IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 70,394

FOURTH DCA
CASE NO. 85-1995

FLA. BAR. NO.: 338788

WILLIAM F. SCOTT,

Petitioner/Plaintiff,

v.

OTIS ELEVATOR COMPANY,

Respondent/Defendant.

INITIAL BRIEF OF PETITIONER

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QUESTIONS PRESENTED

I. WHETHER A CAUSE OF ACTION FOR WRONGFUL DISCHARGE IS SUBJECT TO A FOUR YEAR STATUTE OF LIMITATIONS UNDER FLORIDA LAW.

II. WHETHER THE PLAINTIFF IN A WRONGFUL DISCHARGE ACTION IS ENTITLED TO RECOVER DAMAGES FOR MENTAL PAIN AND SUFFERING AND HUMILIATION.

III. WHETHER THE PLAINTIFF IN A WRONGFUL DISCHARGE CASE IS ENTITLED TO PREJUDGMENT INTEREST ON HIS PAST LOST WAGES AWARD.

STATEMENT OF THE CASE

This is an appeal by the Plaintiff, WILLIAM SCOTT, from a decision of the Fourth District Court of Appeal reversing the trial court and holding that MR. SCOTT'S cause of action for wrongful discharge against his employer Defendant OTIS ELEVATOR COMPANY was barred by the statute of limitations. Pursuant to a question certified to be of great public importance by the Fourth District Court of Appeal, this Court accepted jurisdiction herein. In this brief, the parties will be referred to by name or as the Plaintiff and Defendant. References to the record on appeal will be by (R. 1-913) and references to the appendix will be by (A. 1-3). Any emphasis appearing in this brief is that of the writer unless otherwise indicated.

The Plaintiff, WILLIAM SCOTT, filed an action against his employer, Defendant OTIS ELEVATOR COMPANY (hereinafter OTIS), alleging his wrongful discharge in retaliation for MR. SCOTT'S filing of a workers' compensation claim. As part of the damages sought in the complaint, SCOTT claimed recompense for his "loss of morale, confidence and self-esteem, humiliation and loss of reputation among his friends and fellow co-workers" (R. 674). The Defendant filed an answer to the complaint denying all material allegations and raised as defenses the statute of limitations and that MR. SCOTT had been discharged as a result of an altercation between himself and another construction worker (R. 692, 727).

OTIS filed a motion for summary judgment and motion for judgment on the pleadings based upon its statute of limitations defense which were denied by the trial court (R. 725, 736).

At trial, the jury returned a verdict in favor of MR. SCOTT and assessed damages at $100,000.00 for past loss wages and benefits and $200,000.00 for future lost wages and benefits (R. 591-592). OTIS' motion for judgment in accordance with motion for directed verdict, motion for new trial and motion for remittitur were denied (R. 833-835, 853-894, 898).

On appeal to the Fourth District, OTIS argued that a cause of action for wrongful discharge under §440.205 was subject to the two year statute of limitations contained within Fla. Stat. §95.11 (c) governing claims for lost past and future wages. The Plaintiff cross-appealed the denial of prejudgment interest on his past lost wages award, and argued that the trial court had erred in failing to instruct the jury on his claim for damages arising from his mental pain and suffering and humiliation resulting from his wrongful discharge.

The Fourth District reversed on the basis that it was compelled by Broward Builders Exchange, Inc. v. Goehring, 231 So. 2d 513 (Fla. 1970) to find that Plaintiff's claim was governed by the two year statute of limitations contained in §95.11 (4)(c) and was therefore time barred. The District Court did not address the other issues raised by Defendant OTIS nor did it resolve the issues raised on cross-appeal. The court did, however, certify the following question to this Court:

> Are actions for wrongful discharge brought pursuant to section 440.205, Florida Statutes (1979), governed by Broward Builders Exchange, Inc. v. Goehring, 231 So. 2d 513 (Fla. 1970) (A. 2).

The Plaintiff sought review of the certified question, and this Court accepted jurisdiction, Art. V, §3 (b)(4), Fla. Const.

STATEMENT OF THE FACTS

Since MR. SCOTT was the prevailing party pursuant to a jury verdict entered herein in his favor, the following facts appear from the evidence and all reasonable inferences arising therefrom in favor of the Plaintiff as the prevailing party:

MR. SCOTT worked for OTIS ELEVATOR for 19 1/2 years as an elevator mechanic/foreman (R. 229). At the time of his discharge, MR. SCOTT was a foreman with OTIS, the highest official on the job site on a day to day basis (R. 270). On September 12, 1980 MR. SCOTT tripped and fell over a pile of debris when he got out of an elevator on a job site which was located at the construction site of the Burdines Department Store at Galleria Mall in Broward County, Florida (R. 124-125, 253). MR. SCOTT called J. D. Mitchell, the construction superintendent for OTIS, to tell him about his fall but Mitchell was out of the office. Therefore Mr. Scott told Mitchell about his fall the following week when Mitchell came to the job site (R. 272). Mitchell testified that when he saw MR. SCOTT the next week he was limping and using a cane (R. 131-132).

Then on September 19, 1980 the police were called to the OTIS work site by a workman for another company who advised the police that MR. SCOTT had assaulted him with a gun. MR. SCOTT denied all knowledge of the incident (R. 387). MR. SCOTT testified that the man who made the complaint was a friend of his ex-wife and that both the complainant and his wife, who was a Fort Lauderdale Police Department dispatcher, came to the site with the police (R. 307-308).

MR. SCOTT had never been arrested prior to this incident (R.

349). The police did not find a weapon on MR. SCOTT or in his son's vehicle (R. 390). The investigating officer testified that he did not find any bullets matching the rifle supposedly in MR. SCOTT'S possession (R. 391). MR. SCOTT was subsequently prosecuted for assault and pled nolo contendre to the charge (R. 392, 415).

When MR. SCOTT returned to work the day following the alleged gun incident, Mitchell told him to take a few weeks off without pay (R. 257, 312-314). An OTIS employee testified that after the alleged gun incident the Vice President of Burdines requested that MR. SCOTT not be allowed to work on the Burdines' job in the future (R. 316, 369-371).

On September 25, 1980 MR. SCOTT was advised by J. D. Mitchell that his employment was being terminated. MR. SCOTT's personnel file stated that the reasons for his termination were "conduct, absenteeism, tardiness and customer complaints" (R. 510).

On the day MR. SCOTT was terminated by Mitchell, SCOTT gave an insurance form to Mitchell in Mitchell's office. This form was for an insurance disability policy on MR. SCOTT'S home which would cover his monthly mortgage payments in case he got sick or hurt (R. 533). It was after MR. SCOTT handed this form to Mitchell that Mitchell took SCOTT outside and told him in the parking lot that he was terminated (R. 529).

Although Mitchell testified at trial that he fired MR. SCOTT because of customer complaints, absenteeism and tardines, there were no customer complaints documented in the OTIS personnel file on MR. SCOTT, only on the termination notice which was completed <u>after</u> MR. SCOTT'S termination (R. 127). Moreover, Mitchell testified that he

was aware that MR. SCOTT had injured himself in mid or early September but did not make any notation of it in his file (R. 124-125). Nevertheless, on the notice of injury form which was completed by OTIS, Mitchell made a notation that he was "unaware of injury" (Plaintiff's Exhibit 1).

Mitchell admitted that the only reference in MR. SCOTT'S employment file as to why he was terminated was on his payroll notice where it stated that "conduct, absenteeism, tardiness and customer complaints" resulted in his discharge (R. 510). Mitchell testified that the "conduct" referred to in the termination notice concerned the alleged gun incident at Burdines (R. 511); "absenteeism" referred to one letter written in August of 1980, one month before MR. SCOTT was terminated, when Mitchell went to the job site and waited for MR. SCOTT and SCOTT arrived approximately one half to two hours late (R. 512). Mitchell conceded as to this incident that MR. SCOTT was late because he had been to a hardware store to pick up materials for the job site (R. 512).

"Tardiness" Mitchell said again referred to the August 1980 incident (R. 513). Mitchell also referred to an incident where MR. SCOTT was working two jobs at the same time and the owners (Saks Fifth Avenue) at one site complained because he wasn't on the job site more (R. 510). Mitchell testified that "customer complaints" referred to the alleged gun incident at Burdines, a complaint by a customer that MR. SCOTT had charged for transporting materials at the job site; and the incident at Saks Fifth Avenue (R. 513). However, Mitchell testified that the primary reason for SCOTT'S discharge was the gun incident (R. 513).

Mitchell also conceded at trial that some of the allegations made against MR. SCOTT, even though related to the reasons for his discharge, were unfounded (R. 522). Mitchell admitted that he had considered the Saks incident in firing MR. SCOTT even though MR. SCOTT was working two jobs and Mitchell attributed his absence at the Saks job site to the fact that he was supervising two separate jobs (R. 523).

The evidence showed that OTIS has an in-house form for on the job accidents which is to be filled out by the injured employee prior to their return to work (R. 526). It was Mitchell's responsibility to file the workers' compensation notice of injury form (R. 526-527). Mitchell conceded at trial that he was aware of the State law requiring every accident, no matter how slight, to be reported to the State within ten days (R. 527). Although Mitchell admitted that MR. SCOTT informed him that he had fallen on a pile of debris and hurt his knee and that MR. SCOTT was limping and using a cane after the fall, Mitchell testified that that did not indicate to him that MR. SCOTT had been injured in an accident (R. 527-528). MR. SCOTT showed Mitchell his swollen knee and elbow (R. 273).

MR. SCOTT testified that in the 19 1/2 years in which he had been employed by OTIS no one from OTIS had ever complained to him about his work nor did they ever tell him that they had received customer complaints about him (R. 244). In fact, MR. SCOTT testified that OTIS employees told him tht Burdines had requested that he do all of their jobs (R. 244). MR. SCOTT also testified that after he went to the OTIS' offices and filled out the forms to obtain medical treatment, he was released from the doctor's care and was told he could return to

work. However, when MR. SCOTT called OTIS he was told that OTIS did not have any escalator work available at that time (R. 256).

MR. SCOTT did not go to a doctor on the day he told Mitchell about his injury because he did not feel he could take off the time from work (R. 275). MR. SCOTT testified that he did not file a compensation claim at the time he was injured because he knew OTIS' attitude about it and "did not want to be a party of it" (R. 255). MR. SCOTT stated that when he was told by Mitchell to take a couple of weeks off after the Burdines' incident that Mitchell did not give him any specific reason for this. MR. SCOTT felt that it was probably because of his injury (R. 277-278). MR. SCOTT felt his accident had a "great deal" to do with his termination (R. 329). MR. SCOTT believed that the OTIS employee who completed his accident report was fired (R. 330).

At the time Mitchell terminated SCOTT, Mitchell testified that SCOTT was walking with a cane (R. 508-509). Mitchell admitted that on the day he fired SCOTT, SCOTT had called him and asked him to fill out a disability insurance mortgage form for him (R. 503). Mitchell also testified that he had seen MR. SCOTT twice between the time he was injured and the time he was terminated and that SCOTT was limping and using a cane both times (R. 132).

SUMMARY OF ARGUMENT

It is the position of the Plaintiff, WILLIAM SCOTT, that contrary to the decision of the Fourth District herein, his action for wrongful discharge is not barred by Fla. Stat. §95.11(4)(c) which governs actions for lost past and future wages, overtime, etc. Rather, Plaintiff submits that his claim is a statutory cause of action subject to the four year statute of limitations contained within Fla. Stat. §95.11 (3)(f) or, alternatively, that his claim is an intentional tort which would provide a four year statute of limitations under Fla. Stat. §95.11 (3)(o). Regardless of which statute of limitations is applied, however, the District Court clearly erred in holding that this claim is time barred.

Moreover, Plaintiff seeks discretionary review by this Court of two issues raised on cross-appeal by the Plaintiff not addressed by the Fourth District Court of Appeal, namely whether MR. SCOTT should have been allowed to present evidence of his claim for mental anguish and humiliation arising from his wrongful discharge. Since this claim is an intentional tort under Florida law, Plaintiff submits that damages for mental distress are clearly available. Further Plaintiff seeks a determination by this Court that he is entitled to prejudgment interest on his past lost wages award under Argonaut Insurance Co. v. May Plumbing Co., 474 So. 2d 212 (Fla. 1985).

ARGUMENT

POINT I

A CAUSE OF ACTION FOR WRONGFUL DISCHARGE IS SUBJECT TO A FOUR YEAR STATUTE OF LIMITATIONS UNDER FLORIDA LAW.

A. The Plaintiff's Claim is a Statutory Cause of Action Subject to the Four Year Statute of Limitations Contained Within Fla. Stat. §95.11 (3)(f) and Therefore is Not Time Barred.

At the outset, the Plaintiff WILLIAM SCOTT would note the uniqueness of his cause of action for wrongful discharge under §440.205. It is this uniqueness which distinguishes his claim from a normal breach of contract action or other cases which arise from an employment relationship. But for MR. SCOTT'S filing of a claim for workers' compensation benefits, this action would not have arisen. That statute states:

> No employer shall discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's valid claim for compensation or attempt to claim compensation under the Workers' Compensation Law.

It was the filing of MR. SCOTT'S workers' compensation claim which he alleged, and was subsequently found by the jury, to have caused his discharge by OTIS in retaliation. At all times MR. SCOTT, although he had been employed by OTIS for 19 1/2 years, was still an at will employee under Florida law. Therefore, he did not fall within the cause of action available to the plaintiff in Broward Builders Exchange, Inc. v. Goehring, 231 So. 2d 513 (Fla. 1970) which concerned an action for damages arising from breach of an employment contract.

It is disturbing that the District Court accepted Goehring as controlling herein and apparently agreed with OTIS' argument below that you must look at the damages claimed by the plaintiff in order to

determine which statute of limitations applies regardless of the elements of the cause of action (Reply Brief of OTIS at 8-9). Defendant OTIS argued below that regardless of the nature of the cause of action, §95.11 (4)(c) applies to all suits for wages.

However, both the Defendant and the District Court ignored the fact that the Plaintiff's claim is not simply for wages only but also for his mental distress and loss of morale and self-esteem arising from his discharge without cause after 19 1/2 years of employment. In addition, it appears that the Fourth District Court of Appeal's interpretation of Goehring would require that in all cases where the plaintiff claims lost past or future wages as an element of damages the limitations provision of §95.11 (4)(c) would apply. This would include negligence actions, products liability actions, medical malpractice actions, intentional torts, etc. MR. SCOTT does not need to go into great detail as to the fallacies of such an argument but need only point out that if that holding is accepted by this Court, then literally hundreds of this Court's decisions governing the statute of limitations applicable to different causes of actions will have been overturned.

There is little case law interpreting or discussing §440.205. However, this Court in the case of Smith v. Piezo Technology and Professional Administrators, 427 So. 2d 182 (Fla. 1983) stated that §440.205 created a "statutory cause of action." Smith at 183. This Court was careful in Smith to note that Florida had not adopted a cause of action for wrongful discharge as a common law tort but rather that the Legislature had implemented a statutory remedy. Smith at 184.

This Court specifically stated in Smith:

> [b]ecause the Legislature enacted a statute that clearly imposes a duty and because the intent of this section is to preclude retalitory discharge, the statute confers by implication every particular power necessary to insure the performance of that duty. (Citation omitted.) Id. at 184.

This Court went further to note in Smith that a claim under §440.205 is not a claim for compensation or benefits under Chapter 440. Id. In fact, the Smith opinion distinguished a §440.205 cause of action from any other type of claim including a common law tort, administrative claim, or a remedy within the Workers' Compensation Act.

The language of the statute is indicative of its intent since it discusses the discharge, "intimidation" and "coercion" of an employee by the employer because of the filing of a workers' compensation claim. Such language refers to intentional, illegal conduct by an employer and not to a simple breach of contract action.

§440.205 creates a duty under Florida law the violation of which results in the accrual of a cause of action under §440.205. As a result, an action for wrongful discharge is a claim based upon a statutory liability within the four year statute of limitations contained in §95.11 (3)(f). See, e.g., Van Dusen v. Southeast First National Bank of Miami, 478 So. 2d 82, 92 (Fla. 3rd DCA 1985).

The trial court in this case properly found that this action was timely filed within four years of the date of discharge and the District Court erred in holding to the contrary. Therefore Plaintiff respectfully requests that this Court quash the decision of the Fourth DCA and remand this action with directions that the judgment rendered pursuant to the jury verdict herein be reinstated.

B. The Plaintiff's Claim is a Cause of Action for An Intentional Tort Under Florida Statute §95.11 (3)(o) and Therefore is Not Time Barred.

Alternatively, even if this Court should find that this is not an action founded on a statutory liability, MR. SCOTT submits that a wrongful discharge claim is an action for an intentional tort within the provisions of Fla. Stat. §95.11 (3)(o). Similar to a claim for malicious prosecution or false imprisonment, the employer (here OTIS) meant to bring about the result achieved, i.e., the employee's discharge. Also analagous to false imprisonment and malicious prosecution claims, OTIS used facially acceptable conduct, i.e., discharge of the employee for the alleged gun incident, as a pretext for firing of the employee for an unlawful reason, the filing of a workers' compensation claim. Of course, if violation of this statute is found then the intent of the employer (OTIS) must be presumed.

It was noted in Prosser & Keeton on Torts that the tort of retaliatory discharge is grounded on intent rather then in negligence. W. Keeton, D. Dobbs, R. Keeton & D. Owen, Prosser & Keaton on Torts §130, at 1027 (5th Ed. 1984). The Supreme Court of Washington in a recent decision, Cagle v. Burns and Roe, Inc., 106 Wash. 2d 911, 726 P. 2d 434 (Wahs. en banc 1986) stated that:

> Wrongful termination of employment in violation of public policy evidences an intent on the part of the employer to discharge an employee for a reason that contravenes a clear mandate of public policy. Thus, wrongful termination of employment in violation of public policy can be accurately characterized as an intentional tort. Smith v. Atlas Off-Shore Boat Serv., Inc., 653 F. 2d 1057, 1064 (5th Cir. 1981).

The West Virginia Supreme Court has repeatedly found that a claim for retaliatory discharge is a tort. Harless v. First Nat'l Bank in Fairmont, 289 S.E. 2d 692 (W. Va. 1982); Stanley v. Sewell Coles Co.,

285 S.E. 2d 679 (W. Va. 1981) and Shanholtz v. Monongahela Power Co., 270 S. E. 2d 1978 (W. Va. 1980). A Michigan Court of Appeal similarly noted in Goins v. Ford Motor Company, 131 Mich. App. 185, 347 N.W. 2d 184, 191 (1983) that a cause of action for wrongful discharge is one sounding in tort and not in contract. Also see Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 384 N.E. 2d 353 (1978) where the court found that punitive damages were available because a cause of action for wrongful discharge was premised upon a "separate and independent tort." Kelsay, 384 N.E. 2d at 360. Indeed, the Supreme Court of Nevada in Hansen v. Harrah's, 675 P. 2d 394 (Nev. 1984) characterized a wrongful discharge claim as an intentional tort. Hansen at 397.

The employer's conduct in a case such as this is most egregious. The employer has not only obtained all the benefits and immunities available to it pursuant to the Workers' Compensation Act by trading its tort liability for the protection of the Act but takes its "protection" one step further by illegally penalizing the employee for pursuing a compensation claim. This action is not simply a claim by the employee for lost wages, overtime, bonuses, etc. It is a flagrant violation of public policy, and an anathema to the purpose and policy behind our Workers' Compensation Act, and should subject the employer to liability for any and all damages arising therefrom.

The purpose and effect of §440.205 was well stated by Plaintiff's counsel in his closing argument:

> There is something else. That law is there for the benefit and protection of the worker. And companies like OTIS need to know that if they intimidate people and they try to use their brute force to keep them from having their rights under the law, that they will be brought before a jury like you gentlemen and that they will be held accountable for thier actions, and they will be required to pay what they should pay and that justice will be done (R. 578).

As Henry David Thoreau once said:

> Whatever the human law may be, neither an individual nor a nation can commit the least act of injustice against the obscurest individual without having to pay the penalty for it.

The Plaintiff's claim is a tort and the Defendant having been found guilty of committing this tort by a jury is liable therefor.

For these reasons, the Plaintiff, WILLIAM SCOTT, respectfully requests that this Court hold that a cause of action for wrongful discharge pursuant to §440.205 is an intentional tort and therefore subject to the four year statute of limitations contained within §95.11 (3)(o) and quash the District Court's decision herein to the contrary.

POINT II

THE PLAINTIFF IN A WRONGFUL DISCHARGE ACTION IS ENTITLED TO RECOVER DAMAGES FOR MENTAL PAIN AND SUFFERING AND HUMILIATION.

The trial court ruled that the Plaintiff could not recover for loss of enjoyment of life and emotional problems arising from his wrongful termination (R. 220-221). On cross-appeal to the Fourth District, Plaintiff raised this issue. However, the Fourth District did not address it. Plaintiff submits that since this Court has jurisdiction, it can and should consider the merits of the issues raised by Plaintiff's cross-appeal in this case of first impression in the interests of judicial time and economy. Tillman v. State, 471 So. 2d 32, 34 (Fla. 1985); Trushin v. State, 425 So. 2d 1126, 1130 (Fla. 1982).

As previously stated, it is Plaintiff's position that a wrongful discharge claim is an intentional tort. In other intentional tort cases damages for mental pain and suffering have been allowed since the wrongful act implies malice. Kirksey v. Jernigan, 45 So. 2d 188 (Fla. 1950). For example, in malicious prosecution and false imprisonment actions, the jury is instructed that it may award the Plaintiff damages for injury to reputation or health, and any damages for shame, humiliation, mental anguish and hurt feelings arising from the defendant's conduct. See, Fla. Std. Jury Instr. (Civ.) Mi 5.2. Damages for mental anguish have been held compensable in a claim for legal malpractice. Freeman v. Rubin, 318 So. 2d 540 (Fla. 3rd DCA 1975).

However, most enlightening are those out of state cases which have considered this issue. Most recently, the Washington Supreme

Court in Cagle v. Burns and Roe, Inc., supra, held that the plaintiff in a wrongful termination suit could recover damages for emotional distress. That court concluded that since an action for wrongful discharge is a violation of public policy and is premised upon tort principles, damages available in tort should be utilized. Cagle, 726 P. 2d at 436.

As the court noted in Cagle, the clear majority of jurisdictions that recognize a cause of action for wrongful discharge also allow recovery of damages for emotional distress as part of the plaintiff's compensatory damages. Cagle, 726 P. 2d at 437. In fact, the Cagle court noted that there is only one decision where the plaintiff was denied damages for emotional distress arising from a wrongful discharge. Cagle at 437, n.2 citing Vigil v. Arzola, 102 N.M. 682, 699 P. 2d 613 (N.M. Ct. App. 1983).

The West Virginia Supreme Court in the case of Harless v. First Nat'l Bank in Fairmont, supra, stated that since it had found that a cause of action for retalitatory discharge was a tort, it must utilize West Virginia's tort damage law in determining the extent of recovery. Harless, 289 S.E. 2d at 701. The court pointed out that emotional distress recovery had previously been permitted where the underlying claim involved an intentional tort. These intentional, "traditional non-physical torts" include malicious prosecution, false imprisonment, and libel and slander. Id. The court in Harless found that the tort of wrongful discharge carries with it sufficient indicia of intent such that emotional distress damages should be recoverable. Harless at 702.

For these reasons, the Plaintiff respectfully requests that this

Court find that damages for mental distress are available to a plaintiff in a wrongful discharge case and reverse and remand this case with directions that Plaintiff's claim for mental distress be presented to the jury.

POINT III

THE PLAINTIFF IN A WRONGFUL DISCHARGE CASE IS ENTITLED TO PREJUDGMENT INTEREST ON HIS PAST LOST WAGES AWARD.

This Court held in Argonaut Insurance Co. v. May Plumbing Co., 474 So. 2d 212 (Fla. 1985) that once a verdict has been litigated as of a date certain, the plaintiff is entitled, as a matter of law, to prejudgment interest at the statutory rate from the date of the loss. The verdict in this case liquidated the sum of Plaintiff's past lost wages of $100,000.00 from the date of the Plaintiff's termination until the date of trial. Therefore under this controlling law Plaintiff is entitled to prejudgment interest. For these reasons, Plaintiff respectfully requests this Court reverse and remand this action with directions that the judgment be amended to include interest on the amount of the verdict, at the statutory rate, from the date of the loss.

CONCLUSION

For the reasons set forth above, the Plaintiff WILLIAM SCOTT submits that the District Court erred in holding that his claim for wrongful discharge was time barred. The Plaintiff therefore requests that this Court answer the certified question in the negative, quash the decision of the Fourth District, and remand this action with directions that the judgment entered on the verdict herein be reinstated. In addition, the Plaintiff urges that this Court reach the other issues raised by this appeal and hold that this Plaintiff is entitled to damages for mental pain and suffering and reverse for trial on this issue; and that Plaintiff is entitled to interest on his past lost wages award and direct that the judgment be amended accordingly.

Respectfully submitted,

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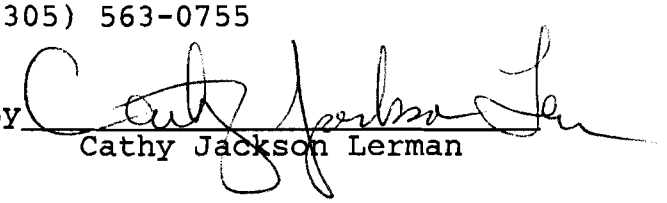
By 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing have been mailed to: Edna L. Caruso, Esq., Suite 4B Barristers Bldg., 1615 Forum Place, West Palm Beach 33401; Mark Levitt, 609 W. Horatio St., Tampa, Fl. 33606; Edward J. Dempsey, Esq., United Technologies Bldg., Hartford, Conn. 06101; and Earle Lee Butler, 1995 E. Oakland Park Blvd., Suite 100, Ft. Lauderdale, Florida 33306.

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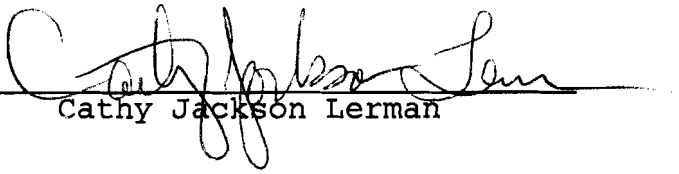
By 
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