Belmont v Jetblue Airways Corp.
2020 NY Slip Op 33593(U)
October 19, 2020
Supreme Court, Kings County
Docket Number: 520534/2018
Judge: Reginald A. Boddie

At an IAS Trial Term, Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 19th day of October 2020.

P R E S E N T:
Honorable Reginald A. Boddie, JSC

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STEEVE BELMONT,

Plaintiff,

-against-

JETBLUE AIRWAYS CORP,

Defendant.

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Index No. 520534/2018

Cal. No. 4, 5, 6, MS 1, 2, 3

DECISION AND ORDER

Papers	Numbered
MS 1	Docs. # 8-10 ; 21-32, 44-45
MS 2	Docs. # 11-20, 43, 48
MS 3	Docs. # 33-42, 47

Upon the foregoing cited papers, the decision and order on defendant's motion to dismiss pursuant to CPLR 3211 (a) (7), CPLR 3211 (a) (10) and 49 U.S.C.A. § 44941 (a), plaintiff's motion to consolidate this action pursuant to CPLR § 602 (a) with a related action and for leave to amend the complaint pursuant to CPLR 3025 (b), are as follows:

Plaintiff commenced this action seeking damages allegedly from his false arrest after boarding a plane with the permission and consent of JetBlue Airways. Plaintiff alleged that on April 21, 2018, at approximately 2:30 PM, he escorted his wife and two children to terminal 5 at JFK airport, where JetBlue is located. He averred he requested a gate pass to assist his wife in boarding the plane with the children and was provided a gate pass for this purpose by an agent/employee of JetBlue. Plaintiff averred he was also given further permission to board the plane to assist his wife in boarding the plane with the children. After placing an infant child in the seat, he left the plane and went home without incident.

On April 22, 2018, he was contacted by the Port Authority Police and told to return to the JetBlue terminal. Upon returning to the terminal, he was accused of gaining access to the terminal and plane without authority. Plaintiff allegedly told the police he was given a gate pass and boarded the plane with the permission of JetBlue agents. He was arrested and charged with criminal impersonation and unlawful use or possession of official police cards. Subsequently, on August 3, 2018, the charges were dismissed by the Queens Criminal Court.

Plaintiff sought damages on the grounds of intentional tort, false arrest, unlawful imprisonment, defamation of character, battery, intentional infliction of emotional distress, common law negligence, negligent hiring and negligent infliction of emotional distress.

JetBlue initially sought to remove this matter to federal court on November 20, 2018. Plaintiff opposed the application and the case was remanded to the Supreme Court. In the interim, plaintiff also commenced an action in Supreme Court, Kings County, against the Port Authority Police Department of New York and New Jersey (PAPD), bearing index number 508229/2019.

Thereafter, JetBlue filed the instant motion to dismiss the complaint. Plaintiff filed a motion seeking to consolidate this action with the case against the PAPD and to amend the complaint. Defendant opposed the motions to consolidate and amend. Plaintiff opposed the motion to dismiss.

As a preliminary matter, JetBlue alleged federal law immunized it against suit due to a safety threat and that the report to law enforcement was required. JetBlue also argued the complaint should be dismissed for failure to join the PAPD, which is an indispensable party, and the remainder of plaintiff's claims fail as a matter of law. Plaintiff argued his motion to join the cases in this matter should be granted since they derive from common questions of law and fact and his motion to amend the claims for negligent hiring and retention to include additional facts should be

granted. Plaintiff also contended his case in chief should be maintained and JetBlue's motion denied since his complaint adequately plead the claims against JetBlue.

JetBlue relied on 49 U.S.C.A. § 44491 (a) for its claim of immunization from lawsuit. Section 44941(a) provides:

> Any air carrier or foreign air carrier or any employee of an air carrier or foreign air carrier who makes a voluntary disclosure of any suspicious transaction relevant to a possible violation of law or regulation, relating to air piracy, a threat to aircraft or passenger safety, or terrorism, . . . shall not be civilly liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, for such disclosure.

However, 49 U.S.C.A. § 44941 (b) provides that immunity will not apply to "any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading; or made with reckless disregard as to the truth or falsity of that disclosure."

Significantly, defendant previously raised this issue in the federal court in its effort to seek removal and the court rejected the argument on several grounds including that this is a fact specific issue, and not one for federal preemption but rather presents issues of state interest pertaining to the actions of JetBlue in the terminal, and not on the aircraft. The court also noted plaintiff has a viable claim for exemption in light of his allegations that he received permission to go to the gate and board the plane (*Belmont v JetBlue Airways Corp.*, US Dist Ct, EDNY, 18 CV 6655, Brodie, J., 2019). The determination of the federal court must be given res judicata effect (*see McKinney v City of New York*, 78 AD2d 884 [2d Dept 1980]; *see also Paramount Pictures Corp. v Allianz Risk Transfer AG*, 31 NY3d 64 [2018]). Accordingly, defendant's motion to dismiss on the ground of immunity is denied (*see Baez v JetBlue Airways Corp.*, 793 F3d 269 [2d Cir 2015]).

Defendant also averred plaintiff failed to sufficiently plead his claims of false arrest, unlawful imprisonment, battery, intentional and negligent infliction of emotional distress and negligent hiring and retention. When evaluating claims under New York Law for failure to state a

cause of action, the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action (*Thaw v North Shore Univ. Hosp.*, 129 AD3d 937 [2d Dept 2013]). The court must, " 'accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory' " (*Sokol v Leader*, 74 AD3d 1180 [2d Dept 2010], citing *Nonnon v City of New York*, 9 NY3d 825, 827 [2007], quoting *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

Under New York Law to prevail on a claim for false arrest or false imprisonment, plaintiff must show: 1) intentional confinement, 2) plaintiff was conscious of the confinement, 3) plaintiff did not consent to the confinement, and 4) the confinement was not otherwise privileged (*Petrychenko v Solovey*, 99 AD3d 777 [2d Dept 2012]). Plaintiff adequately plead such here.

To establish a claim of battery under New York law, plaintiff must allege there was physical contact by another person, made with intent, that is offensive in nature, and without consent (*Thaw v North Shore Univ. Hosp.*, 129 AD3d 937, 938-939 [2d Dept 2015] [citations omitted]). Defendant argued plaintiff was never touched by any of its employees. Plaintiff, citing *Rodriguez v City of New York*, 112 AD3d 905, 906 (2d Dept 2013), argued he did not indicate that agents of JetBlue battered him, but is relying on a theory of "concerted action liability" alleging a common plan or design of one or more persons, including JetBlue and its employees, to engage in a battery by having him falsely arrested. Accordingly, the court declines to dismiss this claim.

Plaintiff also sought to plead a claim for intentional and negligent infliction of emotional distress. To prevail on a claim for intentional infliction of emotional distress, plaintiff must show: "i) extreme and outrageous conduct; ii) intent to cause, or disregard of a substantial probability of causing, severe emotional injury; iii) a causal connection between the conduct and injury; and iv)

severe emotional distress" (*Fischer v Maloney*, 43 NY2d 553 [1978]). The conduct by defendant must be "extreme and outrageous" and "beyond the bounds of decency" and utterly intolerable in a civilized community" (*Fischer v Maloney*, 43 NY2d 553, 557 [1978], quoting Prosser, Torts § 12 at 56 [4th ed]). The conduct alleged "must consist of more than mere insults, indignities and annoyances" (*Nestleroad v Federal Ins. Co*, 66 AD2d 504, 507 [4th Dept 1979]; *see Belanoff v Grayson*, 98 AD2d 353, 357 [1st Dept 1984]).

Plaintiff's allegations here do not adhere to this high standard since plaintiff did not state and plead any facts to establish that the conduct was so "extreme and outrageous" as to be "beyond the bounds of decency" or that the plaintiff suffered "severe" emotional distress. Therefore, the eighth cause of action is dismissed (*see Taggart v Costabile*, 131 AD3d 243, 250 [2d Dept 2015]); *Fischer v Maloney*, 43 NY2d 553 [1978]).

To prevail on a claim of negligent infliction of emotional distress, plaintiff must show breach of a duty of care and direct emotional harm as a result of the breach (*see Costabile*, 131 AD3d at 252; *see also Savva v Longo*, 8 AD3d 551 [2d Dept 2004]. Here, plaintiff failed to allege the duty that was breached, and plead the direct injury, rather than consequential injury, caused by the breach (*see Taggart*, 131 AD3d at 253). Accordingly, the seventh cause of action is dismissed.

Plaintiff also sought to amend his pleading to properly allege negligent hiring and retention. Defendant, however, contends that even with the proposed amendment the claim is defective. A necessary element of a negligent hiring claim under New York law is that the "employer knew or should have known of the employee's propensity for the conduct which caused the injury" (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 161 [2d Dept 1997]). There is no statutory requirement that a cause of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity (*Kenneth R. v Roman*

Catholic Diocese of Brooklyn, 229 AD2d 159 [2d Dept 1997]; *see Jones v Trane*, 153 Misc 2d 822 [Sup Ct, Onondaga County 1992]), although a complaint which contains bare legal conclusions and/or factual claims which are "flatly contradicted by the evidence" should be dismissed pursuant to CPLR 3211 (a) (7) (*Corporate Natl. Realty v Philson Ltd.*, 232 AD2d 518 [2d Dept 1996]). Here, plaintiff's proposed amended fourth cause of action passes muster and plaintiff is granted leave to file the amended complaint.

Last, plaintiff requests consolidation of this action with the case against the PAPD. A trial court has broad discretion in determining whether to consolidate related actions pursuant to CPLR 602 (a) (*Hanover Ins. Group v Mezansky*, 105 AD3d 1000, 1000-1001 [2d Dept 2013] [citations omitted]). The interest of justice and judicial economy are better served by consolidation of cases where the actions share material questions of law or fact (*Hanover*, 105 AD3d at 1001 [citations omitted]). Moreover, previous courts have held a motion to consolidate should be granted absent a showing of prejudice to a substantial right of a party opposing the motion (*Hanover*, 105 AD3d at1001).

JetBlue is unable to demonstrate any prejudice by the case being consolidated for trial and discovery. Rather, it would be more likely to suffer prejudice if the case were not consolidated since the PAPD effectuated the arrest of plaintiff. Therefore, the interests of judicial economy and justice would best be served by permitting consolidation of the PAPD action with the instant case. Accordingly, index number 508229/2019, captioned *Steeve Belmont v Port Authority of New York and New Jersey*, is joined with the instant case for trial and discovery.

Finally, in as much as PAPD is a party already subject to the court's jurisdiction in the related matter, and the cases are being joined defendant's motion seeking dismissal for failure to

join a necessary party is rendered moot (*Dime Sav. Bank of N.Y. v Johneas*, 172 AD2d 1082 [4th Dept 1991].

Therefore, it is ordered, plaintiff's motions to amend (MS 3) and for consolidation (MS 2) are granted. Index number 508229/2019, captioned *Steeve Belmont v Port Authority of New York and New Jersey*, is joined with the instant case for trial and discovery. Defendant's motion to dismiss (MS 1) is granted to the extent indicated herein, and otherwise denied.

ENTER:

HON. REGINALD A. BODDIE J.S.C.

Honorable Reginald A. Boddie
Justice, Supreme Court

KINGS COUNTY CLERK FILED 2020 OCT 29 AM 10:34