

Bernstein v Classic Demolition Co., Inc.

2025 NY Slip Op 34525(U)

November 21, 2025

Supreme Court, New York County

Docket Number: Index No. 155481/2021

Judge: James G. Clynes

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 39M

Justice

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THERESA GEYER BERNSTEIN, AS ADMINISTRATOR OF THE ESTATE OF JOSHUA GEYER A/K/A JOSHUA WILLIAM GEYER, DECEASED, THERESA GEYER BERNSTEIN, INDIVIDUALLY

Plaintiff,

- v -

CLASSIC DEMOLITION COMPANY, INC., ROBERT ALFORD,

Defendant.

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INDEX NO. 155481/2021
MOTION DATE 07/17/2024
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 108, 109, 110, 111, 112, 113, 114, 115, 116, 119, 122, 123, 124, 125, 126

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, defendants' motion for summary judgment on the issue of punitive damages in their favor (MOT SEQ 005) is decided as follows:

The plaintiffs commenced this negligence action as a result of a December 20, 2019 accident between deceased pedestrian Joshua Geyer and a commercial waste truck owned by defendant Classic Demolition Company, Inc. ("Classic") and operated by defendant Robert Alford. Theresa Geyer Bernstein was appointed Administrator of the Estate of Joshua Geyer. Per an order dated June 20, 2023, the Court (Clynes, J.) granted the plaintiffs' motion for summary judgment on the issue of liability (MOT SEQ 001) and dismissed the defendants' second affirmative defense. The defendants now move for summary judgment pursuant to CPLR 3212 seeking dismissal of the plaintiffs' claims for punitive damages (MOT SEQ 005).

A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence eliminating all material issues of fact. See CPLR 3212; Shaw v Looking Glass Assoc. LP, 8 AD3d 100, 102 (1st Dept. 2004). Only if the defendant satisfies this standard, does the burden shift to the plaintiff to rebut

the prima facie showing, by producing admissible evidence sufficient to require a trial of material factual issues. See id.

The plaintiffs seek punitive damages against defendant Alford for negligence in operating the truck that killed the decedent, and against Classic for negligently hiring Alford. The defendants argue that the plaintiffs' claims for punitive damages should be dismissed based on the conduct of Alford and Classic.

Punitive damages are "intended as punishment for gross misbehavior for the good of the public." Home Ins. Co. v American Home Prods. Corp., 75 N.Y.2d 196, 203 (1990). Punitive damages are permitted when "the defendant's wrongdoing is not simply intentional but 'evince[s] a high degree of moral turpitude [and implies] a criminal indifference to civil obligations.'" Ross v Louise Wise Servs., Inc., 8 N.Y.3d 478, 489 (2007), quoting Walker v Sheldon, 10 N.Y.2d 401, 405 (1961).

In support of their summary judgment motion, the defendants submit the deposition of Albert, the affidavit of Charles Schellaci, president of Classic Demolition, and dash cam footage of the accident. Based on Albert's deposition, he was employed as a truck driver for 21 years for Classic. Prior to the accident, Albert had never been convicted of a crime or involved in a major incident driving a truck. Albert testified that he was required to complete a pre-inspection of his vehicle before each shift, and that he completed the pre-inspection on the date of the accident with no issues. He testified that at the time of the accident, he put his left blinker on and made a left-hand turn at a speed of approximately 10-15 miles per hour at the intersection of 49th Street and Tenth Avenue. Albert stated that he was able to see the entire crosswalk at the intersection and did not see any pedestrians. He stated that he stopped the truck a few seconds after he felt something under his truck, and then promptly called the police when he saw the decedent. Albert participated in a Breathalyzer and walking test, and the tests determined that he was not under the influence of alcohol. In addition, based on the dash cam footage, Albert appears alert and is not using a cellphone or other distraction while driving. In the footage, the decedent enters the street outside of the crosswalk and appears to be looking down.

The defendants also submit the affidavit of Schellaci. Schellaci states that prior to hiring employees, Classic performs extensive background checks and that a background check was performed on Albert prior to his employment, and there were no findings. Schellaci also states that employees are subject to annual drug and alcohol tests. Schellaci states that Albert's license was in good standing, and that he completed a required physical every two years and was deemed fit to drive trucks. In sum, the defendants have submitted evidence which eliminates any material issue of fact supporting punitive damages against Albert or Classic, as there is no evidence that the defendants' conduct rises to the level of a high degree of moral turpitude or gross misbehavior supporting an award for punitive damages.

In opposition, the plaintiffs argue that the defendants' summary judgment motion must fail as the defendants did not submit Albert's employment file, which the plaintiffs argue is necessary to support the claim that Classic evinced a high degree of moral turpitude in hiring and retaining Albert as an employee.

However, the defendants have met their burden by submitting admissible evidence showing an absence of material fact on the issue of whether Albert or Classic's actions evinced a high degree of moral turpitude to warrant punitive damages and the plaintiffs have failed to rebut the prima facie showing and have failed to produce admissible evidence demonstrating triable issues of fact. While the plaintiffs argue that Albert's employment file is necessary to establish punitive damages against Classic, the Court notes that the plaintiffs have not submitted any driving records, criminal records, or other evidence indicating that Albert's conduct was problematic during his 21 years of employment with Classic. The plaintiffs have failed to show that "facts essential to justify opposition may exist." Hampton Hall Pty. Ltd. v Global Funding Servs., Ltd., 82 AD3d 523, 524 (1st Dept. 2011), quoting CPLR 3212(f); See Moukarzel v Montefiore Medical Center, 235 AD2d 239, 239 (1st Dept. 1997). However, if new evidence comes to light after the plaintiffs' review the employment file, they may move to renew their claim. On the current record before the Court, the defendants' motion for summary judgment is granted dismissing the plaintiffs' claims for punitive damages.

Accordingly, it is

ORDERED that the defendants' motion for summary judgment dismissing plaintiffs' claims for punitive damages (MOT SEQ 005) is GRANTED.

The foregoing constitutes the Decision and Order of this Court.

11/21/2025

DATE

James G. Clynnes
JAMES G. CLYNES, 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