

SMITH v. POOLE, C.P. Fulton County Branch, No. 84 of 1981—C,

*Landlord & Tenant - Self-Help Eviction - Unfair Trade Practices and Consumer Protection Law - Damages - Implied Covenant of Quiet Enjoyment*

1. An implied covenant of quiet enjoyment runs with the lease and any wrongful act by the landlord interfering with possession is an eviction.
2. Damages for wrongful eviction may include increased costs of commuting to work as a result of change of residence.
3. An increase in commuting expenses may not be claimed for the entire one year lease period but rather for that period of time it would take to complete the proper judicial procedure or a reasonable time whichever occurs first.
4. Damages for wrongful eviction may include inconvenience, humiliation and other emotional harm resulting from having ones belongings set out on the street.
5. Self-help eviction conduct and landlords' representations that it will be resorted to do not fall within the ambit of the Unfair Trade Practices and Consumer Protection Law.
6. *Commonwealth v. Monumental Properties, Inc.*, 459 Pa. 450, 329 A. 2d 812 (1974), does not dictate that all aspects of landlord/tenant relationships fall within the consumer protection law.

*David W. Woodward, Esq.*, Counsel for Plaintiffs

*Stanley J. Kerlin, Esq.*, Counsel for Defendant

#### OPINION AND ORDER

KELLER, J., August 24, 1981:

A complaint was filed by plaintiffs in this matter on March 25, 1981, which alleged a wrongful eviction from leased premises and a violation of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201.1 et seq. Defendant filed preliminary objections to the complaint on May 4, 1981. An amended complaint was then filed by plaintiffs on May 26, 1981, which corrected some of the items objected to by the defendant and added new allegations under Count III. Plaintiff placed the case on the argument list on that same day. A further preliminary objection in the nature of a demurrer to Count III was then filed by the defendant on June 15, 1981.

The preliminary objections filed by defendant are now before this Court. In his objections, the defendant has moved for a more specific pleading and has requested the Court to strike certain paragraphs of the complaint and to strike Count III in its entirety. Defendant's demurrer to Count III is also before this Court.

Defendant concedes the information sought in the motion for a more specific pleading was provided by plaintiffs in their amended complaint. Therefore, defendant's motion for a more specific pleading will be deemed withdrawn.

Defendant's motion to strike seeks to have certain paragraphs of the complaint stricken. Paragraph 1 of this motion is withdrawn because the paragraph sought to be stricken from the original complaint was eliminated in plaintiffs' amended complaint.

Defendant objects to paragraphs 15, 16 and 17 of plaintiffs' complaint which allege advice given by a District Justice to one of the plaintiffs. The amended complaint further alleges that the advice rendered by the District Justice followed a telephone call made by the District Justice to Merrill W. Kerlin, Esq., who confirmed that the advice to be given was correct prior to such advice being communicated to plaintiffs and defendant.

Defendant contends that these allegations are irrelevant and should be stricken. Punitive damages may appropriately be awarded where a defendant acts willfully, maliciously, or so carelessly as to indicate wanton disregard for the rights of the party injured. *Gerwig v. W. J. Johnston Co.*, 207 Pa. 585, 57 A. 42 (1904); *Thompson v. Swank*, 317 Pa. 158, 176 A. 211 (1934). The allegations in plaintiffs' complaint, as amended, are essential elements to justify punitive damages. They are clearly relevant and pertinent to the issue at hand. Therefore, defendant's motion to strike paragraphs 15, 16 and 17 of the complaint is denied.

Defendant has moved to strike paragraphs 29-35, inclusive, of plaintiffs' complaint. In these paragraphs plaintiff, Rodney W. Smith, claims damages for increased costs and expenses in commuting to and from his place of employment as a result of his change of residences. In the case of *Minnich v. Kauffman*, 265 Pa. 321, 108 A. 597 (1919), the court held:

"The general rule . . . is that the lessee may recover in an action of trespass for all lossess which he can prove he has actually sustained, or which he will necessarily sustain, under

the circumstances, as a result of the unlawful eviction. The measure of damages has been liberally extended to include even well-established profits of the business during the unexpired term of the lease. It has also been held that punitive or exemplary damages may be recovered, when the facts show wanton or malicious injuries to, or interference with, the lessee's possession and enjoyment of the property." (*Minnich* at 598).

The plaintiffs in this case have alleged that there was an oral lease between the parties for one year. While the increase in commuting expenses cannot properly be claimed as damages for that entire one-year period, such increased costs of commuting to work from residences located at greater distances than the home plaintiffs were entitled to remain in may be proper damage claims for the period of time it would have taken defendant to complete the proper judicial eviction process or for a reasonable time, whichever would first occur. While defendant does not owe plaintiffs a legal duty to guarantee a residence close to their employment, defendant does owe plaintiffs a duty to carry out an eviction in a legally proper manner. Plaintiffs may not be precluded from presenting their claims for damages naturally flowing from defendant's failure to follow the proper eviction process. Therefore, defendant's motion to strike off paragraphs 29-32 is denied and the motion to strike paragraphs 33, 34 and 35 is granted with the plaintiffs being granted leave to amend pursuant to this opinion.

Defendant has moved to strike paragraphs 36-39 of the complaint. These paragraphs deal with the inconvenience, embarrassment, humiliation, pain and emotional suffering inflicted on plaintiffs as a result of defendant's alleged unlawful eviction. In a case with somewhat similar facts, *Myers v. Krebs*, 40 Luz. L. Reg. Rep. 113 (1948), the court sustained a demurrer to the complaint because it failed to state that the action of the landlord was willful, malicious or wanton. Leave was granted the plaintiff to amend the complaint with appropriate allegations. The court suggested that such a claim for injury to reputation by the disgrace and disrepute resulting from the tenants' belongings being set out in the street was indeed legally proper when an allegation of willful, malicious or wanton conduct on the part of the defendant-landlord is made.

In *Pollock v. Morelli*, 245 Pa. Super. 388, 369 A. 2d 458 (1976), the Superior Court held that an implied covenant of quiet enjoyment of the demised premises runs with the lease and any wrongful act of the landlord which results in an interference with the tenant's possession is an eviction for which

the landlord is liable in damages to the tenant. Only those items of damages which are reasonable, fair and flow from an alleged illegal eviction may be claimed. The damages claimed for inconvenience, humiliation and other emotional harm resulting from plaintiffs' belongings being set out in public view and the overcrowded housing conditions experienced by plaintiffs were all direct results of defendant's failure to follow the proper eviction procedure by giving notice to plaintiffs and as such, may be legally recoverable. Therefore, the motion to strike paragraphs 36-39 of the complaint is denied.

Finally, we must consider the matter of Count III of plaintiff's complaint and amended complaint. The defendant has moved to strike Count III and has also filed preliminary objections in the nature of a demurrer to Count III. This Court is not willing to extend the holding of the case of *Commonwealth v. Monumental Properties, Inc.*, 459 Pa. 450, 329 A. 2d 812 (1974), as requested by the plaintiffs, to include factual situations such as the one presently before this Court as being violative of the Unfair Trade Practices and Consumer Protection Law, as amended, 73 P. S. Sec. 201-1 et seq.

Plaintiffs have relied on the *Monumental Properties* case as justification for the contention that self-help eviction conduct, and landlord representations that it will be resorted to, fall within the ambit of the Unfair Trade Practices and Consumer Protection Law. Although the Pennsylvania Supreme Court did hold in *Monumental Properties* that purchasers of rental housing are consumers and may be treated as being within the class of persons sought to be protected by the Consumer Protection Law, we are persuaded such a conclusion must necessarily be restricted to the facts of that case. At issue in that case was the use of printed form leases which failed to make affirmative disclosures of the lessee's statutory rights. The court held that such activities are covered by the Consumer Protection Law due to the deceptive or misleading nature of such a practice. This narrow holding does not, we conclude, dictate that all aspects of landlord/tenant relationships fall within the scope of the Consumer Protection Law or can be construed as misleading or deceptive practices.

Although plaintiffs have submitted additional allegations in their amended complaint in an attempt to give substance to Count III, there remains no basis for plaintiffs to recover under the Unfair Trade Practices and Consumer Protection Law. Therefore, defendant's demurrer to Count III is sustained.

ORDER OF COURT

NOW, this 24th day of August, 1981, the defendant's motion to strike off paragraphs 29-32 is denied; motion to strike paragraphs 33, 34 and 35 is granted; motion to strike paragraphs 36-39 is denied. The defendant's demurrer to Count III is sustained.

The plaintiffs are granted twenty (20) days from date hereof to file an amended complaint pursuant to this Opinion.

Exceptions are granted the plaintiffs and defendant.

REAM v. NATIONWIDE INSURANCE COMPANY, C.P. Centre County, No. 1979 - 3705

*Assumpsit - No-Fault Insurance - Work Loss Benefits Suit by Administrator*

1. In order for the parents of a decedent to recover "work loss" benefits under the Pennsylvania No-Fault Act, they must not only allege that they are the decedent's parents, but also that they were dependent on the decedent for support.

2. So long as a plaintiff is a survivor, as defined in the Pennsylvania No-Fault Act, he will not be denied work loss benefits because he elects to claim them on behalf of the decedent's estate.

*Stephen W. Furst, Esq., Attorney for Plaintiffs*

*James M. Horne, Esq., Attorney for Defendant*

MEMORANDUM AND ORDER

EPPINGER, P.J., September 2, 1981:

Plaintiffs are Norman and Phyllis Ream. Their son Jeffrey was killed in an automobile accident while driving a car covered by a "Pennsylvania No-Fault" policy issued by Nationwide Insurance Company.

The complaint alleges that Jeffrey was employed at the time of the accident with a potential to earn more than \$15,000 a year and claims that the decedent's estate or the parents as surviving heirs are entitled to receive an amount for his "work

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