

Davis v Mellifont Constr. Corp.
2022 NY Slip Op 30352(U)
February 8, 2022
Supreme Court, New York County
Docket Number: Index No. 156069/2020
Judge: Lisa S. Headley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LISA S. HEADLEY PART 22M

Justice

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MYLES DAVIS, as Administrator of the Estate of MADISON
JANE LYDEN,

Plaintiff,

INDEX NO. 156069/2020

MOTION DATE 11/09/2021

MOTION SEQ. NO. 001

- v -

MELLIFONT CONSTRUCTION CORP., FELIPE CHAIREZ,
RAISER-NY LLC,UBER TECHNOLOGIES, INC.,UBER
USA, LLC,JOSE PERALTA

Defendant.

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 14, 15,
16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 30, 31

were read on this motion to/for DISMISSAL.

The movant-defendants RAISER-NY, LLC, UBER TECHNOLOGIES, INC., and UBER
USA, LLC (hereinafter "movant-defendants") filed this motion to dismiss, pursuant to CPLR
§3211(a)(7), the plaintiff's cause of action relating to punitive damages, which is GRANTED.
Plaintiff submitted opposition to the motion. The movant-defendants submitted reply papers.

Furthermore, the cross-movant defendants, MELLIFONT CONSTRUCTION CORP. and
FELIPE D. CHAIREZ (hereinafter "cross-movant defendants") filed a cross-motion to dismiss,
pursuant to CPLR §3211(a)(7), the plaintiff's cause of action relating to punitive damages, which
is DENIED. Plaintiff submitted opposition to the motion.

This action arises from an accident on August 10, 2018 that involved the decedent-plaintiff,
Madison Lyden, a bicyclist, and a truck, owned by Mellifont Construction Corp. and operated by
defendants Felipe D. Chairez, as well as co-defendant Jose Peralta and the Uber defendants.

Plaintiff's estate commenced this action to recover damages for the wrongful death of the
decedent, Madison Jane Lyden, who succumbed to the injuries she sustained as a result of subject
accident. Plaintiff alleges that Madison Jane Lyden ("decedent") was riding a bicycle in the north-
bound bicycle lane on Central Park West in Manhattan. The bicycle lane was blocked by a 2015
Toyota, operated by co-defendant Jose A. Peralta ("co-defendant Peralta"), as a driver for Uber
("Uber defendants"). The decedent left the bicycle lane to avoid the 2015 Toyota that was blocking
the bicycle lane, and entered the traffic lane. As a result, a 2007 Mack Truck being operated by
co-defendant, Felipe D. Chairez ("co-defendant Chairez") collided with the decedent, which
resulted in her serious injuries, and ultimately her death.

I. Movant-defendants RAISER-NY, LLC, UBER TECHNOLOGIES, INC., and UBER USA, LLC's motion to dismiss the complaint

Here, the plaintiff's allegations for punitive damages against the movant-defendants include that the defendant driver was an Uber employee, and that the movants failed to use reasonable care in screening, hiring supervising and training the employee, who was not suitable to operate a motor vehicle. Further, plaintiff's complaint alleges that the movant-defendants were "careless, grossly negligent, willful, wanton and in reckless disregard of the safety of others[,] and they were negligent in operation and supervision of the vehicle that, *inter alia*, failed to yield to the right way and blocked a bicycle lane."

In support of the motion to dismiss the punitive damages cause of action, the movant-defendants argue that, pursuant to *CPLR* §3211(a)(7), this cause of action must be dismissed on the ground that the pleading fails to state a cause of action. Here, movants argue that plaintiff fails to meet the standard to impose punitive damages, and cites the Court of Appeals case, which defines the standard of an award of punitive damages to be that a "defendant manifest evil or malicious conduct beyond any breach of professional duty." *See, Dupree v. Giughiano*, 20 N.Y.3d 921, 924 (2012). In relation to this case, the movant-defendants argue that plaintiff's allegations relating to punitive damages should be dismissed and stricken from the complaint with prejudice because defendant Peralta's actions of blocking the bike lane fail to meet the standard for imposing punitive damages, and that plaintiff fails to demonstrate and allege that his actions arose to "evil malicious, intentional and deliberate conduct." Furthermore, the movants argue that defendant Peralta's actions amount no more than ordinary negligence.

II. Cross-movant defendants MELLIFONT CONSTRUCTION CORP. and FELIPE D. CHAIREZ's cross-motion to dismiss the punitive damages cause of action

Co-defendants, Mellifont Construction Corp., and Felipe D. Chairez, filed a cross-motion to also dismiss the plaintiff's punitive damages cause of action. Cross-movants adopted and incorporated the arguments presented in the movant-defendants' motion to dismiss.

III. Plaintiff's opposition to the motion and cross-motion to dismiss the punitive damages cause of action

In opposition, plaintiff argues that the defendants' motion must be denied as premature because depositions and discovery have not yet been exchanged. Plaintiff also argues that the punitive damages claim is appropriate as it related to co-defendants Peralta and Uber as the complaint alleges, *inter alia*, that defendant-driver Peralta: 1) "was illegally blocking the bicycle lane with this vehicle; and 2) "Peralta's conduct directly caused the death of the decedent."

As it relates to defendant-driver Chairez and Mellifont Construction Corp., the plaintiff also argues that the cross-motion must be dismissed. Plaintiff submitted the arrest report, which detailed the reasons for co-defendant Chairez's arrest, which included Chairez's alcohol breath test results to be 0.64%, which is above the legal commercial driver requirement of .04%. In addition, pursuant to the arrest report, defendant Chairez's stated at the scene that he "drank two beers at lunch." Furthermore, the arrest report details the evidence confiscated from the truck Chairez operated, which included: three empty green metal Heineken 12 fluid ounces beer cans, and a paper cup filled with an alcoholic substance.

In reply, the movant-defendants argue that the plaintiff has failed to refute the defendants' *prima facie* showing that this case does not provide any "factual or legal basis on how this lawsuit was pleaded to support a claim for punitive damages against the movants."

IV. Discussion

Punitive damages must be supported by allegations of wanton conduct. *Bennett v. State Farm Fire & Cas. Co.*, 137 A.D.3d 731(2d Dep't 2016) [complaint failed to plead conduct that would potentially justify an award of punitive damages]. "The nature of the conduct which will justify an award of punitive damages has been variously described but, essentially, it is conduct 'having a high degree of moral culpability,' or activated by an evil and reprehensible motive, which manifests a 'conscious disregard of the rights of others or conduct so reckless as to amount to such disregard'." *Home Ins. Co. v. American Home Prods. Corp.*, 75 N.Y.2d 196, 203, 551 N.Y.S.2d 481(1990); *Walker v. Sheldon*, 10 N.Y.2d 401, 404, 223 N.Y.S.2d 488 (1961); *Welch v. Mr. Christmas*, 57 N.Y.2d 143, 150, 454 N.Y.S.2d 971 (1982). Such conduct may consist of actions which constitute willful or wanton negligence or recklessness but need not be intentionally harmful. *Home Ins. Co. v. American Home Prods. Corp.*, *supra*.

"Evidence of willful or wanton negligence or recklessness, therefore, must be presented before a jury question of punitive damages is raised." *Id.* An act is "wanton and reckless" when done under circumstances showing "heedlessness and an utter disregard" for the 'rights and safety of others. A plaintiff cannot maintain the punitive damages demand on the hope that discovery might someday provide a basis for it. *See, Barnes v. Hodge*, 118 A.D.3d 633, 634, 989 N.Y.S.2d 467, 468 (2014), *citing, Mandarin Trading Ltd. v. Wildenstein*, 65 A.D.3d 448, 451, 884 N.Y.S.2d 47 (1st Dep't 2009), *aff'd*, 16 N.Y.3d 173, 919 N.Y.S.2d 465, 944 N.E.2d 1104 (2011). "However, should discovery reveal facts supporting a claim for punitive damages, plaintiff could of course move for leave to replead the demand." *Id.*; *see also, 87 Chambers, LLC v. 77 Reade, LLC*, 114 A.D.3d 525, 980 N.Y.S.2d 444 (1st Dep't 2014).

"Driving while intoxicated may support an award for punitive damages where there is additional evidence that the defendant engaged in "wanton and reckless" conduct evincing heedlessness and an utter disregard for the safety of others. *See, Schragel v. Juszcyk*, 43 A.D.3d 1375, 1375, 844 N.Y.S.2d 532 (2007); *see Parkhill v. Cleary*, 305 A.D.2d 1088, 1089, 759 N.Y.S.2d 262 (2003); *Taylor v. Dyer*, 190 A.D.2d 902, 903, 593 N.Y.S.2d 122(1993); *Sweeney v. McCormick*, 159 A.D.2d 832, 834, 552 N.Y.S.2d 707 (1990); *see also Deon v. Fortuna*, 283 A.D.2d at 389, 724 N.Y.S.2d 450 (2001). An evaluation of whether punitive damages are warranted must be made "on a case-by-case basis taking into account the nature of the actor's conduct and the level of his intoxication." *Sweeney v. McCormick*, 159 A.D.2d *supra* at 834.

As it pertains to the cross-motion, the court finds evidence to support that cross-movants Chairez's actions do amount to wanton conduct which disregarded the rights and safety of others by him driving under the influence of alcohol while operating a commercial vehicle. The allegations in the plaintiff's complaint include that defendant Chairez was arrested at the scene of the accident, and Chairez's Blood/Breath Alcohol Content ("BAC") at the scene of the accident was .064%, well above the legal limit. Under the *VTL*, "[n]o person shall operate a commercial motor vehicle while such person has .04 of one per centum or more but not more than .06 of one per centum by weight of alcohol in the person's blood." *Vehicle and Traffic Law* §1192(5).

Furthermore, the arresting officer's report states Chairez admitted to having two beers at lunch. The arrest report also states officers found more empty beer containers in Chairez's vehicle, and a cup, which had remains of an alcoholic content. This court finds that the complaint's allegations illustrate that defendant Chairez was operating the truck while intoxicated and while in possession of alcoholic content. Here, the cross-movant defendants have failed to dispute said facts that could support the allegations of wanton conduct on behalf of Chairez.

Here, the plaintiff has alleged with supporting evidence, including, the arrest report, the depraved indifference and willful or wanton negligence regarding cross-movants, defendant-driver Chairez and Mellifont Construction Corp. Therefore, the cross-motion seeking an order to dismiss the plaintiff's claims as they pertain to exemplary/punitive damages for failure to state a cause of action pursuant to CPLR §3211(a)(7) is DENIED.

However, as it pertains the movant-defendants, RAISER-NY, LLC, UBER TECHNOLOGIES, INC., and UBER USA, LLC, this court finds that the allegations set forth in the plaintiff's complaint that "the defendant-driver Peralta was blocking the north bound bicycle lane on Central Park West with his 2015 Toyota" do not amount to 'wanton conduct or a heedless disregard for the rights and safety of others.' Based on these allegations, the plaintiff has failed to allege any type of depraved indifference, and willful or wanton negligence regarding the Uber defendants. Therefore, movant-defendant's motion seeking an order to dismiss the plaintiff's claims as they pertain to exemplary/punitive damages for failure to state a cause of action pursuant to CPLR §3211(a)(7) is GRANTED, and if discovery reveals facts to support a claim for punitive damages, plaintiff may move for leave to replead the demand.

Accordingly, it is

ORDERED that motion by movant-defendants RAISER-NY, LLC, UBER TECHNOLOGIES, INC., and UBER USA, LLC's to dismiss the plaintiff's causes of action as they pertain to exemplary/punitive damages against RAISER-NY, LLC, UBER TECHNOLOGIES, INC., and UBER USA, LLC's, only, is **GRANTED** and it is further

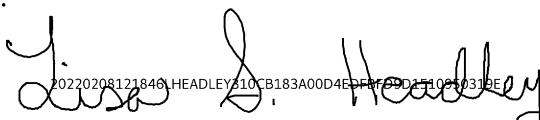
ORDERED that cross-motion by defendants MELLIFONT CONSTRUCTION CORP. and FELIPE D. CHAIREZ to dismiss the plaintiff's causes of action as they pertain to exemplary/punitive damages is **DENIED** and it is further

ORDERED that if discovery reveals facts to support a claim for punitive damages, plaintiff may move for leave to replead the demand; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, movant-defendants shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



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LISA S. HEADLEY, J.S.C.

2/8/2022
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	