

NOTICE

Decision filed 02/17/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 100270-U
NO. 5-10-0270
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

SHANNON HAAS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 08-LM-576
)	
MICHAEL R. STOREY and STOREYLAND,)	
INC.,)	
)	
Defendants-Appellants,)	
)	
and)	
)	
FIRST STAUNTON BANCSHARES, INC., d/b/a)	
FIRST NATIONAL BANK IN STAUNTON,)	Honorable
)	Clarence W. Harrison II,
Defendant.)	Judge, presiding.

PRESIDING JUSTICE DONOVAN delivered the judgment of the court.
Justices Goldenhersh and Wexstten concurred in the judgment.

ORDER

- ¶ 1 *Held*: Trial court did not err in awarding punitive damages and attorney fees on plaintiff's claims against defendants for conversion and violation of the Consumer Fraud and Deceptive Business Practices Act.
- ¶ 2 Plaintiff, Shannon Haas, filed a complaint against defendants Michael R. Storey, Storeyland, Inc., and First Staunton Bancshares, Inc., doing business as First National Bank in Staunton (Bank), for breach of contract, conversion, negligence, and breach of the Consumer Fraud and Deceptive Business Practices Act (Act) (815 ILCS 505/1 *et seq.* (West 2008)). The circuit court of Madison County found in favor of plaintiff on her conversion and statutory fraud claims and awarded her attorney fees and punitive damages. The court

also found in favor of the Bank on its cross-claim against defendants for conversion, and further awarded defendants a partial setoff for plaintiff's breach of contract through her fiancé's constructive discharge of defendants at the work site. Defendant Storey and Storeyland, Inc. (defendants), appeal seeking reversal of the award of punitive damages and attorney fees to plaintiff because plaintiff failed to prove economic or actual damages. We affirm.

¶ 3 On January 8, 2008, plaintiff's mobile home was damaged in a winter storm. A tree fell onto the home, severing the home in half. Plaintiff contacted her insurance company and was informed that she needed to find estimates of the damage to her property. Plaintiff was unable to find someone to help until her attorney suggested defendants. Defendants are in the business of selling and buying used mobile homes. Defendants no longer possess a dealer's license, however, because defendant Storey has a history of prior felony convictions for financial transactions regarding mobile homes and failing to record security interests. Plaintiff was unaware of defendants' history or the lack of a dealer's license to sell her a mobile home before contacting them. Defendant Storey estimated damages to plaintiff's mobile home at \$28,500. Because the damages exceeded the value of the home, the insurance company declared it a total loss and plaintiff was forced to find a new home. Storey suggested he could assist plaintiff both in locating a replacement mobile home and in the removal of the damaged one. Plaintiff and defendants subsequently entered into an agreement whereby defendants would remove plaintiff's mobile home and associated debris, purchase plaintiff a new home, and assist with the installation and modifications. In exchange, plaintiff agreed to pay defendants \$32,000.

¶ 4 On March 4, 2008, plaintiff entered into a promissory note and security agreement with the Bank for the amount of \$24,500 for the purchase of the new home. The Bank deposited the monies into an existing business account with the Bank owned by defendant

Storey's daughters. Defendants used the monies to purchase plaintiff's replacement mobile home for \$17,000. Defendant also obtained moving boxes for plaintiff and rented a "portable on demand storage unit" for her benefit. Defendants then started removing debris from the property, completing, according to them, approximately 80% of the disassembly of the old home. Work stopped because plaintiff's fiancé began verbally harassing defendant Storey and his workers. On the last day work was performed on the property, defendants attempted to disconnect the electrical source to the mobile home in order to finish dissembling it. The electrical source also furnished power to the recreational vehicle in which plaintiff and her fiancé were then residing. Plaintiff's fiancé became extremely upset resulting in Storey and the fiancé having a heated argument. Storey left the property and refused to return unless the fiancé was removed from the property while they were working. Plaintiff refused to ask her fiancé to leave. Plaintiff suggested that a third party could deliver the home, but defendants obstructed plaintiff's efforts to have the mobile home delivered by anyone else. After the parties could not reach any acceptable solution, defendants sold the home to another buyer for \$25,000. Believing that they were entitled to the difference between the original contract and the subsequent sale as well as for work already performed on plaintiff's property plus other expenses incurred in moving and storing the new home, defendants did not return the loan proceeds to the Bank or to plaintiff. Defendants also did not record the Bank's lien on the title.

¶5 The court found that defendants obstructed, or otherwise prevented, all efforts to have the replacement mobile home delivered to plaintiff. The court further found that defendants held the loan proceeds in a constructive trust for the benefit of the Bank and violated the agreement to apply the loan proceeds to the mobile home. The court concluded that defendants' double sale of the mobile home, while retaining the original purchase price loan, constituted not only conversion but also a consumer fraud violation. The court fashioned a

remedy which forgave plaintiff's debt to the Bank and awarded her punitive damages and attorney fees. The court also found in favor of the Bank on its counterclaim against defendants. The court did allow defendants a portion of their setoff claim, however, as a result of plaintiff's constructive breach of the contract. The setoff amount was limited to the difference between the second sale and the original contract plus additional expenses related to the second sale, for a total of \$7,804.31. The court otherwise entered judgment against defendants requiring them to refund the loan proceeds plus a prejudgment interest rate to the Bank, in satisfaction of plaintiff's debt. The court also imposed punitive damages for the intentional tort in the amount of \$15,000 to be superceded by punitive damages in the amount of \$25,000 pursuant to the Act because the court found that defendants acted intentionally and unfairly with respect to the undelivered mobile home and that there needed to be a sufficient deterrent for such future conduct.

¶ 6 Defendants argue on appeal that the court erred as a matter of law in awarding plaintiff punitive damages when plaintiff failed to prove actual damages. According to defendants, when no actual damage that is caused by a defendant's alleged actions is demonstrated, then no tort or statutory fraud claim can exist as a matter of law. In other words, a plaintiff must prove compensatory and actual damages, respectively, to prevail in both a conversion and statutory fraud claim. Given that plaintiff's obligation of the loan to the Bank was discharged and that defendants were obligated to repay any outstanding loan amounts, no actual or economic damage to plaintiff existed. Defendants also argue on appeal that plaintiff failed to prove her *prima facie* case for conversion as well because she did not have an absolute and unconditional immediate right of possession to the loan proceeds.

¶ 7 We initially note that a trial court's judgment will not be reversed on appeal unless that judgment is against the manifest weight of the evidence. *Dargis v. Paradise Park, Inc.*, 354 Ill. App. 3d 171, 177, 819 N.E.2d 1220, 1227 (2004). Whether punitive damages are

properly awarded is, however, a question of law and is reviewed *de novo*. *Bell Leasing Brokerage, LLC v. Roger Auto Service, Inc.*, 372 Ill. App. 3d 461, 473, 865 N.E.2d 558, 569 (2007); *Dargis*, 354 Ill. App. 3d at 177, 819 N.E.2d at 1227.

¶ 8 To prevail on a cause of action for conversion, a plaintiff must prove: wrongful and unauthorized control by a defendant over the plaintiff's property, plaintiff's right in the property, plaintiff's absolute and unconditional immediate right of possession that is not dependent on an act to be performed, and a demand for possession of the property. *Fortech, L.L.C. v. R.W. Dunteman Co., Inc.*, 366 Ill. App. 3d 804, 809, 852 N.E.2d 451, 456 (2006); *Naiditch v. Shaf Home Builders, Inc.*, 160 Ill. App. 3d 245, 269, 512 N.E.2d 1027, 1042 (1987). Here, plaintiff had an absolute and unconditional right to the loan proceeds in that she sought the loan and was the party responsible and liable on the loan. The loan given to her by the Bank was to be secured by the mobile home. Defendants obtained control of the loan proceeds and used them to purchase the mobile home. Defendants exercised unauthorized control over those loan proceeds, however, by failing to transfer title to the mobile home and by failing to record the Bank's lien on the title. Such actions allowed defendants to sell the mobile home to a third party without requiring satisfaction of the Bank's lien or refunding the loan proceeds to either plaintiff or the Bank, thereby leaving plaintiff with a loan to repay on a mobile home she did not possess. Plaintiff established her claim for conversion in this instance and was entitled to a judgment in her favor.

¶ 9 We also agree that in light of the circumstances presented the court correctly awarded punitive damages against defendants under plaintiff's conversion claim. The purpose of awarding compensatory damages is to make an injured party whole, to restore that individual to the position that she or he was in before the loss, but not to give that individual a profit or windfall on the transaction. *Strong v. City of Peoria*, 401 Ill. App. 3d 1096, 1098, 930 N.E.2d 561, 564 (2010). Punitive damages, on the other hand, serve to punish the offender

and deter others from committing similar acts of wrongdoing in the future. *Slovinski v. Elliot*, 237 Ill. 2d 51, 57-58, 927 N.E.2d 1221, 1224-25 (2010). It is undisputed that punitive damages are available for conversion. *Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342, 355, 918 N.E.2d 265, 279 (2009). Here plaintiff was liable to the Bank for the loan of \$24,500. The court barred the Bank from seeking recovery against plaintiff and required defendants to repay the loan, plus interest, to the Bank. The court restored plaintiff back to her original position before she entered into the agreement with defendants. Plaintiff was, in essence, awarded the sum of \$24,500, paid to the Bank, as compensatory damages thereby supporting the award for punitive damages. The court specifically chose this method of compensating plaintiff "because of some of the equitable considerations with regard to the transaction between the bank and Mr. Storey." As the court stated: "I think the way I have outlined it puts the risk of recovery on the right people." A court may award punitive damages when a defendant's tortious conduct is committed with fraud, actual malice, or deliberate violence or when the defendant acts willfully or with such gross negligence as to indicate a wanton disregard of the rights of others. *Slovinski*, 237 Ill. 2d at 58, 927 N.E.2d at 1225. Defendants converted the proceeds of the loan for their own use without regard to plaintiff's continuing liability on the loan to the Bank. They intentionally failed to record the lien on the title thereby allowing them to sell the mobile home without satisfying the Bank's lien. Defendants refunded nothing to the Bank or to plaintiff. Even if defendants were entitled to a setoff for the loss of the first sale, there still was no basis for defendants to withhold the loan proceeds. Defendants obstructed or otherwise prevented all efforts to have the mobile home delivered to plaintiff and then pocketed the loan proceeds, as well as the proceeds from the second sale, for their own use. Defendants acted willfully, wantonly, and maliciously in disregard of plaintiff's rights.

¶ 10 Defendants further argue on appeal that the court improperly awarded plaintiff

judgment on her cause of action under the Act as well. Defendants assert that plaintiff failed to prove actual damage and that she failed to prove that her injury was directly and proximately caused by their actions. They further assert that an award of punitive damages was not warranted because plaintiff failed to prove that defendants' conduct was outrageous.

¶ 11 In order to maintain a successful cause of action under the Act, a plaintiff must prove a deceptive act or practice by the defendant, the defendant's intent that the plaintiff rely on the deception, the occurrence of the deception in the course of conduct involving trade or commerce, and actual damage to the plaintiff proximately caused by the deception. *Pappas v. Pella Corp.*, 363 Ill. App. 3d 795, 798-99, 844 N.E.2d 995, 998 (2006). Plaintiff proved that defendants' representations starting with their being hired by plaintiff's insurer to perform demolition and cleanup work related to the removal of plaintiff's damaged mobile home, to the way in which Storey represented himself to be a dealer, as well as to the fraudulent misrepresentations regarding the loan proceeds and placement of the Bank's lien on the title, all resulted in damages to plaintiff. Defendants failed to transfer title and failed to deliver the mobile home or refund the loan proceeds. Defendants not only retained the loan proceeds, they also retained the proceeds from selling the home a second time. Plaintiff, on the other hand, did not receive the benefit of her bargain and suffered actual damage when she no longer possessed her loan proceeds nor received the mobile home she thought she had purchased with those loan proceeds. The court properly found that defendants' double sale of the mobile home, while retaining the original purchase price loan proceeds, constituted a consumer fraud violation. Clearly plaintiff suffered damages as a result of defendants' representations, and even more clearly, defendants' actions were in reckless disregard of plaintiff's rights. Plaintiff was left owing a loan with nothing to show for it. Defendants had vast years of experience in the industry and knew of their responsibilities when engaging in the sale of a mobile home, all of which they used to their financial advantage at the expense

of plaintiff. The court therefore did not abuse its discretion in awarding either punitive damages or attorney fees under the Act.

¶ 12 For the aforementioned reasons, we affirm the judgment of the circuit court of Madison County.

¶ 13 Affirmed.