

Staltari v Garnero

2018 NY Slip Op 33666(U)

June 6, 2018

Supreme Court, Saratoga County

Docket Number: 2015-3551

Judge: Ann C. Crowell

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ORIGINAL

SUPREME COURT
STATE OF NEW YORK

COUNTY OF SARATOGA

PATRICK STALTARI,

Plaintiff,

- against -

DECISION and JUDGMENT

RJI # 45-1-2017-0217

Index #2015-3551

NICHOLAS GARNERO

Defendant.

APPEARANCES

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SARATOGA COUNTY
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BALLSTON SPA, NY

FILED

ANN C. CROWELL, J.

In its August 28, 2017 Decision and Order the Court granted a default judgment in favor of the plaintiff against the defendant and ordered that an inquest be held to assess damages. That inquest was held on May 15, 2018. The plaintiff testified and submitted his affidavit, his medical records, and attorney's affirmation in support of his claims.

The plaintiff, Mr. Staltari testified in a clear and concise manner about his background, current work and living situation, the injuries inflicted by the defendant and his medical treatment for those injuries. Mr. Salteri is currently 26 years-old and resides with his parents. He is employed as a security guard for Allied Universal. He has an Associates Degree from Hudson Valley Community College. At the time of his assault, on December 6, 2014, he was pursuing his Bachelor's Degree at SUNY New Paltz with a concentration in visual arts, metal smithing and woodworking. He was only a couple of

semesters away from earning his bachelor degree. In addition to his studies he worked part-time at Stewarts. He enjoyed playing chess and pool in his spare time and socializing with friends. He particularly enjoyed going to galleries and art exhibitions in New York City.

When overpowered and assaulted by the defendant, Mr. Staltari was repeatedly struck on the left side of his face and head until he blacked out. As a result of the beating he was left dazed, frightened, in pain, and bleeding. His two female friends were assisting him when a police officer arrived on the scene. Emergency rescue personnel were summoned. He was transferred by ambulance to the Kingston Hospital. At the hospital he took photos of himself so he could see his injuries. He was shocked and deeply upset by his altered appearance and the condition of his face. The photos depict multiple facial lacerations, bruising and swelling. His left eye was swollen shut. His parents came to the hospital. He recalls them both being upset but due to his medical condition he remembers little else about their interactions. While at the hospital he underwent various medical tests and procedures and had a facial laceration repaired. He was released with a diagnosis of a left orbital floor fracture with fat herniation, and a concussion. He was instructed to sleep in an upright position, not blow his nose, ice the area and to follow-up with a plastic surgeon at Albany Medical Center the next day. He was prescribed an antibiotic and pain medication. He stayed with his parents.

After medical follow-up with Dr. Malcom Roth, Chief of Plastic Surgery at Albany Medical Center, and having repeat scans taken, it was determined he had a left orbital floor blow out fracture and fracture of the medial orbit. He was told surgical repair of his injuries was necessary. Mr. Stalteri was anxious and apprehensive about the surgery after having

the risks explained to him. He was also concerned how he might appear post surgery. Dr. Roth performed the surgery on December 16, 2014. During a three hour surgery the doctor repaired the left orbital floor fracture with open reduction with internal fixation and repaired the medial orbit with a titanium floor plate. When Mr. Stalteri awoke in the recovery room he was alone and could not see anything. He "freaked out" and thought he was blind until he was attended to by staff and told his eyes were still covered. Mr. Stalteri was discharged with instructions not to shower or blow his nose, to apply a topical ointment to the surgical site, sleep with the head of his bed elevated and to see the surgeon in two days. He had several follow-up visits with his surgeon, Dr. Roth. He was instructed to limit his activities while he was healing. Dr. Roth noted that he had excellent healing of his scars and full extraocular muscle function without double vision and noted improving sensation to his cheek and upper lip. He was ultimately discharged by Dr. Roth on January 14, 2015.

Mr. Stalteri returned to Dr. Roth on July 10, 2015 with continued complaints of numbness in his cheek, numbness from his lower eyelid down to his upper lip and double vision with upward gaze. Consultation with an oculoplastic surgeon was recommended. Dr. Roth advised Mr. Stalteri that he thought he had an excellent result aesthetically and that he hoped he would experience improvement in his numbness and double vision but that those symptoms may not fully resolve.

Mr. Stalteri followed Dr. Roth's recommendation and treated with Dr. Natalie Lopasic, an ophthalmologist, who diagnosed glaucoma associated with ocular trauma, hypertrobia (misalignment of the eyes), double vision secondary to fracture on extreme gaze, and optic nerve and visual path disorder and recommended continued observation. He was also referred to Dr. Edward Wladis, an ophthalmologist, specializing in cosmetic

facial and eye plastic surgery. Mr. Staltair saw Dr. Wladis on July 27, 2015 and August 7, 2015. In his notes Dr. Wladis stated he saw Mr. Stalteri for the long term sequella related to his orbital trauma including his double vision and left eye being positioned three millimeters posterior to his right eye. After imaging studies were conducted the doctor concluded that the implant placed to address his orbital fracture had a subtle amount of fat that should be positioned above the implant and surgery to re-position the implant was recommended. To date Mr. Stalteri has declined to have that surgery due to the uncertainty of a successful outcome, his poor reaction to anesthesia in his prior surgery and the risk of damage to his optic nerve.

Mr. Stalteri presented as a forthright witness who has been deeply traumatized by this assault. As a result of his physical injuries, required surgery and convalesce he was unable to complete his semester at SUNY New Paltz. He took incompletes in all of his classes because he could not complete his final projects. He did return to SUNY New Paltz and tried to complete those classes on top of a regular course load of new classes. His efforts to sustain this workload were unsuccessful. His grades plummeted. He withdrew from the college and never completed his degree. He was uncomfortable in New Paltz after the attack. He did not want to be there and found it difficult to function. He became anxious about being in public and saw normal situations such as being in a store or on the street as situations where he could potentially be attacked. He still experiences this apprehension. He avoids crowds and is hypervigilant. This has resulted in Mr. Stalteri avoiding unfamiliar surroundings, large crowds and big cities. Specifically he frequently enjoyed time in New York City because of his artistic interests and now is unable to comfortably enjoy himself in that city or others. This has resulted in a lack of social activity. He did indicate his circle

of friends still includes arts types but he has curtailed some activities with them that he found enjoyable due to his continued apprehension in social settings.

He is also bothered by the resulting lack of symmetry in his face. While it was not that obvious to the Court, nonetheless it makes Mr. Stalteri, who is a handsome 26 year-old with a heightened sense of aesthetics, self-conscious. He also continues to suffer from numbness that extends from his eye to his lip on the his left side of his face. Based upon Dr. Roth's notes it does not seem that this condition will abate. Mr. Stalteri indicates he cannot shave because of the numbness. While he had facial hair by choice at the time of the incident the ability to make that decision has been taken away from him. While he did not specifically detail other issues the numbness causes the Court can imagine them extending from basics like eating to matters of intimacy being compromised by the continual numbness. The area around the permanent titanium plate in his face is sensitive to heat and cold and causes him pain as do the screws which also itch on occasion. He also now suffers from trauma induced glaucoma a condition that causes a gradual loss of sight. It is also described in his medical records as pre- glaucoma. Absent from the records is any indication the condition will not be progressive. He experiences double vision and his peripheral vision is compromised. His most recent medical issue is headaches of varying intensity up to the migraine level. There is no evidence that Mr. Stalteri suffered from any of these medical conditions or limitations prior to being beaten by the defendant.

There in no evidence in the record that Mr. Stalteri has received any psychological treatment for his hypervigilance, anxiety or inability to engage freely in travel and day to day activities or attend school as he did before the beating. Regardless his testimony seemed sincere, believable and common sense supports a finding these changes to his life

are real and have not totally subsided since he was attacked by the defendant.

There is no evidence that he has any medical conditions that would impair his longevity. Therefore the Court accepts the life expectancy presumption that he is expected to live another 49.2 years. While some of his injuries are not expected to worsen the glaucoma is a progressive disease that may impair or rob him of his sight. For any person such a loss is monumental but as an artist that loss will be devastating. The Court also notes Mr. Stalteri's decision not to have corrective surgery for his double vision due to his assessment of the potential risks and the uncertain result of any surgery. It is unclear what paths may be available for him to pursue and complete his college education because none have been presented or apparently pursued by Mr. Stalteri.

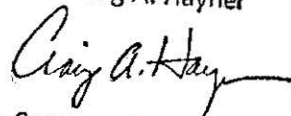
The plaintiff is awarded \$150,000.00 for his pain and suffering and loss of enjoyment of life from the date of the incident, December 14, 2014 to June 1, 2018. He is awarded \$500,000.00 for his future pain and suffering and loss of enjoyment of life over a period of 49.2 years.

Any relief not specifically granted is denied. This decision shall constitute the Order and Judgment of the Court. No costs are awarded to any party. Statutory interest shall be computed by the County Clerk. The original Decision and Order shall be forwarded to the attorney for plaintiff for filing and entry. The underlying papers will be filed by the Court.

Dated: June 6, 2018
Ballston Spa, New York


ANN C. CROWELL, J.S.C.

ENTERED
Craig A. Hayner



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ENTERED

Papers Received and Considered:

Affirmation of Brian D. Deinhart, Esq., affirmed May 11, 2018 with attached Exhibits A-L

Affidavit Patrick Staltari, sworn to May 10, 2018

Affirmation of Brian D. Deinhart, Esq., affirmed May 17, 2018