

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE**

KENT COUNTY COURTHOUSE  
38 THE GREEN  
DOVER, DELAWARE 19901  
PHONE: (302) 735-3910

**CHARLES W. WELCH, III  
JUDGE**

April 13, 2016

Daniel A. Griffith, Esq.  
Whiteford, Taylor & Preston, LLC  
The Renaissance Centre, Suite 500  
405 North King Street  
Wilmington, DE 19801

Mrs. Nina Shahin  
103 Shinnecock Road  
Dover, DE 19904

RE: Nina Shahin v. Dover Police Officer Dale Boney, Badge #10216, et al.  
C.A. No.: CPU5-14-000682

Decision on Defendant Dover Police Officer Dale Boney's Motion to Dismiss

Dear Mr. Griffith and Mrs. Shahin:

The Court has reviewed the Motion to Dismiss filed for the above-referenced matter by Defendant Officer Dale Boney ("Boney") of the Dover Police Department. The motion was filed pursuant to Court of Common Pleas Civil Rule 12(b)(6). After a thorough examination of the file for this matter by the Court, including all of the requisite pleadings filed by the parties, and the parties' submissions, Boney's motion is granted because the plaintiff is precluded from suing Boney for damages for the alleged torts in this action due to the County and Municipal Tort Claims Act, 10 *Del. C.* § 4011.

This civil tort action arises from a motor vehicle accident that involved the plaintiff and another driver in the parking lot of a grocery store. Boney, while on duty as a police officer for the City of Dover, responded to the scene to investigate the accident. It is alleged by the plaintiff that Boney went inside the store for an unspecified amount of time. Upon exiting the store, he issued an inattentive driving citation to the plaintiff. Subsequently, the plaintiff, Nina Shahin, filed the instant tort action for damages against Boney. In her Complaint, the plaintiff alleges that Boney caused her damages when he issued a citation and fabricated a police report that caused the State Farm Mutual Automobile Insurance Company to deny her claim for

reimbursement for damages caused to her vehicle in the accident. The plaintiff contends that Boney had no idea how the accident occurred when he wrongfully issued her the citation and fabricated facts about the accident in his police report. In support of her allegations, the plaintiff contends that the police report contained erroneous information regarding the damage to her vehicle. Moreover, the plaintiff contends that Boney falsified a witness because the witness failed to appear at the Justice of the Peace Court hearing for her inattentive driving citation. The plaintiff demands damages in the amount of \$188.37, to replace her right rear bumper that was damaged in the motor vehicle accident, and court costs. In response, Boney has filed this Motion to Dismiss on the grounds that he is immune from actions in tort under the County and Municipal Tort Claims Act.<sup>1</sup>

### STANDARD OF REVIEW

“When deciding a motion to dismiss, the Court must examine the complaint and accept all well-pleaded allegations as true.” *Morabito v. Del. Sleep Disorder Ctrs., LLC*, 2015 WL 3882609, at \*2 (Del. Super. June 23, 2015) (citations omitted). “If the facts alleged in the complaint are sufficient to support a claim for relief, the motion should be denied.” *Id.* “The test for sufficiency is a broad one, that is, whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.” *Id.* “An allegation, though vague or lacking in detail, is nevertheless ‘well-pleaded’ if it puts the opposing party on notice of the claim being brought against it.” *Id.*

### DISCUSSION

The County and Municipal Tort Claims Act (“Tort Claims Act”) provides statutory immunity to all municipal, town and county governmental entities and their employees from suit on all tort claims. 10 *Del. C.* § 4011. Section 4011(a) of the Tort Claims Act reads as follows:

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<sup>1</sup> In a response to Boney’s Motion to Dismiss, the plaintiff contends that Boney’s legal responsibility falls under federal and not state law. It is the plaintiff’s position that she was deprived rights under the provisions of 42 U.S.C. § 1983 because Boney denied her the basic constitutional right of “due process.” Yet, the plaintiff’s Complaint contains no claim of a violation of federal law pursuant to 42 U.S.C. § 1983. Therefore, the Court cannot provide any weight to her argument in this regard.

**§ 4011. Immunity from suit**

(a) Except as otherwise expressly provided by statute, all governmental entities and their employees shall be immune from suit on any and all tort claims seeking recovery of damages. That a governmental entity has the power to sue or be sued, whether appearing in its charter or statutory enablement, shall not create or be interpreted as a waiver of the immunity granted in this subchapter.

However, where a municipal, town or county governmental entity is immune under the Tort Claims Act, its employee can be held personally liable for his or her acts under § 4011(c) of the Act. Section 4011(c) reads as follows:

**§ 4011. Immunity from suit**

(c) An employee may be personally liable for acts or omissions causing property damage, bodily injury or death in instances in which the governmental entity is immune under this section, but only for those acts which were not within the scope of employment or which were performed with wanton negligence or wilful and malicious intent.

In pertinent part, a “governmental entity” means “any municipality, town, county, administrative entity or instrumentality created pursuant to Chapter 8 of Title 22 or Title 9, [or] any municipality created by a special act of the General Assembly.” 10 *Del. C.* § 4010(2). An “employee” means “a person acting on behalf of a governmental entity in any official capacity.” § 4010(1).

In the current case, the Court takes judicial notice that the City of Dover Police Department is an agency of a municipal corporation, the City of Dover, which has been incorporated by the State of Delaware. “It is well established that municipal police departments are ‘not separate entities for the purpose of suit, but rather, are distinct departments or entities of the [city or municipal] government [themselves]’.” *See Gregory v. Dover Police Dep’t*, 2012 WL 6915204, at note 7 (Del. Super. Dec. 31, 2012) (citing *Breitigan v. State*, C.A. No. 02-1333-GMS, at \*4 (D. Del. 2003)). Furthermore, it is not contested that Boney is an employee of the City of Dover Police Department.

### **Acts or Omissions Causing “Property Damage, Bodily Injury, or Death”**

“An employee may be personally liable for acts or omissions causing property damage, bodily injury or death.” § 4011(c). The § 4011(c) exception to immunity found in the Tort Claims Act “narrowly defines both the type of actions and the type of injuries for which immunity is waived.” *Carr v. Town of Dewey Beach*, 730 F. Supp. 591, 601-02 (D. Del. 1990). A covered employee is “only liable for ‘acts or omissions causing property damage, bodily injury or death’.” *Carr*, 730 F. Supp. at 602. “Economic harm [or loss] alone does not constitute ‘property damage’ as that term is used” under the Tort Claims Act. *Dale v. Town of Elsmere*, 702 A.2d 1219, 1223 (Del. 1997). “Economic loss” is defined as “any monetary loss[], costs of repair or replacement, loss of employment, loss of business or employment opportunities, loss of good will, and diminution of value.” *Brasby v. Morris*, 2007 WL 949485, at \*6 (Del. Super. Mar. 29, 2007) (citations omitted).

In *Carr v. Town of Dewey Beach*, the plaintiff sued for lost profits when the defendants, the Town of Dewey Beach and its employee, allegedly acted with malicious intent when they issued a stop work order that delayed the plaintiff’s construction of his restaurant. *Carr*, 730 F. Supp. at 601. The court held that the plaintiff failed to allege that the employee caused “property damage, bodily injury or death” under the § 4011(c) exception to immunity because the plaintiff only claimed that the employee caused lost profits and no physical damage to the plaintiff’s property. *Id.* at 602.

In *Dale v. Town of Elsmere*, where the plaintiffs brought a nuisance action against the Town of Elsmere and its Mayor, the Supreme Court of Delaware adopted the holding in *Carr* and held that the plaintiffs failed to allege “property damage” necessary to implicate the § 4011(c) exception to immunity because they only sought compensation for loss of enjoyment and value of their property. *Dale*, 702 A.2d at 1223.

In the instant matter, the plaintiff has failed to allege “property damage” as necessary to implicate the § 4011(c) exception to hold Boney personally liable. The plaintiff alleges that Boney caused her property damage when State Farm denied her insurance claim after it relied on Boney’s fabricated police report that states that the plaintiff was the driver at fault in the car

accident in which she was involved. The plaintiff demands damages from Boney in the amount of \$188.37, for damage caused by the accident to her right rear bumper, and court costs in the amount of \$135.00. The Court finds that the plaintiff is only claiming economic harm or economic loss resulting from State Farm's denial of her insurance claim. In her Complaint, the plaintiff does not allege that Boney caused the physical damage to her automobile. In fact, the property damage at issue resulted from the car accident in which the plaintiff was involved with another driver. Economic harm alone without sufficient allegations that Boney caused the physical damage to the plaintiff's property does not constitute "property damage" under the Tort Claims Act and does not satisfy the § 4011(c) exception to hold Boney personally liable. *Dale*, 702 A.2d at 1223. As such, the Court finds that Boney is immune from this tort action pursuant to 10 *Del. C.* § 4011. Therefore, Boney's Motion to Dismiss is granted.

### CONCLUSION

In examining the Complaint and accepting all well-pleaded allegations as true, there are no reasonably conceivable set of circumstances susceptible of proof in which the plaintiff may recover from Boney. Therefore Boney's Motion to Dismiss is granted because he is immune from this tort action pursuant to 10 *Del. C.* § 4011.

**IT IS SO ORDERED, this 13<sup>th</sup> day of April 2016.**

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

Charles W. Welch, III

CWW: mek

pc: Reneta L. Green-Streett, Esq.