

Valdez v Alonzo

2021 NY Slip Op 33692(U)

September 13, 2021

Supreme Court, Bronx County

Docket Number: Index No. 23532/2015E

Judge: Kim Adair Wilson

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, NEW YORK: Part IA-12

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PEDRO J. VALDEZ,
Plaintiff,

DECISION AND ORDER
Index No. 23532/2015E

-against-

RAMONA G. ALONZO, JENNIFER CHAN, AND
SEHIRY CANDELIER,
Defendants.

**HON. KIM ADAIR WILSON
J.S.C.**

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Kim Adair Wilson, J.:

After virtual **Inquest** held on Tuesday, August 3, 2021, as assigned by the Administrative Judge on said date, and based upon the credible testimony and admissible evidence adduced therein, this **Court** finds as follows:

I. BACKGROUND

In this action, plaintiff Pedro J. Valdez seeks monetary damages from Ramona G. Alonzo, Jennifer Chan and Sehiry Candelier for personal injuries that he allegedly sustained, on or about November 19, 2013, when he slipped and fell in an accumulation of water, at 38 Dodworth Street, Brooklyn, New York (“subject premises”). According to the Verified Complaint, dated June 29, 2015, paragraph 40, “the defendants, Ramona G. Alonzo, Jennifer Chan and Sehiry Candelier, jointly owned the property and/or premises located at 38 Dodworth Street, Brooklyn, New York” (herein “defendants”).

According to plaintiff Pedro J. Valdez, he was a tenant of one “Ramona G. Alonzo” at the premises where his accident allegedly occurred. However, upon review of the Lease, of which only the first two pages are provided, dated August 1, 2011, defendant Jennifer Chan is identified as the “LANDLORD,” and plaintiff and his wife, Kina L. Valdez, are identified as the “TENANT.” Nonetheless, plaintiff Perez, his wife and their daughter resided in the basement apartment of the subject premises.

The procedural history of this matter indicates that plaintiff Pedro J. Valdez moved for a default judgment on January 8, 2016; judgment was granted on March 8, 2016; and an inquest ordered on March 8, 2016. Moreover, pursuant to the referenced Decision and Order (Ruiz J.), dated and filed March 8 and 21, 2016, respectively, this Court is satisfied that the plaintiff provided proof of service of process upon the defendants and has satisfied all procedural protocols to place this matter upon this Court’s calendar for Inquest and an assessment of damages.

At virtual Inquest, Attorney Steven Weinstein was present and represented plaintiff. Plaintiff Pedro Valdez was the sole witness. However, there were no appearances on behalf of the defendants as they had already defaulted in accordance with the above-referenced Decision and Order, dated March 8, 2016.

During the Inquest proceeding, plaintiff was asked many questions in order to properly elucidate to the Court both the slip and fall accident and how the accident affected him. In substance, his testimony revealed that, on the day of the accident, there was a family celebration to celebrate his mother's birthday. The celebration took place in the basement of the premises where the plaintiff had an apartment unit. There was also a common area in the basement. At some point, he escorted his mother upstairs to await a taxi. Once his mother departed by taxi, he returned downstairs to the basement. While in the common area of the basement, he was caused to slip and fall to the ground because of an accumulation of water that was on the floor. As a result, plaintiff sustained two fractures in his right ankle.

II. FINDINGS OF FACT

In the instant case, Pedro J. Valdez v Ramona G. Alonso, Jennifer Chan and Sehiry Candelier, an Inquest was conducted on August 3, 2021, by the Undersigned.

During the Inquest, plaintiff's attorney contended that the credible evidence confirms that on November 19, 2013, the defendants breached their duty to keep the premises in a good, safe and fit condition and caused and/or created the condition which proximately caused plaintiff Pedro J. Valdez to sustain personal injuries.

Testimony: Plaintiff- Pedro J. Valdez

Pedro J. Valdez presented the following testimony, in substance, in response to various questions by his attorney during the **Inquest**.

Pedro J. Valdez is forty-seven (47) years old and currently lives in Providence, Rhode Island. He has lived there for four (4) years. His previous addresses included Bronx, New York, and his Brooklyn, New York residence. He is married with two children and is currently unemployed because of the pandemic. At the time of the subject accident, he worked as a taxi driver.

Pedro J. Valdez testified that he was indeed involved in a slip and fall accident on November 19, 2013, which occurred at the common area of the apartment where he and his family lived. On the night of the accident, many people were gathered in the basement apartment where he lived, for his mother's birthday party and were playing a game of dominoes. Defendant Ramona Alonzo and her husband were present at this gathering. Mr. Valdez testified that initially he left the common area, which was steps away from where the accident occurred, and walked upstairs to wait for the taxi in which he called for his mother. The other attendees were in the basement waiting on him to return to finish the game. Once ensuring that his mother was safely in the taxi, he proceeded to return to the basement to rejoin the party. On his way back to the basement, after descending the steps, he slipped in the common hallway of the basement in an accumulation of water which was a couple inches deep and about 3 feet wide by 3 feet long. He testified that his right foot slipped, and his leg folded in some manner, which caused his ankle to be twisted to the right. The direct cause of the slip and fall, itself, was none other than the accumulation of water at the bottom of the steps in the common hallway. He stated that he had walked by this area, when taking his mother upstairs, but asserted the water would have had to accumulate in the amount of time it took for the taxi to arrive for his mother. Mr. Valdez testified that he fell back into the water, and his clothes became wet. He tried but could not stand up without assistance. Thus, his wife and daughter came to help him because they were only about 15 feet from the accident. His wife and daughter proceeded to pull him a chair in which he sat in for about thirty (30) minutes waiting to see if he could walk again. He stated he could not even, after many attempts, try to put pressure on the ankle, so he decided to try to go to sleep. During his testimony, he recounted that defendant Ramona Alonzo "acted like nothing happened." His wife and daughter carried him to his bedroom and his wife helped him change and get into the bed. He stated that he tried to sleep but was unable to because of the pain. During this time his ankle swelled larger than the other one. Therefore, he asked his wife if she could please take him to the hospital, in which she agreed and proceeded to drive him to Wyckoff Heights Medical Center, in Brooklyn, New York. His wife went in, got him a wheelchair, and brought him into the hospital. During admission, he told the nurse what occurred, and the pain he was enduring. The nurse proceeded to take his blood pressure, and the hospital performed an X-ray of his right ankle. They told him he had two fractures in his right ankle. To treat the fractures, they gave him a hard cast that went from the bottom of his foot to his knee on his right leg, and two crutches. The hospital proceeded to give him Tylenol and discharged him. His wife took him back home following the hospital visit, gave him Tylenol, and he tried to sleep. Plaintiff testified that about a week after he went to Wyckoff Clinic, and complained about the pain, and was told that although he was still in pain, his bones were in a good position. Mr. Valdez stated that his cast was on for about six (6) weeks. Once removed, he replaced it with a boot that he purchased at the pharmacy so he could walk better. He wore the boot for about two months. Mr. Valdez testified that, after he went to the clinic, he went to another medical doctor, who sent him to another clinic named

Williamsburg, in which he took another x-ray. The physician called him in a few days and told him everything was fine, although he still had pain. He stated that he could walk during this time but not with much pressure. He testified that he used the crutches for the entire time that his cast was on and used the crutches during some of the time he had his boot on. Mr. Valdez stated, although he used a boot and then discontinued its use, once finished he still has pain sometimes when it rains, or it is cold. He testified that he had trouble walking, and can only run for a couple of minutes, and has to stop because of the pain. He stated that there are many activities he can no longer do, such as, walk up and down stairs without trouble, softball, laundry every weekend, shopping with extensive walking, running, going to the beach and walking for extensive periods of time, and dancing multiple times throughout the year with his wife. Now in 2021, he stated it still hurts when it rains but is better for the majority, and he can walk for about 5 to 6 minutes now. However, he still must stop and rest and then resume walking. He stated that he could not work for three to four months because of his injuries. He stated that he decided to move to Rhode Island, because everything was expensive, and he did not make the same money he did before the accident, as he couldn't sit and drive for long periods of time. Therefore, he decided to get a less expensive residence. The only place that he could find was in Providence, Rhode Island. He testified that he, his wife and daughter moved to Rhode Island where they first got an apartment which was a walk-up. They lived there for only six (6) months since he could not handle the stairs to get to his apartment. He then resided for two (2) years at another apartment which was on the first floor. He and his wife then bought a house in Rhode Island where he and his family presently reside. He testified that he "cannot do a lot around the house" and that his ankle still swells from time to time.

EVIDENCE

Plaintiff's diagnostic exams revealed two (2) fractures of the fibular of his right ankle resulting in a hard ankle cast. According to the papers submitted by Attorney Steven Weinstein, "[t]he Wyckoff Heights Medical Center emergency room reflects that the plaintiff arrived at the emergency room at 12:16 a.m. and that he was seen by a triage nurse at 12:50 a.m. The triage note reflects a history that he had "twisted his right ankle"; and that he was complaining of pain to the right ankle and that his pain scale at that time was "8" out of "10". The LPN note of Ann Marie Johnson reflects a history "I fell in my house last night." The record reflects that the plaintiff was sent for x-rays of his right ankle which revealed two (2) fractures of the fibular of his right ankle. They were described as "oblique" fractures in nature. The record further reflects that the ankle was casted and that he was administered Ketorolac Tromethamine which is an anti-inflammatory medication." The submitted evidence is as follows:

- **Plaintiff's Exh. 1: Wyckoff Heights Medical Center, certified Medical Records**
18-pages evidencing the Emergency Room record; medical complaint(s); medical diagnostic tests performed; diagnosis; medical treatment; severity; prognosis and permanency of the plaintiff's medical injuries.
- **Plaintiff's Exh. 2: "CLINIC RECORD,"** dated November 26, 2013
2-pages electronically signed by **Kevin Wright, M.D.**, dated December 4, 2013.

III. **DISCUSSION**

CPLR § 3215 governs default judgments and states the following in relevant part:

§ 3215. Default judgment

- a. Default and entry.** When a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him. If the plaintiff's claim is for a sum certain or for a sum which can by computation be made certain, application may be made to the clerk within one year after default. The clerk, upon submission of the requisite proof, shall enter judgment for the amount demanded in the complaint or stated in the notice served pursuant to subdivision (b) of rule 305, plus costs and interest.
- f. Proof.** On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316 of this chapter, and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party, or where the state of New York is the plaintiff, by affidavit made by the party, or where the state of New York is the plaintiff, by affidavit made by an attorney from the office of the attorney general who has or obtains knowledge of such facts through review of state records or otherwise.

IV. **DAMAGES**

In light of the above, based upon plaintiff's unrefuted testimony, this Court finds that plaintiff suffered a serious injury. With that, this Court must determine an appropriate measure of damages. It is established New York law that "[a]n unwarranted and excessive award after inquest will not be sustained, as to do otherwise 'would be tantamount of

granting the plaintiff an open season at the expense of a defaulting defendant' (citation omitted)" (*Newman v. Greenblatt*, 260 AD 2d 616, 617 [2nd Dept 1999]). The measure of damages for pain and suffering is the fair and reasonable compensation in light of all the evidence in the case (*Tate v. Colabello*, 58 NY2d 84, 87 [1983]).

Hence, this Court determines that a fair interpretation of the evidence presented in this case and a review of the range of damages awarded in cases in which similar or analogous injuries were sustained, support and warrant judgment in the **TOTAL amount of One Hundred Fifty Thousand (\$150,000.00) Dollars for past pain and suffering**, and does not deviate materially from what is considered reasonable compensation (*see, Quigly v Coco's Water Café, Inc.*, 85 AD3d 998, 999 [2nd Dept 2011]).

V. CONCLUSION


Accordingly, after **Inquest**, this Court awards damages to plaintiff Pedro J. Valdez in the total amount of **One Hundred Fifty Thousand (\$150,000.00) Dollars for past pain and suffering against defendants Ramona G. Alonzo, Jennifer Chan and Sehiry Candelier, jointly and severally, with interest from August 3, 2021, plus costs and disbursements.**

The County Clerk is directed to enter judgment accordingly.

Plaintiff Pedro J. Valdez/movant is directed to a copy of this Decision and Order with Notice of Entry, upon the parties within thirty (30) days of entry of this Order.

This constitutes the Decision and Judgment of this Court.

Dated: September 13, 2021
Bronx, New York



Hon. Kim Adair Wilson, J.S.C