JUDGE'S COPY

FILED
DES MOINES, IOWA
00 AUG 10 PM 4:37

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

| | | |
|---|---|---|
| CHRISTOPHER SHERIDAN, MERLE BENSLEY, and ROCKSANNA SHERIDAN, | * | 4-00-CV-90024 |
| Plaintiffs, | * | |
| v. | * | |
| CITY OF DES MOINES, DES MOINES POLICE DEPARTMENT, FIRSTAR BANK, N.A., OFFICER KIRMAN #872 OF DMPD, OFFICER OLESON #679 OF DMPD, MANNIE EASLEY, JOHN DOE(S) and JANE DOE(S), | * | ORDER |
| Defendants. | * | |

Before the Court is Defendant Firstar Bank, N.A.'s Motion to Dismiss, or in the Alternative, for Summary Judgment filed May 2, 2000. Plaintiff resisted on May 30, 2000. Defendant replied on June 7, 2000. The Court heard from the parties on this Motion at oral argument on July 25, 2000. Given that both sides rely on submissions outside the pleadings, the Court will treat this Motion as one for summary judgment. For the reasons set forth below, the Court grants Defendant's Motion.

## I. Facts

The Court will set out the facts in this case in a light most favorable to Plaintiff as the non-moving party. *See Harlston v. McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir. 1994).

The instant Motion grows out of a 12-count lawsuit filed by Plaintiffs Christopher

COPIED TO COUNSEL
MAILED ON 8-11-00
BY D. Jones
Pleading # 26

Sheridan ("Sheridan"), Merle Bensley ("Bensley"), and Rocksanna Sheridan ("RS"), all residents of Polk County. *See* Amended Complaint and Jury Demand (hereinafter Complaint). After finding what looked to be a ten thousand dollar bill while remodeling a house, Sheridan went to Defendant Firstar Bank, N.A. ("the Bank") in Des Moines to authenticate the bill. The bill was laminated against a cardboard backing.

Sheridan approached Defendant Mannie Easley ("Easley"), a teller, and asked her if the bill was real or not. Easley bent, folded, and manipulated the bill to determine its authenticity. At some point, and pursuant to bank and federal guidelines, bank official's contacted the United States Secret Service ("the Secret Service").[1] Sheridan does not dispute that these guidelines exist and that they direct the Bank to contact the federal authorities. The Secret Service advised Bank officials to contact local law enforcement as the Secret Service believed the bill to be fake. Another bank teller, Carolyn Wilson, then called the Des Moines police department. The police arrived at the bank. Sheridan grew agitated. The police finally handcuffed Sheridan after he refused to calm down. Sheridan urinated on himself because he "was so scared." Sheridan Affid. at para. 19.

The Bank was in possession of the bill for approximately 30 minutes. They gave the bill to the Secret Service, who had possession of it for one week, after which time it was returned to Plaintiff. Bank employees did not make representations to any third parties, beyond the phone call made to the Secret Service and statements given to Des Moines police. The gist of Sheridan's Complaint is that the Bank committed slander by representing both to the Secret Service and Des Moines Police that Sheridan was committing a crime, i.e., that he was intending

[1] The Secret Service is the enforcement wing of the United States Treasury Department, which oversees these currency matters.

to exchange a fake ten thousand dollar bill for smaller currency. Sheridan adamantly maintains his only intent was to verify the authenticity of the bill. Sheridan has also plead a series of property torts variously based on the Bank's physical manipulation of the bill.

**II. Summary judgment standard**

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine," if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "As to materiality, the substantive law will identify which facts are material." *Id.* In this case, the parties agree that Iowa law governs the tort and property claims.

To preclude the entry of summary judgment, the nonmovant – here the Plaintiffs – must make a sufficient showing on every essential element of its case for which it has the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Continental Grain Co. v. Frank Seitzinger Storage, Inc.*, 837 F.2d 836, 838 (8th Cir. 1988). Importantly, in order to defeat a motion for summary judgment, the nonmoving party must go beyond the pleadings and by affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *see Celotex*, 477 U.S. at 324. The quantum of proof that the nonmoving party must produce is not precisely measurable, but it must be "enough evidence so that a reasonable jury could return a verdict for the nonmovant." *Anderson*, 477 U.S. at 257. On a motion for summary judgment, the court will give the non-moving party the benefit of all reasonable inferences that can be drawn from the

facts. *See United States v. City of Columbia*, 914 F.2d 151, 153 (8th Cir. 1990).

## III. Discussion

*A. Intentional infliction of emotional distress*

Count 6 of Plaintiffs' Complaint alleges that conduct by the Bank and its employees constituted the tort of intentional infliction of emotional distress ("IIED"). In Iowa, before a plaintiff can recover under the theory of IIED, they must show: (1) outrageous conduct by defendant; (2) that defendant intentionally caused the plaintiff emotional distress, or acted with reckless disregard for the possibility of causing such emotional distress; (3) that plaintiff suffered severe or extreme emotional distress; and (4) the defendant's outrageous conduct was the proximate cause of plaintiff's emotional distress. *See Van Baale v. City of Des Moines*, 550 N.W.2d 153, 156 (Iowa 1996) (citation omitted). Before Defendants' conduct can be considered outrageous, it must be "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 community." *Harsha v. State Savs. Bank*, 346 N.W.2d 791, 801 (Iowa 1984). Outrageous conduct must be established by substantial evidence. *See Vinson v. Linn-Mar Community Sch. Dist.*, 360 N.W.2d 108, 118 (Iowa 1984).

The Court will not belabor the point, but it's clear the Bank's conduct did not amount to "outrageous" conduct, as that term has been defined in the Iowa cases. Nor is there any evidence that Sheridan suffered "severe or extreme emotional distress." The parties agree that IIED is a claim frequently asserted and almost always denied as a matter of law. Such has been the outcome on facts more troublesome than exist here. *See, e.g., Fuller v. Local Union No. 106*, 567 N.W.2d 419 (Iowa 1997); *Taggart v. Drake Univ.*, 549 N.W.2d 796 (Iowa 1996). For lack of any genuine issues, the Bank's Motion as to Count 6 is granted.

*B. Slander (defamation of character)*

Counts 7 and 8 of Plaintiffs' Complaint alleges that conduct by the Bank and its employees, in calling the police without grounds to believe that a crime was being committed, constituted the torts of defamation of character and slander, respectively. Because slander is a sub-species of character defamation, *see Kennedy v. Zimmermann*, 601 N.W.2d 61, 64 (Iowa 1999) (citation omitted), the Court will analyze this claim under the category of slander.

Slander involves the oral publication of an untrue statement which injures a person's reputation. *See Johnson v. Nickerson*, 542 N.W.2d 506, 510 (Iowa 1996). However, proof of a statement's truth or substantial truth provides a complete defense to an action for defamation. *See Hovey v. Iowa State Daily Publication Bd.*, 372 N.W.2d 253, 255-56 (Iowa 1985). The law recognizes, however, that circumstances may arise when a person, in order to protect his own interest or the interest of others, must make statements about another which are defamatory, and which may not be true. When this happens, the speaker is said to enjoy a qualified privilege, which means that no liability attaches to the published statements. *See Vojak v. Jensen*, 161 N.W.2d 100, 105 (Iowa 1968).

The Bank argues the statements it made to police were substantially true; and, alternatively, even if the statements were false, it enjoys the protection of a qualified privilege. The privilege has been defined this way: "A communication made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable ...." *Vojak*, 161 N.W.2d at 105 (quoting 33 Am. Jur., *Libel and Slander* § 126 at 124).

Assuming any statements made by Bank officials to the police were false, the Bank has

properly established the existence of a qualified privilege. The Court will assume, as it must under the rules for summary judgment motions, that Sheridan simply asked the Bank to verify the authenticity of the bill, and not exchange it for smaller denominations. Under Bank and federal guidelines, the tellers had an interest and duty to contact the Secret Service and relay the matter to the agency. It is undisputed the Secret Service instructed the Bank to contact local police, which the Bank did. By every account, the elements of a qualified privilege have been met. As required by the federal rules, *see* Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324, Sheridan has not come forward with any evidence to refute the Bank's assertion of qualified privilege; nor has Sheridan demonstrated the existence of actual malice on the part of the Bank to remove the qualified privilege. *See Vinson v. Linn-Mar Community Sch. Dist.*, 360 N.W.2d 108, 117 (Iowa 1984). The Bank's Motion as to Counts 6 and 7 is granted.

*C. Property torts*

In Counts 9, 10, and 11 of the Complaint, Plaintiff has alleged the following property torts: trespass to chattels, intentional destruction of property, and wrongful conversion, respectfully. The Bank's bending and folding of the bill provide the basis for these claims.

As no Iowa cases lay out the elements of "trespass to chattels," the Court will rely on the elements set forth in the Restatement (Second) of Torts. In relevant part, "[o]ne who commits a trespass to a chattel is subject to liability to the possessor of the chattel if, but only if, (a) he dispossesses the other of the chattel, or (b) the chattel is impaired as to its condition, quality, or value ...." Restatement (Second) of Torts § 218 (1965) (hereinafter "Restatement"). As to damages, "[t]he law infers, without proof of actual injury, some damages from every direct invasion of the ... property of another." 75 Am. Jur. 2d Trespass § 157 (1991) (hereinafter "Trespass"). Thus, it is irrelevant that Sheridan has not offered proof of any damages, or loss in

value. If a party cannot prove actual injury, the law entitles him to recover nominal damages. *Id.* at § 161.

However, the alleged tortfeasor may escape liability for trespass to chattels "to the extent the [owner] has effectively consented to the interference with his rights," Restatement § 252, which is the case here. "[F]or consent to be a valid defense to trespass, the acts of the party accused of trespass must not exceed, nor conflict with, the purposes for which consent was given." Trespass § 88. In this case, Sheridan himself admits he "approached a teller ... and asked her 'Can you tell me if this is real[?]'" Sheridan Affid. at para. 6. As the teller, Easley, explained, "Feeling currency sometimes helps determine authenticity. The thickness of real currency and genuine currency paper are distinctive." Easley Decl. at para. 3. It was necessary for Bank officials to bend and fold the bill in order to determine its authenticity, as requested by Plaintiff. *See* Trespass § 88 ("Permission to accomplish any particular enterprise carries with it authority to do all that is necessary to effect the principal object, and a consent to the conduct of another is effective for all consequences of the conduct and for the invasion of any interests arising from it.") (citations omitted). The undisputed record shows Sheridan consented to the trespass. The Bank's Motion as to Count 9 is granted.

As to Count 10, a Westlaw search by the Court did not reveal any reported state or federal cases in Iowa analyzing the elements of the tort of "intentional destruction of property." Nor was this claimed tort found in Westlaw's "Restatement of the Laws – Torts" database. The only reported Iowa cases which analyzed this claimed tort dealt with criminal prosecutions. *See State v. Zeien*, 505 N.W.2d 498, 499 (1993) (damage to contents of home analyzed under Iowa's criminal mischief statute at Iowa Code § 716.1); *State v. Mann*, 463 N.W.2d 883, 884 (1990) (criminal prosecution of damage by tenant to leased property discussed). Count 10 fails on the

pleadings. The Court grants the Bank's Motion as to this Count.

As to Count 11, Plaintiff asserts wrongful conversion. In Iowa, conversion occurs when a person "exercises wrongful control or dominion" over another's property." *Larson v. Great West Casualty Co.*, 482 N.W.2d 170, 173 (Iowa Ct. App. 1992) (citation omitted). Consent, however, is a complete defense. *See id.* (citing Restatement § 252). The Court's conclusion that Sheridan consented with respect to the trespass to chattel claim is dispositive of this claim as well. The Bank's Motion as to Count 11 is granted.

*D. Respondeat superior*

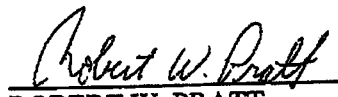
Plaintiff's Count 12 pleads respondeat superior. Since that is not a claim for relief, but assertion of an agency principle, the Court need not address it.

**IV. Conclusion**

Under Federal Rule 56, the Court **GRANTS** the Bank's Motion for Summary Judgment as to all claims asserted against it, Mannie Easley, and any John or Jane Doe employees of the Bank.

**IT IS SO ORDERED.**

Dated this 10th day of August, 2000.



ROBERT W. PRATT
U.S. DISTRICT JUDGE