

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D19624  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 19, 2008

WILLIAM F. MASTRO, J.P.  
PETER B. SKELOS  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

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2007-02362

DECISION & ORDER

Lurdes Correia, et al., respondents,  
v Eduardo Suarez, appellant.

(Index No. 2039/03)

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Lisette Castelo, White Plains, N.Y. (Gilberto M. Garcia of counsel), for appellant.

Peter Klose, Nyack, N.Y., for respondents.

In an action, inter alia, to recover damages for defamation and intentional infliction of emotional distress, the defendant appeals, as limited by his brief, from so much of a judgment of the Supreme Court, Westchester County (Bellantoni, J.), entered October 13, 2006, as, upon a jury verdict, is in favor of the plaintiffs and against him awarding punitive damages in the principal sum of \$70,000 for intentional infliction of emotional distress.

ORDERED that the judgment is reversed insofar as appealed from, with costs, and the matter is remitted for a new trial on the issue of punitive damages for intentional infliction of emotional distress, unless within 30 days after service upon the plaintiffs of a copy of this decision and order, the plaintiffs shall serve and file in the office of the Clerk of the Supreme Court, Westchester County, a written stipulation consenting to reduce the verdict as to punitive damages for intentional infliction of emotional distress from the sum of \$70,000 to the sum of \$15,000; in the event that the plaintiffs so stipulate, then the judgment, as so reduced and amended, is affirmed insofar as appealed from, without costs or disbursements.

The defendant's challenge to the trial court's charge on the issue of punitive damages is unpreserved for appellate review (*see* CPLR 4110-b; *Harris v Armstrong*, 64 NY2d 700; *Ross v Mandeville*, 45 AD3d 755; *Maskantz v Hayes*, 39 AD3d 211; *Taggart v Shaw*, 36 AD3d 683;

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*Silverstein v Marine Midland Trust Co. of N.Y.*, 35 AD3d 840).

However, upon review of the record and consideration of the applicable factors, we agree with the defendant that the award of punitive damages in the amount of \$70,000 for intentional infliction of emotional distress is excessive and impermissibly disproportionate to the award of \$3,000 in compensatory damages on that same cause of action (*see State Farm Mut. Auto. Ins. Co. v Campbell*, 538 US 408; *BMW of North America, Inc. v Gore*, 517 US 559; *Pacific Mut. Life Ins. Co. v Haslip*, 499 US 1; *Maskantz v Hayes*, 39 AD3d 211; *Sawtelle v Waddell & Reed, Inc.*, 21 AD3d 820). Accordingly, we remit the matter for a new trial on the issue of punitive damages for intentional infliction of emotional distress, unless the plaintiffs agree to a reduction in the award from the sum of \$70,000 to the sum of \$15,000.

MASTRO, J.P., SKELOS, BALKIN and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court