

# In "Case" You Missed It: *Giallombardo v. Kyriak*: A Clarification Of The Punitive Damages Standard

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In a recent decision, *Giallombardo v. Kyriak*, No. A-2295-19 (App. Div. May 10, 2021), the Appellate Division clarified the punitive damages standard and explained that a trial court cannot deny punitive damages on the basis of “conclusory findings” without discussion of the underlying facts, but rather must make a finding on the record with regard to each element of a punitive damages claim.

The case concerned a contract in which plaintiff agreed to loan defendant \$600,000. In exchange, defendant agreed repay plaintiff within 45 days, and allowed plaintiff to hold as collateral certain real property that defendant owned. The property would be transferred to plaintiff if defendant did not repay the loan within 45 days.

Defendant never repaid the loan. After plaintiff requested that the property be transferred pursuant to the contract, defendant informed plaintiff that he did not actually own the property and had no power to transfer it.

Plaintiff then filed suit for breach of contract. After extensive motion practice and a plenary hearing regarding damages, the trial court awarded plaintiff \$600,000 in damages, plus interest, but denied his application for punitive damages and attorneys' fees. Plaintiff appealed on those issues.

The Appellate Division reversed and remanded for further proceedings as to both attorney's fees and punitive damages. With regard to attorney's fees, the panel simply held that the parties' contract required payment of legal costs and fees in the case of a default. On the issue of punitive damages, however, the panel provided a fairly expansive discussion of the requirements for an award of punitive damages.

To begin, the panel declined to adopt plaintiff's argument that the trial court's finding that defendant committed fraud automatically entitled plaintiff to punitive damages. Although it noted that fraud cases are particularly strong vehicles for an award of punitive damages, the panel explained, with support from prior case law, that fraud *per se* is not sufficient to meet the “special circumstances' warranting punitive damages, and that there must be some additional “aggravating element” to sustain such damages. Nevertheless, the panel remanded the issue because the trial court did not “state the factual findings supporting its conclusion.” The panel explained that the trial court should have explained its conclusions and addressed each of the four statutory considerations for awarding punitive damages.

There are thus two clear takeaways: (1) fraud is not sufficient, standing alone, to support punitive damages; and (2) a trial court must explicitly state its findings regarding punitive damages on the record, and must address each of the four statutory criteria relating to punitive damages.

*Estate of Semprevivo v. Lahham: Relaxation Of Rule 1:13-7*

The Appellate Division also provided important guidance regarding the standard for administrative dismissal under *Rule 1:13-7* in a recent published decision, *Estate of Semprevivo v. Lahham*, \_\_\_ N.J. Super. \_\_\_, No. 2505-19 (App. Div., May 11, 2021).

In that case, plaintiffs filed a medical negligence action against two defendants on September 17, 2018. On January 25, 2019, after no further action was taken, the trial court issued a written dismissal warning notice, advising that the complaint would be dismissed within 60 days pursuant to *Rule 1:13-7* if plaintiffs failed to take further action. On March 29, 2019, three days after the 60-day deadline, plaintiffs' counsel filed a deficient proof of service. The next day, the court administratively dismissed the complaint for failure to prosecute under *Rule 1:13-7*.

Plaintiffs filed a motion to reinstate the complaint. The trial court denied the motion, finding that plaintiffs had demonstrated neither good cause nor exceptional circumstances sufficient to warrant reinstatement of the complaint under *Rule 1:13-7*. The court later granted a defendant's motion to dismiss the matter with prejudice, and denied a second motion by plaintiffs to reinstate the matter. Plaintiffs appealed.

The Appellate Division reversed in a published decision that provides a thorough elucidation of the standards provided by *Rule 1:13-7*. The court began by noting that the text of the *Rule* requires that a court reviewing a motion for reinstatement must "determine whether the plaintiff has established good cause on one hand, or exceptional circumstances on the other, depending on the timing of the motion and the number of parties in the case." The panel acknowledged that this matter would, in typical circumstances, warrant the exceptional circumstances standard because there were multiple defendants and the motion for reinstatement was made more than 90 days after dismissal.

Nevertheless, the panel explained that a trial court has the discretion to relax certain rules if adherence would result in injustice, especially in cases where adherence may result in a plaintiff being closed out of court. The panel then explained that the exceptional circumstances standard is meant to address "management problems" that occur in multi-defendant cases where a plaintiff seeks reinstatement of a dismissed defendant after the case has proceeded to discovery. Here, the panel explained, "the management problem the rule was intended to address -- delay of all further proceedings against defendants that have participated in the case and taken discovery -- did not exist" because the matter had not yet proceeded to discovery. Moreover, the panel relied on prior case law for the principle that courts should be especially cognizant of relaxing the rules to prevent injustice where the plaintiff is blameless and the delay is caused by the plaintiff's attorney. The panel concluded, based on the evidence, that this was undoubtedly the case here. After holding that the exceptional circumstances standard did not apply, the panel then went on to hold that plaintiffs had met the requirements of the less exacting "good cause" standard because they had shown that the delay was due to their counsel's "inattention."

Finally, the panel held that *Rule 1:13-7*, by its plain language, allows only for dismissal without prejudice, and that the trial court therefore should not have dismissed the matter with prejudice. Accordingly, taking all of these factors together, the panel reversed the trial court and allowed the matter to proceed on the merits.

In sum, the decision provides important guidance stressing that courts should generally be wary of administratively dismissing a matter under *Rule 1:13-7*, and should never do so with prejudice. The case also makes clear that defense counsel should not rely on the *Rule* as an easy way out of a case that a plaintiff has failed to pursue.