

**SUPERIOR COURT OF CALIFORNIA,**

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - February 07, 2019

EVENT DATE: 02/08/2019

EVENT TIME: 10:30:00 AM

DEPT.: C-68

JUDICIAL OFFICER: Richard S. Whitney

CASE NO.: 37-2018-00023369-CU-PO-CTL

CASE TITLE: CHRISTOPHER WILLIAMS VS DAVID ARAMBULA [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

CAUSAL DOCUMENT/DATE FILED:

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**TENTATIVE RULING: Defendant CITY OF LEMON GROVE's Motion for Summary Judgement, or in the Alternative, Motion for Summary Adjudication is DENIED.**

It is undisputed that Defendant David Arambula was an employee of Defendant City of Lemon Grove ("City" or "Defendant") as an elected member of the City of Lemon Grove City Council at the time of the incident. (SSUF Nos. 1-5.) "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment" if the act or omission by the employee would "have given rise to a cause of action against that employee." (Gov. Code, § 815.2(a).) A public entity is not liable if the employee's actions were "so divorced" or "so unusual" from the employee's employment that it exceeded the employee's "scope of employment." (*Z.V. v. County of Riverside* (2015) 238 Cal.App.4th 889, 898 [Citation omitted].) The focus is on "the extent of abnormality." (*Id.*) "That the employment brought tortfeasor and victim together in time and place is not enough ... the incident leading to injury must be an 'outgrowth' of the employment...; the risk of tortious injury must be 'inherent in the working environment' [Citation] or 'typical of or broadly incidental to the enterprise [the employer] has undertaken.'" (*Id.* [Citations and quotes omitted].)

Each of Plaintiff's causes of action rely on Mr. Arambula's violence towards Plaintiff. Taisha Brown, a member of a local political organization, declares that she spoke to Mr. Arambula, on behalf of Plaintiff, to setup a meeting with Plaintiff and Mr. Arambula to discuss cannabis dispensaries. (Decl. Ms. Brown, ¶ 1; SSUF No. 7.) Ms. Brown declares Mr. Arambula moved the meeting place from a pizzeria to Mr. Arambula's house. (Decl. Ms. Brown, ¶¶ 2-3.) Ms. Brown declares that after she and Plaintiff arrived at Mr. Arambula's home, she heard Plaintiff and Mr. Arambula discussing Plaintiff's applications for medical-marijuana dispensaries. (Decl. Ms. Brown, ¶ 4.) Mr. Arambula showed Plaintiff a briefing booklet that he had received for the upcoming City Council meeting. (Decl. Ms. Brown, ¶ 4.) Ms. Brown declares Mr. Arambula's conversation with Plaintiff continued until after 8 pm. (Decl. Ms. Brown, ¶ 4.) Finally, Ms. Brown declares she and Mayor Vasquez left the event between 11:30 pm and midnight. (Decl. Ms. Brown, ¶ 5.)

It is undisputed that Mr. Arambula held official City business meetings at his home on multiple occasions, with Mayor Vasquez's knowledge. (Plaintiff UAMF No. 27.) Further, other members of the City Council also conducted official City business at locations beyond City Hall. (Plaintiff UAMF No. 27.) The meeting at Mr. Arambula's house between Plaintiff and Mr. Arambula involved City business. The City argues that the meeting ended at 8 pm and that all events thereafter were part of a social event. Defendant relies on the deposition testimony of Mr. Arambula to establish that the meeting with Plaintiff ended by 8 pm; however, Ms. Brown declares it continued until after 8 pm. (Decl. Ms. Brown, ¶ 4.) There

is a question of fact as to the length of time between when the conversation regarding medical-marijuana dispensaries ended and when Plaintiff was injured. Consequently, there is a question of fact as to whether the incident was an outgrowth of Mr. Arambula's scope of employment as a member of the City Council.

The City also argues Plaintiff failed to comply with the claims statute. Government Code section 910 provides, a presented claim must include, *inter alia*, "[t]he date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted" and a "general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim." (Gov. Code, § 910.) There must be some compliance with all of the statutory requirement and the compliance must be "sufficient to constitute *substantial* compliance." (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 457.) The purpose of the claim statute is "to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation." (*Id.* at 525.) "[T]he statute should not be applied to snare the unwary where its purpose is satisfied," and the 'claim need not contain the detail and specificity required of the pleading, but need only fairly describe what the entity is alleged to have done.'" (*Garber v. City of Clovis* (E.D. Cal. 2010) 698 F.Supp.2d 1204, 1216 [Citation omitted].) Defendant does not provide any authority that Plaintiff must describe the legal theory of recovery in the claim. Government Code section 910 does not require an explanation of each legal theory upon which the plaintiff will rely upon at the time of trial.

Here, Plaintiff filled out the City's claim form. (Decl. City Manager, Exhibit A.) Plaintiff describes the circumstance as follows:

David Arambula invited me to his home to discuss my application for a permit to operative [sic] a medical marijuana dispensary. He was drinking heavily. As I was trying to leave, I was looking at my phone to schedule an Uber. That's when Mr. Arumbula [sic], unprovoked, hit me in the head with a bottle and bit/kicked/punched/choked me.

(Decl. City Manager, Exhibit A.) Plaintiff provides a general description of the damages incurred as follows: "I suffered a serious laceration above, my eye, a bite wound, a broken rib, and other injuries. I required stitches and a tetanus shot in addition to other treatment. I have substantial medical bills, as well as damages for pain and suffering and lost work." (Decl. City Manager, Exhibit A.) These facts are sufficient to apprise the City of Plaintiff's later pled claims for assault and battery, intentional infliction of emotional distress, and negligence. Whether or not intentional torts may or may not also constitute negligence is not a distinction that Plaintiff was required to make in alleging the facts in the tort claim. The City was put on notice that Plaintiff suffered physical injuries, pain and suffering, and "other treatment" as a result of the incident. Plaintiff substantially complied with Government Code section 910. Notwithstanding the above, the City has immunity for discretionary acts taken as to Plaintiff's applications after the incident occurred. "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." (Gov. Code, § 820.2.) "[P]ublic employees' tort immunity for legislative decision-making applies even when that decision-making is also alleged to involve the making of misrepresentations motivated by 'actual fraud, corruption or actual malice.'" (*Freeny v. City of San Buenaventura* (2013) 216 Cal.App.4th 1333, 1337.) Plaintiff cannot show that the act to deny any of his applications was not a discretionary act and not immune from liability. However, summary adjudication is not proper. Under CCP section 437c(f), a party may move for summary adjudication as to punitive damages. If the claim for damages is for something other than punitive damages, then under CCP section 437c(t), a party may still move for summary adjudication under certain conditions. CCP section 437c(t) requires a stipulation by the parties regarding the issue of damages. No such stipulation has been filed in this case. As such, the claim for damages as to the denial of Plaintiff's applications may not be summarily adjudicated at this time.

The motion is denied in its entirety.

Plaintiff's Objections to Evidence:

Objection 1: Overruled

Defendant's Objections to Evidence:

Objection 1: Overruled

Objection 2: Overruled

Objection 3: Overruled

Objection 4: Overruled

Objection 5: Overruled

Objection 6: Sustained as to statement regarding Mayor Vazquez's alleged conversation with Plaintiff as to Plaintiff's marijuana dispensary applications.

Objection 7: Overruled

Objection 8: Overruled

Objection 9: Overruled

Objection 10: Overruled

Objection 11: Overruled

Objection 12: Overruled

Objection 13: Overruled

Objection 14: Overruled

Objection 15: Overruled