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Kenneth W. Ward and Hannah S. Lowe



On June 22, 2020, DRI and Tennessee Defense Lawyers Association members [Kenneth W. Ward](#), shareholder in, and [Hannah S. Lowe](#), associate of, **Trammell**

Adkins & Ward PC, in Knoxville, Tennessee, received a favorable ruling from the Tennessee Court of Appeals, which overturned a jury verdict in a slip-and-fall case brought against their clients, Beaver Hollow LP, (BHLF), the owner of an apartment complex in Johnson City, Tennessee, and Olympia Management Inc., (Olympia), the management company with which BHLF had contracted to manage the day-to-day operation of the apartments.

The plaintiff, a resident of the apartments, was injured in February 2015, after slipping on ice and snow in the parking lot. The plaintiff sued BHLF and Olympia in the Circuit Court for Washington County, alleging negligence against both defendants and seeking compensatory damages. She was later permitted by the trial court to amend to seek punitive damages as well. The case was tried over several days in November 2018. At the end of the first phase of trial, the jury allocated fault as follows: 49 percent to the plaintiff; 50 percent to Olympia; and 1 percent to BHLF. Compensatory damages were found to be \$1,251,396.41, which was reduced to \$638,212.17 after allocation of the plaintiff's 49 percent share of fault.

The matter proceeded to a second phase of the trial to determine the amount of punitive damages against

Olympia (the jury having determined that the plaintiff had established in the first phase entitlement to an award of punitive damages against Olympia only), and the jury ultimately awarded \$1,400,000 in punitive damages against Olympia. The defendants filed multiple post-trial motions, which were all denied.

On appeal, the Tennessee Court of Appeals found one issue to be dispositive and require that the verdict be vacated and remanded for a new trial: the trial court's denial of the defendants' motion for a directed verdict with respect to BHLF, the property owner. Finding that there was absolutely no material evidence whatsoever in the record to support the jury's allocation of fault to BHLF, because BHLF could not simply be held liable when the proof showed that it was merely a passive owner of the apartments that had delegated complete, actual control of the apartments to Olympia, the court of appeals held that the trial court erred in denying the defendants' motion for a directed verdict with respect to BHLF. The failure to grant a directed verdict to BHLF meant that fault must be reallocated. This was particularly significant in this case, since the plaintiff had been found to be 49 percent at fault, and if the jury had allocated the 1 percent originally attributed to BHLF to the plaintiff, instead of to BHLF, the defendants would have prevailed under Tennessee's modified, comparative fault system because the plaintiff would have been found to be 50 percent at fault.

Having found that the trial court erred in failing to grant a directed verdict to BHLF, and because fault could not be reallocated on appeal, the Tennessee Court of Appeals vacated the trial court's judgment and remanded for the trial court to enter a directed verdict with respect to BHLF and for a new trial with Olympia as the sole remaining defendant. Because the court of appeals found this one issue to be dispositive and mandate a new trial, all other issues on appeal were pretermitted. You can read more about the case, *Geneva Jessica Day v. Beaver Hollow, L.P., et. al.*, Appeal. No. E2019-01266-COA-R3-CV by following this [link](#) to the full text of the opinion.