

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-04-235
S. J. KENNEDY 6-20-04

SEAN COLFER,

Plaintiff

v.

JUDGMENT

CHARLES WESTON,

Defendant

This matter comes before the court for hearing on damages following an earlier default of the defendant. The default established liability, and the only remaining issue is the extent of damages. Although a mailed notice of the hearing to Mr. Weston was returned, he called the clerk's office and had actual notice of the hearing. Mr. Weston did not attend.

The court heard the testimony of Mr. Colfer and received voluminous documentary evidence concerning Mr. Colfer's medical treatment, condition and bills. Based upon the evidence, the court accepts Mr. Colfer's presentation of special damages totaling \$177,473.28. (See tab A for damages summary sheet).

With regard to compensatory damages, the court agrees with the plaintiff's suggestion that these damages for pain, suffering and mental anguish would reasonably total \$250,000. With regard to the plaintiff's claim for permanent impairment, the court notes Dr. Day's opinion that the plaintiff has 4% total body permanent impairment, with some exertional limitations. Based on these measurements, the court finds permanent impairment damages in the amount of \$200,000.

Finally, the plaintiff has requested punitive damages, based upon the fact that he was physically attacked by the defendant with a golf club. In this regard, it is noted that the defendant was prosecuted for his attack on the plaintiff. The defendant pled guilty to a charge of elevated aggravated assault, and was ultimately sentenced to 15 years to the Department of Corrections with all but two and a half years suspended and four years of probation, plus restitution to the Victim's Compensation Fund in the amount of \$4,752 and to the District Attorney in the amount of \$637. The court initially questioned the award of punitive damages in light of the criminal prosecution and conviction, but is now satisfied that the two actions are not mutually exclusive. *Tuttle v. Raymond*, 494 A.2d 1353, 1356 (Me. 1985). In the present case, the conviction of the defendant and the plaintiff's testimony concerning the nature and circumstances of his serious injuries lead the court to find by clear and convincing evidence that those injuries were inflicted upon the plaintiff by the defendant with clear malice. Although the court makes the necessary findings to impose punitive damages in the civil suit, the fact of the criminal conviction must still be considered among the factors to be weighed in determining an award of punitive damages. *Hanover Ins. Co. v. Hayward*, 464 A.2d 156, 159 (Me. 1983). After weighing all the factors, the court finds a proper award of punitive damages in the amount of \$50,000, after giving consideration to the aggravating and mitigating factors including the defendant's incarceration for the same activity.

Therefore, the court finds total damages in the amount of \$677,473.28.

The entry will be:

Judgment for the plaintiff in the amount of \$677,473.28, plus costs and interest.

Dated: June 28, 2007



S. Kirk Studstrup
Justice, Superior Court

SEAN COLFER - PLAINTIFF
47 ALBERT POINT
STETSON ME 04488
Attorney for: SEAN COLFER
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PO BOX 1051
AUGUSTA ME 04332-1051

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CV-2004-00235

DOCKET RECORD

vs

CHARLES WESTON - DEFENDANT
PO BOX 322,
JEFFERSON ME 04348
GAYLORD WESTON (DISM) - DEFENDANT
BOX 565 ROUTE 135,
BELGRADE ME 04917
Attorney for: GAYLORD WESTON (DISM)
SUSAN FARNSWORTH - WITHDRAWN 12/23/2004
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Attorney for: GAYLORD WESTON (DISM)
WILLIAM J KELLEHER - RETAINED
MARDEN DUBORD ET AL
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WATERVILLE ME 04901-0708

Filing Document: COMPLAINT
Filing Date: 10/20/2004

Minor Case Type: ASSAULT/BATTERY

Docket Events:

10/20/2004 FILING DOCUMENT - COMPLAINT FILED ON 10/20/2004
Plaintiff's Attorney: SUMNER LIPMAN

10/20/2004 Party(s): SEAN COLFER
ATTORNEY - RETAINED ENTERED ON 10/20/2004
Plaintiff's Attorney: SUMNER LIPMAN

10/20/2004 CERTIFY/NOTIFICATION - CASE FILE NOTICE SENT ON 10/20/2004
ISSUED TO S. LIPMAN, ESQ.

10/26/2004 Party(s): GAYLORD WESTON (DISM)
SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 10/26/2004
ORIGINAL SUMMONS WITH RETURN SERVICE MADE UPON GAYLORD WESTON

10/29/2004 Party(s): CHARLES WESTON
SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 10/21/2004
ORIGINAL SUMMONS WITH RETURN SERVICE MADE UPON CHARLES WESTON

11/04/2004 Party(s): CHARLES WESTON

RESPONSIVE PLEADING - ANSWER FILED ON 11/04/2004
ANSWER OF DEFENDANT, FILED. S/CHARLES WESTON, PRO SE DEFENDANT.

11/15/2004 Party(s): GAYLORD WESTON (DISM)
RESPONSIVE PLEADING - ANSWER FILED ON 11/10/2004
Defendant's Attorney: SUSAN FARNSWORTH

11/15/2004 Party(s): GAYLORD WESTON (DISM)
ATTORNEY - RETAINED ENTERED ON 11/10/2004
Defendant's Attorney: SUSAN FARNSWORTH

11/15/2004 ORDER - SCHEDULING ORDER ENTERED ON 11/15/2004
S KIRK STUDSTRUP , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL

11/15/2004 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 07/15/2005

11/15/2004 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 11/15/2004
S KIRK STUDSTRUP , JUSTICE

12/08/2004 Party(s): GAYLORD WESTON (DISM)
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 12/08/2004
Defendant's Attorney: WILLIAM J KELLEHER
DEFENDANT, GAYLORD WESTON'S INTERROGATORIES PROPOUNDED TO THE PLAINTIFF AND DEFEDANT,
GAYLORD WESTON'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO THE PLAINTIFF SERVED ON
SUMNER LIPMAN, ESQ. ON 12/7/04

12/08/2004 Party(s): GAYLORD WESTON (DISM)
OTHER FILING - ENTRY OF APPEARANCE FILED ON 12/08/2004
Defendant's Attorney: WILLIAM J KELLEHER
ENTRY OF APPEARANCE ON BEHALF OF DEFENDANT GAYLORD WESTON, FILED.

12/09/2004 Party(s): GAYLORD WESTON (DISM)
ATTORNEY - RETAINED ENTERED ON 12/08/2004
Defendant's Attorney: WILLIAM J KELLEHER

12/20/2004 Party(s): GAYLORD WESTON (DISM)
RESPONSIVE PLEADING - ANSWER AMENDED ON 12/20/2004
Defendant's Attorney: WILLIAM J KELLEHER
AMENDED ANSWER OF GAYLORD WESTON, FILED.

12/20/2004 Party(s): SEAN COLFER
LETTER - FROM PARTY FILED ON 12/20/2004
Plaintiff's Attorney: SUMNER LIPMAN
LETTER CONFIRMING AGREEMENT FOR EXTENSION OF TIME TO FILE AMENDED ANSWER.

12/22/2004 Party(s): GAYLORD WESTON (DISM)
MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED ON 12/22/2004
Defendant's Attorney: SUSAN FARNSWORTH
MOTION FOR LEAVE TO WITHDRAW, FILED.

12/27/2004 Party(s): GAYLORD WESTON (DISM)