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TIERCO MARYLAND, INC. v. WILLIAMS:

***Injection of Racial Considerations Is Improper when
Statements Are Irrelevant to the Causes of
Action Pled or Relief Sought***

By: John C. Morton

The Court of Appeals of Maryland held that a trial court's denial of a motion for mistrial, where attorneys made improper and irrelevant race-based arguments for the purpose of inflaming the passions of jurors, was an abuse of discretion. *Tierco Maryland, Inc. v. Williams*, 381 Md. 378, 849 A.2d 504 (2004). Specifically, the court of appeals ruled that such statements are improper when not related to the theory of recovery. *Id.* at 381, 849 A.2d at 506.

On July 31, 1999, the Williams family went to Six Flags America ("Six Flags"), an amusement park in Prince George's County. After several hours of enjoying the amusement park, five family members ("Respondents"), including four-year old, Shaniqua, attempted to ride the Typhoon Sea Coaster. Once Respondents seated themselves in the ride, a ride attendant approached them and explained that Shaniqua was not tall enough to go on the ride. The ride attendant further informed them that the ride would not be restarted until she disembarked. They refused to get off the ride and insisted that Shaniqua be allowed to stay on the ride. Respondents claimed that they had seen white children smaller than Shaniqua on the ride. At some point, they agreed to disembark the ride.

There are varying accounts of what occurred next, but it is undisputed that an altercation broke-out, and Respondents were physically restrained and handcuffed (with the exception of Shaniqua), after which they were taken to the park's security headquarters.

Respondents sued Six Flags in the Circuit Court for Prince George's County for assault, battery, false imprisonment, and negligent supervision. The jury collectively awarded Respondents \$1,000,000 in compensatory damages and \$1,500,000 in punitive

damages. However, the trial judge vacated the punitive damages award. Judgment was ultimately entered against Tierco Maryland, Inc. ("Tierco"), the company which operates the amusement park, and was responsible for the Six Flags employees' actions. Tierco appealed to the Court of Special Appeals of Maryland, which reinstated the original jury verdict, including the punitive damages award.

The Court of Appeals of Maryland granted *certiorari* to consider several questions, including whether the trial court erred in denying Tierco's motion for judgment notwithstanding the verdict ("JNOV"), motion for new trial, or in the alternative, motion for remittitur. Tierco argued that it was prejudiced by Respondents' counsel's repeated acts of undertaking race-based arguments to sway and impassion the minds of jurors. Tierco asserted that the large damages award, in light of Respondent's *de minimus* injuries, was evidence of its position. *Id.* at 385-86, 849 A.2d at 509.

In analyzing this matter, the court of appeals began by acknowledging that, at trial, Respondents sought "to cast as an act of racial discrimination at least the conduct of Six Flags and its employees in not extending to an African-American family the same benefits allegedly extended to white patrons." *Id.* at 401, 849 A.2d at 518. The court found the maltreatment of individuals on the basis of race inexcusable and, "if properly pled, actionable." *Id.* However, the court explained, such claims cannot be the focus of a trial where [those claims are] not relevant to proof of any element of the theories of recovery." *Id.* The court noted that Respondents did not assert an allegation of racial discrimination, or even mention race, anywhere in their complaint or in any pre-trial motion. *Id.* at 403, 849 A.2d at 519. Yet, the court stated, "race was injected as an issue from the beginning of the trial." *Id.* at 404, 849 A.2d at 520. In reviewing the record, the court of appeals found approximately sixty-three references to African-Americans and racism against African-Americans. *Id.* Upon review of the record, the court stated, "[s]ome Respondents, Respondents' counsel, and several of Respondents' non-party witnesses apparently intended to convey to the jury an explicit racial animus element attributed to at least certain of Petitioner's alleged employees." *Id.* at 406, 849 A.2d at 521.

The court concluded that racial inferences are improper when used to inflame the jury; "[s]uch statements, 'if irrelevant and

unjustified and calculated or tending to arouse racial, national, or religious prejudice or feeling, [are] universally condemned.” *Id.* at 409, 849 A.2d at 523 (quoting C.R. McCorkle, STATEMENT BY COUNSEL RELATING TO RACE, NATIONALITY, RELIGION IN CIVIL ACTION AS PREJUDICIAL, 99 A.L.R.2d 1249, 1254 (1965)). In so concluding, the court of appeals determined that, in order to be properly introduced at trial, racial inferences must be relevant to the cause(s) of action pled or the relief sought. *Id.* at 410, 849 A.2d at 523. With respect to the instant matter, the court opined, “[t]he ultimate question is whether the prejudice was so great that it denied Tierco a fair trial.” *Id.* at 413, 849 A.2d at 526. The court answered that question in the affirmative. *Id.*

Upon these findings, the court of appeals found the million-dollar verdict of the trial court excessive, as there was no evidence of wrongful confinement or severe permanent physical or mental injuries. *Id.* at 408, 849 A.2d at 522. The damages, combined with the number of references to race, led the court of appeals to conclude that there was a significant probability that the jury’s verdict was improperly influenced by racial considerations. *Id.* at 409, 849 A.2d at 523. Notably, the court reached this decision even though Tierco failed to object to Respondents’ race-based arguments during trial, and therefore, arguably failed to preserve the record in this regard. *Id.* at 416-17, 849 A.2d at 527. However, the court still found error in the instant matter due to the extreme and rare circumstances of this case. *Id.*

Tierco Maryland, Inc. v. Williams sets a very stringent requirement upon the litigation of cases in the State of Maryland. Unless involved in an element of the claim, race should not be mentioned, except for the limited purpose of description, where necessary. Should a party otherwise inject race into argument, courts will most likely strike such comments for fear of being found to have abused their discretion. If a judge does not address such argument/testimony, the unoffending party may have very strong grounds for JNOV.