

IN THE (1) Third District Court

(2) Wallace Rothsman
Appellant(s),

Third DCA Case No.: 3D24-1764


v.
(3) Jaguar Land Rover North America LLC
Appellee(s).

Lower Tribunal Case No.: (4) 2024-012301-CA-01

2024 OCT -4 PM 3:44
CLERK OF DISTRICT COURT OF APPEAL

NOTICE OF APPEAL

NOTICE IS GIVEN that (2) Wallace Rothsman, Appellant, appeals to the Third District Court of Appeal the Order of this Court rendered [see Fla. R. App. P. 9.020(h)]
(5) Order Granting Motion to. The nature of the order is a final order
(6) Strike Punitive Damages

(7) 

Name: (8) Wallace Rothsman

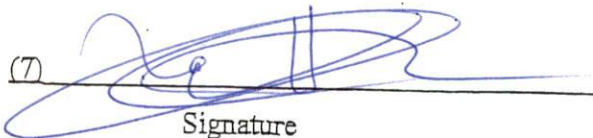
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CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to (10) William L. Bromagen
of Bromagen Law via email ebrom@bromagenlaw.com

(11) _____ this (12) 4th day of (13) October, 20(14) 2024

(7) 
Signature

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

2024 OCT -4 PM 3: 44

CASE NO: 2024-012301-CA-01

SECTION: CA23

JUDGE: Joseph Perkins

CLERK DISTRICT COURT OF
APPEAL THIRD DISTRICT

Wallace Rothsman

Plaintiff(s)

vs.

Jaguar Land Rover North America, LLC

Defendant(s)

ORDER GRANTING MOTION TO STRIKE PUNITIVE DAMAGES

This case came before the Court on Defendant's Motion to Strike Demand for Punitive Damages (#10) and Plaintiff's Response (#13), which appears to have been drafted by AI. See <https://phrasly.ai/ai-detector>. The parties have fully briefed their positions, and no hearing is necessary. After consideration, the Court **ORDERS and ADJUDGES** as follows:

1. The Motion is **GRANTED** due to Plaintiff's failure to comply with Rule 1.190(f).
2. The hearing scheduled for September 26, 2024 is **CANCELLED**.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 25th day of September, 2024.

2024-012301-CA-01 09-25-2024 4:01 PM

2024-012301-CA-01 09-25-2024 4:01 PM

Hon. Joseph Perkins

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

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Physically Served:

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WALLACE ROTHSMAN,
Plaintiff,

v.

JAGUAR LAND ROVER NORTH
AMERICA, LLC.,
Defendant.

IN THE FLORIDA THIRD DISTRICT
COURT OF APPEAL

CASE NO. 2024-012301-CA-01
SECTION: CA23

**APPEAL AGAINST ORDER
GRANTING MOTION TO STRIKE
PUNITIVE DAMAGES PURSUANT
TO FLORIDA RULE OF APPELLATE
PROCEDURE 9.130(A)(3)(C)**

JUDGE: Joseph Perkins

FILED
CLERK OF DISTRICT COURT OF
APPEAL - THIRD DISTRICT
2024 OCT -4 PM 3:45

COMES NOW, the Plaintiff, WALLACE ROTHSMAN, appearing pro se, and most respectfully submits that this appeal arises from the trial court's erroneous decision to strike the Appellant's claim for punitive damages in an action initiated against Jaguar Land Rover North America, LLC (hereinafter "**JLRNA**") for fraudulent misrepresentation, fraudulent concealment, violations of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), and unjust enrichment. The gravamen of the Appellant's claim stems from the Appellee's failure to disclose material facts concerning the replacement of the Engine Control Unit (ECU) in a leased vehicle, which directly led to significant performance issues, financial losses, and unwarranted hardship on the part of

1 the Appellant. The striking of the punitive damages claim, at this premature juncture, was not
2 only premature but inconsistent with established legal principles governing punitive relief.

3 4 **GROUNDS OF APPEAL**

5 **GROUND 1: MECHANICAL APPLICATION OF PROCEDURAL LAWS AND RULES**

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7 1. In the instant matter, the Court, in its hasty conclusion, erroneously granted the motion on
8 the purported basis that the Plaintiff failed to adhere to Rule 1.190(f), thereby dismissing
9 the claim with undue disregard for the Plaintiff's status as a pro se litigant. Such a decision,
10 predicated upon a rigid and mechanical application of procedural laws and rules, stands in
11 stark contrast to the well-established jurisprudential principle that courts must, in all equity
12 and fairness, afford latitude to those litigants who, by virtue of their lay status, lack the
13 technical acumen of seasoned counsel. It is not merely an oversight but a fundamental
14 misapprehension of justice to treat a pro se party with the same unforgiving scrutiny
15 applied to those represented by counsel, as the Court's decision has effectively done. The
16 Court, in its zeal to enforce procedural conformity, has neglected its duty to interpret such
17 pleadings with a degree of flexibility, an obligation which is not merely advisable but
18 imperative under the doctrine enunciated in *Haines v. Kerner*, 404 U.S. 519, which
19 mandates that pro se pleadings be construed more liberally.

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23 2. Indeed, while the proposition that "a pro se litigant is subject to the same standards as one
24 represented by counsel" has been articulated in *Kohn v. City of Miami Beach*, 611 So.2d
25 538, this does not foreclose the concurrent responsibility of courts to temper such
26 application with leniency when circumstances so require. The overarching goal of the
27 judicial system is to ensure that cases are decided on their merits, rather than allowing
28 technical procedural lapses to serve as the sole determinants of justice. The Plaintiff, bereft

1 of the guidance of legal counsel, is entitled to have his pleadings read in a manner which
2 furthers this objective, particularly where no evidence of prejudice or undue delay is
3 present. Thus, the Court's failure to adopt a more charitable and nuanced approach, as
4 dictated by the very nature of pro se representation, constitutes a manifest miscarriage of
5 justice that must not stand uncorrected.
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7 3. It is a well-settled principle that courts are obliged to construe the pleadings of pro se
8 litigants with a degree of liberality, recognizing the inherent disadvantage posed by their
9 lack of legal expertise. The U.S. Supreme Court, in *Haines v. Kerner*, 404 U.S. 519
10 (1972), unequivocally held that pro se filings must be viewed through a more forgiving
11 lens, subject to a less stringent standard than those prepared by attorneys. This doctrine
12 arises from a profound understanding of the imbalance between laypersons and seasoned
13 legal practitioners, ensuring that the pursuit of justice is not thwarted by an individual's
14 unfamiliarity with complex procedural formalities. By adhering to such a standard, courts
15 do not sacrifice the integrity of the law but rather preserve the equitable administration of
16 justice, enabling claims to be adjudicated on their substantive merits rather than dismissed
17 on technical grounds.
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20 4. In this context, to subject a pro se litigant to the same exacting procedural demands
21 imposed upon members of the legal profession is to risk undermining the core objective
22 of fairness in the judicial process. Courts must strike a balance, ensuring that while pro se
23 parties are not excused from compliance with essential rules, they are afforded a
24 reasonable degree of leniency in the interpretation and application of those rules. As
25 *Haines* instructs, the paramount aim of the judiciary is to resolve disputes on their merits,
26 not to erect insurmountable procedural barriers that disproportionately disadvantage those
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1 unrepresented by counsel. Accordingly, the liberal construction of pro se pleadings is not
2 merely a gesture of leniency but a vital safeguard against the miscarriage of justice.

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4 5. A court must not dismiss an action with prejudice solely on the basis of defective pleadings
5 without first affording the plaintiff an opportunity to amend. This principle is firmly
6 entrenched in Florida jurisprudence, as articulated in *Kairalla v. John D. & Catherine T.*
7 *MacArthur Foundation*, 534 So.2d 774, 775 (Fla. 4th DCA 1988), which emphasizes
8 that dismissing a claim with finality under such circumstances amounts to a
9 disproportionate and unjust remedy. The essence of justice demands that procedural
10 missteps, especially those arising from defective pleadings, should be met with an
11 opportunity for correction, not the harsh sanction of dismissal with prejudice. This ensures
12 that substantive claims are adjudicated based on their merits rather than prematurely
13 extinguished due to technical inadequacies.

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16 6. By denying the plaintiff the chance to amend, the court fails to uphold the equitable
17 doctrine that favors resolution on the merits, thereby contravening the very spirit of
18 judicial fairness. The opportunity to amend, particularly in cases involving pro se litigants,
19 is not a mere procedural formality but a necessary safeguard to prevent the miscarriage of
20 justice. As Florida courts have long recognized, such leniency is essential to balance the
21 scales of justice, ensuring that litigants are not unduly penalized for errors that may be
22 rectified through amendment. The draconian consequence of dismissal with prejudice,
23 absent this opportunity, is neither warranted nor proper within the context of procedural
24 justice.
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**GROUND 2:
ARBITRARY AND CAPRICIOUS APPLICATION OF THE LAW AND
RESTRICTIONS CONCERNING AI**

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4 7. The learned judge erred in granting Defendant's Motion to Strike the Plaintiff's demand
5 for punitive damages based on the assertion that the Plaintiff's Response appeared to have
6 been drafted by AI. It is both untenable and without precedent to grant such a motion
7 merely on the speculative nature of the drafting process, as the identity or manner of
8 drafting, whether by human counsel or artificial intelligence, bears no legal weight on the
9 substantive merits of the arguments presented. The judicial system ought not to allow such
10 extraneous factors to influence its decision-making process, for it is the legal sufficiency
11 of the claims and arguments, not the medium through which they are drafted, that should
12 form the bedrock of any ruling.
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14 8. Moreover, a thorough review of the jurisprudence in the state of Florida reveals no
15 provision, statutory or otherwise, nor any case law that sanctions the striking of punitive
16 damages on the basis of the method employed to draft a pleading or motion. Rule 1.190(f)
17 of the Florida Rules of Civil Procedure governs the amendment of pleadings and does not
18 impose any restrictions concerning the tools or technology utilized in the drafting of such
19 documents. The court's reliance on the assumption that AI involvement justifies striking
20 a demand for punitive damages is, therefore, an arbitrary and capricious application of the
21 law, wholly disconnected from the statutory framework within which such motions must
22 be adjudicated.
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24 9. The learned judge's order in this regard is a troubling departure from established legal
25 principles. It disregards the substantive law governing punitive damages and instead relies
26 on a misguided procedural critique that has no grounding in Florida's legal system. Such
27 a ruling, if allowed to stand, would not only set a dangerous precedent but would also
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1 airplane in operation, (*Shattuck v. Mullen*, Fla.App. 1959, 115 So.2d 597), an operated
2 motorcycle, (*Western Union Telegraph Co. v. Michel*, 1935, 120 Fla. 511, 163 So. 86)
3 and all boats (Sec. 371.52, F.S.A.), and strict liability has been imposed upon the owners
4 thereof for their improper use. The Supreme Court has also recognized that certain items
5 may be dangerous instrumentalities in fact."") *West v. Caterpillar Tractor Company, Inc.*,
6 336 So. 2d 80, 85-86 (Fla. 1976) ("We approached strict liability in *Green v. American*
7 *Tobacco Co.*, 154 So.2d 169 (Fla. 1963), which was a suit against the manufacturer and
8 distributor of cigarettes. The Court observed that the suit involved a commodity which
9 was available indiscriminately to the public generally, and applied a rule of absolute or
10 strict liability to the manufacturer. The question certified to this Court by the United States
11 Court of Appeals read as follows: "Does the law of Florida impose on a manufacturer and
12 distributor of cigarettes absolute liability, as for breach of implied warranty, for death
13 caused by using such cigarettes from 1924 or 1925 until February 1, 1956, the cancer
14 having developed prior to February 1, 1956, and the death occurring February 25, 1958,
15 when the defendant manufacturer and distributor could not on, or prior to, February 1,
16 1956, by the reasonable application of human skill and foresight, have known that users
17 of such cigarettes would be endangered, by the inhalation of the main stream smoke from
18 such cigarettes, of contracting cancer of the lung?" 154 So.2d at 170. This Court answered
19 the question as follows: "Upon the critical point, our decisions conclusively establish the
20 principle that a manufacturer's or seller's actual knowledge or opportunity for knowledge
21 of a defective or unwholesome condition is wholly irrelevant to his liability on the theory
22 of implied warranty, and the question certified must therefore be answered in the
23 affirmative." 154 So.2d at 170-71. See also *McLeod v. W.S. Merrell Co.*, 174 So.2d
24 736 (Fla. 1965). In a products liability suit against a manufacturer of a commercial
25 product by an ultimate consumer or a user, the sole test has been whether or not the product
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1 was reasonably safe for its intended use, as manufactured and designed, when it left the
2 plant of the manufacturer. This Court in *Matthews v. Lawnlite Co.*, 88 So.2d 299,
3 300 (Fla. 1956), said: “[C]ases have so often departed from or modified the old theory
4 that an innocent third party who purchases from a retailer can not sue a manufacturer
5 because of absence of privity of contract that the doctrine may be said to have been
6 abandoned in many jurisdictions. A doctrine more in line with reason and justice has been
7 substituted for it and may be said to have been crystallized in Restatement of the Law of
8 Torts, Sec. 398, Vol. 2, page 1084, as follows: “A manufacturer of a chattel made under
9 a plan or design which makes it dangerous for the uses for which it is manufactured is
10 subject to liability to others whom he should expect to use the chattel lawfully or to be in
11 the vicinity of its probable use, for bodily harm caused by his failure to exercise reasonable
12 care in the adoption of a safe plan or design.”)

15 **GROUND 4:**
16 **MISAPPLICATION OF THE LEGAL STANDARD**

17 11. Florida law unambiguously provides that punitive damages are appropriate where there is
18 evidence of conduct that is willful, wanton, malicious, or grossly negligent. In the present
19 case, the Appellee’s deliberate nondisclosure of the ECU replacement—an omission that
20 materially affected the vehicle’s performance and longevity—constitutes precisely the
21 kind of behavior contemplated by the Florida standard for punitive damages. The trial
22 court misapplied this legal standard by unduly minimizing the fraudulent nature of the
23 Appellee’s actions, disregarding the substantial evidence of willful misconduct placed
24 before it.
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**GROUND 5:
IMPROPER PREMATURE DISMISSAL**

12. Punitive damages are not to be lightly struck before a factual record has been fully developed. The trial court, in preemptively granting the motion to strike punitive damages, deprived the Appellant of the opportunity to develop and present critical evidence during discovery, thereby frustrating the very purpose of punitive damages, which is to deter particularly egregious conduct. The striking of punitive damages at this stage not only curtailed the Appellant's ability to present a complete case but also undermined the judicial process by truncating the examination of facts material to the issue of intentional misconduct.

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**GROUND 6:
VIOLATION OF DUE PROCESS**

13. The premature dismissal of the punitive damages claim constituted a violation of the Appellant's procedural due process rights. The Appellant was denied the opportunity to conduct sufficient discovery, present evidence, and argue the case on its merits with respect to the Appellee's fraudulent concealment and misrepresentation. The trial court's failure to afford the Appellant a fair and full opportunity to pursue punitive damages curtailed his right to a just hearing and denied him the chance to seek redress for the Appellee's egregious conduct.

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**GROUND 7:
FAILURE TO CONSIDER EVIDENCE OF AGGRAVATING FACTORS**

14. It is respectfully submitted that the trial court failed to properly weigh the aggravating factors presented by the Appellant. Fraud and concealment, by their very nature, are egregious and aggravating. The Appellee's knowledge of the defective ECU and its deliberate decision to withhold this critical information from the Appellant, which

1 subsequently caused mechanical failures and financial hardship, constitutes malice in law,
2 if not in fact. These aggravating factors, which should have been duly considered, establish
3 a clear basis for punitive damages under Florida law.
4

5 **GROUND 8:**
6 **INAPPROPRIATE FOCUS ON ECONOMIC DAMAGES**

7 15. It appears the trial court placed undue emphasis on the compensatory aspects of the
8 Appellant's claim, to the exclusion of punitive considerations. While compensatory
9 damages may serve to address the direct financial harm suffered by the Appellant, they
10 fail to address the punitive aspect of the Appellee's misconduct, which is intended to serve
11 as a deterrent against future fraud and deception. By striking the claim for punitive
12 damages, the court has failed to appreciate the distinct and complementary role that
13 punitive relief plays in our system of justice.
14

15 **GROUND 9:**
16 **ABUSE OF DISCRETION**


17 16. The trial court abused its discretion in granting the motion to strike. The decision was
18 arbitrary and capricious, lacking proper justification in fact or law. The evidence before
19 the court, when viewed in light of the governing legal principles, clearly supports the
20 Appellant's entitlement to pursue punitive damages. The striking of this claim, without
21 allowing full discovery or considering the totality of the circumstances, constitutes an
22 abuse of judicial discretion and warrants reversal.
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CONCLUSION

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2 For the foregoing reasons, the Appellant respectfully requests that this Court reverse the trial
3 court's order granting the motion to strike punitive damages and grant any other relief which this
4 honorable Court deems fit and appropriate.
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7 DATED: October 4th, 2024.
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9 Respectfully Submitted,

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11 By:  _____

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13 WALLACE ROTHSMAN
14 Pro se Plaintiff
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WALLACE ROTHSMAN,
Plaintiff,

: IN THE FLORIDA THIRD DISTRICT
: COURT OF APPEAL

V.

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: CASE NO. 2024-012301-CA-01
: SECTION: CA23

JAGUAR LAND ROVER NORTH
AMERICA, LLC.,
Defendant.

:
: **APPEAL AGAINST ORDER**
: **GRANTING MOTION TO STRIKE**
: **PUNITIVE DAMAGES PURSUANT**
: **TO FLORIDA RULE OF APPELLATE**
: **PROCEDURE 9.130(A)(3)(C)**

JUDGE: Joseph Perkins

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Plaintiff's Motion for Continuance was served on
the above-identified party or its counsel via Mail and email.

DATED: October 4th, 2024.

Respectfully Submitted,

By: 

WALLACE ROTHSMAN
Pro se Plaintiff