

Duffy v Pitt
2022 NY Slip Op 35107(U)
June 27, 2022
Supreme Court, Bronx County
Docket Number: Index No. 810799/2021E
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

Index No. 810799/2021E
Motion Sequence No. 001
Motion Date: 3/14/2022

-----x
NICOLE DUFFY and NEAL KOCH.

Plaintiffs,

-against-

DECISION/ORDER

Present:

Hon. Wilma Guzman

DYLAN PITT, DYLAN KANE, JOHN CORSO,
And MICHELLE FALLON,

Defendants.
-----x

Recitation, as required by CPLR 2219(a), of the papers considered in review of these motions:

Papers

Numbered

Notice of Motion, Affirmation in Support and	
Exhibits Thereto	1
Affirmation in Opposition and Exhibits Thereto.....	2
Reply Affirmation	3

Motion by Defendant MICHELLE FALLON (hereafter referred to as "Fallon"), by **NOTICE OF MOTION** and all papers in connection thereto, for dismissal of Plaintiff NICOLE DUFFY and NEAL KOCH's (hereinafter referred to as "Plaintiffs") Complaint pursuant to CPLR §3211(a)(7). Opposition and reply having been submitted thereto, upon due deliberation having been had, the motion is decided as follows:

Plaintiffs commenced this action by filing a Summons and Complaint alleging tort causes of action sounding in assault and battery, negligence, negligent infliction of emotional distress, among others, which took place on July 4, 2021, at Behan's Public House located in Bronx County. Plaintiffs' action arose when they were assaulted by Defendants DYLAN PITT and DYLAN KANE (hereinafter referred to as "Pitt" and "Kane," respectively), Plaintiffs further allege that Defendant Fallon conspired with Defendant Pitt by providing him with a car to flee from New York to Florida to avoid civil and criminal liability (NYSCEF Doc. No. 1). Defendant Fallon now moves pursuant to CPLR §3211(a)(7), arguing that the Plaintiffs' Complaint fails to state a cause of action as to Defendant Fallon. Plaintiff has opposed Fallon's motion. Defendant Kane, Defendant JOHN CORSO (hereinafter referred to as "Corso"), and Defendant Pitt take no position on the motion.

Fallon seeks to dismiss Plaintiff's Complaint for failure to state a cause of action pursuant to CPLR §3211(a)(7). Specifically, Fallon alleges that Plaintiffs' claims relating to negligence, negligent entrustment and aiding and abetting a tort fail to state a cognizable cause of action. Fallon argues she did not owe any duty to the Plaintiffs to support a negligence claim against her, as she was not present at the time of the alleged assault. Fallon also argues that the Complaint fails to allege any instrumentality of hers was used by Pitt in the commission of any tort or that any such

instrumentality allegedly caused injuries during the commission of a tort, or that the entrustment of her car to her son Pitt had any causal relation to the injuries Plaintiffs sustained. Further, Fallon argues that any actions alleged against her did not aid and abet any torts alleged against Pitt, nor does the Complaint support an aiding and abetting cause of action as the torts alleged to have occurred took place at Behan's Public House, and the car was given to Pitt after the fact and no facts are alleged against Fallon in connection with either Kane or Corso. Fallon also argues that her car was not used in connection with any of the torts alleged, and there exists no nexus between her vehicle and the causes of action against Pitt or any other Defendant. (NYSCEF Doc. No. 7).

Plaintiffs opposed Fallon's motion. Plaintiffs argue that they have pled sufficient facts in the Complaint to support the claims of negligence, negligent entrustment and aiding and abetting a tort. In support of their opposition, Plaintiffs argue that a reasonable inference can be made that Fallon, as the mother of Pitt, "was aware of the violent and criminal tendencies of Pitt" and that Fallon was aware that her son had attacked the Plaintiffs and was attempting to escape. Plaintiffs argue that Fallon's lending of her car to Pitt "nearly immediately" after the assault gives rise to Fallon's duty, and breach of that duty, as it relates to the negligence claim against her. Plaintiffs argue that without Fallon's lending the car to Pitt to provide him a means of escape immediately after the alleged assault, Pitt "likely never would have been able to commit such a tort." Plaintiffs further argue that Fallon had transferred some of Pitt's assets to herself in anticipation of a judgment. (NYSCEF Doc. No. 10).

A motion to dismiss pursuant to CPLR §3211(a)(7) requires that the Court favorably view the pleadings to determine whether a valid cause of action exists. *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1984). On a motion to dismiss pursuant to CPLR §3211(a)(7) for failure to state a cause of action, the pleading is to be afforded a liberal construction. *See* CPLR §3026. The Court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *See Leon*, 84 N.Y.2d at 87-88, *Sokoloff v. Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 414 (2001). A CPLR § 3211 motion should be granted only where "the essential facts have been negated beyond substantial question by the affidavits and evidentiary matter submitted." *Biondi v. Beekman Hill House Apartment Corp.*, 257 A.D.2d 76, 81 (1st Dept. 1999).

The Complaint filed by Plaintiffs allege three causes of action against Fallon, that of negligence, negligent entrustment, and aiding and abetting a tort. The Complaint thus alleges the following against Fallon: "Paragraph 22. Upon fleeing the scene Defendant PITT then conspired with Defendant FALLON to flee the State of New York for the purposes of avoiding criminal and civil liability. Paragraph 23. FALLON provided PITT with a vehicle to flee the state and registered the property of PITT, including motor vehicles, into FALLON's own name. Paragraph 24. PITT used FALLON's vehicle to flee to Florida." (NYSCEF Doc. No. 1).

In order for the Court to accept the facts as set forth as true, this Court must determine whether the facts alleged by Plaintiff fit within any cognizable legal theory. Plaintiff's theory of negligence must show a duty of care, breach of that duty, and that the breach was a substantial cause of Plaintiff's injuries. *Merino v. New York City Transit Auth.*, 218 A.D.2d 451 (1st Dept. 1996). The facts set forth by Plaintiff herein fail to conform to the legal theory of negligence.

As to the tort theory of negligent entrustment, the facts must fit within “the degree of knowledge the supplier of a chattel has or should have concerning the entrustee’s propensity to use the chattel in an improper or dangerous fashion.” *Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222 (2001); *Byrne v. Collins*, 77 A.D.3d 782 (2d Dept. 2010) (a cause of action for negligent entrustment can be established if the Defendant has special knowledge concerning a characteristic peculiar to the entrustee which rendered his use of the chattel unreasonably dangerous). Again, the Complaint has failed to state a cause of action against Defendant Fallon.

“Viable claims for the recovery of damages for the aiding and abetting of any tort rests upon allegations of fact constituting the elements of the existence of the underlying tort, knowledge thereof by the aider and abettor, and substantial assistance by the aider and abettor in the achievement of the tortious act” *Hudson v. Delta Kew Holding Corp.*, 992 N.Y.S.2d 158 (Sup. Ct. Suffolk Co. 2014). Plaintiffs’ Complaint fails to meet the standards for this claims as asserted against Fallon. Plaintiffs fail to state the facts that would give rise to Fallon’s duty; Fallon was not present at the time of the alleged assault and was not present immediately thereafter. Plaintiffs’ injuries resulted from the actions of Pitt and Kane; Plaintiffs have not proffered any facts to support that Fallon knew or should have known of the events that took place at Behan’s Public House.

Plaintiffs’ arguments in opposition to Fallon’s motion are speculative, unpersuasive and contradictory. Plaintiffs’ opposition merely states the common law elements of the three causes of action but does not offer any facts to support how Fallon owed any duty to Plaintiffs. Plaintiff’s argument that by virtue of Fallon’s relationship to Pitt as his mother constitutes some kind of reasonable inference that Fallon somehow knew of Pitt’s actions or was aware of his violent and criminal tendencies is wholly and completely unsupported by any facts and is alleged nowhere in the Plaintiffs’ complaint against Fallon. Further, Plaintiffs’ argument in support of their negligent entrustment claim, that the lending of her car to Pitt in near immediate proximity to her son’s commitment to the tort is contradictory to Plaintiffs’ claim that Pitt and Kane left Behan’s in Corso’s car after the assault took place. No facts have been alleged to support the Plaintiffs’ allegation that Fallon transferred some of Pitt’s property into her own name; Plaintiffs fail to state what, if any, property was allegedly transferred; nor have Plaintiffs alleged any facts that purport to show that Fallon knew that Pitt’s actions were undertaken in order to flee. *See, LaTorre v. Genessee Management, Inc.*, 90 N.Y.2d 576 (1997); *Massapequa Free School Dist. No. 23 v. Regan*, 63 A.D.2d 727 (1978); *Brahm v. Hatch*, 203 A.D.2d 640 (3d Dept. 1994); *Marino v. Schoppmeyer*, 236 A.D.2d 450 (2d Dept. 1997).

Plaintiffs further confuse the elements of negligent entrustment; Plaintiffs have not shown that Fallon’s vehicle was used by Pitt in an improper or dangerous fashion, nor that Pitt had some characteristic that made his use of the vehicle unreasonably dangerous. Plaintiffs were not injured by Pitt’s use of Fallon’s vehicle. There exists no nexus between Fallon’s providing her car to Pitt and the injuries sustained by the Plaintiffs. *See, Marino v. Schoppmeyer, supra; Brahm v. Hatch, supra.*

Further, Plaintiffs fail to allege any facts to support their contention that Fallon aided and abetted any of the torts allegedly committed by any of the other Defendants. Further, Plaintiff’s argument that Pitt “likely never would have been able to commit such a tort” without Fallon’s assistance

directly contradicts the information contained in the Complaint, as it is alleged that the tort that had been committed by the other Defendants had already been completed when Fallon provided her car to Pitt. *See, Hudson v. Delta Kew Holding Corp, supra.* As such, Fallon's motion to dismiss pursuant to CPLR §3211(a)(7) is granted and Plaintiffs' Complaint against Fallon is dismissed.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant MICHELLE FALLON's motion to dismiss Plaintiffs NICOLE DUFFY and NEAL KOCH's Complaint pursuant to CPLR §3211(a)(1) is denied. It is further

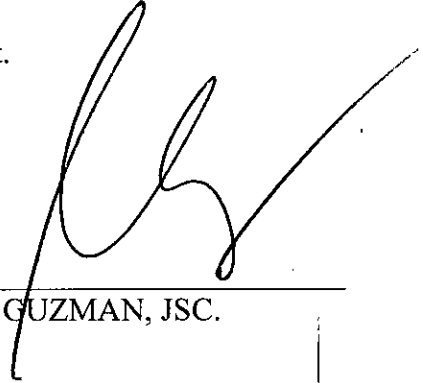
ORDERED AND ADJUDGED that Defendant MICHELLE FALLON's motion to dismiss Plaintiffs NICOLE DUFFY and NEAL KOCH's Complaint pursuant to CPLR §3211(a)(7) is hereby granted. It is further

ORDERED AND ADJUDGED that Defendant MICHELLE FALLON shall serve a copy of this order with notice of entry upon all parties within thirty (30) days from the date of entry of this order. It is further

The forgoing constitutes the Decision and Order of the Court.

This constitutes the decision and order of this Court.

6/27/22
DATE


HON. WILMA GUZMAN, JSC.