

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
FOURTH JUDICIAL DEPARTMENT

Sparks v. Fels, Jr., Schwan's Home Service, Inc., and Schwan's Food  
Service, Inc.

238 CA 15-00753 (Supreme Court of the State of New York Appellate Division Fourth Judicial Department  
2016) · No. 238 CA 15-00753 · Decided March 18, 2016

SUMMARY

The Supreme Court of New York, Appellate Division, Fourth Department, affirmed an order granting defendants summary judgment dismissing the plaintiff’s claim for punitive damages arising from a motor vehicle accident. The court held that the record did not establish the gross recklessness, intentional misconduct, wantonness, or other circumstances necessary to support an award of punitive damages.

CASE DETAILS

|                       |                                                                                                                                                                                |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department                                                                                         |
| WRITING FOR THE COURT | Whalen, P.J.; Smith, J.; Carni, J.; Nemoyer, J.; Curran, J.                                                                                                                    |
| JURISDICTION          | New York                                                                                                                                                                       |
| DECIDED               | March 18, 2016                                                                                                                                                                 |
| DOCKET                | 238 CA 15-00753                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Plaintiff appealed from an order granting defendants' motion for summary judgment in part and dismissing her claim for punitive damages arising from a motor vehicle accident. |
| STANDARD OF REVIEW    | The Appellate Division reviewed the grant of summary judgment and whether the record established circumstances warranting punitive damages.                                    |
| PRECEDENTIAL VALUE    | Published Appellate Division memorandum and order                                                                                                                              |
| PARTIES               | Diane Sparks v. Larry Fels, Jr., Schwan's Home Service, Inc., Schwan's Food Service, Inc.                                                                                      |

TOPICS

punitive damages

damages

appellate procedure

standard of review

## PRACTICE AREAS

torts

remedies

motor vehicle accidents

## QUESTIONS PRESENTED

1. Whether the record presented circumstances warranting an award of punitive damages for defendants' conduct in connection with the motor vehicle accident.
2. Whether Supreme Court properly granted defendants summary judgment dismissing the punitive-damages claim.

## HOLDINGS

1. Punitive damages are available only when the defendant's conduct demonstrates a high degree of moral culpability, transcends mere carelessness, constitutes willful or wanton negligence or recklessness, or otherwise involves grossly reckless, intentional, wanton, malicious, evil, or reprehensible conduct aimed at the public generally.
2. Summary judgment dismissing plaintiff's punitive-damages claim was proper because the record did not evince circumstances warranting punitive damages.

## KEY QUOTATIONS

*“Punitive damages are warranted where the conduct of the party being held liable evidences a high degree of moral culpability, or where the conduct is so flagrant as to transcend mere carelessness, or where the conduct constitutes willful or wanton negligence or recklessness”*

*“Punitive damages are available for the purpose of vindicating a public right only where the actions of the alleged tort-feasor constitute gross recklessness or intentional, wanton or malicious conduct aimed at the public generally or are activated by evil or reprehensible motives”*

## FACTUAL BACKGROUND

The action arose from a motor vehicle accident involving plaintiff and defendants. Plaintiff sought punitive damages based on defendants' conduct. The court concluded that the record did not demonstrate conduct sufficiently culpable to support such an award.

## PROCEDURAL HISTORY

The Supreme Court of New York, Niagara County, granted defendants' motion for summary judgment insofar as it sought dismissal of plaintiff's punitive-damages claim. Plaintiff appealed that portion of the order, and the Appellate Division unanimously affirmed without costs.

## DISPOSITION

affirmed

#### CASES CITED

- Fernandez v. Suffolk County Water Auth., 276 A.D.2d 466, 467 (2000)
- Lee v. Health Force, 268 A.D.2d 564 (2000)
- Rey v. Park View Nursing Home, 262 A.D.2d 624, 627 (1999)
- Buckholz v. Maple Garden Apts., LLC, 38 A.D.3d 584, 585
- Pascazi v. Pelton, 210 A.D.2d 910
- Ross v. Louise Wise Servs., Inc., 8 N.Y.3d 478, 489
- Cushing v. Seemann, 247 A.D.2d 891, 893
- Green v. Passenger Bus Corp. (appeal No. 2), 61 A.D.3d 1377, 1378

#### OPINION

PER CURIAM.

SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department 238 CA 15-00753 PRESENT: WHALEN, P.J., SMITH, CARNI, NEMOYER, AND CURRAN, JJ. DIANE SPARKS, PLAINTIFF-APPELLANT, V MEMORANDUM AND ORDER LARRY FELLS, JR., SCHWAN'S HOME SERVICE, INC., AND SCHWAN'S FOOD SERVICE, INC., DEFENDANTS-RESPONDENTS. CAMPBELL & SHELTON, LLP, EDEN, MAGAVERN MAGAVERN GRIMM, LLP, BUFFALO (EDWARD J. MARKARIAN OF COUNSEL), FOR PLAINTIFF-APPELLANT.

HURWITZ & FINE, P.C., BUFFALO (JODY E. BRIANDI OF COUNSEL), FOR DEFENDANTS-RESPONDENTS. Appeal from an order of the Supreme Court, Niagara County (Richard C. Kloch, Sr., A.J.), entered January 26, 2015. The order, insofar as appealed from, granted in part defendants' motion for summary judgment and dismissed plaintiff's claim for punitive damages. It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In this action arising out of a motor vehicle accident, plaintiff appeals from that part of an order granting defendants' motion for summary judgment seeking dismissal of plaintiff's claim for punitive damages. "Punitive damages are warranted where the conduct of the party being held liable evidences a high degree of moral culpability, or where the conduct is so flagrant as to transcend mere carelessness, or where the conduct constitutes willful or wanton negligence or recklessness (Fernandez v Suffolk County Water Auth., 276 AD2d 466, 467 [2000]; Lee v Health Force, 268 AD2d 564 [2000]; Rey v Park View Nursing Home, 262 AD2d 624, 627 [1999])" (Buckholz v Maple Garden Apts., LLC, 38 AD3d 584, 585).

In other words, “[p]unitive damages are available for the purpose of vindicating a public right only where the actions of the alleged tort- feisor constitute gross recklessness or intentional, wanton or malicious conduct aimed at the public generally or are activated by evil or reprehensible motives” (Pascazi v Pelton, 210 AD2d 910 [internal quotation marks omitted]; see Ross v Louise Wise Servs., Inc., 8 NY3d 478, 489).

Here, we conclude that the record does not evince circumstances warranting an award of punitive damages (see Cushing v Seemann, 247 AD2d 891, 893; see generally Green v Passenger Bus Corp. [appeal No. 2], 61 AD3d 1377, 1378; Buckholz, 38 AD3d at -2- 238 CA 15-00753 585).  
Entered: March 18, 2016 Frances E. Cafarell Clerk of the Court