Letren v Big Fish Entertainment LLC
2021 NY Slip Op 31688(U)
May 21, 2021
Supreme Court, New York County
Docket Number: 152173/2020
Judge: Phillip Hom

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PHILLIP HOM** **PART** **IAS MOTION 2**

Justice

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RICHARD LETREN

Plaintiff,

- v -

BIG FISH ENTERTAINMENT LLC,

Defendant.

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INDEX NO. 152173/2020

MOTION DATE March 15, 2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9 were read on this motion to/for DISMISS.

Upon the foregoing documents, it is ORDERED that the motion is granted in its entirety and the Complaint is dismissed, with prejudice.

Background

Plaintiff, Richard Letren ("Letren") provided security services for the Black Ink reality television show crew on November 8, 2019. During the filming, cast member Jakeitha Days ("Days") "engaged in a verbal altercation with her son, with another case member present" and subsequently struck Letren in the head with a hotel telephone (NYSCEF Doc. No 1 ¶¶13-14). Defendant, Big Fish Entertainment LLC ("Big Fish"), is a full- service production company for broadcast programming. Letren is suing Big Fish for Negligence-Failure to Supervise/Protect from a Dangerous Individual and Negligence-Retention of Dangerous Individual. Letren is also seeking punitive damages (*id* ¶¶ 20, 21, 25, 26 and 27).

Big Fish moves to dismiss the complaint under CPLR§3211(a)(7) alleging Letren has failed to establish that: (1) an employer-employee relationship exists between Days and Big Fish

and (2) that the underlying tort occurred on the "employer's premises" or with the "employer's chattels" (NYSCEF Doc. No. 4 page 1). Alternatively, Big Fish seeks an order striking the claim for punitive damages.

Motion to Dismiss a Complaint under CPLR §3211(a)(7)

When a party moves to dismiss a complaint under CPLR §3211(a)(7), the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action (*African Diaspora Mar. Corp. v Golden Gate Yacht Club,* 109 AD3d 204 [1st Dept 2013]). Although bare legal conclusions are not presumed to be true on a motion to dismiss under CPLR §3211(a)(7), 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 (*511 W. 232nd Owners Corp. v Jennifer Realty Co.,* 98 NY2d 144 [2002]).

Whether a plaintiff can ultimately establish its allegations is not taken into consideration in determining a motion to dismiss (*Philips S. Beach, LLC v ZC Specialty Ins. Co.,* 55 AD3d 493 [1st Dept 2008]; *African Diaspora Mar. Corp. v Golden Gate Yacht Club, supra* at 211). On a motion to dismiss the complaint, "the pleading is to be afforded liberal construction" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

First Cause of Action for Negligent Supervision of an Employee

Letren's first cause of action sounds in negligent supervision of an employee. It is well settled that in order to "state a claim for negligent supervision [of an employee]…under New York law… a plaintiff must show: 1) that the tort-feasor and the defendant were in an employee-

employer relationship; (2) that the employer knew or should have known of the employee's propensity for the conduct which caused the injury prior to the injury's occurrence; and (3) that the tort was committed on the employer's premises or with the employers chattels" (*Gibbs v Leman Manhattan Prep*, 2020 WL 2842542 5/27/20 *citing Green v City of Mount Vernon,* 96 F. Supp. 3d 263 [SDNY 2015] *quoting Ehrens v Lutheran Church,* 385 F. 3d 232 [2d Cir. 2004]).

In the complaint, the alleged tortfeasor Jakeitha Days is merely described as "a cast member on *Black Ink Crew*." She is not alleged anywhere in the complaint to be an employee of Big Fish and as such the first prong must fail. Second, except for a reference to "an incident as recent as February 13, 2019" in paragraph nine of the complaint, Letren makes blanket statements of Big Fish's knowledge that Ms. Days had a violent disposition. Third, the tort was committed in a hotel, not the place of business of Big Fish. In sum, Letren fails to meet any of the pleading requirements to state a cause of action for negligent supervision of an employee and thus this cause of action is dismissed.

Second Cause of Action for Negligent Retention of a Dangerous Individual

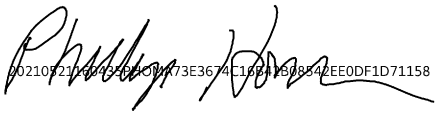
The three-prong test also applies to the negligent retention claim (*Ehrens v Lutheran Church supra* at 235). It is well settled that "the vast weight of authority establishes a premises element to negligent and supervision and retention claims" (*Doe v Alsaud,* 12 F.Supp 3d 674, 684 [SDNY 2014] *citing Ehrens v Lutheran Church*). Thus, Letren's claim for negligent retention of a dangerous individual must similarly fail. This Court finds that Letren's reliance on *Krystal G. v Roman Catholic Diocese of Brooklyn* 34 Misc.3d 531 Sup. Ct Kings Co. is misplaced. That case is a Second Department case and not binding on this Court. As such the cause of action for negligent retention is also dismissed.

Conclusion

Accordingly, the motion is granted and the causes of action for negligent supervision and negligent retention are dismissed.

In light of the foregoing, the prayer for punitive damages is rendered academic.

This constitutes the decision and order of this Court.



5/21/2021
DATE

PHILLIP HOM, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE