Supreme Court of Ohio Clerk of Court - Filed June 16, 2016 - Case No. 2016-0810

IN THE SUPREME COURT OF OHIO

CARLOS SIVIT, *et al.*,	)	Case No. 2016-0810
Appellees	)	
and	)	
DAVID S. GRUHIN and SYDNEY SIGLER GRUHIN,	)	On Appeal from Cuyahoga County Court of Appeals, Eighth Appellate District
Appellants	)	Court of Appeals Case Nos.:
vs.	)	CA-15-103340 and CA-15-103498
VILLAGE GREEN OF BEACHWOOD, L.P., *et al.*,	)	
Appellees	)	

MEMORANDUM IN SUPPORT OF JURISDICTION
OF
APPELLANTS, DAVID S. GRUHIN AND SYDNEY SIGLER GRUHIN

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STATEMENT OF THE CASE AND FACTS

This matter arises out of five separate lawsuits resulting from a fire that occurred in October 2007 in a Beachwood, Ohio apartment complex, owned and managed respectively by the Appellees, Village Green of Beachwood L.P. ("Village Green"), and Forrest City Residential Management, Inc. ("Forrest City").[1] The VG-FC Appellees were the named defendants in each of these actions; one commenced by Diemert & Associates Co., L.P.A. ("Diemert Firm"), on behalf of thirteen individual plaintiffs (the "Individual Plaintiffs"),[2] and the others respectively commenced by various subrogated insurers (the "Subrogated Insurers") of certain of the Individual Plaintiffs. The Individual Plaintiffs each possessed, in varying amounts, separate, distinct and unique compensatory damages claims, and all, as applicable, tenanted ten of the apartments in the building destroyed by the fire.

Consolidated for trial, each of these actions alleged that the fire had resulted from "negligent construction" (*i.e.*, negligent installation of electrical wiring) and subsequent "negligent maintenance" of the electrical wiring in violation of the Ohio Landlord-Tenant Act, *R.C. 5321.04*. The Diemert Firm prosecuted compensatory and punitive damages on the Individual Plaintiffs' behalves, while the Subrogated Insurers asserted claims for compensatory damages only. Pursuant

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[1] Village Green and Forrest City are hereinafter collectively referred to as "VG-FC Appellees."

[2] The Individual Plaintiffs consist of: (i) David Gruhin and Sydney Sigler Gruhin ("Gruhin Appellants"), who are presently husband and wife, but at the time of the fire were both single; and (ii) Carlos Sivit, Sonya Pace, Jason Edwards, Renee Edwards, Natalie Rudd, Prathibha Marathe, Hallie Gelb, Mohammed Marwali, Selvey Pangkey, Luciana Armanijigan and Mitchell Rosenberg (collectively, the "Sivit Appellees").

to *R.C. 2315.21(B)*,[3] the compensatory and punitive damages claims were bifurcated at trial. In December 2011, a common pleas court jury found that the VG-FC Appellees had been negligent, and awarded a total of $582,326.00 in compensatory damages allocated in varying amounts amongst the Individual Plaintiffs.

In contrast, however, to the Individual Plaintiffs' separate, distinct, unique and particularized compensatory damages claims, the Diemert Firm requested of the same jury during the trial's second phase, that punitive damages be awarded on a collective as opposed to individual basis to the Individual Plaintiffs. In the verdict interrogatories, the jurors were instructed to consider whether as a group, the Individual Plaintiffs were entitled (as opposed to each individually) to an award of punitive damages and, if so, in what total amount. The jury returned a $2,000,000.00 punitive damages verdict against Village Green - - a figure representing more than three and a half times the combined compensatory damages of $582,326.00 awarded to the Individual Plaintiffs. The VG-FC Appellees moved to reduce the punitive damages award to the amount prescribed by the "cap" provision set forth in *Statute (D)(2)(a)*, but the trial court refused to do so.

On May 14, 2012, the trial court issued a final judgment entry ("May 2012 Judgment") setting forth, among other things, the separate compensatory damages awards to each of the Individual Plaintiffs,[4] as well as the $2,000,000.00 in punitive damages collectively awarded to them. (Appx. 1-4) The Court of Appeals, Eighth Appellate District ("CA-8th") affirmed the May

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[3] For purposes of this Memorandum In Support Of Jurisdiction, *R.C. 2315.21* is referred to as the "Statute," and *sub-Sections (A), (B)(2), (B)(3)* and *(D)(2))(a)* thereof are sometimes referred to as "*Statute (A)*," "*Statute (B)(2)*," "*Statute (B(3)*," and "*Statute (D)(2)(a)*," respectively.

[4] As the consequence of a relatively *de minimis* mathematical error, the May 2012 Judgment erroneously referenced a total compensatory damages award figure of only $582,146.00 instead of the correct $582,326.00 figure.

2012 Judgment on January 17, 2013. *Sivit v. Village Green of Beachwood, L.P., 8th Dist. Cuyahoga No. 98401, 2013-Ohio-103*. In June 2013, this Court accepted the VG-FC Appellees' discretionary appeal on several issues, including whether the Individual Plaintiffs' claims constituted a "tort action" within the meaning of *Statute (A)*, as to which the punitive damages "cap" set forth in *Statute (D)(2)(a)* applied. *Sivit v. Village Green of Beachwood, L.P., 136 Ohio St.3d 1404, 2013-Ohio-2645, 989 N.E.2d 1019*. Thereafter, this Court affirmed all issues related to the jury verdict, except for its award of punitive damages. *Sivit v. Village Green of Beachwood, L.P., 143 Ohio St.3d 168, 2015-Ohio-1193, 35 N.E.3d 508*.

This Court agreed with the VC-FC Appellees, insofar as punitive damages were concerned, that: (i) the action brought by the Individual Plaintiffs was a "tort" and not a "contract" action; (ii) the $2,000,000.00 in awarded punitive damages impermissibly exceeded the "cap" set forth in *Statute (D)(2)(a)*; and (iii) the appropriate punitive damages figure in the instant circumstances, was to be specifically fixed at exactly twice (*i.e.*, the maximum permitted pursuant to *Statute (D)(2)(a)*) the aggregate total of the varying compensatory damages awarded by the jury to each of the Individual Plaintiffs. (Appx. 5-12)

The VG-FC Appellees filed a motion, ultimately denied by this Court, for reconsideration regarding the Individual Plaintiffs' entitlement to punitive damages. *Sivit v. Village Green of Beachwood, L.P., 142 Ohio St.3d 1479, 2015-Ohio-2104, 31 N.E.3d 656*. On June 3, 2015, this Court issued its mandate and sent certified copies of its April 2, 2015 judgment entry to the trial court and the CA-8th.

Upon remand, the VG-FC Appellees filed a motion for application of this Court's punitive damages ruling. Following a hearing, the trial court entered an order reducing the jury's

$2,000,000.00 punitive damages award to $1,537,555.90, *plus* statutory interest from the date of entry of the May 2012 Judgment.

On July 13, 2015, the trial court ordered the VG-FC Appellees to pay the $1,537,555.90, *plus* statutory interest to the Cuyahoga County Clerk of Courts. (Appx. 13) Thereafter, on August 31, 2015, the trial court awarded punitive damages in the amount of $153,755.59 to "each of the ten plaintiff units." (Appx. 14-19) Subsequently, on October 19, 2015, the trial court entered a judgment entry ("August 2015 Order") wherein, the VG-FC Appellees were: (i) ordered to deposit $1,194,294.00 (*plus* interest for a total amount of $1,309,535.10) with the Cuyahoga County Clerk of Courts, representing the portion of the reduced $1,537,555.90 punitive damages award then no longer in dispute; and (ii) granted a stay of execution, predicated upon the posting of a $400,000.00 *supersedeas* bond as to the remaining $343,261.90 *plus* interest, pending the appeal's ultimate outcome. (Appx. 20-22)

The Gruhin Appellants and the VG-FC Appellees each appealed the August 2015 Order. On May 12, 2016, the CA-8th entered its Journal Entry and Opinion ("May 2016 Order") reversing *in toto*, the $1,537,555.90 punitive damages award, and remanded the matter to the trial court with instructions to fix the total punitive damages award at $1,194,294.00, and to allocate and distribute such funds equally among "ten individual plaintiff groups." (Appx. 23-63) On May 26, 2016, the Gruhin Appellants filed their: (i) Notice of Appeal in accordance with *S.Ct.Prac.R. 7.01(A)(1)(a)(i)* and *(A)(1)(3)(i)-(ii)* from certain portions of the May 2016 Order (Appx. 64-67); and (ii) Motion Seeking Limited Stay Relief in accordance with *S.Ct.Prac.R. 7.01(A)(3)(a).* (Appx. 68-115).

EXPLANATION AS TO WHY THIS MATTER IS OF PUBLIC OR GREAT GENERAL INTEREST

The Gruhin Appellants **do not** take exception to the CA-8th's reduction of the aggregate punitive damages award from $1,537,555.90 to $1,194,294.00. They do, however, disagree with the following specific determinations set forth in the May 2016 Order, and believe that these erroneous findings, all of which present matters of public or great general interest to the citizenry, bar and judiciary of the State of Ohio, merit further consideration by this Court:

1. That the trial court's *per capita* allocation of the punitive damages in ten equal shares amongst "ten individual plaintiff groups" consisting of the thirteen Individual Plaintiffs does not violate *Statute (D)(2)(a)*.

2. That the purpose of *Statute (D)(2)(a)* "… is to limit the damages to be awarded against a defendant, not to ensure that a particular plaintiff gets a particular punitive damage award (or a particular share of a punitive damages award)." (Appx. 55 at {¶48})

3. That there was no necessity for the CA-8th to "… decide the issue of whether sufficient evidence existed to support the trial court's finding that an agreement existed amongst the [I]ndividual [P]laintiffs to equally share any award of punitive damages[,] because even if the trial court erred in concluding that such an agreement existed, [the CA-8th] would still affirm the trial court's decision to distribute the punitive damages equally among the ten individual plaintiff groups based on the particular facts and circumstances in this case." (Appx. 54 at {¶46})

A. ***R.C. 2315.21(D)(2)(a)***

Insofar as proper application of *Statute (D)(2)(a)* is concerned, it is of importance not only to the public, but to the bar and judiciary as well, that this Court, as a matter of statutory interpretation, definitively determines which reading of *Statute (D)(2)(a)* is indeed the correct one

- - that ascribed to it by the CA-8th in the May 2016 Order, or that argued by the Gruhin Appellants in their merits and supplemental briefs filed below.

1. The CA-8th's Interpretation and Application of *R.C. 2315.21(D)(2)(a)*

As now interpreted by the CA-8th, *Statute (D)(2)(a)* neither ensures nor entitles a particular amount of punitive damages (or a particular share thereof) to be awarded to a qualifying plaintiff (*i.e.*, one that has made claims for both compensatory and punitive damages) already possessed of a separate, distinct and unique compensatory damages award. To the contrary, when considered in combination with the rights and entitlements of other similarly qualifying plaintiffs, **all of whom** are themselves possessed, in varying amounts, of separate, distinct, unique compensatory damages awards, the CA-8th erroneously concluded, that *Statute (D)(2)(a)* affords the trier of fact the latitude and discretion - - for the benefit of select qualifying plaintiffs and to the detriment of others of them - - to authorize discriminatory and excessive punitive damages allocations in excess of *Statute (D)(2)(a)*'s mandated "two times" maximum awarded compensatory damages "cap."

2. The Gruhin Appellant's Interpretation and Application of *R.C. 2315.21(D)(2)(a)*

The Gruhin Appellants contend, that **in the absence of a written agreement** (knowingly secured by counsel on a fully informed basis from all qualifying plaintiffs in strict compliance with the Ohio Rules of Professional Conduct ["*RPC*"])[5] providing for some other allocation and

[5] *Prof.Cond.R. 1.7*'s mandatory requirement for a memorialized writing is only implicated in instances where conflicts of interest and informed consent issues (collectively, the "Conflicts/Consents Issues") present themselves. While in myriad other circumstances it may represent "best" or "better" practice to similarly reduce such matters between client and attorney to writing, *Prof.Cond.R. 1.7* has no application in a situation where an attorney is representing the interests of a singular client. In such circumstance, unlike here, there is no risk of the attorney being confronted with divergent client interests, or questions or concerns involving possible disparate client treatment.

distribution methodology, there is no discretion afforded pursuant to *Statute (D)(2)(a)*. Rather, a trial court is mandatorily obliged thereunder, to initially look to the specific compensatory damages awarded to each qualifying plaintiff, and then multiply each such fixed compensatory damages figure by a factor no greater than two. In adhering to such "two-pronged" analysis, the precise but varying punitive damages awards properly allocable to each qualifying plaintiff will have been correctly determined. At the same time, such approach renders it impossible for a court to run afoul of the maximum "cap" punitive damages amount to which a qualifying plaintiff is statutorily entitled.

While this issue will inevitably present itself in future multi-plaintiff actions in which a punitive damage "overlay" exists, so too, based upon its specific facts, does the instant matter, similarly require this Court's intervention. Previously, this tribunal of last resort determined that the jury's awarded punitive damages figure was necessarily subject to remitter, because it substantially exceeded *Statute (D)(2)(a)*'s maximum "cap" (*i.e.*, two times the Individual Plaintiffs' awarded compensatory damages). At the same time, this Court also concluded that as so reduced, such award was to be fixed at exactly (*i.e.*, no more nor less) than the maximum amount permitted pursuant to *Statute (D)(2)(a)*. Regrettably, despite these rulings, upon remand, the trial court, and subsequently the CA-8th upon appeal, both erroneously and improperly exercised discretion (where none exists either statutorily or as a consequence of this Court's earlier actions) to permit certain of the Individual Defendants to receive punitive damages awards in excess of the *Statute (D)(2)(a)* "cap."

Thus, a definitive pronouncement by this Court will necessarily provide clarity and guidance to the general public, the bar and most importantly the judiciary, as to what indeed is the proper interpretation and application of *Statute (D)(2)(a)*, in circumstances where the interests of

multiple qualifying plaintiffs, each possessed of separate, distinct and unique compensatory damages awards are involved.

B. The Conflicts of Interest and Informed Consent Issues Left Unaddressed and Unresolved by the May 2016 Order

1. Other Than the Non-Existent *Prof.Cond.R. 1.*7 Compliant Written Agreement, the "Particular Facts and Circumstances of This Case" are Immaterial and Insufficient to Permit Allocation of the Awarded Punitive Damages Equally Among Ten Individual Plaintiff Groups

The CA-8th determined in the May 2016 Order, that the existence or absence of an "agreement" (written or otherwise) concerning allocation and distribution of any punitive damages award, in clear disregard to the mandatory requirements of *Prof.Cond.R. 1.*7, was of no moment or consequence. The May 2016 Order is all the more suspect in this regard, when such glaring failure to comply with the *RPC* occurs in a situation where the interests of all qualifying plaintiffs (*i.e.*, each of the Individual Plaintiffs) were represented at trial by the same law firm (*i.e.*, the Diemert Firm).

The May 2016 Order's finding that "… even if the trial court erred in concluding that such an agreement existed, [the CA-8th] would still affirm the trial court's decision to distribute the punitive damages equally among the ten individual plaintiff groups based on the particular facts and circumstances in this case[,]" is unsupportable and unsustainable as a matter of law. Regardless of the **"particular facts and circumstances"** to which the CA-8th refers or alludes, **none** sufficiently "inoculate" or excuse the **uncontroverted fact** that under the **"particular facts and circumstances"** of this case, the Diemert Firm failed to comply with the clear, express, unequivocal and unwaivable requirements of *Prof.Cond.R. 1.7*, and as a consequence, certain of the Individual Plaintiffs were improperly awarded punitive damages in excess of the *Statute (D)(2)(a)* "cap."

2. The May 2016 Order's Punitive Damages Allocation and Distribution Ruling is Unsustainable Because of the Diemert Firm's *Prof.Cond.R. 1.7* Compliance Failure

Paramount amongst *Prof.Cond.R. 1.7*'s requirements, is the mandatory obligation that a lawyer or law firm **must without exception**, reduce to writing, the terms of any "agreement" purporting to alter (positively or negatively) the respective individual rights, as applicable, of the multiple clients then being represented. In connection with such writing: (i) the lawyer or law firm **must** specifically detail the scope, nature and full extent to which any then posed, actual or potential Conflicts/Consents Issues could adversely impact the interests of one, more or all of such clients; (ii) the clients **must** individually acknowledge that each understands and fully comprehends the import of the foregoing disclosures; and (iii) after having been so informed, the clients, acting as a group, **must** unanimously consent to the waiver of such Conflicts/Consents Issues, and agree to be bound to the terms of the "agreement" as to which such Conflicts/Consents Issues had been implicated in the first instance.

The CA-8th's flawed analysis of *Statute (D)(2)(a)* resulted in substantial measure, from its obvious unwillingness to address head on and resolve, the serious and substantial Conflicts/Consents Issues that, as an unfortunate consequence of the May 2016 Order, still remain unresolved today, just as they have from the very outset of the attorney/client relationship established between the Individual Plaintiffs and the Diemert Firm.

All of the Conflicts/Consents Issues were raised with specificity in the Gruhin Appellants' merits and supplemental briefs filed below. Yet, instead of tackling any of these troubling issues calling into serious question a *penumbra* of decisions unilaterally made by the Diemert Firm on the Individual Plaintiffs' behalves - - all without its first having solicited and secured in writing, as the *RPC* requires, fully informed consents and conflicts of interest waivers from each of the Individual

Plaintiffs - - the CA-8th in the May 2016 Order engaged in what can only be described as extremely tortured "mental gymnastics." Therein, it implemented on a *de facto* basis, the sum and substance of "agreement" terms initially divined (all without any basis in fact therefor) by the trial court, while simultaneously sidestepping entirely, the actual existence (or lack thereof) of such "agreement."

The CA-8th ruled in such fashion despite (or more accurately in spite of) the absence, as required by *Prof.Cond.R. 1.7*, of any writing confirming and memorializing the Diemert Firm's full disclosure to, and satisfactory resolution between all of the Individual Plaintiffs, of the Conflicts/Consents Issues affecting - - one way or the other - - any ultimate determination as to the efficacy, let alone very existence of any such "agreement" in the first instance. For, contrary to the ruling contained in the May 2016 Order, in the absence of such "agreement," there can exist no basis for distribution of the awarded punitive damages to the Individual Plaintiffs in any manner other than that mandatorily prescribed pursuant to *Statute (D)(2)(a)*.

3. None of the "Particular Facts and Circumstances" Relied Upon in the May 2016 Order Would Have Occurred if the Diemert Firm Had Complied With *Prof.Cond.R. 1.7*

Ironically, each of the specific facts and circumstances cited by the CA-8th in the May 2016 Order in support of its strained conclusions and findings, arise directly and proximately from the Diemert Firm's failure from the outset, as well as throughout the ongoing course of this representation, to at any time: (i) apprise the Individual Plaintiffs as to the nature, scope and extent of the Conflicts/Consents Issues; and (ii) take affirmative steps pursuant to *Prof.Cond.R. 1.7*, to adequately address, resolve and memorialize same. Had the Diemert Firm done so, all of the festering Conflicts/Consents Issues it allowed to go unchecked and unresolved would have been avoided.

In concluding it unnecessary to determine in the May 2016 Order if the trial court erred in finding the existence of such punitive damages allocation and distribution "agreement," the CA-8th relied entirely upon specific occurrences that never could or would have taken place had the Diemert Firm actually and adequately performed its separately owed duty and obligation to address and resolve the Conflicts/Consents Issues. In placing its *imprimatur* upon the claimed "substance" of such "agreement," the CA-8th disingenuously ignored and dismissed the Conflicts/Consents Issues as irrelevant; all without any direct or indirect comment, statement or reference within the May 2016 Order. In sum, the Diemert Firm's failure to comply with the "absolute" requirements and strictures of the *RPC*, the Conflicts/Consents Issues not only permeated, but eventually undermined and tainted the entirety of its attorney/client relationship with the Individual Plaintiffs.

Despite having the Conflicts/Consents Issues squarely presented before it for review, consideration and adjudication, the CA-8th completely failed in its obligation to consider the nature, scope and extent of the ethical obligations incumbent upon an attorney during all phases of an attorney/client relationship (*i.e.*, prior to and during the course of any ongoing representation) involving the rights of multiple clients (each of whom is possessed of disparate individual claims) in which said attorney assumes the representation of their interests in a single action or proceeding, to identify, address and satisfactorily resolve all actual, apparent, potential and/or perceived Conflicts/Consents Issues in accordance with the *RPC* generally and *Prof.Cond.R. 1.7* specifically.

Therefore, it is important that this Court, unlike the CA-8th, actually undertakes the review of the Conflicts/Consents Issues that the lower appellate tribunal proved either incapable or entirely unwilling to do. Through such review, this Court will provide guidance not only to members of the public who every day contract for the provision of legal services in the marketplace, but also for the benefit of all members of the bar who find themselves confronted

with ethical issues such as the Conflicts/Consents Issues, that potentially adversely affect or impact their clients' rights in instances where said clients' respective interests in a single action/claim are not identical, but rather, separate, disparate, individual, unique and distinct.

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. 1

ATTORNEYS REPRESENTING DIVERGENT RIGHTS AND INTERESTS OF MULTIPLE CLIENTS IN THE SAME MATTER MUST FIRST COMPLY WITH THE MANDATORY REQUIREMENTS OF *PROF.COND.R. 1.7* BEFORE ACTING ON THEIR CLIENTS' "JOINT" BEHALVES, WHERE TO DO SO ACTUALLY OR COULD POTENTIALLY PROVE DETRIMENTAL TO ONE OR MORE OF SUCH CLIENTS' "INDIVIDUAL" CLAIMS

Prof.Cond.R. 1.7(a), (b) and *(c)* set forth the specific guidelines to be adhered to by counsel **before** it may act in furtherance of any purported "agreement" or "understanding" adversely affecting or benefiting, as applicable, the uniquely individual rights of multiple clients whose interests are to be or are already in the midst of being jointly represented in any transaction or litigation.

In such context, it is an absolute requirement and imperative that all actual, potential and/or constructive conflicts of interest be: (i) fully explained by counsel to all involved clients; and (ii) reduced to a memorialized writing executed by each of the affected clients, confirming that the specific terms of such agreement" or "understanding" had, subject to their unanimously solicited and secured informed consent, been volitionally given, agreed to and entered into by each and all of them.[6]

[6] It is noteworthy that even in *Prof.Cond.R. 1.7(a)* and *(b)* compliant circumstances, *Prof.Cond.R. 1.7(c)(2)* makes clear, regardless of client consent, that counsel shall not accept or continue a particular representation if doing so would involve **- - as most certainly was the case here - -** the assertion of claims between and amongst any of the clients then represented in the same matter or proceeding by such attorney or law firm.

In the instant action, as a direct consequence of the Diemert Firm's several violations from the very inception of its representation of the Individual Plaintiffs' interests of the *RPC* generally and *Prof.Cond.R. 1.7* specifically, there *ab initio* could never have been put into place any punitive damages allocation/distribution "agreement" or "understanding" that binds or otherwise obligates the Individual Plaintiffs. Thus, even if one were *arguendo* to assume the existence of an "agreement" or "understanding" **verbally** entered into between the Diemert Firm and the Individual Plaintiffs, such **verbal** "agreement" or "understanding" could never be deemed effective, precisely because the paramount aim and goal of the *RPC* is to protect clients' rights and interests. Thus, *Prof.Cond.R. 1.7* unequivocally mandates that any such "agreement" necessarily be reduced to a memorialized writing signed by all involved parties, only after all relevant and involved facts, issues and concerns have been entirely disclosed and discussed between attorney and clients, and the clients' respective fully informed consents have, based on such full and complete disclosure, been provided.

Herein, the Diemert Firm and Sivit Appellees' failure during all proceedings below to offer any evidentiary proofs or any memorialized writing(s) signed by all (or any) of the Individual Plaintiffs and the Diemert Firm proving the existence of such written "agreement" or "understanding," serves to lay bare the inherent and incurable flaw underlying the trial court, and now the CA-8th's reasoning, findings and rulings set forth in the May 2016 Order, making them unsustainable and subject to reversal by this Court.

PROPOSITION OF LAW NO. 2

ABSENT A WRITTEN "AGREEMENT" AMONGST MULTIPLE PLAINTIFFS IN A SINGLE ACTION ALLOCATING PUNITIVE DAMAGES BETWEEN THEM IN A MANNER CONTRARY TO *R.C. 2315.21(D)(2)(a)*, FOR A COURT TO DETERMINE THE PRECISE BUT VARYING PUNITIVE DAMAGES PAYABLE TO EACH SEPARATELY "QUALIFYING" PLAINTIFF WHO ASSERTED BOTH COMPENSATORY AND PUNITIVE DAMAGES CLAIMS, IT MUST, AS THE STATUTE MANDATES,

QUANTIFY THE VARYING COMPENSATORY DAMAGES INDIVIDUALLY AWARDED TO EACH PLAINTIFF, AND THEN MULTIPLY SUCH AMOUNT BY A FACTOR NO GREATER THAN TWO

A. No Case Law Specifically on Point Exists in Ohio Regarding <u>Division of Punitive Damages Amongst Multiple Plaintiffs</u>

Although there is no specific case law on point in Ohio regarding the division of punitive damages amongst multiple plaintiffs, *Harris, et al., v. Physicians Mutual Insurance Company, et al., 240 F.Supp.2d 715 (N.D.Ohio 2003)*, is illustrative of the Gruhin Appellants' contention, contrary to the May 2016 Order, that each of the Individual Plaintiffs is entitled to a share of the awarded punitive damages equal to two times such litigant's respectively and individually awarded compensatory damages.

While the *Harris* court's primary focus was to determine whether or not the individual claims of several plaintiffs could be aggregated for purposes of meeting the $75,000.00 statutory threshold figure necessary to invoke federal diversity jurisdiction, it also analyzed the rights of individual members of a plaintiff "class" to discrete allocations of punitive damages based upon their respective actual compensatory damage awards. The *Harris* court concluded that "… class members' rights are not common and undivided, because they could maintain individual actions against the defendants. That is, not only the class as a whole is entitled to the requested relief." *240 F.Supp.2d 715* at *719*.

Accordingly, the Gruhin Appellants assert that a *Statute (D)(2)(a)* award of punitive damages is to be properly determined in line with a plaintiff's individual compensatory damages award, but in all events, such award may never exceed its statutorily established "two times" maximum "cap." To achieve such result, a court must determine that each "qualifying" plaintiff seeking punitive damages has in fact made claims for both compensatory damages and punitive damages [*Statute (B)(2)*], and then multiply by a factor no greater than two, the specific

compensatory damages awarded to such plaintiff [*Statute (B)(3)*]. Following this statutorily mandated "two pronged" analysis, assures: (i) that the precise and discrete punitive damages to which a plaintiff is entitled pursuant to *Statute (D)(2)(a)* will have been correctly determined; and (ii) that a court never allocates punitive damages in excess of "two times" a plaintiff's individually awarded compensatory damages.

B. In a Multi-Plaintiff Tort Action in Which Punitive Damages Are Sought, the Jury Must be Required to Determine the Specific Punitive Damages Amount Each Plaintiff is to Receive

In the instant action, the Individual Plaintiffs could each have asserted their respective claims for compensatory and punitive damages on a wholly separate and independent basis. While all such claims would likely have been subject to consolidation for trial, had they done so, each of the Individual Plaintiffs would still be entitled to his/her own compensatory damages award, as well as punitive damages pursuant to *Statute (D)(2)(a)*. Thus, to obviate future repetition of what has regrettably occurred herein, all juries empaneled in multi-plaintiff tort actions in which punitive damages are sought, should be required to determine by specific (as opposed to general) verdict interrogatory, the discrete punitive damages to which each plaintiff is individually entitled.

CONCLUSION

For the reasons set forth above, the Gruhin Appellants respectfully request that this Court accept jurisdiction and address these issues of public and great general interest.

Respectfully submitted,

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Facsimile: (216) 378-9898
Email: litigation@gruhin.com
Attorneys for Appellants,
David S. Gruhin and Sydney Sigler Gruhin

CERTIFICATE OF SERVICE

Pursuant to *S.Ct.Prac.R. 3.11(B)(1)(a)* and *(C)(1)*, service of this Memorandum In Support Of Jurisdiction is made this 16th day of June, 2016 upon the following parties via email:

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/s Michael H. Gruhin

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Attorneys for Appellants,
David S. Gruhin and Sydney Sigler Gruhin

APPENDIX

CASE NO. 671776 ASSIGNED JUDGE Hanna

Sivit, et al. VS VGOB

☐	02	REASSIGNED	DISPOSITION	☐	81	JURY TRIAL	☒ 89 DIS. W/PREJ.
☐	03	REINSTATED (C/A)		☐	82	ARBITRATION DECREE	☐ 91 COGNOVITS
☐	04	REINSTATED		☐	83	COURT TRIAL	☐ 92 DEFAULT
☐	20	MAGISTRATE		☐	85	PRETRIAL	☐ 93 TRANS TO COURT
☐	40	ARBITRATION		☐	86	FOREIGN JUDGMENT	☐ 95 TRANS TO JUDGE
☐	65	STAY		☐	87	DIS. W/O PREJ	☐ 96 OTHER
☐	69	SUBMITTED		☐	88	BANKRUPTCY/APPEAL STAY	

CIVIL

NO. JURORS _____	COURT REPORTER _____	☐ PARTIAL
START DATE ___/___/___	START DATE ___/___/___	☒ FINAL
END DATE ___/___/___	END DATE ___/___/___	☐ POST CARD

CV08671776

DATE 5/11/12 (NUNC PRO TUNC ENTRY AS OF & FOR ___/___/___)

CLERK OF CO

JOURNAL

Final Judgment Entry.

Costs to Defts.

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D.S.J.

JUDGE

Appx. 1

CPC 43-2

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CARLOS SIVIT, et al.	)	Case No. 08-CV-671776
	)	
Plaintiffs,	)	Judge: Harry Hanna
	)	
v.	)	
	)	
VILLAGE GREEN OF BEACHWOOD, L.P., et al.	)	**FINAL JUDGMENT ENTRY**
	)	
Defendants.	)	

This matter came on for hearing before this Court pursuant to the post-verdict motions filed by the respective parties, all of which were thoroughly briefed, argued and supported by supplemental evidentiary hearings over the past four months.

The Court finds that the within action was filed some 4 years ago and related to an apartment building fire in 2007;

The Court further finds that the case, through no fault of the parties, eventually went through four judges, ending with this Court for trial on December 5th, 2012.

The Court further finds that on December 16, 2012, after a two-week trial, the jury awarded the following compensatory damage awards in favor of Plaintiffs Carlos Sivit, et al. ("the Sivit Plaintiffs") and against Defendants Village Green of Beachwood, L.P. ("VGOB") and Forest City Residential Management, Inc. ("FCRM"):

Sonya Pace.....	$214,873.00
David and Sidney Gruhin.....	$111,233.00
Carlos Sivit.....	$107,430.00
Jason and Renee Edwards.....	$47,484.00
Natalie Rudd.....	$38,850.00
Prathibha Marathe.....	$35,020.00
Hallie Gelb.....	$27,256.00

Additionally, pre-trial stipulations (contingent upon a finding of liability) were filed on the issue of compensatory damages for the following Sivit Plaintiffs and for the following amounts:

Mohammed Marwali / Selvey Pangkey....	$12,000
Luciana Armanijigan.....	$3,000
Mitchell Rosenberg.....	Nominal damages ($1)

Further, pre-trial stipulations (contingent upon a finding of liability) were also filed on the issue of compensatory damages for the following insurance subrogation plaintiffs ("insurance plaintiffs") and for the following amounts:

State Farm Insurance.....	$95,500.00
Nationwide Insurance.....	$41,026.00
Allstate Insurance.....	$25,104.95
Safeco Insurance.....	$10,000.00

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that judgment for compensatory damages in the amounts above stated be awarded to the above named claimant groups of Plaintiffs respectively, and against both Defendants, jointly and severally, for the total aggregate sum of $768,777.95.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, pursuant to the jury award of punitive damages, that judgment is granted in favor of the 10 claimant groups of Sivit Plaintiffs aforementioned, and against Defendant Village Green of Beachwood, LP, the sum of $2,000,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, for the reasons stated on the record on May 8, 2012, that the Sivit Plaintiffs' motion for prejudgment interest is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, for the reasons stated on the record on May 8, 2012, Defendants' motion to reduce the punitive damages award is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, for the reasons stated on the record on May 8, 2012, that the Sivit Plaintiffs' motion for attorney fees and costs is approved and reasonable attorneys fees are hereby adjudged in favor of the 10 claimant groups of Sivit Plaintiffs for the sum of $1,040,000.00, plus their litigation costs in the amount of $51,757.15, against the Defendant Village Green of Beachwood, LP..

IT IS FURTHER ORDERED that Defendants shall pay the costs of this action.

IT IS FURTHER ORDERED that this judgment is final and appealable, and there is no just cause for further delay.

IT IS SO ORDERED.

CUYAHOGA COUNTY COURT OF COMMON PLEAS

Harry A Hanna

JUDGE HARRY HANNA

DATE: 5-14-12

RECEIVED FOR FILING

MAY 14 2012

GERALD E. FUERST, CLERK

By _____ Deputy

The Supreme Court of Ohio

FILED
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CLERK OF COURT
SUPREME COURT OF OHIO

Carlos Sivit, et al.	Case No. 2013-0586
v.	JUDGMENT ENTRY
Village Green of Beachwood, L.P., et al.	APPEAL FROM THE COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Cuyahoga County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed with respect to all issues related to the verdict except the award of punitive damages, consistent with the opinion rendered herein.

It is further ordered that the court holds that punitive damages in the amount of two times the award of compensatory damages is the appropriate amount, and this issue is remanded to the trial court to set the amount of damages.

It is further ordered that mandates be sent to and filed with the clerks of the Court of Appeals for Cuyahoga County and the Court of Common Pleas for Cuyahoga County.

(Cuyahoga County Court of Appeals; No. 98401)

Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at http://www.supremecourt.ohio.gov/ROD/docs/.

SIVIT ET AL., APPELLEES, *v.* VILLAGE GREEN OF BEACHWOOD, L.P., ET AL., APPELLANTS.

[Cite as *Sivit v. Village Green of Beachwood, L.P.*, 143 Ohio St.3d 168, 2015-Ohio-1193.]

Damages—Tort—R.C. 2315.21—Punitive damages are limited by statute in a tort action.

(No. 2013-0586—Submitted March 11, 2014—Decided April 2, 2015.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 98401, 2013-Ohio-103.

PFEIFER, J.

BACKGROUND

{¶ 1} In 2004, a fire destroyed Building 3 of the Village Green Apartments, located in Beachwood, Ohio. At the request of the Beachwood Fire Department, the fire was investigated by Ralph Dolence, an experienced fire investigator and consultant, who determined that the fire originated between the ceiling of the second story and the floor just above it as a direct result of construction defects.

{¶ 2} On October 23, 2007, a fire broke out in another building, Building 8, of the apartment complex. Dolence conducted an investigation and concluded that the fire originated in the space between the floor and ceiling of apartments 210 and 310. Dolence detailed various National Electric Code violations, including unsecured feeder cables, wires double stapled, and wires placed against metal gusset places with insulation damage. Dolence also saw extensive infiltration of water within the building. At trial, Dolence testified that he was

100 percent certain that the fire was caused by "faulty electrical wiring contaminated by water leaks" within the building.

{¶ 3} Following the 2007 fire, appellees, Carlos Sivit and several other tenants, filed suit against appellants, Village Green of Beachwood, L.P., and Forest City Residential Management, Inc. (collectively, "Village Green"), claiming that the building had been negligently constructed. Several subrogated insurers filed separate actions; the actions were consolidated in the trial court.[1] Sivit also claimed that Village Green had negligently maintained electrical wiring in violation of the Ohio Landlord-Tenant Act, R.C. Chapter 5321. After a jury trial, Village Green was found liable. The jury awarded compensatory damages of $582,146, punitive damages of $2,000,000, and attorney fees of $1,040,000. The Eighth District Court of Appeals affirmed. We granted Village Green's discretionary appeal. 136 Ohio St.3d 1404, 2013-Ohio-2645, 989 N.E.2d 1019.

ANALYSIS

{¶ 4} Village Green has raised three propositions of law, which are quoted and addressed in turn.

Proposition of Law I

> An action to recover damages for injury to person or property caused by negligence or other tortious conduct is a "tort action" within the meaning of R.C. 2315.21(A) even though the plaintiff's claim may have arisen from a breach of duty created by a contractual relationship and even though the defendant's conduct may have constituted both tortious conduct and a breach of contract.

[1] The plaintiffs in the consolidated actions will be referred to in this opinion as "Sivit."

{¶ 5} Village Green argues that the action brought by Sivit is a tort and thus that R.C. 2315.21 applies. The court of appeals concluded that Village Green and Sivit had a contractual agreement, which is true, and that "injurious conduct arising out of the contract is not a tort action," which is not necessarily true. 2013-Ohio-103, ¶ 59. Certainly, injurious conduct arising between parties to a contract does not always sound in tort, but it can, as in this case. Here, Village Green and Sivit have a contractual agreement, but the harm caused in this case is not the result of a contractual breach; it is the result of a violation of R.C. 5321.04, which constitutes negligence per se. *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, 857 N.E.2d 1195, ¶ 23, citing *Sikora v. Wenzel*, 88 Ohio St.3d 493, 727 N.E.2d 1277 (2000). Furthermore, counsel for Sivit conceded in oral argument that the case sounds in tort. We conclude that this is a tort action and, therefore, that it is subject to R.C. 2315.21.

{¶ 6} R.C. 2315.21(D)(2)(a) states that "in a tort action," a "court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff." The compensatory-damages award by the jury totaled $582,146. The judgment entry of the trial court also included stipulated compensatory damages of $186,631.95, which were contingent on a finding of liability. The punitive damages awarded totaled $2,000,000. The $2,000,000 award for punitive damages is more than twice the total compensatory damages. Accordingly, it is clear that the award of punitive damages is contrary to the mandate of R.C. 2315.21(D)(2).

{¶ 7} "The purpose of punitive damages is not to compensate a plaintiff, but to punish and deter certain conduct." *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 651, 635 N.E.2d 331 (1994). In *Moskovitz*, we reiterated that an award of punitive damages requires that actual malice be proven, and we defined "actual malice" as either " 'that state of mind under which a person's conduct is characterized by hatred, ill will or a spirit of revenge' " or " 'a conscious

disregard for the rights and safety of other persons that has a great probability of causing substantial harm.' " *Id*. at 652, quoting *Preston v. Murty*, 32 Ohio St.3d 334, 512 N.E.2d 1174 (1987), at syllabus. We also discussed the difficulty of determining an appropriate amount of punitive damages, quoting with approval *Shoemaker v. Crawford*, 78 Ohio App.3d 53, 66, 603 N.E.2d 1114 (1991), in which the Tenth District Court of Appeals stated:

> No simple mathematical formula can be applied as to either a minimum or a maximum, and there is a wide range between those figures. The decision rests as much on policy considerations as it does anything else and some degree of arbitrariness cannot be totally divorced from the decision, whether made by us or by the jury.

{¶ 8} Remittitur of punitive damages is required. Accordingly, we must consider the four criteria that arise from this court's decision in *Chester Park Co. v. Schulte*, 120 Ohio St. 273, 166 N.E. 186 (1929), paragraph three of the syllabus. *See Dardinger v. Anthem Blue Cross & Blue Shield*, 98 Ohio St.3d 77, 2002-Ohio-7113, 781 N.E.2d 121, ¶ 184. First, the punitive damages must have been assessed by a jury; they were. Second, the verdict must not have been influenced by passion or prejudice; Village Green does not argue that the jury was unduly influenced by passion or prejudice. Third, the punitive damages must be excessive; they are in excess of the statutory limit. Fourth, the plaintiff must agree to the reduction; we consider the chance that Sivit will refuse remittitur remote given the clear mandate of the statute. We order reduction of the amount of punitive damages to twice the amount of compensatory damages that were awarded in the trial court's judgment entry, which we deem an appropriate amount to deter the conduct at issue in this case.

Proposition of Law II

> In order to recover punitive damages against a landlord on the ground that the landlord consciously disregarded the rights and safety of a tenant, the tenant must prove that the specific danger that caused the tenant's injury was a danger of which the landlord had subjective knowledge. The fact that the landlord had knowledge of another danger on the premises is irrelevant if that other danger had no causal connection to the tenant's injury.

{¶ 9} The essence of this proposition of law is to challenge the trial court's decision to allow the claim for punitive damages to go to the jury. Reviewing courts "will not disturb a decision of the trial court as to a determination of damages absent an abuse of discretion." *Roberts v. United States Fid. & Guar. Co.*, 75 Ohio St.3d 630, 634, 665 N.E.2d 664 (1996), citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). "The term 'abuse of discretion' connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980), citing *Steiner v. Custer*, 137 Ohio St. 448, 31 N.E.2d 855 (1940).

{¶ 10} In reviewing the record, we see nothing that indicates that the trial court abused its discretion when it allowed the claim for punitive damages to go to the jury. The fire in 2007 had substantially the same cause as the fire in 2004. The circumstances attendant to both fires—the conscious disregard of code violations that affected health and safety—were more than enough for the jury to conclude that Village Green had acted with " 'a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm.' " *Moskovitz*, 69 Ohio St.3d at 652, 635 N.E.2d 331, quoting *Preston*, 32 Ohio St.3d 334, 512 N.E.2d 1174, syllabus. Given that, we cannot conclude that

the trial court acted in a way that was unreasonable, arbitrary, or unconscionable. In short, the trial court's decision to allow the issue of punitive damages to go to the jury was not an abuse of discretion.

Proposition of Law III

> A landlord cannot be held liable under R.C. 5321.04 for failure to correct defects occurring in electrical wiring of which it was unaware and which were concealed above ceilings or behind walls.

{¶ 11} Village Green may be correct in stating that it cannot be held liable for defects of which it was unaware. But that is not the issue in this case. There had been a previous fire in a different building started by the same cause as the fire in this case. Furthermore, there was evidence that faulty wiring caused the fire, and the walls of the building, where the wiring was installed, were described as "waterlogged" by a former maintenance supervisor at the apartment complex. There were sufficient facts upon which the jury could determine that Village Green was aware of the potential, indeed likelihood, of a fire. After reviewing the record, we see nothing that indicates that the trial court abused its discretion in allowing the jury to determine that Village Green had failed to comply with R.C. 5321.04.

CONCLUSION

{¶ 12} In summary, we affirm the court of appeals with respect to all issues related to the verdict except the award of punitive damages. We agree with Village Green that the amount of punitive damages allowed exceeds the limit prescribed by R.C. 2315.21(D)(2)(a). Therefore, we hold that punitive damages in the amount of two times the award of compensatory damages is the appropriate amount and remand to the trial court to set the amount of damages.

Judgment accordingly.

O'DONNELL, LANZINGER, and O'NEILL, JJ., concur.

O'CONNOR, C.J., and KENNEDY and FRENCH, JJ., concur in judgment only.

Diemert & Associates Co., L.P.A., Joseph W. Diemert Jr., and Daniel A. Powell, for appellees.

Ulmer & Berne, L.L.P., Marvin L. Karp, and Lawrence D. Pollack, for appellants.

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

CARLOS SIVIT, et al.,	)	CASE NO. CV-08-671776
Plaintiffs	)	JUDGE HARRY HANNA
vs.	)	
VILLAGE GREEN OF BEACHWOOD, et al.	)	ORDER
Defendants	)	

There being no just cause for delay, defendants are ordered to pay to each individual plaintiff the amount awarded by the jury for compensatory damages plus statutory interest from May 14, 2012 to date of payment. Failure to do so immediately will result in sanctions, including but not limited to Defendants being held in contempt of court.

Further, there being no just cause for delay, defendant is ordered to pay Diemert and Associates the sum of $1,040,000, plus costs in the amount of $51,757.15, plus statutory interest on both amounts from the original date of the entry of judgment on May 14, 2012; and

Further, there being no just cause for delay, defendant is ordered to pay punitive damages in the amount of $1,537,555.90, plus statutory interest from the date of entry of the original journal entry on May 14, 2012, to the clerk of courts for Cuyahoga County for further distribution orders to be forthcoming from this Court.

SO ORDERED.

Harry A Hanna

Hon. Harry A. Hanna

FILED
2015 JUL 13 A 11:44
WINDOW 7
CLERK OF COURTS
CUYAHOGA COUNTY

CV08671776
90080603

CASE NO. 671776 ASSIGNED JUDGE Hanna

Swift v. Viel, Green VS

☐	02	REASSIGNED	DISPOSITION	☐	81	JURY TRIAL	☐ 89 DIS. W/PREJ.
☐	03	REINSTATED (C/A)		☐	82	ADR DECREE	☐ 91 COGNOVITS
☐	04	REINSTATED		☐	83	COURT TRIAL	☐ 92 DEFAULT
☐	20	MAGISTRATE		☐	85	PRETRIAL	☐ 93 TRANS TO COURT
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☐	65	STAY		☐	87	DIS. W/O PREJ	☐ 96 OTHER
☐	69	SUBMITTED		☐	88	BANKRUPTCY/APPEAL STAY	

CIVIL CASE STATUS FORM

NO. JURORS _____

START DATE ____/____/____

END DATE ____/____/____

COURT REPORTER _____

CV08671776 90734097

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JOURNAL

DATE 8/31/15 (NUNC PRO TUNC ENTRY AS OF & FOR ____/____/____)

CLERK OF COURTS

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CLERK OF COURTS CUYAHOGA COUNTY

OSJ

JUDGE

Appx. 14

CPC 43-2

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CARLOS SIVIT, *et al.,*	)	**CASE NO. CV-08-671776**
	)	
Plaintiffs	)	
	)	
vs.	)	**JUDGE HARRY A. HANNA**
	)	
VILLAGE GREEN OF BEACHWOOD, *et al.,*	)	
	)	**ORDER AND OPNION**
Defendants	)	
	)	
	)	

This case is before the Court on remand from the Supreme Court of Ohio and on motions, regarding the allocation of punitive damages, filed by Plaintiffs David S. Gruhin and Sydney Sigler Gruhin ("Gruhin Plaintiffs"), and by Plaintiffs Sonya Pace, Carlos Sivit, Jason and Renee Edwards, Natalie Rudd, Prathibha Marathe, Hallie Gelb, Mohammed Marwali and Selvey Pangkey, Luciana Armanijigan, and Mitchell Rosenberg ("Diemert Plaintiffs").

HISTORICAL FACTS

The Plaintiffs herein are a group of former tenants of an upscale Beachwood, Ohio apartment complex constructed, owned and operated by various subsidiaries of Forest City Enterprises. In 2007, their homes were destroyed in a fire which was eerily similar to an earlier fire which occurred in another apartment building in the same complex. The 2007 fire, and the efforts to extinguish the flames, inflicted serious damage upon the Plaintiffs' apartments and

personal property. They banded together,[1] with one lawyer (Diemert & Associates), determined to seek redress from the Defendants.

Several subrogated insurers filed separate actions against the Defendants, which were consolidated with the Plaintiffs cause of action in this Court. In a jury trial, the Plaintiffs won a verdict for the full amount of the provable value of their lost personal property, which was $582,146, as well as punitive damages in the amount of $2,000,000. Based on pre-trial stipulations, the Court further awarded compensatory damages to certain Plaintiffs, in the amount of $15,001, and the insurance subrogation plaintiffs, in the amount of $171,630.95, for a total award of compensatory damages in the amount of $768,777.95. Court Order dated May 11, 2012.

Three years of appeals culminated in an affirmance by the Supreme Court of Ohio of the total compensatory damages, $768,777.95. Slip Opinion No. 2015-Ohio-1193. The Court remanded to this Court to award punitive damages in the amount of two times the award of compensatory damages, as prescribed by Ohio Revised Code §2315.21(D)(2)(a). This Court subsequently reset the award of punitive damages in the amount of $1,537,555.90. The question remaining for this Court is the distribution of the punitive damages among the Plaintiffs.[2]

LEGAL ARGUMENTS AS TO DISTRIBUTION

Upon remand, the Defendants argued that what the Supreme Court of Ohio really meant was that each individual plaintiff could only recover, in punitive damages, twice the amount of each one's compensatory damages. The Court found that the Supreme Court did not say that; the

[1] The thirteen individual Plaintiffs were grouped into ten units: Sonya Pace; David Gruhin and Sydney Sigler Gruhin; Carlos Sivit; Jason Edwards and Renee Edwards; Natalie Rudd; Prathiba Marathe; Hallie Gelb; Mohammed Marwali and Selvey Pangkey; Luciana Amanijigan; and Mitchell Rosenberg.

[2] The complaints of the insurance subrogation plaintiffs did not include claims for punitive damages.

Supreme Court affirmed the total compensatory damage claims and instructed this Court to enter judgment on the punitive damage claim at twice that amount.

During the course of the appeals, two of the Plaintiffs, David S. Gruhin and Sydney Sigler Gruhin, left the Diemert law firm and signed representation agreements with Michael H. Gruhin. The Gruhin Plaintiffs continue to argue that they are entitled to punitive damages in an amount of twice the award of their compensatory damages of $111,233. Such a distribution would entitle them to punitive damages in the amount of $222,466.

Conversely, the Diemert Plaintiffs argue that throughout the litigation they had agreed among themselves that any award of punitive damages would be shared equally by them.[3] Such a distribution would result in an award of punitive damages in the amount of $153,755.59 to each of the ten plaintiff groups. In support of their arguments, Plaintiffs have submitted the affidavits of Sonya Pace and Carlos Sivit wherein they testify regarding the equal sharing of punitive damages by the Plaintiffs.

OPINION AND ORDER

The history of the litigation is helpful in explaining the Opinion and Order of this Court.

As noted above, the Plaintiffs were the occupants of ten units that were affected by the fire; they were treated by their lawyers as ten units. Presumably, had they not been successful, each unit would have been assessed ten percent of the cost of the litigation. Since they were so successful, attorneys' fees and costs were awarded and that assessment became unnecessary.

During the course of proceedings leading up to trial, it became apparent that one of the Plaintiffs, Mitchell Rosenberg, could not participate in discovery because of his wife's slow decline and ultimate demise and health problems of his own. Rather than dismiss or abandon the

[3] After the verdict, the Plaintiffs were told by counsel that each would receive $200,000 or 10% of the punitive damage award. None of the Plaintiffs questioned the agreed mode of division.

Rosenbergs' claim, Plaintiffs' counsel secured a stipulation from the defense that the Rosenberg personalty was worth at least one dollar. Thus, if the Plaintiffs were to prevail as they did, Mr. Rosenberg would receive an equal share of the punitive damages. Without that stipulation, Mr. Rosenberg's claim for compensatory damages would fail and he would be unable to participate in the punitive damage pool.

The Court finds that a distribution of punitive damages does not have to be pro rata and, furthermore, that plaintiffs may participate in determining the mode of distribution. Herein, the Court finds the agreement of the Plaintiffs was to equally share any award of punitive damages. Thus, the Court awards punitive damages in the amount of $153,755.59 to each of the plaintiff units – Sonya Pace, David Gruhin and Sydney Sigler Gruhin, Carlos Sivit, Jason Edwards and Renee Edwards, Natalie Rudd, Prathiba Marathe, Hallie Gelb, Mohammed Marwali and Selvey Pangkey, Luciana Amanijigan, and Mitchell Rosenberg.

Whereas the Plaintiffs have been compensated for their losses, the Court finds this distribution of punitive damages is fair, reasonable and equitable. Indeed, if Mr. Rosenberg received punitive damages in the amount of twice his compensatory damages, as argued by the Gruhin Plaintiffs, he would receive a total of $3.00 for his loss.

Finally, the Court notes that the Gruhin Plaintiffs sought to enlist the aid of Diemert Plaintiffs Sonya Pace and Carlos Sivit in their argument for punitive damages in the amount of twice the compensatory damages. Ms. Pace and Dr. Sivit would have received greater shares of the punitive damages under the late blooming Gruhin plan. Their decision to refuse to join the Gruhin motion and to honor the original agreement, at great personal sacrifice, is a testament to the character of Ms. Pace and Dr. Sivit

In all, each of the ten plaintiff units is awarded punitive damages in the amount of $153,755.59.

IT IS SO ORDERED.

Hon. Harry A. Hanna

CV08671776 91356002

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED
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CLERK OF COURTS
CUYAHOGA COUNTY

CARLOS SIVIT, et al.	)	Case No. 08-CV-671776
	)	
Plaintiffs,	)	Judge Pamela Barker
	)	Judge Harry Hanna
vs.	)	
	)	
VILLAGE GREEN OF BEACHWOOD, et al.	)	**JUDGMENT ENTRY**
	)	
	)	
Defendants.	)	

Presently before this Court is the Motion to Release Funds on Deposit with the Clerk of Courts filed by Plaintiffs Carlos Sivit, et al. ("the Sivit Plaintiffs") on September 4, 2015. Plaintiffs David and Sydney Gruhin ("the Gruhin Plaintiffs") and Defendant Village Green of Beachwood, L.P. ("Defendant VGOB") filed briefs opposing the motion. A hearing was held on September 17, 2014 relative to the Motion and opposition thereto. After considering the arguments submitted, the Court issues the following Orders:

WHEREAS, certain funds are currently on deposit with and in the care and custody of the Clerk of Courts for Cuyahoga County;

WHEREAS, the depositing of the these funds was in compliance with the July 24, 2015 Stipulated Amended Judgment Entry, which provided, in pertinent part, that Defendant VGOB was to deposit with the Clerk of Courts for Cuyahoga County that portion of the $1,537,555.90 in punitive damages award which is no longer in dispute;

WHEREAS, in compliance with the July 24, 2015 Stipulated Amended Judgment Entry, Defendant VGOB deposited with the Clerk of Courts for Cuyahoga County a check for

$1,309,535.10, which is the amount of undisputed punitive damages ($1,194,294.00) plus interest ($115,241.10) through July 31, 2015;

WHEREAS, the subject funds were deposited with the Clerk pending further Order of this Court setting forth how the punitive damages award is to be distributed amongst the plaintiffs;

WHEREAS, upon such further Order being issued by this Court on August 31, 2015, the Sivit Plaintiffs filed their motion to release the subject funds;

WHEREAS, Defendant VGOB and the Gruhin Plaintiffs have filed Notices of Appeal relative to the August 31, 2015 Order;

THEREFORE, in the interest of allowing those funds which are not in dispute to be distributed in a manner which would not prejudice any rights the parties may possess or result in any waiver or relinquishment of any such rights, the Court instructs the funds on deposit to be distributed as follows:

Plaintiff	Punitive Damages	Interest	TOTAL
Sonya Pace	$119,429.40	$11,524.11	$130,953.51
David and Sydney Gruhin	$119,429.40	$11,524.11	$130,953.51
Carlos Sivit	$119,429.40	$11,524.11	$130,953.51
Jason and Renee Edwards	$94,968.00	$9,109.12	$104,077.12
Natalie Rudd	$77,700.00	$7,452.36	$85,152.36
Prathibha Marathe	$70,040.00	$6,718.32	$76,758.32
Hallie Gelb	$54,512.00	$5,228.64	$59,740.64
Mohammed Marwali and Selvey Pangkey	$24,000.00	$2,302.56	$26,302.56
Luciana Armaganijan	$6,000.00	$576.00	$6,576.00
Mitchell Rosenberg	$2.00	$0.20	$2.20

FURTHERMORE, the Court orders that, following these disbursements, any and all funds remaining shall be deposited and maintained by the Clerk of Courts in an interest bearing account or other financial instrument (as directed by this Court), at no less the statutory interest rate, pending further Order of this Court.

IT IS SO ORDERED

Date: 10-19-15

JUDGE HARRY HANNA

MAY 12 2016

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 103340 and 103498

CARLOS SIVIT, ET AL.

PLAINTIFFS-APPELLEES

vs.

VILLAGE GREEN OF BEACHWOOD, L.P., ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED IN PART, REVERSED IN PART
AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-08-671776

BEFORE: E.A. Gallagher, J., Keough, P.J. and Blackmon, J.

RELEASED AND JOURNALIZED: May 12, 2016

CV08671776 94122086

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EILEEN A. GALLAGHER, J.:

{¶1} In this consolidated appeal, defendant-appellant Village Green of Beachwood, L.P. ("Village Green") and plaintiffs-appellants David Gruhin and Sydney Sigler Gruhin (the "Gruhins") appeal from orders of the trial court (1) awarding the Gruhins and plaintiffs-appellees Carlos Sivit, Sonya Pace, Jason Edwards, Renee Edwards, Natalie Rudd, Prathibha Marathe, Hallie Gelb, Mohammad Marwali, Selvy Pangkey, Luciana Armaganijan and Mitchell Rosenberg (collectively, the "Sivit plaintiffs")[1] a total of $1,537,555.90 in punitive damages and (2) allocating those punitive damages equally among the Gruhins and nine other groups of individual plaintiffs (the "individual plaintiff groups"), i.e., allocating $153,755.59 in punitive damages to each individual plaintiff group.[2] Village Green claims that the trial court's punitive damages award exceeds the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a). The Gruhins contend that the trial court's per capita allocation of the punitive damages award violates R.C. 2315.21(D)(2)(a) and that, based on the statute, they should have been allocated a share of the punitive damages award equal to

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[1] The Gruhins and the Sivit plaintiffs are collectively referred to herein as the "individual plaintiffs." All of the individual plaintiffs were initially represented by the Diemert law firm; however, after an issue arose with respect to the allocation of the punitive damages award, the Gruhins terminated their relationship with that firm and retained separate counsel.

[2] The 13 individual plaintiffs were grouped into 10 individual plaintiff groups based on the 10 apartment units they occupied, as follows: Carlos Sivit, Sonya Pace, Jason and Renee Edwards, Natalie Rudd, Prathibha Marathe, Hallie Gelb, Mohammad Marwali and Selvy Pangkey, Luciana Armaganijan, Mitchell Rosenberg and the Gruhins.

two times their compensatory damages, i.e., $222,466 instead of $153,755.59. For the reasons that follow, we affirm the trial court's judgment in part, reverse the trial court's judgment in part and remand the case for the trial court to enter an order setting the total amount of punitive damages awarded to the individual plaintiffs at $1,194,294, to be allocated equally among the ten individual plaintiff groups, i.e., $119,429.40 to each of the ten individual plaintiff groups.

Factual and Procedural Background

{¶2} Following a 2007 fire in the Village Green apartment complex in Beachwood, Ohio, the individual plaintiffs — tenants residing in ten apartment units that sustained property damage in the fire — filed suit against Village Green and Forest City Residential Management, Inc. ("FCRM") (collectively, the "defendants"). The individual plaintiffs alleged that the building had been negligently constructed and negligently maintained in violation of R.C. Chapter 5321, the Ohio Landlord-Tenant Act, and that this negligence caused the fire. Several subrogated insurers (collectively, the "insurer plaintiffs") filed separate lawsuits against the defendants related to the fire, and these actions were consolidated with the action filed by the individual plaintiffs.[3] The individual plaintiffs sought both compensatory and punitive damages. The insurer plaintiffs sought only compensatory damages.

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[3]The insurer plaintiffs and the individual plaintiffs are collectively referred to herein as the "plaintiffs."

{¶3} The case proceeded to trial, and the trial was bifurcated on issues of compensatory damages and punitive damages. Following the compensatory damages phase of the trial, the jury returned a verdict in favor of the plaintiffs and against the defendants on their negligence claims. The jury awarded a total of $582,146 in compensatory damages to seven groups of individual plaintiffs against the defendants as follows:

Sonya Pace	$214,873.00
David and Sidney [sic] Gruhin	$111,233.00
Carlos Sivit	$107,430.00
Jason and Renee Edwards	$47,484.00
Natalie Rudd	$38,850.00
Prathibha Marathe	$35,020.00[4]
Hallie Gelb	$27,256.00
Total	$582,146.00

The jury's verdict awarded compensatory damages to each of the plaintiff groups in the full amounts they requested.

{¶4} In addition, pretrial stipulations, contingent upon a finding of liability, were submitted as to the amount of compensatory damages sustained by three groups of individual plaintiffs as follows:

---

[4]These compensatory damages figures are based on the trial court's statement, in its May 14, 2012 final judgment entry, of the compensatory damages awarded to the plaintiffs by the jury. In its answer to the jury interrogatory specifying the amount of compensatory damages to be awarded to each individual plaintiff group, the jury actually identified $35,200.00 as the amount of compensatory damages to be awarded to Marathe, not $35,020.00 as the trial court stated, and ultimately awarded to Marathe, in its judgment entry. Thus, the total compensatory damages the jury awarded the individual plaintiff groups (not including the stipulated damages) actually totaled $582,236. As no issue was raised by the parties regarding this error, we will ignore it in this appeal.

Mohammed Marwali/Selvey [sic] Pangkey	$12,000.00
Luciana Armanijigan [sic]	$3,000.00
Mitchell Rosenberg	Nominal damages ($1)
Total	$15,001.00

Accordingly, the total compensatory damages awarded to the individual plaintiffs was $597,147.

{¶5} Pretrial stipulations, contingent upon a finding of liability, were also submitted as to the compensatory damages sustained by the four insurer plaintiffs as follows:

State Farm Insurance	$95,500.00
Nationwide Insurance	$41,026.00
Allstate Insurance	$25,104.95
Safeco Insurance	$10,000.00
Total	$171,630.95

Accordingly, the total compensatory damages awarded to all plaintiffs was $768,777.95.

{¶6} The trial court then submitted the issue of punitive damages to the jury. In contrast to the particularized claims the individual plaintiff groups submitted as to their compensatory damages, the individual plaintiffs requested punitive damages collectively. In the verdict forms submitted to the jury, the trial court asked the jury to consider whether the individual plaintiffs as a group were entitled to an award of punitive damages and, if so, in what amount.

{¶7} The jury awarded punitive damages to the individual plaintiffs against Village Green in a lump sum of $2,000,000.[5] The jury also found that the individual plaintiffs were entitled to recover their reasonable attorney fees from Village Green. Village Green filed various post-trial motions, including a motion to reduce the punitive damages award pursuant to R.C. 2315.21(D)(2)(a). The trial court denied that motion.

{¶8} On May 14, 2012, the trial court issued a final judgment entry setting forth the separate compensatory damages awards to each of the individual plaintiff groups and insurer plaintiffs — totaling $768,777.95 in compensatory damages — and collectively awarding the ten individual plaintiff groups $2,000,000 in punitive damages, $1,040,000 in attorney fees and $51,757.15 in litigation costs against Village Green. On January 17, 2013, this court affirmed the trial court's judgment. *Sivit v. Village Green of Beachwood*, 8th Dist. Cuyahoga No. 98401, 2013-Ohio-103.

{¶9} The Gruhins thereafter began to question how the punitive damages award would be allocated among the plaintiffs. In a series of emails sent to counsel on January 23, 2013, David Gruhin inquired:

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[5]The jury was not asked to determine the amount of punitive damages to be awarded to each individual plaintiff or individual plaintiff group. Rather, with respect to the amount of punitive damages to be awarded, the jury was asked, "If you answered yes on either Verdict Form 'A' or 'B,' please state the amount of punitive damages to be awarded." The jury's response was $2,000,000.00. "Verdict Form A" addressed the liability of Village Green for punitive damages; "Verdict Form B" addressed the liability of FCRM for punitive damages. The jury found that FCRM was not liable for punitive damages.

> Can you please explain your intentions as to the distribution of the punitive damages award?
>
> Are you distributing the punitive award based on a pro-rata share of the compensatory awards? If not how do you plan on dividing the award as there is no language in our engagement letter indicating how this would be done. There may be some expressed intent in the Jury Interrogatories or the Verdict Forms, that I am unaware of, and would like you to send me PDF copies of both of those documents for my review.
>
> Additionally, is the award to be divided by the 13 listed plaintiffs or by the 10 listed parties receiving compensatory awards in the final judgment? If you are intending on dividing the punitive award by the 13 plaintiffs, I see that both Jason and Renee are listed as individual plaintiffs, would they each be entitled to a portion of the award, or would they receive one award as a single entity? If they were to be given 2 shares of the punitive award, why was Sydney never made a plaintiff? She was a co-signer on our original lease, yet she was never added to the class. Also I noticed on the final judgement that both Sydney and I are listed to receive an award. How would that be possible if she was not a plaintiff?

He further stated, "If the money is to be divided equally I have an issue with this, and I would guess both Carlos [Sivit] and Sonya [Pace] would as well. I can only assume the punitive damage award would not have been as high without our 3 compensatory awards. As such it would seem fairly unreasonable to divide the money equally when the remainder of the plaintiff's loss was significantly less than the 3 of ours." On January 24, 2013, counsel responded, in relevant part, as follows:

> [W]e anticipate dividing the punitives into 10 plaintiff groups equally.... they are NOT compensatory damages, and not linked to the compensatory damages....they are meant to punish the defendants, so regardless of the individual losses as tabulated, the purpose for the punitive award was equally shared. [I] believe the

> court's judgement entry will help clarify this for you....but, as [I] said, once you review them [sic] we will chat again. [I] believe everyone had other family members, and were not all listed in the lawsuit for their own individual reasons. * * *

David Gruhin claimed that he never received this response, but, in any event, he did not raise any further issue with respect to the allocation of the punitive damages award until April 2015 — more than two years later.

{¶10} In June 2013, the Ohio Supreme Court accepted Village Green's discretionary appeal on several issues, including whether the individual plaintiffs' claims constituted a "tort action" within the meaning R.C. 2315.21(A) to which the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a) applied. *Sivit v. Village Green of Beachwood*, 136 Ohio St.3d 1404, 2013-Ohio-2645, 989 N.E.2d 1019. Specifically, as it related to the amount of punitive damages awarded to the individual plaintiffs, the Ohio Supreme Court agreed to review the issue of whether

> [a]n action to recover damages for injury to person or property caused by negligence or other tortious conduct is a 'tort action' within the meaning of R.C. 2315.21(A) even though the plaintiff's claim may have arisen from a breach of duty created by a contractual relationship and even though the defendant's conduct may have constituted both tortious conduct and a breach of contract.

Sivit v. Village Green of Beachwood, L.P., 143 Ohio St.3d 168, 2015-Ohio-1193, 35 N.E.3d 508, ¶ 4.

{¶11} On appeal, the Ohio Supreme Court affirmed all of the issues related to the verdict except the award of punitive damages. *Id.* at ¶ 12. With

respect to the award of punitive damages, the court agreed with Village Green that the action brought by the plaintiffs was indeed a "tort action" and that the $2,000,000 punitive damages award exceeded the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a). As the court explained in its opinion:

> We conclude that this is a tort action and, therefore, that it is subject to R.C. 2315.21.
>
> R.C. 2315.21(D)(2)(a) states that "in a tort action," a "court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff." The compensatory-damages award by the jury totaled $582,146. The judgment entry of the trial court also included stipulated compensatory damages of $186,631.95, which were contingent on a finding of liability. The punitive damages awarded totaled $2,000,000. The $2,000,000 award for punitive damages is more than twice the total compensatory damages. Accordingly, it is clear that the award of punitive damages is contrary to the mandate of R.C. 2315.21(D)(2). * * *
>
> Remittitur of punitive damages is required. * * * [T]he punitive damages * * * are in excess of the statutory limit. * * * We order reduction of the amount of punitive damages to twice the amount of compensatory damages that were awarded in the trial court's judgment entry, which we deem an appropriate amount to deter the conduct at issue in this case.

Id. at ¶ 5-6, 8.

{¶12} In the conclusion of its opinion, the court further stated:

> In summary, we affirm the court of appeals with respect to all issues related to the verdict except the award of punitive damages. We agree with Village Green that the amount of punitive damages allowed exceeds the limit prescribed by R.C. 2315.21(D)(2)(a). Therefore, we hold that punitive damages in the amount of two times the award of compensatory damages is the appropriate amount and remand to the trial court to set the amount of damages.

Id. at ¶ 12.

{¶13} The opinion was accompanied by a judgment entry, dated April 2, 2015, which provided as follows:

> This cause, here on appeal from the Court of Appeals for Cuyahoga County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed with respect to all issues related to the verdict except the award of punitive damages, consistent with the opinion rendered herein.
>
> It is further ordered that the court holds that punitive damages in the amount of two times the award of compensatory damages is the appropriate amount, and this issue is remanded to the trial court to set the amount of damages.
>
> It is further ordered that mandates be sent to and filed with the clerks of the Court of Appeals for Cuyahoga County and the Court of Common Pleas for Cuyahoga County.

{¶14} Village Green filed a motion for reconsideration on the issue of the individual plaintiffs' entitlement to punitive damages, which the Ohio Supreme Court denied. *Sivit v. Village Green of Beachwood, L.P.*, 142 Ohio St.3d 1479, 2015-Ohio-2104, 31 N.E.3d 656. On June 3, 2015, the Ohio Supreme Court issued its mandate and sent certified copies of its April 2, 2015 judgment entry to the trial court and this court.

{¶15} After the punitive damages award was reversed, counsel sent a letter to the Gruhins advising them of the Ohio Supreme Court's decision and stating that, "[b]ased on preliminary calculations," the Gruhins' punitive damages award was estimated "to be adjusted from $200,000 to approximately

$153,750, not inclusive of interest earned" as a result of the decision. After receiving the letter, David Gruhin once again sent emails to counsel inquiring as to how the punitive damage award "is being divided up" and indicating that he assumed that he and Sydney would receive a 2/13ths share of the reduced punitive damages award. Counsel responded as follows:

> The final judgment entry split the punitive damage award 10 ways, in the same manner we presented damages to the jury. It was done by unit. * * * If it is your intent to challenge the divide, you will need to hire separate legal counsel as any such disputes amongst the clients would present a conflict of interest for us.

{¶16} Counsel and the Gruhins continued to exchange correspondence related to the allocation issue. On May 6, 2015, counsel sent a letter to the Sivit plaintiffs advising them of a potential dispute with the Gruhins relating to the allocation of the punitive damages award. In June 2015, the Gruhins retained separate counsel, and the Sivit plaintiffs continued to be represented by their original counsel.

{¶17} After the case was remanded, Village Green filed a motion for application of the Ohio Supreme Court's ruling capping punitive damages. Village Green argued that, based on the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a), the punitive damages award should be reduced to $1,194,294, i.e., two times the total compensatory damages awarded to the individual plaintiffs who sought punitive damages. The Sivit plaintiffs filed a response in which they argued that, pursuant to the mandate from the Ohio

Supreme Court, the trial court was required to consider all of the compensatory damages, including the stipulated damages awarded to the insurance plaintiffs, in calculating the cap on punitive damages. They argued that this would result in a reduction of the punitive damages awarded to the individual plaintiffs from $2,000,000 to $1,537,555.90.

{¶18} The Gruhins joined in Village Green's motion to the extent it sought to apply R.C. 2315.21(D)(2)(a) on an individual basis to the claims of each individual plaintiff and joined in the response filed by the Sivit plaintiffs to the extent they asserted that the punitive damages award should be capped at $1,537,555.90 rather than $1,194,294. With respect to allocation and distribution of the $1,537,555.90, the Gruhins denied that they had agreed to share the punitive damages award equally with the other individual plaintiff groups and submitted affidavits to that effect. They argued that, consistent with R.C. 2315.21(D)(2)(a), $1,194,294 of the $1,537,555.90 should be allocated and distributed among the 13 individual plaintiffs in amounts equal to two times their share of the $597,147 in compensatory damages the trial court had awarded to the individual plaintiffs and that the remaining $343,261.90 in punitive damages should be allocated and distributed either (1) to the 13 individual plaintiffs on a pro rata basis, based on their compensatory damages awards, or (2) to one or more nonprofit public institutions.

{¶19} The Sivit plaintiffs maintained that the individual plaintiffs had agreed that each of the ten individual plaintiff groups would receive an equal share of any punitive damages award regardless of the amount of compensatory damages awarded to that plaintiff group, i.e., $153,755.59 or 10% of the $1,537,555.90 that they claimed was the proper calculation of the punitive damages award. In support of their argument, the Sivit plaintiffs submitted affidavits from Sonya Pace and Carlos Sivit in which they attested, in relevant part: "With regard to the request for punitive damages, as advised by my attorneys, I was aware that the punitive damages would be shared equally amongst the 10 groups of plaintiffs represented by my attorneys." They further attested that although they were aware of the Gruhins' position on the allocation of punitive damages and that such position — were it to be accepted — would result in a larger punitive damages award to them, they were "not in agreement with the Gruhins' stated position and do not join in their motion to change the equal allocation of punitive damages."

{¶20} Following a hearing on the reduction of the punitive damages award, the trial court entered an order reducing the jury's $2,000,000 punitive damages award to $1,537,555.90, plus statutory interest from the date of the trial court's original judgment entry. In its July 10, 2015 order, the trial court explained the reasoning behind its decision as follows:

> It is a rock bed principle of our system of jurisprudence that trial courts are subordinate to superior courts. In this instance, this

> Court has been ordered to re-access [sic] punitive damages at twice the compensatory damages in the original journal entry — an award which has been affirmed by the entire Eighth District Court of Appeals and a unanimous Supreme Court. The defendant now presents an elaborate and somewhat engaging argument to this Court to reduce the amount of compensatory damages subject to the statutory multiplier. This Court is not at liberty to do so. A trial court must obey the mandates of superior courts. If the defendant perceived any ambiguity in the mandate, the time and place to raise the current theory was at the Supreme Court in the motion for reconsideration, not here and not now.
>
> Pursuant to the mandate of the Supreme Court of Ohio, punitive damages are reduced from $2,000,000.00 to $1,537,555.90 plus statutory interest from May 14, 2012 to date of payment.

{¶21} On July 13, 2015, the trial court ordered Village Green to pay the $1,537,555.90 in punitive damages plus statutory interest to the Cuyahoga County Clerk of Courts. The trial court thereafter entered a stipulated amended judgment entry pursuant to which the parties agreed that Village Green would deposit $1,194,294.00, the portion of the trial court's $1,537,555.90 punitive damages award it allegedly did not dispute, with the Cuyahoga County Clerk of Courts and a stay of execution would be granted as to the remaining $343,261.90 with interest pending appeal upon Village Green's posting of a $400,000 supersedeas bond.

{¶22} The trial court then addressed the dispute between the Gruhins and the Sivit plaintiffs related to the allocation of the punitive damages award. Following additional briefing and a hearing in which the trial court heard

argument from both sides on the allocation issue,[6] on August 31, 2015, the trial court issued an order and opinion in which it found that "a distribution of punitive damages does not have to be pro rata," that "plaintiffs may participate in determining the mode of distribution" and that "the agreement of the [p]laintiffs was to equally share any award of punitive damages." The trial court further found that an equal distribution of the punitive damages award "is fair, reasonable and equitable." The trial court, therefore, awarded $153,755.59 in punitive damages to each of the ten individual plaintiff groups.

{¶23} Village Green appealed the trial court's July 10, 2015, July 13, 2015 and August 31, 2015 orders, raising the following two assignments of error for review:

> Assignment of Error No. 1:
> The Common Pleas Court erred in awarding punitive damages in the amount of $153,755 to seven of the individual plaintiff groups.

[6]It does not appear from the record that any request was made for an evidentiary hearing on the allocation issue.

Assignment of Error No. 2:
The Common Pleas Court erred in issuing preliminary orders reducing plaintiffs' total punitive damages from $2,000,000 to $1,537,555 and ordering defendant to pay that latter amount into court.

The Gruhins appealed the trial court's August 31, 2015 order, raising the following three assignments of error for review:

First Assignment of Error:
The lower court abused its discretion in finding in its August 31, 2015 Order and Opinion (the "August 31st Order") * * * that Plaintiffs had "banded together" and entered into an "agreement" amongst themselves, allocating and distributing the $1,537,555.90 punitive damages award in equal shares to ten "groups" of them — one share to Plaintiffs-Appellants (consisting of two individuals), and nine shares to Plaintiffs-Appellees (consisting of eleven individuals).

Second Assignment of Error:
The lower court erred when, in contravention of the punitive damages "cap" set forth in O.R.C. §2315.21 * * *, it failed in the August 31st Order * * * to find each Plaintiff entitled to punitive damages equal to "two times" his or her individual compensatory damages awarded by the jury and, instead, allocated and distributed the punitive damages to Plaintiffs in excess of "two times" their respective compensatory damages award.

Third Assignment of Error:
The lower court's misplaced acceptance of and reliance upon material unsworn and unsubstantiated "facts" proffered by Plaintiffs-Appellees' counsel during the remand proceedings *in lieu* of any testimony or other evidentiary proofs from Plaintiffs-Appellees themselves, resulted in the inclusion of myriad false findings in the August 31st Order * * *, requiring its reversal, along with a clarification of the punitive damages award provision contained in the May 14, 2012 Final Judgment Entry * * * , and further modification of the October 19, 2015 Judgment Entry.

Law and Analysis

Application of the Cap on Punitive Damages Set Forth in R.C. 2315.21(D)(2)(a)

{¶24} Village Green's assignments of error and the Gruhins' second assignment of error are interrelated; we, therefore, address them together. All three assignments of error involve the interpretation and application of the statutory cap on punitive damages set forth in R.C. 2315.21(D)(2)(a) and the mandate of the Ohio Supreme Court following Village Green's appeal of the judgment entered on the jury verdict in this case. Village Green argues that under R.C. 2315.21(D)(2)(a), the trial court erred in awarding the individual plaintiffs more than $1,194,294.00 — two times the total compensatory damages awarded the individual plaintiffs — in punitive damages. The Gruhins similarly argue that under R.C. 2315.21(D)(2)(a), the punitive damages "allocable and distributable to each of [the individual plaintiffs] must * * * not exceed a maximum of two times their respective individual, distinct, separate and unique compensatory damages awards." The Sivit plaintiffs assert that, consistent with R.C. 2315.21(D)(2)(a) and the mandate of the Ohio Supreme Court, the trial court properly considered the total amount of compensatory damages awarded all plaintiffs in the case, including the compensatory damages awarded the insurer plaintiffs, in reducing the jury's punitive damages award from $2,000,000 to $1,537,555.90. Following a careful review of the record and the applicable authority, we agree with Village Green and the Gruhins that the trial

court's punitive damages award of $1,537,555.90 exceeds the limit prescribed by R.C. 2315.21(D)(2)(a) and is contrary to the mandate previously issued in this case by the Ohio Supreme Court.

{¶25} "Reviewing courts 'will not disturb a decision of the trial court as to a determination of damages absent an abuse of discretion.'" *Sivit*, 143 Ohio St.3d 168, 2015-Ohio-1193, 35 N.E.3d 508, at ¶ 9, quoting *Roberts v. United States Fid. & Guar. Co.*, 75 Ohio St.3d 630, 634, 665 N.E.2d 664 (1996). A trial court abuses its discretion where it acts unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶26} R.C. 2315.21(D)(2)(a) provides: "The court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff from that defendant, as determined pursuant to division (B)(2) or (3) of this section." R.C. 2315.21(B)(2) provides:

> In a tort action that is tried to a jury and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant.

R.C. 2315.21(B)(3) applies to bench trials and, therefore, is not applicable here.

{¶27} R.C. 2315.21(C) further provides:

> Subject to division (E) of this section, punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply:
>
> (1) The actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud, or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.
>
> (2) The trier of fact has returned a verdict or has made a determination pursuant to division (B)(2) or (3) of this section of the total compensatory damages recoverable by the plaintiff from that defendant.

{¶28} "The primary goal in construing a statute is to ascertain and give effect to the intent of the legislature." *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164, ¶ 17, citing *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 11. We examine the plain language of the statute, "read words and phrases in context[,] and construe them according to the rules of grammar and common usage." *In re M.W.* at ¶ 17, citing R.C. 1.42. In doing so, we attempt to give effect to "every word, phrase, sentence, and part of the statute" and to avoid an interpretation that would "restrict, constrict, qualify, narrow, enlarge, or abridge the General Assembly's wording" or that would otherwise render a provision meaningless or superfluous. *State ex rel. Carna v. Texas Valley Local School Dist. Bd. of Edn.*, 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶ 18-19. Where, as here, a statute is clear on its face, we must apply the statute as written. The General Assembly is presumed to mean what it said. *San Allen v. Buehrer*, 2014-Ohio-2071, 11 N.E.3d 739, ¶ 81 (8th Dist.).

{¶29} Applying these principles of statutory construction, we conclude that under R.C. 2315.21(D)(2)(a), the trial court was precluded from entering a judgment for punitive damages to the individual plaintiffs that exceeded two times the compensatory damages awarded to those plaintiffs. In other words, in computing the cap on punitive damages, the trial court could only consider the total compensatory damages awarded to the individual plaintiffs; it could not also consider the amount of compensatory damages awarded to other plaintiffs, i.e., the insurer plaintiffs, who were not seeking punitive damages, who were not involved in the punitive damages proceeding, and as to whom no determination of entitlement to punitive damages was made by the jury.

{¶30} Under R.C. 2315.21(D)(2)(a), the cap on punitive damages is computed by multiplying "the amount of the compensatory damages awarded to *the plaintiff*" times two. (Emphasis added.) The definite "the plaintiff" referenced in R.C. 2315.21(D)(2)(a) refers back, by its terms, to (1) the "plaintiff" identified in R.C. 2315.21(B)(2) (jury trials) or (3) (bench trials), as applicable, i.e., "*a plaintiff* [who] makes a claim for both compensatory damages and punitive or exemplary damages," and (2) the "determin[ation]" made in accordance with that provision, i.e., the jury's "answers to an interrogatory that specifies the total compensatory damages recoverable by *the plaintiff* from each defendant." (Emphasis added.) *See also* R.C. 2315.21(C)(2) ("punitive or exemplary damages are not recoverable from a defendant in question in a tort

action unless * * * [t]he trier of fact has returned a verdict or has made a determination pursuant to division (B)(2) or (3) of this section of the total compensatory damages recoverable by *the plaintiff* from that defendant.") (Emphasis added.).

{¶31} The Sivit plaintiffs argue that their interpretation is simply a matter of reading the singular "the plaintiff" in R.C. 2315.21(D)(2)(a) as the plural "the plaintiffs"; however, it is much more than that. Although it is an accepted principle of statutory construction that "(t)he singular includes the plural, and the plural includes the singular," R.C. 1.43(A), this rule does not apply where there is "clear language in [the statute] to the contrary, or evidence which adequately demonstrates that such a construction is out of context with the remaining language of that statute or its related provisions." *Wingate v. Hordge*, 60 Ohio St.2d 55, 58, 396 N.E.2d 770 (1979).

{¶32} Furthermore, under the Sivit plaintiffs' interpretation of R.C. 2315.21(D)(2)(a), we would have to read "the plaintiff" not only as "the plaintiffs" but to include persons other than "plaintiff[s] [who] make[] a claim for both compensatory damages and punitive or exemplary damages" as set forth in R.C. 2315.21(B)(2) and (3) — to which R.C. 2315.21(D)(2)(a) expressly refers. Under the Sivit plaintiffs' interpretation, we would have to ignore the reference to R.C. 2315.21(B)(2) and (3) and read "the plaintiff" as encompassing all plaintiffs in the case who are awarded compensatory damages, regardless of whether they

have made a claim for punitive damages. Such an interpretation is contrary to the plain meaning of the statute. Although "the plaintiff" as used in R.C. 2315.21(D)(2)(a), when read in context, could be reasonably interpreted as including all *plaintiffs* who "make[ ] a claim for both compensatory damages and punitive or exemplary damages" as set forth in R.C. 2315.21(B)(2) and (3), there is nothing in R.C. 2315.21 that permits "the plaintiff" as used in R.C. 2315.21(D)(2)(a) to be interchangeable with "a plaintiff [who] makes a claim for both compensatory damages and punitive or exemplary damages" and any other plaintiff in the case who receives a compensatory damages award — as the Sivit plaintiffs argue here.

{¶33} Further, when reading R.C. 2315.21(D)(2)(a) in context with the other provisions of the statute, it is worth noting that it is only where a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, that R.C. 2315.21 requires the jury, if a verdict is returned for the plaintiff, to answer an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant. There is no such requirement in R.C. 2315.21 with respect to a plaintiff who does not make a claim for punitive damages. The reason for this distinction is that where a plaintiff makes a claim for both compensatory and punitive damages, there must be a basis upon which the court can calculate the cap on punitive damages set

forth in R.C. 2315.21(D)(2)(a); where there is no claim for punitive damages, no such calculation is required.

{¶34} Thus, any compensatory damages awarded to plaintiffs who have not asserted claims for punitive damages are not properly considered in applying the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a). *See also Freudeman v. Landing of Canton,* 702 F.3d 318, 331-334 (6th Cir.2012) (compensatory damages awarded for wrongful death claim could not be considered when determining the statutory cap on punitive damages awarded for survival claims under R.C. 2315.21(D)(2)(a) because punitive damages are not available for a wrongful death claim and R.C. 2315.21(D)(2)(a) instructs the trial court to look at "the amount of the compensatory damages awarded to the *plaintiff*"; whereas the "real plaintiff" for a survival claim is the decedent's estate, the decedent's statutory beneficiaries are the "real parties" for a wrongful death claim).

{¶35} The Sivit plaintiffs claim that such an interpretation of R.C. 2315.21(D)(2)(a) is contrary to the purpose for which punitive damages are awarded. However, it is not only the purpose of awarding punitive damages, but also the purpose of having a *cap* on punitive damages that is relevant here. While the purpose of punitive damages is "to punish and deter certain conduct," *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 651, 635 N.E.2d 331 (1994), the purpose of the cap on punitive damages — to which R.C. 2315.21(D)(2)(a) is

directed — is to limit the amount of punitive damages that can be awarded against a defendant to "mak[e] the civil justice system more predictable." *Arbino v. Johnson & Johnson,* 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 102.

{¶36} Furthermore, the only reason an issue exists in this case as to whether the punitive damages cap should be based on the compensatory damages awarded to the individual plaintiffs or the total compensatory damages awarded to all plaintiffs (including the insurer plaintiffs who did not assert claims for punitive damages), is because the action filed by the individual plaintiffs was consolidated, for purposes of judicial economy, with the actions filed by the insurer plaintiffs who did not assert claims for punitive damages. If the insurer plaintiffs' actions had not been consolidated with the action filed by the individual plaintiffs, there is no basis upon which the individual plaintiffs could claim that they were entitled, under R.C. 2315.21(D)(2)(a), to punitive damages in excess of two times their own awards of compensatory damages. Given the purpose of the cap on punitive damages, we do not believe the legislature intended that the amount of punitive damages a trial court may award a plaintiff under R.C. 2315.21(D)(2)(a) should vary depending upon the number of other plaintiffs (or the amount of compensatory damages awarded to other plaintiffs) whose claims are tried with the plaintiff's claims but who do not

themselves seek punitive damages (or as to whom no determination is made that they are entitled to punitive damages).

{¶37} The Sivit plaintiffs also argue that even if R.C. 2315.21(D)(2)(a) would have otherwise required the trial court to consider only the compensatory damages awarded to the individual plaintiffs in calculating the cap on punitive damages, the trial court was constrained by, and bound to follow, the mandate of the Ohio Supreme Court and award $1,537,555.90, two times the total compensatory damages awarded all plaintiffs, in punitive damages.

{¶38} An inferior court generally has "no discretion to disregard the mandate of a superior court in a prior appeal in the same case." *Nolan v. Nolan*, 11 Ohio St.3d 1, 462 N.E.2d 410 (1984), syllabus. The Sivit plaintiffs assert that the Ohio Supreme Court's mandate is found in paragraph 8 of its opinion, which states as follows:

> We order reduction of the amount of punitive damages to twice the amount of compensatory damages that were awarded in the trial court's judgment entry, which we deem an appropriate amount to deter the conduct at issue in this case.

Village Green argues that this language should not be construed as mandating a reduction in the punitive damages award to $1,537,555, i.e., twice the compensatory damages awarded to all of the plaintiffs, because the court's opinion "did not mention — and certainly did not consider the significance of — the fact that $171,630.95 of the 'stipulated compensatory damages of $186,671.95' had been awarded to four subrogated insurance company plaintiffs

who had not been awarded any punitive damages by the jury" given that that fact had no relevance to the issues then before the court. (Emphasis omitted.) Village Green also contends that paragraph 8 is inconsistent with paragraph 12 of the opinion that remands the matter to the trial court to "set the amount of damages." The Sivit plaintiffs respond that because the court pointed out in its opinion that the "compensatory-damages awarded by the jury totaled $582,146" and that "[t]he judgment entry of the trial court also included stipulated compensatory damages of $186,631.95, which were contingent on a finding of liability," the court clearly understood that "the amount of compensatory damages that were awarded in the trial court's judgment entry" included the compensatory damages awarded to the insurer plaintiffs who had not requested punitive damages.

{¶39} We need not resolve the issue of whether the Ohio Supreme Court, in rendering its decision, understood and considered the fact that the total compensatory damages awarded in this case included compensatory damages to plaintiffs who did not seek punitive damages or precisely what the Ohio Supreme Court intended by its reference to "the amount of compensatory damages that were awarded in the trial court's judgment entry" in paragraph 8 of its opinion because paragraph 8 is not the mandate of the Ohio Supreme Court in this case. S.Ct.Prac.R. 18.04(C) provides: "A certified copy of the judgment entry shall constitute the mandate." In this case, the Ohio Supreme

Court's mandate, i.e., a certified copy of its April 2, 2015 judgment entry, stated, in relevant part, as follows:

> This cause * * * is affirmed with respect to all issues related to the verdict except the award of punitive damages, consistent with the opinion rendered herein.
>
> It is further ordered that the court holds that punitive damages in the amount of two times the award of compensatory damages is the appropriate amount, and this issue is remanded to the trial court to set the amount of damages.

{¶40} Accordingly, the Ohio Supreme Court remanded the case for the trial court "to set the amount of damages." For the reasons explained above, properly "set[ting] the amount of [punitive] damages," in accordance with R.C. 2315.21(D)(2)(a), required the trial court to award a total of $1,194,294 in punitive damages, not $1,537,555.90 in punitive damages, as the trial court did here. We do not find that applying R.C. 2315.21(D)(2)(a) as written, i.e., limiting the punitive damages award to two times the total compensatory damages awarded to the individual plaintiffs, would violate the mandate of the Ohio Supreme Court.

{¶41} Although we agree with Village Green that the trial court erred in setting the amount of the punitive damages award at $1,537,555.90, rather than $1,194,294, we also agree with the Sivit plaintiffs that the punitive damages award must be reversed in total — not just, as Village Green suggests, as to the punitive damages allocated to the seven individual plaintiff groups — Jason and Renee Edwards, Natalie Rudd, Prathibha Marathe, Hallie Gelb, Mohammad

Marwali and Selvy Pangkey, Luciana Armaganijan and Mitchell Rosenberg — who would receive more than two times their compensatory damages under the trial court's per capita allocation of the punitive damages award. Accordingly, we sustain Village Green's first assignment of error in part and the Gruhins' second assignment of error in part and overrule them in part. We also sustain Village Green's second assignment of error. We reverse the trial court's punitive damage award and remand the matter to the trial court to reset the total amount of punitive damages awarded to the individual plaintiffs at $1,194,294.

The Trial Court's Allocation of the Punitive Damages Award

{¶42} In their first and third assignments of error, the Gruhins argue that they are entitled to punitive damages equal to twice their compensatory damages award — $222,466 in punitive damages — and that the trial court abused its discretion in allocating the punitive damages equally, on a per capita basis, among the ten individual plaintiff groups.

{¶43} The Gruhins do not dispute that the individual plaintiffs could have entered into an agreement specifying how any punitive damages award they received was to be allocated among them, and that, if such an agreement had been made, the trial court could have enforced that agreement and ordered the allocation and distribution of the punitive damages award consistent with that agreement. The Gruhins assert, however, that no such agreement existed among the individual plaintiffs. The Gruhins contend that the trial court's

findings that the individual plaintiffs had "banded together" and agreed to equally share any punitive damages award among the ten individual plaintiff groups "are patently false and erroneous," that "no testimony or other evidentiary proofs supportive of such findings exist," and that the trial court "inexplicably allowed itself to be swayed" by "unsworn, unsubstantiated, untrue, wholly gratuitous and self-serving statements improperly proffered as 'fact'" by the Diemert law firm.

{¶44} We disagree with the Gruhins that there was "no evidence" in the record to support the trial court's finding that the individual plaintiffs had agreed to equally share any award of punitive damages. In addition to the affidavits from Sivit and Pace setting forth their understanding that the punitive damages award would be shared equally among the ten individual plaintiff groups,[7] the verdict forms submitted to the jury on the issue of punitive damages reflect an intent or understanding on the part of the individual plaintiffs to share in any punitive damages award (particularly when compared with the interrogatory submitted on the issue of compensatory damages, which required the jury to specify the amount of compensatory damages awarded to each of the individual plaintiff groups). Furthermore, after counsel advised David Gruhin in January 2013 that, consistent with the trial court's judgment entry, he

[7]Sivit and Pace would have each received a much larger share of the punitive damages award if the award had been allocated on a pro rata basis, based on the compensatory damages they were awarded, rather than a per capita basis, shared equally among the ten individual plaintiff groups.

"anticipate[d] dividing the punitives into 10 plaintiff groups equally" because "the purpose for the punitive award was equally shared," the Gruhins did not raise any further issue with respect to proposed allocation of the punitive damages award until April 2015 — more than two years later — and, then, only after counsel sent a letter advising the Gruhins that their share of the punitive damages award would likely be reduced from $200,000 to $153,750 as a result of the decision by the Ohio Supreme Court. Although David Gruhin claims he never received counsel's January 24, 2013 email, it strains credulity to believe that he would have waited more than two years for a response to his January 2013 emails without following up, particularly given that, due to his "hectic" work schedule, he had requested "a written response detailing your intentions in regard to the punitive damages, sent within 7 days."

{¶45} Although the Gruhins dispute that an agreement existed among the plaintiffs to share any punitive damages award equally, they do not claim that there was some other agreement among the plaintiffs as to how the lump sum punitive damages award would be allocated. Nor do they indicate how they thought the award would be allocated when the jury was asked to award punitive damages to the plaintiffs collectively.[8]

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[8]As discussed below, at that time, there had been no determination that plaintiffs' action was a "tort action" within the meaning of R.C. 2315.21. Accordingly, the Gruhins could not have then expected that R.C. 2315.21 applied to the plaintiffs' claims or that they would receive a pro rata share of the total punitive damages awarded, as they now claim, based on R.C. 2315.21(D)(1)(a).

{¶46} We need not decide the issue of whether sufficient evidence existed to support the trial court's finding that an agreement existed among the individual plaintiffs to equally share any award of punitive damages because even if the trial court erred in concluding that such an agreement existed, we would still affirm the trial court's decision to distribute the punitive damages award equally among the ten individual plaintiff groups based on the particular facts and circumstances in this case.

{¶47} The Gruhins argue that R.C. 2315.21(D)(2)(a) controls the allocation of the punitive damages award in this case and that the trial court's failure to allocate punitive damages to each of the plaintiff groups in an amount equal to two times their compensatory damages violates R.C. 2315.21(D)(2)(a). The Gruhins contend that R.C. 2315.21(D)(2)(a) requires the court to (1) "look to the 'groups' of Plaintiffs who made claims for both compensatory and punitive damages," (2) "take into account the varying amounts of compensatory damages awarded to each individual 'group' of Plaintiffs" and (3) multiply "each of these ten individual amounts * * * by two * * * to determine the amount of punitive damages to which each Plaintiff is entitled pursuant to the Statute." (Emphasis omitted.) The Gruhins contend that because certain plaintiff groups will receive more than two times their awarded compensatory damages and other plaintiff groups will receive less than two times their awarded compensatory damages

under the trial court's allocation of the punitive damages award, the trial court's allocation of punitive damages must be reversed. Once again, we disagree.

{¶48} The purpose of R.C. 2315.21(D)(2)(a) is to limit the damages awarded against a defendant, not to ensure that a particular plaintiff gets a particular punitive damage award (or a particular share of a punitive damages award). Thus, R.C. 2315.21(D)(2)(a) does not, as the Gruhins contend, "entitle" a plaintiff to a particular *amount* of punitive damages.

{¶49} Significantly, in this case, the jury was not asked to make (and, therefore, did not make) separate determinations, as to each individual plaintiff or plaintiff group (1) whether the plaintiff or plaintiff group was entitled to punitive damages from Village Green and (2) if so, in what amount. There was no ruling that R.C. 2315.21 — and specifically, the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a) — applied to the individual plaintiffs' claims for punitive damages prior to the jury's verdicts on punitive damages. Thus, for strategic reasons, no doubt with an eye toward (1) convincing the jury to award punitive damages to the plaintiffs in the first instance and (2) maximizing any punitive damages award ultimately awarded by the jury, the individual plaintiffs' claims for punitive damages were presented collectively to the jury and the jury was asked to consider an award of punitive damages to the plaintiffs as a group.

{¶50} Consistent with that approach, two verdict forms were submitted to the jury in the punitive damages phase of the trial. The jury was asked to consider (1) whether the individual plaintiffs as a group should be awarded punitive damages against Village Green and (2) if so, in what amount. No objection was raised to the trial court's submission of these verdict forms to the jury. Likewise, no objection was made after the jury awarded punitive damages to the individual plaintiffs in a lump sum. Nor was any claim made on appeal that the trial court erred in failing to submit jury interrogatories asking the jury to independently consider the punitive damages claim of each individual plaintiff or in permitting the jury to make a lump sum punitive damages award. The only objection that was made and the only error that was raised on appeal related to the verdict forms was Village Green's objection to the total amount of punitive damages awarded against it. Accordingly, any error allegedly associated with the trial court's failure to request separate determinations from the jury on the plaintiffs' punitive damages claims or the jury's lump sum punitive damages award has been waived and any claim based on any such alleged error would be barred by res judicata. *See also Faieta v. World Harvest Church*, 10th Dist. Franklin No. 08AP-527, 2008-Ohio-6959, ¶ 80-85 (trial court did not commit plain error by submitting to the jury general verdict forms and interrogatories that did not require the jury to specify the amount of punitive damages awarded to each individual plaintiff where defendants, who on appeal

claimed the submission of the verdict forms and interrogatories was plain error, not only failed to object to the verdict forms and interrogatories, but invited the alleged error by submitting draft verdict forms and interrogatories to the trial court that asked the jury to determine the amount of damages awarded to the plaintiffs collectively, not individually).

{¶51} Although we agree, reading the statute as a whole, that R.C. 2315.21 seems to contemplates that the trier of fact will make individualized determinations of both the compensatory damages to be awarded to a particular plaintiff (or a plaintiff group where, as here, the claims of individual plaintiffs such as a husband and wife are presented together) and whether a particular plaintiff is entitled to recover punitive damages, there is nothing in R.C. 2315.21 that expressly requires the trial court, in a multi-plaintiff case, to submit an interrogatory to the jury that specifies the amount of punitive damages recoverable by each plaintiff from a defendant. *Compare* R.C. 2315.21(B)(2) ("In a tort action that is tried to a jury and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant.") *with* R.C. 2315.21(B)(1)(b) ("If the jury determines in the initial stage of the trial that the plaintiff is entitled to recover compensatory damages

for the injury or loss to person or property from the defendant, evidence may be presented in the second stage of the trial, and a determination by that jury shall be made, with respect to whether the plaintiff additionally is entitled to recover punitive or exemplary damages for the injury or loss to person or property from the defendant.") *and* R.C. 2315.21(D)(1)("In a tort action, the trier of fact shall determine the liability of any defendant for punitive or exemplary damages and the amount of those damages."). Further, R.C. 2315.21 does not address the allocation of a lump sum punitive damages award where, as here, the trier of fact was not asked to make an individualized determination of the amount of punitive damages to be awarded to each plaintiff determined to be entitled to recover punitive damages.

{¶52} Given that the jury was not asked to make separate determinations of the amount of punitive damages each individual plaintiff was entitled to recover, the allocation of the punitive damages the jury awarded to the individual plaintiffs as a group was properly left to the discretion of the trial court.

{¶53} As the Ohio Supreme Court explained in *Dardinger v. Anthem Blue Cross & Blue Shield*, 98 Ohio St.3d 77, 2002-Ohio-7113, 781 N.E.2d 121, courts have "a central role to play" in determining how punitive damage awards should be distributed:

> [A] punitive damages award is about the defendant's actions. "The purpose of punitive damages is not to compensate a plaintiff but to

> punish the guilty, deter future misconduct, and to demonstrate society's disapproval." * * * At the punitive-damages level, it is the societal element that is most important. The plaintiff remains a party, but the de facto party is our society, and the jury is determining whether and to what extent we as a society should punish the defendant.
>
> There is a philosophical void between the reasons we award punitive damages and how the damages are distributed. The community makes the statement, while the plaintiff reaps the monetary award. * * * In Ohio, punitive damages are an outgrowth of the common law. * * * Therefore, Ohio's courts have a central role to play in the distribution of punitive damages. Punitive damages awards should not be subject to bright-line division but instead should be considered on a case-by-case basis, with those awards making the most significant societal statements being the most likely candidates for alternative distribution.
>
> Clearly, we do not want to dissuade plaintiffs from moving forward with important societal undertakings. The distribution of the jury's award must recognize the effort the plaintiff undertook in bringing about the award and the important role a plaintiff plays in bringing about necessary changes that society agrees need be made. Plaintiffs themselves might get involved in how the award is distributed. * * *

Id. at ¶ 187-189.

{¶54} The Gruhins claim that the trial court's allocation of the punitive damages award in ten equal shares is a case of "robbing Peter to pay Paul" and that the Gruhins are entitled to have the punitive damages award "allocated and distributed in line with their respective, distinct, separate and unique individually awarded compensatory damages" just as would have occurred "[h]ad each [p]laintiff filed a separate action." The Gruhins' argument assumes that if they had brought their claims separately from those of the other plaintiffs (1)

the jury would have still awarded them punitive damages and (2) the punitive damages the jury awarded them would not have been less than the statutory cap of two times their compensatory damages. There is, however, no guarantee that that would have been the case.

{¶55} While the Gruhins are correct that they and each of the other individual plaintiffs could have filed separate actions asserting their claims for compensatory and punitive damages on a "wholly separate and independent basis," it is not necessarily true if they had done so, that they would have received the punitive damages award to which they now claim they are entitled. Two times compensatory damages was simply the maximum amount the Gruhins could have recovered in punitive damages had their claims been tried separately. Had the Gruhins' claims been tried separately (or if separate interrogatories had been submitted to the jury on their punitive damages claim), they could have received the same punitive damages award, a lower punitive damages award or even no punitive damages at all. As the Ohio Supreme Court recently stated in *Whetstone v. Binner*, Slip Opinion. No. 2016-Ohio-1006, ¶ 20, "[A]n award of punitive damages is not automatic. Even when a plaintiff can establish entitlement to punitive damages, whether to impose punitive damages, and in what amount, is left to the trier of fact."

{¶56} No doubt the reason the individual plaintiffs joined their claims together in a single lawsuit and submitted their punitive damages claims to the

jury collectively was because they saw potential advantages to doing so, including an increased likelihood of receiving a substantial punitive damages award. The fact that ten plaintiff groups (some of whom were elderly, some of whom had children) all suffered significant losses as a result of the defendant's malicious conduct may have very well increased the punitive damages award to the individual plaintiffs beyond what they would have received had their claims been tried independently. Likewise, the fact certain plaintiffs, such as Rosenberg and Armaganijan, were clearly harmed by Village Green's conduct but Village Green was required to pay only "nominal" "agreed upon" compensatory damages for their losses may have led the jury to increase the amount of punitive damages awarded to the individual plaintiffs as a group.

{¶57} Based on our review of the record, we cannot say that the trial court acted arbitrarily, unreasonably or unconscionably in ordering the lump sum punitive damages award to be shared equally among the ten individual plaintiff groups. In determining what a "fair, reasonable and equitable" allocation of the punitive damages should be, the trial court considered the relevant facts and equities of the situation, including the verdict forms and interrogatories submitted to the jury, the manner in which the plaintiffs' claims were presented at trial, i.e., as ten plaintiff groups representing the ten apartment units the individual plaintiffs occupied at the time of the fire, the role and purpose of the

stipulations that had been entered as to the compensatory damages sustained by certain of the individual plaintiffs and the nature of the claims asserted.

{¶58} As the trial court observed, every plaintiff was a victim of the same malicious conduct that justified the award of punitive damages against Village Green. Some of the plaintiffs, such as Rosenberg, were subject to such conduct for a much longer period of time than the Gruhins. Every plaintiff lost items that were of great personal value for which the law may not have provided adequate compensation. Every plaintiff was displaced from his or her home due to the damage caused by the fire. To the extent that some individual plaintiff groups suffered higher compensable losses than others, those differences were already accounted for in the compensatory damages awards the plaintiff groups received and need not have been considered by the trial court in allocating the punitive damages award.

{¶59} Accordingly, we overrule the Gruhins' first and third assignments of error. We affirm the trial court's judgment in part, reverse the trial court's judgment in part, and remand the matter for the trial court to enter an order setting the total amount of punitive damages awarded to the individual plaintiffs at $1,194,294, to be distributed equally among the ten individual plaintiff groups, i.e., $119,429.40 to each of the ten individual plaintiff groups.

{¶60} This cause is affirmed in part, reversed in part and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that the Gruhins and Village Green share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)

MAY 12 2016

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By _____ Deputy

IN THE SUPREME COURT OF OHIO

CARLOS SIVIT, *et al.*,	)	No. _____
	)	
Appellees	)	
	)	On Appeal from Cuyahoga County
and	)	Court of Appeals, Eighth Appellate District
	)	
DAVID S. GRUHIN and	)	Court of Appeals Case Nos.:
SYDNEY SIGLER GRUHIN,	)	CA-15-103340 and CA-15-103498
	)	
Appellants	)	
	)	
vs.	)	
	)	
VILLAGE GREEN OF	)	
BEACHWOOD, L.P., *et al.*,	)	
	)	
Appellees	)	

NOTICE OF APPEAL OF APPELLANTS,
DAVID S. GRUHIN AND SYDNEY SIGLER GRUHIN

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NOTICE OF APPEAL OF APELLANTS,
DAVID S. GRUHIN AND SYDNEY SIGLER GRUHIN

Appellants, David S. Gruhin and Sydney Sigler Gruhin, hereby give notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals Case Nos. 15-CA-103340 and CA-15-103498 on May 12, 2016.

This case is one of public and great general interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to S.Ct.Prac.R. 3.11(B)(1)(a) and (C)(1), service of this Notice Of Appeal is being made this 26th day of May, 2016, upon the following parties by facsimile and email:

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David S. Gruhin and Sydney Sigler Gruhin

IN THE SUPREME COURT OF OHIO

CARLOS SIVIT, *et al.*, Appellees	)	No. _____
and	)	On Appeal from Cuyahoga County Court of Appeals, Eighth Appellate District
DAVID S. GRUHIN and SYDNEY SIGLER GRUHIN, Appellants	)	Court of Appeals Case Nos.: CA-15-103340 and CA-15-103498
vs.	)	
VILLAGE GREEN OF BEACHWOOD, L.P., *et al.*, Appellees	)	

MOTION FOR LIMITED STAY RELIEF
OF APPELLANTS,
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Now come Appellants, David S. Gruhin and Sydney Sigler Gruhin ("Gruhin Appellants"), who, pursuant to S.Ct.Prac.R. 7.01(A)(3)(a), respectfully submit this Motion For Limited Stay Relief ("Motion") with respect to the release of all but $103,036.60 of the aggregate $544,870.02 in punitive damage award monies currently remaining on deposit with the Cuyahoga County Clerk of Courts ("Clerk of Courts").

In furtherance of this Motion, the Gruhin Appellants have, of even date herewith, filed their Notice of Appeal pursuant to S.Ct.Prac.R. 7.01 from the May 12, 2016 Journal Entry and Opinion ("May 2016 Order and Opinion") entered in the instant action by the Cuyahoga County, Eighth Appellate District, Court of Appeals ("Court of Appeals"). Pursuant to S.Ct.Prac.R. 7.01(A)(3)(a)(ii), a copy of the May 2016 Order and Opinion is attached hereto. The Gruhin Appellants' Memorandum in Support of Jurisdiction shall be timely filed within the forty-five (45) day period permitted by S.Ct.Prac.R. 7.01(A)(3)(b).

Pursuant to S.Ct.Prac.R. 7.01(A)(3), the Gruhin Appellants seek in this Motion to preserve their rights **only** in and to $103,036.60 ("Disputed *Res*") of the total $1,194,294.00 in punitive damage monies (which aggregate figure has now been definitively fixed and determined by the Eighth District Court of Appeals), while they pursue an appeal ("Gruhin Appellants' Appeal") before this Court as to certain of the findings and rulings set forth in the May 2016 Order and Opinion.

The Gruhin Appellants raise no objection in this Motion to the release and distribution to Appellees, Carlos Sivit, Sonya Pace, Jason Edwards, Renee Edwards, Natalie Rudd, Prathibha Marathe, Hallie Gelb, Mohammed Marwali, Selvey Pangkey, Luciana Armanijigan and Mitchell Rosenberg (collectively, the "Sivit Appellees"), of the

$544,870.02 (*i.e.*, the net remainder of the $1,194,294.00 in awarded punitive damages) currently on deposit with the Clerk of Courts, **less only** the Disputed *Res*.

LIMITED REQUESTED STAY RELIEF SOUGHT TO PRESERVE
STATUS QUO DURING PENDENCY OF GRUHIN APPELLANTS' APPEAL

Pursuant to this Motion, the Gruhin Appellants respectfully seek the following limited stay relief ("Requested Stay Relief"):

(a) The continued retention by the Clerk of Courts of only $103,036.60 (*i.e.*, the Disputed *Res*) from the $544,870.02 in aggregate remaining punitive damage monies currently in its care, custody and control;

(b) The immediate release by the Clerk of Courts on an unfettered and unrestricted basis to the Sivit Appellees, the entirety of the then net remaining $441,833.42, together with all accrued interest earned thereon, currently in its care, custody and control; and

(c) That in conformance with S.Ct.Prac.R. 4.01(A)(2), the Gruhin Appellants are not required to post a *supersedeas* bond to perfect the Gruhin Appellants' Appeal, because during the pendency of such appellate proceedings, the Disputed *Res* shall continue to remain fully preserved and intact in the Clerk of Court's care, custody and control. As a consequence, the Sivit Appellees' competing claim to the Disputed *Res* shall not be subject to any diminution or prejudice if the relief sought in the Gruhin Appellants' Appeal is not ultimately granted by this Court.

In the absence of the Requested Stay Relief, upon further remand as directed in the May 2016 Order and Opinion, the trial court will have no choice but to order the Clerk of Courts to release to the Sivit Appellees, the entirety of the $544,870.02 in remaining punitive damage award monies, notwithstanding the continued pendency of the Gruhin

Appellants' Appeal which, in part, pertains to the Disputed *Res*. In such eventuality, the Gruhin Appellants' financial rights and interests shall be irreparably damaged, for if the Disputed *Res* no longer exists, there will be no source of funds from which to make the Gruhin Appellants whole, should this Court ultimately find there to be reversible error in the May 2016 Order and Opinion.

Furthermore, grant of the Requested Stay Relief will eliminate any risk that should the Disputed *Res* no longer exist (which in the absence of the Requested Stay Relief will result), the individual rights and interests of the Gruhin Appellants may potentially be deemed moot or no longer justiciable when, in the exercise of its jurisdictional discretion, this Court first determines whether or not to accept the Gruhin Appellants' Appeal, or at such time, if accepted, this Court decides this matter on its merits.

CONCLUSION

Accordingly, based upon the timely filing of their Notice of Appeal, and for all of the reasons hereinabove set forth, the Gruhin Appellants respectfully move this Court for issuance of an order, staying the May 2016 Order and Opinion in part only, by requiring that the $544,870.02 presently on deposit with the Clerk of Courts be subject to distribution in part and retention in part as follows:

(a) $441,833.42, together with all accrued interest, if any, earned on the entirety of the $544,870.02 while in the care, custody and control of the Clerk of Courts, to the Sivit Appellees; and

(b) $103,036.60, together with all hereafter accruing interest, to continue in the care, custody and control of the Clerk of the Courts, so that under all circumstances,

the Gruhin Appellants' rights and interests in and to the Disputed *Res* (as to which rightful entitlement is still in dispute between them and the Sivit Appellees), remains adequately protected pending the ultimate outcome of the Gruhin Appellants' Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to S.Ct.Prac.R. 3.11(B)(1)(a) and (C)(1), service of this Motion For Limited Stay Relief is being made on this 26th day of May, 2016 to the following parties via facsimile and email:

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David S. Gruhin and Sydney Sigler Gruhin

MAY 12 2016

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 103340 and 103498

CARLOS SIVIT, ET AL.

PLAINTIFFS-APPELLEES

vs.

VILLAGE GREEN OF BEACHWOOD, L.P., ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED IN PART, REVERSED IN PART
AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-08-671776

BEFORE: E.A. Gallagher, J., Keough, P.J. and Blackmon, J.

RELEASED AND JOURNALIZED: May 12, 2016

CV08671776 94102086

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EILEEN A. GALLAGHER, J.:

{¶1} In this consolidated appeal, defendant-appellant Village Green of Beachwood, L.P. ("Village Green") and plaintiffs-appellants David Gruhin and Sydney Sigler Gruhin (the "Gruhins") appeal from orders of the trial court (1) awarding the Gruhins and plaintiffs-appellees Carlos Sivit, Sonya Pace, Jason Edwards, Renee Edwards, Natalie Rudd, Prathibha Marathe, Hallie Gelb, Mohammad Marwali, Selvy Pangkey, Luciana Armaganijan and Mitchell Rosenberg (collectively, the "Sivit plaintiffs")[1] a total of $1,537,555.90 in punitive damages and (2) allocating those punitive damages equally among the Gruhins and nine other groups of individual plaintiffs (the "individual plaintiff groups"), i.e., allocating $153,755.59 in punitive damages to each individual plaintiff group.[2] Village Green claims that the trial court's punitive damages award exceeds the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a). The Gruhins contend that the trial court's per capita allocation of the punitive damages award violates R.C. 2315.21(D)(2)(a) and that, based on the statute, they should have been allocated a share of the punitive damages award equal to

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[1] The Gruhins and the Sivit plaintiffs are collectively referred to herein as the "individual plaintiffs." All of the individual plaintiffs were initially represented by the Diemert law firm; however, after an issue arose with respect to the allocation of the punitive damages award, the Gruhins terminated their relationship with that firm and retained separate counsel.

[2] The 13 individual plaintiffs were grouped into 10 individual plaintiff groups based on the 10 apartment units they occupied, as follows: Carlos Sivit, Sonya Pace, Jason and Renee Edwards, Natalie Rudd, Prathibha Marathe, Hallie Gelb, Mohammad Marwali and Selvy Pangkey, Luciana Armaganijan, Mitchell Rosenberg and the Gruhins.

two times their compensatory damages, i.e., $222,466 instead of $153,755.59. For the reasons that follow, we affirm the trial court's judgment in part, reverse the trial court's judgment in part and remand the case for the trial court to enter an order setting the total amount of punitive damages awarded to the individual plaintiffs at $1,194,294, to be allocated equally among the ten individual plaintiff groups, i.e., $119,429.40 to each of the ten individual plaintiff groups.

Factual and Procedural Background

{¶2} Following a 2007 fire in the Village Green apartment complex in Beachwood, Ohio, the individual plaintiffs — tenants residing in ten apartment units that sustained property damage in the fire — filed suit against Village Green and Forest City Residential Management, Inc. ("FCRM") (collectively, the "defendants"). The individual plaintiffs alleged that the building had been negligently constructed and negligently maintained in violation of R.C. Chapter 5321, the Ohio Landlord-Tenant Act, and that this negligence caused the fire. Several subrogated insurers (collectively, the "insurer plaintiffs") filed separate lawsuits against the defendants related to the fire, and these actions were consolidated with the action filed by the individual plaintiffs.[3] The individual plaintiffs sought both compensatory and punitive damages. The insurer plaintiffs sought only compensatory damages.

---

[3]The insurer plaintiffs and the individual plaintiffs are collectively referred to herein as the "plaintiffs."

{¶3} The case proceeded to trial, and the trial was bifurcated on issues of compensatory damages and punitive damages. Following the compensatory damages phase of the trial, the jury returned a verdict in favor of the plaintiffs and against the defendants on their negligence claims. The jury awarded a total of $582,146 in compensatory damages to seven groups of individual plaintiffs against the defendants as follows:

Sonya Pace	$214,873.00
David and Sidney [sic] Gruhin	$111,233.00
Carlos Sivit	$107,430.00
Jason and Renee Edwards	$47,484.00
Natalie Rudd	$38,850.00
Prathibha Marathe	$35,020.00[4]
Hallie Gelb	$27,256.00
Total	$582,146.00

The jury's verdict awarded compensatory damages to each of the plaintiff groups in the full amounts they requested.

{¶4} In addition, pretrial stipulations, contingent upon a finding of liability, were submitted as to the amount of compensatory damages sustained by three groups of individual plaintiffs as follows:

---

[4]These compensatory damages figures are based on the trial court's statement, in its May 14, 2012 final judgment entry, of the compensatory damages awarded to the plaintiffs by the jury. In its answer to the jury interrogatory specifying the amount of compensatory damages to be awarded to each individual plaintiff group, the jury actually identified $35,200.00 as the amount of compensatory damages to be awarded to Marathe, not $35,020.00 as the trial court stated, and ultimately awarded to Marathe, in its judgment entry. Thus, the total compensatory damages the jury awarded the individual plaintiff groups (not including the stipulated damages) actually totaled $582,236. As no issue was raised by the parties regarding this error, we will ignore it in this appeal.

Mohammed Marwali/Selvey [sic] Pangkey	$12,000.00
Luciana Armanijigan [sic]	$3,000.00
Mitchell Rosenberg	Nominal damages ($1)
Total	$15,001.00

Accordingly, the total compensatory damages awarded to the individual plaintiffs was $597,147.

{¶5} Pretrial stipulations, contingent upon a finding of liability, were also submitted as to the compensatory damages sustained by the four insurer plaintiffs as follows:

State Farm Insurance	$95,500.00
Nationwide Insurance	$41,026.00
Allstate Insurance	$25,104.95
Safeco Insurance	$10,000.00
Total	$171,630.95

Accordingly, the total compensatory damages awarded to all plaintiffs was $768,777.95.

{¶6} The trial court then submitted the issue of punitive damages to the jury. In contrast to the particularized claims the individual plaintiff groups submitted as to their compensatory damages, the individual plaintiffs requested punitive damages collectively. In the verdict forms submitted to the jury, the trial court asked the jury to consider whether the individual plaintiffs as a group were entitled to an award of punitive damages and, if so, in what amount.

{¶7} The jury awarded punitive damages to the individual plaintiffs against Village Green in a lump sum of $2,000,000.[5] The jury also found that the individual plaintiffs were entitled to recover their reasonable attorney fees from Village Green. Village Green filed various post-trial motions, including a motion to reduce the punitive damages award pursuant to R.C. 2315.21(D)(2)(a). The trial court denied that motion.

{¶8} On May 14, 2012, the trial court issued a final judgment entry setting forth the separate compensatory damages awards to each of the individual plaintiff groups and insurer plaintiffs — totaling $768,777.95 in compensatory damages — and collectively awarding the ten individual plaintiff groups $2,000,000 in punitive damages, $1,040,000 in attorney fees and $51,757.15 in litigation costs against Village Green. On January 17, 2013, this court affirmed the trial court's judgment. *Sivit v. Village Green of Beachwood*, 8th Dist. Cuyahoga No. 98401, 2013-Ohio-103.

{¶9} The Gruhins thereafter began to question how the punitive damages award would be allocated among the plaintiffs. In a series of emails sent to counsel on January 23, 2013, David Gruhin inquired:

---

[5]The jury was not asked to determine the amount of punitive damages to be awarded to each individual plaintiff or individual plaintiff group. Rather, with respect to the amount of punitive damages to be awarded, the jury was asked, "If you answered yes on either Verdict Form 'A' or 'B,' please state the amount of punitive damages to be awarded." The jury's response was $2,000,000.00. "Verdict Form A" addressed the liability of Village Green for punitive damages; "Verdict Form B" addressed the liability of FCRM for punitive damages. The jury found that FCRM was not liable for punitive damages.

> Can you please explain your intentions as to the distribution of the punitive damages award?
>
> Are you distributing the punitive award based on a pro-rata share of the compensatory awards? If not how do you plan on dividing the award as there is no language in our engagement letter indicating how this would be done. There may be some expressed intent in the Jury Interrogatories or the Verdict Forms, that I am unaware of, and would like you to send me PDF copies of both of those documents for my review.
>
> Additionally, is the award to be divided by the 13 listed plaintiffs or by the 10 listed parties receiving compensatory awards in the final judgment? If you are intending on dividing the punitive award by the 13 plaintiffs, I see that both Jason and Renee are listed as individual plaintiffs, would they each be entitled to a portion of the award, or would they receive one award as a single entity? If they were to be given 2 shares of the punitive award, why was Sydney never made a plaintiff? She was a co-signer on our original lease, yet she was never added to the class. Also I noticed on the final judgement that both Sydney and I are listed to receive an award. How would that be possible if she was not a plaintiff?

He further stated, "If the money is to be divided equally I have an issue with this, and I would guess both Carlos [Sivit] and Sonya [Pace] would as well. I can only assume the punitive damage award would not have been as high without our 3 compensatory awards. As such it would seem fairly unreasonable to divide the money equally when the remainder of the plaintiff's loss was significantly less than the 3 of ours." On January 24, 2013, counsel responded, in relevant part, as follows:

> [W]e anticipate dividing the punitives into 10 plaintiff groups equally.... they are NOT compensatory damages, and not linked to the compensatory damages....they are meant to punish the defendants, so regardless of the individual losses as tabulated, the purpose for the punitive award was equally shared. [I] believe the

> court's judgement entry will help clarify this for you....but, as [I] said, once you review them [sic] we will chat again. [I] believe everyone had other family members, and were not all listed in the lawsuit for their own individual reasons. * * *

David Gruhin claimed that he never received this response, but, in any event, he did not raise any further issue with respect to the allocation of the punitive damages award until April 2015 — more than two years later.

{¶10} In June 2013, the Ohio Supreme Court accepted Village Green's discretionary appeal on several issues, including whether the individual plaintiffs' claims constituted a "tort action" within the meaning R.C. 2315.21(A) to which the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a) applied. *Sivit v. Village Green of Beachwood*, 136 Ohio St.3d 1404, 2013-Ohio-2645, 989 N.E.2d 1019. Specifically, as it related to the amount of punitive damages awarded to the individual plaintiffs, the Ohio Supreme Court agreed to review the issue of whether

> [a]n action to recover damages for injury to person or property caused by negligence or other tortious conduct is a 'tort action' within the meaning of R.C. 2315.21(A) even though the plaintiff's claim may have arisen from a breach of duty created by a contractual relationship and even though the defendant's conduct may have constituted both tortious conduct and a breach of contract.

Sivit v. Village Green of Beachwood, L.P., 143 Ohio St.3d 168, 2015-Ohio-1193, 35 N.E.3d 508, ¶ 4.

{¶11} On appeal, the Ohio Supreme Court affirmed all of the issues related to the verdict except the award of punitive damages. *Id.* at ¶ 12. With

respect to the award of punitive damages, the court agreed with Village Green that the action brought by the plaintiffs was indeed a "tort action" and that the $2,000,000 punitive damages award exceeded the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a). As the court explained in its opinion:

> We conclude that this is a tort action and, therefore, that it is subject to R.C. 2315.21.
>
> R.C. 2315.21(D)(2)(a) states that "in a tort action," a "court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff." The compensatory-damages award by the jury totaled $582,146. The judgment entry of the trial court also included stipulated compensatory damages of $186,631.95, which were contingent on a finding of liability. The punitive damages awarded totaled $2,000,000. The $2,000,000 award for punitive damages is more than twice the total compensatory damages. Accordingly, it is clear that the award of punitive damages is contrary to the mandate of R.C. 2315.21(D)(2). * * *
>
> Remittitur of punitive damages is required. * * * [T]he punitive damages * * * are in excess of the statutory limit. * * * We order reduction of the amount of punitive damages to twice the amount of compensatory damages that were awarded in the trial court's judgment entry, which we deem an appropriate amount to deter the conduct at issue in this case.

Id. at ¶ 5-6, 8.

{¶12} In the conclusion of its opinion, the court further stated:

> In summary, we affirm the court of appeals with respect to all issues related to the verdict except the award of punitive damages. We agree with Village Green that the amount of punitive damages allowed exceeds the limit prescribed by R.C. 2315.21(D)(2)(a). Therefore, we hold that punitive damages in the amount of two times the award of compensatory damages is the appropriate amount and remand to the trial court to set the amount of damages.

Id. at ¶ 12.

{¶13} The opinion was accompanied by a judgment entry, dated April 2, 2015, which provided as follows:

> This cause, here on appeal from the Court of Appeals for Cuyahoga County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed with respect to all issues related to the verdict except the award of punitive damages, consistent with the opinion rendered herein.
>
> It is further ordered that the court holds that punitive damages in the amount of two times the award of compensatory damages is the appropriate amount, and this issue is remanded to the trial court to set the amount of damages.
>
> It is further ordered that mandates be sent to and filed with the clerks of the Court of Appeals for Cuyahoga County and the Court of Common Pleas for Cuyahoga County.

{¶14} Village Green filed a motion for reconsideration on the issue of the individual plaintiffs' entitlement to punitive damages, which the Ohio Supreme Court denied. *Sivit v. Village Green of Beachwood, L.P.*, 142 Ohio St.3d 1479, 2015-Ohio-2104, 31 N.E.3d 656. On June 3, 2015, the Ohio Supreme Court issued its mandate and sent certified copies of its April 2, 2015 judgment entry to the trial court and this court.

{¶15} After the punitive damages award was reversed, counsel sent a letter to the Gruhins advising them of the Ohio Supreme Court's decision and stating that, "[b]ased on preliminary calculations," the Gruhins' punitive damages award was estimated "to be adjusted from $200,000 to approximately

$153,750, not inclusive of interest earned" as a result of the decision. After receiving the letter, David Gruhin once again sent emails to counsel inquiring as to how the punitive damage award "is being divided up" and indicating that he assumed that he and Sydney would receive a 2/13ths share of the reduced punitive damages award. Counsel responded as follows:

> The final judgment entry split the punitive damage award 10 ways, in the same manner we presented damages to the jury. It was done by unit. * * * If it is your intent to challenge the divide, you will need to hire separate legal counsel as any such disputes amongst the clients would present a conflict of interest for us.

{¶16} Counsel and the Gruhins continued to exchange correspondence related to the allocation issue. On May 6, 2015, counsel sent a letter to the Sivit plaintiffs advising them of a potential dispute with the Gruhins relating to the allocation of the punitive damages award. In June 2015, the Gruhins retained separate counsel, and the Sivit plaintiffs continued to be represented by their original counsel.

{¶17} After the case was remanded, Village Green filed a motion for application of the Ohio Supreme Court's ruling capping punitive damages. Village Green argued that, based on the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a), the punitive damages award should be reduced to $1,194,294, i.e., two times the total compensatory damages awarded to the individual plaintiffs who sought punitive damages. The Sivit plaintiffs filed a response in which they argued that, pursuant to the mandate from the Ohio

Supreme Court, the trial court was required to consider all of the compensatory damages, including the stipulated damages awarded to the insurance plaintiffs, in calculating the cap on punitive damages. They argued that this would result in a reduction of the punitive damages awarded to the individual plaintiffs from $2,000,000 to $1,537,555.90.

{¶18} The Gruhins joined in Village Green's motion to the extent it sought to apply R.C. 2315.21(D)(2)(a) on an individual basis to the claims of each individual plaintiff and joined in the response filed by the Sivit plaintiffs to the extent they asserted that the punitive damages award should be capped at $1,537,555.90 rather than $1,194,294. With respect to allocation and distribution of the $1,537,555.90, the Gruhins denied that they had agreed to share the punitive damages award equally with the other individual plaintiff groups and submitted affidavits to that effect. They argued that, consistent with R.C. 2315.21(D)(2)(a), $1,194,294 of the $1,537,555.90 should be allocated and distributed among the 13 individual plaintiffs in amounts equal to two times their share of the $597,147 in compensatory damages the trial court had awarded to the individual plaintiffs and that the remaining $343,261.90 in punitive damages should be allocated and distributed either (1) to the 13 individual plaintiffs on a pro rata basis, based on their compensatory damages awards, or (2) to one or more nonprofit public institutions.

{¶19} The Sivit plaintiffs maintained that the individual plaintiffs had agreed that each of the ten individual plaintiff groups would receive an equal share of any punitive damages award regardless of the amount of compensatory damages awarded to that plaintiff group, i.e., $153,755.59 or 10% of the $1,537,555.90 that they claimed was the proper calculation of the punitive damages award. In support of their argument, the Sivit plaintiffs submitted affidavits from Sonya Pace and Carlos Sivit in which they attested, in relevant part: "With regard to the request for punitive damages, as advised by my attorneys, I was aware that the punitive damages would be shared equally amongst the 10 groups of plaintiffs represented by my attorneys." They further attested that although they were aware of the Gruhins' position on the allocation of punitive damages and that such position — were it to be accepted — would result in a larger punitive damages award to them, they were "not in agreement with the Gruhins' stated position and do not join in their motion to change the equal allocation of punitive damages."

{¶20} Following a hearing on the reduction of the punitive damages award, the trial court entered an order reducing the jury's $2,000,000 punitive damages award to $1,537,555.90, plus statutory interest from the date of the trial court's original judgment entry. In its July 10, 2015 order, the trial court explained the reasoning behind its decision as follows:

> It is a rock bed principle of our system of jurisprudence that trial courts are subordinate to superior courts. In this instance, this

> Court has been ordered to re-access [sic] punitive damages at twice the compensatory damages in the original journal entry — an award which has been affirmed by the entire Eighth District Court of Appeals and a unanimous Supreme Court. The defendant now presents an elaborate and somewhat engaging argument to this Court to reduce the amount of compensatory damages subject to the statutory multiplier. This Court is not at liberty to do so. A trial court must obey the mandates of superior courts. If the defendant perceived any ambiguity in the mandate, the time and place to raise the current theory was at the Supreme Court in the motion for reconsideration, not here and not now.
>
> Pursuant to the mandate of the Supreme Court of Ohio, punitive damages are reduced from $2,000,000.00 to $1,537,555.90 plus statutory interest from May 14, 2012 to date of payment.

{¶21} On July 13, 2015, the trial court ordered Village Green to pay the $1,537,555.90 in punitive damages plus statutory interest to the Cuyahoga County Clerk of Courts. The trial court thereafter entered a stipulated amended judgment entry pursuant to which the parties agreed that Village Green would deposit $1,194,294.00, the portion of the trial court's $1,537,555.90 punitive damages award it allegedly did not dispute, with the Cuyahoga County Clerk of Courts and a stay of execution would be granted as to the remaining $343,261.90 with interest pending appeal upon Village Green's posting of a $400,000 supersedeas bond.

{¶22} The trial court then addressed the dispute between the Gruhins and the Sivit plaintiffs related to the allocation of the punitive damages award. Following additional briefing and a hearing in which the trial court heard

argument from both sides on the allocation issue,[6] on August 31, 2015, the trial court issued an order and opinion in which it found that "a distribution of punitive damages does not have to be pro rata," that "plaintiffs may participate in determining the mode of distribution" and that "the agreement of the [p]laintiffs was to equally share any award of punitive damages." The trial court further found that an equal distribution of the punitive damages award "is fair, reasonable and equitable." The trial court, therefore, awarded $153,755.59 in punitive damages to each of the ten individual plaintiff groups.

{¶23} Village Green appealed the trial court's July 10, 2015, July 13, 2015 and August 31, 2015 orders, raising the following two assignments of error for review:

> Assignment of Error No. 1:
> The Common Pleas Court erred in awarding punitive damages in the amount of $153,755 to seven of the individual plaintiff groups.

[6]It does not appear from the record that any request was made for an evidentiary hearing on the allocation issue.

Assignment of Error No. 2:
The Common Pleas Court erred in issuing preliminary orders reducing plaintiffs' total punitive damages from $2,000,000 to $1,537,555 and ordering defendant to pay that latter amount into court.

The Gruhins appealed the trial court's August 31, 2015 order, raising the following three assignments of error for review:

First Assignment of Error:
The lower court abused its discretion in finding in its August 31, 2015 Order and Opinion (the "August 31st Order") * * * that Plaintiffs had "banded together" and entered into an "agreement" amongst themselves, allocating and distributing the $1,537,555.90 punitive damages award in equal shares to ten "groups" of them — one share to Plaintiffs-Appellants (consisting of two individuals), and nine shares to Plaintiffs-Appellees (consisting of eleven individuals).

Second Assignment of Error:
The lower court erred when, in contravention of the punitive damages "cap" set forth in O.R.C. §2315.21 * * *, it failed in the August 31st Order * * * to find each Plaintiff entitled to punitive damages equal to "two times" his or her individual compensatory damages awarded by the jury and, instead, allocated and distributed the punitive damages to Plaintiffs in excess of "two times" their respective compensatory damages award.

Third Assignment of Error:
The lower court's misplaced acceptance of and reliance upon material unsworn and unsubstantiated "facts" proffered by Plaintiffs-Appellees' counsel during the remand proceedings *in lieu* of any testimony or other evidentiary proofs from Plaintiffs-Appellees themselves, resulted in the inclusion of myriad false findings in the August 31st Order * * *, requiring its reversal, along with a clarification of the punitive damages award provision contained in the May 14, 2012 Final Judgment Entry * * * , and further modification of the October 19, 2015 Judgment Entry.

Law and Analysis

Application of the Cap on Punitive Damages Set Forth in R.C. 2315.21(D)(2)(a)

{¶24} Village Green's assignments of error and the Gruhins' second assignment of error are interrelated; we, therefore, address them together. All three assignments of error involve the interpretation and application of the statutory cap on punitive damages set forth in R.C. 2315.21(D)(2)(a) and the mandate of the Ohio Supreme Court following Village Green's appeal of the judgment entered on the jury verdict in this case. Village Green argues that under R.C. 2315.21(D)(2)(a), the trial court erred in awarding the individual plaintiffs more than $1,194,294.00 — two times the total compensatory damages awarded the individual plaintiffs — in punitive damages. The Gruhins similarly argue that under R.C. 2315.21(D)(2)(a), the punitive damages "allocable and distributable to each of [the individual plaintiffs] must * * * not exceed a maximum of two times their respective individual, distinct, separate and unique compensatory damages awards." The Sivit plaintiffs assert that, consistent with R.C. 2315.21(D)(2)(a) and the mandate of the Ohio Supreme Court, the trial court properly considered the total amount of compensatory damages awarded all plaintiffs in the case, including the compensatory damages awarded the insurer plaintiffs, in reducing the jury's punitive damages award from $2,000,000 to $1,537,555.90. Following a careful review of the record and the applicable authority, we agree with Village Green and the Gruhins that the trial

court's punitive damages award of $1,537,555.90 exceeds the limit prescribed by R.C. 2315.21(D)(2)(a) and is contrary to the mandate previously issued in this case by the Ohio Supreme Court.

{¶25} "Reviewing courts 'will not disturb a decision of the trial court as to a determination of damages absent an abuse of discretion.'" *Sivit*, 143 Ohio St.3d 168, 2015-Ohio-1193, 35 N.E.3d 508, at ¶ 9, quoting *Roberts v. United States Fid. & Guar. Co.*, 75 Ohio St.3d 630, 634, 665 N.E.2d 664 (1996). A trial court abuses its discretion where it acts unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶26} R.C. 2315.21(D)(2)(a) provides: "The court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff from that defendant, as determined pursuant to division (B)(2) or (3) of this section." R.C. 2315.21(B)(2) provides:

> In a tort action that is tried to a jury and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant.

R.C. 2315.21(B)(3) applies to bench trials and, therefore, is not applicable here.

{¶27} R.C. 2315.21(C) further provides:

> Subject to division (E) of this section, punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply:
>
> (1) The actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud, or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.
>
> (2) The trier of fact has returned a verdict or has made a determination pursuant to division (B)(2) or (3) of this section of the total compensatory damages recoverable by the plaintiff from that defendant.

{¶28} "The primary goal in construing a statute is to ascertain and give effect to the intent of the legislature." *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164, ¶ 17, citing *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 11. We examine the plain language of the statute, "read words and phrases in context[,] and construe them according to the rules of grammar and common usage." *In re M.W.* at ¶ 17, citing R.C. 1.42. In doing so, we attempt to give effect to "every word, phrase, sentence, and part of the statute" and to avoid an interpretation that would "restrict, constrict, qualify, narrow, enlarge, or abridge the General Assembly's wording" or that would otherwise render a provision meaningless or superfluous. *State ex rel. Carna v. Texas Valley Local School Dist. Bd. of Edn.*, 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶ 18-19. Where, as here, a statute is clear on its face, we must apply the statute as written. The General Assembly is presumed to mean what it said. *San Allen v. Buehrer*, 2014-Ohio-2071, 11 N.E.3d 739, ¶ 81 (8th Dist.).

{¶29} Applying these principles of statutory construction, we conclude that under R.C. 2315.21(D)(2)(a), the trial court was precluded from entering a judgment for punitive damages to the individual plaintiffs that exceeded two times the compensatory damages awarded to those plaintiffs. In other words, in computing the cap on punitive damages, the trial court could only consider the total compensatory damages awarded to the individual plaintiffs; it could not also consider the amount of compensatory damages awarded to other plaintiffs, i.e., the insurer plaintiffs, who were not seeking punitive damages, who were not involved in the punitive damages proceeding, and as to whom no determination of entitlement to punitive damages was made by the jury.

{¶30} Under R.C. 2315.21(D)(2)(a), the cap on punitive damages is computed by multiplying "the amount of the compensatory damages awarded to *the plaintiff*" times two. (Emphasis added.) The definite "the plaintiff" referenced in R.C. 2315.21(D)(2)(a) refers back, by its terms, to (1) the "plaintiff" identified in R.C. 2315.21(B)(2) (jury trials) or (3) (bench trials), as applicable, i.e., "*a plaintiff* [who] makes a claim for both compensatory damages and punitive or exemplary damages," and (2) the "determin[ation]" made in accordance with that provision, i.e., the jury's "answers to an interrogatory that specifies the total compensatory damages recoverable by *the plaintiff* from each defendant." (Emphasis added.) *See also* R.C. 2315.21(C)(2) ("punitive or exemplary damages are not recoverable from a defendant in question in a tort

action unless * * * [t]he trier of fact has returned a verdict or has made a determination pursuant to division (B)(2) or (3) of this section of the total compensatory damages recoverable by *the plaintiff* from that defendant.") (Emphasis added.).

{¶31} The Sivit plaintiffs argue that their interpretation is simply a matter of reading the singular "the plaintiff" in R.C. 2315.21(D)(2)(a) as the plural "the plaintiffs"; however, it is much more than that. Although it is an accepted principle of statutory construction that "(t)he singular includes the plural, and the plural includes the singular," R.C. 1.43(A), this rule does not apply where there is "clear language in [the statute] to the contrary, or evidence which adequately demonstrates that such a construction is out of context with the remaining language of that statute or its related provisions." *Wingate v. Hordge*, 60 Ohio St.2d 55, 58, 396 N.E.2d 770 (1979).

{¶32} Furthermore, under the Sivit plaintiffs' interpretation of R.C. 2315.21(D)(2)(a), we would have to read "the plaintiff" not only as "the plaintiffs" but to include persons other than "plaintiff[s] [who] make[] a claim for both compensatory damages and punitive or exemplary damages" as set forth in R.C. 2315.21(B)(2) and (3) — to which R.C. 2315.21(D)(2)(a) expressly refers. Under the Sivit plaintiffs' interpretation, we would have to ignore the reference to R.C. 2315.21(B)(2) and (3) and read "the plaintiff" as encompassing all plaintiffs in the case who are awarded compensatory damages, regardless of whether they

have made a claim for punitive damages. Such an interpretation is contrary to the plain meaning of the statute. Although "the plaintiff" as used in R.C. 2315.21(D)(2)(a), when read in context, could be reasonably interpreted as including all *plaintiffs* who "make[ ] a claim for both compensatory damages and punitive or exemplary damages" as set forth in R.C. 2315.21(B)(2) and (3), there is nothing in R.C. 2315.21 that permits "the plaintiff" as used in R.C. 2315.21(D)(2)(a) to be interchangeable with "a plaintiff [who] makes a claim for both compensatory damages and punitive or exemplary damages" and any other plaintiff in the case who receives a compensatory damages award — as the Sivit plaintiffs argue here.

{¶33} Further, when reading R.C. 2315.21(D)(2)(a) in context with the other provisions of the statute, it is worth noting that it is only where a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, that R.C. 2315.21 requires the jury, if a verdict is returned for the plaintiff, to answer an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant. There is no such requirement in R.C. 2315.21 with respect to a plaintiff who does not make a claim for punitive damages. The reason for this distinction is that where a plaintiff makes a claim for both compensatory and punitive damages, there must be a basis upon which the court can calculate the cap on punitive damages set

forth in R.C. 2315.21(D)(2)(a); where there is no claim for punitive damages, no such calculation is required.

{¶34} Thus, any compensatory damages awarded to plaintiffs who have not asserted claims for punitive damages are not properly considered in applying the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a). *See also Freudeman v. Landing of Canton,* 702 F.3d 318, 331-334 (6th Cir.2012) (compensatory damages awarded for wrongful death claim could not be considered when determining the statutory cap on punitive damages awarded for survival claims under R.C. 2315.21(D)(2)(a) because punitive damages are not available for a wrongful death claim and R.C. 2315.21(D)(2)(a) instructs the trial court to look at "the amount of the compensatory damages awarded to the *plaintiff*"; whereas the "real plaintiff" for a survival claim is the decedent's estate, the decedent's statutory beneficiaries are the "real parties" for a wrongful death claim).

{¶35} The Sivit plaintiffs claim that such an interpretation of R.C. 2315.21(D)(2)(a) is contrary to the purpose for which punitive damages are awarded. However, it is not only the purpose of awarding punitive damages, but also the purpose of having a *cap* on punitive damages that is relevant here. While the purpose of punitive damages is "to punish and deter certain conduct," *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 651, 635 N.E.2d 331 (1994), the purpose of the cap on punitive damages — to which R.C. 2315.21(D)(2)(a) is

directed — is to limit the amount of punitive damages that can be awarded against a defendant to "mak[e] the civil justice system more predictable." *Arbino v. Johnson & Johnson,* 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 102.

{¶36} Furthermore, the only reason an issue exists in this case as to whether the punitive damages cap should be based on the compensatory damages awarded to the individual plaintiffs or the total compensatory damages awarded to all plaintiffs (including the insurer plaintiffs who did not assert claims for punitive damages), is because the action filed by the individual plaintiffs was consolidated, for purposes of judicial economy, with the actions filed by the insurer plaintiffs who did not assert claims for punitive damages. If the insurer plaintiffs' actions had not been consolidated with the action filed by the individual plaintiffs, there is no basis upon which the individual plaintiffs could claim that they were entitled, under R.C. 2315.21(D)(2)(a), to punitive damages in excess of two times their own awards of compensatory damages. Given the purpose of the cap on punitive damages, we do not believe the legislature intended that the amount of punitive damages a trial court may award a plaintiff under R.C. 2315.21(D)(2)(a) should vary depending upon the number of other plaintiffs (or the amount of compensatory damages awarded to other plaintiffs) whose claims are tried with the plaintiff's claims but who do not

themselves seek punitive damages (or as to whom no determination is made that they are entitled to punitive damages).

{¶37} The Sivit plaintiffs also argue that even if R.C. 2315.21(D)(2)(a) would have otherwise required the trial court to consider only the compensatory damages awarded to the individual plaintiffs in calculating the cap on punitive damages, the trial court was constrained by, and bound to follow, the mandate of the Ohio Supreme Court and award $1,537,555.90, two times the total compensatory damages awarded all plaintiffs, in punitive damages.

{¶38} An inferior court generally has "no discretion to disregard the mandate of a superior court in a prior appeal in the same case." *Nolan v. Nolan*, 11 Ohio St.3d 1, 462 N.E.2d 410 (1984), syllabus. The Sivit plaintiffs assert that the Ohio Supreme Court's mandate is found in paragraph 8 of its opinion, which states as follows:

> We order reduction of the amount of punitive damages to twice the amount of compensatory damages that were awarded in the trial court's judgment entry, which we deem an appropriate amount to deter the conduct at issue in this case.

Village Green argues that this language should not be construed as mandating a reduction in the punitive damages award to $1,537,555, i.e., twice the compensatory damages awarded to all of the plaintiffs, because the court's opinion "did not mention — and certainly did not consider the significance of — the fact that $171,630.95 of the 'stipulated compensatory damages of $186,671.95' had been awarded to four subrogated insurance company plaintiffs

who had not been awarded any punitive damages by the jury" given that that fact had no relevance to the issues then before the court. (Emphasis omitted.) Village Green also contends that paragraph 8 is inconsistent with paragraph 12 of the opinion that remands the matter to the trial court to "set the amount of damages." The Sivit plaintiffs respond that because the court pointed out in its opinion that the "compensatory-damages awarded by the jury totaled $582,146" and that "[t]he judgment entry of the trial court also included stipulated compensatory damages of $186,631.95, which were contingent on a finding of liability," the court clearly understood that "the amount of compensatory damages that were awarded in the trial court's judgment entry" included the compensatory damages awarded to the insurer plaintiffs who had not requested punitive damages.

{¶39} We need not resolve the issue of whether the Ohio Supreme Court, in rendering its decision, understood and considered the fact that the total compensatory damages awarded in this case included compensatory damages to plaintiffs who did not seek punitive damages or precisely what the Ohio Supreme Court intended by its reference to "the amount of compensatory damages that were awarded in the trial court's judgment entry" in paragraph 8 of its opinion because paragraph 8 is not the mandate of the Ohio Supreme Court in this case. S.Ct.Prac.R. 18.04(C) provides: "A certified copy of the judgment entry shall constitute the mandate." In this case, the Ohio Supreme

Court's mandate, i.e., a certified copy of its April 2, 2015 judgment entry, stated, in relevant part, as follows:

> This cause * * * is affirmed with respect to all issues related to the verdict except the award of punitive damages, consistent with the opinion rendered herein.
>
> It is further ordered that the court holds that punitive damages in the amount of two times the award of compensatory damages is the appropriate amount, and this issue is remanded to the trial court to set the amount of damages.

{¶40} Accordingly, the Ohio Supreme Court remanded the case for the trial court "to set the amount of damages." For the reasons explained above, properly "set[ting] the amount of [punitive] damages," in accordance with R.C. 2315.21(D)(2)(a), required the trial court to award a total of $1,194,294 in punitive damages, not $1,537,555.90 in punitive damages, as the trial court did here. We do not find that applying R.C. 2315.21(D)(2)(a) as written, i.e., limiting the punitive damages award to two times the total compensatory damages awarded to the individual plaintiffs, would violate the mandate of the Ohio Supreme Court.

{¶41} Although we agree with Village Green that the trial court erred in setting the amount of the punitive damages award at $1,537,555.90, rather than $1,194,294, we also agree with the Sivit plaintiffs that the punitive damages award must be reversed in total — not just, as Village Green suggests, as to the punitive damages allocated to the seven individual plaintiff groups — Jason and Renee Edwards, Natalie Rudd, Prathibha Marathe, Hallie Gelb, Mohammad

Marwali and Selvy Pangkey, Luciana Armaganijan and Mitchell Rosenberg — who would receive more than two times their compensatory damages under the trial court's per capita allocation of the punitive damages award. Accordingly, we sustain Village Green's first assignment of error in part and the Gruhins' second assignment of error in part and overrule them in part. We also sustain Village Green's second assignment of error. We reverse the trial court's punitive damage award and remand the matter to the trial court to reset the total amount of punitive damages awarded to the individual plaintiffs at $1,194,294.

The Trial Court's Allocation of the Punitive Damages Award

{¶42} In their first and third assignments of error, the Gruhins argue that they are entitled to punitive damages equal to twice their compensatory damages award — $222,466 in punitive damages — and that the trial court abused its discretion in allocating the punitive damages equally, on a per capita basis, among the ten individual plaintiff groups.

{¶43} The Gruhins do not dispute that the individual plaintiffs could have entered into an agreement specifying how any punitive damages award they received was to be allocated among them, and that, if such an agreement had been made, the trial court could have enforced that agreement and ordered the allocation and distribution of the punitive damages award consistent with that agreement. The Gruhins assert, however, that no such agreement existed among the individual plaintiffs. The Gruhins contend that the trial court's

findings that the individual plaintiffs had "banded together" and agreed to equally share any punitive damages award among the ten individual plaintiff groups "are patently false and erroneous," that "no testimony or other evidentiary proofs supportive of such findings exist," and that the trial court "inexplicably allowed itself to be swayed" by "unsworn, unsubstantiated, untrue, wholly gratuitous and self-serving statements improperly proffered as 'fact'" by the Diemert law firm.

{¶44} We disagree with the Gruhins that there was "no evidence" in the record to support the trial court's finding that the individual plaintiffs had agreed to equally share any award of punitive damages. In addition to the affidavits from Sivit and Pace setting forth their understanding that the punitive damages award would be shared equally among the ten individual plaintiff groups,[7] the verdict forms submitted to the jury on the issue of punitive damages reflect an intent or understanding on the part of the individual plaintiffs to share in any punitive damages award (particularly when compared with the interrogatory submitted on the issue of compensatory damages, which required the jury to specify the amount of compensatory damages awarded to each of the individual plaintiff groups). Furthermore, after counsel advised David Gruhin in January 2013 that, consistent with the trial court's judgment entry, he

[7]Sivit and Pace would have each received a much larger share of the punitive damages award if the award had been allocated on a pro rata basis, based on the compensatory damages they were awarded, rather than a per capita basis, shared equally among the ten individual plaintiff groups.

"anticipate[d] dividing the punitives into 10 plaintiff groups equally" because "the purpose for the punitive award was equally shared," the Gruhins did not raise any further issue with respect to proposed allocation of the punitive damages award until April 2015 — more than two years later — and, then, only after counsel sent a letter advising the Gruhins that their share of the punitive damages award would likely be reduced from $200,000 to $153,750 as a result of the decision by the Ohio Supreme Court. Although David Gruhin claims he never received counsel's January 24, 2013 email, it strains credulity to believe that he would have waited more than two years for a response to his January 2013 emails without following up, particularly given that, due to his "hectic" work schedule, he had requested "a written response detailing your intentions in regard to the punitive damages, sent within 7 days."

{¶45} Although the Gruhins dispute that an agreement existed among the plaintiffs to share any punitive damages award equally, they do not claim that there was some other agreement among the plaintiffs as to how the lump sum punitive damages award would be allocated. Nor do they indicate how they thought the award would be allocated when the jury was asked to award punitive damages to the plaintiffs collectively.[8]

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[8]As discussed below, at that time, there had been no determination that plaintiffs' action was a "tort action" within the meaning of R.C. 2315.21. Accordingly, the Gruhins could not have then expected that R.C. 2315.21 applied to the plaintiffs' claims or that they would receive a pro rata share of the total punitive damages awarded, as they now claim, based on R.C. 2315.21(D)(1)(a).

{¶46} We need not decide the issue of whether sufficient evidence existed to support the trial court's finding that an agreement existed among the individual plaintiffs to equally share any award of punitive damages because even if the trial court erred in concluding that such an agreement existed, we would still affirm the trial court's decision to distribute the punitive damages award equally among the ten individual plaintiff groups based on the particular facts and circumstances in this case.

{¶47} The Gruhins argue that R.C. 2315.21(D)(2)(a) controls the allocation of the punitive damages award in this case and that the trial court's failure to allocate punitive damages to each of the plaintiff groups in an amount equal to two times their compensatory damages violates R.C. 2315.21(D)(2)(a). The Gruhins contend that R.C. 2315.21(D)(2)(a) requires the court to (1) "look to the 'groups' of Plaintiffs who made claims for both compensatory and punitive damages," (2) "take into account the varying amounts of compensatory damages awarded to each individual 'group' of Plaintiffs" and (3) multiply "each of these ten individual amounts * * * by two * * * to determine the amount of punitive damages to which each Plaintiff is entitled pursuant to the Statute." (Emphasis omitted.) The Gruhins contend that because certain plaintiff groups will receive more than two times their awarded compensatory damages and other plaintiff groups will receive less than two times their awarded compensatory damages

under the trial court's allocation of the punitive damages award, the trial court's allocation of punitive damages must be reversed. Once again, we disagree.

{¶48} The purpose of R.C. 2315.21(D)(2)(a) is to limit the damages awarded against a defendant, not to ensure that a particular plaintiff gets a particular punitive damage award (or a particular share of a punitive damages award). Thus, R.C. 2315.21(D)(2)(a) does not, as the Gruhins contend, "entitle" a plaintiff to a particular *amount* of punitive damages.

{¶49} Significantly, in this case, the jury was not asked to make (and, therefore, did not make) separate determinations, as to each individual plaintiff or plaintiff group (1) whether the plaintiff or plaintiff group was entitled to punitive damages from Village Green and (2) if so, in what amount. There was no ruling that R.C. 2315.21 — and specifically, the cap on punitive damages set forth in R.C. 2315.21(D)(2)(a) — applied to the individual plaintiffs' claims for punitive damages prior to the jury's verdicts on punitive damages. Thus, for strategic reasons, no doubt with an eye toward (1) convincing the jury to award punitive damages to the plaintiffs in the first instance and (2) maximizing any punitive damages award ultimately awarded by the jury, the individual plaintiffs' claims for punitive damages were presented collectively to the jury and the jury was asked to consider an award of punitive damages to the plaintiffs as a group.

{¶50} Consistent with that approach, two verdict forms were submitted to the jury in the punitive damages phase of the trial. The jury was asked to consider (1) whether the individual plaintiffs as a group should be awarded punitive damages against Village Green and (2) if so, in what amount. No objection was raised to the trial court's submission of these verdict forms to the jury. Likewise, no objection was made after the jury awarded punitive damages to the individual plaintiffs in a lump sum. Nor was any claim made on appeal that the trial court erred in failing to submit jury interrogatories asking the jury to independently consider the punitive damages claim of each individual plaintiff or in permitting the jury to make a lump sum punitive damages award. The only objection that was made and the only error that was raised on appeal related to the verdict forms was Village Green's objection to the total amount of punitive damages awarded against it. Accordingly, any error allegedly associated with the trial court's failure to request separate determinations from the jury on the plaintiffs' punitive damages claims or the jury's lump sum punitive damages award has been waived and any claim based on any such alleged error would be barred by res judicata. *See also Faieta v. World Harvest Church*, 10th Dist. Franklin No. 08AP-527, 2008-Ohio-6959, ¶ 80-85 (trial court did not commit plain error by submitting to the jury general verdict forms and interrogatories that did not require the jury to specify the amount of punitive damages awarded to each individual plaintiff where defendants, who on appeal

claimed the submission of the verdict forms and interrogatories was plain error, not only failed to object to the verdict forms and interrogatories, but invited the alleged error by submitting draft verdict forms and interrogatories to the trial court that asked the jury to determine the amount of damages awarded to the plaintiffs collectively, not individually).

{¶51} Although we agree, reading the statute as a whole, that R.C. 2315.21 seems to contemplates that the trier of fact will make individualized determinations of both the compensatory damages to be awarded to a particular plaintiff (or a plaintiff group where, as here, the claims of individual plaintiffs such as a husband and wife are presented together) and whether a particular plaintiff is entitled to recover punitive damages, there is nothing in R.C. 2315.21 that expressly requires the trial court, in a multi-plaintiff case, to submit an interrogatory to the jury that specifies the amount of punitive damages recoverable by each plaintiff from a defendant. *Compare* R.C. 2315.21(B)(2) ("In a tort action that is tried to a jury and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant.") *with* R.C. 2315.21(B)(1)(b) ("If the jury determines in the initial stage of the trial that the plaintiff is entitled to recover compensatory damages

for the injury or loss to person or property from the defendant, evidence may be presented in the second stage of the trial, and a determination by that jury shall be made, with respect to whether the plaintiff additionally is entitled to recover punitive or exemplary damages for the injury or loss to person or property from the defendant.") *and* R.C. 2315.21(D)(1)("In a tort action, the trier of fact shall determine the liability of any defendant for punitive or exemplary damages and the amount of those damages."). Further, R.C. 2315.21 does not address the allocation of a lump sum punitive damages award where, as here, the trier of fact was not asked to make an individualized determination of the amount of punitive damages to be awarded to each plaintiff determined to be entitled to recover punitive damages.

{¶52} Given that the jury was not asked to make separate determinations of the amount of punitive damages each individual plaintiff was entitled to recover, the allocation of the punitive damages the jury awarded to the individual plaintiffs as a group was properly left to the discretion of the trial court.

{¶53} As the Ohio Supreme Court explained in *Dardinger v. Anthem Blue Cross & Blue Shield*, 98 Ohio St.3d 77, 2002-Ohio-7113, 781 N.E.2d 121, courts have "a central role to play" in determining how punitive damage awards should be distributed:

> [A] punitive damages award is about the defendant's actions. "The purpose of punitive damages is not to compensate a plaintiff but to

> punish the guilty, deter future misconduct, and to demonstrate society's disapproval." * * * At the punitive-damages level, it is the societal element that is most important. The plaintiff remains a party, but the de facto party is our society, and the jury is determining whether and to what extent we as a society should punish the defendant.
>
> There is a philosophical void between the reasons we award punitive damages and how the damages are distributed. The community makes the statement, while the plaintiff reaps the monetary award. * * * In Ohio, punitive damages are an outgrowth of the common law. * * * Therefore, Ohio's courts have a central role to play in the distribution of punitive damages. Punitive damages awards should not be subject to bright-line division but instead should be considered on a case-by-case basis, with those awards making the most significant societal statements being the most likely candidates for alternative distribution.
>
> Clearly, we do not want to dissuade plaintiffs from moving forward with important societal undertakings. The distribution of the jury's award must recognize the effort the plaintiff undertook in bringing about the award and the important role a plaintiff plays in bringing about necessary changes that society agrees need be made. Plaintiffs themselves might get involved in how the award is distributed. * * *

Id. at ¶ 187-189.

{¶54} The Gruhins claim that the trial court's allocation of the punitive damages award in ten equal shares is a case of "robbing Peter to pay Paul" and that the Gruhins are entitled to have the punitive damages award "allocated and distributed in line with their respective, distinct, separate and unique individually awarded compensatory damages" just as would have occurred "[h]ad each [p]laintiff filed a separate action." The Gruhins' argument assumes that if they had brought their claims separately from those of the other plaintiffs (1)

the jury would have still awarded them punitive damages and (2) the punitive damages the jury awarded them would not have been less than the statutory cap of two times their compensatory damages. There is, however, no guarantee that that would have been the case.

{¶55} While the Gruhins are correct that they and each of the other individual plaintiffs could have filed separate actions asserting their claims for compensatory and punitive damages on a "wholly separate and independent basis," it is not necessarily true if they had done so, that they would have received the punitive damages award to which they now claim they are entitled. Two times compensatory damages was simply the maximum amount the Gruhins could have recovered in punitive damages had their claims been tried separately. Had the Gruhins' claims been tried separately (or if separate interrogatories had been submitted to the jury on their punitive damages claim), they could have received the same punitive damages award, a lower punitive damages award or even no punitive damages at all. As the Ohio Supreme Court recently stated in *Whetstone v. Binner*, Slip Opinion. No. 2016-Ohio-1006, ¶ 20, "[A]n award of punitive damages is not automatic. Even when a plaintiff can establish entitlement to punitive damages, whether to impose punitive damages, and in what amount, is left to the trier of fact."

{¶56} No doubt the reason the individual plaintiffs joined their claims together in a single lawsuit and submitted their punitive damages claims to the

jury collectively was because they saw potential advantages to doing so, including an increased likelihood of receiving a substantial punitive damages award. The fact that ten plaintiff groups (some of whom were elderly, some of whom had children) all suffered significant losses as a result of the defendant's malicious conduct may have very well increased the punitive damages award to the individual plaintiffs beyond what they would have received had their claims been tried independently. Likewise, the fact certain plaintiffs, such as Rosenberg and Armaganijan, were clearly harmed by Village Green's conduct but Village Green was required to pay only "nominal" "agreed upon" compensatory damages for their losses may have led the jury to increase the amount of punitive damages awarded to the individual plaintiffs as a group.

{¶57} Based on our review of the record, we cannot say that the trial court acted arbitrarily, unreasonably or unconscionably in ordering the lump sum punitive damages award to be shared equally among the ten individual plaintiff groups. In determining what a "fair, reasonable and equitable" allocation of the punitive damages should be, the trial court considered the relevant facts and equities of the situation, including the verdict forms and interrogatories submitted to the jury, the manner in which the plaintiffs' claims were presented at trial, i.e., as ten plaintiff groups representing the ten apartment units the individual plaintiffs occupied at the time of the fire, the role and purpose of the

stipulations that had been entered as to the compensatory damages sustained by certain of the individual plaintiffs and the nature of the claims asserted.

{¶58} As the trial court observed, every plaintiff was a victim of the same malicious conduct that justified the award of punitive damages against Village Green. Some of the plaintiffs, such as Rosenberg, were subject to such conduct for a much longer period of time than the Gruhins. Every plaintiff lost items that were of great personal value for which the law may not have provided adequate compensation. Every plaintiff was displaced from his or her home due to the damage caused by the fire. To the extent that some individual plaintiff groups suffered higher compensable losses than others, those differences were already accounted for in the compensatory damages awards the plaintiff groups received and need not have been considered by the trial court in allocating the punitive damages award.

{¶59} Accordingly, we overrule the Gruhins' first and third assignments of error. We affirm the trial court's judgment in part, reverse the trial court's judgment in part, and remand the matter for the trial court to enter an order setting the total amount of punitive damages awarded to the individual plaintiffs at $1,194,294, to be distributed equally among the ten individual plaintiff groups, i.e., $119,429.40 to each of the ten individual plaintiff groups.

{¶60} This cause is affirmed in part, reversed in part and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that the Gruhins and Village Green share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)

MAY 12 2016

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By _____ Deputy