Perlov v Port Auth. of the State of N.Y.
2018 NY Slip Op 33288(U)
April 9, 2018
Supreme Court, Kings County
Docket Number: 501644/2017
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
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EUGENA PERLOV, Individually and as Administrator of the ESTATE OF VLADMIR PERLOV, Deceased, and DIANA PERLOV,

Plaintiffs,

-against-

THE PORT AUTHORITY OF THE STATE OF NEW YORK,

Defendant,

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Index No.:501644/2017
Motion Date:10-30-17
Motion Cal. No.:20

DECISION/ORDER

The following papers numbered 1 to 2 were read on this motion:

Papers:	**Numbered**
Notice of Motion/Order to Show Cause Affidavits/Affirmations/Exhibits......................................	1
Answering Affirmations/Affidavits/Exhibits................................	2
Reply Affirmations/Affidavits/Exhibits..	
Other..	

Upon the foregoing papers, the motion is decided as follows:

The plaintiffs commenced this wrongful death action to recover damages arising out of the alleged negligence of the defendant in failing to take reasonable measures to prevent the suicide of plaintiffs' decedent, who died as a result of jumping off the George Washington Bridge . The defendant now moves pursuant to CPLR 3211(a)(7) to dismiss the complaint for failure to state a cause of action. Defendant contends the complaint fails to allege facts giving rise to a duty of care by the defendant to prevent the suicide.

Plaintiffs alleged in their complaint that on the morning of January 28, 2015, the decedent, Vladmir Perlov, drove onto the George Washington Bridge (the "bridge"), exited his vehicle, and jumped to his death from the North Walkway into the Hudson River. Plaintiffs alleged that the bridge was a "suicide magnet" and that suicide attempts occur at the bridge at the

rate of one every 3-½ days. Plaintiffs further alleged that in the seven years leading up to 2016, approximately 93 people have perished by jumping from the various walkways of the bridge.

Plaintiffs' complaint alleges four causes of action, all of which sound in common law negligence. On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must "accept the facts as alleged in the complaint as true, accord the plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v. Martinez,* 84 N.Y.2d 83, 87–88, 614 N.Y.S.2d 972, 638 N.E.2d 511). To state a cause of action sounding in common law negligence, a plaintiff must allege facts giving rise to duty of care, a breach of that duty, proximate cause, and damages (*MVB Collision, Inc. v. Allstate Ins. Co.*, 129 A.D.3d 1041, 1042, 13 N.Y.S.3d 137, 138). "Without a duty running directly to the injured person there can be no liability in damages, however careless the conduct or foreseeable the harm" (*Lauer v. City of New York*, 95 N.Y.2d 95, 100, 711 N.Y.S.2d 112, 733 N.E.2d 184; *see also Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 232, 750 N.E.2d 1055, 1060).

Plaintiffs contend that the defendant, as the alleged owner and operator of the bridge, owed a duty of care to the general public to maintain the bridge in a reasonably safe condition. Plaintiffs maintain that since there are sufficient facts alleged in the complaint that it was foreseeable that members of the general public would use the bridge as a means of committing suicide, the defendant's duty to maintain the bridge in a reasonably safe condition included the duty to take reasonable measures to prevent such suicides. Plaintiffs argue that there are sufficient allegations in the complaint that this duty was breached[1] and that the suicide of plaintiffs' decedent was a result.

It is accepted law that the existence of a duty of care as well as the scope of such duty are questions of law for the court (*Di Ponzio v. Riordan,* 89 N.Y.2d 578, 657 N.Y.S.2d 377, 679 N.E.2d 616; *Church v. Callanan Indus.,* 99 N.Y.2d 104, 110–111, 752 N.Y.S.2d 254, 782 N.E.2d 50; *Abbott v. Johnson*, 152 A.D.3d 730, 732, 61 N.Y.S.3d 34, 36). While the Court agrees that the complaint alleges facts giving rise to a duty by defendant to maintain the bridge in a reasonably safe condition is not in question, the case law simply does not support plaintiffs' contention that taking reasonable measures to prevent members of the general public from using the bridge as a means to commit suicide does not fall within the scope of this duty.

Generally, a defendant does not have the duty to prevent a person from committing suicide unless the defendant has a special relationship with that person. In *Cygan v. City of New*

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[1]Plaintiff claims that the decedent's suicide could have been prevented had the defendant installed proper fencing along the walkways of the bridge and nets beneath the walkways.

York, 165 A.D.2d 58, 67, 566 N.Y.S.2d 232, 238[2], the Appellate Division, First Department held that there are only two situations where liability can exist for a defendant's failure to prevent a suicide. "One is where a facility such as a hospital or jail which is in actual physical custody of an individual fails to take reasonable steps to prevent a reasonably foreseeable suicide. *Gordon v. City of New York, supra*, 70 N.Y.2d at 840, 523 N.Y.S.2d 445, 517 N.E.2d 1331 (holding that the City failed to satisfy its duty of care to plaintiff prisoner where authorities knew or had reason to know of his suicidal tendencies). The second is where an institution or mental health professional with sufficient expertise to detect suicidal tendencies and with the control necessary to care for the person's well-being fails to take such steps. *See Huntley v. State of New York,* 62 N.Y.2d 134, 137, 476 N.Y.S.2d 99, 464 N.E.2d 467 (1984) (plaintiff left hospital premises, unsupervised and jumped from the roof of a nearby parking garage; failure of hospital staff member to transmit information to staff psychiatrist who then allowed plaintiff to leave premises rendered hospital liable for negligence)" (*Id.*). The Appellate Division, Second Department seems to agree with this holding. In *Mucciola v. City of New York*, 207 A.D.2d 435, 436, 616 N.Y.S.2d 227, 228, the Court held that plaintiff's negligence claim against a defendant for causing decedent's suicide was without merit where "[t]here [was] no competent evidence to establish that the defendant's agents undertook a special relationship with the plaintiffs' decedent.").

Since there are no allegations in the complaint that the defendant had a special relationship with plaintiff's decedent, the complaint does not allege facts giving rise to a duty by the defendant to prevent his suicide.[3]

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[2] The *Cygan* Court held that the City of New York was not liable for the suicide of a police officer whom it "had neither physical custody nor control over" and "whom the [Police] Department only evaluated for fitness as an officer and never treated as a psychiatric patient" (Cygan, 165 A.D.2d at 67–68, 566 N.Y.S.2d at 238).

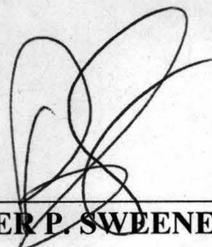
[3]Nor does this case fall within the holding in *Splawnik v. Di Caprio*, 146 A.D.2d 333, 540 N.Y.S.2d 615. There, the Court held that the allegations in a widower's complaint that the defendant gun dealer, who knew of his wife's depression had nevertheless supplied her with a loaded gun so that she could ostensibly use it to shoot a rabbit, were sufficient to state claim for negligent entrustment when wife subsequently used gun to commit suicide. In so holding, the Court stated:"[t]he pleadings adequately allege[d] that defendant supplied a dangerous instrumentality to someone he had reason to know was likely, because of her depressed mental state, to use it in a manner involving unreasonable risk of physical harm to herself. The duty alleged to have been breached by defendant is not, as defendant suggests, a specialized duty to prevent decedent's suicide...Rather, it is alleged that defendant breached a general duty not to furnish a dangerous chattel to someone inexperienced or otherwise unable to understand or appreciate the danger. . . or someone known to have dangerous or violent tendencies" (146 A.D.2d at 336, 540 N.Y.S.2d at 617). Here, there are no allegations that the defendant furnish a dangerous chattel to the decedent or that it knew of should have know of the decedent's mental state.

This Court respectfully disagrees with the holdings in *Ginsburg v. City of Ithaca*, 839 F. Supp. 537 [N.D.N.Y. 2012] and *Ginsburg v. City of Ithaca*, 5 F. Supp. 3d 243 [N.D.N.Y. 2014]. While these holdings support plaintiffs' position that the complaint sets forth an actionable claim against the defendant, these holdings are contrary to appellate authority in this State.

Accordingly, it is hereby

ORDERED that defendant's motion to dismiss the complaint pursuant to CPLR 3211(a)(7) is **GRANTED.**

This constitutes the decision of the Court.



Dated: April 9, 2018

PETER P. SWEENEY, J.S.C.

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KINGS COUNTY CLERK
FILED