

Cioffi v SM Foods Inc.
2013 NY Slip Op 32586(U)
January 11, 2013
Sup Ct, Westchester County
Docket Number: 55391/2011
Judge: Mary H. Smith
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DECISION AND ORDER

FILED & ENTERED

1/11/13

To commence the statutory period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this Order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
IAS PART, WESTCHESTER COUNTY

Present: HON. MARY H. SMITH
Supreme Court Justice

-----X
FREDERICK M. CIOFFI and ELISABETTA CIOFFI,

Plaintiffs,

MOTION DATE: 1/4/13
INDEX NO.: 55391/11

-against-

SM FOODS, INC., GFI BOSTON, LLC, ATLANTA FOODS INTERNATIONAL, RUSSELL MCCALL'S INC., RUSSELL MCCALL'S INC. d/b/a SHEILA MARIE FOODS, SHEILA MARIE IMPORTS, DOUG JAY, RYDER TRUCK RENTAL, INC., PLM TRAILER LEASING and DANIEL E. BURKE,

Defendants.

-----X
S.M. FOODS, INC., GFI BOSON, LLC PLM TRAILER LEASING and DANIEL BURKE,

Third-Party Plaintiffs,

-against-

VILLAGE OF TUCKAHOE and VINCENT PINTO,

Third-Party Defendants.

-----X
The following papers numbered 1 to 9 were read on this motion by defendants Atlanta Foods International, Russell McCall's Inc. and Jay for an Order pursuant to CPLR 3211 and CPLR 3016 dismissing the amended complaint for failure to state a cause of action, etc., and on this cross-motion by plaintiffs for an Order pursuant to 22

N.Y.C.R.R. 130-1.1 imposing costs and/or sanctions for frivolous moving defendants' frivolous motion.

Papers Numbered

Notice of Motion - Affirmation (Quinlan) - Exhs. (A-H) 1-3
 Notice of Cross-Motion - Affirmation (Grant) - Exhs. (1-7) .. 4-6
 Answering Affirmation (Quinlan) - Exhs. (Collectively)¹ -
 Replied Affirmation (Quinlan) 7-9

Upon the foregoing papers, it is Ordered and adjudged that this motion and cross-motion are disposed of as follows:

This Court previously has addressed in its Decision and Order, dated August 13, 2012, and its Decision and Order, dated November 20, 2012, the facts comprising the record at bar. In the latter Decision and Order, this Court, inter alia, had granted plaintiffs' motion for reargument, had reversed its original determination dismissing this action against defendant Ryder based upon its founded entitlement to the protection afforded by the Graves Amendment, and instead this Court had found that defendant Ryder had failed to sustain its burden of demonstrating as a matter of law that it is entitled to the protection of the Graves Amendment, and in any event that there exist questions of fact regarding defendant Ryder's criminal wrongdoing as well as other issues of fact regarding Ryder's independent negligence in failing properly to have "safety checked" defendant Burke by way of a road test,

¹This Part's published Rules require separately tabbed motion exhibits.

and/or to have retrieved the subject vehicle upon the expiration of the rental period, and thus whether Ryder is entitled to Graves Amendment protection.

Presently, defendants Atlanta Foods International, Russell McCall's Inc. d/b/a Atlanta Foods International and Jay (collectively "Atlanta") are moving for an Order pursuant to CPLR 3211 and CPLR 3016 dismissing the amended complaint for failure to state a cause of action, and further alleging that plaintiffs lacked standing and capacity to bring their claims, and that their claim for punitive damages against moving defendants should be dismissed. Plaintiffs are cross-moving for an Order pursuant to 22 N.Y.c.R.R. 130-1.1 imposing costs and/or sanctions upon defendants Atlanta for their allegedly frivolous motion practice in making this motion, which substantially is identical to their opposition to plaintiff's earlier motion seeking to amend their complaint and which this Court clearly had rejected in granting plaintiffs amendment relief.

Addressing defendants Atlanta's instant dismissal motion, the Court agrees with plaintiffs that the issues raised herein largely are a restatement of defendants Atlanta's opposition to plaintiffs' recent motion to amend their complaint, a courtesy copy of which is annexed as an exhibit to plaintiffs' opposition papers. For unexplained reasons, however, it appears that this Court never had

received and considered said opposition at the time that it had granted plaintiffs permission to serve an amended complaint.²

As previously had been observed by this Court, it is well-settled that, on a motion to dismiss for failure to state a cause of action, the Court initially must accept the facts alleged in the complaint as true and then determine whether those facts fit within any cognizable legal theory, irrespective of whether the plaintiff will likely prevail on the merits. See Campaign for Fiscal Equity, Inc. v. State, 86 N.Y.2d 307, 318 (1995); Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994); People v. New York City Transit Authority, 59 N.Y.2d 343, 348 (1983); Morone v. Morone, 50 N.Y.2d 481 (1980); Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 274-275 (1977); Cavanaugh v. Doherty, 243 A.D.2d 92, 98 (3rd Dept. 1989); Klondike Gold, Inc. v. Richmond Associates, 103 A.D.2d 821 (2nd Dept. 1984). The complaint must be given a liberal construction and will be deemed to allege whatever cause of action can be implied by fair and reasonable intendment. See Shields v. School of Law of Hofstra University, 77 A.D.2d 867, 868 (2nd Dept. 1980); Penato v. George, 52 A.D.2d 939 (2nd Dept. 1976). The test is whether the pleading gives notice of the transactions relied upon by the plaintiff and whether sufficient material elements of the cause of action have

²Attorney Quinn's affirmation in opposition is not listed among those papers considered by the Court in the rendering of its November 20, 2012, Decision and Order.

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been asserted. The allegations in the complaint cannot be vague and conclusory." Stoianoff v. Gahona, 248 A.D.2d 525, 526 (2nd Dept. 1998). It does not matter that the plaintiff may have mislabeled his cause of action. See CPLR 3027, 3016. "Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claim, is irrelevant to the determination of a pre-disclosure motion to dismiss." Porcelli v. Key Food Stores Co-op., Inc., 44 A.D.3d 1020 (2nd Dept. 2007).

Where extrinsic evidentiary material is considered, the Court need not assume the truthfulness of the pleaded allegations. The criterion to be applied in such a case is whether the plaintiff actually has a cause of action, not whether he properly has stated one. See Guggenheimer v. Ginzburg, supra at 275; Kaufman v. International Business Machines Corp., 97 A.D.2d 925 (3rd Dept. 1983), affd. 61 N.Y.2d 930 (1984); Rappaport v. International Playtex Corporation, 43 A.D.2d 393, 395 (3rd Dept. 1974). Thus where it has been shown that a material fact or facts as claimed by the plaintiff "have been negated beyond substantial question" by the documentary evidence or affidavits and other evidentiary submissions, and/or where the very allegations set forth in the complaint fail to support any cause of action, the complaint should be dismissed. See CPLR 3211, subd. (a), par. 1; DePaulis Holding

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Corp. v. Vitale, 66 A.D.3d 816, 818 (2nd Dept. 2009); Biondi v. Beekman Hill House Apartment Corp., 257 A.D.2d 76 (1st Dept. 1999), affd. 94 N.Y.2d 659 (2000); Robinson v. Robinson, 303 A.D.2d 234 (1st Dept. 2003).

Applying the foregoing principles of law to the facts at bar, the Court denies defendants Atlanta's motion to dismiss. Firstly, the Court notes that defendants' objection to the amended complaint essentially only is with respect to the newly added allegations set forth in paragraph 142 to 174.

Secondly, the Court agrees with plaintiffs that, contrary to defendants Atlanta's characterization of this action, this is a personal injury action. Plaintiffs are not seeking to assert violations of Federal and New York law against any defendants, including Atlanta. Plaintiffs have alleged that plaintiff Frederick Cioffi, on duty as a police officer for the Village of Tuckahoe, had been standing in a roadway talking to the driver of another vehicle when he had been struck by a tractor trailer, owned by defendant Ryder Truck Rental, Inc. ("Ryder"), leased to defendant GFI Boston LLC d/b/a Sheila Marie Imports ("Sheila Marie"), and operated by defendant Burke, who at the time had been working and in the course of his employment for defendant S.M. Foods. Although plaintiffs also allege that Ryder has engaged in a pattern of criminal wrongdoing and intentional violations of

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Federal and State laws and regulations relating to public safety, including its failure to have had the subject vehicle identified as one that was being operated by defendant GFI Boston LLC under its Department of Transportation number, and that Ryder had permitted defendant GF Boston LLC to improperly and illegally use Ryder's DOT registration number and thus that Ryder de facto had become a motor carrier and not merely a lessor, as well as that Ryder independently had been negligent in failing properly to have "safety checked" defendant Burke by way of a road test, and/or that it negligently had failed to retrieve the subject vehicle upon the expiration of the rental period, plaintiffs allegations are designed merely to create an exception to defendants' reliance on the Graves Amendment herein, and not to create private rights of actions which otherwise do not exist for breaches of statutory duties.

Further, plaintiffs also have alleged that defendant Russell McCall's Inc. is a member of defendant GFI Boston, LLC, that defendant Jay is the managing member of GFI Boston, and that the Ryder and Sheila Marie defendants had a relationship of agency, and/or joint venture, and/or had engaged in a conspiracy with the Atlanta defendants to violate State and Federal regulations and statutes, and that there exists an alter ego relationship between the Atlanta defendants and defendants Ryder, GFI Boston and SM

Foods, which warrants piercing of the corporate veil. These claims are not subject to dismissal based upon the record at bar.

The Court understands that, from defendants Atlanta's perspective, this action only involves an unfortunate accident where plaintiff had been struck and injured in the course of his employment by a tractor trailer, the driver of which had been in the course of his employment, and that he had been appropriately licensed and not under the influence of any drugs or alcohol, nor had he been guilty of any driving violations, and that Ryder had been the tractor trailer's owner/lessor, that GFI Boston had been the lessee thereof, that the tractor trailer had been registered, that the tractor trailer had been in established safe mechanical condition on the accident date, and that it also had been properly and sufficiently insured. The Court further understands defendants Atlanta's position that, at most, the facts establish that the written rental agreement between Ryder and GFI Boston had expired prior to the subject accident, that there properly had not been executed a long-term written lease, as required by the Federal Motor Carrier Safety Act, and that the tractor trailer's registration number improperly had belonged to Ryder when it should have belonged to GFI Boston LLC, but that none of the foregoing supports any claim against defendants Atlanta and/or entitlement to recovery of the punitive damages plaintiffs seek.

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This Court disagree. At this point of the litigation, and without prejudice to defendants Atlanta's entitlement to move for summary judgment after the completion of discovery, the Court cannot agree that plaintiffs have failed as a matter of law to state claims against defendants Atlanta.

As to defendants Atlanta's argument that plaintiffs improperly are seeking punitive damages, it is well settled that punitive damages are recoverable to vindicate public rights. See Garrity v. Lyle Stuart, Inc., 40 N.Y.2d 354, 358 (1976); Tartaro v. Allstate Indemn. Co., 56 A.D.3d 758 (2nd Dept. 2009). Thus, a private party seeking to recover punitive damages must not only demonstrate fraudulent or egregious tortious conduct by which he was aggrieved and which is actionable as an independent tort, but also that such conduct was part of a pattern of similar conduct directed at the public generally. See New York University v. Continental Insurance Co., 87 N.Y.2d 308, 315-316 (1995); Rocanova v. Equitable Life Assurance Society of United States, 83 N.Y.2d 603, 613 (1994); O'Keefe v. Allstate, 90 A.D.3d 725, 726 (2nd Dept. 2011); Rodriguez v. Allstate Ins. Co., 33 Misc.3d. 827 (Sup. Ct. Kings Co. 2007).

Here, the Court necessarily finds that plaintiffs have not alleged any fraudulent or tortious conduct which aggrieved plaintiffs and which is actionable as a separate tort. Indeed, plaintiffs concede that their only purpose in pleading the

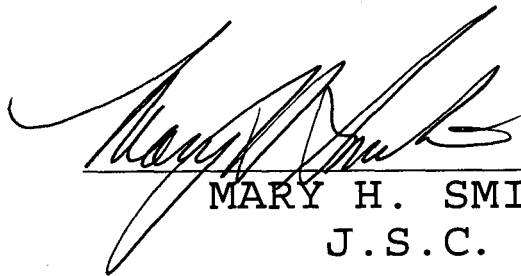
allegations of defendants' alleged statutory violations is to preempt defendants' entitlement to the protection of the Graves Amendment and not to allege any cause of action. Accordingly, defendants Atlanta's motion is granted to the extent only that plaintiffs' claim for punitive damages is dismissed.

Plaintiffs' cross-motion for an Order pursuant to 22 N.Y.C.R.R. 130-1.1 imposing costs and/or sanctions upon defendants Atlanta is denied.

This Court takes the opportunity to note that any issues involving discovery, and/or the parties' actions and/or failures related to discovery, are not properly before this Court and instead should be addressed in the Compliance Conference Part in accordance with the Differentiated Case Management Part Rules implemented by Hon. Alan D. Scheinkman, 9th Judicial District Administrative Judge.

The parties shall appear in the Compliance Conference Part, Room 800, at 9:30 a.m., on January 24, 2013.

Dated: January 11, 2013
White Plains, New York



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