

Henriquez v Brigante
2025 NY Slip Op 35506(U)
February 4, 2025
Supreme Court, Nassau County
Docket Number: Index No. 614000/23
Judge: Gregg Roth
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SUPREME COURT - STATE OF NEW YORK
TRIAL/IAS TERM, PART 29 NASSAU COUNTY

PRESENT:

Honorable Gregg Roth
Justice

_____X

RAUL HENRIQUEZ,

Plaintiff(s), Index No.: 614000/23

-against- Motion Seq. No.: 001
Motion Submitted: 10/2/24

VINCENT BRIGANTE, NATHAN KELLNER,
EMILY KELLNER, LESLIE’S LEASHES, LLC
and LESLIE STERN,

Defendant(s).

_____X

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....X
Affirmation in Opposition.....X
Reply Affirmation.....X

Plaintiff, Raul Henriquez (Henriquez), moves this court for leave to amend his complaint. Defendants, Leslie’s Leashes, LLC (Leashes), and Leslie Stern (Stern) (collectively “the Leslie Defendants”), and Vincent Brigante (Brigante), Nathan Kellner (Nathan) and Emily Kellner (Emily) (collectively “the Brigante/Kellner Defendants”),

oppose the motion.

Henriquez commenced this dog bite case by summons and complaint dated August 30, 2023. Issue was joined by service of an answer with cross claims by the Leslie Defendants dated September 28, 2023. The Brigante/Kellner Defendants joined issue by service of an answer with cross claims November 5, 2023. The case certified ready for trial on January 29, 2025 and a note of issue has not yet been filed.

According to Henriquez, on May 12, 2023, he was attacked by the dog that is owned by Brigante and was being walked by Stern. Henriquez now moves the court to amend his complaint to include Nathan and Emily as owners of the dog, and to add a cause of action for negligence against the Leslie Defendants¹.

“ ‘Leave to amend pleadings should be freely given provided that the amendment is not palpably insufficient, does not prejudice or surprise the opposing party, and is not patently devoid of merit’ ” (*Bloom v. Lugli*, 102 AD3d 715 [2d Dept 2013]; quoting *Greco v. Christoffersen*, 70 AD3d 769, 770 [2d Dept 2010], quoting *Gitlin v. Chirinkin*, 60 AD3d 901, 901–902 [2d Dept 2009]; see CPLR 3025[b];). “A determination whether to grant such leave is within the Supreme Court's broad discretion, and the exercise of that discretion will not be lightly disturbed” (*Gitlin*, 60 AD3d at 902; see *Greco*, 70 A.D.3d at 770). “The granting of such leave is committed to the sound discretion of the trial court and must be determined on a case-by-case basis” (*Biaggi & Biaggi v. 175*

¹The parties previously stipulated to amending the caption to change the name of Defendant “Leslie Abramowitz” to “Leslie Stern”.

Medical Vision Properties, LLC, 105 AD3d 790, 791 [2d Dept. 2013]; quoting *Skinner v. Scobbo*, 221 A.D.2d 334, 335 [2d Dept 1995]).

The motion will be denied. Initially, the court notes that both the complaint and the proposed amended complaint contain a separate cause of action for punitive damages. That cause of action must be dismissed as New York does not recognize a separate cause of action for punitive damages (*see Podesta v. Assumable Homes Dev. II Corp.*, 137 AD3d 767 [2d Dept 2016]). Nor does the complaint or the proposed amended complaint contain allegations that would rise to the level of supporting a claim for punitive damages (*see Traiman v United States Life Ins., Co.*, 139 AD3d 713 [2d Dept 2016]).

Next, Henriquez's application to name Nathan and Emily as owners of the dog is patently devoid of merit. Brigante is the dog's owner and he and the dog live with Nathan and Emily. Nathan and Emily have acknowledged they harbor the subject dog, and making them "owners" of the dog does not open up any new avenues of liability. Regardless, the court disagrees with Henriquez that Brigante's deposition testimony indicates that Nathan and Emily are also owners of the dog.

Finally, the court rejects Henriquez's argument that Stern's actions in walking the dog open up the Leslie Defendants to a cause of action for negligence. Liability for a domestic animal who causes an injury only lies in strict liability where the owner knew or should have known of the animals' vicious propensities (*see Petrone v Fernandez*, 12 NY3d 516 [2009]). To the extent that a cause of action for negligence can be raised

relating to an injury caused by a domestic animal, and the court questions whether any such cause of action exists, the facts of this case would not meet any such criteria.

Accordingly, it is hereby;

ORDERED that Henriquez's motion to amend the complaint is DENIED in its entirety; and it is further

ORDERED, that the Fourth Cause of Action Against Defendants Nathan Kellner and Emily Kellner for Punitive Damages is dismissed.

The court has considered the parties' remaining arguments and finds them to be without merit. This constitutes the decision and order of the court.

Dated: February 4, 2025
Mineola, N.Y.



Hon. Gregg Roth, J.S.C.

ENTERED

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NASSAU COUNTY
COUNTY CLERK'S OFFICE