AD2d 441, 442). At this stage of the litigation, it is premature to conclude that the allegations in the complaint are insufficient to support a claim that the defendant driver acted so recklessly or wantonly as to warrant an award of punitive damages (*see Wilner v Allstate Ins. Co.*, 71 AD3d 155, 167). Accordingly, the Supreme Court should have denied that branch of the defendants' motion which was pursuant to CPLR 3211(a)(7) to dismiss the plaintiff's demand for punitive damages insofar as asserted against the defendant driver.

DILLON, J.P., LEVENTHAL, HALL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court