

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPT.
C.A. 18159

AUGUST V. MEDEIROS and SANDRA MEDEIROS)	PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR ARGUMENT THAT DAMAGES FOR EMOTIONAL DISTRESS MAY BE RECOVERED UNDER G.L. c.93A
v.)	
DONALD LLOYD, D.V.M.)	
)	
)	

I. EMOTIONAL DISTRESS DAMAGES ARE "ACTUAL DAMAGES"

G.L. c.93A 9(3) permits recovery of "actual damages or twenty-five dollars, whichever is greater."

"Actual damages" include emotional distress.

"'Actual damages' for injuries under G.L. c.93A comprehend all foreseeable and consequential damages arising out of conduct which violates the statute. DiMarzo v. American Mutual Ins. Co., 389 Mass. 85, 101, 449 N.E. 2d 1189, 1200 (1983) and, we think, include, after St. 1979, c.406 sec. 1 'emotional distress...' (my emphasis).

Brown v. LeClair, 20 Mass. App. 976, 979, 482 N.E. 2d 870, 873 (1985) (the plaintiff was allowed recovery for emotional distress suffered from assault and battery). See also, Simon v. Solomon, 385 Mass. 91, 431 N.E. 2d 556 (1982) ("actual damages" under G.L. c.186 sec. 14 includes damages for emotional distress).

In Bank of New Orleans & Trust Co. v. Phillips, 415 So 2d 973, 976 (La. 1982), the court expressly rejected the defendant's argument that the phrase

"actual damages" in the Louisiana analog to G.L. c.93A did not permit recovery of emotional distress, citing to Webster's Dictionary.

Defendant argues that 'actual' damages does not include humiliation and mental anguish. We do not agree. Humiliation and mental anguish are 'real,' 'genuine,' 'existing in fact,' a part of 'reality' and 'exist in the present.'

II. THE LEGISLATURE MAY CREATE NEW CAUSES OF ACTION AND IS NOT BOUND BY PRINCIPLES OF COMMON LAW

That recovery of damages for emotional distress may not be permitted under common law tort theories, does not preclude recovery for emotional distress under G.L. c.93A. G.L. c.93A creates a statutory cause of action that is neither tortious nor contractual in nature. Slaney v. Westwood Auto, Inc., 366 Mass. 688, 322 N.E. 2d 768 (1975). The Supreme Judicial Court characterizes G.L. c.93A as "a statute of broad impact which creates new substantive rights." Slaney, supra, Mass. at 693, N.E. 2d at 772. See also, Commonwealth v. DeCotis, 366 Mass. 234, 244, n.8, 316 N.E. 2d 748, 755 n.8 (1974). The legislature, in creating a new cause of action, is not bound by the limits of common law tort law principles. Massachusetts Constitution Pt. 2, L. 6, Art. VI.

III. IN ITS 1979 AMENDMENT TO G.L. c.93A THE LEGISLATURE INTENDED TO PERMIT THE RECOVERY OF EMOTIONAL DISTRESS

In creating these "new substantive rights," the legislature intended that emotional distress damages be recoverable. The original language of G.L. c.93A provided for recovery only for "loss of money or property." The Supreme Judicial Court interpreted this language to mean that damages for emotional distress were not recoverable. Baldassari v. Public Fin. Trust, 369 Mass. 33, 337 N.E. 2d 701 (1975). Following Baldassari, the legislature amended G.L. c.93A to allow recovery of damages to one "who has been injured." St. 1979, c.406, sec. 1. The Supreme Judicial Court has recognized that this 1979 amendment was a reaction to the narrow Baldassari holding. Leardi v. Brown, 394 Mass. 151, 158, 474 N.E. 2d 1094, 1101 (1985).

IV. TO RECOVER FOR EMOTIONAL DISTRESS THE PLAINTIFF
NEED PROVE ONLY CAUSAL CONNECTION AND FORSEE-
ABILITY OF INJURY

To recover damages under G.L. c.93A, a plaintiff need show only that a causal connection exists between the unfair or deceptive act or practice and the claimed loss and that the loss was foreseeable. Kohl v. Silver Lake Motors, Inc., 369 Mass. 795, 800-801, 343 N.E. 2d 375, 379 (1976). E.g., International Fidelity Ins. Co. v. Wilson, 387 Mass. 841, 850, 443 N.E. 2d 1308, 1314 (1983). The expert evidence will show that the emotional distress suffered by the plaintiffs was a direct result of their dog's death and the defendant's mal-

practice.

The plaintiffs' emotional distress was foreseeable. In Barnes v. Geiger, 15 Mass. App. 365, 446 N.E. 2d 78, further rev. den. (1983), the Appeals Court examined the question of reasonable foreseeability in the context of a plaintiff who was injured as a result of seeing a motor vehicle strike a boy she mistakenly believed to be her son. The Court noted, Mass. App. at 369, n.5, N.E. 2d at 81, n.5, that included among the type of relationships that have been held to be "sufficiently close" to be damaged was that of "child-dog," citing Campbell v. Animal Quarantine Station, 63 Haw. 557, 632 P.2d 1066 (1981)). [Campbell actually affirmed the damage award for the death of the family dog not only to the three Campbell children but to their parents. Id., Haw. at 557, P.2d at 1067].

In Dziokonski v. Babineau, 375 Mass. 555, 567, 380 N.E. 2d 1295, 1302 (1978), the Supreme Judicial Court stated that:

it is clear that it is reasonably foreseeable that, if one negligently operates a motor vehicle so as to injure a person, there will be one or more persons sufficiently attached emotionally to the injured person that he or they will be affected.

E.g., Barnes, supra, Mass. App. at 368, N.E. 2d at 81 ("Injury to a child and the protracted anguish placed upon the witnessing parent is, on the scale of human experience, tangible and predictable"). The same is

true for injury to a family dog. Accord, D.S. Favre and M.D. Loring, Animal Law (Greenwood Press 1983), at 59 ("As it is foreseeable that a child will have a caring parent, it is also foreseeable that a pet will have an owner who cares for the animal and who would be distressed by its injury or death.")

No one knows the depth of emotional attachment of an owner to his or her dog better than a small-animal veterinarian, for it is this powerful attachment and this alone from which he derives his professional existence.

(A) veterinarian, whose livelihood is based upon the love and affection an owner feels for his or her pet, should reasonably foresee the owner's emotional distress where there is negligent injury to the pet.

D. Mazor, "Veterinarians at Fault: Rare Breed of Malpractitioners," 7 University of California, Davis Law Review 400, 411 (1974). This obvious fact has been judicially recognized numerous times. Corso v. Crawford Dog and Cat Hospital, Inc., 97 Misc. 2d 530, 415 N.Y.S. 2d 182, 193 (1979) (In awarding damages for emotional distress, the Court stated that "(a) pet is not an inanimate thing that just receives affection; it also returns it. . . Losing the right to memorialize a pet rock, or a pet tree or losing a family picture album is not actionable. But a dog--that is something else."); LaPorte v. Associated Independents, Inc., 163

So. 2d 267, 269 (Fla. 1964) (In awarding damages for emotional distress, the Court stated that "we feel the affection of a master for his dog is a very real thing. . .); Infante v. Leith, 85 P.R.R. 24, 37, n.33 (1963) (In awarding damages for emotional distress, the Court noted that "as correctly stated by the justice of the peace in referring to her [the plaintiff whose dog had been injured] ' . . .she looked as if there were tears in her eyes; she showed the restlessness of a woman who loses something she loves.'"). E.g., Peloquin v. Calcasieu Parish Police Jury, 367 So. 2d 1246 (Ct. of App. of La. 1979) (The court permitted the recovery of damages for "mental anguish" for the death of a pet cat); Knowles Animal Hospital, Inc. v. Wills, 360 So. 2d 37 (Ct. of App. of Fla. 1978) (The Court permitted the recovery of damages for "mental suffering" for a veterinary injury to a pet dog); Lincecum v. Smith, 287 So. 2d 625 (Ct. of App. of La. 1973) (The Court permitted the recovery of damages for emotional distress for the death of a pet dog); City of Garland v. White, 368 S.W. 2d 12 (Ct. of Civ. App. of Texas 1963) (The Court permitted the recovery of damages for "mental pain and suffering" for the death of a pet dog).

The attachment of owner to pet has been emphasized by the veterinary profession itself, "Forward" by William J. Kay, D.V.M., Chief of Staff, Animal Medical

Center, New York City in H.A. Nieburg and A. Fischer, Pet Loss, (Harper and Row 1982) at xi ("The veterinary medical profession has long understood that to pet owners - especially those faced with the loss of their pet - an animal is never merely 'just a dog' or 'just a cat.' We have learned that for many clients no greater emotional attachment exists."); S.E. Crow, D.V.M. and M. Bennett, LAT, "Grief in a University Hospital", in 9 Archives of the Foundation of Thanatology, Veterinary Medical Practice, Pet Loss and Human Emotion ("Thanatology"), No. 2 (1981) at 23 ("Pet owner grief is a natural phenomenon within our society").

Health professionals have come to understand the depth of loss and grief that can be suffered by a dog owner. B.M. Levinson, Ph.D. "Human Grief on the Loss of an Animal Companion," Thanatology at 5 ("The trend toward smaller nuclear families and the virtual disappearance of the extended family has led animal companions to play a greater role in American life. A pet's death can therefore be experienced as traumatic, even catastrophic, to some owners. . ."); E. Friedmann, Ph.D., "Health Consequences of Animal Ownership" in Thanatology at 20 ("The significance of the loss of a pet must be understood in terms of the profound effects that the loss may have on the former owner's health and emotional state."); Pet Loss at xiii ("In our society we are expected to underplay our sorrow

over the death of a cat or dog, but the truth is that our feelings often linger on, long after the loss has taken place. While the impact may not be the same as occurs with human loss, the reactions can be intense enough to cause strong emotional and even physical disturbances. After all, our pets have shared our lives, our homes and our affection."); K.E. Keddie, "Pathological Mourning After the Death of a Domestic Pet," 131 British J. of Psychiatry 21 (1977).

As the Massachusetts courts have held that it is reasonably foreseeable that one who witnesses a negligent act or who soon arrives on the scene of the negligent act and sees its terrible consequences will suffer emotional distress, Cohen v. McDonnell Douglas Corp., 389 Mass. 327, 341, 450 N.E. 2d 581, 589; Payton v. Abbott Labs, 386 Mass. 540, 551, 437 N.E. 2d 171, 179; Ferriter v. Daniel O'Connell's Sons, 381 Mass. 507, 518-519, 413, N.E.2d 690, 696 (1980); Dziokonski, supra, Mass. at 568, N.E. 2d at 1295, so emotional distress is all the more foreseeable in a case like the one at bar where Dr. Lloyd actually instructed the Medeiros's to administer the pills that lead to the death of their pet for weeks and they, out of concern for the welfare of their pet, carefully followed his instructions. The Medeiros's therefore not only witnessed the negligence and its fatal consequences, but were actually transformed into an instrument of

their dog's death. This certainly served to aggravate their emotional distress. See, J. Holzworth, Ph.D, D.V.M. "Easing Grief Over Loss of a Pet: Practical Suggestions for Veterinarian and Owner" in Thanatology at 15 ("Truly shattering is a death for which the owner feels responsible. . .The feeling of guilt may then be so intense that emotional disturbance can result"). This, too, was reasonably foreseeable.

V. CONCLUSION

The legislature is not bound by the common law and may alter it as it sees fit. It passed G.L. c.93A so as to permit the recovery of "actual damages." Actual damages include emotional distress. A plaintiff need prove only a causal connection between the unfair or deceptive act or practice and the claimed loss and that the loss was foreseeable. The plaintiffs can do so.

Dated: FEBRUARY 2, 1987

By their attorney,

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The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

Furthermore, it is noted that regular audits are essential to identify any discrepancies or errors early on. By conducting these checks frequently, the organization can prevent small mistakes from escalating into larger financial issues.

In addition, the document highlights the need for clear communication between all departments involved in the financial process. This includes the accounting, sales, and procurement teams, ensuring that everyone is on the same page regarding the current status and requirements.

The second section of the document focuses on the implementation of robust internal controls. These controls are designed to minimize the risk of fraud and ensure the integrity of the financial reporting process.

Key elements of these controls include the separation of duties, which prevents any single individual from having too much control over a critical financial process. This is achieved by assigning different tasks to different personnel, such as authorizing transactions, recording them, and reconciling the accounts.

Another important aspect is the use of standardized procedures for all financial transactions. This helps to reduce the likelihood of errors and ensures that all entries are recorded consistently. Additionally, the document suggests implementing a system of approvals, where higher-level management must review and sign off on significant transactions.

Finally, the document stresses the importance of maintaining up-to-date financial records. This involves regular reconciliations of bank statements and other external records with the internal accounting system. By doing so, the organization can ensure that its financial statements are accurate and reliable.

The final part of the document provides a summary of the key points discussed and offers recommendations for further improvement.

It is concluded that a strong financial management system is crucial for the long-term success of any organization. By following the guidelines outlined in this document, the organization can enhance its financial accuracy, reduce risk, and improve overall operational efficiency.

The document also includes a list of references and a glossary of terms used throughout the text. This is intended to provide additional context and ensure that all readers have a clear understanding of the concepts discussed.