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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. 2024-001724
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,

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

RESPONDANT/APPELANT'S FINAL BRIEF AS APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in awarding compensatory damages that inadequately compensate the Appellant for her injuries and losses.
2. Whether the trial court erred in awarding insufficient punitive damages despite clear evidence of gross negligence and disregard for tenant safety.

ISSUE

Whether the trial court erred in awarding insufficient compensatory and punitive damages by failing to fully account for the Appellant's demonstrated economic losses, ongoing medical treatment, and substantial pain and suffering resulting from the Respondents' negligence.

STATEMENT OF THE CASE

This appeal arises from a personal injury case initiated by the Respondent/Appellant, Aszane Cruz (hereinafter "Appellant"), following a serious incident at her rental property on April 9, 2022. While in her apartment at Wyndham Place, a ceiling fan, previously reported as loose to the property management, detached and struck her head, resulting in a concussion, chronic migraines, and other injuries. At the time of the incident, Appellant was employed full-time as a customer service representative, but the ongoing effects of her injuries ultimately led to her termination.

Appellant filed her complaint on September 9, 2023, alleging negligence on the part of the Respondents, the property owners and managers, for failing to address dangerous conditions in the apartment despite multiple reports of the issue. The Respondents were properly served but failed to appear or answer the complaint. Consequently, the trial court entered a default judgment against the Respondents.

At the damages hearing held on March 13, 2024, Appellant presented uncontroverted evidence of her economic and non-economic damages. This evidence included medical bills

totaling \$16,686.00, lost wages from her termination and subsequent unemployment, and extensive testimony regarding her chronic migraines, ongoing treatment, and diminished quality of life. Appellant also detailed the Defendants' reckless and willful disregard for tenant safety, evidenced by their repeated failures to address her reports of a loose ceiling fan.

Despite the significant evidence presented, the trial court awarded only \$31,686.00 compensatory damages and \$5,000.00 in punitive damages, for a total of \$40,686.00. This award failed to account for the long-term medical care required, the ongoing impact of her injuries on her ability to work and perform daily activities, and the substantial emotional distress she continues to endure.

Appellant appeals the trial court's damages award as insufficient and unsupported by the weight of the evidence. Specifically, Appellant asserts that the award failed to fully compensate her for future medical expenses, lost earning capacity, and non-economic damages, and that the punitive damages were inadequate given the Defendants' egregious and reckless conduct. The uncontroverted evidence at trial demonstrates that a higher award is warranted to ensure proper redress for Appellant's injuries and the Defendants' actions.

STANDARD OF REVIEW

The standard of review for damages awards is whether the trial court abused its discretion. An appellate court will overturn a judgment if it is unsupported by the evidence or results in an injustice. See *Waring v. Johnson*, 341 S.C. 248, 534 S.E.2d 11 (Ct. App. 2000). An appellate can overturn a damages award.

ARGUMENT

I. The Trial Court Erred by Failing to Award Sufficient Compensatory Damages

The trial court's compensatory damages award of \$31,686.00 fails to fully address the significant and enduring harms suffered by the Appellant, Aszane Cruz. South Carolina law

requires compensatory damages to make the injured party whole by accounting for both economic and non-economic damages, including medical expenses, lost wages, pain and suffering, and loss of enjoyment of life. See *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001).

The evidence presented at the damages hearing established medical expenses totaling \$16,686.00, primarily for treatment of a concussion and ongoing chronic migraines caused by the falling ceiling fan. Beyond medical expenses, the Appellant testified to loss of income resulting from her inability to work following the incident, as well as the emotional and physical toll these injuries have taken on her quality of life. Chronic migraines are a debilitating condition that not only affect daily functioning but also impose long-term economic and emotional costs.

Appellant testified that she was terminated from her position due to migraines stemming from the incident: "They terminated me...because of the migraines. I couldn't stare at the screen." (R. p. 00055, lines 3-7)(Transcript, p. 12, ll. 3-7). Additionally, Ms. Cruz described her period of unemployment and difficulty returning to work: "It took about two months. My next position, I was hired in September of 2022." (R. p. 00056, lines 4-6)(Transcript, p. 13, ll. 4-6).

Her lost wages were calculated based on her testimony that she worked full-time (40 hours per week) at \$17-\$19 per hour (R. p. 00055, lines 12-19)(Transcript, p. 11, ll. 12-19). Despite this calculation, the damages award fails to adequately reflect the financial impact of her termination, her two months of unemployment, and her reduced earning capacity due to ongoing health issues.

The Appellant's ongoing medical treatments and the likelihood of future care were also not sufficiently considered. Ms. Cruz provided clear and uncontroverted testimony that her injuries are ongoing and will require continued treatment. She testified: "I currently suffer from chronic migraines, and now I'm taking a prescription that my doctor gave me." (R. p. 00053, lines 3-5)(Transcript, p. 10, lines 3- 5). "I'm currently dealing with one now." (R. p. 00055, line

9)(Transcript, p. 12, line 9).

These statements establish that Ms. Cruz's migraines are persistent and debilitating, significantly impacting her daily life. The Court's failure to explicitly include future medical costs for ongoing treatment and medication is a significant oversight. The awarded damages only address her past medical expenses (\$16,686.00) but fail to account for future care needs. (R. p. 00054, line 1)(Transcript, p. 11, l. 1).

South Carolina law supports awarding damages for future medical expenses where the evidence shows a reasonable certainty of future care being necessary. See *Haltiwanger v. Barr*, 258 S.C. 27, 186 S.E.2d 819 (1972). The Appellant's testimony regarding her chronic migraines, coupled with medical documentation, establishes a need for continued treatment.

Additionally, the non-economic damages for pain and suffering and loss of enjoyment of life were grossly undervalued. The Appellant has experienced significant disruptions to her personal and professional life due to the accident, yet the compensatory damages awarded fall far below what is necessary to address these intangible but very real harms.

The Appellant described the profound emotional and physical toll the incident has taken on her life. "This was very hard for me. Honestly, it was very hard. I never dealt with a property that...did not take the tenants' concerns seriously." (R. p. 00056, lines 21-23)(Transcript, p. 13, ll. 21-23). "I can't do certain things that I like to do, like doing hair...it's just really hard." (R. p. 00057, lines 1-2)(Transcript, p. 14, ll. 1-2).

This testimony underscores the depth of her suffering, which extends beyond physical pain to a diminished quality of life. By awarding \$35,810.00 in actual damages without addressing these extensive non-economic impacts, the Court undervalued her pain and suffering.

II. The Trial Court Erred by Failing to Award Adequate Punitive Damages

Punitive damages are designed to punish egregious conduct and deter similar behavior in

the future. See *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009). The Respondents' gross negligence in this case warrants a significant punitive damages award, yet the trial court's award of \$5,000.00 is wholly inadequate.

The record demonstrates that the Respondents were repeatedly made aware of the loose ceiling fan before the incident occurred. Despite multiple reports from the Appellant and other tenants, the Respondents took no action to remedy the hazard. Their failure to address the issue directly led to the Appellant's injuries. This conduct rises to the level of gross negligence and demonstrates a reckless disregard for tenant safety.

The testimony clearly demonstrated the Defendants' reckless disregard for tenant safety. Ms. Cruz testified: "When I told [the property owner] about the ceiling fan being loose, he just wrote my name on a piece of paper and said, we will have the maintenance guy come take a look at it. And no one came." (R. p. 00050, lines 18-20)(Transcript, p. 7, ll. 18-20). "This was the second time" [she reported the issue]. (R. p. 00050, line 23)(Transcript, p. 7, l. 23).

The negligence escalated to a dangerous incident when the ceiling fan fell on her, causing a concussion and ongoing migraines. (R. p. 00053, lines 1-5)(Transcript, p. 10, ll. 1-5). This pattern of indifference— ignoring safety concerns despite repeated warnings—warrants a more substantial punitive damages award. The \$5,000 punitive damages award fails to account for the Defendants' egregious and repeated failures.

South Carolina courts have held that punitive damages should be proportional to the reprehensibility of the defendant's conduct. See *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 638 S.E.2d 667 (2006). The Respondents' repeated inaction despite knowledge of the dangerous condition reflects an egregious indifference to tenant welfare. Furthermore, the minimal punitive damages awarded fail to serve as an effective deterrent against similar misconduct.

In assessing punitive damages, courts also consider the ratio between punitive and compensatory damages. See *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003). Here, the ratio is insufficient to reflect the severity of the Respondents' actions and to deter similar behavior in the future. An increased punitive damages award is necessary to achieve the objectives of punishment and deterrence.

III. The Trial Court Failed to Properly Account for the Appellant's Ongoing and Future Harms

The trial court's judgment does not reflect a full consideration of the evidence presented at the damages hearing. The Appellant's testimony regarding her ongoing medical treatments, chronic migraines, and diminished quality of life was detailed and supported by medical records and bills. However, the damages awarded suggest that the court undervalued or overlooked these elements.

Additionally, the court failed to account for the broader implications of the Respondents' negligence. As a tenant, the Appellant had a reasonable expectation of safety in her home. The Respondents' failure to maintain safe living conditions breached this fundamental duty and caused substantial harm. The damages awarded must reflect not only the economic costs but also the broader impact of this breach on the Appellant's life.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial court's judgment and remand the case solely for a reassessment of damages consistent with the evidence presented and South Carolina law.

[SIGNATURE PAGE TO FOLLOW]

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