

**PHILIP GODLEWSKI**

**Plaintiff**

v.

**CHRIS KELLY, TIMES SHAMROCK  
COMMUNICATIONS, SCRANTON  
TIMES-TRIBUNE, LARRY HOLEVA**

**Defendants**

: **IN THE COURT**  
: **OF COMMON PLEASE**  
: **OF LACKAWANNA COUNTY**

: **CIVIL DIVISION**  
: **JURY TRIAL DEMANDED**

: **NO. 2021 CV 2195**

MAURICE B. KELLY  
LACKAWANNA COUNTY  
JAN 21 2021 10:13 AM

**MEMORANDUM and ORDER**

**Minora, Sr.J.,**

In the underlying matter, Plaintiff, Phillip Godlewski, alleges he was defamed by Defendants, Chris Kelly, Times Shamrock Communications, The Scranton Times, L.P., and Larry Holeva, by virtue of a publication which appeared in the Defendant- newspaper on February 14, 2021. In his claims for relief against all defendants, Plaintiff seeks punitive damages.

By virtue of the fact that the parties have subsequent to the filing of the complaint stipulated Plaintiff is a “public figure,” Plaintiff must prove Defendants acted with “actual malice” to succeed in his claims. *American Future Systems v. Better Business Bureau*, 923 A. 2d 389, 400 (Pa. 2007). Consequently, were Plaintiff to establish Defendants’ liability, he would necessarily be entitled to the consideration of punitive damages, which are recoverable “when an individual’s actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct.” *Dubose v. Quinlan*, 125 A. 2d 1231, 1240 (Pa. Super. 2015). Meanwhile, as is below relevant, a

defendant's net worth is recognized as a valid measure of wealth for the purposes of punitive damages. *Sprague v. Walter*, 656 A.2d 890, 920 (Pa. 1995).

With this as background, Plaintiff now submits for consideration a motion to conduct punitive damages discovery as permitted by Rule 4003.7 of the Pennsylvania Rules of Civil Procedure, which provides:

A party may obtain information concerning the wealth of a defendant in a claim for punitive damages only upon order of court setting forth appropriate restrictions as to the time of the discovery, the scope of the discovery, and the dissemination of the material discovered.

Pa. R.C.P. 4003.7. The purpose of the rule is to place the discovery of financial wealth in a punitive damages case "under the control of the court." Pa. R.C.P. 4003.7, Explanatory Comment – 1997. According to the plain language of the rule, the Court has authority to permit or prohibit discovery of a defendant's wealth and, if determined permissible, to impose restrictions.

Rule 4003.7 does not state what factors should guide the Court's discretion in exercising this authority. However, case law makes clear that a claim for punitive damages alone is insufficient to support a request for wealth discovery unless accompanied with evidence to establish there is a factual basis for the claim. *Cabot Oil & Gas Corporation v. Speer*, 241 A. 3d 1191, 1199-1200 (Pa. Super. 2020). More specifically, "[t]o secure financial wealth discovery under Rule 4003.7, (a) plaintiff must identify facts that establish a *prima facie* basis for the recovery of punitive damages under Pennsylvania law." *Charlesworth v. Galacci*, 68 Pa. D.& C. 5<sup>th</sup> 79, 84 (C.C.P. Lackawanna 2017, Nealon, J.) (Emphasis added.)

In opposing the motion, Defendants have come before the Court mistakenly challenging the merits of Plaintiff's claim itself. In discovery matters, we are not charged with the responsibility of rendering an opinion on the quality or virtue of the underlying case. As a result, the fact that Plaintiff has a "heavy burden," as Defendants assert, to prove his case, does not persuade us to deny Plaintiff's motion to conduct wealth discovery.

Instead, we focus on the undeniable truth that Plaintiff has not submitted in support of his motion any evidence, as he must, to establish a *prima facie* basis for the entitlement to punitive damages. This is not to say the complaint itself is legally insufficient - unable to survive a preliminary objection in the nature of a demurrer. Rather, we are guided by the heightened standard Plaintiff must meet in seeking to engage in wealth discovery.

That is, although courts allow punitive damages claims to proceed beyond the pleadings stage without specific factual support showing willful, wanton, or reckless conduct, a plaintiff is not entitled to wealth discovery until first establishing the requisite *prima facie* basis to recover punitive damages. Specifically, Plaintiff must support his request with evidence Defendants acted willfully, wantonly, or recklessly. *Cabot Oil, supra* at 1199. While this issue may be revisited should Plaintiff, during the course of discovery, develop evidence of the required conduct, he has not at present satisfied his burden to convince us he is entitled to conduct wealth discovery.

An Order consistent with the foregoing now follows.