Joseph v Baldera
2022 NY Slip Op 32271(U)
January 10, 2022
Supreme Court, Bronx County
Docket Number: Index No. 26866/2019E
Judge: Veronica G. Hummel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31

ELVIS B. JOSEPH, Plaintiff, -against- NELSON BALDERA and EMIL GARABITO GARCIA, Defendants.	**Index No. 26866/2019E** **HON. VERONICA G. HUMMEL, A.J.S.C.** **Mot. Seq. No. 1**

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in support of and in opposition to defendants NELSON BALDERA's ("Defendant Baldera") and EMIL GARABITO GARCIA's ("Defendant Garcia"; and, together with Defendant Baldera, "Defendants") motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting them partial summary judgment dismissing any claims asserted against them by plaintiff ELVIS B. JOSEPH ("Plaintiff") that do not sound in negligence. In other words, Defendants seek dismissal of Plaintiff's claims, as alleged in paragraphs 18, 19, and 22 of the Amended Verified Complaint [NYSCEF Doc. 20],[1] that Defendants acted recklessly and, as a result, that Plaintiff is entitled to punitive damages.

This is a personal-injury action arising out of a two-vehicle side-swipe accident that occurred on February 22, 2019, at approximately 12:00 p.m., on East 177th Street near the exit ramp to I-95 in the Bronx, New York (the "Accident"). At the time of the Accident, Defendant Baldera was driving a box truck owned by Defendant Garcia, and Plaintiff was driving a Toyota Camry that he leased and was then operating as an Uber.

In support of the motion, Defendants submit an attorney affirmation; a Statement of Material Facts; copies of the pleadings; copies of the transcripts of Plaintiff's and Defendant Baldera's depositions; copies of post-Accident photographs of Plaintiff's vehicle; and a copy of the police report. Because the police accident report is not certified, however, the Court cannot

[1] Defendants also reference Plaintiff's allegation in paragraph 18 of the original Verified Complaint [NYSCEF Doc. 19] that Defendants acted with willful disregard. The Court does not address that allegation here, however, because the allegations contained in the Amended Verified Complaint supersede those contained in the original Verified Complaint. *See Nimkoff Rosenfeld & Schechter, LLP v. O'Flaherty*, 71 A.D.3d 533 (1st Dep't 2010) ("It is well settled that an amended complaint supersedes the original complaint . . . .").

consider it as competent evidence in deciding the motion. *Yassin v. Blackman*, 188 A.D.3d 62 (2d Dep't 2020); *Coleman v. Maclas*, 61 A.D.3d 569, 569 (1st Dep't 2009).

In opposition to the motion, Plaintiff submits only an attorney affirmation. The attorney affirmation, in turn, relies solely on the transcripts of Plaintiff's and Defendant Baldera's depositions submitted in support of the motion. Notably, Plaintiff did not include in his opposition papers a Statement of Material Facts corresponding to Defendants' Statement of Material Facts, as required by Uniform Trial Court Rule 202.8-g(b). 22 NYCRR 202.8-g (eff. Feb. 1, 2021). Consequently, under Rule 202.8-g(c), each fact stated in Plaintiff's Statement of Material Facts is deemed admitted.

Based on a review of the deposition transcripts, Defendants' Statement of Material Facts, and the parties' respective attorneys' affirmations, the following material facts are undisputed: On February 22, 2019, shortly before the Accident occurred, Plaintiff and Defendant Baldera were both stopped at a red light on East 177th Street near the intersection with the exit ramp to I-95. Plaintiff's vehicle was in the right lane, and Defendant Baldera's vehicle was next to it in the center lane. Vehicles driving in either of those lanes were required to make right turns onto the ramp to I-95. While stopped at the red light, both Plaintiff's and Defendant Baldera's vehicles were within their respective lanes. Once the light changed and traffic was permitted to move, both Plaintiff and Defendant Baldera proceeded to make a right turn heading onto the ramp to I-95. During the execution of those right turns, before either vehicle entered the ramp to I-95, the front-right side of Defendant Baldera's vehicle struck the back-left side of Plaintiff's vehicle. The impact was heavy and caused damage to the back-left panel and bumper of Plaintiff's vehicle. After the Accident occurred, Plaintiff and Defendant Baldera both stopped in the right lane of the exit ramp and waited for police to arrive.

In New York, it is well-settled that "punitive damages are not available for ordinary negligence." *Munoz v. Puretz*, 301 A.D.2d 382, 384 (1st Dep't 2003) (citation omitted). Rather, "[i]n order to recover punitive damages, a plaintiff must show, by clear, unequivocal and convincing evidence, egregious and willful conduct that is morally culpable, or is actuated by evil and reprehensible motives." *Id.* (internal quotation marks and citations omitted). "Punitive damages are permitted when the defendant's wrongdoing is not simply intentional but evince[s] a high degree of moral turpitude and demonstrate[s] such wanton dishonesty as to imply a criminal indifference to civil obligations." *Walker v. Sheldon*, 10 N.Y.2d 401, 405 (1961). "In other words, '[p]unitive damages are available for the purpose of vindicating a public right only where the

actions of the alleged tort-feasor constitute gross recklessness or intentional, wanton or malicious conduct aimed at the public generally or are activated by evil or reprehensible motives.'" *Sparks v. Fels*, 137 A.D.3d 1623, 1623 (4th Dep't 2016) (quoting *Pascazi v. Pelton*, 210 A.D.2d 910, 910 (4th Dep't 1994)).

"A demand for exemplary or punitive damages is not usually included in motor vehicle personal injury actions, and such damages are rarely awarded." *Greenberg v. Cross Island Indus., Inc.*, 522 F. Supp. 2d 463, 466 (S.D.N.Y. 2007) (citing *Parker v. Crown Equip. Corp.*, 39 A.D.3d 347, 348 (1st Dep't 2007); *Boykin v. Mora*, 274 A.D.2d 441, 442 (2d Dep't 2000)). The limited, exceptional circumstances in which New York courts have allowed claims for punitive damages include where intoxication, fleeing from the scene of the accident, speeding, or drag racing was a proximate cause of the underlying accident. *See, e.g., O'Connor v. Kuzmicki*, 14 A.D.3d 498 (2d Dep't 2005) (drag racing); *Acker v. Garson*, 306 A.D.2d 609 (3d Dep't 2003) (passing vehicles on right shoulder while going 70 mph in a 40-mph zone); *Parkhill v. Cleary*, 305 A.D.2d 1088 (4th Dep't 2003) (intoxicated, ran through a stop sign while speeding); *Rahn v. Carkner*, 241 A.D.2d 585 (3d Dep't 1997) (leaving scene of accident); *Linsalata v. Berry*, 39 Misc. 3d 1207(A) (N.Y. Sup. Ct. Westchester Cty. 2013) (intoxication).

Based on the submissions, Defendant Baldera has established his *prima facie* entitlement to partial summary judgment. Defendant Baldera, through admissible evidence, demonstrates the absence of any facts supporting the conclusion that Defendant Baldera's conduct was evil, wanton, egregious, reckless, or in any way more than mere negligence.[2] Based on the evidence before the Court on the motion, the exceptional circumstances existing in those motor-vehicle personal-injury cases in which New York courts have allowed claims for punitive damages simply do not exist in this case.

Plaintiff, in turn, has failed to come forward with any evidence raising a genuine issue of material fact as to Defendant Baldera's recklessness. Plaintiff contends that "Defendant [Baldera] failed to explain why there was two impacts with Plaintiff's vehicle, why his car came into contact with Plaintiff's car, and what actions he took to evade the incident." Initially, with respect to those "two impacts," Plaintiff has himself testified that the initial impact from Defendant Baldera's vehicle (a box truck) pushed the rear of Plaintiff's vehicle (a sedan) up off the ground and that the second impact was simply the vehicle coming back down. The "two impacts" were, therefore, fully

[2] By this statement, the Court does *not* find that Defendant Baldera's conduct in fact constituted negligence, as that question is not now before the Court.

explained by Plaintiff. The explanation that he offered, however, does not reflect on whether Defendant Baldera's conduct was reckless rather than merely negligent. Plaintiff's other contentions are equally unavailing, as they constitute mere speculation, which cannot be used to defeat a motion for summary judgment. *See Cabrera v. Rodriguez*, 72 A.D.3d 553, 554 (1st Dep't 2010) (citing *Alvord & Swift v. Muller Constr. Co.*, 46 N.Y.2d 276, 281-82 (1978)); *Garcia v. Verizon N.Y., Inc.*, 10 A.D.3d 339, 340 (1st Dep't 2004).

Particularly apt here are those observations and conclusions made in *Trudeau v. Cooke*, 2003 WL 25780727 (N.Y. Sup. Ct. Clinton Cty. Jan. 22, 2003):

> While the Court has reviewed a whole host of cases on the issue of punitive damages arising from automobile accidents, conclusory statements such as gross negligence, reckless or wanton conduct, and conscious disregard of the rights of others are not particularly helpful. In fact, these types of conclusions are usually the questions asked of juries based on specific facts proved at trial. On the other hand, a court routinely handling motor vehicle cases is in an excellent position to determine what is a garden-variety motor vehicle accident case and what is a motor vehicle case which stands out among the multitude.

This Court—IAS Part 31—is specifically and exclusively a motor-vehicle court. Its docket comprises thousands of cases stemming from motor-vehicle accidents, and it resolves many hundreds of motions involving such accidents each year. Few courts, therefore, are more qualified to distinguish between an ordinary motor-vehicle accident and an unusual one. Simply put, "[t]his case is a garden-variety motor-vehicle accident case," not one in which punitive damages are justified. *Id.*

Because Plaintiff has failed to raise a genuine question of material fact as to Defendant Baldera's recklessness, Defendant Garcia is also entitled to partial summary judgment on Plaintiff's claims for punitive damages. But even if there were such a question of fact, Defendant Garcia still would be entitled to partial summary judgment as to punitive damages, because Defendant Garcia's liability, if any, as the owner of the box truck, is purely vicarious. *Hale v. Saltamacchia*, 28 A.D.3d 715, at *1 (2d Dep't 2006); *Campbell v. Gaeta Interior Demolition, Inc.*, Index No. 26233/2016E, 2020 WL 7779085, at *3 (N.Y. Sup. Ct. Bronx Cty. Dec. 10, 2020) (citing *Hale*, 28 A.D.3d at *1).

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the movant was not addressed by the

Court, it is hereby denied.

ORDERED that defendants NELSON BALDERA's and EMIL GARABITO GARCIA's motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting them partial summary judgment dismissing any claims asserted against them by plaintiff ELVIS B. JOSEPH that do not sound in negligence is **GRANTED**; and it is further

ORDERED that that part of plaintiff JOSEPH's Amended Verified Complaint alleging recklessness on the part of defendants BALDERA and GARCIA and seeking punitive damages against them is **DISMISSED** and the remaining claims in the Amended Verified Complaint are severed and continued; and it is further

ORDERED that the Clerk shall mark the motion (Seq. No. 1) disposed in all court records.

This constitutes the decision and order of the Court.

Dated: January 10, 2022 **Hon.** *s/Hon. Veronica G. Hummel/signed 01/10/2022*
VERONICA G. HUMMEL, A.J.S.C.

1.	CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY		☒ CASE STILL ACTIVE	
2.	MOTION IS.....	☒ GRANTED	☐ DENIED	☐ GRANTED IN PART	☐ OTHER
3.	CHECK IF APPROPRIATE.....	☐ SETTLE ORDER	☐ SUBMIT ORDER	☐ SCHEDULE APPEARANCE	
		☐ FIDUCIARY APPOINTMENT		☐ REFEREE APPOINTMENT	