

occurred. Thus, it appears as if the in-court identification of the defendant made by the victim at the preliminary hearing does not have an independent origin in the victim's observations at the time of the crime, but was based upon the suggestive manner of the preliminary hearing. Therefore, the court feels that the ends of justice would best be served by suppressing the in-court identification of the defendant made by the victim on October 1, 1987.

ORDER OF COURT

January 12, 1988, the court dismisses the defendant's first two motions to suppress since the officer did have probable cause to arrest the defendant and the on-the-scene identification was proper.

The court does grant the defendant's third motion to suppress the in-court identification of the defendant by the victim at the preliminary hearing on October 1, 1987.

WILDERS AND WIFE vs. COMMUNITY REFUSE SERVICE, INC., ET AL., C.P. Franklin County Branch, No. A.D. 1985-194

Accident - Punitive Damages - Broken Warning Buzzer

1. Punitive damages may be awarded if defendant's actions are outrageous, wilful, wanton, the result of bad motive, or in reckless disregard of the rights of others.
2. Pennsylvania law does not require a garbage truck to have a warning buzzer sound while backing up and failure of defendant to repair a broken buzzer is not outrageous or reckless behavior.
3. Backing into a parking lot without a full view of the area behind the truck may be negligence but not the subject of punitive damages because most vehicles have a blind spot.

John N. Keller, Esquire, Counsel for plaintiffs
Thomas J. Finucane, Esquire, Counsel for defendants

OPINION AND ORDER

WALKER, J., April 14, 1986:

FIRST NATIONAL BANK AND TRUST CO.



13 West Main Street P.O. Box 391
Waynesboro, Pennsylvania 17268

(717) 762-8161

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Member F. D. I. C.



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LEGAL NOTICES, cont.

NOTICE OF FILING OF ARTICLES OF INCORPORATION

Notice is hereby given that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on the 1st day of August, 1988, for the purpose of obtaining a certificate of incorporation.

The name of the proposed corporation organized under the Commonwealth of Pennsylvania Business Corporation Law approved May 5, 1933, P.L. 364, as amended, is LAURICH REAL ESTATE, INCORPORATED.

The purpose for which the corporation has been organized is to engage in and to do any lawful acts concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

LAW OFFICES OF WELTON J. FISCHER
550 Cleveland Avenue
Chambersburg, PA 17201

8/19/88

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on July 26, 1988 for the purpose of obtaining a Certificate of Incorporation of a domestic business corporation to be organized under the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, and its amendments and supplements. The name of the corporation is ANTHONY WAYNE LEASING, INC.

The purpose for which the corporation has been organized is to engage in and to do any lawful act concerning any and/or all lawful business for which corporations may be organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of May 5, 1933, P.L. 364, as amended.

Timothy W. Misner, Esquire
ULLMAN, PAINTER AND MISNER
10 East Main Street
Waynesboro, PA 17268

8/19/88

LEGAL NOTICES, cont.

On May 13, 1985, plaintiff, Earl Rayburn Wilders, walked across a parking lot behind the Waynesboro Elks Club and stepped into the path of defendants' garbage truck as it was backing up in the parking lot. Though the garbage truck was equipped with a back up buzzer, the buzzer was broken.

Plaintiff asserts that at no time did he see or hear the truck. The driver of the truck could not see the plaintiff because of a blind spot behind the truck, and backed the truck over the plaintiff, crushing both of plaintiff's legs.

Plaintiffs' complaint seeks punitive damages. Defendants filed a preliminary objection in the nature of a demurrer to the claim for punitive damages.

The issue is whether, for the purposes of a demurrer, the plaintiffs have alleged sufficient facts to allow a claim for punitive damages.

The Restatement of Torts, as adopted in Pennsylvania, allows the imposition of punitive damages if the defendants' actions are outrageous, willful, wanton, the result of bad motive, or in reckless disregard of the rights of others. Restatement (Second) of Torts §908(2). See *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742 (1984). More specifically, punitive damages are warranted if the defendant acted in conscious disregard of a risk that he knew, or should have known, would cause a high probability of harm to another. Restatement (Second) of Torts §500.

In applying this standard to the present facts, the court must determine whether the defendant consciously disregarded a high probability of risk to the plaintiff by backing his truck into a parking lot with a blind spot behind the truck and without an operable warning buzzer.

Defendant does not dispute the fact that he bought the truck knowing that the back-up buzzer did not work and defendant allowed the truck to operate without attempting to fix the back-up warning device. However, under Pennsylvania law, no such auditory device is required on garbage trucks. Defendant's failure to repair the back-up buzzer is no more objectionable than buying and operating a garbage truck without a buzzer. The court cannot hold that this is outrageous or reckless behavior without usurping the legislature's function, which the court is not willing to do.

Plaintiffs also maintain that backing a truck into a parking lot

frequented by pedestrians, without a full view of the area behind the truck, is a reckless action. Plaintiffs suggest that to do this over a period of time in various alleys and parking lots is a conscious disregard of a high probability of risk.

The problem with plaintiffs' argument is that, in the facts before us, there appears to be a question of contributory negligence. Plaintiff cut across a parking lot adjacent to an alley and in spite of the noise from the truck's engine, the speed of a large garbage truck backing up, and the unobstructed view of the parking lot and alley, plaintiff stepped into the truck's path and walked with his back to the truck. Should the defendant have anticipated, to a high degree of probability, that a pedestrian would act with such disregard for his own safety? The court thinks not.

Furthermore, most vehicles have a blind spot behind them, necessitating the use of extra caution when backing up. Failure to exercise this higher degree of caution may be negligent, but it does not constitute willful, wanton, reckless or outrageous behavior.

In summary, the defendants have not engaged in such outrageous conduct as would warrant the imposition of punitive damages. No cases were cited by either party that even remotely resemble the facts before the court. This may be a further indication that these actions simply do not rise to the level of malicious, wanton or reckless behavior.

ORDER OF COURT

April 14, 1986, defendants' demurrer to plaintiffs' count for punitive damages is sustained.

KERN, ADMRX ESTATE OF GARNER vs. CHAMBERSBURG HOSPITAL, ET AL., C.P. Franklin County Branch, No. A.D. 1984-111

Medical Malpractice - Interrogatories - Expert Witness - Rule 4003.5

1. The purpose of Rule 4003.5 is to avoid unfair surprise by allowing counsel to evaluate opponent's position prior to trial.

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