

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JASON MACKEN and TRACY MACKEN

Plaintiffs

VERIFIED COMPLAINT

v.

Date Filed

Index No.

JAMES MICHAEL SMITH a/k/a JIMMY SMITH,
BALTIMORE RAVENS LIMITED PARTNERSHIP,
and NATIONAL FOOTBALL LEAGUE

Defendants,

Plaintiffs, above named, for their verified causes of action against the defendants herein, allege upon information and/or knowledge and/or belief:

FIRST: That at all times hereinafter mentioned, plaintiffs, were and are residents of the County of Erie and State of New York.

SECOND: That at all times hereinafter mentioned, defendant, JAMES MICHAEL SMITH aka JIMMY SMITH was a resident of the City of Baltimore and County of Baltimore, State of Maryland.

THIRD: That at all times hereinafter mentioned, defendant, JAMES MICHAEL SMITH aka JIMMY SMITH was employed in and had has principal place of business in the City of Baltimore and County of Baltimore, State of Maryland.

FOURTH: That defendant, JAMES MICHAEL SMITH a/k/a JIMMY SMITH committed tortuous acts in the State of New York which caused injury to plaintiff, JASON MACKEN in New York State.

FIFTH: That at all times hereinafter mentioned, defendant, BALTIMORE

RAVENS LIMITED PARTNERSHIP, was a limited partnership formed under the laws of the State of Maryland and with its principal place of business in Baltimore County, State of Maryland.

SIXTH: That defendant, BALTIMORE RAVENS LIMITED PARTNERSHIP, conducted business in New York State on a regular basis and derived substantial revenue and other business opportunities in the State of New York.

SEVENTH: That defendant, BALTIMORE RAVENS LIMITED PARTNERSHIP, committed an act of negligence outside of New York State which resulted in injury to plaintiff, JASON MACKEN in New York State.

EIGHTH: That defendant, BALTIMORE RAVENS LIMITED PARTNERSHIP, committed an act of negligence in New York State which resulted in injury to plaintiff, JASON MACKEN in New York State.

NINTH: That at all times hereinafter mentioned, defendant, THE NATIONAL FOOTBALL LEAGUE, was an unincorporated association with its principal place of business in New York County in the State of New York.

TENTH: That defendant, THE NATIONAL FOOTBALL LEAGUE, committed acts of negligence in New York State which caused injury to plaintiff, JASON MACKEN in New York State.

ELEVENTH: That defendant, THE NATIONAL FOOTBALL LEAGUE, committed acts of negligence outside New York state which caused injury to plaintiff, JASON MACKEN in New York State.

TWELFTH: On or about December 8, 2019, a National Football League game between

the Buffalo Bills and defendant, BALTIMORE RAVENS LIMITED PARTNERSHIP, (hereinafter “the Defendant,, BALTIMORE RAVENS, ”) took place at the Buffalo Bills Football Stadium, which was then known as New Era Field, located at 1 Bills Drive in Orchard Park, New York.

THIRTEENTH: On or about December 8, 2019, plaintiff, JASON MACKEN, was employed as a Peace Officer by the Erie County Sheriff’s Department during Buffalo Bills football games at New Era Field.

FOURTEENTH: On or about December 8, 2019, plaintiff, JASON MACKEN, was employed as a Peace Officer during the Buffalo Bills-Baltimore Ravens football game.

FIFTEENTH: On or about December 8, 2019, defendant, JAMES MICHAEL SMITH aka JIMMY SMITH was employed as a National Football League professional football player by the Defendant, BALTIMORE RAVENS.

SIXTEENTH: On or about December 8, 2019, defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, played in the Buffalo Bills-Baltimore Ravens football game as an employee of the Defendant, BALTIMORE RAVENS.

SEVENTEENTH: During the course of the December 8, 2019 football game between the Buffalo Bills and Baltimore Ravens, a Buffalo Bills player, Cole Beasley, successfully converted a “try by run or pass” (hereinafter “two-point try”) by completing a catch of the football in the end zone.

EIGHTEENTH: Defendant, JAMES MICHAEL SMITH aka JIMMY SMITH was on the football field as a Baltimore Ravens football player at the time the Buffalo Bills were attempting the aforesaid “two-point try”.

NINETEENTH: When Cole Beasley completed the catch of pass in the end zone, successfully converting the “two-point try”, the ball was automatically dead and the “two-point try” play was ended.

TWENTIETH: After Cole Beasley went down to the ground, ending the “two-point try” play, defendant, JAMES MICHAEL SMITH aka JIMMY SMITH ran towards plaintiff, JASON MACKEN.

TWENTY-FIRST: During the course of the aforementioned “two-point try” play, plaintiff, JASON MACKEN stood on the ground within the bowl of New Era Field, near the wall between the field of play and the stands.

TWENTY-SECOND: During the course of the aforementioned “two-point try” play, plaintiff, JASON MACKEN stood with his back to the field of play, watching the crowd in the stands.

TWENTY-THIRD: After the end of the aforesaid “two-point try” play, defendant, JAMES MICHAEL SMITH aka JIMMY SMITH ran up to plaintiff, JASON MACKEN and struck Mr. Macken from behind in the lower back area with his fist.

TWENTY-FOURTH: After defendant, JAMES MICHAEL SMITH aka JIMMY SMITH struck plaintiff, JASON MACKEN in the lower back with his fist, he proceeded to run into Mr. Macken from behind, driving Mr. Macken into the wall of the stadium.

TWENTY-FIFTH: That by striking Mr. Macken with his fist and by running into him from behind, defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, caused injury to plaintiff, JASON MACKEN.

TWENTY-SIXTH: That by reason of the premises, the plaintiff, JASON MACKEN,

suffered certain severe, permanent and painful injuries, internal as well as external, by reason of which he will be compelled to expend large sums of money for medical bills, and that the plaintiff has been and will be incapacitated from performing his usual duties for a long period of time, all to his damage in a sum in excess of the jurisdictional amounts of CPLR §3017 (c).

TWENTY-SEVENTH: The amount of damages sought exceeds the jurisdictional limits of all lower courts.

FOR A FIRST CAUSE OF ACTION – BATTERY

TWENTY-EIGHTH: Plaintiffs repeat, reallege, and reaffirm those allegations set forth in Paragraphs FIRST through TWENTY-SEVENTH above.

TWENTY-NINTH: On or about December 8, 2019, while plaintiff, JASON MACKEN, was lawfully on the premises of New Era Field, in the course of his employment as a Peace Officer, defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, intentionally and forcibly struck the body of plaintiff, JASON MACKEN.

THIRTIETH: That defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, intentionally struck Mr. Macken with his fist and proceeded to run into him after the conclusion of the aforementioned, “two-point try” play.

THIRTY-FIRST: That the action of defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, in striking Mr. Macken with his fist and running into him from behind, did not occur during the ordinary and usual course of play during the Buffalo Bills-Baltimore Ravens football game.

THIRTY-SECOND: That due to defendant JAMES MICHAEL SMITH aka JIMMY

SMITH's intentional conduct, plaintiff JASON MACKEN suffered bodily contact that was harmful and offensive.

THIRTY-THIRD: That the conduct of the defendant, JAMES MICHAEL SMITH aka JIMMY SMITH in striking plaintiff JASON MACKEN, amounted and constituted willful conduct resulting in severe, permanent, and painful injuries to the plaintiff JASON MACKEN.

THIRTY-FOURTH: That the defendant, JAMES MICHAEL SMITH aka JIMMY SMITH did not have plaintiff, JASON MACKEN's consent for such bodily contact.

THIRTY-FIFTH: That plaintiff JASON MACKEN did not in any way assume the risk of being intentionally struck by defendant JAMES MICHAEL SMITH aka JIMMY SMITH.

THIRTY-SIXTH: That Mr. Macken's cause of action for injuries sustained as a result of defendant JAMES MICHAEL SMITH aka JIMMY SMITH's assault upon him, is not barred by the common law "firefighter's rule" as a result of the abrogation of the "firefighter's rule" through the enactment of General Obligations Law § 11-106.

FOR A SECOND CAUSE OF ACTION – Negligence of defendant, Baltimore Ravens

THIRTY-SEVENTH: Plaintiffs repeat, reallege, and reaffirm those allegations set forth in Paragraphs FIRST through THIRTY- SIXTH above.

THIRTY-EIGHTH: That on December 8, 2019, defendant, JAMES MICHAEL SMITH aka JIMMY SMITH was an employee of defendant, BALTIMORE RAVENS.

THIRTY-NINTH: That defendant, JAMES MICHAEL SMITH aka JIMMY SMITH had been an employee of defendant, BALTIMORE RAVENS, since 2011.

FORTIETH: That prior to hiring defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, the Defendant, BALTIMORE RAVENS, had actual or constructive notice that defendant, JAMES MICHAEL SMITH aka JIMMY SMITH had been charged with third degree assault while a student at the University of Colorado.

FORTY-FIRST: That after its employment of Mr. Smith the Defendant, BALTIMORE RAVENS, had actual or constructive notice that in July 2014, Mr. Smith had been arrested for disorderly conduct following an incident in the women's restroom in The Greene Turtle in Towson, Maryland, because Mr. Smith refused to comply with the orders of a police officer to get away from an unconscious woman in the women's restroom.

FORTY-SECOND: That the defendant, BALTIMORE RAVENS, had imposed no discipline upon defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, following his July 2014 disorderly conduct arrest.

FORTY-THIRD: That the defendant, BALTIMORE RAVENS, had continued to retain the services of defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, following his July 2014 disorderly conduct arrest.

FORTY-FOURTH: That the defendant, BALTIMORE RAVENS, had actual or constructive notice that in 2018, a former girlfriend of defendant, JAMES MICHAEL SMITH aka JIMMY SMITH had accused him of domestic violence towards her.

FORTY-FIFTH: That the defendant, NATIONAL FOOTBALL LEAGUE, suspended defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, for the first four games of the 2018 NFL season for violations of its personal conduct policy due to Mr. Smith's abusive conduct towards his former girlfriend.

FORTY-SIXTH: That the defendant JAMES MICHAEL SMITH aka JIMMY SMITH responded to the 2018 domestic abuse allegations and his suspension by the NFL with an apology, in which he stated, “I would like to sincerely apologize to my former girlfriend, the NFL, the Ravens organization, my coaches, my teammates, my fiancée and all our fans. I’m very disappointed that my past actions have led to this suspension. I promise that I have already learned much and will continue to learn more from this experience. I believe I am, and will continue to try to be, a better person and a better father because of this. I am committed to being the best I can be, both on and off the field.”

FORTY-SEVENTH: That the defendant, BALTIMORE RAVENS, admitted notice of defendant, JAMES MICHAEL SMITH aka JIMMY SMITH’s conduct in the following statement: “The NFL found evidence of threatening and emotionally abusive behaviors by Jimmy toward his former girlfriend that showed a pattern of improper conduct. Our player’s behavior was inappropriate and wrong.”

FORTY-EIGHTH: In 2018, the applicable National Football League Code of Conduct emphasized that it required more from its players than to “avoid being found guilty of a crime.” Rather, prohibited CONDUCT included, but was not limited to, the following:

Actual or threatened physical violence against another person, including dating violence, domestic violence, child abuse, and other forms of family violence;

Assault and/or battery, including sexual assault or other sex offenses;

Violent or threatening behavior toward another employee or a third party in any workplace setting

Disorderly conduct;

Crimes against law enforcement, such as obstruction, resisting arrest, or harming a police officer or other law enforcement officer

FORTY-NINTH: That the defendant, BALTIMORE RAVENS, continued to employ defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, following the expiration of his four game suspension.

FIFTY: Based upon the forgoing, the Defendant,, BALTIMORE RAVENS, up to and as of December 8, 2019, were guilty of negligent retention of defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, based upon his propensity to engage in violent conduct and to place his interests above those of society.

FIFTY-FIRST: Plaintiff JASON MACKEN , would not have been injured by defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, on December 8, 2019 if the Defendant, BALTIMORE RAVENS, had not continued to negligently retain Mr. Smith as an employee.

FOR A THIRD CAUSE OF ACTION – Negligence of defendant, National Football League

FIFTY-SECOND: Plaintiffs repeat, reallege, and reaffirm those allegations set forth in Paragraphs FIRST through FIFTY-FIRST.

FIFTY-THIRD: Defendant, NATIONAL FOOTBALL LEAGUE, had actual or constructive notice that defendant, JAMES MICHAEL SMITH aka JIMMY SMITH had been charged with third degree assault while a student at the University of Colorado.

FIFTY-FOURTH: Defendant, NATIONAL FOOTBALL LEAGUE, had actual or

constructive notice that defendant, JAMES MICHAEL SMITH aka JIMMY SMITH had actual or constructive notice that in July 2014, Mr. Smith had been arrested for disorderly conduct following an incident in which Mr. Smith refused to comply with the orders of a police officer to get away from an unconscious woman in the women's restroom in The Greene Turtle in Towson, Maryland.

FIFTY-FIFTH: Defendant, NATIONAL FOOTBALL LEAGUE, had imposed no discipline upon defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, following his July 2014 disorderly conduct arrest.

FIFTY-SIXTH: Defendant, NATIONAL FOOTBALL LEAGUE, had actual knowledge of in 2018, a former girlfriend of defendant, JAMES MICHAEL SMITH aka JIMMY SMITH had accused him of domestic violence towards her.

FIFTY-SEVENTH: Defendant, NATIONAL FOOTBALL LEAGUE, had imposed a four game suspension upon defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, due to his domestic abuse of his ex-girlfriend.

FIFTY-EIGHTH: In the NFL "Personal Conduct Policy" applicable from 2016 through to December 8, 2019, defendant, NATIONAL FOOTBALL LEAGUE, obligated itself to offer "a formal clinical evaluation, the cost of which will be paid by the league, education, counseling, or treatment programs" to players, such as Mr. Smith, who is "arrested or charged with violent or threatening conduct that would violate this policy".

FIFTY-NINTH: In conjunction with the discipline imposed by defendant, NATIONAL FOOTBALL LEAGUE, upon defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, due to his domestic abuse of his ex-girlfriend, the NFL's "Personal Conduct Policy"

reserved the NFL's right to require disciplined players "to seek ongoing counseling, treatment, or therapy."

SIXTIETH: Defendant, NATIONAL FOOTBALL LEAGUE, was negligent in not requiring defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, to successfully complete behavior modification therapy, including, without limitation, anger management and impulse control therapy, prior to resuming his employment as an active National Football League player.

SIXTY-FIRST: Defendant, NATIONAL FOOTBALL LEAGUE, NEGLIGENCE in failing to require defendant, JAMES MICHAEL SMITH aka JIMMY SMITH, to successfully complete anger management, impulse control and or other required therapy was a cause of injuries sustained by Mr. Macken on December 8, 2019, due to Mr. Smith's assault upon him.

FOR A FOURTH CAUSE OF ACTION – Derivative Cause of Action of plaintiff,

Tracy Macken

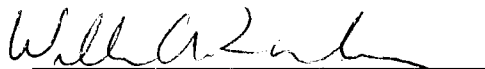
SIXTY-SECOND: Plaintiffs repeat and reallege paragraphs FIRST through SIXTY-FIRST, as is more fully stated herein.

SIXTY-THIRD: That as a result of the foregoing, the plaintiff, TRACY MACKEN'S husband suffered certain painful and permanent injuries by reason of which she has been and will be deprived of her husband's services, society, support, and that she has been and will be compelled to expend large sums of money for medical bills on behalf of her spouse, all to her damage in a sum against the defendants pursuant to CPLR §3017 (c).

WHEREFORE, Plaintiffs, JASON MACKEN AND TRACY MACKEN, demand judgment against each of the defendants, JAMES MICHAEL SMITH aka JIMMY SMITH,

BALTIMORE RAVENS LIMITED PARTNERSHIP and NATIONAL FOOTBALL LEAGUE,
on each of the causes of action jointly and severally, together with damages for economic and noneconomic losses, together with interest, costs and disbursements in this action; and for such other relief as the Court may deem just and proper.

DATED: Buffalo, New York
June 16, 2021



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