Ruffalo v Firestone Complete Auto Care
2012 NY Slip Op 33240(U)
May 1, 2012
Sup Ct, Westchester County
Docket Number: 59614/2011
Judge: William J. Giacomo

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

FILED
AND
ENTERED
ON 5-1- 2012
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.

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ROBIN RUFFALO and TODD RUFFALO, SR.,

Plaintiff,

Index No. 59614/2011

-against-

Decision & Order

FIRESTONE COMPLETE AUTO CARE, and MANAGER STEVEN CALLARI, Individually,

Defendants.

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The following papers numbered 1 to 7 were read on defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(3) and (a)(7).

	PAPERS NUMBERED
Notice of Motion/Affirmation/Exhibit A-B	1-4
Memorandum of Law	5
Plaintiffs's Reply in Opposition	6
Reply Memorandum of Law	7

Factual and Procedural Background

Plaintiffs, appearing pro se[1], commenced this action seeking damages for alleged faulty auto care service performed by defendant Firestone Complete Auto Care. Although it is difficult to discern from plaintiffs' rambling complaint filled with conjecture, threats, insults and name-calling, it appears that from April 28, 2011 to May 4, 2011, defendant sold and installed new tires on plaintiffs' 1993 Mercury Sable, and performed service to the car's brake and air conditioning systems at a cost of $3,000. There was an additional servicing of the car's air conditioning system from May 7, 2011 to May 11, 2011 at a cost of $431.28. According to plaintiffs this work was not done properly requiring them to bring the car to another repair shop to correct the work at a cost of $3,653.07.

In their complaint plaintiffs appear to allege causes of actions sounding in malice, fraud and malpractice. Plaintiffs also seek compensatory and punitive damages in the amount of $5,000,000 for humiliation, emotional distress and mental anguish.

Defendant now moves for an order dismissing the complaint, in part, for failure to state a cause of action with respect to the claims for malice, fraud and malpractice and to limit plaintiffs' damages to the cost of repair or the reduction in value of the vehicle due to the alleged faulty service plus any alleged incidental car rental expenses.

In opposition, plaintiffs submit a long rambling opposition motion, which includes a diatribe on the American legal system, the criminal justice system, the insurance industry,

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[1]While the Court is mindful that plaintiffs are appearing *pro se*, "[a] litigant appearing *pro se* acquires no greater right than any other litigant and such appearance may not be used to deprive defendants of the same rights enjoyed by other defendants". (*Roundtree v. Singh*, 143 AD2d 995, 996 [2nd Dept 1988]). A *pro se* litigant appears so "at their own peril." (*Banushi v. Lambrakos*, 305 AD2d 524 [2nd Dept 2003]).

the medical industry, Wall Street and the banking system. Plaintiffs also state that "Pro-Lender, Pro-Business Judges and Law Clerks are also a burden on the judicial system, and need to be **Exterminated**, and **Eviscerated** from the game." [emphasis in original]

In their opposition, plaintiffs note that they are out of pocket $4,900, however, seek additional damages for the "Grief, Shock Shoty [sic] Work and Careless Performances" of defendant.

Discussion

On a motion for dismissal pursuant to CPLR 3211(a)(7) for failure to state a cause of action, "[the Court's] well-settled task is to determine whether, 'accepting as true the factual averments of the complaint, plaintiff can succeed upon any reasonable view of the facts stated'" (*Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307,318 [1995] [internal citations and quotation marks omitted]). In performing that task, the Court "[is] required to accord plaintiff[] the benefit of all favorable inferences which may be drawn from [its] pleading, without expressing [any] opinion as to whether [it] can ultimately establish the truth of [its] allegations before the trier of fact" (*ibid.*).

At the outset, the Court notes that New York does not recognize a cause of action sounding in "malice" or "shock." Further, to the extent plaintiffs seek damages for malpractice, such a cause of action does exist against mechanics. Plaintiff can either alleged a negligence action or breach of contract action on these set of facts.

With respect to plaintiffs' claims of fraud, in order to bring an action based upon a fraud, the circumstances constituting fraud shall be stated in detail. Thus, the misconduct must be set forth in sufficient detail to clearly inform a defendant with respect to the

incidents complained of. (*See* McKinney's CPLR 3016[b]; *RBE Northern Funding, Inc. v. Stone Mountain Holdings*, LLC, --- N.Y.S.2d ----, 2010 WL 4539526 [2nd Dept 2010]). Here, while plaintiffs have satisfactorily alleged that defendant was negligent in performing auto work to their vehicle, plaintiffs have not made any detailed allegations to support a cause of action sounding in fraud (*see Kaufman v Cohen*, 307 A.D.2d 113, 760 N.Y.S.2d 157 [1st Dept 2003]).

With respect to defendant's motion to reduce the damages sought by plaintiffs, this Court notes "[t]he measure of damages for injury to property resulting from negligence is the difference in the market value immediately before and immediately after the accident, or the reasonable cost of repairs necessary to restore it to its former condition, whichever is the lesser" (*Babbitt v Maraia*, 157 A.D.2d 691, 549 N.Y.S.2d 791 [2nd Dept 1990] *citing Johnson v Scholz*, 276 App Div 163, 164 [2nd Dept 1949]).

Plaintiffs remaining claims are to recover for the property damage their vehicle sustained by defendant's poor auto care work, as such, plaintiff's recovery must be limited to "the difference in the market value immediately before and immediately after the accident, or the reasonable cost of repairs necessary to restore it to its former condition, whichever is the lesser" as well as any incidental damages, such as, car rental costs.

Plaintiffs claim that they are entitled to $5,000,000 in damages since defendant's negligence "could've killed or injured the Plaintiffs, or other family units and civilians." However, the law does not allow recovery for events that did not happen.

Accordingly, based upon the foregoing, defendant's motion to dismiss all but plaintiffs' negligence claims and to limit plaintiffs' recovery to those associated with property damage is GRANTED.

Dated: White Plains, New York
May 1, 2012

HON. WILLIAM J. GIACOMO, J.S.C.

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