

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE BLUNT, et ux. : CIVIL ACTION  
:   
v. :   
:   
BOYD GAMING CORPORATION, :   
et al. : NO. 08-285

MEMORANDUM

Dalzell, J.

October 23, 2008

Plaintiffs George and Loretta Blunt sued defendants Boyd Gaming Corporation and Marine District Development Co., LLC, which operate the Borgata Hotel Casino & Spa in Atlantic City, New Jersey ("Borgata"), for negligent supervision, intentional infliction of emotional distress, false imprisonment, malicious prosecution, and loss of consortium. Defendants now move for summary judgment on all of these claims except for false imprisonment and loss of consortium. Defendants also seek summary judgment on the requested punitive damages. We here resolve that motion.

**I. Factual Background**

George Blunt is a seventy-six year old Pennsylvania State Constable<sup>1</sup>. Compl. ¶ 10. On Saturday, January 6, 2007,

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<sup>1</sup>Constables are elected Pennsylvania peace officers, though the office has been abolished in the City of Philadelphia. 13 Pa. Cons. Stat. Ann. §§ 1-3, 6, 15. Constables are empowered to keep the peace, enforce local ordinances, conduct investigations at the behest of the court, and, in certain instances, serve process. Id. §§ 41, 44-46; see also In re Act 147 of 1990, 598 A.2d 985, 986, 990 (Pa. 1991).

Blunt, in his uniform and accompanied by his brother-in-law, Howard Mitchell, drove to Atlantic City, New Jersey to serve a subpoena on Joseph Corbo, the Vice-President and General Counsel of the Borgata. Id. ¶¶ 8-10.

Blunt arrived at the casino around noon or 12:30 p.m. Pl.'s Mem. Ex. B [Borgata Incident Report] at 1. He parked in the loading area, got out of the car (Mitchell remained in it), and asked someone in a white uniform where he could find the security desk. Def.'s Mem. Ex. B [Blunt Dep.] at 50. The person told Blunt that it was through the employee entrance. Id. Not wishing to waste his time going through the entire casino, Blunt went through the nearby door and entered a restricted security area. Id. at 50-51, 53. He then walked up to the security booth, tapped the man in the booth on the shoulder, and dropped the subpoena on the desk. Id. at 55.

At that point, a Borgata security employee approached Blunt and asked him what he wanted. Blunt Dep. at 55; Pl.'s Mem. Ex. B [Borgata Incident Report] at 1. Blunt explained that he was there to serve a subpoena on Corbo. Blunt Dep. at 55; Borgata Incident Report at 1. The employee went into the main security office to discuss the matter with his supervisor. The supervisor stated that "we could not accept a subpoena on behalf of someone else, and if there was nobody from the Legal Department on premises to accept it, he would have to come back

on Monday." Borgata Incident Report at 1.

Another member of Borgata security, Michael Young, returned to convey this message to Blunt. Borgata Incident Report at 1. Blunt reiterated that he had served the subpoena. Id. When Borgata security personnel began asking questions about who Blunt was, Blunt stated he was "Law Enforcement" and started walking away from the security booth and towards the exit. Borgata Incident Report at 1; Blunt Dep. at 55.

Young and Milton Hendrix of Borgata security followed Blunt. Borgata Incident Report at 1; Blunt Dep. at 55. Once out in the loading area, Blunt got into his car. Id. Young then asked Hendrix to stand in front of the car so Blunt could not leave. Borgata Incident Report at 1; Blunt Dep. at 55. Hendrix did as told and stood in front of the car with both of his hands out. Borgata Incident Report at 1; Blunt Dep. at 55; Def.'s Mem. Ex. C [Mitchell Dep.] at 34-35.

Young then approached the driver's side window and asked Blunt for identification. Borgata Incident Report at 1. Blunt again said that he was "Law Enforcement", and Young requested to see his badge. Borgata Incident Report at 1. Blunt showed him the emblem on his uniform, but Young did not accept this as proof. Borgata Incident Report at 1; Blunt Dep. at 55. Young then used his cellular phone to call the Atlantic City police. Blunt Dep. at 60; Pl.'s Mem. Ex. A at 3.

Eventually, Blunt told Hendrix to get out from in front of the car. Blunt Dep. at 62. Blunt turned on the engine and began moving forward. Blunt Dep. at 62; Borgata Incident Report at 1. Hendrix attempted to get out of the way, but the bumper of Blunt's car made contact with his left leg. Borgata Incident Report at 1, 4; Blunt Dep. at 62. Hendrix walked to the medical station and, after an examination, was cleared to return to work the same day. Borgata Incident Report at 2.

After Blunt left the loading area and while Hendrix was being examined at the medical station, the Atlantic City police arrived and Borgata security informed them of what had happened. Borgata Incident Report at 2; Pl.'s Mem. Ex. A at 3. The Borgata employees also gave the police with a written statement. Borgata Incident Report at 2; Pl.'s Mem. Ex. A at 3. Hendrix did not file a complaint against Blunt. Borgata Incident Report at 2.

At no time during these events did Borgata security curse or yell at Blunt, touch him, or come within three feet of him, or do anything that made Blunt feel as though Borgata security was going to physically harm him. Blunt Dep. at 58; Mitchell Dep. at 34-36.

Shortly after the incident, Blunt received a notice in the mail from the Atlantic City Police Department informing him that he had left the scene of an accident and that he was required to report to the Atlantic City Police Department

immediately. Pl.'s Mem. Ex. A at 1; Blunt Dep. at 71. Those charges were eventually dismissed. Blunt Dep. at 71.

## II. Analysis<sup>2</sup>

George Blunt here sues the defendants for negligent supervision, false imprisonment, malicious prosecution, and intentional infliction of emotional distress. His wife, Loretta, sues for loss of consortium. The defendants have moved for summary judgment on all of the claims save those alleging false

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<sup>2</sup>Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In ruling on a motion for summary judgment, the Court must view the evidence, and make all reasonable inferences from the evidence, in the light most favorable to the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Whenever a factual issue arises which cannot be resolved without a credibility determination, at this stage the Court must credit the non-moving party's evidence over that presented by the moving party. Liberty Lobby, 477 U.S. at 255.

The moving party bears the initial burden of proving that there is no genuine issue of material fact in dispute. Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585 n.10 (1986). Once the moving party carries this burden, the nonmoving party must "come forward with 'specific facts showing there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The non-moving party must present something more than mere allegations, general denials, vague statements, or suspicions. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992); Fireman's Ins. Co. of Newark v. DuFresne, 676 F.2d 965, 969 (3d Cir.1982). It is not enough to discredit the moving party's evidence, the non-moving party is required to "present affirmative evidence in order to defeat a properly supported motion for summary judgment." Liberty Lobby, 477 U.S. at 257 (emphasis in original). A proper motion for summary judgment will not be defeated by merely colorable or insignificantly probative evidence. See Liberty Lobby, 477 U.S. at 249-50. Also, If the non-moving party has the burden of proof at trial, then that party must establish the existence of each element on which it bears the burden. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

imprisonment and loss of consortium. The defendants also seek summary judgment on Blunt's claim for punitive damages.

Before we turn to the substantive law, we must first decide which law applies to each of the claims because the events that precipitated this litigation occurred in New Jersey, but the plaintiffs are citizens of the Commonwealth of Pennsylvania. Either law could well apply. As this case has been brought in this Court under our diversity jurisdiction, we apply Pennsylvania choice of law jurisprudence to decide this choice of law problem. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496-97 (1941); Chin v. Chrysler, LLC, 538 F.3d 272, 278 (3d Cir.2008).

Under Pennsylvania's choice of law rules, courts use a three step approach. First, courts see if there is a real conflict, i.e., whether there is indeed a substantive difference between respective state's laws. Hammersmith v. TIG Ins. Co., 480 F.3d 220, 229-30 (3d Cir. 2007). If no difference exists, then no real conflict exists and the forum's law applies. Id. at 230.

If there is a substantive difference between the competing state's laws, then we move to the second step and examine the governmental policies underlying each law in order to classify the conflict as false, true, or unprovided-for. Id. A false conflict exists only when one state's interests would be

impaired, and, in this scenario, courts apply the interested state's law. LeJeune v. Bliss-Salem Inc., 85 F.3d 1069, 1071 (3d Cir. 1996). An unprovided-for situation occurs when neither state's interests would be impaired if its laws were not applied, and, in that case, "[t]he principle of lex loci delicti, the law of the place of the wrong, supplies the substantive law to be applied in unprovided-for cases." Garcia v. Plaza Oldsmobile Ltd., 421 F.3d 216, 220 (3d Cir. 2005). A true conflict exists when application of one state's law would impair a governmental policy or interest of the other, at which point courts move to the third step. Hammersmith, 480 F.3d at 231.

When there is a true conflict, the third step obliges courts to "determine which state has the greater interest in the application of its law." Id. Courts weigh the contacts with each state "on a qualitative scale according to their relation to the policies and interests underlying the particular issue." Id. (internal quotations omitted). The greater weight tips this scale to the law that courts should apply.

We now turn to Blunt's claims, and will in each instance decide which law applies.<sup>3</sup>

**A. Intentional Infliction of Emotional Distress**

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<sup>3</sup>We note that the defendants do not contest that Borgata security acted within the scope of their employment, and, though the torts averred are intentional torts, the defendants are subject to respondeat superior liability.

Both New Jersey and Pennsylvania have adopted the Restatement (Second) of Torts's formulation of intentional infliction of emotional distress, which requires a plaintiff to prove that the defendant's conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." Hoy v. Angelone, 720 A.2d 745, 754 (Pa. 1998); Buckley v. Trenton Savings Fund Society, 544 A.2d 857, 863 (N.J. 1988). As no real conflict exists between New Jersey and Pennsylvania law on this subject, we apply Pennsylvania law. Hammersmith, 480 F.3d at 230.

Here, Blunt has presented no evidence from which a reasonable finder of fact could conclude that the Borgata security employees involved in this incident acted in a manner "utterly intolerable in a civilized society." Hoy, 720 A.2d at 754. By his own estimation, Blunt admitted that Borgata security did not use offensive language or put him in fear for his physical safety. Blunt Dep. at 58; see also Mitchell Dep. at 34-36. Blunt admits he brought the emotional distress claim because Borgata security "wouldn't comply and they were running me around a bush in a sense."<sup>4</sup> Blunt Dep. at 58.

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<sup>4</sup>Q. The sole reason that you claim you sustained emotional injuries from whatever happened inside the Borgata was because they didn't want to accept the subpoena, correct?

A. Correct.

Q. Any other reason?

A. And their attitudes.

Whatever disrespect the Borgata security may have shown Blunt, it does not rise to the level of outrageousness needed to sustain a claim for intentional infliction of emotional distress. See e.g., Papieves v. Lawrence, 263 A.2d 118 (Pa. 1970) (defendant struck and killed plaintiff's son with automobile, failed to notify authorities or seek medical assistance and buried the son's body in a field where it was discovered two months later and returned to parents); Banyas v. Lower Bucks Hospital, 437 A.2d 1236 (Pa. Super. 1981) (defendants intentionally fabricated records to suggest that plaintiff had killed a third party which led to plaintiff being indicted for homicide); Chuy v. Philadelphia Eagles Football Club, 595 F.2d 1265 (3d Cir. 1979) (defendant's team physician released information to the press that plaintiff was suffering from a fatal disease when physician knew such information was false).

We will therefore grant summary judgment for the defendants on the claim of intentional infliction of emotional distress.

**B. Malicious Prosecution**

Both Pennsylvania and New Jersey require that for a

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- Q. Did they at any point curse or yell at you?  
A. No.  
Q. At any point did they interfere with our personal space, touch you, get within three feet of you?  
A. No.

Blunt Dep. at 58.

claim of malicious prosecution the plaintiff must establish that the defendant "instituted proceedings against the plaintiff 1) without probable cause, 2) with malice, and 3) the proceedings [were] terminated in favor of the plaintiff." Kelley v. General Teamsters, Chauffeurs and Helpers, Local Union 249, 544 A.2d 940, 941 (Pa. 1988); Helmy v. City of Jersey City, 836 A.2d 802, 806 (N.J. 2003) (plaintiff must prove "(1) that the criminal action was instituted by the defendant against the plaintiff, (2) that it was actuated by malice, (3) that there was an absence of probable cause for the proceeding, and (4) that it was terminated favorably to the plaintiff"). As no substantive differences exist between the formulas of these two states' laws, we will apply Pennsylvania law to this claim. Hammersmith, 480 F.3d at 230.

#### **1. Instituting Proceedings**

Blunt cannot establish that the defendants instituted any proceedings against him. Pennsylvania takes much of its law of malicious prosecution from the Restatement (Second) of Torts. Galluci v. Phillips & Jacobs, 614 A.2d 284, 290 (Pa. Super. 1992). According to the Restatement, one initiates criminal proceedings "by making a charge before a public official or body [that] require[s] the official or body to determine whether process shall or shall not be issued against the accused." § 653, comment c. A defendant can be liable for malicious

prosecution only if he or she "induc[ed] a third person, either a private person or a public prosecutor, to initiate [criminal proceedings], [or] prevail[ed] upon a public official to institute them by filing an information." Id. § 653, comment d. But "[w]hen a private person gives to a prosecuting officer information that he believes to be true, and the officer in the exercise of his uncontrolled discretion initiates criminal proceedings based upon that information, the informer is not liable." Id. § 653, comment g (emphasis supplied).

Blunt has here presented no evidence that the defendants induced or prevailed upon anyone to initiate proceedings against him. The Borgata security personnel did call the police, and when the police arrived they took statements from the security personnel involved in the incident. Borgata Incident Report at 2; Pl.'s Mem. Ex. A at 3. Blunt offers no evidence that any of the statements given to the police was false, let alone maliciously so. Blunt also presents no evidence that the Borgata or any of its security personnel somehow pushed the police or the Atlantic County prosecutors to file charges against him. It is true that Blunt flatly claims that "Defendant's employees filed charges with the Atlantic City Police," but he provides no citation to the record to corroborate

his assertion. Pl.'s Mem. at 13<sup>5</sup>. To the contrary, the record establishes that the Borgata employee who could have brought charges against Blunt, Milton Hendrix, opted not to file a complaint against Blunt. Borgata Incident Report at 2. In short, Blunt cannot establish that these defendants instituted any criminal proceedings against him in a manner that would subject any of the defendants to liability for the tort of malicious prosecution.

Thus, we will grant defendant's motion for summary judgment as to Blunt's malicious prosecution claim.

## **2. Probable Cause**

Even assuming that the defendants somehow instituted criminal proceedings against Blunt, he cannot establish that the defendants acted without probable cause. In the context of malicious prosecution, probable cause exists when there is "a reasonable ground of suspicion supported by circumstances sufficient to warrant that an ordinary prudent person in the same situation could believe a party is guilty of the offense charged." Corriqan v. Central Tax Bureau of PA., Inc., 828 A.2d 502, 505 (Pa. Cmwlth. 2003) (citing Miller v. Pennsylvania Railroad Co., 89 A.2d 809, 811-812 (Pa. 1952)).

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<sup>5</sup>The page numbers associated with plaintiff's brief represent our count rather than modern printing practice. Luckily, the prose in plaintiff's brief was in any event not persuasive, and he did, mercifully, properly number his exhibits.

Blunt's malicious prosecution claim is based on the notification he received from the Atlantic City police stating that he had failed to report an accident. Pl.'s Mem. Ex. A at 1. The governing statute requires that "[t]he driver of a vehicle or street car involved in an accident resulting in injury to...any person...shall by the quickest means of communication give notice of such accident to the [police], and in addition shall within 10 days after such accident forward a written report of such accident to the commission on forms furnished by it." N.J.S.A. 39:4-130.

Since the crime with which Blunt was charged was failure to report an accident, Blunt must establish that the defendants did not have probable cause to believe that an accident "resulting in injury" to someone had occurred. But the record establishes that Blunt hit Hendrix with his car. During his deposition, Blunt stated that "I put it in gear and I was just drifting off, and that's when he fell as though I hit him." Blunt Dep. at 62. In the Borgata Incident Report, both Young and Hendrix state that Blunt's car hit Hendrix. Borgata Incident Report at 1, 4. Nothing in the record casts doubt on this fact.<sup>6</sup>

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<sup>6</sup>Blunt asserts that "Defendant is in the possession of a video which clearly shows Hendricks [sic] was not struck by Blunt's car." Pl.'s Mem. at 13. Blunt does not cite to anything in the record that would support his assertion. No such video is in the record before us, so either Blunt's attorney failed to request it as part of discovery or the video does not exist. Regardless of why this video is not part of the record, we ignore baseless assertions when determining if summary judgment is

To be sure, Hendrix in the end went back to work -- but he was first checked out at the medical station, and was there when the police arrived and interviewed Borgata security. Borgata Incident Report at 2; Pl's Mem. Ex. A at 3. Probable cause does not require that one be correct about the beliefs that they act on, but merely that it would be reasonable for someone in the same circumstance to have acted on that belief. Corrigan, 828 A.2d at 505. Here, the fact that Blunt hit Hendrix with his car makes it reasonable to believe that Hendrix sustained some injury. Thus, Blunt cannot establish that the defendants acted without probable cause when they informed the police of the accident, and so we will grant defendants' motion for summary judgment as to Blunt's malicious prosecution claim.

**C. Negligent Supervision**

New Jersey and Pennsylvania law of negligent supervision are much the same. Under New Jersey law, an employer may be liable when "it knew or had reason to know of the particular unfitness, incompetence or dangerous attributes of the employee and could reasonably have foreseen that such qualities created a risk of harm to other persons." Di Cosala v. Kay, 450 A.2d 508, 516 (N.J. 1982). Similarly in Pennsylvania, an

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appropriate. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992); Fireman's Ins. Co. of Newark v. DuFresne, 676 F.2d 965, 969 (3d Cir.1982).

employer may be liable for negligence "if it knew or should have known that an employee was dangerous, careless or incompetent and such employment might create a situation where the employee's conduct would harm a third person." Brezenski v. World Truck Transfer, Inc., 755 A.2d 36, 39-40 (Pa. Super. 2000) (citing Dempsey v. Walso Bureau, Inc., 246 A.2d 418 (Pa. 1968)).

Fundamentally, Pennsylvania examines "(1) what was [the employee's] conduct prior to [the commission of the alleged tort] and was it of such nature as to indicate a propensity for [committing that tort]? (2) did [the employer] know, or in the exercise of ordinary care, should it have known of [the employee's] prior [tortious] conduct?" Dempsey, 246 A.2d at 422. Since there is no substantive difference between the states' laws, we again apply the law of the forum state. Hammersmith, 480 F.3d at 230.

Blunt's claim must fail. He has not provided a scintilla of evidence about the prior behavior or proclivities of the Borgata security personnel with whom he interacted. Blunt presents no evidence that the defendants knew or should have known about any tortious propensity on the part of their security personnel. Without establishing these two elements, i.e., the only two elements of a negligent supervision claim, Blunt cannot make out a prima facie case for such claim, and therefore it must succumb to summary judgment.

**D. Punitive Damages**

**1. Choice of Law**

Unlike the other issues we have considered, Pennsylvania's and New Jersey's laws of punitive damages are not facially identical, and, in fact, differ in important ways. New Jersey law requires that the plaintiff prove "by clear and convincing evidence, that the harm suffered was the result of the defendant's acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed." N.J.S.A. 2A:15-5.12(a). Pennsylvania, on the other hand, requires that a plaintiff establish by a preponderance of the evidence 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," thereby injuring the plaintiff. Hutchinson ex rel. Hutchison v. Luddy, 870 A.2d 766, 772 (Pa. 2005) (as to elements); Sprague v. Walter, 656 A.2d 890, 923 (Pa. Super. 1995) (citing Martin v. Johns-Manville Corp., 494 A.2d 1088, 1089 (1985), abrogated on other grounds by Kirkbride v. Lisbon Contractors, Inc., 555 A.2d 800 (Pa. 1989)) (as to burden). At the least, these laws have different burdens of persuasion that plaintiffs must meet. This is a real difference and thus there is a real conflict between the laws.

The states also have differing governmental interests that are in true conflict. In New Jersey, the governmental interest underlying the assessment of punitive damages is limited to specific deterrence, i.e., "to punish[ing] the defendant and to deter[ring] that defendant from repeating such conduct." N.J.S.A. 2A:15-5.14 (emphasis supplied); see also Tarr v. Bob Ciasulli's Mack Auto Mall, Inc., 916 A.2d 484, 489-90 (N.J. Super. Ct. App. Div.), affirmed by 943 A.2d 866 (N.J. 2007). By contrast, Pennsylvania uses punitive damages "to punish the tortfeasor for outrageous conduct and to deter him or others like him from similar conduct." Hutchison, 870 A.2d at 770 (emphasis supplied). New Jersey's and Pennsylvania's respective governmental interests are not contradictory since the former is encompassed within the latter. But if we were to apply New Jersey law it would only partially satisfy Pennsylvania's governmental interest, and applying Pennsylvania's broader interest would undermine New Jersey's decision to specifically limit the underlying purpose<sup>7</sup> for punitive damages. Thus, we have a true conflict.

We must now weigh the contacts with each state "on a qualitative scale according to [the contacts'] relation to the

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<sup>7</sup>There is little doubt about this purpose. "The [New Jersey] Legislature's purpose in enacting the Act was to establish more restrictive standards with regard to the awarding of punitive damages." Pavlova v. Mint Mgmt. Corp., 868 A.2d 322, 325 (N.J. Super. Ct. App. Div.) certif. denied 867 A.2d 285 (N.J. 2005).

policies and interests underlying the particular issue."

Hammersmith, 480 F.3d at 231. Here, Blunt went into New Jersey to serve the subpoena, which he had to do conformably with New Jersey law. Once outside Pennsylvania, his official position provided him no privileges, and he operated simply as a process-server. The defendants are all located in New Jersey, and on a day-to-day basis the management and behavior of their employees must comport with New Jersey law. Blunt was charged with failure to report an accident under New Jersey law. The accident happened in New Jersey. Most importantly, every interaction Blunt had with Borgata security occurred in New Jersey.

In short, all of the relevant contacts are with New Jersey except Blunt's citizenship in Pennsylvania. We cannot see how that one aspect can outweigh every other on the qualitative scale given the facts here.

Thus, New Jersey law applies to the issue of punitive damages.

## **2. New Jersey Law of Punitive Damages**

In New Jersey, as with most jurisdictions, a claim for punitive damages is not a cause of action unto itself. New Jersey only permits assessment of punitive damages if there is a valid underlying cause of action. It is this underlying conduct that we scrutinize to determine whether punitive damages are appropriate. Smith v. Whitaker, 743 A.2d 243, 250 (N.J. 1999).

Whatever the underlying claim, recovery of punitive damages is limited to "exceptional cases" involving "especially egregious" conduct. Pavlova v. Mint Management Corp., 868 A.2d 322, 326-327 (N.J. Super. Ct. App. Div. 2005). It is not sufficient for the defendant to simply commit a tort. There must be some "circumstances of aggravation or outrage" that justify punishing the defendant and deterring him from acting in such a manner again. Dong v. Alape, 824 A.2d 251, 257 (N.J. Super. Ct. App. Div. 2003) (citing Nappe v. Anshelewitz, Barr, Ansell & Bonello, 477 A.2d 1224, 1231 (N.J. 1984)).

We must look to the facts underlying Blunt's claims in order to determine whether punitive damages are sufficiently in play to submit to a jury. Blunt argues that the conduct relevant to his malicious prosecution and false imprisonment claims justifies imposing punitive damages. Pl.'s Mem. at 26. We have granted summary judgment in favor of defendants on the malicious prosecution claim so it cannot be a basis for punitive damages. This leaves Blunt's false imprisonment claim.

The Borgata security personnel's conduct that underlies the false imprisonment claim does not amount to an exceptional case of especially egregious conduct that would warrant imposing punitive damages. The record establishes that Borgata security did not speak harshly to Blunt, did not touch him, did not come within three feet of him, and did not put him in fear for his

safety. Blunt Dep. at 58; see also Mitchell Dep. at 34-36. Since no evidence substantiates Blunt's assertion of especially egregious conduct, there is no basis upon which to infer that Borgata security acted with actual malice<sup>8</sup> towards Blunt. Blunt has made out a prima facie case for false imprisonment, but cannot point to any circumstances of aggravation or outrage that transforms the Borgata security's actions into an exceptional case of especially egregious conduct, i.e., something more than a mill-run commission of this tort.<sup>9</sup>

Thus, Blunt cannot, on the record before us, establish a basis for imposing punitive damages, and we will grant summary judgment in favor of the defendants on this issue.

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<sup>8</sup>As the underlying tort in question, false imprisonment, is an intentional tort, it does not make sense to talk of recklessness or wanton and willful disregard of the risks of harm to someone in Blunt's shoes. All of the alleged acts defendants' agents made were intentional, and thus to go beyond the mere commission of a tort would require them to be acting with actual malice.

<sup>9</sup>We have not overlooked our Court of Appeals's teaching that we should be "reluctant to grant a motion for summary judgment when resolution of the dispositive issue requires a determination of state of mind," typically an issue that turns on credibility determinations. Norfolk Southern Ry. Co. v. Basell USA Inc., 512 F.3d 86, 95 (3d Cir. 2008) (quoting Metzger v. Osbeck, 841 F.2d 518, 521 (3d Cir.1988)). By contrast, here there are no disputed facts that require credibility determinations. The false imprisonment claim involves no aspect that would lead reasonable jurors to infer that the Borgata employees were somehow out to get Blunt and not merely doing their jobs in a way that, at most, inconvenienced Blunt for a minute or two.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE BLUNT, et ux.                                 :                     CIVIL ACTION  
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BOYD GAMING CORPORATION,                         :                     :  
et al.    :                     NO. 08-285

ORDER

AND NOW, this 23rd day of October, 2008, upon consideration of defendants Boyd Gaming Corporation's and Marine District Development Co., LLC's motion for partial summary judgment (docket number #14), and plaintiffs' response, it is hereby ORDERED that:

1. Defendants' motion for partial summary judgment is GRANTED;
2. Counsel shall CONVENE in Chambers (Room 10613) at 2:30 p.m. on October 30, 2008 for a settlement conference, and the plaintiff and representatives of the defendants with plenary authority to settle shall be available by telephone.

BY THE COURT:

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Stewart Dalzell, J.

