

Petrone v Jakobson

2011 NY Slip Op 30847(U)

March 23, 2011

Sup Ct, Nassau County

Docket Number: 006478/10

Judge: Jeffrey S. Brown

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE

-----X TRIAL/IAS PART 21
JOSEPH PETRONE and MADELINE PETRONE,

Plaintiffs,

- against -

PETER D. JAKOBSON, JR., and LENA JAKOBSON,

Defendants.

Index No. 006478/10
Mot. Seq. # 01
Mot. Date 2-14-11
Submit Date 3-21-11

-----X

The following papers were read on this motion:	Papers Numbered
Notice of Motion, Affidavits (Affirmations), Exhibits Annexed.....	1
Answering Affidavit	2
Reply Affidavit.....	3

Plaintiff moves by notice of motion for the following relief: for an order pursuant to CPLR 3025 to amend the complaint and to add a claim for punitive damages against the defendants.

The underlying action arises out of a December 15, 2009, two car motor vehicle accident in which a vehicle, owned by defendant, Lena Jakobson, and operated by defendant, Peder Jakobson, rear-ended plaintiff Joseph Petrone's vehicle causing alleged severe and permanent injuries to his head and neck area, including a subdural hematoma requiring a craniotomy, brain damage and vision impairment in both eyes.

A police accident report indicates that the collision caused both vehicles to leave the roadway, strike trees, and overturn. The report indicates that the causes of the incident were defendant Peder Jakobson's impairment by drugs and the operation of his vehicle too closely behind plaintiff Joseph Petrone. At the time of the accident, defendant Peder Jakobson was issued a summons for Driving While Impaired by Drugs under Vehicle and Traffic Law §1192. At the scene of the accident the police recovered from defendant's vehicle various contraband,

including drugs and drug paraphernalia. Also allegedly recovered from the trunk of the vehicle were urine samples. Plaintiff alleges defendant was returning from a drug rehabilitation session when the collision occurred.

On April 12, 2010, a Nassau County grand jury voted a true bill indicting defendant on 14 separate counts arising from defendant's conduct at the time of the incident, including 4 felony counts: assault in the first degree, PL §120.10(3); assault in the second degree, PL§120.05(4); vehicular assault in the second degree, PL§120.03(1); and reckless endangerment in the first degree, PL§120.25. He was also indicted for reckless driving in violation of VTL §1212.

Plaintiff now seeks to amend the complaint to permit punitive damages be sought against both defendants.

Defendants oppose the motion for the following reasons: punitive damages are not warranted against defendant Lena Jakobson because she is merely the registered owner of the vehicle; punitive damages are not warranted against defendant Peder Jakobson because the evidence that he was driving while intoxicated is insufficient by itself to justify the imposition of punitive damages; and plaintiffs unduly delayed in bringing the instant application.

Based on the foregoing, the decision of the court is as follows:

The decision whether to allow a pleading to be amended rests within the sound discretion of the court. *Pagan v. Quinn*, 51 A.D.3d 1299 [3rd Dept. 2008]; *Trataros Const. Inc. v. New York City School Const. Authority*, 46 A.D.3d 874 [2nd Dept. 2007]. Leave to amend a pleading will be freely granted where the proposed amendment is not palpably insufficient or patently devoid of merit, and will not prejudice or surprise the opposing party. *Shovak v. Long Island Commercial Bank*, 50 A.D.3d 1118, 1120 [2nd Dept. 2008], lv to appeal dismissed in part, denied in part 11 N.Y.3d 762 [2008]; *Lucido v. Mancuso*, 49 A.D.3d 220, 245 [2nd Dept. 2008]; *Bolanowski v. Trustees of Columbia University in City of New York*, 21 A.D.3d 340 [2nd Dept. 2005]. To establish prejudice, which must be significant, there must be some indication that the opposing party has incurred some change in position or hindrance in the preparation of the case which could have been avoided had the original pleading contained the proposed amendment. *Spitzer v. Schussel*, 48 A.D.3d 233 [1st Dept. 2008].

Applying the above principles to the case at bar, plaintiffs motion to amend the complaint is **GRANTED IN PART**.

The application to amend the complaint to add a claim of punitive damages as against defendant Peder Jakobson is **GRANTED**. The court determines that the proposed amendment is not palpably insufficient or patently devoid of merit, and will not prejudice the defendant.

"The nature of the conduct which will justify an award of punitive damages has been variously described but, essentially, it is conduct 'having a high degree of moral culpability'

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(*Home Ins. Co. v American Home Prods. Corp.*, 75 NY2d 196, 203) or activated by an evil and reprehensible motive (*Walker v Sheldon*, 10 NY2d 401, 404) which manifests a ‘conscious disregard of the rights of others or conduct so reckless as to amount to such disregard’ (*Welch v Mr. Christmas*, 57 NY2d 143, 150). Such conduct may consist of actions which constitute willful or wanton negligence or recklessness but need not be intentionally harmful (*Home Ins. Co. v American Home Prods. Corp.*, supra.)” *Sweeney v. McCormick*, 159 A.D.2d 832, 834 (N.Y. App. Div. 3d Dep’t 1990)

“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 (see, *Nooger v Jay-Dee Fast Delivery*, 251 AD2d 307; *Zabas v Kard*, 194 AD2d 784). Evidence that a defendant was driving while intoxicated is insufficient *by itself* to justify the imposition of punitive damages.” *Boykin v. Mora*, 274 A.D.2d 441, 442 (Emphasis added)

Defendant Peder Jakobson has been indicted on various counts of driving while intoxicated (drugs), and he has also been indicted on various counts of reckless endangerment and reckless driving. According to the police accident report, defendant Peder Jakobson operated his vehicle in such a manner as to cause a rear-end collision with plaintiff’s vehicle with such force causing both vehicles to run off the roadway, strike trees, and overturn. These actions, coupled with a true bill voted by a grand jury of Nassau County, indicting defendant on 14 offenses, including 4 felony charges as enumerated above, support a meritorious claim for punitive damages as against defendant Peder Jakobson (see, *Silvin v Karwoski*, 242 AD2d 945; *Rahn v Carkner*, 241 AD2d 585, 586; *Rinaldo v Mashayekhi*, 185 AD2d 435, 436; cf., *Sweeney v McCormick*, supra at 834). The defendant’s conduct, as alleged by the plaintiff, evidences a high degree of moral culpability, is so flagrant as to transcend mere carelessness, and constitutes willful or wanton negligence or recklessness (See, *Shovak v. Long Is. Commercial Bank*, 858 N.Y.S.2d 660).

Moreover, the defendant failed to establish that he would be prejudiced by the amendment; his exposure to greater liability is not sufficient to establish prejudice (see, *Silvin v Karwoski*, supra; *Letterman v. Reddington*, 278 A.D.2d 868).

The application to amend the complaint to add a claim of punitive damages as against defendant Lena Jakobson is **DENIED**.

“Section 388 of the Vehicle and Traffic Law imputes to the owner of a motor vehicle the negligence of one who uses or operates it with his permission for the purpose of imposing on the owner liability to an injured third party. The policy behind said statute is to provide an injured party a remedy against a financially responsible defendant in order to obtain compensation for any injuries suffered, the financially responsible defendant being the owner who is required to carry liability insurance. (*Continental Auto Lease Corp. v. Campbell* 19 N Y 2d 350; *Mills v. Gabriel* 259 App. Div. 60, affd. 284 N. Y. 755.) Punitive damages are penal in nature as

distinguished from compensatory damages. (*Hamilton v. Third Ave. R. R. Co.*, 53 N. Y. 25.) The object of punitive damages is to punish and deter a defendant from indulging in similar conduct in the future and are allowed where the wrong complained of is morally culpable (*Walker v. Sheldon*, 10 N Y 2d 401). It is stated in *Sikora v. Keillor* (17 AD2d 6, 8, affd. 13 NY2d 610): 'The owner of the vehicle is under no liability for the operator's negligence save that which is imposed on him by the provisions of the Vehicle and Traffic Law. Since the statute is in derogation of the common law, it "may not be presumed to make any innovation upon the common law further than is required by the mischief to be remedied". If the Legislature had intended to subject an owner to liability for punitive damages because of the driver's conduct, it would have included such a provision in said statute.' *Ingle v. Mark*, 58 Misc. 2d 895, 895-896 (N.Y. Sup. Ct. 1969)

Since defendant Lena Jakobson cannot be held liable for punitive damages based upon defendant Peder Jakobson's operation of her vehicle, the plaintiff's motion to amend the complaint is denied (See, *Poulard v. Papamihlopoulos*, 254 A.D.2d 266, 267).

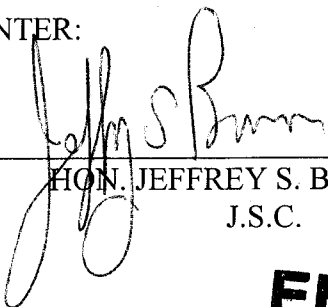
Accordingly, it is hereby

ORDERED, that the plaintiffs shall serve a supplemental summons and an amended complaint in compliance with the instant order upon counsel for the defendants by regular mail within twenty (20) days from the date of the entry of this order.

This constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
March 23, 2011

ENTER:



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