

**Richards v Alexander's Inc.**

2018 NY Slip Op 31203(U)

June 14, 2018

Supreme Court, New York County

Docket Number: 152448/2015

Judge: Carol R. Edmead

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 35

\_\_\_\_\_  
NOEL RICHARDS and YOLANDA MIERES,

x

Plaintiffs

Index No. 152448/2015  
Motion Sequence 005

-against-

ALEXANDER’S INC. VORNADO REALTY TRUST,  
731 COMMERCIAL HOLDING, LLC and 731  
RESIDENTIAL, LLC,

Defendants.

\_\_\_\_\_  
x

**MEMORANDUM DECISION**

Defendants 731 Commercial Holding, LLC, 731 Residential, LLC, Alexander’s Inc and Vornado Realty Trust ( Defendants) move for an Order, pursuant to CPLR §3212, granting Defendants summary judgment and dismissal of the claim of Plaintiffs Noel Richards (Richards) and Yolanda Mieres (collectively Plaintiffs) for punitive damages.

*Defendants’ Argument*

This action arises from Richards’ alleged accident on February 5, 2014, on the public sidewalk adjoining premises at 731 Lexington Avenue, New York, New York. Richards seeks compensation for bodily injuries. He claims to have been struck by snow and/or ice falling from above. His wife Yolanda Mieres, asserts a derivative claim for loss of services.

Punitive damages are inappropriate in this case as this is an ordinary negligence action. There is no clear unequivocal and convincing evidence showing “egregious an wilful conduct” that is “morally culpable, or activated by evil and reprehensible motives in this case.

At no time were Defendants issued violations from the City of New York for snow or ice falling onto the premises’ adjoining public sidewalks. There were no prior lawsuits or claims

relating to injuries from snow or ice falling on the adjoining public sidewalks. Defendants, within minutes of Richards' accident called NYPD and EMS, but NYPD upon assessing the situation directed Defendants not to close off any sidewalks adjoining the building, but instead directed Defendants to keep them open. The assertion that Defendants were aware of a similar occurrence on the very morning of Richards' accident is untrue. The unrelated occurrence was first reported to Defendants two full days after the date of loss. In every instance of complaints of falling ice and snow, Defendants would investigate and visually inspect the situation immediately, notifying NYPD and seeking its guidance.

Defendants' conduct was far from egregious and wilful conduct motivated by evil and reprehensible impulses.

*Plaintiffs' Opposition*

There are a number of material facts in this matter that would justify a jury verdict in favor of Plaintiffs regarding punitive damages against the Defendants based upon their wilful and egregious conduct. Punitive damages in this matter are more appropriately left for the jury to determine, or for the trial judge to determine once the evidence in the case is presented at trial. The evidence in this case shows that the falling ice was an immense problem for years, and that the Defendants allowed it to continue during that time, culminating in a number of people being hit with falling ice. Defendants' claim that there were no prior claims, lawsuits or violations issued regarding the ice and snow falling is a red herring. They cannot claim that they had no notice of the problem as complaints of pedestrians being hit with ice and snow go back years. It is irrelevant whether or not these people brought lawsuits due to their injuries. There are four injury reports authenticated in the deposition of Mr. Alessio Amico, Defendants' assistant

building manager (Amico), not including Richards and three other complaints of falling ice noted in the logbooks from February 3 through 5. As shown in the incident report (Exh. 5 in Amico's deposition)\_ there was at least one other pedestrian who had to be taken to the hospital by ambulance due to being hit by ice and snow falling from the building. Further, Defendants were aware of the falling ice on February 5, 2014 because a Bloomberg employee who worked in the building complained of the falling ice that morning prior to Richards' accident. Finally, there is video evidence that shows the Defendants were watching on their security cameras prior to Richards being hit with the ice, chunks of ice falling onto the sidewalk.

*Defendants' Reply*

Plaintiffs in opposition offer no proof of conduct so flagrant as to transcend mere carelessness, and they fail to establish that this is one of the singularly rare cases with extreme aggravating factors such as improper state of mind, malice or wrongdoing to the public.

DISCUSSION

Punitive Damages: Tort Case

"Punitive damages are awarded in tort actions '[w]here the defendant's wrongdoing has been intentional and deliberate, and has the character of outrage frequently associated with crime" (*Prozeralik v Capital Cities Communications, Inc.*, 82 NY2d 466, 605 NYS2d 218, 626 NE2d 34 [1993], *quoting* Prosser and Keeton, Torts § 2, at 9 [5th ed. 1984]). That author also teaches that: "Something more than the mere commission of a tort is always required for punitive damages. There must be circumstances of aggravation or outrage, such as spite or 'malice,' or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that the conduct may be called wilful or wanton" (Prosser and

Keeton, Torts § 2, at 9-10 [5th ed.1984]).

Thus, the harmful conduct must be "intentional, malicious, outrageous, or otherwise aggravated beyond mere negligence" (*McDougald v Garber*, 73 NY2d 246, 538 NYS2d 937, 536 NE2d 372 [1989]). Furthermore, an award of punitive damages must be supported by "clear, unequivocal and convincing evidence" (*Munoz v Puretz*, 301 AD2d 382, 753 NYS2d 463 [1st Dept 2003]).

Further, it is well settled that the purpose of punitive damages is not to remedy private wrongs but to vindicate public rights (*see Garrity v Lyle Stuart, Inc.*, 40 NY2d 354, 358 [1976]). Thus, a private party seeking to recover punitive damages must not only demonstrate 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 Ins. Co.*, 87 NY2d 308, 315-316 [1995]; *Rocanova v Equitable Life Assurance Society of United States*, 83 NY2d 603, 613 [1994]; *RTC Industries, Inc. v Goodtimes Home Video Corp.*, 1997 WL 35524 [SDNY 1997]).

"Punitive damages are available only in those limited circumstances where it is necessary to deter defendant and others like it from engaging in conduct that may be characterized as 'gross' and 'morally reprehensible' and of 'such wanton dishonesty as to imply criminal indifference to civil obligations' " (*New York University v Continental Ins. Co.*, *supra*, at 316.

Such damages, however, may be recovered in addition to compensatory damages upon a showing that conduct complained of was part of a pattern of similar conduct directed at the public generally, aggravated by evil or a wrongful motive or that there was wilful and intentional

misdoing, or a reckless indifference equivalent intentional wrongdoing (*Walker v Sheldon*, 10 N.Y.2d 401, 404-405 [1961]; see, also *Rocanova v Equitable Life Assur. Soc.*, *supra.*)

"Even where there is gross negligence, punitive damages are awarded only in 'singularly rare cases' such as cases involving an improper state of mind or malice or cases involving wrongdoing to the public" (*Karen S. "Anonymous" v Streitferdt*, 172 AD2d 440, 441, *quoting Rand & Paseka Mfg. Co. v Holmes Protection*, 130 AD2d 429, 431, *lv denied* 70 NY2d 615.)

### Conclusion


This court finds that Plaintiffs have sufficiently stated a cause of action for punitive damages to allow the issue to go to a jury or, alternatively the trial judge. The Plaintiffs have sufficiently established claims supporting proceeding to a jury on this issue, sufficient to overcome the instant motion, through specific evidentiary allegations, that the alleged conduct was of an egregious nature, and aimed not solely at this Richards but at the public, generally (*American Transitions. Co. v Associated International Ins. Co.*, 261 AD2d 251 [1<sup>st</sup> Dept 1999]). A claim for punitive damages is cognizable only in circumstances where plaintiff has made sufficient evidentiary allegations of ultimate facts of fraudulent and deceitful scheme in dealing with general public as to imply criminal indifference to civil obligations (*Porter v Allstate Inc. Co.*, 184 AD2d 685 [2d Dept 1992]).

For the foregoing reasons, it is hereby

**ORDERED** that the application of Defendants 731 Commercial Holding, LLC, 731 Residential, LLC, Alexander's Inc and Vornado Realty Trust for an Order, pursuant to CPLR §3212, granting Defendants summary judgment and dismissal of the claim of Plaintiffs Noel Richards and Yolanda Mieres for punitive damages is denied. Ad it is further

**ORDERED** that counsel for Defendants shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for Plaintiffs.

Dated: June 14, 2018



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Carol Robinson Edmead, J.S.C.

**HON. CAROL R. EDMEAD**  
**J.S.C.**