

*Mathias v. Accor Economy Lodging*

ISSUE(S): Does the failure to take preventative steps against, a situation which results in some level of physical harm and/or unconsented offensive touching constitute [an] intentional tort(s)? If such failure to take preventative steps (and/or disclose) is an intentional tort, can the plaintiff obtain damages above and beyond compensatory damages?

RULE(S): A tort is a “civil wrong” and there are essentially two main types, intentional torts and negligence. The former involves some form of intent or “recklessness” on the part of the defendant, whereas negligence is generally defined as the absence of the exercise of reasonable care by defendant, with harm occurring to the plaintiff as a result.

The types of intentional torts implicated here are battery and fraud. The former (battery) is defined as “the intentional and harmful or offensive touching of another without his consent.” The latter (fraud) is defined as a “knowing misrepresentation”; a false statement of material fact that was knowingly or recklessly made by the defendant with the intent to induce reliance by the plaintiff.

Punitive damages, which are designed to punish the defendant and deter all other potential defendants in the marketplace, are awarded to plaintiffs above and beyond their actual damages. In cases of intentional torts (i.e., when there is findings of wilfulness, maliciousness, or recklessness), punitive damage awards will be upheld provided they meet the ranges/ratios of punitive damages to actual damages, set forth in recent U.S. Supreme Court cases (*BMW* and *State Farm*).

APPLICATION: Here, there was substantial evidence that the defendant, Motel knew of the widespread existence of bedbugs in their rooms. Indeed, the pest service that the Motel used, identified the bed bug problem yet the Motel refused to rectify the problem, even though it would have been at minimal cost to them. In addition, there was evidence that the staff of the Motel consciously and deliberately used euphemisms like “ticks” instead of bed bugs to not make the situation sound as bad as it actually was. All of this conduct was probative of the Motel’s fraudulent conduct, since they knowingly were misrepresenting material facts to their customers. Would any customer have elected to rent the room if they knew of the existence of the bedbugs? Probably not. Or if they did, the terms of the hotel room rental would have been on substantially different terms (lower room rates, etc.).

As to the “battery”, while the bed bug bites pose no grave health risk, they are unsightly and apparently do cause some pain and discomfort. As such, and because the hotel guests did not consent to it (indeed, they were unaware of it), this would be a harmful and offensive touching that would rise to the level of a battery.

As to defenses, the Motel really has none. However, they could try to make the case that the costs of remediation was a lot higher than meets the eye (i.e not just the cost of fumigation, but lost room revenue during the fumigation period and perhaps loss of goodwill). While these may be real numbers, in the end it is no valid excuse.

Lastly as to the issue of punitive damages, the Motel’s argument on appeal is that this a “mere negligence” case, therefore limiting the damages to the actual damages of \$5,000, knocking out punitive damages. But as was established, there was sufficient evidence of wilful and wanton conduct on the part of the Motel so as to warrant punitive damages. Furthermore the ratio of actual damages to punitive damages in this case of 37 to 1 was well within the ranges set out in *State Farm* and *BMW*.

CONCLUSION: For the above reasons, the Federal Appellate Court affirmed the trial court’s judgment in finding for the plaintiff against the defendant Motel.