

Princeton v Moxy Rest. Assoc.
2018 NY Slip Op 32998(U)
November 19, 2018
Supreme Court, New York County
Docket Number: 158255/2016
Judge: Robert D. Kalish
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 29

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DARREN PRINCETON,

Plaintiff,

Index No. 158255/2016
(Motion Sequence No. 002)

- against -

MOXY RESTAURANT ASSOCIATES, INC.
and SMITHFIELD HALL,

Defendants.
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Kalish, J.:

On or about September 30, 2016, plaintiff Darren Princeton commenced this action to recover damages for injuries resulting from an incident that occurred at defendants' bar-restaurant on May 14, 2016, during which plaintiff allegedly suffered a fractured wrist, nerve damage, and injury to his face and head, as well as other physical, emotional and psychological injuries. The original complaint alleges that plaintiff's injuries were caused by defendants' negligent supervision, training, and oversight of an employee providing door and/or security services for the bar-restaurant on the date of the incident. Further, the original complaint alleges that while plaintiff was unconscious, the employee, and/or others acting on defendants' behalf, provided false and/or misleading information to the New York City Police Department (NYPD), causing plaintiff to be arrested and incarcerated for approximately 16 days. The arrest and incarceration resulted in additional injuries, and emotional and psychological damages. Based on the foregoing allegations, the original complaint asserts two causes of action -- a claim "under respondeat superior" and a claim for negligence (Original Complaint, ¶¶ 17-26). On or about November 18, 2016, defendants answered the original complaint.

By notice of motion, dated September 18, 2018, plaintiff now moves, pursuant to CPLR

3025(b) and (c), to amend the complaint to add causes of action for negligent and intentional infliction of emotional distress (Proposed Amended Complaint, at ¶¶ 35-38). Plaintiff also seeks to add a claim for punitive damages. The proposed amended complaint seeks to include additional allegations to support these causes of action. In this regard the proposed amended complaint alleges that two of defendants' employees (rather than one) were involved in the incident -- one employee providing management services and the other providing door and/or security services (*id.* at ¶ 7) -- and that these employees intentionally, recklessly and/or negligently made false statements to the police, which constituted extreme and outrageous conduct. The false statements were intended to cause plaintiff extreme emotional distress, "occasioned, in part as a result of the Plaintiff being arrested" (Proposed Amended Complaint, at ¶ 18). By making these statements, defendants' employees caused plaintiff "to be arrested and caused his safety to be unreasonably endangered and/or caused the Plaintiff to fear for his own safety" (*id.* at ¶ 21). In addition to seeking to include these allegations, plaintiff seeks to remove the allegation in the original complaint that he was unconscious when the false statements were made to the NYPD.

Defendants oppose the motion on the ground that plaintiff's proposed amendment lacks merit. Defendants also argue that plaintiff failed to offer any justification for the delay in seeking to amend the complaint which caused them significant prejudice. Defendants cross-move, in the event the court grants plaintiff's motion to add two new causes of action to the complaint, for an order vacating the note of issue and striking the matter from the trial calendar.

DISCUSSION

The decision whether to grant a motion for leave to amend a pleading is committed to the sound discretion of the trial court (*see Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015]; *Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]). “Leave to amend pleadings is freely given absent prejudice or surprise. Nevertheless, a court must examine the merit of the proposed amendment in order to conserve judicial resources” (*360 West 11th LLC v ACG Credit Co. II, LLC*, 90 AD3d 552, 553 [1st Dept 2011][internal citations omitted]; *see CPLR 3025 [b]; State of N.Y. ex rel. Willcox v Credit Suisse Sec. (USA) LLC*, 140 AD3d 622, 622-623 [1st Dept 2016]). Therefore, “leave to amend will be denied where the proposed pleading fails to state a cause of action, or is palpably insufficient as a matter of law” (*Davis & Davis v Morson*, 286 AD2d 584, 585 [1st Dept 2001][internal citations omitted]).

Here, the allegations in the proposed amended complaint fail state a cause of action for intentional infliction of emotional distress. To state a cause of action for intentional infliction of emotional distress, the conduct alleged must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community” (*Chanko v American Broadcasting Cos. Inc.*, 27 NY3d 46, 56 [2016], quoting *Howell v New York Post Co.*, 81 NY2d 115, 122 [1993]). The allegations in the proposed amended complaint are not sufficient to support this cause of action because they do not rise to the level necessary to satisfy the outrageousness element (*see Matthaus v Hadjedj*, 148 AD3d 425, 425-426 [1st Dept 2017][“plaintiff’s factual allegation that defendant made false statements to the police, causing her arrest and incarceration, was insufficient as a matter of law to constitute extreme and outrageous behavior to sustain the

claim”]; *Slatkin v Lancer Litho Packaging Corp.*, 33 AD3d 421, 422 [1st Dept 2006] [instigation of plaintiff’s arrest by means of false statements to the police are “not so outrageous as to be utterly intolerable”]; *Brown v Sears Roebuck & Co.*, 297 AD2d 205, 212 [1st Dept 2002] [plaintiff’s allegation that defendant’s store manager gave false information to the police, even if true, did not describe conduct so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community]; *see also Sheila C. v Povich*, 11 AD3d 120, 130-131 [1st Dept 2004]).

A claim for negligent infliction of emotion distress also requires outrageous conduct which goes beyond all possible bounds of decency and which is intolerable in a civilized society (*see Berrios v Our Lady of Mercy Med. Ctr.*, 20 AD3d 361, 362 [1st Dept 2005]). Therefore, plaintiff’s proposed amended complaint fails to state a cause of action for negligent infliction of emotional distress.

The proposed amended complaint also includes a claim for punitive damages. “However, an award of punitive damages must be premised on conduct particularly egregious in nature directed both at the plaintiff and the general public” (*National Broadcasting Co. v Fire Craft Servs.*, 287 AD2d 408, 408-409 [1st Dept 2001]). Here, the alleged conduct falls short of this standard.

CONCLUSION

In accordance with the foregoing, it is hereby

ORDERED that plaintiff Darren Princeton's motion for leave to amend the complaint in the proposed form annexed to the moving papers is denied; and it is further

ORDERED that defendants' cross motion is denied as academic.

The foregoing constitutes the decision and order of the Court.

Dated: Nov 19, 2018

ENTER:


HON. ROBERT D. KALISH
J.S.C. J.S.C.