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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

OLIVE OIL, LLC
Plaintiff

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, ET AL
Defendant

Case No: CV-19-912282

Judge: CASSANDRA COLLIER-WILLIAMS

JOURNAL ENTRY

96 DISP.OTHER - PARTIAL

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO PLAINTIFF'S CLAIMS FOR PUNITIVE DAMAGES AND ATTORNEYS' FEES, FILED 01/06/2022, IS GRANTED. OPINION AND ORDER ATTACHED AND ORDERED RECORDED. PARTIAL. OSJ.

OSJ		Date
Judge Signature		

FILED

2022 APR -1 P 2: 21

CLERK OF COURTS
CUYAHOGA COUNTY

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

OLIVE OIL, LLC)	Case No. CV-19-912282
)	
Plaintiff,)	JUDGE CASSANDRA COLLIER-WILLIAMS
)	
)	
v.)	
)	
CLEVELAND ELECTRIC ILLUMINATING CO., ET AL.,)	
)	
Defendants.)	<u>OPINION AND ORDER</u>
)	

JUDGE C. COLLIER-WILLIAMS:

This matter is before the Court pursuant to Defendant Cleveland Electric Illuminating Company's (hereinafter "CEI") Motion for Partial Summary Judgment as to Plaintiff's Claims for Punitive Damages and Attorneys' Fees that was filed on January 6, 2022. For the reasons outlined below, the Court GRANTS Defendant's Motion for Partial Summary Judgment.

PROCEDURAL BACKGROUND

Since 2016, Plaintiff Olive Oil, LLC (hereinafter "Olive Oil") has owned the property located at 130 Front Street in Berea, Ohio. Part of the property includes a parking lot to a bar and restaurant. Since at least 1987, and until 2017, CEI ran power lines over the southeast corner of the parking lot, between a pole on West Street and a pole on the south side of School Street. In 2017, because of a development project involving other defendants, CEI moved the pole from the south side of School Street to the public right-of-way on the north side of the street. Moving the pole across the street caused the wires strung between it to occupy a larger portion of space over

Olive Oil's parking lot. The owner of Olive Oil did not consent to having the new wires span over his property and litigation ensued.

The case proceeded to a jury trial on January 27, 2020. Olive Oil presented its case-in-chief and rested. CEI then moved for a directed verdict on Olive Oil's claims for trespass, spoliation, civil theft, civil conspiracy, tortious interference, and unjust enrichment, as well as its request for attorney's fees and punitive damages. This Court granted these motions, leaving Olive Oil's claims for declaratory judgment and injunctive relief as the only remaining claims against CEI. The trial proceeded and CEI presented its case-in-chief.

This Court ultimately dismissed Olive Oil's declaratory judgment and injunctive relief claims pursuant to Civ. R. 41(B) for failure to prosecute. Olive Oil appealed and asserted six assignments of error for review. CEI cross-appealed and asserted five of its own assignments of error for review.

The Eighth District Court of Appeals rendered a decision in this case on July 8, 2021, narrowing the issues before this Court significantly. The Court affirmed in part, reversed in part and remanded the case back to this Court. The Appellate Court held that it was error for this Court to grant a directed verdict on Olive Oil's trespass claim because of Olive Oil's failure to prove damages. The Court stated that trespass is established where a defendant enters onto another's property without authorization. Thus, the Appellate Court determined that the failure to prove actual damages was not fatal to Olive Oil's trespass claim.

Nevertheless, the Court stated that there was evidence that CEI acquired a prescriptive easement for the old wires running over Olive Oil's property. The Appellate Court remanded the matter to the trial court for determinations of whether Defendant CEI acquired a prescriptive

easement, whether the new wires impermissibly exceeded the scope of any such easement and thereby constitute a trespass on Olive Oil's property and if so, the measure of damages that result from the trespass.

Upon remand, CEI filed a Motion for Partial Summary Judgment as to Olive Oil's claims for punitive damages and attorneys' fees. In its motion, CEI argues that there is no evidence in the record that CEI acted with actual malice towards Olive Oil or that Olive Oil suffered any actual damages. Since both actual malice and actual damages are required for Olive Oil to recover punitive damages, CEI argues that the absence of both necessitates a finding of summary judgment in their favor. In regard to attorneys' fees, CEI argues that Olive Oil cannot recover attorneys' fees without punitive damages, and any claim for attorneys' fees must also be dismissed. Olive Oil filed a brief in opposition, arguing that it is able to seek punitive damages and corresponding attorneys' fees at trial because CEI's tortious conduct was performed with malice or "such a conscious and deliberate disregard of the interest of other that his conduct may be called willful or wanton." *Brief in Opposition* at pg. 2.

LAW AND ANALYSIS

A. Summary Judgment Standard

Pursuant to Civ.R. 56(C), summary judgment is only appropriate when (1) no genuine issue as to any material fact exists; (2) the party moving for summary judgment is entitled to judgment as a matter of law; and (3) after viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion and that conclusion is adverse to the nonmoving party. *Hollins v. Shaffer*, 182 Ohio App.3d 282, 2009-Ohio-2136, 912 N.E.2d 637 (8th Dist.). "The burden of showing no genuine issue as to any material fact exists falls upon the

moving party in requesting summary judgment.” *Harless v. Willis Day Warehousing Co.*, 54 Ohio St. 2d 64, 375 N.E.2d 46 (1978). If the movant satisfies the initial burden, then the nonmoving party has the burden to set forth specific facts that there remain genuine issues of material fact that would preclude summary judgment. *Edvon v. Morales*, 8th Dist. Cuyahoga No. 106448, 2018-Ohio-5171, ¶ 17, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996).

B. **Analysis**

The Court finds that the issues of punitive damages and attorneys’ fees has already been dealt with and subsequently disposed of. There was a trial on the merits in this matter in January 2020. Both Olive Oil and CEI presented evidence to the jury. This Court disposed of each count before the jury could render a verdict. Specifically, this Court granted CEI’s oral motions for directed verdicts on Olive Oil’s requests for attorneys’ fees and punitive damages.

The Court of Appeals also addressed the issue of attorneys’ fees and punitive damages. Specifically, on cross-appeal, CEI argued that the trial court should have granted summary judgment in CEI’s favor on Olive Oil’s requests for punitive damages and attorneys’ fees. In regard to this assignment of error, the Court of Appeals stated the following:

Finally, as to CEI’s remaining assignments of error, pertaining to the trial court’s denial of its motion for summary judgment regarding Olive Oil’s claims for civil conspiracy, declaratory judgment, punitive damages and attorney fees and statutory claims pursuant to R.C. 2307.60 and 2307.61, **we note that the trial court decided those claims in CEI’s favor. Moreover, to the extent that Olive Oil has challenged these issues on appeal, we have affirmed the trial court judgment in favor of CEI.**

(Emphasis added.) *Olive Oil, L.L.C. v. Cleveland Elec. Illum. Co.*, 8th Dist. No. 109553, 2021-Ohio-2309, ¶ 56.

Accordingly, on remand, the issues before this Court have been significantly limited by the Court of Appeals. Olive Oil's brief in opposition makes it clear that it intends to take a "second bite at the apple" in regard to the issue of damages. The Court of Appeals explicitly concluded that Olive Oil did not establish actual damages, but that it may be entitled to nominal damages. The Eighth District stated, in relevant part:

It was error for the trial court to dismiss the trespass claim on the basis that Olive Oil failed to establish damages. **While we agree that Olive Oil failed to establish that it was actually damaged by the new wires**, trespass is established where a defendant enters onto another's property without authorization.

(Emphasis added.) *Id.* at ¶ 15.

Furthermore, when addressing Olive Oil's assignment of error in regard to this Court's directed verdict for its civil conspiracy claim for failure to prove damages, the Court of Appeals stated the following:

More specifically, we observe that Olive Oil makes no argument as to how the trial court erred by finding no evidence of actual damages. **Specifically, Olive Oil fails to identify any evidence in the record establishing actual damages.**

Accordingly, regardless of whether Olive Oil has a viable trespass claim and is **therefore entitled to nominal damages, its failure to prove actual damages** is fatal to its civil conspiracy.

(Emphasis added.) *Id.* at ¶ 23-24.

CONCLUSION

Both this Court and the Eighth District agree that Olive Oil has failed to establish that it was **actually** damaged by the new wires. The issues left before this Court are only the following: (1) whether CEI acquired a prescriptive easement; (2) whether the new wires

exceed the scope of any such easement and thereby constitute a trespass; and (3) if so, the measure of nominal damages that result from the trespass.

At the forthcoming trial on this matter, Olive Oil shall not introduce new evidence of damages. They have already put their entire case on. As the Eighth District explicitly stated, Olive Oil failed to prove actual damages. Regardless, a jury may award nominal damages. Therefore, partial summary judgment as a matter of law is hereby entered in favor of Defendant CEI in regard to punitive damages and attorneys' fees. Partial.

IT IS SO ORDERED.

 4/1/2022

JUDGE CASSANDRA COLLIER-WILLIAMS