FIRST DIVISION
July 17, 2017

No. 1-16-2856

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HOLLY B. GERACI, Plaintiff-Appellant, v. UNION SQUARE CONDOMINIUM ASSOCIATION; LIEBERMAN MANAGEMENT SERVICES, INC.; ROBIN DI BUONO; JAY SCHIESSER; JOHN HOLMES; BARBARA BURKE; JAMES PALMICH; MICHAEL NELLER; MICHAEL WEIDEN; and ANGELIQUE GUINN, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 2014 L 000034 Honorable Patrick Sherlock, Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Connors and Justice Simon concurred in the judgment.

O R D E R

¶ 1 *Held*: The judgments in favor of defendants are affirmed where the trial court did not err in denying plaintiff's motion for judgment *n.o.v.* or for a new trial on defendant Di Buono's counterclaim, nor in dismissing the remaining defendants on the pleadings, nor in denying substitution of judge for cause; and where the trial court did not abuse its discretion in denying remittitur or a new trial on defendant Di Buono's damages award.

¶ 2 This appeal arises from an altercation on an elevator between plaintiff Holly Geraci and defendant Robin Di Buono that occurred on August 27, 2013. Mrs. Geraci's amended complaint charged Ms. Di Buono with battery based on this incident. She claimed the remaining defendants—managers and board members of the condominium association (Association Defendants)—breached fiduciary duties by failing to propound and enforce appropriate rules for dog handling that would have prevented the alleged battery. The trial court dismissed the Association Defendants under section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). Ms. Di Buono filed her own counterclaim for battery and claim for intentional infliction of emotional distress (IIED). After a three-day trial, the trial court directed a verdict in favor of Mrs. Geraci on the IIED claim and the jury found Mrs. Geraci liable for battery, awarding Ms. Di Buono $275,000 for pain and suffering, emotional distress, and punitive damages. On appeal, Mrs. Geraci challenges the jury's finding of battery against her and its finding in favor of Ms. Di Buono on Mrs. Geraci's battery claim, the damages awarded to Ms. Di Buono, the trial court's dismissal of the Association Defendants, and the court's denial of her petition for substitution of judge. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 1. Union Square and the Pet Rule

¶ 5 The following description regarding the property and the rule regarding pets is taken primarily from the amended complaint. The two-building property at 333 West Hubbard Street (Union Square) is managed by defendant Union Square Condominium Association (Association). The five-story north building contains the gated main entrance. The ten-story building to the south contains two elevators and the main lobby. An enclosed, open air courtyard spans the two buildings. Defendant Lieberman Management Services, Inc. manages the day-to-

day operations at the property. A security officer manages the front desk in the main lobby.

¶ 6 Included in the Association's rules and regulations is the "Pet Rule," which provides as follows: "Pet owners should be aware that some people might have a fear or allergy to animals. Therefore, they should be considerate of owners, occupants, and guests when sharing confined spaces. e.g., Elevators, mailroom, etc. and acquiesce to their concerns and requests." This remained the operative rule on August 27, 2013. Two security officers testified to other pet-related rules at trial: when moving through the lobby and common areas, dogs must be on a leash, and dog walkers can travel with no more than two dogs at a time.

¶ 7 2. Trial Testimony

¶ 8 Mrs. Geraci testified that in 2012, she and her husband, Peter Francis Geraci, owned a unit in each of the two buildings and lived on the tenth floor of the main building of Union Square. Mrs. Geraci testified that, when they originally moved to the complex, it was a "no dog" residence. This circumstance changed, to the abiding frustration of the Geracis. Mrs. Geraci testified that she suffered a traumatic attack by an acquaintance's dog in her childhood. Ever since that incident, she has avoided being in confined spaces with strange dogs, including her building's elevator. She testified that her normal practice, whenever anyone with a dog attempted to enter the elevator she was using, was to ask that person to wait for the next available car.

¶ 9 Ms. Di Buono testified that she had been a professional dog walker for years, with clients at Union Square since 2011. Both Mrs. Geraci and Ms. Di Buono testified that, in early 2012, they had an encounter. At that time, Ms. Di Buono was waiting for the elevator on the fifth floor of Union Square with three dogs belonging to resident clients. She testified that she was not aware at that time of the rule mandating no more than two dogs when moving through common areas. Mrs. Geraci and her husband were on the elevator when it stopped on the fifth floor.

According to Mrs. Geraci, she politely asked Ms. Di Buono to take the next elevator car and, once at the lobby, asked the on-duty security officer to review the dog rules with Ms. Di Buono. In contrast, Ms. Di Buono testified that both Geracis screamed at her until the doors closed, leaving her shaken when she discussed the rules with a security officer.

¶ 10 3. The Altercation on August 27, 2013

¶ 11 Mrs. Geraci testified that, on August 27, 2013, she left her home in the early afternoon. According to Ms. Di Buono's testimony, that afternoon she parked her car in front of Union Square to pick up the dogs of two clients in the building. Ms. Di Buono testified that she waited on the fifth floor with the two dogs to take the elevator to the lobby. When the elevator arrived, Mrs. Geraci was on it. There are no cameras on Union Square's elevators, and the only witnesses to what happened next are Mrs. Geraci and Ms. Di Buono, who are each claiming battery by the other. Their respective accounts paint contradictory pictures.

¶ 12 Mrs. Geraci testified that, when she saw Ms. Di Buono with two dogs waiting for the elevator, she asked her "please take the next elevator." In Mrs. Geraci's account, Ms. Di Buono then rushed her way onto the elevator, shielding her eyes and pretending not to see Mrs. Geraci. Once on with the dogs, she told Mrs. Geraci: "I know exactly who you are. You are Mrs. Peter Francis Geraci, and you're a big trouble maker." Mrs. Geraci testified that Ms. Di Buono then launched a flurry of blows, striking Mrs. Geraci repeatedly as the elevator crept to the lobby. She testified Ms. Di Buono "wound up for a really big punch" which landed on her shoulder as she twisted her body away. When the doors opened at the lobby, Mrs. Geraci testified that she fled to tell the security officer, Alysia Coleman, that she "just got beat up," before dialing 9-1-1.

¶ 13 In her case-in-chief, Mrs. Geraci submitted evidence in the form of photographs taken on or about September 5, 2013, showing a mark under her eye and a series of bruises on her left arm

and shoulder. She testified that, as a result of the fight with Ms. Di Buono, she saw her internist Dr. Costas twice and was treated for vertigo by neurologist Dr. Ho over the course of three visits. She also testified to seeing a therapist on a weekly basis to address the effects of the altercation.

¶ 14 In Ms. Di Buono's account, she was looking down as the elevator opened on the fifth floor to make sure the dogs' paws did not catch in the gap at the elevator threshold. She testified her normal practice was to ask permission before boarding an occupied elevator, but she did not see anyone else in the car when she got onto the elevator that day. Once Ms. Di Buono was on the elevator, she pushed the button and immediately "felt hands and nails on me from the back *** [t]rying to push me." She testified that she broke free and turned around to see it was Mrs. Geraci, who screamed "who do [you] think you [are]? What [are you] doing on this elevator? I told you to get off." Ms. Di Buono testified that she warned "you just blew it now. You just did that on camera." In fact, however, Ms. Di Buono was mistaken and there were no cameras on the elevator. Ms. Di Buono testified that she told Alysia Coleman to "call [property manager] Jeffrey. This crazy b*** put her hands on me." Ms. Di Buono called 9-1-1, then phoned resident Megan New, whose dog she was walking at the time of the incident.

¶ 15 Ms. Di Buono testified to her emotional trauma from the ordeal, including distress from the incident itself and from the subsequent criminal trial, after Ms. Geraci pressed criminal charges against her. She discussed her Irritable Bowel Syndrome (IBS) and stress disorder, although she never sought treatment for those conditions. She testified on cross-examination that both conditions were a result of the criminal charges that were filed against her. In addition, she testified that she had a fear of high rises since the altercation and a pervasive sense that she needed to "look[] over her shoulder" when performing her work. Ms. Di Buono's testimony as to injuries was confirmed in part by Ms. New, who identified the photographs she took on the day

of the incident showing scratch marks on Ms. Di Buono's arms. Ms. New stated that Ms. Di Buono was less chatty and more reserved in the rare instances she came to Union Square after the incident. Eventually, Ms. Di Buono hired someone to handle her Union Square clients' dogs, and Ms. New later hired that person directly.

¶ 16 4. Officer Hardy and the Criminal Complaint

¶ 17 Chicago police officer Waddell Hardy testified that he was dispatched in response to Ms. Di Buono's 9-1-1 call. When he arrived at Union Square, he spoke with Ms. Di Buono, who showed him scratches on her arm from the altercation. He then spoke to Mrs. Geraci in the lobby, on whom he observed no marks. When he explained that he was there because of Ms. Di Buono's 9-1-1 call, Mrs. Geraci turned her back and started walking toward the elevators. Officer Hardy testified that he stopped Mrs. Geraci and led her to his squad car.

¶ 18 Soon, Mr. Geraci arrived at Union Square. Ms. Di Buono and Ms. New testified that he threatened to "ruin" both of them with his "80-lawyer" firm, unless Ms. Di Buono dropped any charges against his wife. Officer Hardy testified to hearing part of this remark. The officer spoke with the parties, and all agreed not to press charges and let the Association sort out the dispute.

¶ 19 One week later, Mrs. Geraci filed a criminal complaint for battery against Ms. Di Buono. The criminal trial ended in an acquittal for Ms. Di Buono.

¶ 20 5. Procedural History

¶ 21 Mrs. Geraci filed her initial four-count complaint against Ms. Di Buono and some of the Association Defendants on January 2, 2014. After originally dismissing with prejudice, the court allowed Mrs. Geraci leave to amend her complaint. Mrs. Geraci filed a 13-count amended complaint on November 4, 2014, asserting claims of battery against Ms. Di Buono and breach of fiduciary duty against all of the Association Defendants. On May 5, 2015, the case was

transferred to Judge Patrick Sherlock. Judge Sherlock dismissed all counts against the Association Defendants with prejudice under section 2-615 of the Code on June 23, 2015. (735 ILCS 5/2-615) (West 2016)). Mrs. Geraci sought an Illinois Supreme Court Rule 304(a) finding with respect to the dismissal, which Judge Sherlock denied. Ill. S. Ct. R. 304(a) (eff. Jan. 1, 2006).

¶ 22 Mrs. Geraci moved for Judge Sherlock to recuse himself in response to the "tone" of the dismissal order, under Supreme Court Rule 63(C) (eff. Dec. 5, 2013), which he also denied. She then petitioned for substitution of judge for cause pursuant to section 2-1001(a) of the Code (735 ILCS 5/2-1001(a) (West 2016)). Judge Clare McWilliams denied this petition on June 9, 2016.

¶ 23 6. Trial Issues, Verdict, and Post-Trial Motions

¶ 24 The record reveals a short but contentious trial of Mrs. Geraci's and Ms. Di Buono's claims. Both sides advocated with fervor. Both sides objected throughout the proceeding. In addition to Mrs. Geraci, security officers Alysia Coleman and Venus Peters testified on her behalf. The testimony of Dr. Timothy Carl Hain, certified as an expert in neurology, was read into the record as evidence of Mrs. Geraci's trauma-induced vertigo. Officer Hardy and Ms. New testified on behalf of Robin Di Buono, along with Ms. Di Buono herself.

¶ 25 At the close of evidence, Mrs. Geraci moved successfully for a directed verdict to dismiss the IIED counterclaims. Judge Sherlock instructed Ms. Di Buono's counsel to limit closing argument to "the injuries that resulted from the actions that took place on August 27, 2013."

¶ 26 The jury found in favor of Ms. Di Buono on Mrs. Geraci's battery claim and found Mrs. Geraci liable for battering Ms. Di Buono on the counterclaim. The jury awarded Ms. Di Buono damages of $25,000 for pain and suffering, $125,000 for emotional distress, and $125,000 in punitive damages, for a total of $275,000.

¶ 27 Mrs. Geraci filed a motion for judgment notwithstanding the verdict (judgment *n.o.v.*) or, in the alternative, for a new trial. Judge Sherlock denied the motion on October 24, 2016. Holly Geraci timely filed her notice of appeal on October 25, 2016. We have jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303, governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 28 ANALYSIS

¶ 29 A. Standard of Review

¶ 30 Mrs. Geraci's motion for judgment notwithstanding the verdict on Ms. Di Buono's battery counterclaim presents a question of law that we review *de novo*. *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 547 (2005). The trial court's decision not to grant a new trial on the battery claim or Ms. Di Buono's counterclaim will not be overturned unless the trial court abused its discretion. *Maple v. Gustafson*, 151 Ill. 2d 445, 455 (1992). We likewise review Mrs. Geraci's request for remittitur on the damages award for an abuse of discretion. *Gomez v. The Finishing Co.*, 369 Ill. App. 3d 711, 718 (2006). The trial court's dismissal of the Association Defendants under section 2-615 will be reviewed *de novo*. *In re Estate of Powell*, 2014 IL 115997, ¶ 12. Finally, although review of a judge's recusal decision is examined for an abuse of discretion (*Barth v. State Farm Fire & Cas. Co.*, 228 Ill. 2d 163, 175 (2008)), the denial of a petition for substitution of judge for cause is reviewed *de novo*. *Shachter v. City of Chicago*, 2011 IL App (1st) 103582, ¶ 22.

¶ 31 B. Finding of Liability

¶ 32 1. Mrs. Geraci's Motion for Judgment *N.O.V.* as to the Counterclaim

¶ 33 Mrs. Geraci moved for judgment *n.o.v.* under section 2-1202(b) of the Code (735 ILCS 5/2-1202(b) (West 2016)). The trial court denied the motion and she appeals on two grounds.

First, she claims that Ms. Di Buono failed to provide evidence of Mrs. Geraci's intent to commit an offensive contact. Second, she argues the damages as to which Ms. Di Buono offered evidence were all based on events after the alleged battery, and so could only be attributed to the dismissed IIED counterclaims. Mrs. Geraci argues that because there was no evidence of damages from the alleged battery, she was entitled to judgment *n.o.v.*

¶ 34 This court has recognized that "[a] trial court should enter judgment notwithstanding the verdict only when all evidence, viewed in a light most favorable to the nonmovant, so overwhelmingly favors the movant that no contrary verdict could stand based on the evidence." *Knauerhaze*, 361 Ill. App. 3d at 547. This court will not weigh the evidence or consider the credibility of the witnesses. *Maple*, 151 Ill. 2d at 453. We "may only consider the evidence, and any inferences therefrom, in the light most favorable to the party resisting the motion." *Id.* This is thus a "very difficult standard to meet," and is limited to "extreme situations only." (Internal quotation marks omitted.) *Knauerhaze*, 361 Ill. App. 3d at 548. Addressing judgments *n.o.v.*, our supreme court has admonished, "the appellate court should not usurp the function of the jury and substitute its judgment on questions of fact fairly submitted, tried, and determined from the evidence which did not greatly preponderate either way." *Maple*, 151 Ill. 2d at 452-53.

¶ 35 Construing the evidence in Ms. Di Buono's favor, the trial court correctly denied Mrs. Geraci's motion for judgment *n.o.v.* Under Illinois law, a person commits civil battery if (a) he or she "acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) a harmful contact with the person of the other directly or indirectly results." (Internal quotation marks omitted.) *Flores v. Santiago*, 2013 IL App (1st) 122454, ¶ 14. The "gist of the action for battery is not the hostile intent of [one party], but rather the absence of consent to the contact on the part of the [other party]."

(Internal quotation marks omitted.) *Id.*

¶ 36 The jury heard Ms. Di Buono's testimony that Mrs. Geraci grabbed her from behind and, when Ms. Di Buono broke free, shouted at her "who do [you] think you [are]? What [are you] doing on this elevator? I told you to get off." The jury also heard that Ms. Di Buono felt Mrs. Geraci's hands and nails on her, from the back. This is sufficient evidence that Mrs. Geraci intended to harmfully or offensively contact Robin Di Buono.

¶ 37 Mrs. Geraci's reliance on *Torf v. Chicago Transit Authority*, 405 Ill. App. 3d 379 (2010), is misplaced. In *Torf*, we found there was an issue of material fact as to intent and reversed the finding of summary judgment. 405 Ill. App. 3d at 386. Here, the issue of Mrs. Geraci's intent to commit a battery was sent to a fact finder, and the jury concluded she intentionally committed a harmful or offensive contact with Ms. Di Buono. That finding has evidence to support it.

¶ 38 Mrs. Geraci argues, relying on on *People v. Nelson*, 2013 IL App (3d) 120191, that Ms. Di Buono's counsel "admitted" that she acted involuntarily, and therefore lacked the requisite intent. In *Nelson*, the Third District reversed the defendant's conviction for telephone harassment because the "uncontroverted" expert testimony at trial regarding the defendant's Tourette's syndrome showed that the defendant acted pursuant to an "involuntary tic," and did not intend to dial the phone. *Id.* ¶¶ 29, 35. Mrs. Geraci claims, based on Ms. Di Buono's counsel's closing argument, that there was an admission that she also acted without volition.

¶ 39 A judicial admission is a "clear, unequivocal statement[] by a party about a concrete fact within that party's knowledge." *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998). Ms. Di Buono's counsel argued in closing, in relevant part:

> "Holly Geraci[,] *** goes nuts. She has panic attacks. And she has a panic attack, and she tried to throw my client off the elevator and in the process she scratched

her, and that's a battery."

This is simply not a clear, unequivocal statement that Mrs. Geraci acted involuntarily. Counsel's reference to Ms. Geraci's "panic attacks" is insufficient to make this case similar to *Nelson*, where there was unrebutted expert testimony that the telephone calls the defendant made were not done under his "conscious control." 2013 IL App (3d) 120191 at ¶ 29.

¶ 40 Mrs. Geraci next argues that Ms. Di Buono failed to connect any of her damages to the battery. Mrs. Geraci characterizes the evidence of Ms. Di Buno's damages as fitting into three categories of harm: (1) irritable bowel syndrome, (2) stress disorder, and (3) a generalized fear of going into high rise buildings. Mrs. Geraci argues that these all were linked only to the filing of criminal charges underlying the IIED claim that had been dismissed. This is not an accurate statement of the evidence presented. To start, there was also evidence that Ms. Di Buono was scratched and pushed from behind. Second, although Ms. Di Buono acknowledged on cross examination that the IBS and stress disorder were caused by the criminal trial, she never testified that all of her emotional distress stemmed *exclusively* from Mrs. Geraci's filing criminal charges. Instead, Ms. Di Buono testified that she "wasn't comfortable in that building [Union Square] anymore. It scared me. I feel like I had to look over my shoulder." She also testified that she hired an acquaintance to care for the dogs at Union Square, and that Ms. New eventually hired this person directly. Ms. New testified Ms. Di Buono's demeanor changed, that she avoided Union Square for fear of encountering the Geracis, and that, in the rare instances she came to the building, she was less friendly and chatty than before the incident. None of this testimony was explicitly tied to the criminal trial—the source of the dismissed IIED counterclaims. This provides a reasonable basis for the jury to award the damages on the battery claim.

¶ 41 2. Mrs. Geraci's Motion for a New Trial

¶ 42 Mrs. Geraci argues that she is entitled to a new trial on three bases: (1) the jury's verdict was not supported by the evidence, an argument that rests in part on the intent and damages issues discussed above and also on evidence of what she claims is juror bias; (2) she was prejudiced by the conduct of Ms. Di Buono's attorney; and (3) the trial court made erroneous rulings about jury instructions and in allowing testimony about Mr. Geraci's conduct.

¶ 43 a. Juror Bias

¶ 44 Mrs. Geraci's argument on juror bias rests on a post after the trial on Ms. Di Buono's "Google+" page. Mrs. Geraci quotes the juror's post as: "[m]oney, power, and stature usually means everyday day [sic] people like ourselves don't stand a chance." Mrs. Geraci omits the last sentence: "But u can't deny the truth!" Read in full, the statement is less a class warrior's cry and more an affirmation that money, power, and stature did *not* hinder the jury in arriving at what it deemed to be the true account in this case.

¶ 45 More importantly, "a jury verdict may not be impeached by the testimony of the jurors," including through admission of a juror's statement to show the "motive, method or process by which the jury reached its verdict." (Internal citations omitted.) *People v. Hobley*, 182 Ill. 2d 404, 457 (1998). The juror's post cannot be used this way and, even if it could, it shows no bias.

¶ 46 b. Trial Conduct of Ms. Di Buono's Counsel

¶ 47 Mrs. Geraci next argues that the conduct of Ms. Di Buono's counsel, Mr. Bilyk, denied her a fair trial. The allegedly prejudicial conduct came in opening statement, closing argument, and witness questioning. The statements elicited or made by Mr. Bilyk revolve around the following: (1) Mrs. Geraci yelling at people on the elevator, (2) Mrs. Geraci's complaints about dogs; (3) the Geracis' financial status; and (4) references to Mrs. Geraci's criminal case against

Ms. Di Buono.

¶ 48 In order to grant a new trial due to improper opening statements, the remarks must be both: (1) deliberate misconduct and not made in good faith; and (2) substantially prejudicial. *Davis v. City of Chicago*, 2014 IL App (1st) 122427, ¶ 80. Similar principles apply in determining whether remarks in closing argument warrant a new trial. Generally, attorneys are granted "wide latitude during closing argument and may comment and argue on the evidence and any inference that may be fairly drawn from that evidence." (Internal quotation marks omitted.) *Eid v. Loyola Univ. Med. Ctr.*, 2017 IL App (1st) 143967, ¶ 62. "A new trial based on improper closing argument is allowed only when the comments resulted in substantial prejudice to the opposing party; generally, however, the court sufficiently cures any prejudice when it sustains a timely objection and instructs the jury to disregard the improper comment." *Id.* With respect to witness examination, "[i]t is improper to ask a question when counsel has no good-faith reason for asking that question." *Cancio v. White*, 297 Ill. App. 3d 422, 431 (1998) (finding cross-examination and closing argument which insinuated an unsupported connection between opposing counsel and expert witness was "highly prejudicial," requiring a new trial.) None of the issues that Mrs. Geraci cites regarding counsel's conduct is sufficient to meet these standards.

¶ 49 The trial court ruled as follows on Mrs. Geraci's motion *in limine* regarding her yelling:

> "I'm going to grant the motion to the extent that the defendant intends to seek to introduce evidence relating to the plaintiff's character, but I'm not going to preclude the defendant from introducing facts that occurred on the date of the incident. And if that included yelling or swearing, then it included yelling or swearing. And that might come in, but I don't want to hear any testimony about she has a history in the building of yelling and swearing at people and this

behavior on the date in question was consistent with that type of behavior."

In policing his order *in limine* during witness questioning, the trial court later allowed Ms. Di Buono to testify not only to Mrs. Geraci's yelling at her on August 27, 2013, but also to the Geracis screaming at her during their 2012 elevator encounter.

¶ 50 In opening statement, Mr. Bilyk made three references to Mrs. Geraci yelling on the elevator. He previewed his client's account of the altercation, "[a]nd with her back turned, Holly Geraci grabs her and says, 'Get off the elevator.' And it's not the first time she's done it. You'll hear that [is] what she does. She yells at anybody trying to get on the elevator with a dog." This comment drew no objection from Mrs. Geraci. Mr. Bilyk later stated, "[p]eople seek out the building because it is pet allowed and pet friendly, and she [Mrs. Geraci] yells at people." Mrs. Geraci objected to this, and the trial court sustained the objection. Mr. Bilyk continued, "[y]ou're going to hear from Megan New, who lives in the building. You're going to hear how when she walked to the elevator with her dog, [Mrs. Geraci] told her to get the f*** off this elevator, don't get on this f***ing elevator." Mrs. Geraci again objected, and the trial court instructed, "Counsel, we've ruled on this previously. Try to constrain your remarks." Mrs. Geraci's counsel did not object to the first reference and the second exchange prompted two sustained objections. This is not sufficient to show prejudice.

¶ 51 During examination, the court sustained objections to any questions that violated his *in limine* ruling which, as noted above, he amended to allow for questions regarding the 2012 interaction. The limited testimony allowed regarding yelling during the two incidents between Mrs. Geraci and Ms. Di Buono was relevant to the parties' cross claims and was not improperly prejudicial. Where counsel strayed outside the bounds of the court's ruling, the court sustained objections and Mr. Bilyk moved on. Mrs. Geraci was not denied a fair trial on this basis.

¶ 52 The same is true for the references to Mrs. Geraci's past complaints about dogs and the Geracis' financial status. In a pretrial conference, counsel for Ms. Di Buono stated that he anticipated cross-examining Mrs. Geraci about her written complaints to the Association, depending on what came up in her direct examination, but that he would not bring them up in his case-in-chief. Mrs. Geraci claims that she was prejudiced by his reference to her written complaints in his opening statement, because it made her look like a troublemaker and he did not, in fact, cross-examine her regarding her complaints about dogs. However, nothing suggests that counsel's statement was not made in good faith with the anticipation that the complaints would come into the case during Mrs. Geraci's testimony. See *Costa v. Dresser Industries, Inc.*, 268 Ill. App. 3d 1, 4 (1994) (The "general rule" regarding counsel's opening statement remarks "that certain evidence will be introduced is that such statements are not improper if made in good faith and with reasonable grounds to believe that the evidence is admissible.").

¶ 53 Mr. Bilyk's singular reference in opening statement to the Geracis' home in Hawaii did not deprive Mrs. Geraci of a fair trial. Mrs. Geraci's counsel objected to the comment, the trial court sustained the objection, and Mr. Bilyk did not come back to the subject. Mrs. Geraci can show neither bad faith nor prejudice through an attempt to inflame the jury with the Geracis wealth or status. Furthermore, in *voir dire*, the trial court addressed prospective jurors with the fact that Mr. Geraci is a prominent attorney and asked them, "can you be fair to both sides knowing that Mr. Geraci's name will be mentioned in this case?" One juror said that he could not and the court excused the juror for cause, with the approval of both sides' counsel.

¶ 54 Finally, Mrs. Geraci claims she was denied a fair trial by Mr. Bilyk's references in closing argument to (1) Ms. Di Buono's injuries from the criminal case, including the emotional distress from the IIED claim discussed above; and (2) other litigation filed by Mrs. Geraci.

¶ 55 Mrs. Geraci takes issue with Mr. Bilyk's closing argument comment:

> "You don't get to try and throw somebody out of the elevator and then call them a criminal. *** You don't think they have—somebody has nightmares and insomnia and irritable bowel syndrome and have to leave the courtroom all the time to go to the bathroom. You don't get to do that *** Pain and suffering. Has she suffered? She she's [*sic*] suffering right now. Still. Because she has to be here dealing with this claim."

¶ 56 This statement prompted no objection by Mrs. Geraci's counsel, so any objection would be forfeited. Furthermore, while the reference to "call them a criminal" could be read as an allusion to testimony regarding the criminal case, which was barred, it could also be taken as a reference to Mrs. Geraci's own testimony that she called 9-1-1 to report a battery. If the jury credited Ms. Di Buono's account of what happened in the elevator, Mrs. Geraci's 9-1-1 call would suggest that she tried to conceal her activities with a false narrative. Thus, this remained fair argument, even after the IIED claim had been dismissed.

¶ 57 Mr. Bilyk continued his closing argument with the following:

> "[Y]ou're going to get back there, one of the instructions you're going to read is about punitive damages. See, I think it might be the only thing we've got. Punitive damages. I think it might be the only thing that might slow down the Holly Geraci litigation train."

¶ 58 Mrs. Geraci frames this as an improper reference, not only to the criminal case against Ms. Di Buono, but to another suit Mrs. Geraci filed against Ms. New. However, nothing in this statement refers to any specific litigation. Rather, within the context of punitive damages, it could be a reference to Ms. Di Buono's claim that Mrs. Geraci committed a battery and

responded by bringing a counterclaim. We cannot say there was no proper basis for making this argument or that it violated any of the court's rulings.

¶ 59 Mrs. Geraci also claims she was prejudiced by Mr. Bilyk's comments regarding his client's emotional distress because that related only to the dismissed IIED claim. However, as already discussed, Ms. Di Buono testified to emotional injuries beyond those suffered exclusively from being charged with a crime and thus reference to her emotional distress was not improper.

¶ 60 c. Allegedly Erroneous Rulings

¶ 61 Mrs. Geraci also seeks a new trial based on what she argues were erroneous rulings by the trial court about jury instructions and testimony about her husband's role in the case. As to the jury instructions, at the close of evidence, Mrs. Geraci requested that the line regarding "pain and suffering" be removed from the relevant verdict form and requested the following jury instruction: "You heard testimony about Robin Di Buono's emotional distress and disorders resulting from events that took place after August 27, 2013. You are not to consider this testimony in determining liability or awarding damages in this case." These requests both rest on the incorrect premise that no emotional harm or pain and suffering could have stemmed from the battery claim. The trial court repeatedly rejected this theory, as do we. Both Mrs. Geraci and Ms. Di Buono sought damages for "pain and suffering" and "emotional distress" on their battery claims, and the jury was properly instructed on both claims that such damages could be awarded.

¶ 62 Mrs. Geraci did not seek an instruction in specific reference to the IIED claim and the criminal charges on which there had been a directed verdict. Instead she sought to instruct the jury that they could not consider emotional distress from events that took place after August 27, 2013. However, the jury was entitled to consider Ms. Di Buono's emotional distress on returning

to Union Square after the incident with Mrs. Geraci. We find no abuse of discretion in the trial court's failure to give the requested instruction or remove pain and suffering from the verdict form.

¶ 63 Finally, Mrs. Geraci takes issue with the court allowing testimony about her husband's conduct. The jury heard testimony from Ms. Di Buono regarding Mr. Geraci's statements on the day of the altercation. The jury also heard testimony from Ms. New about her interaction with Mr. Geraci. Mrs. Geraci objected then, and now claims prejudice, arguing that her husband's statements were irrelevant. Mr. Geraci's statements and actions were relevant, among other things, to damages. The jury heard from Ms. Di Buono and Ms. New about Ms. Di Buono's fear of returning to Union Square, lest she encounter the Geracis. Mr. Geraci's statements were relevant to that fear and the trial court did not abuse its discretion in overruling Mrs. Geraci's objection.

¶ 64 3. Mrs. Geraci's Motion for Remittitur of the Damages Award

¶ 65 Mrs. Geraci seeks a remittitur or a new trial to correct what she deems an excessive damages award of $275,000. In support, she repeats the above claims regarding the dearth of evidence tied to the injuries of August 27, 2013, which we have already discussed. Mrs. Geraci also argues that the trial court should have stricken the punitive damages award, claiming it abused its discretion under Illinois law in denying her motion for remittitur. She further claims that the punitive damages award violates the Due Process Clause of the fourteenth amendment to the United States Constitution. U.S. Const., amend. XIV, § 1.

¶ 66 Punitive damages awards are intended to serve two purposes; first, to punish the wrongdoer, and second, to deter that party from committing similar wrongs in the future. *Powers v. Rosine*, 2011 IL App (3d) 100070, ¶ 10. We must "remain mindful that it is for the jury to

decide whether the defendant's conduct was willful and wanton to warrant punitive damages and also the measure of punitive damages." *Crowley v. Watson*, 2016 IL App (1st) 142847, ¶ 51. "The Illinois common law punitive damages inquiry is distinct from the constitutional challenge." *Powers*, 2011 IL App (3d) 100070, ¶ 9 (citing *Blount v. Stroud*, 395 Ill. App. 3d 8, 22 (2009)). Under Illinois common law, a court reviewing the denial of remittitur will determine if punitive damages were excessive by considering: (1) the nature and enormity of the wrong; (2) the financial status of the defendant; and (3) the potential liability of the defendant. *Crowley*, 2016 IL App (1st) 142847, ¶¶ 51, 57 ("[A] jury's verdict for punitive damages should be found to be excessive only if it is evident that it resulted from passion, partiality, or corruption.").

¶ 67 We cannot say that the trial court abused its discretion in denying remittitur of the $125,000 punitive damages award. The jury was properly instructed:

> "If you find that Holly Geraci's conduct was willful and wanton and proximately caused injury to Robin Di Buono and if you believe that justice and the public good require it, you may award an amount of money which will punish Holly Geraci and discourage her and others from misconduct."

¶ 68 The court emphasized the most important question in determining whether and how much to award in punitive damages was "[h]ow reprehensible is Holly Geraci's conduct." Factors in determining the reprehensibility included not only the facts of the conduct, but the vulnerability of the abused party and whether the attacker tried to conceal the misconduct. The jury heard evidence that Mrs. Geraci attacked Ms. Di Buono from behind. It also heard evidence that Mrs. Geraci immediately dialed 9-1-1 and created what the jury verdict reflects it found to be a false story as to what had occurred. Acknowledging that "it is for the jury to decide whether the defendant's conduct was willful and wanton," we are loath to find the court abused its discretion

in denying remittitur. *Crowley*, 2016 IL App (1st) 142847, ¶ 51.

¶ 69 Under the *de novo* federal due process standard, we reach the same result. This inquiry turns on the United States Supreme Court's "guideposts" articulated in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996). These include: (1) the degree of reprehensibility of the conduct; (2) the disparity between the harm or potential harm suffered by the plaintiff and the amount of punitive damages awarded; and (3) the difference between the punitive damages awarded and the civil penalties authorized to be imposed in comparable cases. *Id.* at 575; see, *e.g.*, *Crowley*, 2016 IL App (1st) 142847, ¶¶ 52-55 (applying *Gore* factors to find $2 million punitive damages award did not violate due process where conduct was reprehensible and ratio of compensatory to punitive damages was less than 1:1.5).

¶ 70 The jury in this case could have concluded that Mrs. Geraci acted with indifference or reckless disregard for Ms. Di Buono's wellbeing. They awarded punitive damages that were *less* than the pain and suffering combined with emotional distress damages. There was no disparity to suggest they awarded more than what they viewed as sufficient to punish and deter, or that the award arose from "passion, partiality, or corruption." *Id.* ¶ 57. We affirm the denial of remittitur.

¶ 71 C. The Breach of Fiduciary Duty Case against the Association Defendants

¶ 72 Mrs. Geraci's appeal also seeks review of Judge Sherlock's order of June 23, 2015, dismissing the claim against the Association Defendants under section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)) for having failed in their fiduciary duty to protect her from battery. Having upheld the trial court's judgment that Ms. Di Buono was not liable for battery, our review of the dismissal of the Association Defendants is mooted. The Association Defendants cannot breach a fiduciary duty to prevent a battery that, per the jury's verdict, never occurred. Dismissal under section 2-615 is affirmed. We must, however, review Judge Sherlock's order in

addressing Mrs. Geraci's requests for recusal and substitution of judge for cause.

¶ 73 D. The Denials of Recusal and Substitution for Cause

¶ 74 At the outset, we note that "recusal and substitution for cause are not the same thing." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 45. "Whether a judge should recuse himself is a decision *** exclusively within the determination of the individual judge, pursuant to the canons of judicial ethics found in the Judicial Code." *Id.* In contrast, substitutions-for-cause petitions are brought by a party and are decided by another judge. *Id.* at ¶ 46. This not only provides for a neutral assessment of the allegations against the challenged judge, it "ensures that any substitution coming after a substantive ruling has been made is the result of a proven bias or high probability of the high risk for actual bias and is not a mere ploy for tactical advantage." *Id.* Those seeking a for-cause substitution of a judge must show actual prejudice. *Id.* ¶ 30. "A judge's previous rulings can only constitute a valid basis for a claim of judicial bias if they reveal an opinion that derives from an extrajudicial source or such a high degree of favoritism or antagonism as to make fair judgment impossible." (Internal quotation marks omitted.) *Petalino v. Williams*, 2016 IL App (1st) 151861, ¶ 36.

¶ 75 Mrs. Geraci sought recusal and substitution for cause based on Judge Sherlock's order granting the Association Defendants' motion to dismiss. She takes issue with the opening line of the trial court's analysis: "[s]ignificant judicial time has already been spent on this matter. [Judge] Gillespie had the task of wading through plaintiff's original complaint." Mrs. Geraci also takes issue with statements in the order's conclusion, which leads with a quote from Justice Holmes that, "Judges need not be more naïve than other men," followed by the claim that one "would have to be criminally naïve not to recognize that plaintiff has an ax to grind against the Association and its board members." Judge Sherlock references the "countless hours" wasted on

this lawsuit, and alludes to another case between Mrs. Geraci and the Association. He quotes the dismissal order in that action, to the effect that the case was "palpable nonsense."

¶ 76 Most of what Mrs. Geraci paints as judicial bias is actually a critique of the quality of the claims she brought against the Association. Our supreme court has stated:

> "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings *** do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." (Internal quotation marks omitted.) *O'Brien*, 2011 IL 109039, ¶ 31.

¶ 77 There is one brief reference to another case between Mrs. Geraci and the Association. This, strictly speaking, is outside the course of the instant proceeding. However, the trial court was free to take judicial notice of the dismissal order in that other action. See *Hermesdorf v. Wu*, 372 Ill. App. 3d 842, 850 (2007) (holding court may take judicial notice of written decision in another tribunal). The quoted passage from that other order merely decries the effects of serial litigation. Judge Sherlock used this language to evoke the same sense in the instant case, not to attack a particular litigant.

¶ 78 Mrs. Geraci has failed to carry her burden of showing that the judge abused his discretion in not recusing himself or that she was entitled to a substitution of judge for cause.

¶ 79 CONCLUSION

¶ 80 For the foregoing reasons, we affirm the judgment of the Circuit Court.

¶ 81 Affirmed.