

Beltran v Aldave

2022 NY Slip Op 31436(U)

May 2, 2022

Supreme Court, New York County

Docket Number: Index No. 159530/2020

Judge: Lisa S. Headley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LISA HEADLEY PART 22M

Justice

-----X

NATANAEL BELTRAN,

Plaintiff,

- v -

ALBERTO ALDAVE, IVANA GARZON

Defendant.

-----X

INDEX NO. 159530/2020

MOTION DATE 09/13/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISS

In this personal injury action arising out of an alleged motor vehicle accident, defendants Alberto Aldave (Aldave) and Ivana Garzon (Garzon) move (Motion Seq. 001) (Doc No. 9)1 for an Order dismissing plaintiff's claims (CPLR 3211 [a] [7]) in the Summons and Complaint (the Complaint) (Doc No. 13) for willful and wanton conduct, gross negligence, and/or punitive damages against defendants on grounds that plaintiff failed to state a cause of action therein.

FACTUAL AND PROCEDURAL BACKGROUND

It is alleged in the Complaint that on December 28, 2018 plaintiff was operating his motor vehicle bearing a NY license plate registration #HZT8881 on a public highway at or near Vermilyea Avenue north of Academy Street in the County and State of New York, when another motor vehicle bearing a NJ license plate number #XHAF33, operated by defendant Garzon and

1 References to "Doc No." followed by a number refers to documents filed in NYSCEF.

owned by defendant Aldave, came into contact with plaintiff's motor vehicle (the Accident) (Complaint at ¶¶ 1-10).

A Police Accident Report (the police report) (Doc No. 11) states that defendant Garzon claims to have been:

“making a left turn when [plaintiff] was going too fast and hit [Garzon's] vehicle. [Plaintiff] states [plaintiff] was going straight ahead when [Garzon] made a sudden left u turn causing collision. [Plaintiff] was complaining of neck and leg pain. No airbag deployed. Diver was on a stretcher when [police department] arrived at the scene.”

The police report was completed by Officer Gerald L. Mortimor and reviewed by Sergeant Gypsy Pichardo on December 30, 2018. The copy of the police report also incorporates the following language: “This is to certify that this document is a true and complete copy of a record on file in the New York State Department of Motor Vehicles, Albany, New York” (the Certification Statement) signed by the Commissioner of Motor Vehicles at that time in 2018. Defendants' counsel affirms at ¶ 9 of the Affirmation in Support of this application (Doc No. 10) that because “Box 21” in the police report is filled out and records the number “9,” it means that an “Apparent Contributing Factor,” as described in an uploaded document to the police report (Doc No. 11), was “Following Too Closely.”

Plaintiff alleges in the Complaint that the nature of the Accident was such that plaintiff was “violently precipitated in and about” (*id.* at ¶ 11) his motor vehicle which caused him serious injuries as defined by Section 5102 (d) of the Insurance Law of the State of New York (*id.* at ¶¶ 13 and 15). Plaintiff further alleges that the Accident was caused by defendants' negligence in the:

“ownership, operation and control of the motor vehicle; in the operator being guilty of negligence on the premise that she operated the motor vehicle with utter disregard for the safety of other persons and motorists using the public highway; in failing to operate the motor vehicle in a reasonable and careful manner under the

circumstances; in failing to keep a proper lookout; in failing to give the plaintiff any warning of the impending occurrence; in failing to have the motor vehicle under proper control; in that defendant failed to take cognizance of the character of the roadway; in that defendant operated the motor vehicle at an excessive rate of speed under the circumstances; in that defendant failed to respond to the conditions existing at the time and place of the occurrence; in that defendant failed to keep her attention before her in the instance; in failing to look; in failing to see; in making an improper left turn; in failing to yield the right of way; in failing to honk/horn; and in failing to avoid the occurrence although there was an opportunity to do so” (*id.* at ¶ 12).

On or about November 5, 2020, plaintiff filed and served the Complaint seeking an award of damages against defendants for the injuries sustained by plaintiff resulting from the Accident.

On or about December 23, 2020, defendants filed their responsive pleading to the Complaint (the Answer) (Doc No. 14), together with a demand for a Bill of Particulars and combined discovery demands (*id.*). Defendants’ Answer generally denies the allegations in the Complaint and interposes the following affirmative defenses; (1) lack of personal jurisdiction; (2) an absolute defense and mitigation of damages in the event there is a determination that plaintiff failed to where a seatbelt; (3) contribution; (4) any award of damages, if any, is reduced by collateral sources paid, or to be paid, to plaintiff; (5) plaintiff did not suffer serious injuries as defined by NY Insurance Law § 5102 (d); (6) plaintiff’s claims are barred by the “emergency doctrine;” (7) plaintiff’s action is barred pursuant to NY State Worker’s Compensation Law § 11 and 29; and (8) any punitive damages sought, is “unconstitutionally excessive, and disproportionate to” defendants’ alleged conduct.

On or about March 19, 2021, plaintiff served a Verified Bill of Particulars (the BP) (Doc No. 8) wherein plaintiff enumerates the injuries alleged to have been sustained (*id.* ¶¶ 9) and specifies the manner in which the Accident occurred, asserting that defendants were “careless and negligent” in the:

“ownership, operation, management, maintenance and control of their motor vehicle; in failing to make a reasonable effort to avoid a collision, and to obey the Vehicle and Traffic Law § 1140; in failing to look; in failing to see what was there to be seen; in failing to be observant of the surrounding circumstances; in failing to make prompt, proper and timely use of the steering mechanism of their vehicle; in failing to make prompt, proper and timely use of the braking mechanism of their motor vehicle; in failing to maintain the braking and steering mechanisms of their vehicle in proper and adequate condition and repair; in operating their vehicle at a greater rate of speed than care and caution would permit under the circumstances; in failing to be observant of the traffic and roadway conditions at the time and place of this accident; in failing to observe the other vehicle upon the roadway; in operating defendant’s vehicle at a greater rate of speed than legally permissible under the circumstances; in operating defendant’s vehicle at a greater rate of speed than care and caution would permit under the circumstances; in failing to be observant of the traffic and roadway conditions at the time and place of the accident; in failing to observe the plaintiff’s vehicle upon the roadway; in causing, allowing and permitting defendant’s vehicle to lose control upon the roadway and to strike the plaintiff’s vehicle; in failing to give any signal, sound or warning of the approach of defendant’s vehicle; in failing to exercise due and required care, caution and forbearance in the operation and control of their vehicle so as to have avoided the accident and the injuries to the plaintiff; in failing to exercise due and required care, caution and forbearance in the operation and control of their vehicle so as to have avoided this accident and the injuries to the plaintiff; in failing to exercise due care to avoid colliding with any vehicle upon any roadway and failing to give warning by sounding the horn when necessary; in failing to keep and maintain a proper lookout upon the roadway; in failing to be and remain reasonably alert; in failing to keep a proper vigil upon the roadway; in failing to obey the statutes governing traffic at the time and place of the accident; in violating all applicable sections of the New York State Vehicle and Traffic Law and the New York City Traffic Rules and Regulations concerning the safe and proper operation of a motor vehicle upon the public ways and streets of the State of New York including but not limited to Vehicle and Traffic Law §§ 375, 1101, 1110, 1128, 1129, 1140, 1142, 1146, 1172, 1180, 1180-A, 1212, chapter 47 paragraph 18, and Rules of the City of New York Title 34 Chapter 4, Title 9 §4-01 through §4-15 and New York City Traffic Rules and Regulations Sections 21, 30 and 60” (*id.* ¶¶ 5 and 6).

Soon after the Bill of Particulars was served, defendants, on or about April 12, 2021, interposed the within application (Motion Seq. 001) seeking an Order (CPLR 3211 [a] [7]) dismissing any claim(s) for willful or wanton conduct, gross negligence, or punitive damages against the defendants, on the ground that the plaintiff’s Complaint fails to state a cause of action for such claims.

ARGUMENTS

Defendants contend that the court must dismiss, with prejudice, any and all claims in the Complaint asserting willful or wanton conduct, gross negligence, and/or seeking punitive damages based on an allegation of defendants' "utter disregard for the safety of other[s]" (the Complaint at ¶ 12) because: (1) the police report demonstrates that the Accident was an ordinary and unremarkable collision where a contributing factor of the Accident was that a vehicle was following another too closely; (2) neither plaintiff nor defendant Garzon were issued traffic tickets, summonses, and/or arrested at the scene of the Accident; (3) the two-car collision "gives rise to questions of ordinary negligence" which is not subject to punitive damages; (4) defendants' alleged conduct does not entitle plaintiff to punitive damages; and (5) there is no admissible evidence the defendants acted with "utter disregard for the safety of other[s]."

In opposition, plaintiff argues that the Court must deny defendants' application to dismiss any claims supporting an award of punitive damages because: (1) dismissing claims at this stage of the litigation where discovery is incomplete, is premature; (2) defendants are inappropriately using CPLR 3211 (a) (7) to seek a Court determination as to whether there is evidence to support a cause of action seeking punitive damages; (3) the police report supports plaintiff's allegation in the Complaint that defendant "operated the motor vehicle with utter disregard for the safety of other persons and motorists using the public highway;" (4) defendants' claim that the police report proves the Accident was an ordinary accident, is misplaced because no one can reasonably make this conclusion from the police report; (5) there is no indication that police officers witnessed the Accident which explains why traffic tickets were not issued; and (6) plaintiff's counsel believes there exists video footage of the Accident and therefore discovery must be exchanged in this case before claims can be dismissed.

In reply, defendants reiterate their contentions in support of the within application and maintain that plaintiff failed to refute defendants' showing that this Accident only gives rise to a claim of ordinary negligence which cannot support the imposition of punitive damages.

DISCUSSION

When deciding whether or not to dismiss an action pursuant to CPLR 3211 (a) (7) , the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true, limiting the inquiry to whether or not the complaint states, in some recognizable form, any cause of action known to our law (*D.K. Prop., Inc. v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 168 AD3d 505, 506 [1st Dept 2019]; *World Wide Adj. Bur. v Gordon Co.*, 111 AD2d 98 [1st Dept, 1985]). In assessing the sufficiency of the complaint, the court must also consider the allegations made in both the complaint and the accompanying affidavit(s) submitted in opposition to the motion as true and resolve all inferences which reasonably flow therefrom in favor of the plaintiffs (*Chanko v American Broadcasting Cos. Inc.*, 27 NY3d 46, 52 [2016], citing *Goshen v Mutual Life Ins. Co. of N.Y.* 98 NY2d 314, 326 [2002]).

On a CPLR 3211 (a) (7) motion, the court need not determine the truth of the allegations (see *Campaign for Fiscal Equity v State of New York*, 86 NY2d 307, 318 [1995]). The sufficiency of a pleading to state a cause of action depends upon whether there is substantial compliance with CPLR 3013, which requires that “[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.”

In order to be entitled to punitive damages in a motor vehicle case, there must be a showing that the alleged conduct was done with "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 willful or wanton" (*Dupree v Giugliano*, 20 NY3d 921, 924 [2012] [citation and internal quotation marks omitted]). Moreover, "[p]unitive damages may be awarded for conduct that represents a high degree of immorality and shows such wanton dishonesty as to imply a criminal indifference to civil obligations" (*Marinaccio v Town of Clarence*, 20 NY3d 506, 511 [2013]).

Here, the factual statements in the Complaint are insufficient to warrant an award of punitive damages (*Britz v Grace Indus., LLC*, 156 AD3d 533 [1st Dept 2017]). Indeed, "[p]unitive damages are available to vindicate a public right only where the actions of the alleged tortfeasor constitute either gross recklessness or intentional, wanton, or malicious conduct aimed at the public generally, or were activated by evil or reprehensible motives" (*Boykin v Mora*, 274 AD2d 441, 442 [2nd Dept, 2000]). Plaintiff's conclusory allegation that defendant Garzon "operated the motor vehicle with utter disregard for the safety of other persons" and that the Accident was "violent," without more, cannot sustain a claim for punitive damages.

Nowhere in the Bill of Particulars, the purpose of which is to amplify the pleadings, does plaintiff assert that defendants' alleged conduct was willful, wanton, grossly negligent, or made with utter disregard for the safety of others, nor does the Bill of Particulars elaborate on factual details that could give rise to a claim awarding punitive damages in this case (see generally, *Coutu v Domingo*, 123 AD3d 410, [1st Dept 2014]). Nor does plaintiff's alleged statements in the certified police report support a claim that can substantiate an award of punitive damages in this case (see generally, *Jackson v Trust*, 103 AD3d 851, [2nd Dept, 2013]). Construing the facts in the light most favorable to plaintiff, and accepting as true all the allegations in the Complaint, the Bill of Particulars and plaintiff's statement in the police report (which incidentally highlights the

factual disputes between the parties as to how the Accident occurred), plaintiff nonetheless failed to state a cause of action giving rise to a claim for punitive damages against defendants.

The Court has considered any remaining arguments by the parties and find them unavailing, without merit and/or moot. Accordingly, it is

ORDERED that the application (Motion Seq. No. 001) by defendants Alberto Aldave and Ivana Garzon to dismiss (CPLR 3211 [a] [7]) any claims for punitive damages against defendants, is granted; and it is further


ORDERED that the Clerk of the Court shall enter judgment in favor of defendants Alberto Aldave and Ivana Garzon and against plaintiff, solely to the extent that any claims for an award of punitive damages are hereby dismissed; and it is further

ORDERED that the parties are directed to complete discovery, forthwith; and it is further

ORDERED that counsel are directed to appear for a compliance conference before IAS Part 22 and are directed to contact the Clerk of the Court to arrange for the date, time and place to appear, forthwith.

This constitutes the Decision/Order of the Court.

5/2/2022
DATE


LISA HEADLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE