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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 75,181

FOURTH DCA
CASE NO. 85-1.995

FLA. BAR. NO.: 338788

WILLIAM F. SCOTT,

Petitioner/Plaintiff,

v.

OTIS ELEVATOR COMPANY,

Respondent/Defendant. /

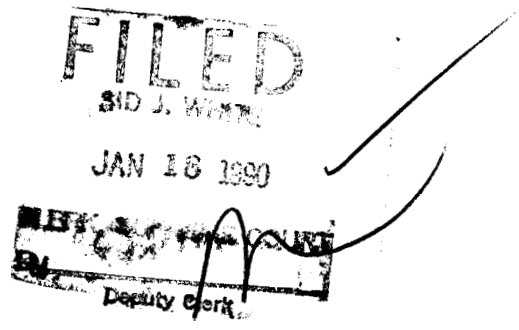

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TABLE OF CONTENTS

	PAGE
TABLE OF CITATIONS	ii
QUESTIONS PRESENTED	iv
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	3
SUMMARY OF ARGUMENT	9
POINT I [Certified Question]	
THE PLAINTIFF IN A WRONGFUL DISCHARGE ACTION PURSUANT TO SECTION 440.205 IS ENTITLED TO RECOVER DAMAGES FOR EMOTIONAL DISTRESS.	10
POINT II	
THE TRIAL COURT WAS CORRECT UNDER BINGER v. ~~KING PEST~~ CONTROL, 401 So. 2d 1310 (Fla. 1981) IN EXCLUDING THE TESTIMONY OF WILLIE FERGUSON.	12
POINT III	
REINSTATEMENT IS NOT *AN* AVAILABLE REMEDY IN A WRONGFUL DISCHARGE CASE UNDER SECTION 440.205 AND THEREFORE DAMAGES FOR FUTURE LOST WAGES ARE AVAILABLE.	15
POINT IV	
THE PLAINTIFF IN A WRONGFUL DISCHARGE CASE IS ENTITLED TO PREJUDGMENT INTEREST ON A PAST LOST WAGES AWARD.	18
CONCLUSION	20
CERTIFICATE OF SERVICE	21

TABLE OF CITATIONS

	PAGE
ARGONAUT INSURANCE CO. v. MAY PLUMBING CO., 474 So. 2d 212 (Fla. 1985).	9, 18
BINGER v. KING PEST CONTROL, 401 So. 2d 1310 (Fla. 1981).	9, 12, 13, 15
CAGLE v. BURNS AND ROE, INC., 726 P. 2d 434 (Wash. 1986) (en banc).	**11**
CARNATION v. BORNER, 610 S.W. 2d 450 (Tex. 1980).	18
CHAVEZ v. MANVILLE PRODUCTS CORPORATION, 108 N.M. 643, 777 P. 2d 371 (1989).	**11**
FERRELL v. ASHMORE, 507 So. 2d 691 (Fla. 1st DCA 1987).	19
FREEMAN v. RUBIN, 318 So. 2d 540 (Fla. 3d DCA 1975).	**11**
GETELMAN v. LEVEY, 481 So. 2d 1236 (Fla. 3d DCA 1985).	19
HARLESS v. FIRST NAT'L. BANK IN FAIRMONT, 289 S.E. 2d 692 (W. Va. 1982).	12
KIRKSEY v. JERNIGAN, 45 So. 2d 188 (Fla. 1950).	**10**
KISSIMEE UTILITY AUTHORITY v. BETTER PLASTICS, INC., 526 So. 2d 46 (Fla. 1988).	19
OTIS ELEVATOR v. SCOTT, 14 F.L.W. 615 (Fla. 4th DCA March 8, 1989), rehearing denied, 14 F.L.W. 2566 (Fla. 4th DCA November 8, 1989).	2
SCOTT v. OTIS ELEVATOR COMPANY, 524 So. 2d 642 (Fla. 1988).	2, 10, 16
TILLMAN v. STATE, 471 So. 2d 32 (Fla. 1985).	13
TRUSHIN v. STATE, 425 So. 2d 1126 (Fla. 1982).	13
VIGIL v. ARZOLA, 102 N.M. 682, 699 P. 2d 613 (N.M. Ct. App. 1983).	**11**

OTHER

Art. V, Sec. 3 (b)(4), Fla. Const.	3
Fla. Std. Jury Instr. (Civ.) Mi 5.2	10
Fla. Stat. Section 95.11 (c)	2
Fla. Stat. Sec. 440.205	1, 2, 3, 10, 15

QUESTIONS PRESENTED

I. WHETHER THE PLAINTIFF IN A WRONGFUL DISCHARGE ACTION PURSUANT TO SECTION 440.205 IS ENTITLED TO RECOVER DAMAGES FOR EMOTIONAL DISTRESS?

II. WHETHER THE TRIAL COURT WAS CORRECT UNDER BINGER V. KING PEST CONTROL, 401 So. 2d 1310 (Fla. 1981) IN EXCLUDING THE TESTIMONY OF WILLIE FERGUSON?

III. WHETHER REINSTATEMENT IS NOT AN AVAILABLE REMEDY IN A WRONGFUL DISCHARGE CASE UNDER SECTION 440.205 AND THEREFORE DAMAGES FOR FUTURE LOST WAGES ARE AVAILABLE?

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

STATEMENT OF THE CASE

This is an appeal by the Plaintiff, WILLIAM SCOTT, from a decision and order on rehearing of the Fourth District Court of Appeal in this wrongful discharge action brought against Defendant OTIS ELEVATOR COMPANY pursuant to 440.205, Fla. Stat. (1979). Pursuant to a question certified to be of great public importance by the Fourth District, 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 in violation of Fla. Stat. sec. 440.205. As part of the damages sought in the complaint, SCOTT claimed recompense for his lost past and future wages and "loss of morale, confidence and self-esteem, humiliation and loss of reputation among his friends and fellow co-workers" (R. 674). OTIS filed an answer to the complaint denying all material allegations and, in pertinent part, raised as a defense that MR. SCOTT had been discharged as the result of an altercation at the job site between himself and another construction worker (R. 692, 727).

At trial, the jury returned a verdict in favor of MR. SCOTT

and assessed damages of $100,000.00 for past lost 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, that court reversed the judgment in favor of SCOTT finding that a cause of action for wrongful discharge under Section 440.205 was subject to the two year statute of limitations contained within Fla. Stat. Section 95.11 (c) governing claims for lost past and future wages. SCOTT, based upon a certified question, then appealed to this Court. This Court quashed the decision of the Fourth District, Scott ~~v. Otis~~ Elevator Company, 524 So. 2d 642 (Fla. 1988), and remanded this case back to the Fourth District for consideration of the other issues raised by the appeal and cross appeal.

Upon remand the Fourth DCA again reversed the judgment in favor of SCOTT and remanded the action for a new trial. Otis Elevator v. Scott, 14 F.L.W. 615 (Fla. 4th DCA March 8, 1989), rehearing denied, 14 F.L.W. 2566 (Fla. 4th DCA November 8, 1989). The Fourth DCA held that SCOTT had failed to establish that his loss of future wages was the result of his wrongful discharge; and that the trial court had abused its discretion in excluding the testimony of a witness offered by OTIS. As to the cross appeal filed by SCOTT, the Fourth District determined that the trial court had not erred in failing to award prejudgment interest on SCOTT'S past lost wages award because SCOTT had not requested it and that the trial court was correct in refusing to

instruct the jury on damages for mental pain and suffering and humiliation (A. 1).

On rehearing, the district court denied all motions except SCOTT'S request for certification. The district court certified to this Court as a question of great public importance the following question:

> ARE DAMAGES FOR EMOTIONAL DISTRESS AVAILABLE TO THE PLAINTIFF IN AN ACTION FOR WRONGFUL DISCHARGE PURSUANT TO SECTION 440.205, FLORIDA STATUTES? (A. 2-3).

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

STATEMENT OF THE FACTS

Since MR. SCOTT was the prevailing party pursuant to a jury verdict entered in his favor, the following facts and all reasonable inferences arising therefrom are construed in his favor:

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 told 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 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 tardiness, there were no customer complaints documented in the **OTIS** personnel file on MR. **SCOTT**, only on the termination notice which was completed after 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 this fact did not indicate to him that MR. **SCOTT** had been injured in an accident (R. 527-528). However, 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 that Burdines had requested that he do all of their jobs (R. 244). MR. **SCOTT** also testified that after he went to **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 but 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).** Further, MR. **SCOTT** believed that the **OTIS** employee who completed his accident report was fired (R. 330).

At the time Mitchell terminated **SCOTT,** Mitchell admitted that **SCOTT** was walking with **a** cane (R. 508-509). In addition, Mitchell conceded 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** admitted 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

SCOTT seeks a determination by this Court of whether he should have been allowed to present evidence of his claim for emotional distress arising from his wrongful discharge. Since this claim is an intentional tort under Florida law, damages for emotional distress are clearly available.

Secondly, Plaintiff claims error by the district court in its determination that the trial court erroneously excluded a witness pursuant to Binger V. King Pest Control, 401 So. 2d 1310 (Fla. **1981).** Further, the DCA erred in determining that reinstatement was available to Plaintiff in this case and reversing SCOTT'S damages for future lost wages. Finally, Plaintiff seeks a determination by this Court that he is entitled to prejudgment interest on his past lost wages award as a matter of law under Argonaut Insurance Co. v. *May* Plumbing Co., 474 So. 2d 212 (Fla. **1985).**

POINT I

[Certified Question]

THE PLAINTIFF IN A WRONGFUL DISCHARGE ACTION PURSUANT TO SECTION 440.205 IS ENTITLED TO RECOVER DAMAGES FOR EMOTIONAL DISTRESS.

The trial court ruled that SCOTT could not recover for emotional distress arising from his wrongful termination (R. 220-221). On appeal, the Fourth DCA affirmed this ruling but certified the question to this Court of whether emotional distress damages are available to the plaintiff in a wrongful discharge case under Section 440.205.

This Court has already stated that a wrongful discharge claim under 440.205 is "tortious in nature". Scott ~~v.~~ ~~Otis~~ Elevator Company, 524 So. 2d 642, 643 (Fla. 1988). In fact, this Court recognized in its prior decision herein that states adopting this tort consider it an intentional act and not negligience and have therefore permitted recovery of damages for emotional distress as well as punitive damages. SCOTT at 643.

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. d DCA 1975).

However, most enlightening are those out of state cases which have considered this issue. Most notably, the Washington Supreme Court in Caqle v. Burns and Roe, Inc., 726 P. 2d 434 (Wash. 1986) (en banc) and the New Mexico Supreme Court in Chavez v. Manville Products Corporation, 108 N.M. 643, 777 P. 2d 371 (1989) held that the plaintiff in a wrongful discharge case could recover damages for emotional distress. Both of these state Supreme Courts 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. Caqle, 726 P. 2d at 436; Chavez, 777 P 2d at 377. [Also see the dissent of Judge Anstead from the Fourth DCA citing Caqle contained in the opinion on rehearing (A. 2-3).]

As the Washington Supreme Court noted in Caqle, 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. Caqle, 726 P. 2d at 437. In fact, the Caqle court noted that there is only one decision where the plaintiff was denied damages for emotional distress arising from a wrongful discharge. Caqle at 437, n.2 citing Vigil v. Arzola, 102 N.M. 682, 699 P. 2d 613 (N.M. Ct. App. 1983). Interestingly, Viqil has been overruled by the New Mexico Supreme Court in Chavez to the extent that it did not permit recovery of damages for emotional distress. Chavez, 777 P. 2d at 378.

The West Virginia Supreme Court in the case of Harless v. First Nat'l. Bank in Fairmont, 289 S.E. 2d 692 (W. Va. 1982) stated that since it had found that a cause of action for retalitatory discharge was a tort, it must utilize West Virginia's tort damages law in determining the extent of recovery. Harless, 289 S.E. 2d at 701. The court pointed out that emotional distress recovery was previously 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 held 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 this Court, in line with the overwhelming majority of jurisdictions that have considered this issue, should hold that damages for emotional distress are available to the plaintiff in a wrongful discharge case under Section 440.205 and quash the decision of the Fourth District with directions that the case be reversed and remanded so that Plaintiff's claim for emotional distress may be presented to the jury.

POINT II

THE TRIAL COURT WAS CORRECT UNDER BINGER V. KING PEST CONTROL, 401 So. 2d 1310 (Fla. 1981) IN EXCLUDING THE TESTIMONY OF WILLIE FERGUSON.

Since this Court has jurisdiction, it can and should consider the merits of the issues raised by Plaintiff's cross-appeal 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).

The trial court in this case in determining whether the contested witness (Ferguson) would be allowed to testify undertook a Binger analysis. In Binger, this Court stated that the question of whether to allow the testimony of undisclosed witnesses is within the broad discretion of the trial court. Binger at 1313. Accordingly, an appellate court may reverse only upon a "clear showing of abuse prejudicial to the affected party" (citations omitted). Binger at 1313. The trial court's discretion to exclude a witness is guided by the resulting prejudice to the objecting party. Binger at 1314. Prejudice refers to surprise in fact of the objecting party and is not dependent on the adverse nature of the testimony. Id. Compliance with the pre-trial order is necessary in order to avoid "trial by ambush". Binger at 1314.

Binger sets forth several factors which the trial court may consider in determining whether to permit a witness to testify. Those factors are: (1) the objecting party's ability to cure the prejudice or, similarly, his independent knowledge of the existence of the witness; (2) the calling party's possible intentional or bad faith noncompliance with the pre-trial order; and (3) the possible disruption of the trial. Binger at 1314. If the prejudice to the objecting party cannot be alleviated, the witness must be excluded Id.

The essence of Ferguson's testimony (still an employee of OTIS at the time of trial) was that on the day of the alleged

gun incident at the Burdines job site he saw MR. SCOTT with a gun. Further, Ferguson claimed that his helper, Hal Noon, took the gun and put it in his car purportedly to hide it from the police (R. **401**). In fact, Ferguson claimed that "the rest of the guys" on the job site (at least **9** others, R. **415**) had also seen the gun (R. **401**).

Nevertheless, OTIS produced only Ferguson to testify to this fact. Defense counsel admitted to the trial court that he had told Plaintiff's counsel about this witness ten or twelve days prior to trial (R. **406**). In response, Plaintiff's counsel explained that he was in trial in another case at the time he was told of this new witness (R. **406**). Defense counsel conceded that he was late in notifying SCOTT'S counsel about Ferguson (R. **409**).

The information which defense counsel had that indicated that Ferguson was present on the job site the day of the incident was obtained from another case, Scott v. Federated Department Stores pursuant to a subpoena duces tecum issued by Ronald Solomon, Esq. who was Federated Department Stores' counsel (R. **405-407**). The Scott v. Federated case was a personal injury action arising from MR. SCOTT'S injury of September 12, **1980** (R. **411**).

The trial court determined from listening to SCOTT'S testimony and the proffered testimony of Ferguson that Plaintiff should have been given the opportunity to subpoena Hal Noon, at the very least, in order to determine the credibility of the statements by Ferguson (R. **417**). Defense counsel indicated to

the court that he had attempted to find Noon but was unable to do so (R. 417). The trial court reasoned that Plaintiff should have been given the opportunity to determine whether Noon would corroborate Ferguson's testimony. Since Plaintiff was not timely given an opportunity to do so, the court ruled that the testimony must be excluded (R. 418).

Since Defendant's counsel indicated that he could not find Noon prior to trial, it would have been impossible for Plaintiff to determine or test the truthfulness of Ferguson's statements. Under these circumstances, the trial court correctly applied Binger in refusing to allow Ferguson's testimony. Any other result would have allowed trial by ambush. For these reasons, the decision of the trial court excluding Ferguson was a proper exercise of the trial court's discretion and the decision of the Fourth District should be quashed.

POINT III

REINSTATEMENT IS NOT *AN* AVAILABLE REMEDY IN A WRONGFUL DISCHARGE CASE UNDER SECTION 440.205 AND THEREFORE DAMAGES FOR FUTURE LOST WAGES ARE AVAILABLE.

SCOTT respectfully submits that the District Court misapprehended the law governing a claim under Fla. Stat. section 440.205 for wrongful discharge by its decision reversing the award of $200,000.00 for lost future wages. The Fourth DCA stated in its opinion that there was nothing in the record indicating that reinstatement of SCOTT was not a viable alternative in this case (A.l) and therefore apparently found that damages for loss of future wages was unavailable.

However, this Court's decision in SCOTT v. OTIS ELEVATOR COMPANY, 524 So. 2d 642 (Fla. 1988) stated that a cause of action for wrongful discharge under section 440.205 is "tortious in nature". SCOTT at 643. In addition, this Court noted that states adopting this "tort" consider it grounded on intent and therefore allow the recovery of emotional distress and punitive damages as well as lost wages. Id.

SCOTT should emphasize that there is no provision under section 440.205 for the trial court to order reinstatement. Therefore the trial court was correct in finding that SCOTT'S remedy was limited to an award of damages (R. 156).

SCOTT submits that Section 440.205, unlike the discrimination statutes relied upon by OTIS and accepted by the Fourth DCA, contains no equitable remedies. Therefore reinstatement is unavailable.

One other important factor precludes reinstatement. Counsel for OTIS stated at trial in discussing the remedy of reinstatement, "It's obvious that we don't want him back to work. We fired him" (R. 194). Certainly if OTIS doesn't want SCOTT back, reinstatement is not an appropriate or available remedy.

In addition, OTIS took the position before the District Court that SCOTT is unable to work in the position that he previously held at OTIS (Initial Brief at 30). In addition, OTIS argued that SCOTT would only be entitled to reinstatement if he was able to perform his old job duties, which it claims he is not (Initial Brief at 34)!

The Fourth DCA in determining **SCOTT'S** evidence of future lost wages insufficient, ignored the fact that the record clearly established with reasonable certainty **SCOTT'S** loss of future wages through the testimony of Dr. Redmond, his economist. Dr. Redmond based his testimony upon union wage rates between 1980 and 1984 and assumed if MR. **SCOTT** worked until the age of 65 he would lose, in present value, net future earnings of $424,230.00 (R. 176). We submit that the facts and figures used by Dr. Redmond were properly before the jury and subject to a determination by them as to their reasonableness and evidentiary value.

Further, OTIS offered no evidence to rebut the figures. Since the evidence established the difference between the union and nonunion wages and there was no evidence presented by OTIS of other union employers **SCOTT** could have worked for, there was no basis for reversal of this award since the burden was on OTIS to show **SCOTT'S** failure to mitigate his damages.

This Court has flatly stated that wrongful discharge is a tort, based upon intent, and is subject to those damages available in a tort action. As a result, reinstatement is not available under section 440.205. The trial court therefore had no authority to order reinstatement. More importantly, reinstatement would not be an appropriate remedy because of the animosity between the parties which is apparent from this litigation!

An award of future lost wages is appropriate where the employee can establish that the loss of future wages,

retirement, and other benefits are the result of a wrongful discharge. See, Carnation v. Borner, 610 S.W. 2d 450 (Tex. 1980). SCOTT'S loss is amply demonstrated through his testimony and that of his economist and was left unrebutted by OTIS.

For these reasons, the decision of the Fourth DCA should be quashed and the verdict for future lost wages be reinstated.

POINT IV

THE PLAINTIFF IN A WRONGFUL DISCHARGE CASE IS ENTITLED TO PREJUDGMENT INTEREST ON A 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 liquidated 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 Plaintiff's past lost wages of $100,000.00 from the date of Plaintiff's termination until the date of trial. Therefore under this controlling law Plaintiff is entitled to prejudgment interest.

The Fourth DCA held that since SCOTT did not request prejudgment interest he was not entitled to it. However the district court also opined that the trial court should determine on remand, if SCOTT prevails at a new trial, whether prejudgment interest should be awarded on Plaintiff's lost wages claim (A. 1). SCOTT respectfully submits to this Court that prejudgment interest should be assessed on SCOTT'S past lost wages as a

matter of law.

It is not necessary, contrary to the decision of the district court herein, that a plaintiff demand prejudgment interest in their pleadings. See, Getelman v. Levey, **481** So. 2d 1236 (Fla. 3d DCA **1985);** Kissimee Utility Authority v. Better Plastics, Inc., 526 So. 2d **46** (Fla. **1988);** Ferrell v. Ashore, 507 So. 2d **691** (Fla. 1st DCA **1987).**

For these reasons, Plaintiff respectfully requests that this Court quash the decision of the Fourth District and 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, if the verdict is reinstated. Alternatively, Plaintiff requests that this Court hold that prejudgment interest be assessed as a matter of law on past lost wages awards in wrongful discharge cases.

CONCLUSION

For the reasons stated, the decision of the district court should be quashed and Plaintiff be granted the relief requested herein.

Respectfully submitted,

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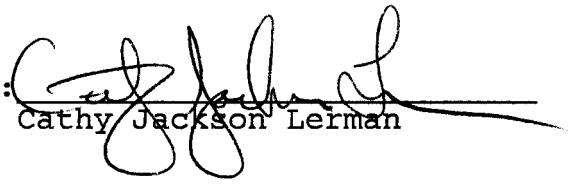
By: 
Cathy Jackson Lerman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 17th day of [illegible], 1990 to: Edna L. Caruso, Esq., Suite 4B Barristers Bldg., 1615 Forum Place, West Palm Beach, FL 33401; Mark Levitt, 609 W. Horatio St., Tampa, FL 33606; and Earle Lee Butler, 1995 E. Oakland Park Blvd., Suite 100, Ft. Lauderdale, FL 33306.

Cathy Jackson Lerman, Esq.
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By: [signature]
Cathy Jackson Lerman