

266 A.D.2d 154, 698 N.Y.S.2d 486, 1999 N.Y. Slip Op. 10148

Supreme Court, Appellate Division, First Department, New York.

Norma-Jean BOTHMER, etc., et al., Plaintiffs-Appellants, v.
SCHOOLER, WEINSTEIN, MINSKY & LESTER, P.C., et al., Defendants-Respondents.

Nov. 30, 1999.

Jonathan Robert Nelson, for Plaintiffs-Appellants.

Andrew Grant Tretter, for Defendants-Respondents.

Order, Supreme Court, New York County (Carol Huff J.), entered May 15, 1998, which, in an action by plaintiff client against defendants accountants stating, insofar as pertinent to the appeal, separate causes of action styled as negligence, gross negligence, and malpractice, insofar as appealed from as limited by plaintiff's brief, granted defendants' motion for summary judgment to the extent of dismissing plaintiff's demand for punitive damages under her cause of action for gross negligence, unanimously modified, on the law, and, upon a search of the record, to dismiss plaintiff's demands for punitive damages under her other causes of action as well, and otherwise affirmed, without costs.

While summary judgment dismissing the cause of action for gross negligence may, as the IAS court held, be precluded by an issue of fact as to "whether defendants acted without the slightest care and regard to [plaintiff's and her decedent's] rights", raised by "the fact that the alleged malpractice continued over the course of six years", such issue does not preclude dismissal of the punitive damages claim under such cause of action. "Even where there is gross negligence, punitive damages are awarded only in 'singularly rare cases' such as cases involving an improper state of mind or malice or cases involving wrongdoing to the public." (*Karen S. "Anonymous" v. Streitferdt*, 172 A.D.2d 440, 441, 568 N.Y.S.2d 946, quoting *Rand & Paseka Mfg. Co. v. Holmes Protection*, 130 A.D.2d 429, 431, 515 N.Y.S.2d 468, *lv. denied* 70 N.Y.2d 615, 524 N.Y.S.2d 677, 519 N.E.2d 623). Here, there is no showing that defendants' repeated error was motivated by malice or a desire to benefit themselves at plaintiff's and her decedent's expense, or that such error " 'was so outrageous as to evince a high degree of moral turpitude and showing such wanton dishonesty as to imply a criminal indifference to civil obligations' " (*Walker v. Stroh*, 192 A.D.2d 775, 776, 596 N.Y.S.2d 213, quoting *Zarin v. Reid & Priest*, 184 A.D.2d 385, 388, 585 N.Y.S.2d 379, citing *Walker v. Sheldon*, 10 N.Y.2d 401, 405, 223 N.Y.S.2d 488, 179 N.E.2d 497). This reasoning is equally applicable to plaintiff's demands for punitive damages under the causes of action for malpractice and negligence, and, upon a search of the record (*see, Chateau D'If Corp. v. City of New York*, 219 A.D.2d 205, 209-210, 641 N.Y.S.2d 252, *lv. denied* 88 N.Y.2d 811, 649 N.Y.S.2d 379, 672 N.E.2d 605), those demands are dismissed as well. We have considered plaintiff's other arguments and find them unpersuasive.

SULLIVAN J.P., NARDELLI, MAZZARELLI, WALLACH and FRIEDMAN, JJ., concur.