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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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APPEAL FROM FLORENCE COUNTY

Court of Common Pleas

Michael G. Nettles, Circuit Judge

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Appellate Case No. 2024-001724

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

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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.

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**RESPONDANT/APPELANT’S FINAL REPLY BRIEF AS APPELLANT**

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May 1, 2025  
Charleston, SC

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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, owned by Casa Bahari (hereinafter "Respondent or Defendant") 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. Respondent did not appear to that hearing

despite being provided notice. 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 Respondents' 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 \$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 Respondents' 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 Respondents' 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**

Casa Bahari, the Respondent, contends that the trial court properly calculated damages based on the evidence presented. However, this assertion is contradicted by the trial record and testimony. Respondent's argument is particularly unpersuasive given that Respondent had the

opportunity to cross-examine Appellant at the damages hearing but failed to appear. This is evidenced by the notice that was provided to them. Now, despite choosing not to participate in that proceeding, Respondent seeks to undermine Respondent's testimony regarding her damages. A party cannot refuse to engage in litigation at a critical stage and then later challenge the very evidence it declined to address when given the chance.

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

The trial court's award of \$16,686.00 in medical expenses only reflects past medical costs and fails to account for ongoing and future treatment needs. Appellant testified to continued medical issues stemming from her injury, including chronic migraines requiring prescription medication and neurological care. (R. p. 00055)(Transcript, 3/13/24, p. 12). The failure to consider these ongoing medical expenses resulted in a damages award that does not fully compensate Appellant for her sustained injuries.

The trial court failed to properly account for the financial impact of Appellants' injuries. Appellant testified that she was terminated from her job due to her inability to perform work-related duties following the incident. (R. p. 00055-00056)(Transcript, 3/13/24, p. 13). Despite working full-time at a wage of \$17 per hour on weekdays and \$19 per hour on weekends, Appellant was out of work for approximately two months before securing new employment. (R. p. 00056, lines 2-5)( Transcript, 3/13/24, p. 13). The court's award of damages did not sufficiently address this period of lost income or the broader economic consequences of Appellant's injuries. Moreover, the trial court failed to consider the long-term impact of her injuries on her ability to maintain employment in her chosen field.

The trial court's pain and suffering award was based on an arbitrary calculation by way of forming a proper award for Appellant. (R. p. 00057, lines 20-22)(Transcript, 3/13/24, p. 14). This method is grossly inadequate given the ongoing nature of Appellants' pain and the significant

disruption to her quality of life. The impact of her injuries extended beyond just physical pain, affecting her ability to engage in daily activities, pursue employment, and maintain her general well-being. The trial court's undervaluation of non-economic damages warrants correction. Testimony from both Appellant and her medical provider established that she experiences frequent, debilitating migraines, yet this was not reflected in the trial court's award.

The written order notably does not accurately reflect the damages verbally awarded by the judge. During the damages hearing, the court's oral ruling stated that the total compensatory damages would be \$35,810.00, which included lost wages, medical expenses, and pain and suffering. (R. p. 00058, line 3). However, the final written order incorrectly states \$31,686.00 (R. p. 00011 )(Order on Default Judgment, p. 3). This discrepancy represents a simple clerical error but one that materially impacts Appellant's recovery and must be corrected.

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

Respondent argues that Appellant failed to establish sufficient grounds for punitive damages. This assertion is directly contradicted by the record. 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 (R. p. 00050, lines 13–25). 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.

No corrective action was taken by any party. (R. p. 00050, lines 14-18)(Transcript, 3/13/24, p. 9). The failure to address a known hazard demonstrates reckless disregard for tenant safety,

meeting the legal threshold for punitive damages. Respondent's continued failure to act, despite being made aware of the danger, shows gross negligence.

The trial court's \$5,000 punitive damages award fails to achieve the intended purpose of deterring grossly negligent behavior. Appellant's actions—ignoring multiple safety complaints, failing to conduct repairs, and neglecting property maintenance—represent a pattern of misconduct that justifies a more substantial punitive damages award. The minimal award issued by the trial court does not adequately punish Respondent or serve as a deterrent against future misconduct.

Respondent attempts to justify the insufficient punitive damages award by asserting that Appellant failed to prove reckless disregard. However, the testimony and evidence in the record overwhelmingly support a finding of gross negligence. The trial court's award fails to reflect the extent of Appellant's conduct and should be increased accordingly.

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**

Respondent asserts that Appellant failed to present evidence of future medical needs. This misrepresents the applicable legal standard and ignores the testimony presented.

Appellant testified that she continues to suffer from migraines and requires ongoing neurological care (R. p. 00055, lines 8-10)(Transcript, 3/13/24, p. 12). South Carolina law permits an award of damages for anticipated future medical expenses where ongoing medical issues have been established. The failure to include such damages in the award constitutes legal error.

Appellant's reliance on the absence of expert testimony ignores established precedent that a plaintiff's own testimony, when supported by medical records and treatment history, can sufficiently establish the need for future medical expenses. Courts have consistently recognized

that a plaintiff who has an ongoing and documented medical condition requiring treatment is entitled to recover future medical costs. Here, the trial court improperly excluded these costs, resulting in an award that fails to fully compensate Respondent for her damages. Future medical expenses are a well-recognized category of damages, and excluding them from the award results in an incomplete and inaccurate assessment of Respondent's actual losses.

The trial court's ruling does not adequately address the ongoing impact of Respondent's injuries on her ability to work and perform daily activities. Respondent's continued difficulties, as described in her testimony, warrant a reassessment of damages. (R. p. 00056, lines 21-25)(R. p. 00057, lines 1-2)(Transcript, 3/13/24, p. 13-14).

### **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.

### **POULIN | WILLEY | ANASTOPOULO, LLC**

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