

STATE OF MICHIGAN
COURT OF APPEALS

GEOFFREY BUNTING and
CHARLOTTE BUNTING,

UNPUBLISHED
November 23, 2004

Plaintiffs-Appellees/Cross-
Appellants,

v

G.L. & ASSOCIATES, LLC, d/b/a PRUDENTIAL
CHAMBERLAIN-STIEHL REALTORS,

No. 248666
Oakland Circuit Court
LC No. 2002-038323-CZ

Defendant/Cross-Plaintiff-
Appellant/Cross-Appellee,

and

K. ALAN THOMPSON,

Defendant/Cross-Defendant-Not
Participating.

Before: Cavanagh, P.J., and Kelly and H. Hood*, JJ.

PER CURIAM.

Defendant appeals as of right a judgment following a jury verdict awarding \$26,000 in economic damages and \$200,000 in noneconomic damages to plaintiffs, premised on the wrongful conduct of defendant's agent, K. Alan Thompson ("Thompson"), in fraudulently misrepresenting a buyer's financial condition in connection with her offer to purchase plaintiffs' house. At trial, defendant G.L. & Associates, LLC, (defendant) conceded that it was liable for any actions taken by Thompson in his capacity as defendant's agent. On appeal, defendant challenges only the amount of emotional distress damages awarded by the jury; it does not dispute liability or the economic damage award. Plaintiffs cross-appeal asserting that the trial court erred in instructing the jury as to the measure of their economic damages, resulting in an award that does not adequately compensate them for their economic loss.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

I. Facts

Plaintiffs first listed their Birmingham house with a real estate agent in February 2000. When that listing agreement expired, plaintiffs reduced the price of their home and attempted to sell it themselves. Plaintiffs made an offer on a home in Florida in June 2000. In September 2000, plaintiffs again listed their home with an agent. Plaintiffs closed on the Florida home in December 2000. In March 2001, plaintiffs received an offer for the Birmingham home consisting of an initial lease period of up to eighteen months, followed by the purchase. This offer was below plaintiffs' asking price. But by this time, plaintiffs were living apart and, having owned two houses for several months, felt that they needed to get the house sold for financial reasons.

Thompson advised plaintiffs that the buyer (who was Thompson's mother) would require a mortgage, but did not need to sell her current home in order to complete the purchase. Thompson also advised plaintiffs that the buyer would make a \$20,000 deposit, which would serve as liquidated damages in the event the buyer did not complete the transaction. Thompson further advised plaintiffs that the buyer did not want to provide a credit report, but Thompson assured that she was a qualified buyer and presented a letter from the buyer's bank to substantiate this. Plaintiffs accepted the offer.

Although the buyer made an initial deposit of \$1,000, she failed to make the remaining deposit of \$19,000 as required by the purchase agreement. Following the buyer's breach of the purchase agreement, plaintiffs filed a demand for arbitration against her and were awarded \$20,000. Plaintiffs attempted to collect on that award, but were unable to do so. Plaintiffs eventually sold their house to another party in December 2001. The jury found, and defendant does not contest, that Thompson misrepresented that the buyer was a "qualified buyer."

II. Remittitur

Defendant argues that the trial court erred in denying defendant's motion for remittitur because the jury's award of \$200,000 for emotional distress was clearly and grossly excessive, influenced by passion or prejudice against Thompson and was not supported by the evidence. We review a trial court's denial of a motion for remittitur for abuse of discretion. *Palenkas v Beaumont Hosp*, 432 Mich 527, 533; 433 NW2d 354 (1989). "An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court made its decision, would conclude that there was no justification for the ruling made." *Szymanski v Brown*, 221 Mich App 423, 431; 562 NW2d 212 (1997). Remittitur must be based on an objective view of the evidence and is justified when a jury verdict exceeds the highest amount the evidence will support. *Palenkas, supra* at 531-533; MCR 2.611(E)(1).

Having established the wrongful nature of Thompson's conduct, plaintiffs were entitled to recover damages for all injuries that were the legal and natural consequences of that wrongful conduct and which might reasonably have been anticipated. *Fagerberg v LeBlanc*, 164 Mich App 349, 356; 416 NW2d 438 (1987). "Generally in tort cases actual damages include compensation for mental distress and anguish." *Phinney v Perlmutter*, 222 Mich App 513, 532; 564 NW2d 532 (1997).

Plaintiffs both testified that the situation had been very strenuous, caused a great deal of financial strain, caused them to be separated from each other and their son, caused them to age, and caused them to feel victimized. Viewing this evidence in a light most favorable to plaintiffs, it does not appear that the trial court's ruling was without justification. Therefore, we conclude the trial court did not abuse its discretion in denying defendant's motion for remittitur.

III. Jury Instruction on Damages

Plaintiffs argue that the trial court improperly instructed the jury on the measure of economic damages. We review claims of instructional error de novo. *Cox v Flint Bd of Hosp Mgrs*, 467 Mich 1, 8; 651 NW2d 356 (2002). "Even if somewhat imperfect, instructions do not create error requiring reversal if, on balance, the theories of the parties and the applicable law are adequately and fairly presented to the jury." *Case v Consumers Power Co*, 463 Mich 1, 6; 61 NW2d 17 (2000).

The trial court instructed the jurors that if they found that Thomson "committed fraud or a violation of the Michigan Consumer Protection Act" then defendants "are liable for all injuries resulting from that wrongful act, whether foreseeable or not, provided that the damages are the real and natural consequences of the wrongful act and might have been anticipated." The trial court also instructed the jury: "If you find that the defendant committed a fraudulent act, the damages with regard to the property shall consist of the difference between the fair market value of the property at the time of the breach and the contract price as well as other damages that are the natural consequence of the defendant's acts." These instructions accurately reflect the applicable law. *Haukland v Muirhead*, 233 Mich 390; 206 NW 549 (1925); *Phinney, supra*; *Fagerberg, supra*; *In re Day Estate*, 70 Mich App 242, 246-247; 245 NW2d 582 (1976). Therefore, we conclude that the trial court did not err in instructing the jury.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ Harold Hood