

IN THE COURT OF APPEALS OF MARYLAND

NO. 135

SEPTEMBER TERM, 1994

MONTGOMERY WARD et al.

v.

FRANCES WILSON

Murphy, C. J.
Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker

JJ.

DISSENTING OPINION BY BELL, J.

FILED: September 15, 1995

I dissent. I agree with the Court of Special Appeals when it concluded that the Circuit Court for Prince George's County "correctly instructed the jury that a finding of implied malice could support an award of punitive damages in this case." Montgomery Ward v. Wilson, 101 Md. App. 535, 548-49, 647 A.2d 1218, 1225 (1994). See also my dissenting opinions in Owens-Illinois v. Zenobia, 325 Md. 420, 478, 601 A.2d 633, 661 (1992) and Komornik v. Sparks, 331 Md. 720, 740, 629 A.2d 721, 731 (1993).

Nor do I agree with the majority's conclusion that "[t]he evidence at trial did not suggest that Bresnahan acted maliciously." ___ Md. ___, ___, ___ A.2d ___, ___ (1995) [Majority op. at 41]. The majority opines that the plaintiff's testimony denying making credit card purchases at Montgomery Ward, did not conflict with the testimony by two of her accusers that they informed Bresnahan that the plaintiff had made the unauthorized credit transactions. That testimony, the majority asserts, was uncontradicted. I do not agree.

Although indirect, the contradiction is implicit and sharp. The jury was not required to, and did not, believe the defense testimony. Indeed, given the sharpness of the contradiction and the fact that the plaintiff's version of the facts could not be reconciled with that of the defense the jury very likely determined that the defense evidence, concerning the source of Bresnahan's knowledge of the plaintiff's wrongdoing was fabricated. That certainly would establish the malice necessary to support the award

of punitive damages.