

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

DR. BA LAM,

COURT FILE NO.: 62-C8-05-012545

Plaintiff,

CASE TYPE: Contract

v.

**DEFENDENT'S RESPONSE
TO PLAINTIFF'S MOTION
TO AMEND COMPLAINT**

COUNTY OF RAMSEY, MINNESOTA,
DANIEL SCHACHT, OFFICE OF THE
RAMSEY COUNTY ATTORNEY, and
DAVID MACMILLAN,

Defendants.

INTRODUCTION

Plaintiff's claim for punitive damages should be denied because he does not have 'clear and convincing' evidence that shows a deliberate disregard for his safety or rights. Even gross negligence will not sustain a claim for punitive damages. Punitive damages are not recoverable in a breach of contract claim. Punitive damages are not allowed against a municipality for a tort claim under Minn. Stat. § 466.4.

ARGUMENT

I. There is no evidence to support the amendment.

Pursuant to Minn. R. Civ. P. 15.01, a party may amend a pleading by leave of the court or by written consent of the adverse party. A trial court should freely grant motions to amend when justice so requires. Minn. R. Civ. P. 15.01. Nonetheless, an amendment to a complaint may properly be denied when the additional alleged claim cannot be maintained. Stead-Bowers v. Langley, 636 N.W.2d 334, 341 (Minn. App. 2001) (citing Hunt v. Univ. of Minn., 465N.W.2d 88, 95 (Minn. App. 1991)). In the case of punitive

damages, the amendment is properly denied where the punitive damages would have been disallowed anyway. Hunt 465 N.W.2d at 95. More specifically, where the proposed amendment and accompanying affidavits do not reasonably allow a conclusion that clear and convincing evidence would establish that the adverse party acted with willful indifference, the trial court does not abuse its discretion in denying the motion to amend. McKenzie v. Northern States Power Co., 440 N.W.2d 183, 184 (Minn. App. 1989).

Under Minn. Stat. § 549.191 a party may not seek punitive damages in an initial complaint, although the moving party may later bring a motion to amend the pleadings. The punitive damages motion need not demonstrate an entitlement to such damages per se but only an entitlement to allege such damages. Popp Telecom v. American Sharecom, 361 F.3d 482 (Minn. 2004). The motion must allege the applicable legal basis under Section 549.20 or other law for awarding punitive damages in the action and must be accompanied by one or more affidavits showing the factual basis for the claim.

The court must find prima facie evidence of a basis for punitive damages before it can grant the motion to amend. The Minnesota Supreme Court has stated: “When presented with a motion to permit assertion of a punitive damage claim, the function of the trial court is to do more than ‘rubber stamp’ the allegations in the motion papers. Rather, the judge must ascertain whether there exists prima facie evidence that the defendants acted with ‘willful indifference’.” Shetka v. Kueppers, Kueppers, von Feldt & Salmen, 454 N.W.2d 916, 918 n. 1 (Minn. 1990).¹

The term “prima facie” does not refer to a quantum of evidence, but to a procedure for screening out non-meritorious claims for punitive damages. Swanlund v.

¹ The 1990 amendments to § 549.20 substituted the phrase “deliberate disregard” for the “willful indifference” language.

Shimano Ind. Corp., Ltd., 459 N.W.2d 151, 154 (Minn.App. 1990). Prima facie evidence is that evidence which, if unrebutted, would support a judgment in the party's favor.

Mckenzie v. Northern States Power Co., 440 N.W.2d 183, 184 (Minn.App. 1989). Prima facie negligence means that evidence of negligence which, unexplained or uncontradicted and standing alone, appears to be sufficient to establish the fact. Tousignant v. St. Louis County, 615 N.W.2d 53, 59 (Minn. 2000).

Plaintiff must show “clear and convincing evidence that the acts of [Appellant] show deliberate disregard for the rights or safety of others.” Backlund v. City of Duluth, 176 F.R.D. 316, 320 (D.Minn. 1997) (citing Minn. § 549.20 subd. 1(a) (2006)). Minn. Stat. § 549.20, subd. 1(b) says:

A defendant acts with deliberate disregard if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and (i) either deliberately proceeds to act in conscious or deliberate disregard of the high degree of probability of injury to the rights or safety of others or (ii) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

A person who acts with deliberate disregard has “knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others.” § 549.20 subd. 1(b). To be “clear and convincing” the evidence must be “sufficient to permit the Jury to conclude that it is ‘highly probable’ that the defendant acted with deliberate disregard to the rights or safety of others.” 176 F.R.D. at 320.

In this case, Plaintiff fails to show clear and convincing evidence that Defendants deliberately disregarded his rights or safety. First, there is no indication in the record that Defendants had “knowledge of facts” that would create a high probability of injury to the rights or safety of the plaintiff. Plaintiff reiterates from the Depositions that Defendant

MacMillan thought the water drainage plans were straightforward and that defendant Schacht understood what needed to be done to abate the water problem. Pl.'s Mem. at 11. Moreover, Plaintiff highlights from the Depositions that defendant Schacht asked Kathy Jaschke to design a catch basin to alleviate the water drainage problem. Pl.'s Mem. at 12-13. At no point does Plaintiff highlight evidence that the Defendants knew that the drain grate would cause an alleged nuisance to Plaintiff's property. Rather, that evidence shows that both Defendants thought a basin would be constructed to abate the problem.

In Matter v. Nelson, 478 N.W.2d 211 (Minn. App. 1991), the Minnesota Court of Appeals did not grant the claim for punitive damages where the moving party claimed a nuisance and trespass. In Matter, the plaintiffs showed that the defendants knew of the water problem and built a swale that inadequately remedied the drainage problem.

Nonetheless, the Matter court concluded that the defendant's knowledge and inaction did not rise to the level of deliberate disregard for the rights or safety of the plaintiffs. In the judgment, the Matter court ordered the defendants to abate the nuisance created by their drainage system, pay plaintiffs compensatory damages, but not to pay punitive damages. Similar to Matter, the Plaintiff in this case attempts to show the Defendants were aware of the water drainage problem and implemented an allegedly inadequate drain grate. With those allegations alone, Plaintiff fails to show clear and convincing evidence that the Defendant's acted with willful indifference to the Plaintiff's rights or safety.

Second, there is no indication in the record that the Defendants intentionally disregarded facts that create a high probability of injury to the rights or safety of others. Intentional disregard is defined as acting recklessly and maliciously from ill will and

improper motives to injure others. See McKenzie, 440 N.W.2d 183, 184 (Minn. Ct. App. 1989); see also Olson, 29 F.Supp.2d 1027 (Minn. 1998).

Plaintiff argues that the Defendants were indifferent to the terms of the Settlement Agreement. Pl.'s Mem. at 10. Plaintiff interprets the Defendants lack of communication, their inability to remember details of the Settlement Agreement, and delegation of responsibility to be "palpable indifference." Pl.'s Mem. at 10. In truth, those allegations fail to show reckless and malicious ill will or improper motives. The evidence shows that the Defendants initiated the project, their professional engineers worked on implementing it, and as a result, a drain grate was installed. None of this shows a deliberate disregard for his safety or rights. Plaintiff's Motion should be denied.

II. Negligence does not rise to the same level of culpability as deliberate disregard.

Plaintiff alleges the Defendants actions or inactions rise to the level of "disregard for or indifference to the high probability of injury" to Plaintiff. Pl.'s Mem. at 10. Again, Plaintiff points to portions in the Depositions that allegedly show the Defendants lack of communication, memory, and oversight. However, absent ill will or bad faith, these actions merely show negligence. Minnesota law establishes "negligence does not rise to the level of willful indifference so as to warrant a claim for punitive damages." Olson, 29 F.Supp.2d at 1034. In Wirig v. Kinney Shoe Corp., 461 N.W.2d 374, 381 (Minn. 1990) the Minnesota Supreme Court held that even if a defendant acts grossly negligent, he should not be liable for punitive damages so long as he acted in good faith and did not knowingly, willfully or wantonly disregard [plaintiff's] interest.

In the case at bar, Plaintiff attempts to show deliberate disregard in that “MacMillan assumed Schacht knew what had to be done” and defendant Schacht told “[Kathy Jaschke] little to almost nothing” about the settled drain system design. Pl.’s Mem. at 13. Those statements show, at most, that the Defendants failed to confirm an assumption and remember a detail. At most, it shows the Defendants were negligent in overseeing the implementation of the agreed drain grate. It does not show Defendants acted in bad faith to knowingly or willfully disregard Plaintiff’s safety or rights. Moreover, the evidence shows Defendants did in fact design and install a drain grate to respect Plaintiff’s property rights. Consequently, the Motion should be denied.

III. Punitive damages based on a contract breach are inconsistent with statutory and case law.

Punitive damages may not be recovered for a breach of contract claim under Minn. Stat. § 549.20. Barr/Nelson v. Tonto’s, Inc., 336 N.W.2d 46, 52 (Minn. 1983). Extra-contract damages are not recoverable for breach of contract claims except in exceptional cases where the breach is accompanied by an independent tort. Haagenson v. National Farmers Union Property and Casualty Company, 277 N.W.2d 648, 652 (Minn. 1979); see also Olson v. Rugloski, 277 N.W.2d 385 (Minn. 1979).

In this case, the breach of contract claim is not independent of the nuisance claim. Plaintiff alleges “nuisance damages naturally and obviously flowed from the breach, *i.e.*, if defendants had not breached the Agreement and Release, the nuisance in the form of water running off Lake Johanna Boulevard and across Plaintiff’s land would have been abated in early November 2005.” (Pl’s motion p. 10). In that passage, Plaintiff shows that the alleged breach of contract is not an action independent of the alleged nuisance tort.

Even without Plaintiff's statement, it is clear Plaintiff's claim arise from the same incident. Absent an independent tort, a claim for punitive damages arising from a breach of a contract should be denied. Haagenson, 277 N.W.2d at 652.

IV. Defendant, County of Ramsey, is statutorily immune from punitive damages arising from tort actions.

Minn. Stat. § 466.02 applies to all tort claims against municipalities. Municipalities include counties under Minn. Stat. § 466.01 subd. 1. Minn. Stat. § 466.04, subd. 1(b) specifically states: "No award for damages on any such claim shall include punitive damages."

The Minnesota Supreme Court in Herrmann v. Fossum 270 N.W.2d 18 (Minn. 1978) held that under Section 466.04 subd. 1, punitive damages may not be assessed against a municipality. Flaherty v. Lindsay 457 N.W.2d 771 (Minn. App. 1990) further held that under Minn. Stat. § 466.04 no claim for damages under the Tort Liability Act shall include punitive damages against a municipality.

Here, the Plaintiff is raising a property tort claim. Under Minn. Stat. § 466.04 and Herrmann, the municipality is immune from the punitive damage claim, and thus the amendment should be denied.

CONCLUSION

In conclusion, there is no evidence to support an amendment to this Complaint for a claim of punitive damages against Defendants, Ramsey County, David Macmillan, and Daniel Schacht. The Plaintiff's Motion for Leave to Amend Complaint should be denied. Plaintiff has failed under Minn. Stat. § 549.191 to show with clear and convincing evidence that the Defendants deliberately disregarded his rights or safety. The record

shows Defendants agreed to implement a water drainage system to protect Plaintiff's rights and did in fact implement such a system. Moreover, if that system was negligently implemented in breach of the Settlement Agreement, that negligence does not rise to the culpability level of deliberate disregard. Furthermore, that alleged breach of contract does not permit recovery of punitive damages under Minn. Stat. § 549.20. Finally, the County is entitled to immunity from punitive damages for its tort actions under Minn. Stat. § 466.04. In sum, Plaintiff's Motion should be denied.

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Ramsey County Attorney

Dated: _____

By: _____

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