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Torts

Owner's handicapped van was wrongfully towed, he claimed

Verdict: Defense

Case Type: Trespass to Chattels, Negligence, Motor Vehicle - Reversing Vehicle

Case: Delvin Sweeney v. Bruckner Plaza Associates, L.P., John Doe "A" (an Entity Licensed to do Business in the State of NY), JNS Recovery Corp., Zerega Recovery Corp., and John Doe "B" (an Entity Licensed to do Business in the State of NY), No. 23941/00

Venue: Bronx Supreme, NY

Judge: Alan J. Saks

Date: 06-24-2009

PLAINTIFF(S)

Attorney:

- Richard L. Giampa; Richard L. Giampa, P.C.; Bronx, NY, for Delvin Sweeney
- Zachary Giampa; Richard L. Giampa, P.C.; Bronx, NY, for Delvin Sweeney

Expert:

- Andrea Coladner D.O.; Physical Rehabilitation; Holbrook, NY called by: Richard Giampa, Zachary Giampa
- Yong Kim M.D.; Orthopedic Surgery; New York, NY called by: Richard Giampa, Zachary Giampa
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- Stephen Teich M.D.; Psychiatry; New York, NY called by: Richard Giampa, Zachary Giampa

DEFENDANT(S)

Attorney:

- Christine A. Bernstock; Wilson, Elser, Moskowitz, Edelman & Dicker LLP; New York, NY, for Bruckner Plaza Associates, L.P.
- Jordan W. Grossman; Boeggeman, George & Corde, P.C.; White Plains, NY, for Zerega Recovery Corp.

Expert:

- Roy Kulick M.D.; Hand Surgery; Bronx, NY called by: Christine Bernstock, Jordan Grossman
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Insurer:

- New York State Liquidation Bureau for Zerega Recovery Corp.
- One Beacon Insurance Group for Bruckner Plaza Associates, L.P.

Facts:

On Dec. 23, 1997, plaintiff Delvin Sweeney, 33, a quadriplegic former welder who had limited use of his arms and hands, drove to the Caldor Department Store, located at 1998 Bruckner Boulevard in the Bronx. In the shopping center's parking lot, he parked his van in a handicapped parking space and went inside with his brother and 7-year-old child. When they came out, Sweeney found that his vehicle had been towed. When the tow truck driver returned to the parking lot, Sweeney asked him about his van. The truck driver admitted towing the vehicle because it did not have the proper handicapped license plates on it and claimed he was not allowed to tow the vehicle back to the shopping center lot. However, he told Sweeney that the towing yard was only a few blocks away and that Sweeney could go get the van himself.

Sweeney called the police, but eventually decided not to wait and began to head toward the towing yard with his brother and son. He then rolled his wheelchair approximately 10 to 12 blocks, or 1.2 miles, to the towing yard, which released the van without any charge. Sweeney claimed that he injured both of his hands and arms from rolling his wheelchair to the yard.

The next day, Sweeney wasn't feeling well and presented to the clinic at Montefiore Medical Center in the Bronx, where he was subsequently diagnosed with pneumonia. He then went to the Department of Motor Vehicles to get proper license plates for the van and then back to the Caldor parking lot to take photographs of the area with his brother. That evening Sweeney and his brother returned to the towing yard, parked halfway across the yard's driveway and the brother exited the vehicle to take pictures of the area. Sweeney claimed that the tow truck driver that towed his vehicle the day before saw them and began to back up the truck toward them, but his brother got back in the car and they were able avoid being hit.

Sweeney sued the owner of the Caldor parking lot, Bruckner Plaza Associates, L.P.; the tow truck company, Zerega Recovery Corp.; a sister company of the towing business, JNS Recovery Corp.; and two unidentified businesses. He alleged the defendants unlawfully and improperly took his personal property, bringing an action for negligence, trespass to chattel, false imprisonment and assault. He also alleged that the tow truck driver was negligent in the operation of his vehicle and that the reversing vehicle constituted assault, and that Zerega was vicariously liable for the driver's actions.

The lower court dismissed the false imprisonment and assault claims at the conclusion of a 2006 trial, and the plaintiff appealed. The appellate division, First Department, affirmed the lower courts decision regarding the claims of false imprisonment and assault, but found that there were triable issues of fact as to the claims of trespass to chattel and negligence. The matter was then sent back to the lower court for trial.

The actions against JNS Recovery and the two unidentified companies were never pursued and were dismissed as a matter of law prior to trial. The matter subsequently proceeded to trial against Bruckner Plaza and Zerega only.

Sweeney claimed that Zerega wrongfully towed a handicapped vehicle from Bruckner Plaza's premises even though his vehicle was posted with stickers indicating that the vehicle belonged to a handicapped individual. He alleged that Bruckner Plaza was also negligent for failing to post the tow company's name, address and phone number on any signs in the parking area to notify him of who towed the vehicle. He claimed that when he asked the tow truck driver where the tow yard was, the driver was negligent for giving him incorrect directions by telling him the yard was closer than it was. He alleged that the driver should not have suggested letting someone in his condition go get the van himself, knowing how far the yard was from the parking lot. Sweeney contended that the taking of his vehicle constituted trespass to chattel and that Zerega was negligent for the driver's incorrect

directions, causing him to sustain injuries when he went to retrieve his van.

Sweeney further claimed that the following day, while his brother was taking pictures of the yard, the tow truck driver attempted to hit them by reversing the tow truck at them at an excessive rate of speed. He contended that Zerega was negligent for the driver's reckless operation of the vehicle and claimed that they would have sustained serious injuries if his brother had not pulled away at the last minute.

The defendants contended that they were entitled to remove any vehicle that was wrongfully parked in a handicapped parking spot and that Sweeney's vehicle was illegally parked because it was not registered for a handicapped parking permit in accordance with Vehicle and Traffic Law § 1203-a. Once it was realized that the vehicle did in fact belong to a handicapped person, the van was released back to Sweeney's attention without any charge. Zerega also argued that even though its driver indicated that the tow yard was not far, Sweeney could have taken a taxi to the location or had his brother go get the vehicle while he waited at the store for him to return with the vehicle if he believed going to the yard would have been an issue. Zerega also denied Sweeney's description of events the following day and alleged that the driver did not attempt to hit Sweeney's vehicle.

Injury:

Sweeney claimed that he sustained repetitive stress injuries to both of his hands, resulting in cane palsy to his right hand and causing damage to the ulnar nerve. He also alleged that he developed pneumonia as a result of his trip to the towing yard. He also claimed that he suffered from great mental distress as a result of the incident with the reversing tow truck on Dec. 24, 1997, resulting in depression.

Sweeney presented to a clinic at Montefiore Medical Center following the incident on Dec. 23, 1997, when he began to not feel well and was treated for pneumonia and released. He alleged that he subsequently presented to the clinic several times to treat his condition and ultimately underwent approximately four rehabilitation sessions at the Rusk Institute for Rehabilitation Medicine in Manhattan to treat his hand injuries. He claimed that over the next couple of years he sought treatment from an orthopedist and a psychiatrist.

Sweeney claimed that he suffered from diminished use of both hands as a result of his injuries. He alleged that following the initial trip to the towing yard, he suffered from limited function to his right hand and a substantial loss of function to his left hand. He contended that even though he was quadriplegic he had some use to his hands and arms, but that following the incident he suffered from further loss of use to both arms. Sweeney claimed that this greatly affected his ability to ambulate and affects his everyday activities.

Plaintiff's counsel called as a witness the physician who performed an EMG study on Sweeney in February 1998, and the physician testified that the electrodiagnostic testing demonstrated abnormal findings to Sweeney's hands and this could be of relatively recent onset. The plaintiff's physical rehabilitation expert further opined that Sweeney's hand injuries were permanent. In addition, testimony from the plaintiff's psychiatry expert was read at trial, in which he opined that Sweeney suffered from depression as a result of the incidents.

Plaintiff's counsel asked the jury to award \$6 million for past and future pain and suffering, and past and future medical expenses.

Defense counsel argued that Sweeney was not seriously injured from either alleged incident. He contended that Sweeney was injured in an accident when he fell over in his wheelchair during an ambulette accident, causing him to require a laminectomy. The defendant's expert hand surgeon testified that given Sweeney's prior accidents, he did not suffer from any additional problems with his hands as a result of either incident in December 1997. He acknowledged that Sweeney's hands

might have been sore as a result of rolling the wheelchair to the towing yard, but disputed that Sweeney suffered from any significant lasting deterioration to his hands or arms. Defense counsel also argued that Sweeney's alleged pneumonia was not causally related to the alleged incident.

Defense counsel further disputed Sweeney's depression and argued that Sweeney did claim a serious injury as a result of the alleged motor vehicle negligence on Dec. 24. Thus, he contended that Sweeney did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d). As a result, defense counsel made a motion for a directed verdict to dismiss the negligence claim in regards to the alleged incident on Dec. 24.

Verdict Information Prior to jury deliberations, the court granted the motion for a directed verdict made by Zerega's counsel, dismissing the negligence claim in regards to the alleged incident on Dec. 24. The jury subsequently addressed only the claims regarding the incident on Dec. 23.

The jury found that Bruckner Plaza was not negligent in having Sweeney's vehicle towed and that its actions were not a substantial factor in causing any alleged injury. It also found that Zerega was not negligent for towing Sweeney's vehicle nor was the towing a substantial factor in causing any alleged injury. However, the jury found that Zerega was negligent for its driver giving Sweeney incorrect directions to the towing yard, but determined that Zerega's negligence was not a substantial factor in causing Sweeney's alleged injuries. Thus, the jury rendered a defense verdict.

Editor's Comments This report includes information that was gleaned from court documents and an interview of defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.