

Collazo v Adusei

2019 NY Slip Op 35038(U)

September 27, 2019

Supreme Court, Bronx County

Docket Number: Index No. 21445/2019E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

-----X
JANSES L. COLLAZO,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 21445/2019E

SYLVIA ADUSEI and R. R. AGYEMANGM-
CLOVINN,

Defendants.
-----X

John R. Higgitt, J.

Upon defendants' July 2, 2019 notice of motion and the affirmation and exhibits submitted in support thereof; plaintiff's July 31, 2019 affirmation in opposition; and due deliberation; defendants' motion to dismiss all "non-negligence" claims alleged in the complaint is granted.

Plaintiff commenced this action to recover damages for personal injuries he allegedly sustained as a result of a March 22, 2016 motor vehicle accident. In the complaint, plaintiff alleged that defendants were "negligent, careless and reckless in the ownership, operation, management, maintenance, supervision, use and control of their motor vehicle" (*see* plaintiff's complaint at para 26 and 28). On April 18, 2019, the defendants joined issue; in their answer they denied, among other things, the allegations of careless and recklessness.

Defendants seek dismissal of the "non-negligence" allegations under CPLR 3211 because the facts and circumstances alleged by plaintiff regarding the accident do not support a finding of any conduct other than negligence. In support of their motion defendants submit the police accident report, which describes the accident as a rear-end collision. Defendants assert that there are no specific allegations in the complaint and no suggestion from the police accident report that

defendants committed a reckless act, which allegations would presumably be used to seek punitive damages.

Defendants' motion is, in effect, a motion to strike prejudicial matter from the complaint and is treated as such. Under CPLR 3024, "a party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading." In deciding a motion under CPLR 3024(b), the question is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action (*see Soumayah v Minnelli*, 41 AD3d 390 [1st Dept 2007]).

Here, the allegations of "recklessness" are not relevant to plaintiff's cause of action. Recklessness, which entails an intentional act of an unreasonable character in disregard of a known or obvious risk (*see Saarinen v Kerr*, 84 NY2d 494, 501 [1994]), is not an element of a negligence claim and would only serve as a basis for an award of punitive damages. Nothing in the complaint or police accident report indicates that defendants engaged in the type of egregious conduct necessary to support an award of such damages (*see generally Ross v Louise Wise Servs., Inc.*, 8 NY3d 478, 489 [2007]). Moreover, punitive damages are rarely appropriate in motor vehicle actions (*see generally* 1B NY PJ3d 2:278 ["Automobile Accidents"] [2019]).

Plaintiff's failed to submit timely opposition to defendants' motion (*see Senise v Mackasek*, 174 AD2d 522, 551 [1st Dept 1991]; *Romeo v Ben-Soph Food Corp.*, 146 AD2d 688, 690 [2d Dept 1989]). Defendants' motion was returnable on July 31, 2019; however, in contravention of the demand in defendants' notice of motion and CPLR 2214(b), plaintiff served the opposition on July 31, 2019. In any event, plaintiff offered no argument or evidence suggesting that an allegation of recklessness is relevant to this action.¹ Of course, if discovery

¹ Plaintiff's allegations of "carelessness" are unnecessary surplusage that are covered by plaintiff's allegations of negligence.

produces evidence supporting allegations of recklessness, plaintiff is free to move to amend the complaint to include such allegations (*see Soumayah v Minnelli*, 41 AD3d at 393).

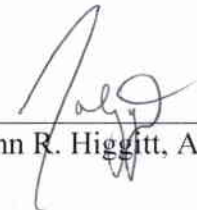
Accordingly, it is

ORDERED, that defendants' motion, in effect, to strike the allegations of recklessness and carelessness from the complaint are granted and those allegations are stricken.

The parties are reminded of the January 31, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: September 27, 2019



John R. Higgett, A.J.S.C.