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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
Robin R. Stilwell, Judge

Case No. 2011-CP-23-02204
Appellate Case No. 2011-204086

Deena L. Bettencourt and Scott Bettencourt, ... Appellants,
v.
Mary R. Wald, ... Respondent.

SUPPLEMENTAL RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO.: 2010-CP-23-2204
	)	
Deena L. and Scott Bettencourt,	)	
	)	
Plaintiffs,	)	
	)	<u>PARTIAL MOTION TO DISMISS</u>
vs.	)	<u>AND ANSWER</u>
	)	(Jury Trial Requested)
	)	
Mary R. Ward,	)	
	)	
Defendant.	)	
	)	

The Defendant, answering the Complaint of the Plaintiffs, would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation contained in the Plaintiffs' Complaint, which is not hereinafter specifically admitted, qualified, or otherwise modified below.

FOR A SECOND DEFENSE BY WAY OF PARTIAL MOTION TO DISMISS

2. The Defendant reincorporates such of the preceding allegations as are consistent herewith.

3. If the Plaintiffs are claiming property damage, depreciation, towing or repair of a vehicle, this Defendant is informed and believes that that claim should be dismissed.

4. As such, if the Plaintiffs are claiming the above, then the undersigned will move, when appropriate, for an order dismissing that claim.

FOR A THIRD DEFENSE

5. The Defendant reincorporates such of the preceding allegations as are consistent

herewith.

6. If the Plaintiffs allege certain damages, then the undersigned hereby pleads payment and accord and satisfaction with regard to those damages.

7. As such, if the Plaintiffs plead certain damages, then this Defendant would allege that those damages have been paid and that the parties have reached an accord and satisfaction with regard to those issues.

FOR A FOURTH DEFENSE

8. The Defendant reincorporates such of the preceding allegations as are consistent herewith.

9. Answering Paragraph One of the Plaintiffs' Complaint, the allegations contained therein are admitted upon information and belief.

10. Answering Paragraph Two of the Plaintiffs' Complaint, this Defendant is presently without sufficient knowledge or information to form a belief as to the allegations contained therein and therefore must deny the same and demand strict proof thereof.

11. Answering Paragraph Three of the Plaintiffs' Complaint, the allegations contained therein are admitted.

12. Answering Paragraph Four of the Plaintiffs' Complaint, the allegations contained therein are admitted. However, the Defendant is informed and believes that Ms. Waite-Bettencourt was actually driving a vehicle owned by Ryobi.

13. Answering Paragraph Five of the Plaintiffs' Complaint, the allegations contained therein are admitted.

14. Answering Paragraph Six of the Plaintiffs' Complaint, it is admitted that the

Defendant was approaching the intersection of Augusta Street and Augusta Place when she hit the rear of the vehicle that Ms. Waite-Bettencourt was driving. However, the remaining allegations contained in Paragraph Six are denied.

15. Answering Paragraph Seven of the Plaintiffs' Complaint, the allegations contained therein are denied.

16. Answering Paragraph Eight of the Plaintiffs' Complaint, the allegations contained therein are denied.

17. Answering Paragraph Nine of the Plaintiffs' Complaint, the allegations contained therein are denied.

18. Answering Paragraph Ten of the Plaintiffs' Complaint, it is admitted that the Defendant was negligent in failing to keep a proper lookout. However, the remaining allegations contained in Paragraph Ten are denied.

19. Answering Paragraph Eleven of the Plaintiffs' Complaint, the allegations contained therein are admitted.

20. Answering Paragraph Twelve of the Plaintiffs' Complaint, the allegations contained therein are denied.

21. Answering Paragraph Thirteen of the Plaintiffs' Complaint, the allegations contained therein are denied.

FOR A FIFTH DEFENSE

22. The Defendant reincorporates such of the preceding allegations as are consistent herewith.

23. The Plaintiffs' injuries, if any, were in no way caused by contact made between the

two parties' vehicles.

24. As such, there is no proximate cause between the damages complained of and the actions of this Defendant.

25. Therefore, the Plaintiffs' Complaint should be dismissed.

FOR A SIXTH DEFENSE

26. The Defendant reincorporates such of the preceding allegations as are consistent herewith.

21. If there were any injuries suffered by the Plaintiff, they were pre-existing or post-existing in nature and, therefore, are not proximately caused by this accident.

22. Therefore, the Plaintiffs' Complaint should be dismissed.

FOR A SEVENTH DEFENSE

23. The Defendant reincorporates such of the preceding allegations as are consistent herewith.

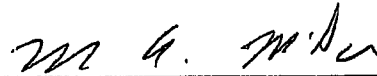
24. The Defendant is informed and believes that the Plaintiff has sought medical treatment which is inapplicable to the injuries for which she complains.

25. As such, the Plaintiffs have failed to mitigate their damages and any award against this Defendant should be reduced accordingly.

WHEREFORE, the Defendant, having moved to partially dismiss a portion of the Plaintiffs' Complaint, and answering the Complaint of the Plaintiffs, would respectfully pray as follows:

- (a) That a portion of the Plaintiffs' Complaint be dismissed;
- (b) That the Plaintiffs' Complaint be dismissed;

- (c) That if certain damages are alleged, then those damages should be dismissed based upon payment and accord and satisfaction;
- (d) For the costs and expenses associated with the defense of this action; and,
- (e) For such other and further relief as the Court deems just and proper.



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Greenville, South Carolina
March 30, 2010

1 this case is indeed about responsibility. And Mrs.
2 Wald -- God bless her -- uh, doesn't feel like she
3 is responsible for all the damage that is incurred
4 by Mrs. Bettencourt. It's interesting how our
5 system works.

6 You've heard this from Dr. Brabham, but you
7 know, when you dispute medical testimony and the
8 doctors and what they say, you can have Mrs.
9 Bettencourt examined all day long by whoever you
10 want. That wasn't done in this case. They didn't
11 do an individual medical examination of Mrs.
12 Bettencourt because they knew what the result would
13 be. You've got three doctors, three neurological
14 psychologists that says unequivocally that she has
15 brain injury.

16 We're not coming in here and saying she's an
17 invalid. And she's obviously not. She's not on a
18 ventilator. She's not able -- unable to remember
19 her childhood. This has had a significant impact on
20 her life. This would have a significant impact on
21 anybody's life.

22 You take a person as they come. It might be to
23 some people that this was not a major collision,
24 that spun cars through the intersection and turned
25 them on their head and put a metal rod through Mrs.

1 Bettencourt's head. She suffered those injuries as
2 a result of that accident. There is not a question
3 about it.

4 What are all these questions about a
5 chiropractor's note that said she had four prior
6 somethings. You don't get through college. You
7 don't get through Sears. You don't do the things
8 that Deena Bettencourt did if you have even slight
9 brain impairment. I think her history speaks for
10 herself. I think that that's a defense to her brain
11 injury. It's grasping at straws. It's looking for
12 a way to find a defense.

13 You're not going to find anybody's medical
14 records anywhere that are completely perfect.
15 Doctors are good people. Nurses are good people.
16 But they are human beings and they make entries that
17 don't make sense sometimes. That is entirely
18 possible and entirely practical.

19 But what did all the doctors say? Of course,
20 Dr. Herring didn't have to come here. Dr. Brabham
21 reviewed his report from Roger C. Peace Hospital.
22 She is still undergoing treatment for this injury.
23 It's an injury that one hoped would go away, but it
24 didn't. This lady is not something that's going to
25 sit back and say I just want to not contribute to my

1 house in hopes of getting some jury award. This
2 lady has run her life for 42 years and showed you
3 the productiveness in her professional life and in
4 her family life and in her community involvements
5 and her children's involvements to fake an injury.
6 And that's what they're saying.

7 In this case, if you rule for the defense, what
8 they're asking you to do is say you're right.
9 That's the whole case. I think you can look at
10 somebody's history and know. You can look at
11 somebody's life and know. People that exaggerate
12 and fabricate and malinger don't aspire to living a
13 good life. They don't do well in their employment.
14 They don't become solid citizens.

15 She manages her family -- managed her family
16 with the ultimate degree of multitasking like most
17 moms do. Like most moms do. It's not easy. Moms
18 know it's not easy. With two children or more
19 children, it's not easy. And if you lose that
20 ability, just imagine how devastating that would be.
21 Imagine the devastation to Scott Bettencourt, a man
22 earning a good, a very good living for his family.
23 You have to commend him for that. But his partner
24 is half gone. He loves her. It's tragic.

25 You have to believe that this lady wanted to

1 impose this tragedy on her family. This lady wanted
2 to be where she is in order to believe the defense.
3 In order to believe in defiance of all the experts,
4 pretty much, the defense is going to have to try to
5 turn it around like they tried on Dr. Kistler.
6 That's the whole thing.

7 Well, she has put a concussion on a
8 chiropractor's intake sheet from 2002. Wouldn't
9 that cause you to question her? Sure it would.
10 Where's the records of that? Where's the evidence
11 of that? You don't go through the Navy with brain
12 damage. What they're telling you is she went
13 through the Navy with brain damage. You don't do
14 that. You don't become hired by the Great Outdoors
15 -- I can't remember all the stuff that she did
16 during the course of her career. You don't do that.
17 You don't, uh, produce the life that she did with
18 that kind of injury.

19 The doctors unequivocally and even Dr.
20 Kistler's unequivocal that she's got an impairment.
21 You can't take the impairment. The only concern to
22 some degree was the fact that he didn't have a
23 record that she had a prior, four prior concussions.
24 Only thing he was presented with was something from
25 Dr. Shride that said he wrote down something that

1 looks like concussion. You heard her mother testify
2 that she -- you know, she's not had a prior
3 concussion. You've had her testify she's not had a
4 prior concussion. So that issue is simply a method
5 by which to cause doubt and for you to question her
6 veracity and basically call her a liar.

7 This lady is not a liar. We know who liars
8 are. We can tell. Doctors can tell. They have
9 dealt with many, hundreds of thousands of people
10 over the years in their profession, people that want
11 to malingering, people that want to hide things. I
12 think the best testimony was Dr. Brabham.

13 You know, somebody's got to get a witness here.
14 Somebody's got to pay a doctor to be here. The
15 doctor's not going to cancel all his appointments
16 and show up in court. Somebody's got to do an
17 independent medical examination. That's what we
18 have Dr. Brabham for. He testified and testified
19 truthfully. He would have said she doesn't have an
20 impairment. It didn't matter who paid him if he
21 thought she didn't. He was not only above what Dr.
22 Jones testified, he was highly certain, highly
23 certain of her impairment. I don't think there's
24 any question about if this lady sustained 20 percent
25 impairment to her person as a result of this

1 accident.

2 It's kind of freakish and unusual that a person
3 would suffer these kinds of injuries from this. But
4 it's perfectly accepted -- it's perfectly, uh,
5 foreseeable that people will be injured when you
6 rear-end them doing 35 miles an hour. It's
7 perfectly foreseeable that 60 g's is going to throw
8 somebody's head around. It's perfectly foreseeable
9 and believable that 130 pounds to Mrs. Bettencourt's
10 head is going to hurt her head. It's perfectly
11 foreseeable that the brain sloshed back and forward.

12 There are things that she couldn't hide.
13 There's things that she couldn't hold. We noticed
14 that. And particularly, the loss of sense of smell.
15 I think that's significant because it just coincides
16 with the area of the head that got the brain
17 sloshed. I don't mean to belittle it, but I call it
18 a brain slosh. I don't know any other way to
19 characterize it.

20 The only thing that a civil jury can do -- you
21 can't raise a wand and you can't put a person back
22 the way they were before the accident. The only
23 thing you can do is come up with a monetary amount
24 to try to pay for the damage. You can't put her --
25 you will -- you will -- \$50 million doesn't put her

1 back where she was before. Okay. We're not asking
2 for \$50 million, let me clear that up.

3 What we want you to do is decide what is an
4 appropriate amount of monetary damages to award that
5 would compensate her for -- that would try to put
6 her in the place you would have been, but for the
7 accident, to restore her back. I don't know how we
8 do that. I don't know how y'all are going to do
9 that. That's going to be difficult.

10 All I've got is medical bills. I've got
11 doctors and economics to say 20 percent impairment.
12 What would pay that person to restore that 30
13 percent? You can't. That's what your job is in
14 this case. Your job has been refined down a bit
15 during the course of this trial.

16 There's a number of damages that she's entitled
17 to be compensated for. I think it sounded like the
18 defendant admitted that they are responsible for the
19 North Point Chiropractic treatment. That's
20 interesting because I heard a lot of questions about
21 North Point Chiropractic treatment that really
22 didn't have a lot to do with anything but to try to
23 say that she had a prior neck injury. They even
24 attacked that, even though she said she's
25 responsible for the neck.

1 Premier Family Practice, I think anybody who
2 sustained an injury in this accident would have gone
3 to their family doctor several times. The MRI, I
4 think that's something that is unquestionably
5 something that should have been done in this case.
6 That's an appropriate amount.

7 Physical Therapy, \$2164. I like the fact that
8 she had nine visits there and she was approved for
9 ten and allegedly didn't go back because she felt
10 she had the exercises and all down that would help
11 her.

12 Urology Associates of Greenville, Dr. Kistler,
13 uh, consultation, office visit, office visit, office
14 visit, office visit. What does Dr. Kistler do? He
15 sends her to Roger C. Peace to go through the brain
16 trauma center. Why does he do that? Because
17 everything she has told him and everything that he
18 sees, even the test that Dr. Jones gave her and you
19 remember all those tests, dexterity, finger
20 recognition of objects, impairment, bilateral
21 impairment. In other words, you've got a difference
22 in how one hand handles things as opposed to the
23 other. Dr. Jones, \$2170 -- 110.

24 Roger C. Peace, \$4290. Uh, do you think that
25 she could ever progress past \$4290 of examination

1 without one doctor saying she's malingering? Did
2 you hear a doctor ever say that? Future medical
3 expenses, speech therapy, psychological evaluation,
4 speech therapy, \$6149. So her -- what I come up
5 with dollarwise is \$20,436.

6 Then you heard from Dr. Swicegood that says he
7 wants to take a conservatory approach to all this.
8 He used her income from 2007 which was really
9 probably one of the lower years of her earnings
10 where she was earning about \$18,000 that year where
11 she used to earn about 50 or 60 when she wanted to
12 be employed. She was employed in Chicago. She made
13 \$82,000 the year before the accident. She was
14 giving a business card and working for Kitchens of
15 the South. His future loss, based on 20 percent
16 impairment that all the doctors essentially agreed
17 upon is \$89,139.

18 The loss of household services is \$164,189.
19 Remember at the opening of this case, the allegation
20 was that she wants nannies, gardeners and maids.
21 That was the defense you heard. Uh, what he's
22 calculated is the loss of household services that
23 she could do before the accident that she can't do
24 now. Twenty percent, the same rate that Dr. Jones
25 gave and Dr. Brabham gave concurred to by Roger C.

1 Peace. Lost of household services. I think if you
2 total all that, it's that.

3 That doesn't include pain and suffering. That
4 doesn't include loss of consortium. That doesn't
5 include mental anguish. That doesn't even cover her
6 losses economically. That's a large figure, but she
7 suffered more damages than that.

8 You have to decide if she's lost consortium of
9 her husband and what value that is. You have to
10 decide what value the loss of pain and suffering to
11 her -- that her pain and suffering was. We're not
12 asking for a figure. We're not saying to you we
13 want \$2.5 million or \$50 million. You know, it's
14 not right to ask those questions. That's your job.
15 That's your job.

16 But the law says that what your reward is
17 intended to do is to restore her to the position she
18 was like prior to this accident and compensate her
19 for the pain she's been through, for the anguish
20 she's been through, the mental suffering she's been
21 through and to compensate her for future losses and
22 to compensate her husband for what he's lost. He's
23 lost half his partner.

24 I think I should be out of time here
25 momentarily. I ask you at the start of this case if

1 it was -- if they wanted you to do a couple of
2 things. One is listen carefully to the witnesses.
3 The second part is use your common sense. When you
4 use your common sense, you will know that Deena
5 Bettencourt is not driving around Greenville county
6 looking to get in a car accident so she can claim
7 some type of injury and to not be able to do the
8 things she can't do since that time in hopes of
9 getting some kind of wonderful reward for that.

10 There's no reward. You will never put her back
11 in the place she was before. No one ever will.
12 This is a resolution of the system in civil court.
13 Your job is to award monetary damages. I wish you
14 could just take her back and put her back to where
15 she was before. That's not possible. You are
16 necessary because, until up here today, Mrs. Wald
17 said I'm not responsible.

18 I don't think she's suffered any injury in the
19 accident. I don't think she got hurt at all. Did
20 you hear that? In their responses to our questions,
21 they said, no, she's not hurt at all. So it is
22 about responsibility. That's why you are here.
23 They said no.

24 Your job is to decide what's appropriate. We
25 trust you to do that. You listen to the judge as he

1 gives the law. You apply these facts as you find
2 them. You render a verdict that does justice, does
3 justice in your mind. Do as best you can do to put
4 her back where she was before, knowing that you are
5 not going to be able to do it. Do the best you can.

6 THE COURT: Mr. McGarr.

7 MR. McGARR: May it please the Court?

8 THE COURT: Yes, sir.

9 MR. McGARR: Let's pay \$273,000 and then tens
10 and hundreds of thousands dollars more. Folks, this
11 plaintiff has been trying to get something
12 essentially for nothing. How do we know that?
13 Because Mrs. McFall fills out affidavits shortly
14 after this accident that had just happened, that the
15 car was not into oncoming traffic. It wasn't hit a
16 second time. This is on Augusta. Mrs. Bettencourt
17 admits that never happened, at least in her
18 deposition. She says Mrs. Bettencourt came to five
19 minutes after this accident. Mrs. Bettencourt says
20 she was never knocked out. Do you think people
21 produce affidavits? Lawyers do. Mr. Ray did. Why?
22 Because they need to get a mechanism of injury to
23 get this.

24 Dr. Shride testified -- ask yourselves in the
25 jury deliberation room -- he released her. She had

1 internet. You can call me and I'd be more than
2 happy to talk to you and answer any questions that
3 you may have about jury service in general or about
4 this particular case. So thank you for your
5 service. I hope y'all have a great weekend and a
6 great evening. All right.

7 (WHEREUPON, the jury exits at approximately
8 6:35 p.m.)

9 THE COURT: All right. Gentlemen, any motions
10 that we need to put on the record?

11 MR. CHILDS: Your Honor, I would move for a
12 new trial based on the introduction of the videotape
13 which reflects the home of Scott and Deena
14 Bettencourt based on previous objections that have
15 been placed on the record in respect to that, the
16 issue with respect to Mr. Bettencourt's income. I
17 would also make a motion for a new trial based upon
18 the insufficiency of the jury verdict. Obviously,
19 they did, uh, adequately consider all the damages
20 associated with her injuries. They obviously
21 awarded an amount insufficient to, uh, to properly
22 compensate for the -- excuse me -- the plaintiff for
23 her injuries.

24 In addition to that, I have a motion for fees
25 and costs associated with the denial of a request to

1 admission that was proposed to the defendant in this
2 case. I would ask the Court to consider that motion
3 at a later date since we do not have the exact costs
4 and expenses associated. As you heard those
5 admissions, we do have some issues related to that.
6 So I think it would be appropriate to retain
7 jurisdiction over determination of that. If we wish
8 to proceed --

9 THE COURT: I understand.

10 MR. CHILDS: I'm making that motion now
11 because I'm afraid I might lose it later.

12 THE COURT: I understand.

13 MR. CHILDS: Those are my motions.

14 THE COURT: Okay. I respectfully deny your
15 motion for a new trial with a nisi additur. I
16 recognize that this is a disappointing verdict for
17 you. I recognize it. But it is a very unusual
18 circumstance that the Court would change a jury
19 verdict absent something that is very, very glaring.
20 I don't see it in this case. Uh, while I do
21 recognize at this point, with respect to your motion
22 for cost incident to the request to admit, uh, I
23 will give you ten days to make that motion in
24 writing and, uh, give the defense five days
25 thereafter to respond to the same. I will rule on

19

1 that in chambers on your motions and your briefs. .
 2 **MR. CHILDS:** Thank you, Your Honor.
 3 **THE COURT:** All right. Good luck to you.
 4 **MR. CHILDS:** I assume you denied the motion
 5 for a new trial outright?
 6 **THE COURT:** Yes, sir.
 7 **MR. CHILDS:** Okay..
 8 **THE COURT:** Yes, sir. Okay. Good luck to
 9 you. Thank you.
 10 **(END OF PROCEEDINGS)**

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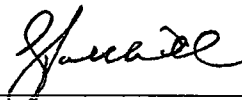
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Mary R. Wald, ... Respondent.

CERTIFICATION

I certify that the Record on Appeal and Supplemental Record on Appeal
have been redacted in compliance with the Supreme Court's Interim Order dated
August 13th, 2007.



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Mary Wald, ...Respondent.

CERTIFICATE OF SERVICE

I certify that on the 23rd day of August, 2013, I served a copy of the Final Brief of Appellant, Reply of Appellant, and the Supplemental Record on Appeal on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record and others as indicated below.

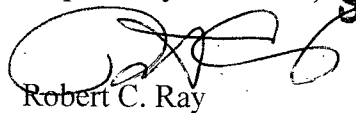
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Respectfully submitted,

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