

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>LAURA E. JAMES and RECCA A. JAMES,</b>	:	
Plaintiffs	:	<b>NO. CV-21-0593</b>
	:	
vs.	:	
	:	
	:	
<b>AARON J. CRAWFORD and BENFERS</b>	:	
<b>CONSTRUCTION, LLC,</b>	:	<b>CIVIL ACTION –</b>
Defendants	:	<b>Preliminary Objections</b>

**OPINION AND ORDER**

Before the Court are Defendant, Benfers Construction, LLC’s [hereinafter “Benfers”] Preliminary Objections to Plaintiffs’ Complaint. For the reasons set forth below, the Preliminary Objections are overruled.

**I. Factual Background**

This action arises out of a motor vehicle collision that occurred on August 24, 2020. Plaintiffs allege the following facts as set forth in their Complaint:

Plaintiff, Laura James, was operating a vehicle and Plaintiff, Becca James, was a passenger. Defendant, Aaron Crawford [hereinafter “Crawford”], was operating a vehicle owned by Defendant, Benfers, who is also Crawford’s employer. See *Plaintiffs’ Complaint at Paragraphs 5-8*. Crawford was acting in the course and scope of his employment at the time of the collision. See *Plaintiffs’ Complaint at Paragraphs 27 and 42*. Plaintiff, Laura James, had the right-of-way via a green traffic light and was in the process of making a left hand turn when Crawford “drove north through a red light . . . and struck the vehicle operated by Plaintiff Laura E. James in the 5:00 position . . . .” See *Plaintiffs’ Complaint at Paragraphs 5 and 7*. As a result of the collision, Plaintiffs sustained numerous injuries. See *Plaintiffs’ Complaint at Paragraphs 10 and 15*.

Plaintiffs further aver that Benfers gave Crawford “implied or express authority to drive” the vehicle when it knew that Crawford “had a robust driving record including license suspension and multiple DUIs.” *See Plaintiffs’ Complaint at Paragraph 9.* It is alleged, in the negligence counts, that Crawford was, among other things, driving the vehicle with a blood chemical amount in excess of the legal limit and, in the negligent entrustment counts, that Benfers knew that Crawford was under the influence and impaired, that his operating privileges had been suspended, and that he “had a horrendous driving record, including various DUIs.” *See Plaintiffs’ Complaint at Paragraphs 22(a), 37(a), 33(a)-(c), and 48(a)-(c).*

## **II. Procedural Background**

Plaintiffs’ six count<sup>1</sup> Complaint was filed on May 17, 2021 containing a negligence claim against Crawford, a vicarious liability claim against Benfers, and a negligent entrustment claim against Benfers for each of the two Plaintiffs. Plaintiffs ask that punitive damages be assessed against both Defendants. Benfers’ Preliminary Objections were filed July 23, 2021. Plaintiffs filed a Response to the Preliminary Objections and argument was held on September 15, 2021.

## **III. Discussion**

Defendant’s sole Preliminary Objection relates to Plaintiffs’ demands for punitive damages against Benfers.

### **a. Standard of Review**

Because Pennsylvania is a fact-pleading state, a complaint must “formulate the issues by summarizing those facts essential to support the Plaintiff’s claim as well as give the defendant notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Lerner v. Lerner*, 954 A.2d 1229, 1235 (Pa. Super. 2008). “When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.” *Richmond v. McHale*, 35 A.3d 779, 783 (Pa. Super. 2012).

### **b. Punitive Damages**

It is well settled in Pennsylvania that punitive damages may be awarded when a tortfeasor’s conduct is “outrageous, because of the defendant’s evil motive or his reckless indifference to the rights of others.” *Feld v. Merriam*, 485 A.2d 742, 747 (Pa. 1984) (*quoting* Restatement (Second) of Torts § 908(2) (1979)). They may be awarded when the evidence shows that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk. *Hutchison ex rel. Hutchison v. Luddy*, 870 A.2d 766, 772 (Pa. 2005)

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<sup>1</sup> The Complaint contains six total counts. However, the counts are numbered one through four

“[P]unitive damages are penal in nature and are proper only in cases where the defendant's actions are so outrageous as to demonstrate willful, wanton or reckless conduct. The purpose of punitive damages is to punish a tortfeasor for outrageous conduct and to deter him or others like him from similar conduct. Additionally, this Court has stressed that, when assessing the propriety of the imposition of punitive damages, the state of mind of the actor is vital. The act, or the failure to act, must be intentional, reckless or malicious.” *Id.* 770–71.

Punitive damages may also be awarded in vicarious liability cases, and there is “no requirement that an agent commit a tortious act at the direction of his principal, nor must the principal ratify the act, in order for punitive damages to be imposed . . . .” *Shiner v. Moriarty*, 706 A.2d 1228, 1240 (Pa. Super. 1998) (internal citations omitted).

In *Livingston v. Greyhound Lines, Inc.*,<sup>2</sup> a Superior Court case that addressed punitive damages against a bus company, held that the evidence presented at trial was insufficient for the jury to find that the bus company, who employed a driver who allegedly fell asleep at the wheel, causing an accident, “consciously disregarded a risk that it subjectively appreciated.” *Livingston v. Greyhound Lines Inc.*, 208 A.3d 1122, 1131 (Pa. Super. 2019). The Court stated that this one accident, by itself, was not enough to prove that the bus company had a subjective appreciation that the driver was likely to fall asleep while driving, or that it was dangerous to allow her to drive. *Id.*

The evidence presented proved that the employee had been driving for the bus company for ten years, that the company knew the driver had an

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followed by another count two and three.

accident ten months before where she was observed “drifting in traffic lanes,” that the company reminded the driver of the need to get sufficient rest, and that the company was aware that its drivers were not following protocol regarding interval stops. *Id.* at 1131-32. On the other hand, the Court seems to suggest that evidence proving that the bus company *knew* that the driver had insufficient sleep the day before the accident or *knew* that she was fatigued on the night of the accident may be enough to support an award of punitive damages. *Id.*

However, as noted by the Court, the “absence of proof of [the company’s] subjective knowledge and conscious disregard . . . does not defeat plaintiffs’ punitive damages claim against it. Under Pennsylvania law, an employer is vicariously liable for the reckless conduct of an employee **without proof that the employer’s conduct satisfies the standard for punitive damages.**” *Id.* at 1132 – 33 (emphasis added) (internal citations omitted).

The Pennsylvania Superior Court, in comparing driving under the influence of drugs and alcohol with intentional assault, has stated the following:

Automobiles represent the most lethal and deadly weapons today entrusted to our citizenry. When automobiles are driven by intoxicated drivers, the possibility of death and serious injury increases substantially. Every licensed driver is aware that driving while under the influence of intoxicating liquor presents a significant and very real danger to others in the area. Thus, we have no hesitancy in concluding that an intentional assault with fists may, in certain instances, constitute action less outrageous than attempting to drive while under the influence of intoxicating liquor which constitutes a threat to the life and safety of others. In certain factual circumstances the risk to others by the drunken driver may be so obvious and the probability that harm will follow so great that outrageous misconduct may be established without reference to motive or intent.

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<sup>2</sup> While this is a case at the trial state, it is instructive in the instant matter.

*Focht v. Rabada*, 268 A.2d 157, 161 (Pa. Super. 1970).

**c. Analysis**

Here, Benfers argues that “there is no indication that [Benfers] authorized or approved of Defendant Crawford’s conduct, thus triggering the Funk Court’s admonition for the exercise of great caution regarding a claim for punitive damages against the tortfeasor’s employer.” See *Defendant Benfers’ Brief in Support at unnumbered page 4*. However, as held in the *Shriner* case, *supra*, this statement is simply incorrect. In order to be successful in a claim for punitive damages, a plaintiff must prove that the defendant had a subjective appreciation of the risk of harm and that he acted, or failed to act in conscious disregard of that risk.

The facts here are distinguishable from those in *Livingston*, *supra*, in that the Plaintiffs did in fact allege not only that Crawford had a “robust driving record” which including license suspensions and DUIs, they pled that Benfers actually *knew* about it. Plaintiffs even went one step further and pled that Benfers *knew* that Crawford’s license was suspended and that he was under the influence and impaired on the day of the collision, and allowed him to operate the vehicle anyway.

Because this case is still in the preliminary objection stage, the Court must accept as true all well-pled facts set forth in the Plaintiffs’ Complaint and any reasonable inferences therefrom. It is clear that Plaintiffs, in alleging that Benfers knew of Crawford’s past driving record and knew that he was intoxicated on the day of the incident and allowed him to drive anyway, have sufficiently pled that

Benfers appreciated the risk of harm of Crawford driving under the influence, and consciously disregarded that risk by allowing him to drive anyway.

Despite these clear allegations, as noted above, Benfers may be vicariously liable to Plaintiffs for Crawford's actions regardless of whether or no Benfers' conduct satisfies the standard for punitive damages.

#### **IV. Conclusion**

For the reasons set forth above, Defendant, Benfers Construction, LLC's Preliminary Objections are overruled.

**ORDER**

**AND NOW**, this 20<sup>th</sup> day of **September, 2021**, upon consideration of Defendant, Benfers Construction, LLC's Preliminary Objections and Plaintiffs' response thereto, and for the reasons set forth above, Defendants' Preliminary Objections are **OVERRULED**.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

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