Intentional Infliction of Emotional Distress

Trial 3/25/97

Benchmemo: Gaiters v. Lynn; CA 86-551-R. Hearing - January 15, 1987, at 9:00 a.m.

Attorneys: Plaintiff - Sa'ad El-Amin
Defendant - J. Alvernon Smith, Jr.
Samuel Baronian, Jr.

Judge, this matter is before you for a hearing on (1) a motion to dismiss for failure to state a claim, pursuant to Rule 12 (b)(6), and on (2) a motion for sanctions against the plaintiff and his attorney.

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

The jist of the defendant's argument is that the complaint fails to state a claim, under Womack v. Eldridge, 215 Va. 338, 210 S.E.2d 145 (1974), for Intentional Infliction of Emotional Distress (IIED). The test under Womack is that four elements must be shown:

" 1. The wrongdoer's conduct was intentional or reckless. This element is satisfied where the wrongdoer had the specific purpose of inflicting emotional distress or where he intended his specific conduct and knew or should have known that emotional distress would likely result.

2. The conduct was outrageous and intolerable in that it offends against the generally accepted standards of decency and morality. This requirement is aimed at limiting frivolous suits and avoiding litigation in situations where only bad manners and mere hurt feelings are involved.

3. There was a causal connection between the wrongdoer's conduct and the emotional distress.

4. The emotional distress was severe."

The Court continues in its ruling to explain: "It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, or whether it is necessarily so. Where reasonable men (PERSONS) may differ, it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability."

(Judge, the state court overruled the demurrer as to this claim, but was apparently about to sustain the defendant's motion to strike the plaintiff's evidence when Sa'ad jumped in and took

a voluntary non-suit. Sa'ad does not admit that this was about to happen, but does not explain his sudden decision to take a non-suit. This fact should probably not be mentioned in your discussion of this motion, however, because Sa'ad will argue that this is an extrinsic matter which converts the motion to dismiss into a motion for summary judgment, if you consider it in your decision on the motion to dismiss. More on this in the last paragraph of the benchmemo.)

It seems fairly clear that Ms. Lynn's actions, while in very bad taste, do not rise to the level of the second requirement: "outrageous and intolerable." Her actions were more like ethnic jokes. (The cases cited by the defendants were quite helpful on this issue. See page 4 - 6 of item 6, defendant's brief in support of the motion to dismiss.) The defendant describes in her brief several cases which were helpful on this point. In Pawelek v. Paramount Studios Corp., 571 F. Supp. 1082 (N.D. Ills. 1983), the court held that the use of "Polack" jokes did not meet the test of outrageousness required to maintain an action for intentional infliction of emotional distress. The court noted that the jokes were clearly intended to and did imply a negative attitude toward persons of polish descent, but found that such conduct does not attain the necessary "degree of outlandishness." Such conduct, according to that court, amounts to no more than insults or indignities which as a matter of law cannot be deemed "extreme and outrageous." It seems clear that Ms. Lynn's actions fall within the category of non-actionable situations "where only bad manners and mere hurt feelings are involved." Womack at 148.

The defendant cites several other cases involving the use of the word "nigger" in which recovery has been denied. These cases support the defendant's position that Ms. Lynn's conduct did not rise to the level of "outrageous and intolerable."

Regarding the first requirement, it also seems clear that this element is not satisfied on these facts. Ms. Lynn clearly did not have the specific purpose of inflicting emotional distress on Mr. Gaiters, since she did not even know him. And, although it is possible to satisfy this element when a defendant

intends her specific conduct and knows or should know that emotional distress would likely result, there is no evidence that Ms. Lynn knew or should have known that emotional distress would result in this plaintiff. Although the plaintiff claims to have a special susceptability to comments about his color, there is no allegation that Ms. Lynn knew about this. The recklessness of the alleged conduct must be evaluated in light of what the reasonable person knew or should have known. Therefore, the first requirement of Womack is not satisfied.

In addition, the fourth element requires that the plaintiff suffer severe emotional distress. The emotional distress must be reasonable and justified under the circumstances and there is no liability where the plaintiff has suffered exagerated and unreasonable emotional distress, unless it results from a peculiar susceptibility to such distress of the which the defendant has knowledge. Restatement (Second) of Torts, section 46, comment j. Thus, the fourth element of Womack is not satisfied on these allegations.

For these reasons, the defendant's motion to dismiss is GRANTED and this matter is hereby DISMISSED WITH PREJUDICE.

MOTION FOR SANCTIONS

The defendant has moved for sanctions against the plaintiff and his attorney, including payment of expenses and attorneys fees, pursuant to Rule 11. The defendant claims that:

1. The allegations are devoid of any ground to support the plaintiff's legal theory of liability under Va. law.
2. The allegations of severe emotional distress, including impotency and alcoholism, are not grounded in fact, as demonstrated by the answers given by the plaintiff during the state court trial.
3. The plaintiff has fully tried this action in the Circuit Court of the City of Richmond, with Sa'ad interrupting just in time to take a non-suit according to the defendant.
4. This constitutes forum shopping, as well as an abuse of the

judicial process.

Judge, while this motion should probably not be granted, Mr. El-Amin probably needs to know that he is close to the line, at least with regard to the second item above. The allegations about impotency and alcoholism do not appear to be well-grounded in fact, when compared to the answers given by the plaintiff during the state trial. See item 8 in the file, pages 3-8, which contains some of plaintiff's testimony about his drinking problem and impotency problem.

This motion should be DENIED but Mr. El-Amin may need a pep talk on professional ethics and being an officer of the court.

OTHER ISSUES

Mr. El-Amin may bring up their argument that the defendant has tried to change what is called a motion to dismiss into a motion for summary judgment, by submitting extrinsic materials. It should probably be made clear in the record that this motion is being considered as a motion to dismiss and that no extrinsic matters were considered by the Court. (Actually, no affidavits were submitted anyway, so the motion should probably not be considered to be a motion for summary judgment.) This will prevent Mr. El-Amin from trying to argue later that the Court committed error, because if the motion to dismiss was treated like a motion for summary judgment, then the Court would have had to notify the non-moving party of that treatment and give that party an opportunity to submit extrinisic materials also. Since we did not do that, it is probably safer just to consider it as a motion to dismiss and GRANT it on those grounds analyzed above.

DAH