

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

CHARLES BOYER, :  
 : C.A. NO: K10C-07-019(RBY)  
 Plaintiff, :  
 :  
 v, :  
 :  
 DOMINICK MATARRESE and :  
 JESSICA EDWARDS, :  
 :  
 Defendants. :

*Submitted: April 27, 2012*  
*Decided: May 22, 2012*

Upon Consideration of Defendant Edwards'  
Motion for Summary Judgment

**DENIED**

**ORDER**

LeRoy A. Tice, Esq., Aber, Goldlust, Baker & Over, Wilmington, Delaware for  
Plaintiff.

Melissa L. Dill, Esq., Liguori & Morris, Dover, Delaware for Defendants.

Young, J.

### **SUMMARY**

\_\_\_\_\_Defendant Jessica Edwards filed the instant motion for summary judgment of Plaintiff Charles Boyer's claims for tortious assault and battery. A question of fact remains regarding whether or not Edwards' actions before arriving at the Home Depot parking lot placed Boyer in apprehension of imminent harm. Moreover, questions of fact remain as to whether Edwards may be liable for the assault and battery committed by her Defendant Dominick Matarrese. Edwards' motion for summary judgment is **DENIED**.

### **FACTS**

\_\_\_\_\_On January 19, 2010, Charles Boyer (Boyer), while operating a motor vehicle on Route 13 in Dover, Delaware, evidently yelled from his car window at Jessica Edwards (Edwards) to instruct her to stop using her cellular phone as she drove. Edwards apparently took exception to the instruction, yelling back at Boyer as she drove.

Not satisfied with her rebuttal, Edwards allegedly followed Boyer to the parking lot of a local dry cleaner. There, she yelled to Boyer: "You are going to get yours!" Boyer entered the dry cleaner as Edwards waited for him. When he re-entered his vehicle, Edwards, it is claimed, resumed her pursuit.

Boyer's next stop was the Home Depot parking lot in Dover, Delaware. Edwards, Plaintiff claims, followed him there, where she was met by Dominick Matarrese. Edwards and Matarrese had a discussion, at the conclusion of which, according to Boyer, Matarrese attacked him.

On July 14, 2010, Boyer filed a complaint alleging tortious assault and tortious

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battery against both Edwards and Matarrese. In response thereto, Edwards and Matarrese each filed an answer denying the allegations and asserting counter claims.

### **STANDARD OF REVIEW**

\_\_\_\_ Summary judgment is appropriate where the record exhibits no genuine issue of material fact so that the movant is entitled to judgment as a matter of law.<sup>1</sup> “Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.”<sup>2</sup> The movant bears the initial burden of establishing that no genuine issue of material fact exists.<sup>3</sup> Upon making that showing, the burden shifts to the non-movant to show evidence to the contrary.<sup>4</sup> When considering a motion for summary judgment, the Court considers the facts in the light most favorable to the non-movant.<sup>5</sup>

### **DISCUSSION**

\_\_\_\_ Edwards filed the instant motion for summary judgment challenging Boyer’s initial pleading. Edwards argues that Boyer has failed to allege facts that can sustain his claims.

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<sup>1</sup> *Tedesco v. Harris*, 2006 WL 1817086 (Del. Super. June 15, 2006).

<sup>2</sup> *Id.*

<sup>3</sup> *Ebersole v. Lowengrub*, 54 Del. 463 (Del. 1962).

<sup>4</sup> *Id.*

<sup>5</sup> *Tedesco*, 2006 WL 1817086 at \*1.

### ***Assault***

“A *prima facie* case for assault requires the plaintiff to show that a defendant’s conduct placed the plaintiff in apprehension of imminent harmful or offensive physical contact.”<sup>6</sup> Edwards argues that the statement “you are going to get yours” does not create an apprehension of imminent harmful or offensive contact. Edwards suggests further that Boyer’s act of entering and exiting the dry cleaner shows that he was not in fear.

Allegedly, Edwards followed Boyer into a parking lot, yelling and threatening him, and waited for him to leave before following him further. At this juncture, it cannot be said conclusively that Boyer was not in apprehension of imminent physical harm. An issue of fact exists regarding this matter.

Moreover, Edwards, allegedly, solicited Matarrese to attack Boyer. At the point in time immediately preceding physical contact, Matarrese, Plaintiff claims, committed an assault. Because of Edwards’ alleged solicitation of Matarrese as something of an agent, she may be liable for Matarrese’s act.

### ***Battery***

“A *prima facie* case for battery requires that the plaintiff show an intentional and unpermitted contact to which the plaintiff did not consent.”<sup>7</sup> Edwards argues that she never made any contact with Boyer, thereby not possibly being liable for battery.

Edwards, as alleged and noted above, solicited Matarrese to attack Boyer. As

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<sup>6</sup> *Atamian v. Ryan*, 2006 WL 1816936, at \*1 (Del. Super. June 9, 2006).

<sup>7</sup> *Id.*

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the story goes, Matarrese attacked Boyer with brass knuckles in the parking lot at Home Depot. Because of Edwards' alleged solicitation, she could be liable for Matarrese's act.

**CONCLUSION**

\_\_\_\_\_ Edwards' motion for summary judgment is **DENIED**.

\_\_\_\_\_ **SO ORDERED.**

\_\_\_\_\_ /s/ Robert B. Young \_\_\_\_\_

—

J.

RBY/sal  
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