

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KIM ENGLERT, Individually,	:	NO. 16-0025
Plaintiff	:	
vs.	:	
	:	CIVIL ACTION
	:	
PEABODY INVESTMENTS, INC. a/k/a and/or	:	
d/b/a/ HUTCHINSON REALTY	:	
DEVELOPMENT CO., LLC.,	:	
Defendants	:	PARTIAL SUMMARY JUDGMENT

OPINION AND ORDER

Plaintiff Kim Englert seeks compensatory and punitive damages as a result of a fall on August 16, 2015 at defendant's property in the city of Williamsport. She alleges injury when a dilapidated porch rail collapsed, causing her to fall.

Averment 15 of the complaint alleges defendant knew or should have known the property was in need of repair. The record reflects that in 2011 defendant obtained a permit for porch repair which was in fact done in 2011. Exactly what was done is unclear from the record. Although the record contains 2013 pictures of the damaged and splintered rail taken after the fall, the record does not contain any other information concerning defendants' knowledge of the porch conditions or risk provided.

Defendants have moved for partial summary judgment as to punitive damages as the record lacks evidence as to defendants' state of mind. This Court agrees.

Pa. R.C.P. 1035.2 provides:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

It is well settled in Pennsylvania that “punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others.” See, Feld v. Merriam, 485 A.2d 742, 747-748 (Pa. 1984), *citing*, Chambers v. Montgomery, 411 Pa. 339, 192 A.2d 355 (1963) *see also*, Phillips v. Cricket Lighters, 883 A.2d 439, 445-446 (Pa. 2005); Hutchison Ex. Re. Hutchison v. Luddy, 870 A.2d 766 (Pa. 2005). Pennsylvania has embraced the RESTATEMENT (SECOND) OF TORTS §908(2) with respect to punitive damages.¹ To prevail in a punitive damages claim, plaintiff must establish that: “(1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed” and (2) the defendant “acted, or failed to act, as the case may be, in conscious disregard of that risk.” Hutchison v. Luddy, *supra*, 870 A.2d at 771.

¹ § 908 Punitive Damages

(1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.

(2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant. Restat 2d of Torts, § 908

Here plaintiff has produced no evidence to establish the requisite state of mind needed for punitive damages.²

ORDER

AND NOW, this **10th** day of **November 2016**, Defendants motion for partial summary judgment is GRANTED and the claim for punitive damages is DISMISSED. This matter shall remain on the February 2017 trial term.

BY THE COURT,

November 10, 2016

Date

J.

cc: David F. Wilk, Esq., for Plaintiff
Gary L. Weber, Esq., for Defendant

² This conclusion is consistent with this rationale in a long line of county cases analyzed by this Court in Ezero v. The Williamsport Hospital and Medical Center, et. al., No. 10-01023 (C.C.P. Lycoming County Jan. 5, 2012), specifically the decisions by the Honorable Clinton W. Smith in Temple v. Susquehanna Health Systems, No. 97-00099 (C.C.P. Lycoming County July 21, 1999); Trimble v. Beltz, No. 98-01720 (C.C.P. Lycoming county Oct. 12, 1999) and Donmoyer v. Indeck, No. 98-01189 (C.C.P. Lycoming county Aug. 16, 2000), and applied by Honorable Kenneth D. Brown in Stepp v. Rajjoub, 05-01261 (C.C.P. Lycoming County Aug. 16, 2007).