

Weber v Dobson

2016 NY Slip Op 31997(U)

September 6, 2016

Supreme Court, Bronx County

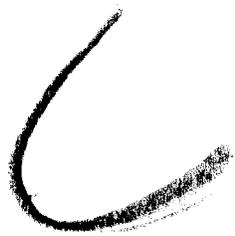
Docket Number: 305672/2014

Judge: Howard H. Sherman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY
Part 4



-----x
Kevin Weber
Plaintiff

Decision and Order

Index No. 305672/2014

-against-

**Crystal N. Dobson,
Autoexpo Ent. Inc., d/b/a/ Hedr Dealer Assignment
and Stacey A. Nelson,**

Defendants

Howard H. Sherman

-----x

JSC

The following papers numbered 1-3 read on this motions to dismiss claim for punitive damages

Notice of Motion -Affirmation and Exhibits A-C	1	
Affirmation in Opposition , Exhibits A,B	2	
Affirmation in Reply	5	

Upon the foregoing papers, the motion of Defendants Auto Expo Ent. Inc. d/b/a Hedr Dealer Assignment, Cassandra E. Dobson and Crystal Dobson for an order pursuant to CPLR 3211[a][7] dismissing plaintiff's claim for punitive damages, is granted.

Plaintiff commenced this action for damages for personal injuries alleged to have been sustained in a motor vehicle accident that occurred on November 28, 2013 . It is alleged that the underlying collision was caused by the carelessness, negligence, and recklessness of the defendant Crystal Dobson in failing to yield to an emergency vehicle, plaintiff's radio patrol car. As pertinent here, it is also asserted that at the time of the accident, Dobson did not have a license to operate a motor vehicle , and that she

was driving at an excessive rate of speed and "in a manner which unreasonably interfered with the free and proper use of the public highway", and that she was arrested for *inter alia*, failure to yield to an emergency vehicle [Verified Complaint ¶¶ 33- 35]. Plaintiff, who was employed as a Police Officer for the City of New York, also asserts claims pursuant to § 205-e of the General Municipal Law, and § 11-106 of the General Obligations Law.

Motion

Defendants now move to dismiss plaintiff's claim for punitive damages on the grounds that it fails to state a cause of action as there is nothing alleged that amounts to more than mere negligence.

In opposition, plaintiff contends that punitive damages are sought because Dobson was driving with s suspended license and arrested at the scene and for violation (see, Vehicle and Traffic Law § 511), and for failing to yield to an emergency vehicle with lights and sirens, and this conduct is so flagrant as to transcend mere carelessness.

Discussion and Conclusions

The established "sole" criteria for the court's consideration of a motion to dismiss a complaint pursuant to CPLR 3211 (a)(7) , " is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail

(see *Foley v D'Agostino*, 21 AD2d 60, 64-65; Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 3211:24, p 31; 4 Weinstein-Korn-Miller, NY Civ Prac, par 3211.36). " *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 , 372 N.E.2d 17 [1977] To this end, the court is required to " liberally construe the complaint (see e.g. *Leon v Martinez*, 84 NY2d 83, 87, 638 N.E.2d 511, 614 N.Y.S.2d 972 [1994]; CPLR 3026), and accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion (see *Sokoloff v Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 414, 729 N.Y.S.2d 425, 754 N.E.2d 184 [2001] [collecting cases]; *Wieder v Skala*, 80 NY2d 628, 631, 609 N.E.2d 105, 593 N.Y.S.2d 752 [1992]) " , according plaintiff " the benefit of every possible favorable inference (see *Sokoloff*, 96 N.Y.2d at 414, 729 N.Y.S.2d 425, 754 N.E.2d 184). " *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 152, 773 N.E.2d 496 [2002] ; see also, *Toth v. New York City Dept. of Citywide Admin. Servs.*, 119 A.D.3d 431, 988 N.Y.S.2d 488 [1st Dept. 2014]). The question of "[w]hether a plaintiff . . . can ultimately establish its allegations is not taken into consideration in determining a motion to dismiss" (*Philips S. Beach, LLC v ZC Specialty Ins. Co.*, 55 AD3d 493, 497, 867 NYS2d 386 [1st Dept 2008] [emphasis added], lv denied 12 NY3d 713, 910 NE2d 430, 882 NYS2d 682 [2009]). " *African Diaspora Mar. Corp. v. Golden Gate Yacht Club*, 109 A.D.3d 204, 211, 968 N.Y.S.2d 459 [1st Dept. 2009]

Preliminarily, it is noted that no separate cause of action for punitive damages lies for pleading purposes (see, Paisley v. Coin Device Corp., 5 AD3d 748 [2d Dept.2004]; Crown Fire Supply Co. v. Cronin, 306 A.D.2d 430, 431 [2d Dept.2003]; Supreme Automotive Mfg. Corp. v. Continental Casualty Co., 126 A.D.2d 153, 156, 512 N.Y.S.2d 820 [1st Dept. 1987]), and plaintiff asserts none, the exclusive reference to punitive damages incorporated within the "demand", and final, paragraph of the complaint.

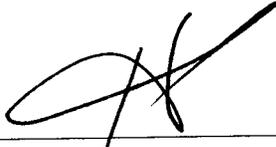
Upon consideration of the pleadings here including the allegation of speeding, and failure to yield to an emergency vehicle despite lights and sirens , as afforded all favorable inferences, it is submitted that defendants have met their burden to demonstrate that the pleadings here fail to allege conduct that is so reckless or wantonly negligent as to be the equivalent of a conscious disregard of the rights of others or so flagrant as to transcend mere carelessness.

Accordingly, it is

ORDERED that the motion be and hereby is granted.

This shall constitute the decision and order of this court .

Dated: September 6, 2016



Howard H. Sherman