

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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|------------------|---|--------------------------------|
| VINCENT . BORJA, |) | SMALL CLAIMS ACTION NO. 98-253 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | WRITTEN DECISION |
| |) | FOLLOWING TRIAL |
| |) | |
| TIM MUSGROVE, |) | |
| |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

PROCEDURAL BACKGROUND

This matter came before the Court for trial commencing on June 4th and 5th, 1998¹. At the close of Plaintiff's case, the Defendant made a motion for judgment as a matter of law. This motion was based on Restatement (Second) of Torts, Section 166, in that the Defendant contended that it was the Plaintiff's burden to prove that the Defendant's entry was intentional or negligent otherwise the above cited section would preclude any recovery. The Court gave the parties an opportunity to brief the issue and thereafter issued a ruling on July 28th, 1998, in which it held that the matter raised by the Defendant is an affirmative defense which the Defendant and not the Plaintiff has the burden of establishing.

[p. 2] Therefore, after some additional continuances due to scheduling conflicts of the Court, the trial continued on September 9th, 1998, at which time the defense presented its case.

¹ As part of the Plaintiff's case in chief, the Court conducted a view of the scene on Capital Hill, where Defendant's vehicle left the highway and entered onto the Plaintiff's property.

FOR PUBLICATION

FINDINGS OF FACTS

Upon the close of all the evidence, there were certain facts which were undisputed. Attachment A, has been drawn by the Court and is illustrative of the testimony received, the photos of the scene admitted into evidence and the view by the Court:

1. The Defendant was driving his car on Capitol Hill, Saipan, late on the evening of April 8th, 1997.
2. As he came around the curve in the vicinity of the Sarah Market, indicated by the arrow in Attachment A, the vehicle left the public roadway and went onto the property of Plaintiff.
3. The vehicle came to rest in front of the rock labeled as item #4 in Attachment A.
4. The distance from the public highway to the rock is approximately 50 feet onto Plaintiff's property. (Represented by line #5 in Attachment A.)
5. The distance traveled by the vehicle is greater than 50', and is represented by dotted line #6, in Attachment A.
6. At the time of the incident, the Defendant and his passenger testified that there was a light rain on the road.
7. They further testified that it had been raining for the short period that they were driving on this road, prior to the incident, which was approximately seven (7) minutes.
8. The Defendant testified that he was sure that he was driving at 25 miles per hour, which is the posted speed limit in this area.
9. When the vehicle came to rest, the Defendant testified that he was slightly disoriented.
10. The Defendant testified that he does not recall any noises which would indicate a collision nor that they had come into contact with hard objects such as trees.
11. A third person came to the aid of Defendant. This person used his vehicle to tow Defendant's vehicle out of the location where it had come to rest.
- [p. 3]** 12. The Defendant indicated that he needed this assistance because his vehicle was stuck

in the mud and could not get out of Plaintiff's property on its own power.

13. The next day the Defendant found a hub cap and a license plate next to rock #4.
14. An investigation of the license plate by the Plaintiff eventually led to the conclusion that the vehicle owned by the Defendant was the one which had been on Plaintiff's property on April 9th, 1997.
15. When Plaintiff confronted Defendant about the damage done to his trees, Defendant did not deny responsibility for the damage. Instead, he agreed to go to Plaintiff's house to look at the damage.
16. Eventually, a dispute over the amount of the damages, led both parties to seek representation and the filing of the instant case by Plaintiff.

In addition, there were factual issues which were disputed and which the Court now resolves on the basis of the relative credibility of the witnesses. There are also factual issues which were not testified to directly, but which may be inferred on the basis of the evidence that was received by the Court:

17. There was no logical explanation provided by the Defendant as to why the vehicle just happened to lose traction at the location depicted in Attachment A.
18. There was no testimony that the driver made any sudden changes in the movement of the steering wheel or that there was a reaction to another vehicle on the roadway or that there was any obstruction that the driver attempted to avoid.
19. Therefore, the only logical inference that can be drawn from this uncontroverted testimony is that the vehicle came around the turn and lost traction because of the road conditions and inclement weather.
20. In addition, in reviewing Attachment A, it is apparent that if a vehicle is proceeding in the direction indicated, the force of the vehicle's speed combined with the direction of the curve and the loss of traction would tend to make the vehicle travel to the opposite side of the roadway from the Plaintiff's property.
21. Consequently, the Defendant must have tried to turn the vehicle back toward Plaintiff's [p. 4] property in an attempt to regain control of the vehicle. At which

point he left the public road and went onto the Plaintiff's property.

22. In the course of traveling over Plaintiff's property, several trees were run over and the vehicle came to rest next to the rock.
23. Contrary to Defendant's and the passenger's testimony, the loss of the license plate and the hub cap do not reflect the smooth and gliding stop that they portrayed to the Court.
24. As to the issue of damages, the Court after observing the location of the incident and the photographs of the downed trees taken immediately after the incident, finds that there was not sufficient room on the ground where the foliage is located in the photos, (Plaintiff's Exhibits A & B) to account for the number of trees testified to by the Plaintiff.
25. In addition, there is insufficient foliage depicted in the photographs to account for the number and size of the trees claimed by the Plaintiff.
26. The Court, therefore, finds that the number of trees damaged on Plaintiff's property was a total of six (6).
27. The conservative value of the trees was placed at \$225 per tree. Therefore, the total damages to Plaintiff's property is $6 \times \$225 = \$1,350.00$.

CONCLUSIONS OF LAW

1. 9 CMC § 5251 (a) requires a driver to operate a vehicle in "... a careful, prudent rate of speed not greater than nor less than is reasonable and proper, having due regard for ... all other restrictions and conditions then and there existing."
2. It is possible that the vehicle was operated in a per se negligent manner, even if the Defendant was driving at the posted speed of 25 miles per hour. The posted speed limit on any public road, is the indication of the safe speed to travel under optimum conditions. See *Harrison v. Seagroves*, 549 N.W. 2d 644 (Neb. 1996)
3. Per the testimony of the Defendant, the conditions were less than optimum on the [p. 5] date of the entry onto Plaintiff's property. It was night time (11:30 p.m.),

the Defendant was approaching a curve and it was raining for several minutes prior to the incident.²

4. Therefore, this was not a careful or prudent rate of speed under those conditions.
5. Secondly, it is probable that the Defendant turned his vehicle toward the property of Plaintiff in an attempt to recover from the slide toward the opposite side of the road, this was an intentional act by Defendant to take his vehicle in that direction. No matter how transitory, the intent was formed, thus making it an intentional act.
6. As such, the facts of this case come within the parameters of the facts in *Ruiz v. Forman*, 514 S.W. 2d 817.
7. As in the instant case, Forman attempted to rely on the same section of the Restatement of Torts. The Texas appellate court however, ruled that even if a driver is attempting to recover from an emergency situation, the turning of the vehicle to one side of the roadway was an intentional act no matter how momentary.
8. Thus, where the act to turn the vehicle toward the Plaintiff's property is intentional, " ... the defendant intended the act which resulted in the trespass, although there was no intentional invasion of the plaintiff's property." *Ibid.* p. 819.

CONCLUSION

The court concludes that under either theory, that the Defendant operated the vehicle at a speed which was negligent for the weather and road conditions existing at that the time or that the act which caused the entry onto Plaintiff's property was intentional, the Defendant must be held liable for the damages caused to Plaintiff's land.

² It is interesting to note that the Defendant and his passenger, both testified that it was a very light rain and yet they both stated that the vehicle was stuck in the mud on Plaintiff's property and had to be towed out. The inference being either that the rain was a great deal heavier in order to make Plaintiff's property muddy or that the rain had been going on for quite a bit more time that evening, than seven minutes.

[p. 6] Accordingly, the Court now awards judgment to the Plaintiff in the amount of \$1,350 for principal, costs of \$45, consisting of the filing fee and service of process, for a total judgment in the amount of \$1,395. Said amount to bear interest from the date of entry at the rate of 9%.

SO ORDERED this 22 day of September, ~~1997~~.
1998

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Associate Judge