



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-246-5496 • TDD: 703-352-4139

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August 24, 2021

Joseph W. Stuart
Joseph W. Stuart, PLC
10427 North Street, Suite 200
Fairfax, VA 22030

Christopher T. Craig
Cook, Craig & Francuzenko, PLLC
3050 Chain Bridge Road, Suite 200
Fairfax, VA 22030

Re: Achilles Papadatos v. Jasvir Kaur, CL 2019-15656

Dear Mr. Stuart and Mr. Craig:

This matter is before the court on the motion of Petitioner, filed July 23, 2021, to reconsider the court's denial of punitive damages.

BACKGROUND

Petitioner brought a five count petition against Jasvir Kaur for Undue Influence (Count I), Fraud (Count II), Breach of Fiduciary Duty (Count III), Conversion (Count IV), and Unjust Enrichment (Count V) as a result of powers of attorney given to Kaur by Petitioner's parents, Evangelos and Bonnie Papadatos, on December 8, 2017. In Count I, Petitioner asserted that a fiduciary relationship existed between Evangelos and Kaur "as a result of the power of attorney . . . ." Petition, ¶ 49. Counts II-V restated and incorporated by reference that assertion.

In each count, Petitioner sought "compensatory damages in the amount of \$173,000, plus costs and pre-judgment interest and post-judgment

interest";<sup>1</sup> in Counts I-IV, Petitioner also sought "punitive damages in the amount of \$340,000 . . . ." The court thus construes the counts as alternative theories pursuant to Sup. Ct. Rule 1:4(k) and the identical language in Code § 8.01-281(A),<sup>2</sup> which was adopted "to grant a party asserting any claim or defense the right to join alternative claims or defenses, that is, to present alternative statements of the facts or alternative legal theories." *Powers v. Cherin*, 249 Va. 33, 37 (1995).

On June 21, 2021, Petitioner filed a *Trial Brief* in which he further articulated his arguments. Of importance for this motion, Petitioner argued that the breach of fiduciary duties arose from Kaur's violation of the powers of attorney and sought recovery pursuant to Uniform Power of Attorney Act (Code § 64.2-1600, *et seq.*) ("the Act") -- in particular, Code § 64.2-1615,<sup>3</sup> -- to wit, that Kaur should "restore to Achilles, as successor in interest to his parents, the value of the Evangelos' and Bonnie's funds principal's (*sic*) to what it would have been had the violation not occurred." *Petitioner's Trial Brief* at 6.

*Petitioner's Trial Brief* also contended that the court should award damages for the breach of fiduciary duties in the amount of \$183,868.19. With regard to each of the other four common law claims -- Fraud, Undue Influence, Conversion, and Unjust Enrichment -- Petitioner also sought recovery of \$183,868.19 on each claim.

At trial, the court found that Kaur breached her fiduciary duties to Evangelos and Bonnie Papadatos in violation of the Act and ordered that Kaur restore to Achilles, as successor in interest to his parents, the sum of \$140,519.19 based upon Kaur's violation of the powers of attorney. The award was on Count III, the claim pursuant to Code § 64.2-1615. The court denied Petitioner's request for punitive damages, but, pursuant to Code § 64.2-1614(E),<sup>4</sup> awarded attorney fees as justice and equity so required.

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<sup>1</sup> At the trial on June 23, 2021, the court granted Petitioner's motion to increase the *ad damnum* to \$183,868.19.

<sup>2</sup> "A party asserting . . . a claim . . . may plead alternative . . . theories of recovery against alternative parties, provided that such claims, defenses, or demands for relief so joined arise out of the same transaction or occurrence."

<sup>3</sup> "An agent that violates this chapter is liable to the principal or the principal's successors in interest for the amount required to:

1. Restore the value of the principal's property to what it would have been had the violation not occurred; and
2. Reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf."

<sup>4</sup> "In a judicial proceeding under this chapter, if the court finds that the agent breached his fiduciary duty in violation of the provisions of this chapter, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any person who petitions the court for relief under subdivisions A 1 through 8, to be paid by the agent found in violation. . . ."

Petitioner now asks the court to reconsider its denial of punitive damages.

## ANALYSIS

### Common Law Punitive Damages

In his motion for reconsideration, Petitioner appears to seek common law punitive damages or, alternatively, to seek punitive damages pursuant to the Act, in particular, Code § 64.2-1619 ("Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter") and Code § 64.2-1621 ("The remedies under this chapter are not exclusive and do not abrogate any right or remedy, including a court-supervised accounting, under the laws of the Commonwealth other than this chapter.").

To recover common law punitive damages, Petitioner must have succeeded on one of his common law claims, i.e., Counts I, II, IV, or V. The court, however, awarded restoration of \$140,519.19 (and attorney fees) to Achilles pursuant to the Act (Count III). Accordingly, because "the trial court must assure that a verdict, while fully and fairly compensating a plaintiff for loss, does not include duplicative damages," *Wilkins v. Peninsula Motor Cars*, 266 Va. 558, 561 (2003), the court cannot also award \$140,519.19 for each of the other four alternative common law claims. It follows that the court also cannot award punitive damages with respect to Counts I-II and IV-V.

### Punitive Damages Under The Act

Having ordered recovery on the breach of fiduciary duties pursuant to Code § 64.2-1615 (Count III), the court may only award an additional monetary recovery (i.e., punitive damages) pursuant to the terms of the Act.

Petitioner argues that, "[u]nder § 64.2-1619, the principles of law and equity supplement this chapter" and that Code § 64.2-1619:

authorizes courts to "employ both statutory principles from the Uniform Power of Attorney Act (Act), Code § 64.2-1600 et seq., and common law principles." *Davis v. Davis*, 298 Va. 157, 168, 835 S.E.2d 888, \_\_\_ (2019).

*Motion for Reconsideration* at 2.

With respect to the first argument, Petitioner has omitted the first part of Code § 64.2-1619 ("Unless displaced by a provision of this chapter [Chapter 16],"). In full, Code § 64.2-1619 states: "Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter [Chapter 16]." Accordingly, the court must determine whether any provision of Chapter 16 (which is the Act) "displaces" the right to punitive damages for an intentional tort under

the common law of Virginia where a respondent has acted willfully and wantonly.<sup>5</sup>

In the court's view, Code § 64.2-1615 displaces the common law right to punitive damages in that it makes the agent liable "for the amount required to:

1. Restore the value of the principal's property to what it would have been had the violation not occurred; and
2. Reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf."

Had the General Assembly intended to allow punitive damages, it could have expressly authorized them. Instead, it authorized, for an agent's violation of the Act, only restoration of the lost value of the principal's property and attorney fees and costs.<sup>6</sup>

Turning to Petitioner's reliance on *Davis v. Davis*, 298 Va. 157 (2019), the Court did not hold, as argued by Petitioner, that "Code § 64.2-1619 authorizes courts to 'employ both statutory principles from the Uniform Power of Attorney Act (Act), Code § 64.2-1600 et seq., and common law principles.'" In fact, in the sentence partially quoted by Petitioner, the Court did not mention Code § 64.2-1619. And Petitioner's purported quotation omitted key introductory language. What the Court actually stated was the following:

In interpreting a power of attorney document, we employ both statutory principles from the Uniform Power of Attorney Act (Act), Code § 64.2-1600 et seq., and common law principles. Code § 64.2-1619 (recognizing that "the principles of law and equity" supplement the Act).

298 Va. at 168.

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<sup>5</sup> "When a plaintiff pleads and proves an intentional tort under the common law of Virginia, the trier of fact may award punitive damages." *Shaw v. Titan Corporation*, 255 Va. 535, 545 (1998). In *Shaw*, Titan argued that Shaw "was not entitled to recover punitive damages because neither the Virginia Human Rights Act nor any other Virginia statute specifically authorized the recovery of such damages at the time Shaw was discharged and filed this action." *Id.* The Court found "no merit in this argument because the cause of action for wrongful termination of employment asserted by Shaw derives solely from the common law." *Id.* Like the Virginia Human Rights Act, the Act here does not expressly authorize the recovery of punitive damages.

<sup>6</sup> The court notes that, for a recovery pursuant to common law remedies such as undue influence, conversion, or unjust enrichment, there would be no right to attorney fees, and that, for fraud, the court, "in the exercise of his discretion, may award attorney's fees to a defrauded party." *Prospect Development Company v. Bershader*, 258 Va. 75, 92 (1999) (emphasis added). Thus, the General Assembly could have concluded that allowing for punitive damages, as well as attorney fees, was excessive so it only allowed recovery of attorney fees.

Thus, employment of the statutory principles from the Act and common law principles is for the purpose of interpreting a power of attorney document. Code § 64.2-1619 was material only because it allowed the use of "the principles of law and equity" in interpreting a power of attorney document. Because in the case at bar, there is no issue of the interpretation of the power of attorney document, the lesson of *Davis* is inapposite.

Petitioner also relies on Code § 64.2-1621, which states:

The *remedies* under this chapter are not exclusive and do not abrogate any right or *remedy*, including a court-supervised accounting, under the laws of the Commonwealth other than this chapter. (Emphasis added).

At the time Code § 64.2-1621 was enacted -- in 2010 -- a remedy was "the means employed to enforce a right or redress an injury . . . ." *Colonna Shipyard v. Bland*, 150 Va. 349, 355 (1928). Thus, damages -- which are the measure of injury -- are not a remedy.<sup>7</sup> As a result, while Code § 64.2-1621 does not abrogate any other means employed to enforce a right or redress an injury, it does not affect the availability *vel non* of damages and thus does not permit financial compensation other than what is otherwise expressly provided for in the Act. As discussed above, for an agent's violation of the Act, the Act authorizes only restoration of the lost value of the principal's property and attorney fees and costs; punitive damages are not authorized.

As Petitioner's recovery was pursuant to the Act and punitive damages are not authorized by the Act, Petitioner's motion for reconsideration is DENIED.

An appropriate order will enter.

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<sup>7</sup> The distinction between a remedy and damages is well articulated in *Kozar v. Chesapeake & O. Ry. Co.*, 449 F.2d 1238 (6th Cir. 1971):

But it is a mistake to characterize the right to recover punitive damages at common law a "common law remedy". There is an important distinction between a "remedy" which *Bouvier's Law Dictionary* defines as "the means employed to enforce a right or redress an injury", and "damages" which are defined as "[t]he indemnity recoverable by a person who has sustained an injury \* \* \* and the term includes not only compensatory, but also exemplary or punitive or vindictive \* \* \* damages." Damages are simply a measure of injury, and to say that at common law there was "punitive damages as a right of action" or there was available "the common law remedy action of punitive damages" or a "punitive damages remedy" is a misuse of the legal terminology.

449 F.2d at 1240.

Sincerely yours,



Richard E. Gardiner  
Judge

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ACHILLES PAPADATOS )  
 )  
Petitioner )  
 )  
v. ) CL 2019-15656  
 )  
JASVIR KAUR )  
 )  
Respondent )

ORDER

THIS MATTER came before the court on the motion of Petitioner, filed July 23, 2021, to reconsider the court's denial of punitive damages.

IT APPEARING to the court, for the reasons stated in the court's letter opinion of today's date, that Petitioner's motion to reconsider the court's denial of punitive damages should be denied, it is hereby

ORDERED that Petitioner's motion to reconsider the court's denial of punitive damages is DENIED.

ENTERED this 24<sup>th</sup> day of August, 2021.

  
Richard E. Gardiner  
Judge

**ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS  
WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE  
SUPREME COURT OF VIRGINIA**

Copy to:

Joseph W. Stuart  
Counsel for Petitioner

Christopher T. Craig  
Counsel for Respondent