

Giraldo v Longford Inc.

2023 NY Slip Op 34461(U)

December 18, 2023

Supreme Court, New York County

Docket Number: Index No. 156705/2013

Judge: Erika M. Edwards

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

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JOSE GIRALDO,

INDEX NO. 156705/2013

Plaintiff,

- v -

**DECISION AND ORDER
AFTER INQUEST**

LONGFORD INC. d/b/a BAR NONE and BAR NONE
HOLDING COMPANY LLC,

Defendants.

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In a decision and order, dated August 2, 2022 (NYSCEF Doc. No. 69), the court granted Plaintiff Jose Giraldo’s (“Plaintiff”) motion for a default judgment against Defendant Longford Inc. d/b/a Bar None (“Longford”) on the issue of liability. Plaintiff had previously discontinued the case against Defendant Bar None Holding Company LLC. An inquest was conducted on November 29, 2023, for the assessment of Plaintiff’s damages. Based on the evidence presented at the inquest, the court determines that Plaintiff is entitled to a judgment in his favor as against Defendant Longford in the amount of \$2,800,000.00 for past pain and suffering.

Plaintiff’s counsel demonstrated that she made reasonable efforts to notify Defendant Longford of the inquest. Counsel for Defendant Longford was previously relieved by the court in a decision and order, dated December 16, 2014 (NYSCEF Doc. No. 27). Subsequently, counsel filed a notice of appearance on August 12, 2015, and then was relieved again in a decision and order, dated July 17, 2019 (NYSCEF Doc. No. 54). Defendant Longford failed to retain substitute counsel or appear in the action. Defendant Longford was served with the court’s previous orders, including the order granting the default and scheduling the inquest. Despite the Defendants’ bar ceasing operations at the location of the incident, Plaintiff’s counsel spoke to an

individual who stated in substance that the individual was affiliated with the bar and Plaintiff notified that individual of the date, time and location of the inquest. The individual stated in substance that he would track out to the person who usually handles these types of matters and let that person know about the court appearance. Defendant Longford failed to appear at the inquest and failed to contact the court to seek an adjournment.

Plaintiff was the sole witness to testify at the inquest. Plaintiff introduced into evidence certified copies of his medical records from Bellevue Hospital Center, Imbanaco Medical Center and Retina Associates of New York, P.C., which includes the records of Dr. Ben Zane Cohen.

Plaintiff testified that he is thirty-four years old, that he works as an Attendance Teacher for the Board of Education and that he has a master's degree in school counselling. He testified that he is not married and has a four-month old daughter. Plaintiff stated in substance that on September 24, 2011, when he was twenty-two years old, he was a customer at Defendant's bar, called Bar None. He was with his girlfriend, her cousin and her friends. Plaintiff's girlfriend was approximately 5' 1" or 5' 2" tall and Plaintiff described himself as being "scrawny."

Plaintiff testified that while he was dancing with his girlfriend, a large man who was approximately 6' 3" tall, and 230 pounds, began bumping into Plaintiff's girlfriend. Plaintiff further testified that he put out his arm out (indicating out laterally with his elbow bent) to protect his girlfriend from getting bumped by the man. Plaintiff stated that the man said "what the fuck you doing?" Plaintiff tried to tell the man that he had no issues with him, but that he was bumping into Plaintiff's girlfriend, but the man picked Plaintiff up and flung him to the floor. The man lunged towards Plaintiff and Plaintiff threw his drink at the man. The bar's bouncers intervened and as they escorted the man outside, the man told Plaintiff "I'm just going to fuck you up outside."

Plaintiff testified that he told the man's friends that their boy was drunk and that Plaintiff did not have any issues, but the man's friends said "[w]e're going to catch you outside." The bouncers escorted the man out of the bar. Plaintiff testified in substance that after about three to five minutes, the bouncers came back and kicked Plaintiff out of the bar too. Plaintiff asked the bouncers not to throw him out and told them that they know what's going to happen to him outside. Plaintiff testified that he asked them to give him a few minutes so that he could call the police, but one of the bouncers told Plaintiff that his boss wants everybody out, so Plaintiff had to leave too. Plaintiff started dialing 911, but it was too late because he was already outside.

As Plaintiff was outside of the bar talking to about four bouncers, they told Plaintiff that he had to walk to the corner. Plaintiff told them in substance that he was not going to go to the corner and he asked the bouncers why they were making him go to the corner if they knew what is going to happen to him?

Plaintiff testified in substance that the man came from his left side and hit Plaintiff in his left eye, popping his eyeball, and he slammed Plaintiff down to the ground. The man left and Plaintiff was bleeding excessively from his left eye. Plaintiff testified that he had blood all over his face and clothing. The bouncers provided Plaintiff with a rag and water for his eye and Plaintiff tried to stop the bleeding and clean up the blood.

Plaintiff went to get food and a couple of hours later went to the emergency room at Bellevue Hospital Center. He testified that he had emergency surgery to repair a ruptured globe and fix a ruptured retina. Plaintiff estimated that his eye bled for approximately thirty minutes, but said that it was still bleeding when he got to the hospital. Plaintiff received stitches and was in a lot of pain. He testified that he was discharged and put on bed rest.

Plaintiff received follow-up treatment at Bellevue, Retina Associates of New York and Imbanaco Medical Center. Plaintiff testified that he underwent approximately nine procedures to repair his detached retina and to treat his eye. He testified in substance that he had a lot of leakage from his left eye, bruising, cuts, swelling, headaches, eyelid weakness with difficulty opening his eye and an inability to open it fully, and he has redness in the corner of his eye. Plaintiff said that he still gets treatment to maintain his eye and that he last saw his doctor approximately four to five months prior to the inquest. Plaintiff stated that he takes prescription medications for both eyes. Plaintiff also stated that he had two cuts under and next to his left eye with permanent scars. Plaintiff, who was already deaf in his right ear, has no vision in his left eye and glaucoma in his right eye.

Plaintiff's injuries caused him to stop working in an afterschool program and he has difficulties viewing computer screens. He also withdrew from Borough of Manhattan Community College (BMCC). After about a year, he went to Boricua College in the Bronx. He eventually went back to work part-time.

Plaintiff testified that he has problems socially because he is half deaf and now half blind. When he is speaking to someone, he has to turn his chair around to have a conversation. Plaintiff stated in substance that he is limited in the types of jobs he can work, so he cannot apply to be a firefighter or join the Army. He is afraid to drive because he is afraid he will get into an accident because he has cannot see things on his left side.

Plaintiff testified that the swelling in his eye area lasted for about three weeks to a month. He said that he currently experiences headaches about two times per week and that he takes Tylenol and Advil for the pain. He uses eyedrops in the mornings, which sometimes help with the redness. Plaintiff said that he used to be active in sports and played basketball, football and

handball, but he can no longer play. He has no depth perception. Plaintiff testified in substance that he bumps into people on the street and has to be careful not to miss the table when he puts something down on top of the table. Plaintiff stated that he takes precautions to protect his eyes and that he wears special glasses. Plaintiff stated that he still cannot see out of his eye.

In summation, Plaintiff's counsel reviewed the relevant portions of the medical records, argued that Plaintiff's blindness is permanent, since it has been twelve years since the incident and it has not gotten better, and she requested \$3,000,000.00 in damages.

After the inquest, Plaintiff's counsel filed a Trial Memorandum, dated November 29, 2023, filed as NYSCEF Doc. No. 74, with copies of the medical records. The medical records indicated that Plaintiff's injuries included a left globe fracture with partial loss of intraocular tissue, iris dislocation, total retinal detachment with a large dialysis (which could not be repaired), severe proliferative vitreoretinopathy and blindness to his left eye. Plaintiff underwent a total of nine surgeries on September 24, 2011 at Bellevue and at Retina Associates of New York, PC on October 27, 2011, November 10, 2011, December 13, 2011, December 15, 2011, December 20, 2011, May 20, 2016, April 14, 2017, and October 30, 2017.

Based on the evidence presented and the cases submitted by Plaintiff's counsel, the court finds that Plaintiff has demonstrated his entitlement to \$2,800,000.00 for past pain and suffering. Plaintiff did not make a claim for future pain and suffering, lost wages or economic losses.

As such, it is hereby

ORDERED that after the inquest held before the court on November 29, 2023, the court awards Plaintiff Jose Giraldo \$2,800,000.00 in damages as against Defendant Longford Inc. d/b/a Bar None; and it is further

ORDERED that the court directs the Clerk of the Court to enter judgment in favor of Plaintiff Jose Giraldo as against Defendant Longford Inc. d/b/a Bar None in the amount of \$2,800,000.00.

This constitutes the decision and order after inquest of the court.



ERIKA M. EDWARDS, JSC

DATE: 12/18/2023

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)