
Hearing Date: 10/18/2024

Department: T

Motion to Strike

Moving Party: Defendant Josh Adam Klinghoffer

Responding Party: Plaintiff Ashley Sanchez

Tentative Ruling: Granted with leave to amend.

BACKGROUND

This is a wrongful death case in which a car driven by Defendant struck and killed Decedent Israel Sanchez (“Decedent”). Plaintiff filed a complaint seeking punitive damages, alleging that Defendant “was likely driving while distracted” and alleging Defendant was using a device seconds before he struck Decedent with his car.

Defendant hereby moves to strike allegations and the prayer related to punitive damages contained in Plaintiff’s Complaint.

MOVING PARTY POSITION

Defendant argues the Court should strike the following portions of Plaintiff’s complaint on the grounds that matters therein are (1) irrelevant and immaterial and (2) are conclusions and not factual:

- Page 2, ¶3, “Video of the incident show...Defendant was likely driving while distracted.”
- Page 2, ¶4, “Video of the incident shows Defendant Josh Adam Klinghoffer was using a
- device mere seconds before he crashed into the decedent.”
- Page 3, ¶9, “Upon information and belief Plaintiff alleges Defendant Josh Adam Klinghoffer was using a device in violation of California Vehicle Code 23123.5.”
- Page 3, ¶11, “. . . Defendant...was and is aware of the danger presented by distracted
- driving. He engaged in this conduct despite that knowledge over a period of time such that this horrible outcome was foreseeable and demonstrates a willful disregard for the rights and safety of others.”
- Page 3, ¶14, “Defendant Josh Adam Klinghoffer was callous in his disregard for the rights and safety of pedestrians including but not limited to Decedent Israel Sanchez. . .”

- Page 6, ¶33, “Upon information and belief Plaintiff alleges Defendant Josh Adam Klinghoffer was using a device in violation of California Vehicle Code 23123.5.”
- Page 6, ¶34, “Defendant Josh Adam Klinghoffer was callous in his disregard for the rights and safety of pedestrians including but not limited to Decedent Israel Sanchez. . .”
- Page 7-8, ¶46, “. . . constituted malice, oppression, or fraud . . .because he was aware of the probable dangerous consequences of driving while distracted, but willfully and deliberately failed to avoid those consequences. The result of this willful and conscious disregard was that Defendant Josh Adam Klinghoffer hit a pedestrian in a marked crosswalk, killing him.”
- Page 8, ¶48, “. . . Defendant...was and is aware of the danger presented by distracted driving. He engaged in this conduct despite that knowledge over a period of time such that this horrible outcome was foreseeable and demonstrates a willful disregard for the rights and safety of others.”
- Page 9, ¶57, “Defendant Josh Adam Klinghoffer was callous in his disregard for the rights and safety of pedestrians including but not limited to Decedent Israel Sanchez. . .”; and
- Prayer at page 10, No. 5 “For exemplary damages.”
(Motion to Strike, p. 2.)

Defendant argues these allegations should be stricken by the Court as they are conclusory, contain irrelevant matter, and lack sufficient facts to support a prayer for punitive damages. (Motion to Strike, p. 6.)

OPPOSITION

Plaintiff argues the allegations support punitive damages because they allege awareness of the probable dangerous consequences of Defendant’s distracted driving, and the willful and deliberate failure to avoid those consequences. Plaintiff moreover asserts that her complaint alleges specific facts to demonstrate Defendant’s conduct amounts to more than a mere commission of a tort. (Opposition, p. 9.)

REPLY

Defendant argues Plaintiff’s allegation that Defendant was using a device prior to the incident is not sufficient to entitle her to recover

punitive damages. Defendant also argues Plaintiff's complaint alleges conclusory allegations that Defendant was aware of the danger posed by distracted driving, that his conduct "demonstrates a willful disregard for the rights and safety of others" and that Defendant was "callous in his disregard for the rights and safety of pedestrians" and constituted malice, oppression, or fraud. (Reply, p. 5.)

ANALYSIS

A. Judicial Notice

Judicial Notice is requested of the following:

- Distracted Driving Overview prepared by the National Highway Traffic Safety Administration (NHTSA) A true and correct copy is attached to the Declaration of Grayson Yoder in Support of Plaintiff's Opposition to Defendant's Motion to Strike as "Exhibit 2."
- Summary of Statistical Findings, Distracted Driving in 2022 prepared by the National Highway Traffic Safety Administration (NHTSA) A true and correct copy is attached to the Declaration of Grayson Yoder in Support of Plaintiff's Opposition to Defendant's Motion to Strike as "Exhibit 3."
- DUI Statistical data over 1982-2021, prepared by the National Highway Traffic Safety Administration (NHTSA). A true and correct copy is attached to the Declaration of Grayson Yoder in Support of Plaintiff's Opposition to Defendant's Motion to Strike as "Exhibit 4."
- California Office of Traffic Safety, Distracted Driving. A true and correct copy is attached to the Declaration of Grayson Yoder in Support of Plaintiff's Opposition to Defendant's Motion to Strike as "Exhibit 4."

The court declines to take judicial notice of these items because they are not material to the disposition of this motion. *St. Croix v. Superior Court* (2014) 228 Cal.App.4th 434, 447.

B. Motion to Strike

A court may strike from the complaint any irrelevant, false, or improper matter. Under CCP § 435, "[a]ny party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof." Under CCP § 436(a). "[t]he court may, upon

a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper . . . [s]trike out any irrelevant, false, or improper matter inserted in any pleading.” Under CCP § 436(b), the court may “[s]trike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.”

A motion to strike is also properly directed to unauthorized claims for damages, meaning damages which are not allowable as a matter of law. See, e.g. *Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). A complaint requesting punitive damages must include “specific factual allegations showing that defendant's conduct was oppressive, fraudulent, or malicious to support a claim for punitive damages.” *Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193. Punitive damages may be stricken where the facts alleged do not rise to the level of “malice, fraud or oppression” required to support a punitive damages award. See, e.g. *Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases “where the defendant has been guilty of oppression, fraud, or malice...” “Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. “Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 (“Searle”).

“When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge

malice.” Id. at 29. “The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone.” Id. at 32. “Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged.” Id. “In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.” Taylor v. Superior Court (1979) 24 Cal.3d 890, 895–896 (“Taylor”); see, e.g., Dawes v. Superior Court (1980) 111 Cal.App.3d 82, 89-90 (“Dawes”) (merely pleading that a defendant was intoxicated at the time of the accident was insufficient to show a conscious disregard for safety of others); cf. Sumpter v. Matteson (2008) 158 Cal.App.4th 928, 936 (factual findings that defendant was driving under the influence and knowing the light was red as the defendant sped toward it justified the award of punitive damages.)

“There are, however, few situations in which claims for punitive damages are predicated on ... conscious disregard of the rights or safety of others and in which no intentional torts are alleged.” Central Pathology Service Medical Clinic, Inc. v. Superior Court (1992) 3 Cal.4th 181, 191. “‘(M)alice’ requires more than a ‘willful and conscious’ disregard of the plaintiffs’ interests. The additional component of ‘despicable conduct’ must be found.” College Hospital Inc. v. Superior Court (1994) 8 Cal.4th 704, 725. Despicable conduct is conduct “so vile, base miserable, wretched or loathsome that it would be looked down on by ordinary decent people.” Scott v. Phoenix Schools, Inc. (2009) 175 Cal.App.4th 702, 715 (internal quotations omitted). Despicable conduct has been described as eliciting the same type of outrage frequently associated with the commission of crimes. Id.

Plaintiff’s allegation that Defendant acted with “willful and conscious disregard” of others, even understood in the light most favorable to Plaintiff’s case, fail to rise to the level of “despicable and willful” conduct. This is insufficient due to the language of Civ. Code § 3294, as amended in 1987. The court in Lackner v. North (2006) 135 Cal.App.4th 1188, explained:

The definition of malice has not always included the requirement of willful and despicable conduct. Prior to 1980, section 3294 did not

malice and despicable conduct. Prior to 1980, section 3294 did not define malice. It was construed to mean malice in fact, which could be proven directly or by implication (Taylor v. Superior Court (1979) 24 Cal.3d 890, 894 (Taylor); 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 1335, p. 793) and could be established by conduct that was done only with “a conscious disregard of the safety of others....” (Taylor, supra, at 895) Relying on the reasoning in G.D. Searle & Co. v. Superior Court (1975) 49 Cal.App.3d 22, the Taylor court recognized that recklessness alone is insufficient to sustain an award of punitive damages because “ [t]he central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone.” Id. The court concluded that “[i]n order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.” (Id. at 895–896) Applying that test, the Supreme Court directed the trial court to reinstate a claim for punitive damages where it was alleged the defendant was operating a motor vehicle while intoxicated, under circumstances which disclosed a conscious disregard of the probable dangerous consequences.

In 1980, the Legislature amended section 3294 by adding the definition of malice stated in Taylor. (Stats.1980, ch. 1242, § 1, pp. 4217–4218; College Hospital Inc. v. Superior Court (1994) 8 Cal.4th 704, 713) The definition was amended in 1987. As amended, malice, based upon a conscious disregard of the plaintiff's rights, requires proof that the defendant's conduct is “despicable” and “willful.” (Stats.1987, ch. 1498, § 5.) The statute's reference to “despicable conduct” represents “a new substantive limitation on punitive damage awards.” (College Hospital, supra, 8 Cal.4th at 725) Lackner v. North (2006) 135 Cal.App.4th 1188, 1210–1211.

In order to allege despicable conduct, Plaintiff must allege conduct which elicits the same type of outrage as the commission of crimes. Scott v. Phoenix Schools, Inc. (2009) 175 Cal.App.4th 702, 715. Even before the amendment of Civil Code § 3294, courts have elucidated that “(t)he central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone.” G. D. Searle & Co. v. Superior Court (1975) 49 Cal.App.3d 22, 32.

The facts alleged by Plaintiff here clearly allege that Defendant was careless, even reckless. However, recklessness is insufficient to support a punitive damages claim. Plaintiff must be able to allege ultimate facts that evidence “despicable” conduct “with a willful and conscious disregard of the rights or safety of others.” Civ. Code § 3294. Even where actions were actually criminal, courts have found that the pleading must contain additional facts sufficient to show they meet the requirements of the punitive damages statute. See Taylor, supra, 24 Cal.3d at 893 (punitive damages was adequately plead where defendant repeatedly drove under the influence, had convictions for drunk driving, and had previously caused accidents while intoxicated); see also Dawes, supra, 111 Cal.App.3d at 90 (punitive damages was adequately plead where defendant drove while intoxicated, speeding into a crowded intersection at 65 mph in a 35 mph zone, and attempted to mislead officers as to whether or not he was driving).

CONCLUSION

Based on the foregoing, Defendant’s Motion to Strike is GRANTED with leave to amend.