

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

JAN 30 2006

CIVIL DIVISION

WILLIAM MALCOLM JOHNSON,
Individually and as Executor of the
ESTATE OF RUSSELL JOHNSON
Plaintiff,

v.

ARMY DISTAFF FOUNDATION, INC.
a/k/a
KNOLLWOOD MILITARY RESIDENCE,
Defendant.

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Civil Action No. 05-791
Calendar 14
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**ORDER DENYING DEFENDANT'S MOTION TO DISMISS OR FOR PARTIAL
SUMMARY JUDGMENT**

This matter is before the court on Defendant's motion to dismiss or for partial summary judgment. Defendant's motion is directed solely at Count III of the Complaint, which alleges violation of Community Residence Facility Regulations and seeks statutory treble damages. Defendant argues that the treble damage statutory remedy is akin to punitive damages, which have to be proven by clear and convincing evidence and supported by a state of mind that Plaintiff has not pled and cannot prove.

There is a disagreement between the expert witnesses as to whether Defendant violated the regulations that are the subject of Count III of the Complaint. Moreover, the question of whether any such violation, if proven, proximately caused the injury to Plaintiff's decedent is a question of fact for the jury. For these reasons, Defendant does not contend that it is entitled to dismissal or summary judgment on Count III. Instead, Defendant seeks something in the nature of a declaratory judgment that Plaintiff is not entitled to statutory treble damages because they were not intended by the Council of the

1/26/06
Order docketed and copies mailed
from Chambers, First Class Mail, to
parties indicated above on 1/27/06.



District of Columbia in a personal injury case of this kind and, even if treble damages might be allowable in such a case, it would only be where Plaintiff both pled and proved entitlement to punitive damages, which Plaintiff did not and cannot do.

The applicability, vel non, of the treble damage remedy in D.C. Code §44-1004.03(a) to personal injury actions such as this appears to be a question of first impression. It will arise only if Plaintiff prevails on his underlying claim in Count III. The question of whether the appropriate standard of proof is a mere preponderance or, as Defendant contends, clear and convincing evidence, is best determined by the trial judge in the context of evidence presented at trial, a motion for judgment made at the close of Plaintiff's case, and the drafting of appropriate jury instructions if any such motion is denied. It is not appropriate for summary judgment. The question of whether Plaintiff is entitled to treble damages will be a question of law for the court if, but only if, Plaintiff first proves that he is entitled to compensatory damages.¹ To the extent the court determines that statutory treble damages are punitive, rather than remedial, Plaintiff's entitlement may also turn on any evidence that Defendant's conduct was willful or reckless in its disregard of the life and safety of Plaintiff's decedent.² Again, the resolution of this issue must await the presentation of evidence at trial. It is not appropriate for summary judgment.

¹ The statutory minimum treble damage award of \$100 and its placement in a section of the code dealing primarily with wrongful discharge or transfer from nursing and community residence facilities may suggest that the Council had in mind something other than trebling of compensatory damages for personal injury. On the other hand, nothing in the statute appears to limit treble damages where, as here, the actual damages may be relatively large.

² Plaintiff's opposition to Defendant's motion offers to withdraw his claim for statutory punitive damages, which are limited to \$5000.

For the foregoing reasons, it is this 26th day of January, 2006,

ORDERED that Defendant's motion to dismiss or for partial summary judgment
be, and it hereby is, denied.



JUDGE FREDERICK H. WEISBERG

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