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Home Sweet Home: Michigan Court Of Appeals Holds “Mental Anguish” Damages Recoverable For Damage Or Destruction Of Real Property

By Sidney A. Klingler

In a published opinion issued August 25, 2011, the Michigan Court of Appeals, in a decision of first impression in Michigan, held that a plaintiff can recover non-economic damages for damage to or destruction of real property.

In *Price v High Pointe Oil Company, Inc.*, __Mich App__ (2011) Defendant negligently pumped nearly 400 gallons of fuel oil into the basement of the Plaintiff's home, causing contamination that required the entire house to be demolished. Because all of Plaintiff's economic damages were paid by her insurer or by the Defendant or its insurer, the only issue at trial was Plaintiff's entitlement to non-economic damages. The trial court ruled that Plaintiff could seek damages for mental anguish, fright, shock, denial of social pleasures or enjoyment, and any embarrassment suffered because of Defendant's negligence, and the jury awarded Plaintiff \$100,000 in non-economic damages.

On appeal, the Defendant challenged the Plaintiff's right to recover non-economic damages. The appellate panel agreed with the trial court that it was legally permissible for Plaintiff to seek damages for mental anguish stemming from the destruction of her home. As a general rule, the Court reasoned, non-economic damages are recoverable in tort claims. The Court rejected Defendant's claim that common law does not permit recovery of damages for mental anguish or emotional distress stemming from damage to real property. The cases cited by Defendant for that proposition, the Court observed, dealt with personal property and not real property. Furthermore, there are “numerous and substantial differences between real and personal property”, the Court said, noting “the unique value of a home” which may provide emotional sustenance as much as physical shelter. Given these considerations, the Court declined to carve out an exception to the general rule that non-economic damages are recoverable in tort claims, for a tort claim based on damage to real property.

SECRET WARDLE NOTES:

This case involved only a claim of negligence, but it lends clear support to Plaintiffs seeking non-economic damages for other torts that affect real property, such as trespass-nuisance, that is, the interference with the enjoyment of land by physical intrusion.

It remains the law in Michigan that a plaintiff may not recover non-economic damages for damage to or loss of personal property.

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Furthermore, the Court held, Plaintiff did not have to demonstrate a physical manifestation of her mental anguish in order to recover damages. The Court distinguished between damages for emotional distress, which require a manifestation of physical injury, and damages for mental anguish (including shame, mortification, mental pain and anxiety, annoyance, discomfiture and humiliation) which are not so circumscribed.

Finally, the Court found that the verdict of \$100,000 was not excessive where Plaintiff lost her home and suffered stress, embarrassment while living in her parents' home, fear, anxiety, and depression, for which she received anti-depressant medication.

This case is very significant in defining a category of damages that has not been previously recognized in a Michigan published case. A plaintiff may now recover non-economic damages, including damages for anguish, shame, humiliation, anxiety and annoyance, that naturally flow from damage to or destruction of real property.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline SE, Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

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CONTRIBUTORS

Premises Liability Practice Group Chair

Mark F. Masters

Premises Liability Practice Group Co-Chair

Caroline Grech-Clapper

Editor

Bonny Craft

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