

FILED

1991 NOV -6 PM 1:07

IN THE CIRCUIT COURT OF THE STATE OF OREGON

9111-07218

FOR THE COUNTY OF MULTNOMAH

CATHERINE STAUFFER,

Plaintiff,

v.

OREGON CITIZENS ALLIANCE, an Oregon Non-Profit Corporation; SCOTT LIVELY, individually and as officer or agent of the Oregon Citizens Alliance; JOHN or JANE DOES 1-5,

Defendants.

Case No. 07218

COMPLAINT

(Battery)

(Claim Not Subject to Mandatory Arbitration)

DEMAND FOR JURY TRIAL

ENTERED NOV - 6 1991 CLAIM FOR RELIEF IN REGISTER BY VD (Battery)

Plaintiff alleges, as to defendants OREGON CITIZENS ALLIANCE ("OCA"), SCOTT LIVELY ("Lively"), and JOHN and JANE DOES 1-5 ("DOE"):

1.

Plaintiff was at all material times and is now an individual resident in Multnomah County, Oregon.

2.

Defendant OCA is now and was at all material times an Oregon non-profit corporation.

3.

Defendant Lively is now and was at all material times an agent, officer, director, or employee of defendant OCA, and acted, at all relevant times, within the course and scope of his office, agency, or employment.

///

Page

1 - COMPLAINT

(STAUFFER.CMP)

BRADLEY J WOODWORTH, OSB #85370 Attorney at Law 920 Crown Plaza 1500 S W First Avenue Portland, Oregon 97201 (503) 273-9146

0001

Verified Correct Copy of Original 9/23/2015

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

4.

On or about October 8, 1991, plaintiff, pursuant to an invitation by her received, attended an OCA meeting at the Foursquare Gospel Church in Portland, Multnomah County, Oregon.

5.

While plaintiff was in attendance at said meeting, defendant Lively assaulted plaintiff by subjecting her to offensive physical contact as follows: grabbing her shoulder in a rough and violent manner; pushing plaintiff across the room and through a doorway, picking plaintiff up off the ground, making contact with her breasts in the process; throwing plaintiff into a wall; throwing plaintiff to the floor; grabbing plaintiff's hands and arms and dragging her across the floor, out the door, and onto the sidewalk, in the process of which, defendant Lively ripped plaintiff's skirt, and inflicted injuries upon plaintiff as alleged below.

6.

As a direct and proximate result of Lively's conduct, plaintiff suffered physical injuries, and has incurred and will continue to incur expenses for care and treatment of her physical injuries, in an amount to be proven at trial.

7.

As a further direct and proximate result of Lively's conduct, plaintiff has suffered hurt, anxiety, pain, humiliation, embarrassment, and physical and psychological trauma, all to her general damage in an amount to be determined at trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

8.

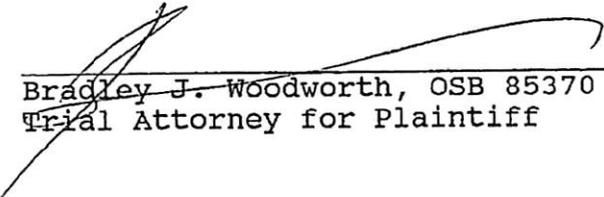
As a further direct and proximate result of Lively's conduct, plaintiff suffered property damage in an amount to be proven at trial.

9.

The actions of defendant Lively and OCA were intentional, wilfull, wanton, malicious, and of a nature that punitive damages would tend to deter. For such conduct, punitive damages should be assessed against defendant Lively and defendant OCA, and each of them, in an amount to be determined at trial, but not less than \$100,000 as to defendant Lively, and \$250,000 as to defendant OCA.

WHEREFORE, plaintiff prays for judgment against defendants, and each of them as follows:

- (1) General damages in an amount to be proven at trial;
- (2) Special damages for property damage and medical care and treatment in an amount to be proven at trial;
- (3) Punitive damages as to each defendant in an amount to be proved at trial;
- (4) For plaintiff's costs and disbursements incurred herein; and
- (5) For such other and further relief as is just and proper in the circumstances.



 Bradley J. Woodworth, OSB 85370
 Trial Attorney for Plaintiff

PAID

FILED
1991 NOV 21 AM 9:43

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CATHERINE STAUFFER,)
)
 Plaintiff,)
)
 v.)
)
 OREGON CITIZENS ALLIANCE, an)
 Oregon Non-profit Corporation;)
 SCOTT LIVELY, individually and)
 as officer or agent of the)
 Oregon Citizens Alliance;)
 JOHN or JANE DOES 1-5,)
)
 Defendants.)

No. 9111-07218

ANSWER TO COMPLAINT,
AFFIRMATIVE DEFENSES,
AND COUNTERCLAIM

Defendants answer plaintiff's complaint as follows:

1

Defendants admit the allegations of paragraphs 1 and 2 of plaintiff's complaint.

2

Defendants admit defendant Lively is Communications Director of defendant Oregon Citizens Alliance (OCA). Defendants deny the other allegations of paragraph 3 of plaintiff's complaint.

3

Defendants admit a private meeting of the Oregon Citizens Alliance was held on or about October 8, 1991, on the private premises of the Portland Foursquare Church, 1302 SE Ankeny, Portland, Oregon. Defendants admit plaintiff knowingly and

BRUCE R. MCCAIN
Attorney At Law
11815 NE Thompson
Portland, OR 97220
(503) 257-7320

ENTERED
NOV 21 1991
IN REGISTERED 0014c

Verified Correct Copy of Original 9/23/2015

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Verified Correct Copy of Original 9/23/2015

willfully entered upon the premises to attend the meeting.
Defendants deny plaintiff was invited or otherwise licensed or
privileged to enter upon the premises or attend the meeting.

4

Defendants admit using reasonable physical force to remove
plaintiff from the premises. Defendants deny the remainder of
the allegations of paragraph 5 of plaintiff's complaint.

5

Except as specifically admitted above, defendants deny
generally and specifically each and every other allegation
contained in plaintiff's complaint and the whole thereof.

For a FIRST AFFIRMATIVE DEFENSE, defendants allege as
follows:

[USE OF FORCE JUSTIFIED]

6

Defendants reallege and incorporate by reference the matters
admitted herein.

7

Defendants were in lawful possession or control of the
premises at all times material. Plaintiff knowingly and
willfully entered upon the premises at a time when the premises
were not open to the public and plaintiff was not otherwise

8_Verified Correct Copy of Original 9/18/2014

licensed or privileged to so enter. After plaintiff entered the premises, plaintiff was lawfully directed, more than once, by defendants to leave the premises. Plaintiff refused to leave the premises after being lawfully directed to do so. By refusing to leave the premises after being lawfully directed to do so, plaintiff remained unlawfully in and upon the premises.

8

Defendants were justified in using physical force upon plaintiff because defendants reasonably believed it necessary to prevent or terminate what defendants reasonably believed to be the commission or attempted commission of a criminal trespass by plaintiff. Any and all force used by defendants was reasonable.

For a SECOND AFFIRMATIVE DEFENSE, defendants allege as follows:

9

Plaintiff has failed to state ultimate facts upon which a claim for relief can be granted.

For their COUNTERCLAIM, defendants allege as follows:

10

Defendants incorporate by reference the matters admitted and alleged in their answer above.

[TRESPASS]

11

On or about October 8, 1991, plaintiff trespassed on premises of which defendants were in lawful possession or control. Plaintiff knowingly and willfully entered upon the premises at a time when the premises were not open to the public and plaintiff was not otherwise licensed or privileged to so enter. After plaintiff entered the premises, plaintiff was lawfully directed, more than once, by defendants to leave the premises. Plaintiff refused to leave the premises after being lawfully directed to do so. By refusing to leave the premises after being lawfully directed to do so, plaintiff remained unlawfully in and upon the premises.

12

As a proximate result of plaintiff's actions, defendants suffered general damages in an amount to be determined at trial.

WHEREFORE, defendants, having fully answered plaintiff's complaint, pray for judgment dismissing plaintiff's complaint and for judgment against plaintiff in an amount to be determined at trial on defendant's counterclaim, and for defendant's costs and disbursements incurred herein.

DATED this 21st day of November, 1991.


Bruce R. McCain OSB 91373
Attorney for Defendants

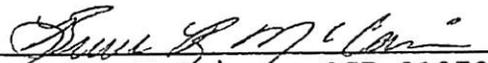
CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing ANSWER,
AFFIRMATIVE DEFENSES AND COUNTERCLAIM to those persons so
entitled and listed below:

Bradley J. Woodworth, Attorney for Plaintiff
920 Crown Plaza
1500 SW 1st Avenue
Portland, Oregon 97201

by mailing him a true copy sealed in a postage prepaid envelope
and deposited in the United States mail at Portland, Oregon, on
the 21st day of November, 1991.

DATED this 21st day of November, 1991.



Bruce R. McCain, OSB 91373
Attorney for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Page

Verified Correct Copy of Original 9/23/2015

4TH JUDICIAL DIST.
OCT -5 11:31
FILED

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CATHERINE STAUFFER,)
)
 Plaintiff,)
)
 v.)
)
 OREGON CITIZENS ALLIANCE, an)
 Oregon Non-Profit Corporation;)
 SCOTT LIVELY, individually and as)
 officer or agent of the Oregon)
 Citizens Alliance; JOHN or JANE)
 DOES 1-5,)
)
 Defendants.)

Case No. 9111-07218

PLAINTIFF'S TRIAL
MEMORANDUM

Plaintiff would respectfully show the court as follows:

1. PLEADINGS AND ISSUES

A. Plaintiff's claims

Plaintiff's complaint alleges a battery against her person on or about October 8, 1991, by defendant Scott Lively.

Plaintiff alleges that, at the time of the battery, Lively was acting within the course and scope of his office, agency or employment with defendant "Oregon Citizens Alliance", an Oregon non-profit corporation.

Discovery subsequently revealed that, at the time of the alleged battery, Lively was acting within the course and scope of his employment for "Oregon Citizens Alliance, PAC, Inc.", an Oregon corporation, ("OCA-PAC"), Oregon Citizens Alliance Educational Foundation, ("OCA"), and the "No Special Rights Committee", another PAC. Plaintiff and Defendants have stipulated that, if Lively is found liable to Plaintiff, then the entities OCA-PAC, and OCA are jointly and severally liable to

Page

1 - PLAINTIFF'S TRIAL MEMORANDUM

BRADLEY J WOODWORTH, OSB #85370
Attorney at Law
920 Crown Plaza
1500 S W First Avenue
Portland, Oregon 97201
(503) 273-9146

ENTERED
(STAUFFER.ME1)
OCT 07 1992
0047
IN REGISTER BY EPC

Verified Correct Copy of Original 9/23/2015

1 Plaintiff. Plaintiff seeks leave to impose liability also on the
2 No Special Rights Committee.

3 Plaintiff seeks special damages in the amount of \$1,182.50,
4 costs incurred by her for treatment for her physical injuries,
5 and the value of her psychological evaluation and treatment.

6 Plaintiff also seeks general damage for her physical pain
7 and suffering and mental and emotional trauma resulting from the
8 alleged assault in the amount of \$50,000.

9 Plaintiff alleges that Lively's conduct was intentional,
10 wilful, wanton and malicious, and Plaintiff seeks punitive
11 damages from Lively of not less than \$100,000, and punitive
12 damages, jointly and severally, as to Defendants OCA-PAC, OCA,
13 and the No Special Rights Committee of not less than \$250,000.

14 B. Defendants' affirmative defense and counterclaim

15 Defendants filed an answer, and alleged as their first
16 affirmative defense that Defendants were justified in using
17 physical force upon Plaintiff, and that "any and all force used
18 by Defendants was reasonable."

19 Plaintiff and Defendants subsequently agreed that paragraph
20 3 of Defendants' Answer and Affirmative Defenses and Counterclaim
21 would be amended by interlineation (see February 14, 1992 letter,
22 exhibit 1) and, as amended, paragraph 3 now reads as follows:

23 3.

24 Defendants admit that Plaintiff entered upon
25 the premises to attend the meeting.
26 Defendants deny that Plaintiff was invited or
otherwise licensed or privileged to enter
upon the premises or attend the meeting.

1 Scheufele v. Newman is a particularly instructive case.
 2 Plaintiff sued for injuries resulting from an alleged assault and
 3 battery, occasioned when defendant struck plaintiff on the
 4 shoulder, jaw and face with a rifle butt. Defendant admitted
 5 that he struck plaintiff, but interposed an affirmative defense
 6 that defendant was the owner of the land where the incident
 7 occurred; that it was posted against trespass and that plaintiff,
 8 although requested to leave the premises, refused to do so and
 9 defied defendant to put him off if "he was able to do so".
 10 Defendant further alleged that when he attempted to eject
 11 plaintiff, the plaintiff resisted defendant's efforts, and that
 12 defendant was obliged to meet plaintiff's "opposition and force
 13 with force" and defend himself against plaintiff's "acts of
 14 resistance and belligerency".

15 The jury found for plaintiff, awarding general, special and
 16 punitive damages, from which judgment Defendant appealed.

17 On appeal, and viewing the record in the light most
 18 favorable to defendant, the court assumed that plaintiff was a
 19 trespasser but held as follows:

20 It does not follow, however, that the
 21 defendant would be justified in using
 22 unreasonable force to compel the plaintiff to
 23 "get off" the land merely because he was a
 24 trespasser. Scheufele, supra, 187 Or at
 25 270.

26 The question whether Defendant used unreasonable force under
 all the facts and circumstances is a proper jury question.
Scheufele v. Newman, supra. Even an aggressor may recover in an
 action for battery against the victim, if the aggressor proves

1 that the victim used more force than was justified in repelling
2 the aggression. Flowers v. Campbell, 81 Or App 437 (1986). By
3 analogy, even a trespasser may recover in an action for battery
4 against the trespass "victim", upon proof that the "victim" used
5 more force than was justified in repelling the trespass.

6 Scheufele v. Newman, supra, Flowers v. Campbell, supra, Paur v.
7 Rose City Dodge, supra.

8 C. Damages Recoverable

9 A victim of a battery is entitled to recover such damages as
10 would compensate her for physical and mental suffering resulting
11 from the misconduct of defendant. Lamb v. Woodry, 154 OR 30
12 (1936). Present and future costs of medical attention are
13 recoverable. Harris v. Hindman, 130 OR 15 (1929).

14 As to punitive damages, malice may be presumed from the
15 manner in which an assault is committed, and proof that the
16 assault was unjustifiable and that excessive force was used is
17 evidence of malice sufficient to allow assessment of punitive
18 damages. Linkhart v. Savely, 190 Or 484 (1951).

19 D. Jury Questions

20 The question whether a party to a battery case was a
21 trespasser is one for the jury, Lewis v. Merrill, 228 Or 541
22 (1961), as are defendant's alleged defense of justification, and
23 the issues of malice and punitive damages. Linkhart v. Savely,
24 supra.

25 ///

26 ///

Verified Correct Copy of Original 9/23/2015.

1 E. Intentional Trespass

2 Defendants have counterclaimed for intentional trespass, and
3 have disclaimed any right of recovery based on an alleged
4 negligent or reckless trespass.

5 Hoaglin v. Decker, 77 Or App 672 (1986) establishes that, in
6 an intentional trespass claim, proof of actual damage is not
7 necessary. Significantly, that case holds that, in the absence
8 of any proof of any actual damage, a party may prevail on an
9 intentional trespass claim, yet receive no award of damages.

10 4. STIPULATIONS OF PARTIES

11 A. Defendants have stipulated that Defendants "Oregon
12 Citizens Alliance PAC, Inc.", and "Oregon Citizens Alliance
13 Educational Foundation" are vicariously liable for any damages of
14 defendant Lively. Further, defendants have stipulated that
15 defendant Lively, at the time of the incident alleged, was acting
16 within the course and scope of his employment, office or agency
17 with said defendants.

18 2. Defendants have stipulated that their counterclaim for
19 trespass alleges only an intentional trespass, and that no
20 recovery is sought on account of any theory of negligent or
21 reckless trespass.

22 3. Defendants have stipulated that the chart notes,
23 reports, and billings of Dr. Kip Hard may be received in evidence
24 without Dr. Hard testifying at trial.

25 ///

26 ///

Verified Correct Copy of Original 9/23/2015.

5. PLAINTIFF'S ANTICIPATED WITNESSES

Presently, Plaintiff anticipates calling the following witnesses in her case in chief, who are anticipated to testify on the subject matters generally summarized below.

A. Plaintiff Catherine Stauffer will testify regarding her background, employment; the nature and extent of her interest in the activities of the Oregon Citizens Alliance; the incident alleged to have occurred on October 8, 1991, and her resulting special and general damages.

B. Jean Furchner, Ph.D., is a clinical psychologist who evaluated Plaintiff's emotional condition following the alleged incident. Dr. Furchner's September 25, 1992 letter report will be offered, and she is anticipated to testify as to the contents of her report, and her other observations and conclusions regarding Plaintiff's mental and emotional condition, and the reasonable value of her services performed on Plaintiff's behalf.

C. Dr. Kip Hard, D.C., is chiropractor who treated Plaintiff's physical injuries. If called as a witness, she is anticipated to testify regarding the nature and extent of Plaintiff's physical injuries, bruising, course of treatment, response to treatment, and expenses incurred in treatment.

D. Anne Tholen is Plaintiff's mother, and is anticipated to testify regarding Plaintiff's background, physical

///
///

1 history, and further, to testify regarding her observations of
2 Plaintiff's physical and emotional condition following the
3 alleged incident.

4 E. Nancy Parr is a friend and co-worker of Plaintiff.
5 She is anticipated to testify regarding Plaintiff's physical,
6 mental and emotion conditions before and after the alleged
7 incident.

8 F. Lorene Dortch is Plaintiff's supervisor at work.
9 Ms. Dortch is anticipated to testify regarding physical work
10 limitations Plaintiff suffered following the incident, and,
11 further, to testify regarding Plaintiff's physical and emotional
12 condition before and after the alleged incident.

13 6. PLAINTIFF'S EXHIBITS

14 Plaintiff anticipates offering the following exhibits.

15 1. Meeting notice reminder regarding the October 8, 1991
16 video preview. (attached).

17 2. A November 7, 1991 letter to Plaintiff from Priscilla
18 Martin, membership secretary of Multnomah County Oregon Citizens
19 Alliance. (attached).

20 3. An audio tape recording of a message directed to
21 Plaintiff from Randy Antinson, a functionary of the Multnomah
22 County Oregon Citizens Alliance prior to and at the time of the
23 October 8, 1991 incident.

24 4. The chart notes, reports and billings of Dr. Kip Hard.

25 5. The September 25, 1992 letter report of Dr. Jean
26 Furchner. (attached).

Verified Correct Copy of Original 9/23/2015.

1 6. An undated printout from the Oregon Citizens Alliance's
2 database regarding Plaintiff. (attached).

3 7. Another printout from the Oregon Citizens Alliance's
4 database regarding Plaintiff. (attached).

5 8. A sheet of notes regarding entries to the Oregon
6 Citizens Alliance database. (attached).

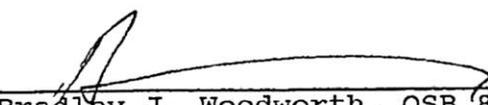
7 9. The skirt that plaintiff wore on the evening of October
8 8, 1991.

9 10. A series of photographs taken by Plaintiff prior to the
10 alleged incident.

11 7. PLAINTIFF'S REQUESTED JURY INSTRUCTIONS

12 Plaintiff anticipates requesting the Uniform and Special
13 Jury Instructions submitted herewith.

14 Respectfully submitted this 1st day of October,
15 1992.

16
17 
18 _____
Bradley J. Woodworth, OSB #85370
Trial Attorney for Plaintiff

Verified Correct Copy of Original 9/23/2015

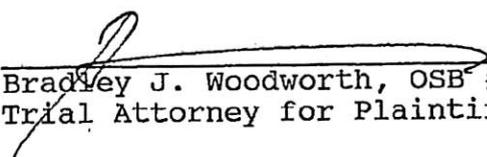
CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the within
PLAINTIFF'S TRIAL MEMORANDUM on the date below on the attorney
named below by handing to said attorney a correct copy thereof.

SERVED UPON:

Bruce R. McCain
Attorney at Law
11815 N.E. Thompson
Portland, OR 97220

DATED this 1st day of October, 1992.


Bradley J. Woodworth, OSB #85370
Trial Attorney for Plaintiff

10-21 2:15
 CT. APPEAR DATE
 Warrant
 DA# 454704
 Ct# 9/23/2011

MICHAEL D. SCHRUNK
 District Attorney For Multnomah County
 INTAKE AND SCREENING
 FACTS SHEET

POLICE # 91-89082
 MCSO
 PPB
 OTHER
 DIRECT PRESENT CASE

| 1. STATE V. COTT LIVELY | | 2. DOB 12-14-57 | 3. ADDR. | | | |
|--|----------------------|---------------------------|---|--|-----------------------------|-----------------------------|
| 4. AKA | | 5. DEF. CRISS # 538330 | 6. SEX-RACE <input checked="" type="checkbox"/> Male <input type="checkbox"/> White <input type="checkbox"/> Indian <input type="checkbox"/> Hispanic <input type="checkbox"/> Female <input type="checkbox"/> Black <input type="checkbox"/> Oriental <input type="checkbox"/> Unknown | | | |
| 7. DATE CASE SCREENED 10/21/91 | 8. DDA HOLZBERMAN | UNIT ISS | 9. Source of Initial Appearance <input type="checkbox"/> Citation <input type="checkbox"/> Indictment <input type="checkbox"/> Prob. Cau. <input type="checkbox"/> UTC. <input checked="" type="checkbox"/> Arrest Warr. <input type="checkbox"/> Bench Wa. | | | |
| Issued County | Type | CHARGE | ORS/FORM # | Charge Initiated By | DDA Charge Rejection Reason | Security Amount (By Charge) |
| Mc | DF OM OV | ASSAULT | 163.460 | <input type="checkbox"/> POLICE <input type="checkbox"/> PROSECUTOR | 056 | \$ |
| | DF OM OV | | | <input type="checkbox"/> POLICE <input type="checkbox"/> PROSECUTOR | | \$ |
| | DF OM OV | N/C | | <input type="checkbox"/> POLICE <input type="checkbox"/> PROSECUTOR | | \$ |
| | DF OM OV | | | <input type="checkbox"/> POLICE <input type="checkbox"/> PROSECUTOR | | \$ |
| | DF OM OV | | | <input type="checkbox"/> POLICE <input type="checkbox"/> PROSECUTOR | | \$ |
| 17. List Arresting/Investigating Officer(s) Officer AKERS | | BPST # 4325 | UNIT E | 18. Complainant CATHERINE L. STAUPPER | | |
| 19. Date/Time/Place of Crime 10-08-91/1930/1302 S.E. ANKENY | | | | | 20. Date Defendant Arrested | |

21. Form Book Insert Information:
 (1) _____
 (2) _____
 (3) _____
 (4) _____
 (5) _____
 (6) _____

22. REJECTED/REASONS
 ISSUED FACT SHEET

(V) goes to private meeting @ church, held by members of Oregon Citizens Alliance. (V) claims to have been invited, but doesn't have invitation when she shows up. (V) is photo journalis for gay newspaper. (V) is told to leave, but refuses (per her statement to police). (V) escorted out of church. (V) says she sustained bruises as a result. Case declined, since state cannot sustain its burden b/c/d due to the following:
 (1) Injuries insufficient for an assault. (2) (V) apparently engaged in criminal conduct of her own (crim. trespass). (V) concedes this. (3) (V)'s statements @ intake varied from ~~her~~ statements made to police (saying @ intake she "never had a chance to leave" to police that she continued conversing w/p in an effort to remain, after having been told to leave).; (4) no inculpatory statements by A or EP.

PRIOR RECORD: _____
 Comments/Special Problems:
 from ~~her~~ statements made to police (saying @ intake she "never had a chance to leave" to police that she continued conversing w/p in an effort to remain, after having been told to leave).; (4) no inculpatory statements by A or EP.
 100

Verified Correct Copy of Original 9/23/2015

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

5TH JUDICIAL DIST.
92 OCT -3 AM 8:43
FILED

CATHERINE STAUFFER,)
)
 Plaintiff,)
)
 v.)
)
 OREGON CITIZENS ALLIANCE, an)
 Oregon Non-profit Corporation;)
 SCOTT LIVELY, individually and)
 as officer or agent of the)
 Oregon Citizens Alliance;)
 JOHN or JANE DOES 1-5,)
)
 Defendants.)

No. 9111-07218

DEFENDANT'S TRIAL
MEMORANDUM

ENTERED
OCT 8 1992
IN REGISTER BY SL

PROCEDURAL BACKGROUND

Plaintiff brings a claim against defendants for battery, arising from an incident which occurred October 8, 1991, on the premises of Portland Foursquare Church. In addition to seeking unspecified general and special damages, plaintiff seeks punitive damages against defendant Lively of not less than \$100,000, and punitive damages against defendant Oregon Citizens Alliance of not less than \$250,000.

Defendants answer plaintiff's complaint with an affirmative defense and counterclaim, both based on plaintiff's alleged trespass, October 8, 1991, on the premises of Portland Foursquare Church.

STATEMENT OF FACTS

Plaintiff is an admitted lesbian photojournalist, who at all times material was a staff member of *Just Out*, a monthly

1 DEFENDANT'S TRIAL MEMORANDUM

Page

Verified Correct Copy of Original 09/23/2015

publication which plaintiff admits is addressed primarily to Portland's gay and lesbian community. Defendant Oregon Citizens Alliance ("OCA") is a much-publicized nonprofit corporation and political committee which has opposed the political activities of the homosexual community. Defendant Lively is an officer and director of OCA.

Plaintiff is an admitted opponent of the OCA's political activities — both now and before October 8, 1991. Stauffer Deposition, p. 12. Plaintiff further admits that over the course of several months prior to the October 8 incident, she took photographs of OCA members and gathered what she describes as "useful" information about the OCA from her "extremely successful" telephone contacts with OCA members. Because plaintiff held herself out as someone interested in OCA activities — without disclosing her status as a lesbian photojournalist who opposes their activities — the OCA placed her name and address on an OCA mailing list. As a result, plaintiff received various OCA-related materials through the mail.

By virtue of her presence on the OCA mailing list, plaintiff received a postcard, reminding OCA members of a special meeting to be held October 8, 1991, at the Portland Foursquare Church. To ensure privacy of this meeting, the meeting reminder plainly stated on its face, "Only OCA members and personal guests shall be admitted." Plaintiff admits she read those words, but decided to enter the premises anyway. Plaintiff also admits she is not, nor has been, an OCA member. Stauffer Deposition, p. 30.

Verific@Corred1 Copy of Original 9/23/2015

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

When plaintiff entered the private premises of Portland Foursquare to attend the private OCA meeting, she was recognized by Bill Casey, Multnomah County OCA director. Mr. Casey told plaintiff the meeting was private, and asked to her to leave more than once. Each time plaintiff refused. After continuing into another room, defendant Lively approached plaintiff and told her to leave. Plaintiff refused again, and argued with Mr. Lively that she should be allowed to stay. Mr. Lively then took hold of plaintiff and escorted her out of the room and off the premises. During their movement to the exit door, plaintiff slipped or fell down (the Portland Police Bureau report notes that plaintiff told the officer that she "either slipped or fell," but at deposition, plaintiff denied slipping or falling.)

On October 21, 1991, plaintiff went to the District Attorney to file an assault charge against Mr. Lively. After the intake interview with plaintiff, and after reviewing the police report, the deputy district attorney declined to prosecute Mr. Lively. In recording his reasons for declining, the D.A. noted that the plaintiff "concedes" that she "apparently engaged in criminal conduct of her own (crim. trespass)." The D.A.'s report also notes plaintiff's statements at intake "varied from statements made to police (saying @ intake she 'never had a chance to leave' and to police that she continued conversing w/[Lively] in an effort to remain, after having been told to leave)" [emphasis in original].

LEGAL ISSUES PRESENTED

Given the underlying facts of this case, the notoriety of defendants' political opposition to "gay rights," and the desires of many people to see the OCA beaten and destroyed, it is tempting for some to use this case as a referendum on the pending OCA-sponsored Measure 9. This court cannot allow that to occur.

The threshold and dispositive issue in this case is not gay rights, nor the religious views of OCA members, nor even plaintiff's claim for battery. Rather, the dispositive issue in this case is defendant's affirmative defense, as provided in ORS 161.225(1):

A person in lawful possession or control of premises is justified in using physical force upon another person when and to the extent the person reasonably believes it is necessary to prevent or terminate what the person reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon the premises.

Defendants claim Mr. Lively, as a person in lawful possession and control of the premises, was justified in using reasonable physical force upon plaintiff because defendants reasonably believed it necessary to prevent or terminate what defendants reasonably believed to be the commission or attempted commission of a criminal trespass by Catherine Stauffer.

ANTICIPATED EVIDENTIARY QUESTIONS

District Attorney's Report. Plaintiff's counsel objects to the admissibility of the District Attorney's report, a copy of which is attached hereto. Plaintiff's counsel apparently argues

Verified Correct Copy of Original 9/23/2015

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

that the exercise of the D.A.'s discretion in not filing an assault charge against Mr. Lively should not exculpate Mr. Lively from a common law battery claim. To that extent, counsel may be correct.

But defendants are not offering the D.A.'s report to exculpate Mr. Lively, but rather to support defendant's affirmative defense and counterclaim of trespass against Ms. Stauffer. The District Attorney's report should be admissible against plaintiff for the following reasons: 1) the report is relevant to defendants' defense and claim (OEC Rules 401 and 402); 2) the report is a public record exception to the hearsay rule (OEC Rule 803(8); the report records admissions by Ms. Stauffer, a party-opponent, which are offered against her (OEC Rule 801(4)(b)), and 4) the report indicates Ms. Stauffer has given inconsistent statements regarding her activities the night of October 8, 1991. Defendants do not object if the court, pursuant to OEC Rule 105, chooses to limit the admissibility of the report for the above-mentioned purposes only.

Religious Beliefs or Opinions. Defendants anticipate plaintiff's counsel will inquire into the religious beliefs of OCA members who are expected to testify. Such inquiries may violate Article I, § 6 of the Oregon Constitution, which provides:

"No person shall be ... questioned in any Court of Justice touching his religeous (sic) belief to affect the weight of his testimony."

Verified Correct Copy of Original 9/23/2015

The above constitutional protection against improper inquiries into a witness' religious beliefs is also set forth in OEC Rule 610, which provides that:

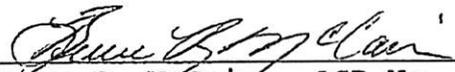
Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the credibility of the witness is impaired or enhanced.

ANTICIPATED DEFENSE WITNESSES

Defendants expect to call the following witnesses:

1. Catherine Stauffer (Plaintiff)
2. Peter A. Ackerman (former deputy D.A.)
3. Scott Lively (Defendant)
4. Bill Casey (witness to occurrence)
5. Paul Deparrie (witness to occurrence)

DATED this 1st day of October, 1992.



 Bruce R. McCain, OSB No. 91373
 Trial Attorney for Defendants

ENTERED IN REGISTER
NOV - 5 1992
JUDGMENT DOCKET BY EC

4TH JUDICIAL DIST.
92 NOV - 4 PM 4: 09
FILED

223/2015
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CATHERINE STAUFFER,
Plaintiff,
v.
OREGON CITIZENS ALLIANCE, an
Oregon Non-Profit Corporation;
SCOTT LIVELY, individually and as
officer or agent of the Oregon
Citizens Alliance; Oregon Citizens
Alliance Educational Foundation,
Inc.,; and Oregon Citizens Alliance
PAC, Inc.
Defendants.

Case No. 9111-07218

JUDGMENT

This action came regularly before the undersigned judge of the above-entitled court, and before a duly empaneled jury of this court, commencing October 1, 1992, and this matter having been heard on said date, and also on October 2, October 5, and October 6, 1992. Plaintiff appeared personally and through her attorney Bradley J. Woodworth; defendant Lively appeared personally and through his attorney, Bruce McCain, and defendants Oregon Citizens Alliance Educational Foundation, Inc., and Oregon Citizens Alliance PAC, Inc., appeared through their attorney, Bruce McCain.

The attorneys thereupon made opening statements on behalf of their respective clients and introduced testimony and other evidence in support of their respective cases, and thereafter rested. Arguments were made to the jury on behalf of the

Verified Correct Copy of Original 9/23/2015.

1 respective parties, and the jury, having been instructed upon all
2 matters of law, and having retired to deliberate on its verdict,
3 did thereafter on the 6th day of October, 1992, return into court
4 a verdict in favor of plaintiff, which, omitting the title of the
5 court and cause, was in the following form:
6

7 1. Was defendant Lively at fault in one or more of the
8 respects claimed in plaintiff's complaint which caused damage to
9 plaintiff?

10 ANSWER: YES (YES OR NO)

11 If your answer to question 1 is "no," your verdict is for
12 the defendant. Your presiding juror should sign this verdict
13 form. You should proceed to question number 3, and answer it.
14 If your answer to question 1 is "yes," proceed to question 2.

15 2. What are the plaintiff's damages for the following
16 categories:

17 A. ECONOMIC DAMAGES: \$ 1,197.50

18 (medical, psychological and other health care; may not exceed the
19 sum of \$1,197.50).

20 B. NON-ECONOMIC DAMAGES: \$ 20,000.00

21 (subjective non-monetary losses; may not exceed the sum of
22 \$50,000.00).

23 C. PUNITIVE DAMAGES:

24 (i) As to defendant Lively,

25 \$ 500.00 (may not exceed the sum of

26 \$100,000);

Verified Correct Copy of Original 9/23/2015.

(ii) As to defendant Oregon Citizens Alliance Educational Foundation, Inc., and Oregon Citizens Alliance PAC, Inc., \$ 10,000.00 (may not exceed the sum of \$250,000);

3. Is plaintiff at fault for an intentional trespass in the manner claimed in defendants' counterclaim?

ANSWER: NO (Yes or No).

If your answer to question 3 is "no," your verdict on defendant's counterclaim is for the plaintiff. Your presiding juror should sign this verdict form. Do not answer any further questions.

If your answer to question 3 is "yes," proceed to question 4.

4. What are the defendants' total damages?

ANSWER: Total money damages _____ (may not exceed the sum of \$ _____)

/s/ _____
Janet Damon, Foreman

The matter now coming on for judgment upon the foregoing verdict, it is hereby

ORDERED AND ADJUDGED, that plaintiff have judgment against defendants and each of them, jointly and severally, for plaintiff's damages, as follows:

Economic damages: \$1,197.50
Non-economic damages: \$20,000

Verified Correct Copy of Original 9/23/2015.

1 And it is further

2 ORDERED AND ADJUDGED, that plaintiff have judgment against
3 defendant Scott Lively for punitive damages in the sum of
4 \$500.00, and that plaintiff have judgment against defendants
5 Oregon Citizens Alliance Educational Foundation, Inc., and Oregon
6 Citizens Alliance PAC, Inc., jointly and severally, in the sum of
7 \$10,000.00 and plaintiff is hereby granted judgment in said sums,
8 and plaintiff is further awarded plaintiff's costs and
9 disbursements incurred herein, taxed at \$693⁰⁰ /.

10 Dated this 4TH day of NOVEMBER, 1992

11
12 MONEY JUDGMENT

13 A. Judgment Creditor and Address: Plaintiff Catherine
14 Stauffer, 3330 SE Yamhill St., Portland, OR 97214

15 B. Attorney for Judgment Creditor: Bradley J. Woodworth,
16 1500 SW 1st Ave., Portland, OR 97201

17 C. Judgment Debtors and Addresses: Scott Lively, 113849 SE
18 122nd, Clackamas, OR 97015, Oregon Citizens Alliance Educational
19 Foundation, Inc., Oregon Citizens Alliance PAC, Inc., 9150 SW
20 Pioneer Court, Suite W, Wilsonville, Oregon 97070.

21 D. Judgment Amount: \$21,197.50, jointly and severally as
22 to all defendants; plus \$500.00 as to defendant Scott Lively;
23 plus \$10,000.00, jointly and severally as to defendants Oregon
24 Citizens Alliance Educational Foundation, Inc., Oregon Citizens
25 Alliance PAC, Inc.

26 E. Prejudgment Interest: None

F. Postjudgment Interest: 9% per annum simple interest

27
28 Samuel J. Imperati
29 Samuel J. Imperati
30 Circuit Court Judge Pro-tempore

Verified Correct Copy of Original 9/23/2015.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Court Reporter: Phyllis Gainey
Office Address: 14375 SW 27th Ct.
Beaverton, OR 97005

Court Reporter: Jan Harrie
Office Address: 8545 SW Secretariat Ter.
Beaverton, OR 97005

Court Reporter: Mary Ann Gianni
Office Address: 1021 SW 4th Ave.,
Room 556
Portland, OR 97204

Court Reporter: Julie Bourgeois
Office Address: 1021 SW 4th Ave.,
Room 311
Portland, OR 97204

Prepared and presented by:

Bradley J. Woodworth, OSB #85370
1500 SW 1st Ave., Suite 920
Portland, OR 97201

Verified Correct Copy of Original 9/23/2015.

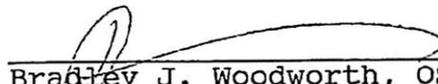
CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I served the following JUDGMENT on the date below on the attorney named below by mailing to him true and correct copies thereof, certified by me as such. I further certify that said copies were placed in a sealed envelope addressed to said attorney at the address set forth below, which is his last known regular post office address, and deposited in the post office at Portland, Oregon, on the day below mentioned.

SERVED UPON:

Bruce R. McCain
11815 NE Thompson
Portland, OR 97220

DATED this 22 day of October, 1992.


Bradley J. Woodworth, OSB #85370
Attorney at Law
1500 S.W. First Avenue, Suite 920
Portland, Oregon 97201

OS

FILED

In the Circuit Court of the State of Oregon NOV - 4 1992

For the County of Multnomah

4th JUDICIAL DISTRICT

Catherine Stauffer

Plaintiff

No. 9111-07218

vs.

Scott Lively, Oregon Citizens Alliance Educational Foundation, Inc., Oregon Citizens Alliance PAC, Inc. Defendant

STATEMENT OF COSTS AND DISBURSEMENTS

Statement of Costs and Disbursements claimed in the above entitled cause by plaintiff, namely:

Filing Fee \$ 118.00
Service of Summons(es)
Service of Subpoena(s)
Trial Fee 200.00
Jury Fee 300.00
Reporter Fee
Attorney Fee
Other (specify) prevailing fee 75.00

Witness fees and mileage for:

ENTERED NOV - 5 1992 IN REGISTER BY SC \$ 683.00

STATE OF OREGON, County of Multnomah ss.

I, Bradley J. Woodworth plaintiff

being first duly sworn, say: That I am attorney for in the above entitled cause, and that said disbursements are correct and were reasonably and necessarily incurred in said cause as I verily believe.

1500 SW 1st Ave., Suite 920
ADDRESS
Portland, OR 97201 273-9146
CITY STATE ZIP PHONE

SIGNATURE
Bradley J. Woodworth 85370
TYPE OR PRINT NAME BAR NO.

Subscribed and sworn to before me on Oct. 28, 1992



Laura Ruben
Notary Public for Oregon. My commission expires

I, attorney for hereby certify that the foregoing copy of cost bill is a complete and exact copy of the original thereof.

Due service of the foregoing cost bill is hereby accepted on, 19

Attorney for

I hereby certify that I served the foregoing cost bill on Bruce McCain

attorney(s) for defendants on 10/16, 1992, by mailing to said attorney(s) a true copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last known address, to-wit: 11185 NE Thompson Portland, OR 97220 and deposited in the post office at Portland, Oregon, on said day.

Dated 10/16, 1992

Attorney for plaintiff