

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2023-CP-21-02320

ASZANE CRUZ,

Plaintiff,

v.

ARETE WYNDHAM PROPERTY
OWNER, LLC d/b/a WYNDHAM PLACE
APARTMENTS; CASA BAHARI, LLC;
DARLINGTON 48 UNIT, LLC; and
JOHN DOE, Individually and as a
Manager/General Manager of ARETE
WYNDHAM PROPERTY OWNER, LLC
d/b/a WYNDHAM PLACE
APARTMENTS,

Defendants.

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SC Court of Appeals

ORDER ON DEFAULT JUDGMENT

Judge: The Honorable Judge Michael G. Nettles
Hearing Date: Tuesday, March 13, 2024
Attorney for Plaintiff: India D. Shaw, Esquire
Attorney for Defendant: N/A

This matter came before the Court on March 13, 2024. At issue was Plaintiff’s request for a damages hearing with respect to a April 9, 2022, premises incident. Plaintiff, Aszane Cruz, and her attorney, India D. Shaw, were in attendance. Having noted that Defendant, Casa Bahari, was previously placed in default, and after hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, a default judgment is hereby entered in favor of Plaintiff.

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff brought this action against Defendant on September 9, 2023, arising from a premises incident that occurred in Florence County, South Carolina, on April 9, 2022. At the time of the incident, Plaintiff was sitting residing in her residences a rental property at 816 West

Marion St, Apt A, Florence, SC 29501 in Sumter, South Carolina. At the same time, Defendant failed to maintain a safe, causing Plaintiff to suffer personal injuries when a ceiling fan fell on top of her.

Plaintiff's Summons and Complaint and first set of discovery requests were duly served on Defendant on December 4, 2023, via private process service, at Defendant's last known address, 6650 Rivers Avenue Suite 100 N. Charleston, South Carolina. Thus, the deadline for Defendant to appear and file a responsive pleading was January 3, 2023.

Defendant failed to file a responsive pleading or otherwise appear to defend the present lawsuit within thirty (30) days after being served. Upon Plaintiff's motion, an Order for Entry of Default was entered by the Clerk of Court for Florence County on January 25, 2024. The issue is now before the Court on Plaintiff's request for a determination of damages pursuant to Rule 55(b)(2), SCRPC, and for entry of judgment by default. The Court finds that Plaintiff served notice of this hearing upon Defendant at Defendant's last known address and the Affidavit of Mailing was filed and made part of the record in this action.

LAW/ANALYSIS

A. Judgment by Default

Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. Rule 55(a), SCRPC. In cases involving unliquidated damages, a court shall hold a hearing to determine the appropriate amount, and, after determining the same, enter judgment by default upon the record. Rule 55(b)(2), SCRPC.

In the present action, Defendant failed to file a responsive pleading within the statutorily proscribed time. Because Defendant failed to file a responsive pleading, this Court must enter judgment by default. All allegations in Plaintiff's Complaint are deemed admitted, and judgment

shall be entered against Defendant upon an appropriate inquiry as to damages.

B. Damages

For actions in tort, a plaintiff is entitled to recover compensation for all actual damages. Actual damages may include medical treatment costs, loss of income or earning potential, loss of property, pain and suffering, emotional distress, loss of enjoyment of life, and loss of consortium. A plaintiff is also entitled to certain incidental damages, if reasonably associated with or related to actual damages. In situations where the defendant's actions show willful, wanton, intentional, or malicious intent, a plaintiff may also seek to recover punitive damages.

In the present action, Plaintiff suffered personal injuries as a result of Defendants negligence and failure in keeping the premises safe ultimately resulted in Plaintiff's medical damages, pain and suffering, loss of enjoyment of life, and other mental anguish.

Accordingly, based on this record, and consistent with the statutory and common law of South Carolina, I find Plaintiff is entitled to recover for his injuries and hereby enter judgment against Defendant in the amounts as follows:

\$31,686.00 in compensatory damages in favor of Plaintiff. Based on the evidence presented, I further find Defendant's actions **do** warrant the imposition of punitive damages and enter judgment for the same in the amount of \$5,000.00 in favor of Plaintiff.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

1. That Defendant failed to submit a responsive pleading or otherwise defend this action within thirty (30) days of service upon Defendant of the Summons and Complaint, and is in default.
2. That Defendant was properly served with notice of this damages hearing.

3. That Plaintiff was injured and otherwise damaged as a result of the negligent actions of Defendant.

IT IS THEREFORE ORDERED that a default judgment be entered against Defendant and that Defendant be held liable for Plaintiff's damages, and that all allegations against Defendant as set forth in Plaintiff's Complaint be and are admitted and deemed true and accurate.

IT IS FURTHER ORDERED that Defendant pay Plaintiff the sum of \$40,686.00 in actual and punitive damages for Plaintiff's personal injuries.

IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT DEFENDANT IS LIABLE FOR PLAINTIFF'S DAMAGES AND SHALL PAY TO PLAINTIFF THE TOTAL SUM OF \$40,686.00.

IT IS SO ORDERED!

The Honorable Michael G. Nettles
Circuit Court Judge

Florence, South Carolina
Date: _____



Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al
Case Number: 2023CP2102320
Type: Order/Damages

So Ordered

s/ The Honorable Michael G. Nettles #2140