

OLIVER V. POGUE, C. P. Franklin County Branch, No. A.D. 1981 - 254

*Trespass - Demurrer - Allegation of Negligence*

1. Where three vehicles collide and two hit a building, the driver of the vehicle not hitting the building may be liable to the building's owner if the driver is negligent and causes the collision.
2. A demurrer may be sustained only in cases where it is certain there can be no recovery.

*George F. Douglas, Jr., Esq.*, Attorney for Plaintiff

*William C. Cramer, Esq.*, Attorney for Defendant, Jeffrey Sollenberger

OPINION AND ORDER

EPPINGER, P. J., February 19, 1982:

E. Budd Olver, plaintiff, was the owner of the Sherk building at the southeast corner of Main and Queen Streets in Chambersburg. On April 11, 1981, three vehicles collided at the intersection, and the automobiles of defendants Robert Pogue (Pogue) and Dennis Sanders (Sanders) hit the building, damaging it.

Jeffrey Sollenberger was the third operator. His car didn't hit the building, and he was, according to plaintiff's complaint, traveling on Queen Street and had a green light to proceed. The negligence that Olver alleges is that Sollenberger, in going through the green light, failed to look and observe Pogue approaching the intersection at a high rate of speed and note that it was obvious Pogue would not come to a stop.

Sollenberger demurred, saying the complaint failed to set forth a cause of action, arguing that while the complaint alleges the existence of negligence and injury, there is no link between the two as far as his conduct was concerned.

We believe the complaint states a cause of action against Sollenberger. The collision is alleged to have been caused at least in part by Sollenberger's negligence and that as a result of the collision the two other cars went into the building. We must accept these allegations as true in ruling on the demurrer before us. 2 Goodrich-Amram 2d Sec. 1017 (b):11, n.42-44. Thus we consider causation adequately raised to send

the issue to the trier of facts. To recover against Sollenberger the plaintiff will have to prove that Sollenberger's negligence was a "substantial factor" in bringing about the injuries for which damages are sought. *Fransis v. Duquesne Light Co.*, 232 Pa. Super. 420, 335 A.2d 796 (1975).

We may sustain a demurrer only in cases where it is certain there can be no recovery. 2 Goodrich-Amram 2d Sec. 1017(b):11; *Pike Co. Hotels Corp. v. Kiefer*, 262 Pa. Super. 126, 393 A.2d 677 (1978). In this factual situation everyone should have the opportunity to present testimony on the question of the liability of each. Compare *Cherry v. Grissinger*, 20 Chester 140 (C.P., 1972).

Sollenberger also alleged the complaint failed to state facts establishing that he violated a duty of due care owed to plaintiff. His brief does not address this, so we may consider it abandoned. In addition, we conclude that the plaintiff's allegation of negligence as in this case means that a given standard of care required of the defendant toward the plaintiff was breached by Sollenberger.

We will overrule the demurrer.

ORDER OF COURT

February 19, 1982, the demurrer of the defendant Jeffrey L. Sollenberger is overruled. The defendant is given twenty days from this date to file an appropriate pleading if required or suffer non pros.

COMMONWEALTH v. HORTON, C. P. Franklin County Branch, No. 40 of 1980.

*Criminal Law - Involuntary Manslaughter - 180 Day Rule*

1. Where defendant was living in another state, the Commonwealth is required to use due diligence in executing an arrest warrant.
2. Where state police actively sought assistance from out of state authorities on whom state police had to rely to serve arrest warrant, the requirements of Rule 1100 are met.