

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY,
CIRCUIT CIVIL DIVISION

PETER MUSANTE, on Behalf of
JOHN GRAZIANO, as Guardian of
the Property

Plaintiff,

Case No.: 08004244CI
Division: 15

vs.

TERRY BOLLEA, individually,
LINDA BOLLEA, individually,
NICHOLAS BOLLEA, a minor, and
DANIEL JACOBS, invidually.

Defendants.

FILED
Clerk of Court Rec. from
2008 MAY 19 AM 11:47
KEN BURKE
CLERK OF CIRCUIT COURT

DEFENDANT NICHOLAS BOLLEA'S ANSWER,
AFFIRMATIVE DEFENSES, AND MOTION TO STRIKE AS
TO COUNT V OF THE COMPLAINT

MOTION TO STRIKE

Pursuant to Fla. R. Civ. P. 1.140(f), Defendant Nicholas Bollea ("Nick Bollea") hereby moves to strike paragraph 104 of Plaintiff Peter Musante's ("Plaintiff") Complaint and Demand for Jury Trial ("Complaint") brought on behalf of John Graziano ("John Graziano"). Paragraph 104 seeks to incorporate prior paragraphs that are immaterial to the count alleged against Nick Bollea. Furthermore, the information sought to be incorporated is both impertinent and scandalous. Thus, the paragraph should be stricken. The basis for striking paragraph 104 is described in more detail below:

1. Pursuant to Fla. R. Civ. P. 1.140(f), "[a] party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time." Fla. R. Civ. P. 1.140(f).

2. Paragraph 104 of the Complaint states that "Plaintiff realleges paragraphs one (1) through seventy-eight (78) as if fully set forth herein." Paragraph 104 is contained as part of Count V of the Complaint. The count is styled as "Negligence Against Nick Bollea."

3. Of the 78 paragraphs "fully set forth herein" as part of Count V, only 18 are material to Count V. The remaining 60 paragraphs Plaintiff seeks to have "fully set forth herein" relate to purported actions or inactions of Terry Bollea and Linda Bollea. Those 60 paragraphs are, therefore, "immaterial" to the claim of negligence against Nick Bollea that Plaintiff has attempted to allege in Count V.

4. Given that the claim Plaintiff seeks to allege in Count V is a claim against Nick Bollea for actions that took place on the afternoon of August 26, 2007, any claims relating to Terry Bollea, Linda Bollea, or actions taken prior to August 26, 2007 are both immaterial and impertinent. The impertinence arises from the fact that acts purportedly taken or not taken by Terry and Linda Bollea are irrelevant to a negligence count against Nick Bollea. Similarly, any acts purportedly undertaken by Nick Bollea prior to August 26, 2007 are explicitly barred by Fla. R. Evid. 90.404(2)(a) ("Similar fact evidence of other...acts...is inadmissible when the evidence is relevant solely to prove bad character or propensity").

5. To the extent the actions or inactions in the 60 immaterial paragraphs purportedly allege actions and inactions by Linda and Terry Bollea, the content of the allegations and their inclusion in the count solely against Nick Bollea appears to be meant for the purpose of creating scandal.

WHEREFORE, Nick Bollea respectfully requests that this Court strike paragraph 104 of the Complaint.

ANSWER AND AFFIRMATIVE DEFENSES

Nicholas Bollea ("Nick Bollea") hereby responds to Count V of Plaintiff Peter Musante's ("Plaintiff") Complaint and Demand for Jury Trial ("Complaint") brought on behalf of John Graziano ("John Graziano") as follows.:

"Count V – Negligence Against Nicholas Bollea"

104. Subject of Motion to Strike, therefore denied.

105. Denied.

106. Denied

a. Denied.

b. Denied.

c. Denied.

d. Denied.

e. Denied.

f. Denied.

107. Denied.

Affirmative Defenses

Defense 1: Comparative fault/ contributory negligence – John Graziano chose to violate Florida law by not wearing his seatbelt. Had John Graziano been wearing his seatbelt, he would not have sustained the injuries alleged in the Complaint.

Defense 2: Comparative fault/ contributory negligence – John Graziano was the adult in the vehicle the day of the accident. He chose to get in the vehicle and, if he believed that Nick Bollea was driving in a negligent, reckless, willful or wanton way (a fact Nick Bollea denies), then as the adult in the vehicle, John Graziano, did nothing to supervise Nick Bollea.

Defense 3: Comparative fault/ contributory negligence – if at any point in time John Graziano thought that Nick Bollea was driving in a negligent, reckless, willful or wanton way, John Graziano could have exited the 1998 Toyota Supra. The 1998 Toyota Supra was traveling on a city street and stopped at multiple stop lights prior to the accident. Despite repeated opportunities, at no point did John Graziano attempt to exit the 1998 Toyota Supra.

Defense 4: Assumption of the risk – assuming that Nick Bollea was negligent (a fact which Nick Bollea denies), John Graziano practically lived at the Bollea house. John Graziano knew Nick Bollea well and knew the 1998 Toyota Supra well. In fact, John Graziano had worked on the 1998 Toyota Supra and John Graziano had driven the 1998 Toyota Supra. John Graziano had been a passenger in the 1998 Toyota Supra innumerable times over the course of their multi-year friendship. John Graziano had spent the entire day of August 26, 2007 with Nick Bollea and knew Nick Bollea's physical condition at the time of the accident. If there was any risk associated with riding as a passenger in the 1998 Toyota Supra, John Graziano knew of the risk and assumed the risk when he chose to be a passenger.

Defense 5: Comparative fault/ Contributory negligence – If Nick Bollea consumed alcohol prior to the accident, John Graziano provided the alcohol to Nick Bollea.

Defense 6: Any damages awarded to Plaintiff and assessed against Nick Bollea shall be reduced by the total of all amounts which have been paid for the benefit of John Graziano, or which are otherwise available to John Graziano, from all collateral sources, pursuant to section 768.76, Florida Statutes.

Defense 7: Nick Bollea is entitled to a reduction in economic damages to the extent that they have been or are written-off, contractually reduced, or otherwise similarly reduced. *See e.g. Goble v. Frohman*, 901 So.2d 830 (Fla. 2005).


Defense 8: The periodic payment provisions of Section 768.78, Florida Statutes, shall apply as specified within the statute, to any award in favor of Plaintiff and against Nick Bollea.

Defense 9: Comparative fault/ Contributory negligence – If there was any negligence (a fact which Nick Bollea denies), Defendant Daniel Jacobs is also at fault for the accident alleged in the Complaint because he encouraged Nick Bollea to drive in the fashion in which Nick Bollea was driving at the time of the accident. The comparative fault is further compounded by the fact that Daniel Jacobs was the adult in the situation and Nick was a minor.

Defense 10: Nick Bollea reserves the right to amend to assert other affirmative defenses as discovery proceeds in this case.

Dated: May 16, 2008

Respectfully submitted,



Morris Weinberg, Jr.
Fla. Bar No. 0486401
Lee Fugate
Fla. Bar No. 170928
Maegen P. Luka
Fla. Bar No. 549851
ZUCKERMAN SPAEDER LLP
101 E. Kennedy Blvd., Suite 1200
Tampa, FL 33602
Tel: 813-221-1010
Fax: 813-23-7961