

*Ongebei v. Olkeriil*, 6 ROP Intrm. 330 (1997)  
**TEWID ONGEBEI,**  
**Plaintiff,**

v.

**LOUIS OLKERIIL and ROSALITA OLKERIIL,**  
**Defendants.**

CIVIL ACTION NO. 331-96

Supreme Court, Trial Division  
Republic of Palau

Decision

Decided: January 31, 1997

Counsel for Plaintiff: Raynold B. Oilouch, MLSC

Counsel for Defendants: Scott P. Ciment

R. BARRIE MICHELSEN, Associate Justice:

¶331

Plaintiff in this case was the victim of a battery concededly exacted upon him by Rosalita Olkeriil. As a result of that battery he arrived at the hospital with multiple lacerations, abrasions, and contusions. His right eye was almost swollen shut, and he was bleeding from a head wound. He was hospitalized for two weeks, but with physical therapy was fully ambulatory by the end of his stay. At the time of trial he complained of residual weakness on his left side.

Defendant Louis Olkeriil is the husband of Rosalita. Plaintiff testified that Mr. Olkeriil intervened in the fray and assisted his wife. Mr. Olkeriil's testimony was that when he heard the commotion he went into the house and his involvement was solely to end the altercation by physically separating the two.

Mrs. Olkeriil had an explanation, although not a convincing one, for the attack. She says that her brother told her that the Plaintiff's response to the brother's request to be given betelnut for Mrs. Olkeriil was a sexual expletive. Mrs. Olkeriil, later being told that such language had been used referring to her, entered the Plaintiff's bedroom and woke him up to demand an explanation of why such verbiage had been directed at her. Apparently the Plaintiff's mood was crotchety once again (he was 78 years old), and Mrs. Olkeriil testified that she was fearful of possible aggressive acts on the Plaintiff's part. Apparently she decided that the best defense is a good offense, and beat him to the point that he was hospitalized with injuries already noted.

Recognizing that her side of the story does not present a legal defense, <sup>1</sup> and that liability

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<sup>1</sup> She pled guilty to Assault and Battery with a Dangerous Weapon. The dangerous weapon was a plate she used on the victim's head during the attack.

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must be conceded, she argues that the damages justify little or no award, and no punitive damages. Mr. Olkeriil asks the Court to find that his involvement does not rise to the level of civil liability.

Mr. Olkeriil's responsibility will be discussed first. Plaintiff argues that Mr. Olkeriil's acts were in furtherance of the tortious acts of his wife. Mr. Olkeriil's testimony was he was completely ignorant of any trouble between his wife and the Plaintiff, was taken by surprise when he heard the commotion inside the house, and upon seeing what was going on intervened solely to assist in its end.

**¶332** As a result of the attack, Plaintiff's relatives told the attending physician that the Plaintiff lost consciousness for ten minutes. No one disputes Mr. Olkeriil intervened at the later stages of the fray. It is possible that Plaintiff's injuries were such that he would not be as accurate an eyewitness as he otherwise would have been by the time Mr. Olkeriil intervened.

It is not unheard of that people sometimes actively intervene in fights on the side of their relatives and acquaintances before assessing the pros and cons of the original argument. However, based upon Mr. Olkeriil's testimony and demeanor, I am inclined to give him the benefit of the doubt and believe that if suddenly confronted with a scene in which his wife is physically assaulting a 78 years old man, his natural instinct would be to intervene to end the fight and separate the two, rather than join in and inflict greater injury on the elderly gentleman.<sup>2</sup>

Plaintiff argues that Mr. Olkeriil is liable because he pled guilty to Assault and Battery in violation of 17 PNC § 503 as a result of the incident. As a matter of law, that conviction is technically inadmissible hearsay, since only convictions for crimes punishable for imprisonment in excess of one year are admissible. ROP R. Evid. 803(22).

The reason that misdemeanors are not admissible as a hearsay exception is that "convictions for misdemeanors do not represent sufficiently reliable determinations to justify dispensing with the hearsay objections." *McCormick on Evidence*, 3rd ed. West Pub. Co. 1984, § 318 at 895. That rationale justifies discounting the weight to be given the conviction even if no objection to its admission was made in this case.

The fact was that Louis Olkeriil, faced with a trial involving a charge of felony assault, was given the opportunity to plead guilty to a misdemeanor and receive a sentence of probation and a \$100 fine. Even if a defendant was positive he would be found not guilty after trial, that plea bargain would be difficult to resist. Consequently, his plea of guilty to a misdemeanor assault does not change my assessment of the rest of the evidence.

Mrs. Olkeriil pled guilty to Assault and Battery With A **¶333** Dangerous Weapon, and that conviction is admissible "to prove any fact essential to the judgment." ROP R. Evid. 803(22). She concedes, as she must, that she is liable. Testimony was still heard on the

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<sup>2</sup> Mrs. Olkeriil had no notable injuries as a result of this incident. Consequently, in light of Plaintiff's injuries, and his age, no one coming upon the fight would have thought intervention on Mrs. Olkeriil's side would have been necessary.

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underlying facts to determine whether punitive damages should be awarded.

With respect to actual damages, no emotional injuries, current medical expenses, lost wages, attorneys' fees, or out of pocket expenses were requested in the complaint. An allegation regarding potential medical expenses in the future was pled, but not pursued at trial. Consequently, this requested award is solely for pain and suffering.<sup>3</sup> From the medical testimony, there seems to be little residual effect from the attack. The Court awards \$8,000 for pain and suffering.

Regarding punitive damages, the necessary preconditions for an award of damages are present. "Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive, or his reckless indifference to the rights of others." Restatement of Torts (Second) § 908(2) American Law Institute, American Law Institute Publishers, 1979. The fact that the assault was committed (in the words of the criminal statute to which she pled guilty) with the intent to inflict grievous bodily harm, meets the standard set in the Restatement section. Nonetheless, I decline to award punitive damages in this case.

Evidence as to the financial worth of a defendant has been held competent upon the issue of the amount of punitive damages that may be awarded against him. Generally speaking, in assessing exemplary or punitive damages, any mitigating circumstances which may operate to reduce such damages without wholly defeating them may be taken into consideration, as may the financial condition and standing of the parties, and this is the position of the Restatement.

Annotation, "Admissibility on defendant's behalf, as a matter in mitigation of punitive damages, of evidence as to his lack of financial resources." 79 ALR 3d 1138, 1139.

The wealth of the defendant is relevant.

Since the purposes of exemplary damages are to punish for **L334** a past event and to prevent future offenses, and the degree of punishment or deterrence resulting from a judgment is to some extent in proportion to the means of the guilty person.

Comment e, § 908, Restatement of Torts (Second).

The evidence in this case shows that Rosalita Olkeriil is in her forties. She is now supported by her husband. She owns no land, has no bank accounts, and has no job. Finding a way to pay the compensatory damages will be daunting enough without adding an award of punitive damages that she, in all likelihood, cannot pay. Therefore, in reliance upon the Restatement's provision that the wealth of the Defendant is a factor to consider in assessing punitive damages, no punitive damages will be awarded in this case.

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<sup>3</sup> The defendants are paying restitution for actual medical expenses as part of their terms of probation.