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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Appellate Case No. 2024-0001724
Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

Respondent/Appellant,

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 MANAGER/GENERAL MANAGER OF ARETE
WYNDHAM PROPERTY OWNER, LLC D/B/A
WYNDHAM PLACE APARTMENTS, DEFENDANTS

OF WHICH CASA BAHARI, LLC IS THE APPELLANT/RESPONDENT.

**INITIAL BRIEF OF APPELLANT/RESPONDENT CASA BAHARI, LLC AS
RESPONDENT**

/s/ Mary Harriet Moore

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in awarding compensatory damages that inadequately compensate the Appellant for her injuries and losses?

II. Whether the trial court erred in awarding insufficient punitive damages despite clear evidence of gross negligence and disregard for tenant safety?

STATEMENT OF THE CASE AND FACTS

On September 29, 2023, Respondent/Appellant Aszane Cruz (hereinafter “Respondent”) filed this action against Defendants Arete Wyndham Property Owner, LLC; Casa Bahari, LLC; Darlington 48 Unit, LLC; and John Doe, individually and as manager of Arete Wyndham Property Owner, LLC. (Compl. ¶¶ 1 – 34). In her complaint, Respondent alleged causes of action for premises liability/negligence and negligent hiring, training, and supervision against all defendants, including Appellant/Respondent Casa Bahari, LLC (hereinafter “Appellant”), related to a personal injury that was allegedly sustained by Respondent on or around April 9, 2022, at 816 West Marion Street, Apt. A, Florence, South Carolina, 29501 (hereinafter “Premises). (Compl. ¶¶ 20 – 34). Respondent served the Summons and Complaint on Appellant through its registered agent, Registered Agents, Inc., via Process Server on December 4, 2023. (4/5/24 Pltf.’s Mot. Recons., p. 2). On January 11, 2024, Appellant, through its counsel in Atlanta, Georgia, sent a letter to Respondent’s counsel via FedEx advising Respondent that Appellant did not own the property on the date of Respondent’s alleged incident and requesting Appellant be dismissed from the action. (4/5/24 Pltf.’s Mot. Recons., p. 2). In the letter, counsel for Appellant included a true and correct copy of the recorded Warranty Deed showing that Appellant did not acquire the Premises until June 13, 2023, from Defendant Darlington 48 Unit, LLC. Importantly, at the time Respondent received the letter, she had not taken any action to put Appellant in default. (4/5/24 Pltf.’s Mot. Recons., p. 2).

On January 12, 2024, Respondent filed an Affidavit of Service certifying that the Summons and Complaint were served on Appellant through its registered agent, via Process Server, on December 4, 2023. (4/5/24 Pltf.’s Mot. Recons., p. 2). On January 16, 2024, counsel for Appellant sent the same letter via email to counsel for Respondent again requesting for Appellant to be

dismissed from the action and including a copy of the recorded deed. (4/5/24 Pltf.'s Mot. Recons., p. 2). Again, importantly, at the time of this second letter, Respondent had not taken any action to put Appellant in default.

Despite having this information, Respondent filed a Motion for Entry of Default as to Appellant on January 25, 2024, and the Clerk of Court filed an Entry of Default as to Appellant on that same day – January 25, 2024. (4/5/24 Pltf.'s Mot. Recons., p. 2). On January 31, 2024, Respondent requested a damages hearing as to Appellant only. (4/5/24 Pltf.'s Mot. Recons., p. 2). On March 13, 2024, a damages hearing was held before the Honorable Judge Michael Nettles without notice having been given to Appellant. (4/5/24 Pltf.'s Mot. Recons., p. 3). Appellant would receive a letter on March 14, 2024, notifying it of the March 13, 2024, default judgment hearing. (4/5/24 Pltf.'s Mot. Recons., Ex. D). At the damages hearing, Respondent requested damages for medical expenses, lost wages, and pain and suffering and the trial court awarded the Respondent \$35,810.00 in compensatory damages and \$5,000.00 in punitive damages. (3/13/24 Trans. pp. 14 – 15).

Upon receipt of the letter regarding the damages hearing on March 14, 2024, Appellant immediately sought counsel in South Carolina to file a motion to have default set aside, such motion having been filed shortly thereafter on March 25, 2024. Thereafter, by Order dated April 2, 2024, the trial court granted default judgment arising out of the March 13, 2024, hearing against Appellant only. (4/2/24 Order). The Order awarded \$40,686.00 in damages - \$31,686.00 in compensatory damages and \$5,000.00 in punitive damages. (4/2/24 Order).¹ On April 5, 2024, Appellant filed its Motion to Reconsider/Set Aside the April 2, 2024, Default Judgment Order.

¹ The Order, which was written by Respondent's counsel and approved by the trial court, contains some mathematical errors. (4/2/24 Order). The total award was \$40,686.00 which suggests a breakdown of \$5,000.00 in punitive damages and \$35,686.00 in compensatory damages.

(4/5/24 Pltf.'s Mot. Recons.). The parties briefed their arguments and were heard on the Motion to Reconsider on August 21, 2024. (8/21/24 Trans.) On September 11, 2024, Judge Nettles issued an Order denying Appellant's Motion to Reconsider/Set Aside. (9/11/24 Order). This appeal followed.

ARGUMENTS

I. STANDARD OF REVIEW ON APPEAL.

“The trial judge has considerable discretion regarding the amount of damages, both actual or punitive. Because of this discretion, our review on appeal is limited to the correction of errors of law.” *Palmetto Construction Group, LLC v. Restoration Specialists, LLC*, 444 S.C. 328, 907 S.E.2d 129 (Ct. App. 2024) (quoting *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 310, 594 S.E.2d 867, 83 (Ct. App. 2004) (citations omitted)). The appellate court’s task in reviewing a damages award is “not to weight the evidence, but to determine if there is any evidence to support the damages award.” *Id.*

II. THE TRIAL COURT DID NOT ERR IN ITS AWARD OF COMPENSATORY DAMAGES.

First, Appellant incorporates the arguments in its Initial Brief as Appellant which was filed with this Court on January 17, 2025. To the extent the default judgment against Appellant is not reversed and vacated by this Court, Respondent Cruz has not shown any errors of law to warrant a new award of compensatory damages. “Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible.” *Austin v. Specialty Transp. Services, Inc.*, 358 S.C. 298, 311, 594 S.E.2d 867, 874 (Ct. App. 2004). These damages “will simply make good or replace the loss caused by the wrong or injury.” *Id.*

Respondent Cruz contends that the trial court’s award of compensatory damages was insufficient because the award (1) fails to account for future care needs and (2) the non-economic damages for pain and suffering and loss of enjoyment of life were grossly undervalued. (Resp. Initial Brief, p. 7). At the damages hearing and in its order for default judgment, the trial court awarded Respondent Cruz \$35,810.00 in compensatory damages. (3/13/24 Trans. p. 15).

Specifically, Respondent Cruz testified to the trial court that her medical expenses were \$16,686.00 as follows:

Q: Okay. Are all those treatments that you received as a result of the incident?

A: Yes, ma'am.

Q: Okay. Can you tell me how much they are?

A: \$16,686.

(3/13/24 Trans. pp. 10-11). Additionally, Respondent Cruz testified as follows to her lost wages claim:

Q: Okay. How many hours a week did you work?

A: Forty. I was full-time.

Q: All right. Can you tell me about what you were making? Were you salary? Were you hourly?

A: I was hourly. So there was price difference. Monday through Friday was \$17 and on the weekends was 19.

Q: Did you miss any time from work as a result of this incident?

A: About three weeks.

...

The Court: How much did you make a week?

A: I will say about 500 a week.

(3/13/24 Trans. pp. 11 -12). Respondent Cruz also testified that she lost her job due to the injuries and did not find another job for two months. (3/13/24 Trans. p. 13). Taking Respondent's testimony as true and calculating her lost wages at the rate of \$500 per week for the three weeks she was out of work and the two months it took for her to find a new job, the lost wages would be approximately \$5,500.00. At the end of the hearing, counsel for Respondent Cruz stated that the award should include her medical damages, the lost wages, and pain and suffering from April 9, 2022, until March 12, 2024 – approximately 566 days. (3/13/24 Trans. p. 14).

Respondent Cruz now argues that the trial court's first error was its failure to account for Respondent Cruz's future care needs. Notably missing, however, from Respondent Cruz's request for damages is any sort of calculation for future medical costs and treatment. Respondent Cruz did

not present any sort of life care plan nor any calculation of future care costs to the trial court for its consideration. Thus, the trial court did not have any evidence to award a future care component of Respondent Cruz's compensatory damages.

Secondly, Respondent Cruz argues that the trial court undervalued her pain and suffering. To determine compensation for Respondent Cruz' pain and suffering, Respondent Cruz's counsel suggested a calculation of \$1 per hour for the 566 days from the date of the incident until the date of the damages hearing. Such a calculation results in an award of roughly \$13,584.00 for pain and suffering. The trial court ultimately issued a verbal award at the hearing of \$35,810.00 for compensatory damages. Using Respondent Cruz's own evidence and testimony of her medical bills, lost wages, and pain and suffering and her suggested calculations, the compensatory damages award would consist of the following:

- Medical Expenses: \$16,686.00
- Lost Wages: \$500 per week for 11 weeks - \$5,500.00
- Pain and Suffering: \$1 per hour for 566 days - \$13,584.00

By Respondent Cruz's own evidence and calculations presented to the trial court, the total award of compensatory damages would be approximately \$35,770 for medical expenses, lost wages, and pain and suffering. The trial court awarded \$35,810.00 in compensatory damages which was more than presented by Respondent Cruz. However, there is a discrepancy between the ruling at the hearing on March 13, 2024, and the Order on Default Judgment. While at the hearing the trial court awarded \$35,810.00 in compensatory damages, the Order on Default Judgment, which was drafted by Respondent Cruz's own counsel and approved by the trial court, awards \$31,686.00 in actual damages plus \$5,000.00 in punitive damages for a total of \$40,686.00. (4/2/24 Order, pp. 3-4). Despite the mathematical errors in the Order on Default Judgment, the final award

of \$40,686.00 suggests an award of \$35,686.00 in compensatory damages and \$5,000.00 in punitive damages which is only slightly different from Respondent Cruz's suggested calculations. The Order on Default Judgment follows almost exactly the calculations presented and proposed by Respondent Cruz and her counsel for compensatory damages. It is unclear therefore how Respondent Cruz is claiming the award of compensatory damages is insufficient when the trial court followed the damages calculation that Respondent Cruz and her counsel presented to the trial court.

Regardless, this Court's review of a damages award is limited to the correction of errors of law. Clearly, if this Court does not reverse and vacate the default judgment as requested in the appeal filed by Appellant in this matter, the trial court did not make any errors of law which warrant a greater award of compensatory damages.

III. THE TRIAL COURT DID NOT ERR IN ITS AWARD OF PUNITIVE DAMAGES.

Again, Appellant incorporates the arguments in its Initial Brief as Appellant which was filed with this Court on January 17, 2025. To the extent the default judgment against Appellant is not reversed and vacated by this Court, Respondent Cruz has not shown any errors of law to warrant a new award of punitive damages. "Punitive damages, also known as exemplary damages, are imposed as punishment." *Austin v. Specialty Transp. Services, Inc.*, 358 S.C. 298, 312, 594 S.E.2d 867, 874 (Ct. App. 2004). "On the issue of punitive damages, the highest burden of proof known to the civil law is applicable." *Id.* at 313. Thus, "[p]unitive 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.*

Respondent Cruz contends "the testimony clearly demonstrated the Defendants' reckless disregard for tenant safety." However, the only testimony offered is that of Respondent Cruz.

Specifically, Respondent Cruz testifies that she told the “property owner” about issues with the ceiling fan and nobody did anything to fix it. Notably, Respondent Cruz does not identify which of the Defendants she allegedly made these reports, nor does she state which Defendant she is referring to as the “property owner” at the time of these allegedly reported incidents. Moreover, Respondent Cruz did not offer any expert testimony or evidence into the record demonstrating “reckless disregard for tenant safety” besides her own self-serving testimony.

Respondent Cruz must meet the high burden of clear and convincing evidence to be awarded punitive damages against Appellant. Given the lack of evidence and support that Appellant’s conduct rose to the level of willful, wanton, or reckless disregard of Respondent Cruz’s rights, the award of \$5,000.00 of punitive damages is excessive let alone inadequate. This Court’s review of a damages award is limited to the correction of errors of law. Clearly, if this Court does not reverse and vacate the default judgment as requested in the appeal filed by Appellant in this matter, the trial court did not make any errors of law which warrant a greater punitive damages award.

IV. THE TRIAL COURT DID NOT FAIL TO PROPERLY ACCOUNT FOR APPELLANT’S ONGOING AND FUTURE HARMS.

Appellant incorporates the arguments in its Initial Brief as Appellant which was filed with this Court on January 17, 2025. To the extent the default judgment against Appellant is not reversed and vacated by this Court, Respondent Cruz has not shown any errors of law to warrant an award of damages for ongoing and future harms. Respondent Cruz contends that the trial court did not sufficiently consider her future care needs. However, at the damages hearing, Respondent Cruz did not present any evidence of “ongoing and future harms.” Specifically, Respondent Cruz did not present any sort of life care plan nor any calculation of future care costs including medications, future treatment, etc. to the trial court for its consideration. Thus, the trial court did not have any

evidence to support an award of damages to award a future care component of Respondent Cruz's compensatory damages and, if this Court does not reverse and vacate the default judgment as requested in the appeal filed by Appellant in this matter, the trial court did not make any errors of law which warrant an award for "ongoing and future harms."

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court dismiss Respondent/Appellant Aszane Cruz's appeal.

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