

before, but under board policy, only the school's principal and vice principal were warned.

Defense counsel for the school board claimed that reasonable care was exercised in supervising the students. Counsel for E.B. claimed she asked Joel several times to stop bothering her before she threw the book at the back of his head in frustration. He claimed that his face was turned away as she threw the book, but he turned to her and was hit in the side of the face.

INJURIES/DAMAGES *double vision / diplopia; fracture, orbit; orbital socket*

Joel suffered a fractured left eye socket as a result of being hit in the face with the textbook. His father took him to the emergency room of a hospital that night when his pain did not subside. He was examined and referred to an eye specialist. On March 26, he underwent surgery to repair the fractured orbit bone. He had follow-up visits with the specialist.

Joel claimed he sometimes has double vision when he looks up. The plaintiffs sought to recover damages for Joel's past and future medical expenses and past and future pain and suffering. His mother sought to recover damages incurred by her for her son's past medical expenses until he turned 18.

Defense counsel for E.B. contended that Joel's teacher indicated that he was fine after returning to school following surgery and did not notice that he had any problems.

Defense counsel for the school board noted that Joel's eye surgeon testified that he did not expect future medical expenses for him.

RESULT The jury found E.B. liable for the incident. It determined that the plaintiffs' damages totaled \$197,508.

JOEL

DEL ROSARIO \$44,008 past medical cost
\$28,500 future medical cost
\$50,000 past pain and suffering
\$50,000 future pain and suffering
\$172,508

NELLY

MARTINEZ-

OLLER \$25,000 past medical cost
\$25,000

TRIAL DETAILS Trial Length: 1 day
Trial Deliberations: 20 minutes

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' and defense counsel.

—Gary Raynaldo

BUSINESS LAW

Defamation — Contracts — Intentional Infliction of Emotional Distress

Plaintiff alleged condo officers defamed her reputation

SETTLEMENT \$100,000

CASE Milagros Fernandez and Innovative Property Management Services of South Florida, Inc. v. Les Chateaux at International Gardens Condominium, Inc., No. 2010-36027-CA-01

COURT Miami-Dade County Circuit Court, 11th, FL

JUDGE Marc Schumacher

DATE 1/14/2013

PLAINTIFF

ATTORNEY(S) Paul A. McKenna, Paul A. McKenna & Associates, P.A., Coral Gables, FL

DEFENSE

ATTORNEY(S) Benjamin M. Esco, Cole, Scott & Kissane, P.A., Miami, FL
Geoffrey Schuessler, Cole Scott & Kissane, P.A., Miami, FL

FACTS & ALLEGATIONS In June 2010, plaintiff Milagros Fernandez, 57, owner and manager of Innovative Property Management Services of South Florida Inc., was accused of grand theft by a vice president on the Board of Directors of Les Chateaux at International Gardens Condominium Inc. The vice president accused Fernandez and her company of stealing assets belonging to Les Chateaux in the course of their contract, a management agreement for Innovative to manage and operate Chateaux's property. The management agreement was signed on Sept. 1, 2006. The vice president made the accusation against Fernandez and her company at a board meeting, which was attended by representatives from other condominium associations also managed by Innovative. That same month, following the making of the statements, Les Chateaux terminated its contract with Innovative.

In January 2011, another vice president of Les Chateaux made more claims against Fernandez and Innovative, alleging that they had stolen more than \$1 million from the condo association and were under investigation by police. The plaintiffs claimed that these allegations were made in front of the same two clients of Innovative that had heard the remarks of June 2010, this time at a master association meeting, where board members as well as homeowners were present. After these allegations were made, one of Innovative's clients expressed to Fernandez that Innovative was at risk of losing its contract with it, due to the client's growing concerns over accusations that Innovative and Fernandez had stolen more than \$1 million from Les Chateaux.

Fernandez and her company sued Les Chateaux, alleging that representatives of the condo association made false statements that defamed the reputation of Fernandez and Innovative. They also alleged breach of contract and intentional infliction of emotional distress by the defendant.

According to the plaintiffs, these statements were made with reckless disregard for the truth. They claimed that the allegations were purposely made to damage the reputation and business of Fernandez and her company. They also accused Les Chateaux of breaching its contract with Innovative by terminating the company as property manager in June 2010. The intentional infliction of emotional distress count was dismissed pursuant to an agreed order on a motion for summary judgment.

Les Chateaux denied making the statements at the board meetings, argued that the statements were not necessarily made in an official capacity, and claimed that neither vice president used the word "stealing." According to defense counsel, the minutes of the meetings in question had no record of any utterance of the word "stealing" by the defendant. They contended that there were legitimate questions as to the possible misappropriation of funds and as to where the money had gone, but that the inquiries were not done maliciously, but rather out of genuine concern for the members of the condominium association. They contended that Fernandez interpreted the line of questioning as calling her a thief, which Les Chateaux disputed. Furthermore, they contended that the board had every right to terminate Innovative's contract without cause.

INJURIES/DAMAGES *emotional distress*

Fernandez and Innovative claimed that as a result of the breach of contract by Les Chateaux, they were unrightfully deprived of the income they were to receive as according to the contract. The contract guaranteed Innovative payment of \$42,588 per year for management and financial services, property management with roving site visits, administrative and resident services, board meeting attendance, and contract procurement. According to the contract, the agreement could be terminated by either party with a 60-day notice, or immediately by written notice in the event of gross malfeasance.

Fernandez also claimed that she experienced emotional distress, due to the damage to her reputation. She claimed that the statements made by Les Chateaux exposed her to "distrust, hatred, contempt, ridicule and obloquy which causes [her] to be avoided and which has injured her business reputation, occupation and employment prospects." Fernandez also claimed that she suffered mental anguish and emotional injury due to the statements made in the January 2011 meeting. She claimed that this infliction was intentional, and that Les Chateaux should have known that these statements would cause emotional distress.

Defense counsel maintained that Fernandez was not entitled to any damages.

RESULT The parties agreed to a \$100,000 settlement, which

also included attorney's fees. As part of the settlement, Les Chateaux denied liability, also attesting that there was no known evidence that the plaintiffs ever stole money from it.

INSURER(S) Travelers Insurance Co.
 Alterra Insurance Co.

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

-Kirk Maltais

MOTOR VEHICLE

Broadside — Phantom Vehicle

No phantom vehicle involved in crash, plaintiff contended

VERDICT \$130,910
CASE Maria Bedoya Diaz v. Susan Betancourt Gener, No. 07-08832 CA
COURT Miami-Dade County Circuit Court, 11th, FL
JUDGE Daryl Trawick
DATE 12/10/2012
PLAINTIFF
ATTORNEY(S) Judd G. Rosen, Goldberg & Rosen P.A., Miami, FL
DEFENSE
ATTORNEY(S) Jonathan G. Liss, Bernstein, Chackman & Liss P A, Hollywood, FL

FACTS & ALLEGATIONS On June 10, 2005, plaintiff Maria Bedoya Diaz, 52, a food server, was driving a Honda sedan on Kendall Drive near 147th Avenue in Kendall when she became involved in a motor vehicle collision. Diaz claimed that a Toyota SUV being driven by Susan Betancourt Gener broadsided the passenger side of her vehicle. Diaz claimed that she injured her neck.

Diaz sued Gener, claiming that she was negligent in the operation of her vehicle.

Diaz claimed Gener failed to look out for approaching vehicles as she exited a shopping center to go onto Kendall Drive.

Gener claimed that she was struck from behind by a phantom vehicle that propelled her vehicle into Diaz's car.

Diaz claimed that she did not see the alleged phantom vehicle that Gener claimed struck her car. Diaz's counsel claimed that pre-existing scratches were on Gener's vehicle where she claimed she was struck from behind.