

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

James Blocker,

Plaintiff,

vs.

Basem Al Khaebbeh,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2022-CP-10-04111

ORDER

RECEIVED

Dec 13 2023

SC Court of Appeals

Hearing Date: August 14, 2023
Special Referee: The Honorable Bentley Price
Plaintiff's Attorney: J. DeVeaux Stockton, Esq. and Barry Krell, Esq.
Defendants Attorney: Lawrence Hershon, Esq.

THIS MATTER was heard before me on August 14, 2023, pursuant to SCRCP 54. The action was commenced by the filing of a Summons and Complaint on September 2, 2022. Personal service was successfully made on Defendant by Process Server on September 10, 2022, as evidenced by the Affidavit of Service on file with the Court. Having failed to answer or otherwise plead to the Complaint, and after Plaintiff entered an Affidavit of Default, Defendant was entered into default by the Honorable Julie J. Armstrong, on November 16, 2023. Defendant represented by Counsel filed a Motion to Set Aside Entry of Default on January 11, 2023 which was denied by the Court on August 14, 2023. As such, the matter was heard in a Damages Hearing pursuant to SCRCP 54(c).

The Plaintiff is present and represented by J. DeVeaux Stockton, Esquire and Barry Krell, Esquire of the law firm Uricchio, Howe, Krell, Jacobson, Toporek & Keith, P.A. The Defendant is present and represented by Lawrence Hershon, Esquire. Testimony was taken, evidence has been received, and having considered the entire record in this case, I make the following Findings

of Fact and Conclusions of Law as required by Rule 52 of the *South Carolina Rules of Civil Procedure*. Any Finding of Fact which is more appropriately denominated as a Conclusion of Law shall be treated as such, and vice-versa.

FINDINGS OF FACT

1. I FIND that the parties hereto and the subject matter hereof are within the jurisdiction of this Court.

2. I FIND that the Plaintiff was a resident of Colleton County at the time this cause of action arose.

3. I FIND that the Defendant was a resident of Charleston County, South Carolina at the time this cause of action arose.

4. I FIND that Plaintiff is a licensed auctioneer with fifty eight years of experience as an auctioneer and has auctioned and sold millions of dollars of property.

5. I FIND that Plaintiff has served in a leadership role in the auctioneering profession and has served on the governor appointed State Commission and helped draft statutes that govern the profession.

6. I FIND that Plaintiff is an active member of his community and serves as a deacon of his church.

7. I FIND on or about June 25, 2022, Plaintiff and Defendant entered into a real estate contract of sale (hereinafter "Contract") for the sale of property located at 10234 Hwy 78 Ladson (hereinafter property), in Berkeley County, South Carolina for Eight Hundred Eighty Thousand (\$880,000.00) Dollars.

8. I FIND that on the aforementioned date, Defendant executed the Contract, and paid a down payment of Eighty-Eight Thousand (\$88,000.00) Dollars with the balance of Seven

Hundred Ninety Two Thousand (\$792,000.00) Dollars to be paid in cash at closing which was set for August 26, 2022.

9. I FIND that Defendant has refused to close the transaction, has refused to pay the balance of the sales price for the property.

10. I FIND that after the execution of the Contract, Defendant confronted Plaintiff and alleged that Plaintiff had conspired to plant “fake bidders” at the auction of the real property in violation of South Carolina law.

11. I FIND that after the execution of the Contract, Defendant confronted Plaintiff and alleged that Plaintiff had conspired and engaged in fraudulent and misleading auction practices in violation of South Carolina law.

12. I FIND that after the execution of the Contract, Defendant has repeatedly demanded that Plaintiff sell the property for a lower price than the price agreed upon in the Contract.

13. I FIND that after the execution of the Contract, Defendant contacted at least one third party and alleged that Plaintiff had conspired to plant “fake bidders” at the auction of the real property in violation of South Carolina law.

14. I FIND that after the execution of the Contract, Defendant contacted at least one third party and alleged that Plaintiff had conspired and engaged in fraudulent and misleading auction practices in violation of South Carolina law.

15. I FIND that Plaintiff has never been accused of engaging in fraudulent and misleading auction practices in his fifty eight year career.

16. I FIND that Plaintiff has never been accused of engaging in fraud or any other crime of moral turpitude in his entire life.

17. I FIND that Plaintiff was contractually entitled to a ten percent (10%) commission on the sale of the property, in the amount of Eighty-Eight Thousand (\$88,000.00) Dollars.

18. I FIND that Defendant was the final and highest bidder on the property and has unjustly attempted to use his defamatory statements to refuse to pay the balance of the monies owed from his successful final and highest bid on the property, denying the Plaintiff his commission fee of Eighty-Eight Thousand (\$88,000.00) Dollars.

19. I FIND that Defendant made false and defamatory statements to a third party accusing the Plaintiff of the commission of a crime of moral turpitude.

20. I FIND that Defendant knew the allegations were false and made the false allegations with malicious intent.

21. I FIND that Defendant's defamatory and slanderous statements have caused injury to Plaintiff's reputation and character both personally and professionally.

22. I FIND that Defendant's defamatory and slanderous statements have caused Plaintiff embarrassment, humiliation, and mental suffering.

23. I FIND that Defendant's slanderous statements are defamation per se and subject Defendant to punitive damages.

24. I FIND that as a result of Defendant's defamatory actions, Plaintiff has been injured and damaged.

25. I FIND that as a result of Defendant's defamatory actions, Plaintiff has lost at least two auction sales and believes his business was adversely affected by Defendant's accusations.

26. I FIND that Plaintiff testified that he has spent his entire career building an exemplary professional reputation beyond reproach and Defendant's unfounded accusations have permanently damaged that unblemished professional reputation.

27. I FIND that Plaintiff testified that he has spent his entire life building an exemplary personal reputation beyond reproach and Defendant's unfounded accusations have permanently damaged that unblemished personal reputation.

29. I FIND that Plaintiff has proven by a preponderance of evidence that he is entitled to damages for his injuries.

30. I FIND that Plaintiff is entitled to punitive damages.

CONCLUSIONS OF LAW

31. "[B]y suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 319 (Ct. App. 2004) (quoting *Roche v. Young Bros., Inc.*, 332 S.C. 75, 81 (1998)). Therefore, inasmuch as the Defendant in this action is in default, the factual allegations of the Complaint relating to their liability are taken as true. Additionally, it appears to this Court that by a preponderance of the evidence, the Defendant's acts and omissions caused the injuries and damages to Plaintiff which resulted in Plaintiff suffering injuries.

32. Defamation may be either actionable per se or not actionable per se. *Id.* at 442, 730 S.E.2d at 309. "Slander is actionable per se when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." *Goodwin v. Kennedy*, 347 S.C. 30, 36, 552 S.E.2d 319, 322-23

(Ct. App. 2001). When a defamatory statement is actionable per se, the plaintiff need not prove general damages—as these damages are presumed—and the defendant is presumed to have acted with common law malice. *See Fountain*, 398 S.C. at 442, 730 S.E.2d at 309. "Whether the statement is actionable per se is a matter of law for the court to resolve." *Id.*

33. Statements alleging the commission of a crime, such as theft, are actionable per se. *See McBride*, 389 S.C. at 561, 698 S.E.2d at 852 (determining a statement that accused a teacher of stealing property was actionable per se because it accused the teacher of committing a crime involving moral turpitude); *see also Turner v. Montgomery Ward & Co.*, 165 S.C. 253, 260-61, 163 S.E. 796, 798 (1932) (finding any words that clearly assume or imply that one committed a crime or that raise strong suspicion in the minds of the hearers that one committed a crime are actionable per se).

34. General damages include injuries such as: injury to one's reputation, mental suffering, hurt feelings, and any other similar injury that is incapable of being given a definitive monetary valuation. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 510 n.4, 506 S.E.2d 497, 502 n.4 (1998). Conversely, "special damages are tangible losses or injury to the plaintiff's property, business, occupation[,] or profession, capable of being assessed monetarily, which result from injury to the plaintiff's reputation." *Id.*

35. The evidence reflects that Defendant's slanderous statements are defamation per se and subject Defendant to punitive damages.

36. Purposes of punitive damages include punish wrongdoers and to deter wrongdoers and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future.

See McGee v. Bruce Hosp. Syst., 244 S.C. 466, 545 S.E.2d 286 (2001); *Clark v. Cantrell*, 339 S.C. 369, 528 S.E.2d 529 (2000).

37. “Punitive damages serve at least three important purposes: (1) punishment of the defendant’s reckless, willful, wanton, or malicious conduct; (2) deterrence of similar future conduct by the defendant or others; and (3) compensation for the reckless or willful invasion of the plaintiff’s private rights. The paramount purpose for awarding punitive damages is not to compensate the plaintiff but to punish and set an example for others.” *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 313 (Ct. App. 2004). “Punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence the defendant’s misconduct was willful, wanton, or in reckless disregard of the plaintiff’s rights.” *Id.* at 313.

38. The Supreme Court has remarked that “few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” *State Farm v. Campbell*, 538 U.S. 408, 410, 123 S. Ct. 1513, 1516 (2003).

39. Further, a preponderance of the evidence AND clear and convincing evidence, convinces this Court that the injuries and damages sustained by Plaintiff are a direct and proximate result of the actions of Defendant and that the amounts reasonably required to fairly and justly compensate Plaintiff for damages for his claim of Defamation Per Se are as follows:

Damages for Defamation Per Se:	<u>\$188,000.00</u>
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TOTAL DAMAGES:	<u>\$188,000.00</u>
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BASED UPON THE FOREGOING,

IT IS ORDERED, ADJUDGED and DECREED that the Plaintiff be, and is hereby awarded judgment against the Defendant in the total amount of **\$188,000.00** together with annual interest at the statutory rate. **IT IS FURTHER ORDERED, ADJUDGED and DECREED** that

the Clerk of this Court shall enter up Judgment in the foregoing amount in the Judgment Rolls of Charleston County, South Carolina.

AND IT IS SO ORDERED.

The Honorable Bentley Price
Ninth Circuit Court of Common Pleas

Charleston, South Carolina

_____, 2023



Charleston Common Pleas

Case Caption: James G Blocker VS Basem Al Khtaebeh

Case Number: 2022CP1004111

Type: Order/Damages

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766