

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2022-CP-10-04068

Tammy Moore,

Plaintiff,

vs.

Basem Al Khaebbeh,

Defendant.

ORDER

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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 1, 2022. Personal service was successfully made on Defendant by Process Server on September 8, 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 Charleston 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 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.
5. 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.
6. I FIND that Defendant has refused to close the transaction, has refused to pay the balance of the sales price for the property.
7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. I FIND that after the execution of the Contract, Defendant has contacted Plaintiff in person, by telephone, and by text and has harassed, intimidated, and made unwelcome remarks to the Plaintiff including offers for Plaintiff and Defendant to go on a vacation together.

13. I FIND that after the execution of the Contract, Defendant has made unwelcome physical advances and remarks to the Plaintiff including on one occasion where Defendant blocked an exit door and locked the exit door.

14. I FIND that Defendant was aware that Plaintiff is recently widowed and the sale of the property is part of the closing of her deceased husband’s estate.

15. I FIND that a valid agreement exists between the Plaintiff and Defendant for the sale of the Property.

16. I FIND that the agreement has been carried into execution on Plaintiff's side with approbation on the side of the Defendant.

17. I FIND that Plaintiff remains willing and able to perform her part of the contract and close on the transaction as stated in the Contract.

18. I FIND that as a direct result of the aforementioned act and omissions of Defendant, Plaintiff has been injured and damaged and continues to be damaged; and Plaintiff respectfully requests that the Court order specific performance of the Contract.

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.

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 the harassment and intimidation of the Plaintiff by the Defendant was extreme and outrageous and exceeds all bounds of decency, must be regarded as atrocious, and utterly intolerable in a civilized community.

26. I FIND that the Defendant intentionally and recklessly inflicted severe emotional distress on Plaintiff and was certain that such distress would result from his conduct.

27. I FIND that as a result of Defendant's intentional actions, both verbally and physical, Plaintiff has suffered emotional distress that no reasonable person should be expected to endure.

28. I FIND that Defendant have caused Plaintiff to suffer trauma, anxiety, mental anguish, mental distress, apprehension and loss of enjoyment of life.

29. I FIND that Plaintiff has proven by a preponderance of evidence that she is entitled to damages for her personal 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. In order to compel specific performance, a court must find: (1) clear evidence of an agreement; (2) that the agreement has been partly carried into execution on one side with the approbation of the other; and (3) that the party who comes to compel performance has performed on his part, or has been and remains able and willing to perform his part of the contract. *Thomson*

v. *Scott*, 6 S.C. Eq. (1 McCord Eq.) 32 (1825); *Scurry v. Edwards, supra.*; *Gibson v. Hrysikos*, 293 S.C. 8, 358 S.E.2d 173, 1987 S.C. App. LEXIS 344.

33. The evidence reflects there is: (1) clear evidence of an agreement; (2) that the agreement has been partly carried into execution by the Plaintiff with the approbation of the Defendant; and (3) that the Plaintiff, who comes to compel performance, has performed on her part and has been and remains able and willing to perform her part of the contract.

34. Generally, the measure of damages for breach of an executory contract to purchase land is the difference between the contract price and the market value of the property at the time of the breach. *Bannon v. Knauss*, 320 S.E. (2d) 470 (S.C. App. 1984); *Southeastern Land Fund, Inc. v. Real Estate World, Inc.*, 237 Ga. 227, 227 S.E. (2d) 340 (1976); 77 Am. Jur. (2d) *Vendor and Purchaser* § 489 at 614 (1975). *Benya v. Gamble*, 282 S.C. 624, 321 S.E.2d 57, 1984 S.C. App. LEXIS 543.

35. In an action arising from a buyer's breach of a contract to purchase real estate, general damages may be measured by the difference between the contract price and the fair market value of the property at the time of the breach. *Southeastern Land Fund, Inc. v. Real Estate World, Inc., supra.*; *Barr v. MacGlothlin*, 176 Va. 474, 11 S.E. (2d) 617 (1940) *Bannon v. Knauss*, 282 S.C. 589, 320 S.E.2d 470, 1984 S.C. App. LEXIS 536.

36. 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.*

37. 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).

38. 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.*

39. In order to recover for the intentional infliction of emotional distress, a plaintiff must establish that the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct, the conduct was so 'extreme and outrageous' as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community, the actions of the

defendant caused the plaintiff's emotional distress; and the emotional distress suffered by the plaintiff was 'severe' so that 'no reasonable man could be expected to endure it.' *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776, 1981 S.C. LEXIS 301(Citing RESTATEMENT (SECOND) OF TORTS SECTION 46).

40. Finding that the essential elements of Plaintiff's claim have been established, the Court finds that specific performance by the Defendant according to the terms of the contract to purchase the real estate is justified to make the Plaintiff whole.

41. Further, if Defendant is unable to specifically perform on the purchase of the property according to the terms of the contract within sixty (60) days of this Order, then Plaintiff shall be entitled to a measure of damages in the amount of the difference between the contract price and the market value of the property at the time of the breach. The market value of the property shall be determined by an independent appraiser selected by the Plaintiff, whose fee shall be paid by the Plaintiff. After the measure of damages in the amount of the difference between the contract price and the market value of the property at the time of the breach is determined by the appraiser, the Defendant shall have sixty (60) days to pay to Plaintiff the amount, or a judgment in that amount shall be entered against the Defendant in favor of the Plaintiff.

42. Further, the Court now addresses the amount of damages which the preponderance of the evidence shows will fairly and adequately compensate Plaintiff for the injuries suffered for defamation per se and intentional infliction of emotional distress.

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

44. The evidence reflects that Defendant's behavior towards Plaintiff was reckless, willful, wanton, and malicious conduct.

45. 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).

46. "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.

47. 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).

48. The doctrine of election of remedies involves a choice between different forms of redress afforded by law for the same injury, or different forms of proceeding on the same cause of action. Stated another way, election of remedies is the act of choosing between different remedies allowed by law on the same state of facts. *Boardman v. Lovett Enterprises, Inc.*, 283 S.C. 425, 323 S.E.2d 784 (Ct. App. 1984), rev'd on other grounds, 287 S.C. 303, 338

S.E.2d 323 (1985). Its purpose is to prevent double redress for a single wrong. *Save Charleston Foundation v. Murray*, 286 S.C. 170, 333 S.E.2d 60 (Ct. App. 1985). Where a party has asserted only one primary wrong, he is entitled to only one recovery. *Boardman*, 283 S.C. 425, 323 S.E.2d 784 (Ct. App. 1984). However, the principle has no application where two separate causes of action, each based on different facts, exists. *Harmon v. Jenkins*, 282 S.C. 189, 318 S.E.2d 371 (Ct. App. 1984). *Jones v. Winn-Dixie Greenville*, 318 S.C. 171, 456 S.E.2d 429, 1995 S.C. App. LEXIS 41.

49. Plaintiff's claim for Defamation Per Se is not based on the same elements as her claim for Intentional Infliction of Emotional Distress. These are two distinct and separate causes of action, each based on different facts and circumstances. Therefore, Plaintiff does not have to elect a remedy.

50. Based upon the foregoing, the Court orders that the Defendant specifically perform on the purchase of the property according to the terms of the contract within sixty (60) days of the date of this Order, if Defendant is unable to specifically perform on the purchase of the property according to the terms of the contract within sixty (60) days of this order, then Plaintiff shall be entitled to the measure of damages in the amount of the difference between the contract price and the market value of the property at the time of the breach. The market value of the property shall be determined by an independent appraiser, whose fee shall be paid by the Plaintiff. 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 her claim of Specific Performance, Defamation Per Se, and Intentional Infliction of Emotional Distress are as follows:

1) Specific Performance by Defendant, or the amount of the difference between the contract price and the market value of the property at the time of the breach, as stated above;

2) Damages for Defamation Per Se \$100,000.00

3) Damages for Intentional Infliction of Emotional Distress \$100,000.00

BASED UPON THE FOREGOING,

IT IS ORDERED, ADJUDGED and DECREED that the Plaintiff be, and is hereby awarded judgment against the Defendant for Defamation Per Se and Intentional Infliction of Emotional Distress in the total amount of **\$200,000.00** together with annual interest at the statutory rate. It is further ordered, adjudged and decreed that the Defendant specifically perform on the purchase of the property according to the terms of the contract within sixty (60) days of the date of this Order, if Defendant is unable to specifically perform on the purchase of the property according to the terms of the contract within sixty (60) days of this order, then Plaintiff shall be entitled to the measure of damages in the amount of the difference between the contract price and the market value of the property at the time of the breach. 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: Tammy Moore VS Basem Al Khtaeb

Case Number: 2022CP1004068

Type: Order/Damages

IT IS SO ORDERED!

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

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