

**IN THE THIRD DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA**

Case No: 3D2024-0833

Lower Tribunal Case No.: 2021-014088-CA-01

FIVE FRAN, LLC,
Appellant,

v.

ROY DAVIS,
Appellee.

APPELLEE'S ANSWER BRIEF

ON APPEAL FROM A NON-FINAL ORDER
OF THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

THE LAW OFFICES OF RHONDA F. GELFMAN, P.A.

Rhonda F. Gelfman, Esq.

Fl Bar # 777013

Matthew Graham, Esq.

Fl Bar # 1048279

115 NW 167th Street, Third Floor

North Miami Beach, FL 33169

(305) 944-9120

Paralegal@GelfmanAssociates.Com

Counsel for Appellee

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STATEMENT OF THE CASE

This case involves a grave and urgent matter: a victim has been subjected to a brutal dog attack, perpetrated by vicious animals residing under the negligent supervision of a Corporate Homeowner. The Corporation, by granting permission for these dangerous dogs to remain on the premises, bears direct responsibility for this horrific incident. This is not a mere dog bite case; it is a stark example of gross corporate recklessness and disregard for public safety, warranting decisive judicial intervention.

Appellant, Five Fran LLC (“Appellant” or “Five Fran”), contends Appellee, Roy Davis (“Appellee” or “Davis”), the Victim, did not satisfy the requisite burden to warrant an amendment to the Complaint for a prayer for punitive damages. (Appx. 0350). Further it argues the Lower Court failed to conduct a sufficient analysis of the evidence to justify such a claim and that the evidence presented is inadequate. (Appx. 0350).

Contrary to Appellant's assertions, the record vividly demonstrates that Appellant's decision to permit Co-Defendant Tangela Walters to remain on the property—despite her possession of a *pack* of dangerously aggressive dogs—directly jeopardized public safety. This reckless choice by Appellant showcased a blatant disregard for the well-being of others and exemplified an egregious breach

of duty. The gravity of Appellant's negligence and the severe implications for public safety are self-evident. (Appx. 0307)

The Lower Court's decision to grant Appellee's Motion for Leave to Amend the Complaint to include a claim for punitive damages was appropriate and necessary. (Appx. 0397). That Court's ruling reflects a thorough and proper assessment of the evidence, acknowledging the significant risk posed by Appellant's inaction. (Appx. 0397). By the Lower Court's granting the amendment it ensures the full extent of Appellant's liability will be addressed and moreover, it may be held accountable for its profound disregard for public safety.

The decision to permit this amendment is not only justified but crucial for achieving justice. It underscores the Lower Court's commitment to addressing severe misconduct and safeguarding individuals from such perilous negligence. The ruling affirms the necessity of punitive damages in this case, reflecting the Court's dedication to upholding legal standards and ensuring that the rights and safety of individuals like Appellee are fully protected.

STATEMENT OF THE FACTS

In responding to the Appellant's initial brief, it is imperative to present a precise and accurate account of the facts to address any discrepancies and underscore the true context and gravity of the case. This statement is designed to offer a clear, factual narrative that aligns with the evidence and reinforces the solid foundation

upon which the Lower Court's decision was made. It is essential for the Court to understand the merits of the case as they were originally presented, ensuring a fair and informed evaluation of the Lower Court's ruling.

I. APPELLEE'S MOTION FOR LEAVE TO ADD CLAIM FOR PUNITIVE DAMAGES AND EVIDENCE SUBMITTED IN SUPPORT THEREOF

On January 11, 2024, Appellee Roy Davis filed a compelling Motion for Leave to Amend his Complaint, seeking to add a claim for punitive damages against Appellant, Five Fran (Appx. 0309). This Motion was meticulously crafted to align with statutory requirements, demonstrating a clear and reasonable basis for pursuing punitive damages. (Appx. 0310). Appellee presented substantial evidence to support his claim, provided a detailed proffer in accordance with *Fla. R. Civ. P. 1.190(f)*, and included the proposed amended complaint to facilitate a thorough review. (Appx. 0311).

Appellee's Motion is not merely procedural; it is founded on concrete evidence that underscores the necessity and merit of amending the complaint. His initiative-taking approach ensures that all relevant facts and legal grounds are duly considered, reinforcing the strong basis for his request. By following procedural rules and substantiating his claim, Appellee has effectively laid the groundwork for justifying the inclusion of punitive damages in this case.

A. PROFFER OF EVIDENCE

Appellee brought this action for negligence against both the dog owner, Tangela Walters, and the property owner, Five Fran (Appellant). (Appx. 0001). Appellant permitted Tangela Walters to rent or use the property located at 2990 North West 60th Street, Miami, Florida. (Appx. 0007).

Appellant's conduct amounted to gross negligence as it knowingly or recklessly allowed a dangerous dog to reside on the property, which was enclosed by a short fence. (Appx. 0311). Furthermore, Appellant or its contractors obstructed the city sidewalk with commercial vehicles, forcing pedestrians, including the Appellee, to walk directly adjacent to the property. This created a hazardous "zone of danger." (Appx. 0306, 0311).

Within this "zone of danger," the aggressive, large dog placed its forepaws on



the short fence, allowing its head and sharp teeth to extend over the fence and viciously attack the Appellee. (Appx. 0311). Appellant was aware of the dangerous

dog, as evidenced by a warning sign posted around the property warning of the presence of such dogs. (Appx. 0306, 0314).

In the Appellant's Amended Answer and Affirmative Defenses, Appellant did not assert a lack of knowledge regarding the dangerous dog, did not deny ownership of the property, and did not claim that Tangela Walters refused to leave the property (Appx. 0018). Consequently, Appellant waived these defenses and is barred from raising them in the appeal of Appellee's Motion for Leave.

Punitive damages are appropriate if the defendants' conduct demonstrates willful, wanton, and reckless disregard for the safety and rights of Davis. See *Leon County Humane Soc., Inc. v. DeGroat*, 439 So.2d 949, 951 (Fla. 1st DCA 1983).

B. PLAINTIFF'S PROFFER TO SUPPORT A CLAIM FOR PUNITIVE DAMAGES

1. Defendant Tangela Walters owned several American Pit Bull dogs, including one that violently attacked Appellee Davis. (Appx. 0002).
2. Despite acquiring the property from Co-Defendant Tangela Walters, Appellant chose to retain the inadequate short fence surrounding the property, failing to address the serious safety concerns it presented. (Appx. 0253, 0306).
3. Appellant not only continued to allow the dog owner to reside on the property after the purchase but also permitted this individual to remain there despite the

known risk, thereby contributing to the hazardous conditions that led to the attack on Appellee Davis. (Appx. 0259, 0306).

4. As the owner of the Dog, WALTERS, owned the Illegal¹ and violent Pit Bull, while the dog remained at all times on the property, this permitted the dog to have the capability to rear up on the hind legs, place its forepaws inside the property line onto the short fence line and place its head over the property line, and thereby bite Appellee as he passed by the subject property, all while Appellee remained on the public sidewalk. All of these events transpired while

¹ The dog in questions has been identified as an American Pit Bull, and as such, when located in Miami-Dade County, was kept in violation of Miami-Dade, FL MuniCode 5-17.2(a)&(b) (2022), Confinement of Pit Bulls, which states in pertinent part:

- a) Because of the pit bull dog's inbred propensity to attack other animals, and because of the danger posed to humans and animals alike by a pit bull dog when running loose or while running together in a pack, pit bull dogs must at all times be securely confined indoor, or confined in a securely and totally enclosed and locked pen, with either a top or with all four (4) sides at least (6) feet high, and with a conspicuous sign displaying the words "**Dangerous Dog**".
- b) At any time that a pit bull dog is not confined as required in subsection (a) about, the dog shall be muzzled in such a manner as to prevent it from biting or injuring any person or animal and kept on a lease with owner or custodian in attendance.

Miami-Dade, FL Municode 5-17.2(a) & (b) (2022).

Sec. 5-17.4 – Registration of Pit Bull Dogs:

Every owner with a pit bull dog in Miami-Dade County shall register the dog with the Animal Services Division of the Public Works Department of the County. The registration shall include the following: Name, address, and telephone number of the dog's owner; the address where the dog is harbored, if different from the owner's address; a complete identification of the dog including the dog's sex, color, and any other distinguishing physical characteristics; a color photograph of the dog; a description of the method of compliance with the confinement requirements; proof of the liability insurance or other evidence of financial responsibility required pursuant to this article, and a registration fee.

As a of June 9, 2022, no dogs were registered to that address, much less as "Dangerous Dogs," indeed, no dogs are or have ever been licensed on that address, and no insurance documents have been filed with the Miami-Dade Animal Control unit as required by code. Thus, the dogs are deemed to be illegal in Miami-Dade County, FL., pursuant to Director of the Animal Control Unit, Miami-Dade County, FL.

Appellee was lawfully walking on the public sidewalk adjacent to the property line, a public walkway. (Appx. 0306-0307, 0312).

5. At all relevant times, the dangerous dog remained on the subject property under the control of the Property Owner, Appellant, when it viciously attacked Appellee. (Appx. 0306-0307, 0313).
6. Appellant had both the right and the responsibility to remove the dog owner to safeguard public safety. By neglecting to exercise this duty, Appellant failed to protect the public, directly resulting in the injury sustained by Appellee. (Appx. 0306-0307, 0549).
7. Throughout the period in question, Appellant owned and managed the property. (Appx. 0047). Appellant allowed the dog owner and her dangerous dogs to reside on the premises as a business invitee, thereby authorizing their presence and contributing to the hazardous conditions that led to Appellee's injury. (Appx. 0306-0307, 0307).
8. The dangerous Pit Bull dogs continue to reside on the property, which still has the same insufficient low fence. (Appx. 0306-0307, 0482).
9. Appellee was compelled to walk on the public right-of-way while navigating between commercial vehicles that obstructed the sidewalk in front of Appellant's property. (Appx. 0306).

10. This obstruction forced Appellee to walk perilously close to the property's fence. The Pit Bull lunged at Appellee by placing its forepaws on the low fence, extending its head and sharp teeth over the property line, and ultimately biting Appellee. (Appx. 0306).

11. Appellant was fully aware of the dog's dangerous nature, as evidenced by the presence of a "Beware of Dog" sign on the front fence, which remained even after Appellant acquired the property. (Appx. 0307).

12. While the "Beware of Dog" sign alerted the public to the presence of dogs, it failed to adequately convey the severe risk posed by a Pit Bull. (Appx. 0306-0307). This sign clearly indicates that Appellant knew about the dangerous dogs on the property but did nothing to mitigate the risk to innocent bystanders. (Appx. 0306-0307).

II. THE HEARING ON APPELLEE'S MOTION FOR LEAVE

On February 13, 2024, the Motion for Leave was initially presented to the Court on Motion calendar. (Appx. 0324). However, recognizing the need for a thorough evaluation, the Court ordered that the Motion for Leave be specially set for a hearing, as documented in the Court's order (Appx. 0324). Consequently, on April 5, 2024, the Lower Court conducted a detailed and specially set hearing on the Motion for Leave. (Appx. 0397).

At the outset of the hearing, the Lower Court indicated that it had meticulously reviewed *all* relevant materials, including the Appellee's proposed proffer of evidence and the Appellant's response to the Motion for Leave. (Appx. 0548). This demonstrates the Court's commitment to a comprehensive examination of the issues at hand.

During the hearing, Appellee's counsel effectively argued that there was straightforward evidence of gross negligence. (Appx. 0549). The Appellant was aware of a pack of wild dogs on the property, which included parked cars obstructing the sidewalk, forcing the Appellee to walk perilously close to a short fence. (Appx. 0306-0307, 0549). As a result, the Appellee was bitten by a dog from this property, with the animals' legs remaining on the premises and its sharp teeth extending over the fence. (Appx. 0306-0307, 0549). Furthermore, Appellee's counsel underscored that the Lower Court's findings during the Motion for Summary Judgment already supported the Motion for Leave, illustrating a strong basis for proceeding with the amendment for a prayer for punitive damages in the case (Appx. 0556).

In contrast, the Appellant's response focused on reiterating arguments from her *four* Motions for Summary Judgment (denied: Appx. 0306-0307) and contested the issue of damages. (Appx. 0556). A Motion for Leave is evaluated under the Motion to Dismiss standard, not the Summary Judgment standard. The Appellant's assertion that the Appellee failed to provide new evidence overlooked the fact that the record

itself supported the need for the Motion for Leave. (Appx. 0306-0307, 0556).

Moreover, the Appellant's claim of untimeliness was misplaced; while she suggested that a Lower date was imminent, no such date had been set. (Appx. 0549).

The Lower calendar, scheduled for March 2024, did not impact the April 5, 2024, hearing on the Motion for Leave, making the argument of untimeliness irrelevant. The Appellant's approach to presenting the facts seemed to be strategically aimed at undermining the Motion rather than addressing the substantive issues in the light most favorable to the Appellee. (Appx. 0557).

In conclusion, the Lower Court appropriately found a reasonable basis for punitive damages based on the well-founded arguments presented in both the Appellees' Motion and the Appellant's Response (Appx. 0556), and the Lower Court's *complete* familiarity of the facts of the case, especially as it had already ruled on Appellant's multiple Motions for Summary Judgment (denied, Appx. 0306-0307). The Lower Court's ruling reflects a thoughtful consideration of the evidence and arguments, underscoring the merits of granting the Motion for Leave deemed filed *nunc pro tunc* on April 5, 2024. (Appx. 0397).

SUMMARY OF ARGUMENT

The Lower Court's decision to grant the Motion for Leave to Amend the Complaint for Punitive Damages was both meticulous and justified, adhering precisely to Florida law. The Court's precise review of the evidence confirmed that

the Appellee's claim met the stringent requirements set forth under § 768.72. This aligns with clearly established legal precedents. See *Ford Motor Co. v. Garcia*, 639 So. 2d 60 (Fla. 3d DCA 1994) and *TGI Friday's, Inc. v. Dvorak*, 663 So. 2d 606 (Fla. 3d DCA 1995), which mandate a rigorous assessment before permitting punitive damages.

The evidence unequivocally supports the claim for punitive damages, revealing that the Appellants engaged in grossly negligent behavior. The Appellee's evidence shows that the Appellants recklessly allowed dangerous dogs to remain on their property with a dangerously inadequate and illegal fence, creating a hazardous environment that directly led to the Appellee's injury. (Appx. 0306-0307).

The prominent "Beware of Dog" sign and the Appellants' failure to act on this known threat only compounds their culpability. (Appx. 0307). As noted in the Court's Order denying Summary Judgment, *Noble v. Yorke*, 490 So.2d 29 (Fla. 1986) and *Rosseau v. Fintz*, 711 So. 2d 1352 (Fla. Dist. Ct. App. 1998), underscores that landlords can be held accountable for tenant's dogs if they had knowledge of the danger and control over the property.

Indeed, the Lower Court stated in its order denying summary judgment to Appellant, "[i]n the case at bar, there were signs on the property owned by Five Fran LLC, warning 'Beware of Dog,' and as such, it can be inferred Five Fran LLC knew

about the dogs, and could have evicted its tenant, but failed to do so.” (Appx. 306-307).

The egregious nature of the Appellants' actions underscores the necessity for punitive damages. The Lower Court's decision is a critical step in upholding accountability and justice, thereby reinforcing that severe misconduct and gross negligence must be met with appropriate legal consequences. This decision not only aligns with Florida's legal standards but also affirms the Court's commitment to protecting individuals from such reckless behavior.

STANDARD OF REVIEW

A denial of a Motion for Leave to Amend to Add a Claim for Punitive Damages is reviewed *de novo*. *GEICO Gen. Ins. Co. v. Hoy*, 136 So. 3d 647, 652 (Fla. 2d DCA 2013) (affirming denial of motion).

It is well-established that the burden of demonstrating reversible error rests with the appellant. *Snowden v. Wells Fargo Bank*, 172 So. 3d 506, 507 (Fla. 1st DCA 2015) (noting that even under a *de novo* standard of review, the Lower Court's decision is presumed correct, and the appellant must show error). See also *Whelan v. Whelan*, 736 So. 2d 732, 733 (Fla. 4th DCA 1999) (“Absent a Lower transcript, this Court may reverse only if an error of law appears on the face of the final judgment.”); *Nunes v. Nunes*, 112 So. 3d 696, 700–01 (Fla. 4th DCA 2013) (“Even if the written order failed to adequately address the issue, we would affirm the Trial

Court's decision due to the lack of a transcript of the hearing."); *J.P. Morgan Chase Bank v. Combee*, 883 So. 2d 330, 332 (Fla. 1st DCA 2004) (without a transcript, it is presumed that the Trial Court's judgment was based on evidence presented at the hearing); *Estes v. Sassano*, 47 So. 3d 383, 385 (Fla. 1st DCA 2010) ("Without an adequate record, this Court cannot conclude that the Trial Court misapplied the law as to warrant reversal.").

I. LEGAL STANDARD FOR PUNITIVE DAMAGES

Section 768.72(1), *Florida Statutes*, stipulates that "[i]n any civil action, no claim for punitive damages shall be permitted unless there is a *reasonable showing* by evidence in the *record or presented by the claimant* which would provide a reasonable basis for recovery of such damages" (emphasis added).

The focus in the Motion for Leave is on whether the plaintiff's proffered evidence provides a *reasonable basis* for recovery of punitive damages. In contrast, reviewing a verdict by the trier of fact requires evaluating whether the plaintiff proved the requisite elements by "clear and convincing evidence." Fla. Stat. § 768.72(2) (emphasis added).

II. REVIEWING PROFFERED EVIDENCE

In reviewing a motion for leave to amend to seek punitive damages, the Court must view the proffered evidence in the light most favorable to the movant, accepting it as true. *Estate of Despain v. Avante Group, Inc.*, 900 So. 2d 637, 644

(Fla. 5th DCA 2005); *Wayne Firer Home Ctr. Of Pensacola, Inc. v. Cadlerock Joint Venture*, 16 So. 3d 1006, 1010 (Fla. 1st DCA 2009); *Porter v. Ogden, Newell & Welch*, 241 F.3d 1334, 1341 (11th Cir. 2001).

The Appellate Court must accept the evidence as true for the purpose of determining whether a reasonable basis exists for punitive damages. *Gattorno v. Souto*, No. 3D23-0639, 2024 WL 1289889, at *2 (Fla. 3d DCA Mar. 27, 2024) (citing *Est. of Blakely by & Through Wilson v. Stetson Univ., Inc.*, 355 So. 3d 476, 481 (Fla. 5th DCA 2022)). See also *Fed. Ins. Co. v. Perlmutter*, 376 So. 3d 24 (Fla. 4th DCA 2023); *Hosp. Specialists, P.A. v. Deen*, 373 So. 3d 1283 (Fla. 5th DCA 2023). The movant is entitled to reasonable inferences from the evidence. *Perlmutter*, 376 So. 3d at 34 (“The preliminary determination by the Lower Court considers the evidence presented by all parties and gives the movant the benefit of all reasonable inferences.”). “The mere fact that the evidence proffered by the parties was in some respect conflicting does not require a Lower Court to deny a motion seeking leave to amend to add a claim for punitive damages.” *Gattorno*, No. 3D23-0639, slip op. at 10, n.2.

ARGUMENT

I. THE LOWER COURT PROPERLY ANALYZED THE EVIDENCE & COMPLIED WITH FLORIDA LAW

On January 11, 2024, Appellee filed a Motion for Leave to amend the complaint to include a claim for punitive damages. (Appx. 0309). On February 12, 2024, Appellant responded to the Motion. (Appx. 0349). The Lower Court initially addressed the Motion on the Motion Calendar on February 13, 2024, and ordered a specially set 30-minute hearing for a more thorough examination. (Appx. 0324).

On February 22, 2024, a Calendar Call was conducted to tentatively schedule the Lower for the third week of March 2024. (Appx. 0548). Despite this, no trial date was set, and the Motion for Leave was fully argued before the Lower Court on April 5, 2024. (Appx. 0549). During the hearing, the Lower Court stated it had reviewed all relevant documents and did not require a detailed reiteration of the Motion and Response. (Appx. 0548). The Appellee argued convincingly that the Appellant's actions, including allowing dangerous dogs on the property, maintaining an inadequate fence, and obstructing the sidewalk, created a hazardous zone endangering the public by reminding the Court as to its prior orders. See ORDER on Summary Judgment, (Appx. 0306-0307), and Order on Motion to Amend (Appx. 0397).

The Appellant countered by arguing the validity of the facts instead of accepting the facts as true. (Appx. 0556). However, the Lower Court, after thorough consideration, ruled that the evidence shows a reasonable basis to find gross negligence on the part of the Appellant. (Appx. 0397). (Appx. 0469).

Pursuant to Fla. Stat. § 768.72(1), “no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.” [Emphasis added]. In this case, the Lower Court carefully scrutinized the evidence and found it compelling enough to justify punitive damages. (Appx. 0397). This approach adheres to the legal standard set forth in *Ford Motor Co. v. Garcia*, 639 So. 2d 60 (Fla. 3d DCA 1994), which emphasizes the necessity of a detailed examination of the evidence before allowing such claims.

The Lower Court's decision to grant the Motion for Leave was both appropriate and legally sound. The Court's decision aligns with the statutory requirements and legal principles governing punitive damages. As established in *TGI Friday's, Inc. v. Dvorak*, 663 So. 2d 606 (Fla. 3d DCA 1995), it is the Court's duty to ensure there is a solid evidentiary basis for punitive damages before permitting such a claim.

In this instance, the Lower Court's ruling was well-founded on the evidence and consistent with the governing legal standards, underscoring the Appellee's right to seek redress for the Appellant's egregious conduct.

II. THE EVIDENCE SUPPORTS THE ENTITLEMENT TO PUNITIVE DAMAGES

The evidence presented in this case indicated that Appellee has a legitimate claim for punitive damages. The record reflects unambiguous evidence of conduct that was willful, malicious, or grossly negligent, justifying the claim for punitive damages. The Lower Court's finding that the evidence met the threshold for such damages was based on a proper evaluation of the facts and the applicable law.

The Lower Court's decision to grant Appellee leave to amend the Complaint to include a claim for punitive damages should be affirmed. The proffered evidence, particularly when viewed in the light most favorable to the Appellee, not only provides but robustly supports the basis to allege punitive damages against the Appellants. The totality of the evidence shows a grossly negligent property owner who permitted a pack of wild dogs to remain on the property with a truly and illegal short fence, and who blocked the sidewalk to force the public to walk near the short fence which justifies the pursuit of punitive damages. (Appx. 0306-0307, 0314).

Under section Florida Stat. § 768.72(2), a party is liable for punitive damages when evidence is presented of the party's "intentional misconduct" which is "fraudulent, malicious, deliberately violent or oppressive," or "gross negligence" that resulted in a wanton disregard for the rights of others. *Owens-Corning Fiberglas Corp. v. Ballard*, 749 So. 2d 483, 486 (Fla. 1999). The terms are defined as follows: (a) "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the

claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage; (b) “Gross negligence” means that the defendant’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. *Fla. Stat. § 768.72(2)* (2022), Specific intent is not required under either scenario; the resulting harm and disregard for “the rights of others” is paramount. *Valladares v. Bank of Am. Corp.*, 197 So. 3d 1, 11 (Fla. 2016).

A. ZONE OF DANGER

Appellee had presented compelling, numerous exhibits and sworn declarations establishing that the attack occurred while he was lawfully walking on the public right-of-way in between commercial vehicles blocking the sidewalk in front of Appellant’s property. (Appx. 0306). Commercial vehicles obstructed the sidewalk in front of the property, forcing Appellee to walk dangerously close to the property’s illegal and low fence. (Appx. 0306). It was in this perilous situation that the tenant’s aggressive Pit Bull lunged at Appellee, using its forepaws to scale the inadequate fence. (Appx. 0306). This allowed the dog’s head to extend over the property line, while its hind legs remained on the property, ultimately enabling the vicious attack. (Appx. 0306). This sequence of events starkly highlights the hazardous conditions created by Appellant and underscores the justification for holding them accountable for the severe injuries inflicted on Appellee. (Appx. 0306).

B. BEWARE OF DOG SIGN(S)

The property owned by Five Fran LLC is marked with a prominent "Beware of Dog" sign. (Appx. 0307). This sign not only reveals that Five Fran LLC was fully aware of the dangerous dogs on its property but also underscores its blatant failure to act responsibly. (Appx. 0307). Knowing the risk posed by these dogs, Five Fran LLC had the legal authority and obligation to evict the tenant to protect the public. Its deliberate inaction in addressing this known threat exemplifies a gross neglect of duty and directly contributes to its liability. (Appx. 0306).

C. APPELLANT'S LIABILITY

Appellant not only owned and controlled the property in question but also actively authorized the tenant and her dangerous dogs to reside there as a business invitee. (Appx.0307). By granting this permission, Appellant explicitly sanctioned the presence of these hazardous animals on the premises. (Appx.0307). This decision directly contributed to the dangerous conditions that led to Appellee's injury. Appellant's actions, or lack thereof, in permitting and maintaining this dangerous environment, are at the core of the liability for the harm suffered by Appellee. (Appx. 0306).

"Our Supreme Court's recent decision in *Noble v. Yorke*, 490 So.2d 29 (Fla. 1986), lays to rest any uncertainty that may have existed entitling a dog-bite victim to sue the non-owner of a dog — the victim may pursue the non-owner upon a

common law liability claim. Id. at 31.” Indeed, *Fl. Sta. §767.04* specifically states: “The remedy by this section is in addition to and cumulative with any other remedy provided by statute or common law.” *Rosseau v. Fintz*, 711 So. 2d 1352 (Fla. Dist. Ct. App. 1998)(“a landlord may be liable for injuries resulting from an attack by a tenant's dog, if the landlord knew, or should have known that the tenant kept a vicious dog on the premises, and the landlord had the ability to control its presence. See *Noble v. Yorke*, 490 So.2d 29 (Fla. 1986); *Vasques By and Through Rocha v. Lopez*, 509 So.2d 1241 (Fla. 4th DCA 1987); *Ward v. Young*, 504 So.2d 528 (Fla. 2d DCA 1987); *Anderson v. Walthal*, 468 So.2d 291 (Fla. 1st DCA 1985). A landlord's knowledge of a dog and its vicious propensity can be inferred from the circumstances and can be imputed from the landlord's agent.” See *Ward ex rel. Rocha v. Lopez*, 509 So. 2d 1241 (Fla. Dist. Ct. App. 1987) (Holding that landlord may be liable for tenant's dog if landlord knows a dog is vicious and has sufficient control of premises to protect plaintiff, Appellant asserts that, based upon the evidence, a jury could infer actual knowledge on the part of the landlord), citing *Ward v. Young*, 504 So.2d 528 (Fla. 2d DCA 1987) and *Anderson v. Walthal*, 468 So.2d 291 (Fla. 1st DCA 1985). “Appellant further asserts that because the tenants could be lawfully evicted at will, the landlord had sufficient control over the premises to be liable for the dangerous condition created by the dog.” [Emphasis added]. (Appx. 0306-0307).

Given the appalling nature of the Appellants' conduct, the Lower Court's decision to award punitive damages was not only justified but virtually mandated.

The evidence overwhelmingly supports the conclusion that the Appellants' actions were egregiously negligent and reckless. Florida's legal standards are crafted to safeguard individuals from such severe misconduct and to hold wrongdoers accountable. The Lower Court's decision aligns perfectly with these principles, ensuring that justice is served and reinforcing the need for stringent accountability in cases of gross negligence.

CONCLUSION

In conclusion, the Lower Court's decision to grant the Motion for Leave was both procedurally correct and compellingly justified by the numerous exhibits and sworn declarations submitted by Appellee.

The Lower Court adhered strictly to the requirements of § 768.72, and carefully evaluated the Appellee's proffered evidence. When viewed in the light most favorable to the Appellee, this evidence unmistakably establishes a solid basis for seeking punitive damages. Given the clear demonstration of gross negligence and the egregious nature of the Appellants' conduct, it is imperative that this Court uphold the Lower Court's order. The decision not only aligns with Florida's legal standards but also serves to ensure accountability and justice.

Respectfully submitted,



Matthew Graham, Esq.
Fl Bar # 1048279
The Law Offices of Rhonda F. Gelfman, P.A.
115 NW 167th Street, Third Floor
North Miami Beach, FL 33169
305-944-9120
305-948-3317 (Fax)
mgraham@gelfmanassociates.com
www.gelfmanassociates.com

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was sent by the Florida Courts e-filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this 9th day of August 2024:

THE LAW OFFICES OF K. ELAINE WHITE, P.A.

K. Elaine White, Esq.
Fla. Bar No.: 1000550
2200 North Commerce Pkwy
Suite 200-4429
Weston, FL 33326

Counsel for Appellant



Matthew Graham, Esq.
Fl Bar # 1048279

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document complies with the formatting requirements in the Florida Rule of Appellate Procedure 9.210.



Matthew Graham, Esq.
Fl Bar # 1048279