

Ruiz v New York City
2023 NY Slip Op 32964(U)
August 28, 2023
Supreme Court, New York County
Docket Number: Index No. 150725/2018
Judge: J. Mabelle Sweeting
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART 62

Justice

-----X

RADAMES RUIZ,

Plaintiff,

- v -

NEW YORK CITY, NEW YORK CITY HOUSING
AUTHORITY

Defendant.

-----X

INDEX NO. 150725/2018

MOTION DATE 04/25/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for STRIKE PLEADINGS.

In the underlying action, plaintiff seeks to recover for personal injuries allegedly sustained on February 12, 2017 due to a sidewalk trip and fall on 5th Street between Avenue D and Avenue C, New York, New York, abutting 713 East 5th Street.

Pending before the court is a motion in which defendants the NEW YORK CITY and NEW YORK CITY HOUSING AUTHORITY (“NYCHA”) (collectively, the “City defendants”) seek an order: (a) striking plaintiff RADAMES RUIZ’s post-Note of Issue (“NOI”) claim for punitive damages from his Supplemental Bill of Particulars; (ii) precluding plaintiff from later raising a claim for punitive damages; or, (iii) in the alternative, striking the NOI. (The “bill of particulars” shall be referred to herein as a “BP”).

Arguments Made by the Parties

The City defendants argue that plaintiff filed a Supplemental BP on or around April 19, 2023, and that this was the first time plaintiff ever raised the issue of punitive damages. The City defendants argue that none of plaintiff's earlier filings in this case, including the Notice of Claim, the Summons and Complaint, and original BP, had given any indication that plaintiff was seeking to recover punitive damages against the City defendants. The City defendants argue that plaintiff raised the issue of punitive damages only after the NOI was filed, and hence, the City defendants were deprived of an opportunity to conduct discovery and establish a defense in respect to the newly asserted claim.

The City defendants also argue that as a matter of law, they are immune from punitive damages, as the New York Court of Appeals has held that New York State political subdivisions, including the City defendants, are not subject to punitive damages.¹

Finally, the City defendants argue, even *assuming arguendo* that they were not immune from punitive damages, the claim for punitive damages must nevertheless be dismissed because punitive damages are only warranted when there is a showing of actual malice or reckless disregard of the rights of the plaintiff. The City defendants argue that plaintiff's own pleadings assert that the City defendants acted with negligence only, not with actual malice or reckless disregard.

In opposition, plaintiff argues, first, that the City defendants had both actual and constructive notice about the defect in the sidewalk prior to the day plaintiff fell, yet chose not to repair the sidewalk. Plaintiff argues that even though the accident in this case happened more than six years ago, on February 12, 2017, the dangerous uneven sidewalk condition remains unrepaired.

¹ Unless there is a clear and express statement of legislative intent to the contrary

First, plaintiff argues:

35. Plaintiff sustained a fractured arm. Assuming Plaintiff receives full monetary compensation, NYCHA will still not change its dangerous behavior without a substantial award in punitive damages.

Plaintiff argues, second, that even *assuming arguendo* that the City of New York was immune from punitive damages, this argument does not extend to NYCHA, as “NYCHA long ago waived defenses relative to its role as a landlord” and “NYCHA as landlord, has waived defenses unavailable to private landlords.”

Finally, plaintiff argues that the delay was caused because, “Plaintiff’s supplemental bill of particulars adding punitive damages was drafted and relied on deposition transcripts of NYCHA’s witnesses,” and that, “Nothing in Defendants’ argument shows that Plaintiff’s supplemental bill of particulars adding punitive damages requires additional discovery, or that Plaintiff’s supplemental bill would be unfairly prejudicial at the time of trial.”

In Reply, the City defendants argue that NYCHA was created pursuant to New York State Public Housing Law 401, which states that NYCHA “is hereby constituted and declared to be a body corporate and politic with all the powers, rights and duties set forth in article five of the former state housing law.” Accordingly, the City defendants argue, NYCHA is a subdivision of the State.

CONCLUSIONS OF LAW

In Sharapata v Town of Islip, 56 NY2d 332 (1982), the New York Court of Appeals held:

In a matter of first impression in this court, we hold today that the waiver of sovereign immunity effected by section 8 of the Court of Claims Act does not permit punitive damages to be assessed against the State or its political subdivisions.

[...]

[...] we begin our analysis by noting important distinctions between compensatory and punitive damages. The former, including those recoverable for negligent conduct, are based on the fundamental purpose of damages, which is to have the wrongdoer make the victim whole [...] Punitive or "exemplary" damages, sometimes known as "smart money", and thus seemingly attuned to the criminal rather than the civil side of the law, are not intended to compensate the injured party but to punish the tort-feasor for his conduct and to deter him and others like him from similar action in the future [...].

[...]

Indeed, the Legislature's enactments to this day continue to reaffirm the policy that public funds not be available, directly or indirectly, for the payment of damages beyond those actually suffered, an approach consistent with the spirit of our State Constitution's cautions against unwarranted invasion of the public purse [...]

[...]

Finally, aside from these telltale signs of legislative intent, the twin justifications for punitive damages -- punishment and deterrence -- are hardly advanced when applied to a governmental unit. As Justice Titone realistically put it in his opinion below, it would be anomalous to have "the persons who bear the burden of punishment, i.e., the taxpayers and citizens", constitute "the self-same group who are expected to benefit from the public example which the granting of such damages supposedly makes of the wrongdoer [...]"

[...]

For all these reasons, as Justice Blackmun recently declared in a somewhat related frame of reference, "Damages awarded for punitive purposes * * * are not sensibly assessed against the governmental entity itself" [...]

Here, there is no dispute that the City of New York is a political subdivision of the State of New York, and the City defendants' motion can be granted, with respect to the City of New York, on that basis alone. *See also* Dorian v City of New York, 129 AD3d 445 (1st Dept 2015) ("[...] punitive damages are not recoverable against a state or its political subdivisions, which includes a

municipality”); Grasso v New York State Thruway Auth., 159 AD3d 674 (2d Dept 2018) (“The Court of Claims also properly granted that branch of NYSTA's motion which was for summary judgment dismissing the claims for punitive damages. Although the claimants alleged in their supplemental bills of particulars that awards of punitive damages were warranted, ‘the waiver of sovereign immunity effected by section 8 of the Court of Claims Act does not permit punitive damages to be assessed against the State or its ... subdivisions’”).

Further, with respect to NYCHA, the City defendants are correct that under the caselaw, NYCHA is considered to be a subdivision of the state that is not subject to punitive damages. *See Kovachevich v New York City Hous. Auth.*, 290 AD2d 325 (1st Dept 2002) (“[...] the punitive damages claim was not viable, and, in any event, does not lie against defendant”); Seville Const., Inc. v New York City Hous. Auth., 247 AD2d 69 (1st Dept 1998) (“The court also properly dismissed the third cause of action on the ground that punitive damages are not recoverable against the municipality [referring to the New York City Housing Authority]”). Accordingly, the motion of the City defendants’ can also be granted, with respect to the NYCHA, on this basis alone.

Further, even *assuming arguendo* that the City defendants were not immune from punitive damages, the court notes that plaintiff never moved, at any time, for leave to amend the original bill of particulars.

And, “leave to amend pleadings, including a bill of particulars, is to be freely given, *absent prejudice or surprise*” [emphasis added] (Cherebin v Empress Ambulance Serv., Inc., 43 AD3d 364 [1st Dept 2007]). Here, plaintiff argues that the Supplemental BP based on “was drafted and relied on deposition transcripts of NYCHA’s witnesses.” However, the record shows that the deposition of NYCHA employee Jaime Rivera occurred on September 9, 2022, and the deposition of NYCHA employee Robert Quiles occurred on March 3, 2023. Plaintiff then filed NOI and

Certificate of Readiness for Trial on March 14, 2023, which was after those depositions had already taken place. As the City properly argues, plaintiff raised the issue of punitive damages only after the NOI was filed, and hence, the City defendants were deprived of an opportunity to conduct discovery and establish a defense in respect to the newly asserted claim. Hence, it cannot be said that there is no prejudice to the City defendants here if the court was to allow the claim for punitive damages to stand.

Conclusion

For the reasons stated above, it is hereby:

ORDERED that the motion of the City defendants is **GRANTED**; and it is further

ORDERED that plaintiff's claim for punitive damages in his Supplemental Bill of Particulars is **STRICKEN**; and it is further

ORDERED that plaintiff is precluded from later raising a claim for punitive damages.

8/28/2023
DATE



J. MACHELLE SWEETING, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: