



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR KENT COUNTY**

<b>THE ESTATE OF CHARLES G.</b>	:	
<b>LAMB, by and through its</b>	:	<b>C.A. No: 07C-12-037 (RBY)</b>
<b>Executrix, BETTE W. LAMB and</b>	:	
<b>BETTE W. LAMB,</b>	:	
	:	
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>ZKT, L.L.C., a Delaware Limited</b>	:	
<b>Liability Company, and Symmetric,</b>	:	
<b>LLC, a Delaware Limited Liability</b>	:	
<b>Company</b>	:	
	:	
	:	
<b>Defendants.</b>	:	

**ORDER**

**Summary**

The factual pattern regarding this case is described in the Court's decision on a different topic related to this same matter dated March 30, 2009.

Defendant ZKT has moved for Summary Judgment relative to Plaintiffs' claims for punitive damages. The parties agree that punitive damages are not permitted in wrongful death actions. The parties also agree that punitive damages are permitted in survivorship actions. The parties disagree as to whether a claim exists in this particular survivorship action.

Since the location of Plaintiffs' decedent's fall is an area, at most, merely ill maintained, and was the subject of on-going consideration for improvement plans, which actually began shortly after the incident, a basis for compensatory damages, at best, exists. Accordingly, Defendant' motion for Summary Judgment asa matter of

law in its favor relative to Plaintiffs' punitive damages claim is **GRANTED**.

Analysis

To sustain a claim for punitive damages, Plaintiff must show Defendant's actions constituted recklessness or a conscious indifference or an "I don't care" attitude.<sup>1</sup> Plaintiff asserts that ZKT's lack of a reaction to the 2005 Town of Smyrna notices supports a finding that ZKT acted with conscious indifference to the safety of others.

The facts, however, do not show such a reaction. While in 2005 the parking lot may have had its problems, the condition of the parking lot around the time of Mr. Lamb's fall was of ongoing concern to ZKT. ZKT took action with respect to repairing the parking lot when it sought the services of S&M Paving. ZKT wanted S&M Paving to tell it what needed to be done to the parking lot. The day after Mr. Lamb's fall, S&M Paving returned an invoice recommending a cleaning and repairing of the parking lot. These repairs included the filling of the potholes in the lot. Also, ZKT hired an employee to keep the lot clean. This evidence directly rebuts Plaintiff's claim that ZKT exhibited a wilful, wanton disregard concerning the maintenance of the parking lot. As such, the evidence of ZKT's state of mind does not support implementation of punitive damages against it. Based on the clear evidence negating a wanton state of mind, Defendant ZKT's motion for partial summary judgment with respect to punitive damages is **GRANTED**.

**SO ORDERED** this 29th day of May, 2009.

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<sup>1</sup> See *Jardel v. Hughes*, 523 A.2d 518, 529-30 (Del. 1987).

/s/ Robert B. Young

J.

RBV/sal

**Dannetta Danielson**

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Order regarding punitive damages (3 pages)  
Order - negligence per se (4 pages)  
**Authorized Date/Time:** May 29 2009 10:40AM EDT  
**Authorizer:** Robert B Young  
**Authorizer's Organization:** DE Superior Court-Kent County  
**Sending Parties:**  
N/A  
**Served Parties:**  
Z K T LLC

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