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Supreme Court of Pennsylvania
Pennsylvania Board of Law Examiners

Pennsylvania Bar Examination
February 27 and 28, 2018

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February 27, 2018

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FILE

Memorandum

TO: Applicants

FROM: Luke Benjamin, Managing Partner

RE: Assignment to Draft Complaint

DATE: February 27, 2018

We represent Maria Gonzalez, a Pennsylvania resident, with an address of 10 Downing Street, Notown, Small County, Pennsylvania, with regard to her claims against her contractor, Conrad Croson, and his wife, Maggie Croson. Both Conrad and Maggie Croson are Pennsylvania residents who reside at 24 Sussex Drive, Notown, Small County, Pennsylvania. Conrad, a sole proprietor, also operates his only place of business, i.e. custom cabinet making, out of his residence, 24 Sussex Drive, Notown, Small County, Pennsylvania. As detailed in my notes from my meeting with Mrs. Gonzalez, which are attached hereto, Mr. Croson negligently caused personal injuries to Mrs. Gonzalez, Mrs. Croson negligently entrusted her vehicle to Mr. Croson allowing him to injure Mrs. Gonzalez, and Mr. Croson also undertook actions that violate Pennsylvania law when he installed cabinets in Mrs. Gonzalez's kitchen.

Please use the facts contained in my typed notes from my meeting with Mrs. Gonzalez, along with the materials in the attached Library to draft a complaint for negligence, negligent entrustment, and violations of the Unfair Trade Practices and Consumer Protection Law (UTPCPL). The complaint will be filed in the Pennsylvania Court of Common Pleas in Small County, Pennsylvania. I am still reviewing the potential breach-of-contract claim and will insert an appropriate cause of action into your draft complaint when I have finished my review. Thus, please do not address that issue in the complaint. If I do, in fact, include such a claim, I will attach the contract to the complaint in accordance with the rules of civil procedure. Thus, you should not do so.

Included in the attached File, in addition to my typed notes from my meeting with Mrs. Gonzalez, is the contract between Mr. Croson and Mrs. Gonzalez, a formatting memorandum regarding drafting complaints, and a sample complaint for your reference. The attached Library includes relevant caselaw, portions of the Pennsylvania and Small County rules of civil procedure, and portions of the UTPCPL. Do not rely on your personal knowledge of these issues, or on cases, rules, and statutes not included in the Library. Instead you should draft your complaint only based upon the documents provided in the File and the Library.

Memorandum

TO: Luke Benjamin, Managing Partner
FROM: Megan McDonough, Administrative Assistant
RE: Your Notes from Client Meeting
DATE: February 27, 2018

Mrs. Gonzalez, a retiree, resides at 10 Downing Street, Notown, Small County, Pennsylvania. She owns an older home and wished to upgrade her kitchen. Because of the age and construction of her home, prefabricated cabinets would not fit in her kitchen. In order to do the job the right way, Mrs. Gonzalez needed the expertise of someone who makes custom cabinets. She was referred by an acquaintance to a contractor named Conrad Croson. On December 1, 2017, Mr. Croson told Mrs. Gonzalez that he builds the finest and sturdiest custom cabinets in the United States of America. That day, Mrs. Gonzalez signed a contract hiring Mr. Croson to replace the kitchen cabinets in her home. He promised her that he would handcraft custom hardwood cabinets for her that would look great and last a lifetime, and that he would make each cabinet on-site, by hand, to ensure a perfect fit. Mrs. Gonzalez paid Mr. Croson in full, in advance, so that he could purchase the wood to make the cabinets. The custom cabinets Mr. Croson agreed to build and install cost five times more than prefabricated cabinets.

On January 2, 2018, Mr. Croson came to build and install the custom cabinets. Per their arrangement, Mrs. Gonzalez left a key under her doormat that morning so that Mr. Croson could gain entry to the kitchen while she volunteered at her church. On her way home that day, Mrs. Gonzalez was surprised to pass a truck leaving her driveway emblazoned with a "Kabinets-R-Us" logo. Kabinets-R-Us is a company known for making one-size-fits-all prefabricated cabinets from poor quality materials. When Mrs. Gonzalez walked into her kitchen, she saw several cardboard cartons with pictures of cabinets on the sides. There appeared to be one box for each cabinet that Mr. Croson installed in her kitchen. Further, there was no extra wood lying around; no sawdust anywhere; and no saw for cutting wood. Worse yet, the cabinets stick out farther than they should; there are gaps between the cabinets and the walls; and the cabinets were made of particle board instead of hardwood. Mrs. Gonzalez believes Mr. Conrad installed prefabricated cabinets instead of the custom made hardwood cabinets for which she paid.

At approximately 2:30 p.m., Mrs. Gonzalez confronted Mr. Croson about the cabinets; he immediately grabbed his tool bag and walked out the door, angrily saying, "These cabinets are great." Mrs. Gonzalez followed Mr. Croson to the blue Ford Explorer, owned by Mrs. Croson, trying to talk to him. She went to the open window on the passenger side as Mr. Croson got into the driver side of the car. Mr. Croson started the car, looked directly at Mrs. Gonzalez standing right next to the car and sped off. Upon doing so, he ran over Mrs. Gonzalez's foot, breaking it in several places. Mrs. Gonzalez was rushed to the hospital, where she underwent emergency surgery. She is expected to have four more operations before her foot will be well enough for her to walk again, but, even then, her activities will be limited for the rest of her life.

I have estimated the value of her claim for injuries to her foot to be $300,000, and she paid $55,000 for the kitchen cabinets that she will have to tear out and replace.

I have also been able to ascertain that Mrs. Croson owns the blue Ford Explorer Mr. Croson was driving when he ran over Mrs. Gonzalez's foot; and this is the sixth time during the past two months that Mr. Croson has caused injuries to someone in a motor-vehicle-related incident. I know the Croson's next door neighbor; the neighbor told me that the Crosons frequently fight about Mr. Croson's poor driving, and how his poor driving has caused many injuries in the past. On the morning of January 2, 2018, the neighbor overheard Mrs. Croson say that "every time you use my car you injure someone."

Contract for Custom Cabinets by Conrad Croson

This Agreement is between Conrad Croson ("Contractor") and Maria Gonzalez ("Customer").

Contractor agrees to build and install for Customer the finest and sturdiest custom cabinets in the United States of America. Said cabinets will be handcrafted by Contractor at Customer's home and shall be made from hardwood. Said cabinets will look great and last a lifetime. By handcrafting custom cabinets, made onsite, out of the finest and sturdiest materials, Contractor ensures that the cabinets will be a perfect fit.

In exchange for the labor and materials provided by Contractor in conjunction with the handcrafting and installation of the custom cabinets, Customer agrees to pay to Contractor the sum of $55,000.00. Funds are due immediately so that Contractor can purchase the hardwood and other fine materials required for building the custom cabinets in advance of the handcrafting and installation.

By signing below, Contractor acknowledges and agrees to both his obligations set forth above, and receipt of full payment for the custom cabinets. By signing below, Customer agrees to pay Contractor the sum set forth above, in advance of the cabinets being handcrafted and installed.

Contractor: Conrad Croson

Date: 12/1/2017

Customer: Maria Gonzalez

Date: 12/1/2017

Big Law Firm

TO: All Associates and Law Clerks
FROM: Luke Benjamin, Managing Partner
RE: Formatting Memorandum for Drafting Complaint
DATE: February 1, 2017

Use the following guidelines for drafting a complaint:

1. A complaint is a pleading that sets forth a legal cause of action against one or more parties.

2. A paralegal will place a caption, containing all relevant information, at the top of your complaint. The paralegal will also place an appropriate notice to plead, verification, and signature block at the end of the complaint. Thus, do not include any of these items in the complaint.

3. The complaint shall be divided into paragraphs numbered consecutively.

4. Each paragraph in the complaint shall contain as far as practicable only one material allegation.

5. A material allegation is an assertion of fact that is essential to the claim.

6. Pennsylvania is a fact pleading jurisdiction in which a plaintiff must set forth concisely the facts upon which a cause of action is based.

7. A complaint may contain more than one cause of action, and it may bring related causes of action against more than one defendant. Each cause of action must be stated in a separate count, and must include its own demand for relief. Thus, the complaint should have a separate count (e.g., "Count I – Negligence") for each cause of action.

8. Any claim(s) for relief must be in accordance with the rules of civil procedure.

A sample complaint (also with no caption, notice to plead, verification, venue, or signature block) is attached hereto for your reference.

SAMPLE COMPLAINT

NOW COMES, the Plaintiff, Aaron Plastics, Inc., and for its complaint avers as follows:

1. Aaron Plastics, Inc. (hereinafter "Aaron") is a Pennsylvania corporation with its principal place of business at 1 Flickinger Lane, Big City, Kathryn County, Pennsylvania.
2. RES Electric Services, Inc. (hereinafter "RES") is a Pennsylvania corporation with its principal place of business at 1 Main Street, Big City, Kathryn County, Pennsylvania.
3. Aaron and RES are parties to that certain Electric Services Agreement dated September 2, 2010, with a term of ten years, and wherein RES agreed to supply electric services to Aaron at a discounted rate, and Aaron agreed to pay for those discounted electric services.
4. The Agreement, attached hereto as Exhibit A, required Aaron to pay to RES any amounts due within twenty days of the billing date.
5. As a result of a change in accounting department personnel, Aaron neglected to make timely payment of its July 2013 payment, which was due by August 21, 2013, and totaled two-thousand five hundred dollars ($2,500), an average size bill.
6. On September 23, 2013, an employee of RES who was authorized to waive payment due dates by virtue of being the Accounting Manager of RES, sent to Aaron an e-mail communication that waived the time for payment, as well as remedies under the Agreement.
7. The e-mail correspondence stated:

> Our records indicate that we never received payment for electricity for the month of July 2013. If you have a cancelled check for this payment, please send me a copy or send payment as soon as possible to avoid late charges.

8. On September 25, 2013, RES sent to Aaron a notice that it was discontinuing services being provided under the Agreement; and RES stopped providing electricity to Aaron.
9. RES has refused to resume the provision of electric services to Aaron.
10. RES is barred from claiming Aaron's failure to pay is a breach of the Agreement as a result of the express waiver contained in the aforementioned September 23, 2013, e-mail correspondence from RES' Accounting Manager to Aaron.

BREACH OF CONTRACT – AARON v. RES

11. Each paragraph of this complaint is incorporated herein as if set forth at length.
12. The aforementioned conduct of RES constitutes a breach of the Agreement.
13. As a result of RES' breach of the Agreement, RES is liable to Aaron for the damages provided in the Agreement.

WHEREFORE, Aaron demands judgment in its favor and against RES in an amount in excess of Fifty Thousand Dollars ($50,000).

LIBRARY

Pa. R.C.P. 1019. Contents of Pleadings. General and Specific Averments.

(a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.

(b) Averments of fraud or mistake shall be averred with particularity. Malice, intent, knowledge, and other conditions of mind may be averred generally.

(c) In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of such performance or occurrence shall be made specifically and with particularity.

(d) In pleading an official document or official act, it is sufficient to identify it by reference and aver that the document was issued or the act done in compliance with law.

(e) In pleading a judgment, order or decision of a domestic or foreign court, judicial or administrative tribunal, or board, commission or officer, it is sufficient to aver the judgment, order or decision without setting forth matter showing jurisdiction to render it.

(f) Averments of time, place and items of special damage shall be specifically stated.

(g) Any part of a pleading may be incorporated by reference in another part of the same pleading or in another pleading in the same action. A party may incorporate by reference any matter of record in any State or Federal court of record whose records are within the county in which the action is pending, or any matter which is recorded or transcribed verbatim in the office of the prothonotary, clerk of any court of record, recorder of deeds or register of wills of such county.

(h) When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.

Official Note:

If the agreement is in writing, it must be attached to the pleading. See subdivision (i) of this rule.

(i) When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance of the writing.

Pa. R.C.P. 1021. Claim for Relief. Determination of Amount in Controversy

(a) Any pleading demanding relief shall specify the relief sought . . .

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(b) In counties having rules governing compulsory arbitration the plaintiff shall state whether the amount claimed does or does not exceed the jurisdictional amount requiring arbitration referral by local rule.

***

Small County Local Rule of Civil Procedure 1301. Arbitration

All civil actions brought in the Court of Common Pleas of Small County in which the amount in controversy is $50,000 or less shall first be submitted to arbitration and heard by a panel of three arbitrators selected from members of the bar of this court in accordance with the provisions of this rule.

73 P.S. § 201-1 – 201-9.3

PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

§ 201-1. Short title

This act shall be known and may be cited as the "Unfair Trade Practices and Consumer Protection Law."

§ 201-2. Definitions

As used in this act.

***

(4) **"Unfair methods of competition"** and **"unfair or deceptive acts or practices"** mean any one or more of the following:

(i) Passing off goods or services as those of another;

***

(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

***

(vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another[.]

***

§ 201-3. Unlawful acts or practices; exclusions

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of clause (4) of section [201-2] of this act . . . are hereby declared unlawful.

§ 201-9.2. Private actions

(a) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section [201-3] of this act, may bring a private action to recover actual damages or one hundred dollars ($100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars ($100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.

61 Pa. D. & C.4th 353 (Pa.Ct.Com.Pl. 2003)

Nading

v.

Boice

***

Before this court for consideration are the defendants[’] . . . preliminary objections filed in response to the plaintiffs[’] complaint in the above captioned matter. For the following reasons, defendants' preliminary objections are sustained in part and overruled in part.

***

Plaintiffs filed their complaint . . . alleging that they were injured as a result of a motor vehicle accident with a van driven by defendant Kenneth Boice. Plaintiffs allege that . . . plaintiff David Nading was driving his pickup truck east on State Route 68 near the intersection of Routes 68 and 268. Plaintiff Zachary Nading was a passenger in the truck. Plaintiffs allege that the defendants' van was facing a flashing red light and stop sign at the intersection of Routes 68 and 268. Defendants allegedly turned into plaintiffs' lane of traffic in violation of the traffic signals. Defendants' van struck the passenger side of plaintiffs' truck. Plaintiffs allege that defendant Elizabeth Boice owns the van driven by defendant Kenneth Boice. Plaintiffs' complaint alleges two causes of action against defendants, negligence and negligence per se. Defendants filed preliminary objections . . . arguing that the complaint fails to state a cause of action as to Elizabeth Boice . . . . Plaintiffs filed a brief in response to defendants’ preliminary objections, arguing that the owner of the vehicle bears liability for a defective or substandard vehicle. Plaintiffs allege that the braking mechanism on the van was not in proper working order.

***

1. *Demurrer -- Failure To State a Cause of Action Against Defendant Elizabeth Boice*

Defendants argue that the complaint fails to state a cause of action against defendant Elizabeth Boice. They argue that plaintiffs have not set forth any allegations that Ms. Boice was negligent. Defendants also argue that plaintiffs' complaint fails to state a cause of action against Elizabeth Boice for negligent entrustment. Plaintiffs argue that owners have liability for a defective or substandard vehicle. Paragraph 14(d) of plaintiffs' complaint alleges that defendants were careless or negligent "in failing to have the brakes and braking mechanism on said vehicle in proper working order and/or in failing to properly and promptly operate the brakes and braking mechanism." Said paragraph is the sole allegation in the complaint that relates to defendant Elizabeth Boice.

In order to state a valid cause of action for negligence, a plaintiff must plead four elements: "(1) a duty or obligation recognized by the law that requires an actor to conform his actions to a standard of conduct for the protection of others against unreasonable risks; (2) failure on the part of the defendant to conform to that standard of conduct, *i.e.,* a breach of duty; (3) a reasonably close causal connection between the breach of duty and the injury sustained; and (4) actual loss or damages that result from the

breach." [citations omitted] "[A] mere spousal relationship is insufficient to impose liability upon a spouse, as owner of a vehicle, due to the other spouse's negligent driving of that vehicle." [citation omitted] The Pennsylvania Supreme Court stated the following with respect to an owner's duty to maintain a vehicle:

> 'Generally speaking, it is the duty of one operating a motor vehicle on the public highways to see that it is in reasonably good condition and properly equipped, so that it may be at all times controlled, and not become a source of danger to its occupants or to other travelers. To this end, the owner or operator of a motor vehicle must exercise reasonable care in the inspection of the machine and is chargeable with notice of everything that such inspection would disclose.'

[citation omitted]

[Here], defendant Elizabeth Boice's duty to maintain the vehicle in working condition can be inferred from the allegations contained in paragraph 14(d). Said paragraph also alleges that defendant Elizabeth Boice breached her duty by failing to maintain the brakes on her vehicle in working condition. Plaintiffs' complaint also alleges the negligence elements of cause and damages. As such, plaintiffs' complaint states a cause of action against defendant Elizabeth Boice for negligence.

In order to plead a valid claim for negligent entrustment, a plaintiff must plead that the defendant (1) permitted a third person, (2) to use a thing under the control of the defendant, and (3) that the defendant knew or should have known that the third person intended to or was likely to use the thing in such a way that would harm another. [citation omitted] Plaintiffs' complaint does not make any allegations that set forth a claim for negligent entrustment against Ms. Boice. Therefore, plaintiffs' complaint fails to set forth a cause of action for negligent entrustment.

Plaintiffs' complaint states a cause of action for negligence. It does not state a cause of action for negligent entrustment. Therefore, defendants' preliminary objection as to defendant Elizabeth Boice is overruled as to negligence and sustained as to negligent entrustment.

***

698 A.2d 631 (Pa.Super. 1997)

JOHNSON and JOHNSON,

v.

HYUNDAI MOTOR AMERICA and MCCAFFERTY HYUNDAI SALES, INC.,

***

MONTEMURO, Judge.

Appellants, Hyundai Motor America (Hyundai) and McCafferty Hyundai Sales, Inc. (McCafferty) appeal from the . . . denial of their post-trial motions for judgment notwithstanding the verdict (JNOV) and/or a new trial. For the reasons set forth below, we affirm. The facts giving rise to the underlying action are as follows. On June 1, 1988, Appellees, Steven and DeLee Johnson, bought a 1988 Hyundai GLS sedan from McCafferty, an authorized Hyundai dealer and repair facility. The car was manufactured by Hyundai and was equipped with an anti-theft device installed by McCafferty. At the time of the purchase, Appellees were given a handbook that contained various warranty and consumer information . . . .

***

When Appellees purchased their vehicle, they obtained a warranty from Hyundai for twelve months or 12,500 miles. In addition to the manufacturer's warranty, they also separately purchased a warranty from McCafferty for five years or 50,000 miles.

Shortly after purchasing their new Hyundai, Appellees began to experience serious difficulty with its performance. The ensuing difficulties are aptly summarized by the trial court as follows:

> [Approximately one month after the purchase of the Hyundai,] on July 10, 1988, the car would not start when the key was placed in the ignition. The car was towed to McCafferty. The mileage on the car at that time was 2,497 miles. McCafferty advised plaintiffs that it had fixed the car, replaced the anti-theft device, and issued a work order indicating the work done on the car. The repair order indicated that a fuse had been replaced.
>
> Five days later, on July 15, 1988, [Appellees] experienced the no start condition again. Once again, the car was towed to McCafferty, and McCafferty purportedly fixed the car. This time, McCafferty did not provide a repair receipt, despite the fact that [Appellees] specifically asked for one. Also at this time, the anti-theft device was removed from the car.
>
> Seven days later, on July 22, 1988, [Appellees] experienced the no start condition for the third time. At this point, the car had been driven 2,582 miles. Again the car was towed to McCafferty. McCafferty purportedly repaired the car and issued a repair order. The repair order indicated a fuse had been replaced.

> Finally, on August 13, 1988, [Appellees] experienced the no start condition for the fourth time. Now, the vehicle had 2,896 miles on it. The service order again indicated that fuses had been replaced. Moreover, the service records indicate that the time spent attempting to repair the car on the third and fourth attempts was about two tenths of an hour, with minimal cost to the dealership. [citation omitted]
>
> After the fourth no start condition, Appellees decided that they were not going to accept the return of the vehicle. Instead, Appellees mailed letters to Consumer Affairs and telephoned the office of Hyundai's president, but to no avail. As a result, Appellees sought legal advice and brought suit against Hyundai and McCafferty under the Pennsylvania Automobile Lemon Law ("Lemon Law") [citation omitted]; the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL") [citation omitted] the Pennsylvania Uniform Commercial Code, Article II Sales [citation omitted]; and the Magnuson-Moss Warranty Act [citation omitted].

***

For the eight years between August 15, 1988, when Appellees refused return of the vehicle, and the January 25, 1996 trial date, the car remained untouched at McCafferty while Appellees dutifully paid all of their monthly payments on the car loan. However, on January 24, 1996, one day before trial, two master technicians from McCafferty, Mr. Richard DeFeo and Mr. Paul, inspected the car in a serious effort to discover the problem. After six hours, they found the real difficulty. At trial, Mr. DeFeo testified that as of the time of inspection, "it was pretty obvious that there was something not right there." [citation omitted] His thorough inspection revealed that "a short to ground had caused the system to burn" with respect to all of the no start problems. [citation omitted]

During trial, the court entered nonsuit on Appellees' claim under the Lemon Law because their vehicle, although purchased in Pennsylvania, was registered in New Jersey and, therefore, did not meet the prerequisites for eligibility under the Lemon Law. At the close of the trial, the jury answered special interrogatories, finding both Appellants in breach of certain warranties, and finding that McCafferty had made repairs or replacements on the vehicle of a nature or quality below the standard of that agreed to in writing. The jury concluded, however, that neither Appellant acted fraudulently.

Following the damages phase of trial, the jury awarded $17,709.70 in compensatory damages. The court then trebled this award, pursuant to its discretion under UTPCPL, for a total of $53,129.10. The court also added to the award attorney's fees and costs of $11,500, and interest in the amount of $2,878.40, resulting in a total verdict of $67,507.50.

***

Both Appellants present several issues for our review. Hyundai challenges the trial court's imposition of joint and several liability as to both compensatory and treble damages, and the trial court's award of treble damages where liability was based solely upon breach of warranty. McCafferty challenges the jury's finding of liability under the UTPCPL, as well as the trial court's damages calculation, award of attorney's fees, and its refusal to consider a cross-claim for indemnification. Both

Appellants challenge the trial court's award of treble damages absent a finding of fraud . . . .

***

After a thorough review of the record, the briefs of the parties, as well as applicable caselaw and statutory authority, we conclude that the trial court has sufficiently addressed and properly disposed of Appellants' issues regarding UTPCPL liability, attorney's fees, damages calculations, joint and several liability as to compensatory damages, and indemnification. With respect to those issues, we agree with the trial court's conclusion that neither JNOV nor a new trial is warranted, and, therefore, affirm on the basis of the well-reasoned trial court Opinion. [footnote omitted] However, Appellants' claims regarding the award of treble damages . . . warrant further discussion.

***

[W]e address Appellants' claims regarding treble damages. Under the UTPCPL,

> [a]ny person who purchases . . . goods . . . primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages or one hundred dollars ($100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained . . . and may provide such additional relief as it deems necessary or proper.

73 P.S. § 201-9.2(a) (footnotes omitted). Appellants argue that as in the instant case, where liability under UTPCPL is based solely upon a breach of warranty, [footnote omitted] a court may not award treble damages absent a finding of egregious, fraudulent conduct. [citation omitted] Although the trial court agreed with this assessment of the law, it found that Appellants' conduct was indeed "reckless," and, therefore, exercised its discretion under the UTPCPL and awarded treble damages. For the reasons set forth below, we find no abuse of that discretion.

The purpose of the UTPCPL is to protect the public from fraud and unfair or deceptive business practices. [citation omitted] Therefore, it is not surprising that most of the subsections enumerated under the Act's heading of "unfair or deceptive acts or practices" involve situations such as: passing off goods or services as those of another; disparaging the goods, services, or business of another by false or misleading representation of fact; advertising goods or services with intent not to sell as advertised; representing that goods are original or new if they are deteriorated, altered, or second-hand; or engaging in "any other fraudulent conduct." [citation omitted]

Unlike most of the prohibited acts under the UTPCPL which "sound in tort/trespass," however, Appellants contend that the provision which they were found guilty of violating "sounds strictly in contract/assumpsit in the nature of a breach of warranty." [citation omitted] Therefore, since treble damages are punitive in nature and, thus, not typically awarded in contract actions, Appellants argue that the court must first find "outrageous" or "egregious" conduct before an award of treble damages is appropriate for a breach of contract or warranty under the UTPCPL. [citation omitted] Appellants conclude that since the jury specifically found that neither defendant engaged in any fraudulent conduct,

and there was no evidence of any outrageous or egregious conduct presented at trial, the trial court's award of treble damages was erroneous. (Id.)

By advancing this argument, Appellants essentially urge this Court to adopt the reasoning of the federal district courts which have interpreted the UTPCPL to require a finding of "outrageous conduct" before awarding treble damages for breach of contract or warranty under the UTPCPL.

***

At the outset, we remind Appellants in the instant case that this Court is not bound by any federal interpretation of Pennsylvania statutes. Although we acknowledge that, unlike most of the UTPCPL provisions, the provisions violated by Appellants were solely breach of contract/warranty, it is clear that the UTPCPL does not differentiate between "tort-like" violations and "contract-like" violations; rather, all prohibited "unfair or deceptive acts or practices" are listed together in section § 201-2(4)(i)-(xvii).

It is also clear from a plain reading of the statute that upon the commission of a prohibited act in any of the enumerated subsections in § 201-2(4), the trial court "may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars ($100), and may provide such additional relief as it deems necessary or proper." 73 P.S. § 201-9.2(a). The statute does not explicitly require a finding of "outrageous conduct" before a trial court may award treble damages for a breach of warranty violation under the UTPCPL. Rather, without providing further guidance, the legislature has vested the trial court with considerable discretion in the imposition of treble damages. Although Appellants would prefer otherwise, statutory construction is within the power of the legislature, and it is, therefore, beyond the jurisdiction of this Court to reformulate the UTPCPL by inserting language which differentiates among prohibitions and imposes specific prerequisites for recovery. Therefore, since the legislature has not provided for a specific finding of outrageous conduct before an award of treble damages for breach of contract/warranty may be imposed, we must trust that the courts will be guided by the well-established, general principles of law governing punitive damages when exercising discretion under the UTPCPL.

It is undisputed that the imposition of exemplary or treble damages is essentially punitive in nature. The law of Pennsylvania clearly provides, however, that punitive damages are not recoverable in an action solely based upon breach of contract. [citations omitted] Therefore, under the law of this Commonwealth, a court may award punitive damages only if an actor's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others. [citation omitted] It is precisely these well-grounded principles of law that we expect the trial courts will follow when, as in the instant case, exercising discretion and awarding treble damages for breach of contract/warranty under the UTPCPL.

Indeed, in the instant case, it is clear that the trial court properly applied the law as outlined above and concluded that Appellants' actions were "recklessly indifferent," thus warranting treble damages. The trial court stated that there was "more than enough material in the record to support this finding." [citation omitted] We agree.

For example, neither defendant took the time to discover successfully the real problem

> with the car until one day before trial. Prior to this time, the car sat in a storage lot for nearly 6 1/2 years with each defendant maintaining that the car was fixed. All the while, the plaintiffs made their monthly payments on a new car they could not use. In the actual attempts to fix the car, little money or time was spent [by Appellants]. Once the problem was discovered, both sides continued to blame the other side, trying to escape blame. McCafferty actually entered a counterclaim against the plaintiffs for storage costs and maintained the claim even after they had discovered that the car was indeed in need of repair and unsuitable for use.

[citation omitted] "[O]bviously neither of these defendants believed their customer; and, therefore, they never spent the requisite time and attention to find the defect until one day before trial, and six years after the sale." [citation omitted]

After reviewing the record, we agree with the trial court's conclusion and, therefore, find that it did not abuse its discretion by awarding treble damages for Appellants' breach of contract/warranty under the UTPCPL.

Order affirmed.

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Instructions

The performance test is designed to test an applicant's ability to perform the legal task that has been assigned using the factual information contained in the File and legal principles that are provided in the Library.

The File contains the only factual information that you should consider in performing the assigned task. The task to be completed is set forth in the first document in the File in the form of a memorandum to the applicant. The Library contains the only legal principles that you should consider to complete the assigned task. Although your general knowledge of the law may provide some background for analyzing the problem, the factual information contained in the File and the legal principles contained in the Library are the only materials that you should use in formulating your answer to the assigned task.

Your response should be written in the gray answer book or typed in answer screen number 3 of Examplify. Be sure to allow sufficient time for reading the materials, organizing your answer, and completing the task assigned. Your answer should demonstrate an understanding of the relevant facts, recognition of the issues and the applicable principles of law, and the reasoning that supports your answer. Your grade will be based on the content of your response and your ability to follow instructions in performing the assigned task.

The events depicted and the persons portrayed by the information in the File are fictitious and such information does not depict nor is it intended to depict or portray any actual person, company or occurrence. Any similarity to any person, living or dead, or any occurrence is purely coincidental.