IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LUIS E. MUNOZ, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.	:	NO. 05-5318

MEMORANDUM

Bartle, C.J. October 10, 2007

Before the court is the motion of the defendants, the City of Philadelphia ("City") and the Philadelphia Redevelopment Authority ("RDA"), for judgment as a matter of law, or in the alternative for a new trial or remittitur.

Plaintiffs Luis and Deborah Munoz (the "Munozes"), who are husband and wife, and General Farmer's Market, Inc., filed this action against defendants, the City, the RDA, and Frankford Community Development Corporation ("FCDC"). After this court granted, in part, defendants' motion to dismiss, the only claim that remained was pursuant to 42 U.S.C. § 1983 for alleged violations of § 4625(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "URA").[1] See 42 U.S.C. § 4625(a).

A jury trial was held on plaintiffs' claim. At the close of evidence, this court granted the motion of FCDC for

1. Thereafter, by order dated February 21, 2007, this court denied the motion of defendants for summary judgment.

judgment as a matter of law under Rule 50 of the Federal Rules of Civil Procedure. The jury returned a verdict against the remaining defendants, the City and RDA, and awarded damages in the amount of: (1) $379,230 in favor of plaintiff, General Farmer's Market, Inc., for the decrease in the value of the business from the date defendants violated the URA to April, 2004, the date the business closed; (2) $68,000 in favor of plaintiff, General Farmer's Market, Inc., for the cost to relocate the business; and (3) $25,000 in favor of each plaintiff Luis Munoz and Deborah Munoz, for emotional distress.

I.

In considering defendants' motion for judgment as a matter of law, the court must view the evidence, along with all inferences therefrom, in the light most favorable to the verdict winner, in this case, the plaintiffs. Alexander v. Univ. of Pittsburgh Med. Ctr. Sys., 185 F.3d 141, 145 (3d Cir. 1999).

Deborah and Luis Munoz responded to a newspaper advertisement listing the sale of Nino's Farmer's Market ("Nino's"), located in the Juniata section of Philadelphia. After visiting Nino's and speaking with the owner, the Munozes signed an agreement on April 14, 2000 to purchase the business and its assets for $1,000,000. The purchase included the land, buildings, equipment, inventory, and good will. While the original closing date was set for July 30, 2000, the closing did not actually take place until August 31, 2001. The Munozes, each

as a 50% stockholder, formed General Farmer's Market, Inc. to operate the business.

The business did not run entirely smoothly when the Munozes assumed ownership. Specifically, they could not be licensed to operate the food stamp machine in Nino's until November, 2001 because of certain violations preexisting their ownership. The Munozes were unable to quantify how much business they lost as a consequence. The Munozes at the outset also made repairs and improvements to Nino's costing between $65,000 and $75,000.

In November and December of 2001, customers began to ask the Munozes if they were planning to sell the property to the City for redevelopment. The Munozes assured their customers that they had no plans to do so, but throughout 2002 customers continued to inquire if the property was targeted for redevelopment.

As the Munozes were starting to operate Nino's, and unbeknownst to them, the City, RDA and FCDC were working on a redevelopment plan for the neighborhood where Nino's was located. FCDC, a community development corporation, initiated a plan to redevelop part of the Juniata section of Philadelphia. Community development corporations, such as FCDC, are non-profit organizations that work in distressed neighborhoods to help improve the communities, mostly through housing development. FCDC worked closely with the City's Office of Housing and Community Development ("OHCD"), which is integral to the City's

redevelopment planning process. OHCD annually applies for, and receives, federal funding to implement the City's housing programs.

The RDA, a state agency, works closely with OHCD to plan and implement redevelopment projects. The RDA contracts with OHCD to perform specific tasks, such as land acquisition and relocation. Only the RDA, and not OHCD, has the power to acquire land through urban renewal takings and eminent domain condemnation.

FCDC's redevelopment plan for the Juniata section of Philadelphia was in response to a Pennsylvania Housing Finance Agency ("PHFA") request for proposals for the Homeownership Choice Program. The latter provides funding for single-family urban housing developments that create opportunities for home ownership. The request for proposals was distributed on February 15, 2002. FCDC cannot respond to such requests on its own but must first gain the City's approval of its plan. It is the City, not the FCDC, which ultimately responds to a PHFA request for proposals.

There are multiple steps that must take place before the City responds to a PHFA request for proposals. First, OHCD distributes a request for qualifications asking community development corporations, such as FCDC, to submit proposals to OHCD for consideration. OHCD then recommends to the Mayor which proposal, if any, should be submitted to PHFA for the Homeownership Choice Program. The Mayor then makes the final

decision whether the City will respond to PHFA's request for proposals.

On July 1, 2002, FCDC sent OHCD a proposal for developing homes on a five acre site at the intersection of Castor Avenue and Wingohocking Street in the Juniata section of Philadelphia. The proposal, titled "Townhouses at Frankford Creek," hereinafter "2002 Frankford Creek Plan," did not include the Munozes' property or a neighboring commercial property referred to throughout the planning process as the "Clearkin parcel."

In August, 2002, OHCD recommended to the Mayor, and the Mayor concurred, that the City not submit a proposal to the Homeownership Choice Program. OHCD agreed, however, to work with FCDC to improve the 2002 Frankford Creek Plan with the potential of moving forward with the project. Steve Culbertson, the executive director of FCDC, testified that there were then significant changes and reconfigurations of the original proposal to create a viable redevelopment plan. On September 16, 2002, Culbertson attended a meeting with Herb Wetzel, executive director of the RDA, a second RDA employee, and Deborah McColloch, director of OHCD. McColloch's notes from the meeting stated: "Need to acquire the entire triangle, including Clearkin parcel. Create urban renewal area." Trial Ex. P-6. McColloch testified that she believed the "entire triangle" included the Munozes' property and that creating an "urban renewal area" was

one of the mechanisms to exercise the power of eminent domain to take the property.

On September 30, 2002, Herb Wetzel sent a letter to Maxine Griffith at the Philadelphia City Planning Commission requesting that it certify conditions of blight and create a redevelopment area where the Townhouses at Frankford Creek were planned. The letter requested that the Redevelopment Area include the area bounded by Orthodox Street to the North, Hunting Park and Frankford Avenues to the South, Adams Avenue to the East, and Castor Avenue to the West. The Munozes' property was included within these boundaries. The letter went on to state that "[b]light certification and creation of a Redevelopment Area will enable the RDA to establish an Urban Renewal Area and permit the acquisition of blighted properties through eminent domain." Trial Ex. P-7. The blight certification encompassing the Munozes' property was issued on November 9, 2002.

The following year, on February 14, 2003, PHFA issued another request for proposals for the Homeownership Choice Program. Kevin Hanna, the Secretary of Housing for the City, sent a letter to the Mayor's chief of staff recommending that the Townhouses at Frankford Creek be submitted to PHFA for the Homeownership Choice Program. The Mayor agreed. The proposal, hereinafter the "2003 Frankford Creek Plan," was still being fine-tuned throughout early 2003. A number of meetings took place regarding the project, including one on April 2, 2003 between Culbertson and Rick Mariano, the City Councilman for the

District encompassing the area in issue. Culbertson testified that it was proposed at that meeting that the project include the Munozes' property and Clearkin parcel. On April 22, 2003 Culbertson sent a letter to Michael Koonce, deputy director of the RDA stating: "On behalf of the Frankford Community Development Corporation (FCDC), I would like to request the remainder of the property in the area bounded by Wingohocking, Castor and Cayuga Streets for inclusion in the Twins at Frankford Creek project." Trial Ex. P-15. The property referenced in the letter was the Munozes' property and Clearkin parcel. While Culbertson did not receive a written response, he did receive a call from Walter De Treux, Councilman Mariano's chief of staff and a FCDC Board member, saying, "It's a go."

On May 9, 2003 an architect drafted two site plans. One plan included the Munozes property, the other did not. On May 30, 2003, Culbertson sent a letter to PHFA listing the current uses for the project site, including a small farmer's market and garden center. Culbertson testified that the "small farmer's market and garden center" was the Munozes' property.

Nevertheless, the final 2003 Frankford Creek Plan, dated June 2, 2003 and submitted to PHFA included only one site plan—the May 9, 2003 site plan that omitted the Munozes' property. The project description in the 2003 Frankford Creek Plan, however, did include the Munozes' property. It stated: "The current uses that occupy the project site include a Verizon equipment storage yard (former supermarket), auto body shop,

salvage yard, contractor yard and small farmer's market/garden center." Trial Ex. P-19. The reference to the small farmer's market/garden center was to Nino's.

Meanwhile, the Munozes' business was continuing to struggle. The 1999 and 2000 tax returns for the business showed that the gross receipts or sales under the previous owner were $2,607,876 and $2,599,072, respectively. The 2001 tax returns for General Farmer's Market, Inc., demonstrated only $540,318 in gross receipts or sales for the approximately four months that the market was operated by the Munozes. In 2002, the gross receipts or sales were only $795,899.

The Munozes were increasingly unable to pay their bills, including the payments due on a sizeable loan from Sovereign Bank that they had obtained to purchase the business. In November, 2002 Luis Munoz became ill and was unable to return to work at the business until January, 2003, and then, only part-time. An Acme grocery store located near Nino's closed at some point before March, 2003. Luis Munoz estimated that Nino's had a 25% drop in sales because of the closure.

In the spring of 2003 Deborah Munoz began calling City agencies involved in the Townhouses at Frankford Creek project to find out if the Munozes' property was part of the redevelopment plan. She received no response but instead was directed to contact Culbertson of the FCDC. The Munozes met with Culbertson twice in 2003—once in August, and again in September. Culbertson did not tell the Munozes whether or not their property was

included in the plan. He simply said that he was not at liberty to disclose that information.

All the while the Munozes were attempting to salvage their business. On March 13, 2003, Deborah Munoz completed an application for consulting services at the Temple University School of Business and Management. In describing her goals for the business, Deborah Munoz wrote: "Recapture lost sales due to prior owner running customers away by depleting stock and quality. Tap into sales in newer and local Hispanic community." Trial Ex. D-21. While her application did not mention her concerns about the Townhouses at Frankford Creek project, the Munozes testified that they continued to be concerned that their property was part of the redevelopment plan.

In the fall of 2003, the necessary steps to begin acquisition of the Munozes' property were begun. On October 1, 2003 the FCDC completed a "Property Acquisition Request Form" asking the RDA to acquire the Munozes' property. Meanwhile, in April, 2004, the Munozes closed their business. On May 28, 2004 the RDA informed the Munozes that a bill had been introduced in City Council authorizing the RDA to take their property. In June, 2004, City Council passed the bill, and the Mayor signed it on July 1, 2004. It was not until July 8, 2004 after City Council authorized the taking of their property that the RDA finally sent the Munozes a "Notice of Interest" pursuant to the URA. The notice stated:

> The Redevelopment Authority of the City of Philadelphia (RDA), in connection with the Frankford Creek Town Homes project, is considering the property that you own for acquisition.
>
> If the Redevelopment Authority does acquire your property:
> - The RDA must obtain an appraisal of your property to establish the fair market value of the property.
> - You, or your designated representative, have the right to accompany the appraiser and inspect your property and you may present material relevant to determining the value of your property.
> - The RDA will offer to pay you fair market value for your property.
>
> You should refer to the enclosed brochure, "When A Public Agency Acquires Your Property" for a further explanation of your rights under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

Trial Ex. P-32.

The Munozes maintain that under the URA the defendants were required to send them a Notice of Interest in acquiring their property in September, 2002, rather than in July, 2004. It was in September, 2002, plaintiffs argue, that the URA requirements were triggered because Deborah McColloch wrote "need to acquire entire triangle" in her September 16, 2002 meeting notes. The "entire triangle" referred to the Munozes' property. Also in September, 2002 Herb Wetzel requested that the Philadelphia City Planning Commission certify the Frankford Creek area, including the Munozes' property, as blighted. According to the Munozes, their business decreased in value after September, 2002 because of the uncertainty created by the defendants. The

Munozes were hearing unconfirmed rumors that their property was going to be condemned. They were unsure about the future of the property and therefore were not in the position to make informed decisions about the future of the business. According to the Munozes, the uncertainty prevented them from deciding whether to invest more time and money into the business or relocate. Deborah Munoz testified that if the defendants had complied with the URA and they chose to relocate Nino's it would have cost between $50,000 and $70,000 to move the business equipment to a new location.

Both Deborah and Luis Munoz testified regarding the value of their business in September, 2002. Deborah Munoz was asked:

> Q. [W]hat was your business worth in September, 2002?
>
> A. A million dollars.
>
> Q. And what are you basing that on? How do you know that?
>
> A. All the buildings were still there. The real estate was still under my feet, and the business was still operational, and I was showing up every day. Customers were coming in.

Trial Tr., 187 (Mar. 12, 2007). Deborah Munoz conceded, however, that in reaching her conclusion she did not take into consideration the business' sales and receipts since the time they had purchased it.

Luis Munoz also testified regarding the value of the business in September, 2002. He was asked:

> Q. What was the business worth in September of 2002?
>
> A. $1,000,000. That's what I paid for it.
>
> Q. Okay. You had paid that a year earlier.
>
> A. Absolutely. I had – everything was set. The registers were ringing. The infrastructure was there. The refrigerators were running. We were stocked. We were running, operating as a normal business.

Trial Tr., 24 (Mar. 14, 2007).

The plaintiffs presented no expert on the value of the business as of September, 2002. Defendants' expert witness, Steven Pressman, CPA, testified that by December 31, 2002 the only value that remained was that of the real estate and other hard assets, or approximately $400,000. According to Pressman, no goodwill remained. He further opined that by March, 2003 the state of the business was so dire that it was too late for any assistance to have a positive effect. Because of the size of the Munozes' debt, Pressman concluded that they needed to increase sales from the time they purchased the business to pay the debt and make a profit. As the tax returns discussed above show, they did not do so. The jury awarded General Farmer's Market, Inc. $379,230 for the decrease in the value of its business as a result of defendants' violation of the URA and $68,000 for the cost to relocate the business.

Deborah and Luis Munoz also testified in detail how defendants' conduct in delaying the notice of interest caused

them significant emotional damage. The jury awarded each of them $25,000.

II.

Rule 50 provides that judgment as a matter of law should be granted if there is "no legally sufficient evidentiary basis for a jury to find for the party on that issue." Fed. R. Civ. P. 50(a). "Although judgment as a matter of law should be granted sparingly, a scintilla of evidence is not enough to sustain a verdict of liability." Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1166 (3d Cir. 1993) (citation omitted). "In determining whether the evidence is sufficient to sustain liability, the court may not weigh the evidence, determine the credibility of the witnesses, or substitute its version of the facts for the jury's version." Id. (citation omitted).

In addition to defendants' motion for judgment as a matter of law, defendants move for a new trial under Rule 59 or remittitur. Rule 59 provides that "A new trial may be granted ... in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States ... ." Fed. R. Civ. P. 59(a). The standard for granting a new trial, although lower than that required for judgment as matter of law, is still high. Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1076 (3d Cir. 1996), citing Roebuck v. Drexel Univ., 852 F.2d 715, 735-36 (3d Cir. 1988). "A new trial should be granted only where the great weight of the evidence cuts against

the verdict and where a miscarriage of justice would result if the verdict were to stand." Springer v. Henry, 435 F.3d 268, 274 (3d Cir. 2006) (citation omitted). The Third Circuit has explained that "this stringent standard is necessary to ensure that a district court does not substitute its judgment of the facts and credibility of the witnesses for that of the jury." Sheridan, 100 F.3d at 1076 (citations omitted).

Finally, defendants' motion also seeks in the alternative a remittitur. The court may not lower the jury's award simply because it would have awarded a lesser amount had it been sitting as the fact finder. Gumbs v. Pueblo Int'l, Inc., 823 F.2d 768, 771 (3d Cir. 1987). A jury has "very broad discretion in measuring damages." Id. at 773. Instead, we must review the evidence to determine whether there is a "rational relationship between the specific injury sustained and the amount awarded." Id. In general, we may grant remittitur only if the verdict awarded is "so grossly excessive as to shock the judicial conscience." Keenan v. City of Philadelphia, 983 F.2d 459, 469 (3d Cir. 1992). If the damages are subject to mathematical calculation, there must be sufficient facts from which a jury "'can arrive at an intelligent estimate without speculation or conjecture.'" Scully v. US WATS, Inc., 238 F.3d 497, 515 (3d Cir. 2001) (citation omitted). If we deem remittitur appropriate, we "may not require a reduction in the amount of the verdict to less than the 'maximum recovery' that does not shock the judicial conscience." Gumbs, 823 F.2d at 774 (citing

Gorsalitz v. Olin Mathieson Chem. Corp., 429 F.2d 1033, 1046-47 (5th Cir. 1970)). We are afforded great deference in deciding whether to grant remittitur because a district court "'is in the best position to evaluate the evidence presented and determine whether or not the jury has come to a rationally based conclusion.'" Evans v. Port Auth. of N.Y. & N.J., 273 F.3d 346, 354 (3d Cir. 2001)(citation omitted).

III.

Defendants first maintain that the URA does not confer rights enforceable by 42 U.S.C. § 1983. It is well established that § 1983 is not a source of substantive rights but rather provides a remedy for violations of federal constitutional or statutory rights. Kalina v. Fletcher, 522 U.S. 118, 123 (1997); Sameric Corp. of Del., Inc. v. City of Philadelphia, 142 F.3d 582, 590 (3d Cir. 1998).

The URA was passed to supplement the usual remedy of condemnation for losses incurred as a result of urban renewal projects where federal funds are involved. Our Court of Appeals has stated that the URA is designed "[t]o minimize hardship and assure that individuals will not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole ...." Pietroniro v. Borough of Oceanport, N.J., 764 F.2d 976, 980 (3d Cir. 1985).

The URA states:

> Programs or projects undertaken by a Federal agency or with Federal financial assistance shall be planned in a manner that (1)

> recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

42 U.S.C. § 4625(a).

This court, in denying defendants' motion to dismiss, ruled that a private cause of action exists under § 1983 for violations of § 4625(a) of the URA. Munoz v. City of Philadelphia, 2006 U.S. Dist. LEXIS 5174, Civ. A. No. 05-5318 (E.D. Pa. Feb. 10, 2006). We relied upon Pietroniro, in which our Court of Appeals held: "In the absence of a comprehensive enforcement scheme within the regulatory scheme which encompasses the plaintiff's complaint there exists a private cause of action against state officials for violations of the Housing Act and the URA." 764 F.2d at 980 (citations omitted). It explained that "[a] claim for damages resulting from the destruction of a business is an appropriate action under 42 U.S.C. § 1983." Id. at 979.

According to defendants, Pietroniro has been overturned by implication and is therefore no longer good law. Specifically, defendants argue that the Supreme Court's subsequent decisions in Gonzaga Univ. v. Doe, 536 U.S. 273 (2002), and Suter v. Artist M., 503 U.S. 347 (1992), mandate a different analysis than the one used in Pietroniro. The Supreme

Court has stated, "[s]ection 1983 provides a remedy only for the deprivation of rights, privileges, or immunities secured by the Constitution and laws of the United States. Accordingly, it is rights, not the broader or vaguer benefits or interests, that may be enforced under the authority of that section." Gonzaga, 536 U.S. at 283 (emphasis in original). Therefore, to confer a personal right, a statute must: "(1) be intended by Congress to benefit the plaintiff, (2) not be vague and amorphous, and (3) impose an unambiguous binding obligation on the States." Sabree v. Richman, 367 F.3d 180, 186 (3d Cir. 2004) (citing Blessing v. Freestone, 520 U.S. 329, 340-41 (1997)) (hereinafter, the "Blessing Test"). In Gonzaga, the Court clarified that under the first prong of the analysis, it must be clear that Congress intended to create "rights" under the statute, and not merely "benefits." 536 U.S. at 283. Under this analysis, defendants maintain, the URA does not create individual rights, and thus plaintiffs do not have a remedy under § 1983.

Plaintiffs counter that Pietroniro remains binding on this court because the Supreme Court has not explicitly overturned that decision. Furthermore, according to plaintiffs, even under the Blessing Test, the URA creates individual rights enforceable under § 1983.

It is unnecessary to reach the issue of whether the URA is enforceable pursuant to § 1983 under the Blessing Test. Our Court of Appeals has explained, "precedents set by higher courts are conclusive on courts lower in the judicial hierarchy and

leave to the latter no scope for independent judgment or discretion." United States v. Mitlo, 714 F.2d 294, 298 (3d Cir. 1983) (quoting Allegheny Gen. Hosp. v. NLRB, 608 F.2d 965, 970 (3d Cir. 1979) (internal quotations omitted)). "[A] decision by [our Court of Appeals], not overruled by the Supreme Court is a decision of the court of last resort of this federal judicial circuit and is therefore binding on all inferior courts and litigants in the Third Judicial Circuit." Id. (quoting Allegheny, 608 F.2d at 970). Absent an explicit holding by the Supreme Court or our Court of Appeals overturning Pietroniro, its holding that violations of § 4625 of the URA are enforceable under § 1983 is binding on this court. We will therefore deny the motion of defendants for judgment as a matter of law on this ground.

Next, defendants argue that even if there is a private right of action under the URA plaintiffs are not entitled to any recovery because the URA provides benefits only to displaced persons and plaintiffs do not fit the statutory definition.

The URA defines "displaced persons" as:

> [S]olely for the purposes of sections 4622(a) and (b) and 4625 of this title, any person who moves from real property, or moves his personal property from real property--
>
> (I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or
>
> (II) as a direct result of rehabilitation, demolition, or such other

> displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

42 U.S.C. § 4601(6)(A).

Defendants contend that the Munozes are not displaced persons because they did not actually move from the property in question as a direct result of a written notice of intent to acquire or as a direct result of "rehabilitation, demolition, or other displacing activity." Defendants' maintain that plaintiffs closed Nino's because of mounting financial difficulties before they received a notice of intent to acquire and before any "rehabilitation, demolition or other displacing activity." 42 U.S.C. § 4601(6)(A).

Plaintiffs argue that but for defendants' conduct they would have satisfied the statutory definition of "displaced persons." According to plaintiffs, if defendants had complied with the URA and provided them with a notice of interest in September, 2002, they would have taken steps to relocate the business.[2] That is, according to plaintiffs, defendants' failure

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2. We note that in addressing defendants' argument that the Munozes are not "displaced persons," they state: "Noting that the Munozes did not actually relocate conveniently ignores the jury's finding that the City and the RDA violated the URA . . . ." (Pls.' Resp. 24) (emphasis added). Whether or not plaintiffs actually relocated is only pertinent to their entitlement to relocation benefits under the URA. The statutory definition of "displaced persons" does not require that the individual or

(continued...)

to comply with the URA created the uncertainty that caused plaintiffs' precarious financial situation and hastened their decision to close Nino's.

The Munozes stopped operating the business in April, 2004, but there is no evidence that they moved any of the business equipment or other tangible property on that date—they simply closed the doors. As mentioned above, shortly thereafter, on May 28, 2004, a bill was introduced in City Council authorizing the RDA to take the Munozes property. The Mayor signed the ordinance into law on July 1, 2004. Those actions clearly were "displacing activities." At that time the City authorized the RDA to take the Munozes' property and plaintiffs met the definition of "displaced persons" under the URA.[3]

The fact that they closed Nino's shortly before the displacing activities does not mean that the defendants are exempt from liability under the URA. The URA clearly provides certain benefits to "displaced persons" before they are actually displaced. The URA states: "Programs or projects undertaken by Federal agencies or with Federal financial assistance shall be

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2(...continued)
business displaced relocate.

3. The cases cited by defendants are also unpersuasive. Indeed, the cases are easily distinguishable from this action and have little relation to issues presented here. For example, Alexander v. U.S. Dept. of Hous. and Urban Dev., 441 U.S. 39 (1979), cited by defendants, concerns only relocation benefits and does not discuss all agency obligations under the URA, such as sending a notice of interest "[a]s soon as feasible." 49 C.F.R. § 24.102(b).

planned in a manner that ... recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements ...." 42 U.S.C. § 4625(a) (emphasis added). Consistent with the language of the act, federal regulations require that, "[a]s soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part." 49 C.F.R. § 24.102(b) (hereinafter, notice of interest). Further, property owners must also be informed that "he or she may be displaced" and must be given a notice that "generally describes the relocation payment(s) for which the person may be eligible ...." 49 C.F.R. § 24.203(a) (hereinafter, notice of relocation benefits).

As noted above, the URA is designed "[t]o minimize hardship and assure that individuals will not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole ...." Pietroniro, 764 F.2d at 980. To that end, the notice of interest, which must be sent "[a]s soon as feasible," allows property owners to make plans before they are actually displaced. Like any significant change in life, early warning and time to prepare is vital for property owners in their efforts to mitigate the difficulties and losses from displacement.

The crux of plaintiffs' claim is that defendants failed to send a notice of interest in September, 2002 and inform them

of relocation benefits when defendants became interested in including Nino's as part of the redevelopment plan. Plaintiffs claim that if they had received the notice of interest in a timely manner they would have had the early warning and had time to take steps to prevent the damages they suffered. The notice of interest was not sent until July 8, 2004 after the City had authorized the taking of the property and several months after Nino's had closed. It was within the jury's province to determine from the evidence when the defendants were obligated under the URA to send the notice of interest and whether it was sent too late.

Defendants also argue that the jury's award of $379,230 in damages for the decreased value of Nino's was based on speculation because plaintiffs failed to establish a causal connection between the decline in their business and defendants' violation of the URA. Defendants do not argue that plaintiffs were unqualified to testify about the value of their business.

A damages award cannot be based purely upon speculation. Our Court of Appeals has noted, however, "[t]he law does not command mathematical preciseness from the evidence in finding damages. Instead, all that is required is that sufficient facts ... be introduced so that a court can arrive at an intelligent estimate without speculation or conjecture." Scully, 238 F.3d at 515 (internal quotations omitted) (citation omitted).

Plaintiffs presented sufficient evidence from which the jury could reasonably conclude that the decrease in the value of their business was due to defendants' failure to comply with the URA. The Munozes testified that they were plagued by questions from customers regarding the future of Nino's. Moreover, they were unable to obtain definitive responses from defendants to their questions about the business' future and therefore incapable of making sound business decisions given the uncertainty. As mentioned previously, Deborah Munoz contacted the City Planning Commission, which directed her to Culbertson of the FCDC. Twice Culbertson declined to disclose whether the Munozes' property was part of the Townhouses at Frankford Creek redevelopment project. Deborah Munoz was asked at trial:

> Q. If the City and the RDA had told you in September of 2002 that they were interested in acquiring your property, if they had sent you a notice ... and you knew that that was the direction things were headed, what would you have done?
> ...
> A. I would have had many more options available to myself, at that point in time, such as negotiate with the City to purchase my property, and I can continue operating while I looked to see what the RDA had available elsewhere in the City property-wise where I could move my business. I ... would have had firm answers to make business decisions. I could have rented out my property in Philadelphia. I could have moved somewhere else in Philadelphia and kept operating my business.

Trial Tr., 36-37 (Mar. 13, 2007).

Luis Munoz reiterated that if they were notified in September, 2002 of defendants' interest in the property, they

would have been able to make informed decisions about the future of Nino's and preserved some or all of the value of the business. Luis Munoz testified that they could have sold the business, rented the property and relocated the market, or negotiated with the city. He further testified that friends had offered him additional financing for the business, but he declined the money because he did not want to "put money into something that I still don't know, at that point, what's the future of that land ...." Trial Tr., 55 (Mar. 14, 2007).

While there was contrary evidence that the business failed for reasons having nothing to do with a violation of the URA, it is not the place of this court to substitute its judgment for that of the jury when, as here, there is sufficient evidence to support the award. As discussed above, one of the purposes of the URA is to provide advance notice to property owners who will be displaced so that they can make appropriate plans and minimize their financial hardships from any displacement. The Munozes testified that had they received notice in September, 2002 they could have taken steps to mitigate or prevent the losses they were suffering, and continued to suffer, until they closed Nino's in April, 2004. It was the jury's duty to weigh the evidence and decide whether plaintiffs proved that defendants' failure to provide plaintiffs with a timely notice of interest earlier than July 8, 2004 caused plaintiffs' losses.[4] Indeed, plaintiffs

4. We note that the verdict sheet asked the jury to "[s]tate the (continued...)

argued that Nino's decreased in value from $600,000 in September, 2002, to zero in April, 2004. The jury did not award General Farmer's Market, Inc. the full $600,000 that it sought but instead found damages in the amount of $379,230. This award was supported by the evidence. We will therefore deny the defendants' motion for judgment as a matter of law or for a new trial on this element of damages. Nor is a remittitur warranted since the award is not "so grossly excessive as to shock the judicial conscience." Keenan, 983 F.2d at 469.

Defendants also argue that General Farmer's Market, Inc. is not entitled to the $68,000 in relocation damages awarded by the jury because it did not actually relocate. The URA provides:

> Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of--
>
> (1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property ....

42 U.S.C. § 4622(a).

As discussed above, General Farmer's Market, Inc. met the definition of a "displaced person" under the URA when the City authorized the RDA to take the property on which it was

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4(...continued)
amount of damage, if any, that you award ... for the decrease in the value of General Farmer's Market's business from the date of the violation of the URA to April 2004." The jury was therefore free to determine that defendants did not violate the URA until a point in time after the September, 2002 suggested by plaintiffs.

located. There is no evidence, however, that it moved or relocated. We agree that General Farmer's Market Inc. did not incur "actual reasonable expenses in moving" under 42 U.S.C. § 4622(a). Thus, we will grant the motion of defendants for judgment as a matter of law with respect to the $68,000 damage award for relocation expenses.

Next, defendants argue that the damage award for the emotional distress suffered by Deborah and Luis Munoz was not supported by sufficient evidence. Deborah and Luis Munoz were each awarded $25,000. Defendants emphasize that there was no testimony that the Munozes' sought medical treatment or counseling or suffered physical manifestations of their distress. Moreover, according to defendants, the Munozes were unable to connect the Munozes' emotional distress to the defendants' conduct as opposed to other potential causes, such as Luis Munoz's illness. We are not persuaded.

Plaintiffs in a § 1983 action must prove an "actual injury." See Farrar v. Hobby, 506 U.S. 103, 112 (1992) (citing Carey v. Piphus, 435 U.S. 247, 264 (1978)). There is, however, no particular type of evidence that plaintiffs must present to recover damages for emotional distress. Our Court of Appeals has rejected the argument that medical testimony is required to prove emotional distress damages in a § 1983 case. Bolden v. Southeastern Pa. Transp. Auth., 21 F.3d 29, 36 (3d Cir. 1994). In Bolden, the court explained that it saw "no reason to require

that a specific type of evidence be introduced to demonstrate injury in the form of emotional distress." Id.

In this case, there was sufficient evidence of emotional distress caused by defendants' conduct from which the jury could award such damages. Both Deborah and Luis Munoz testified about the emotional toll the uncertainty about their business took on them, their marriage, and their family. Deborah Munoz testified: "I was so incredibly frustrated, I felt like I was drowning. I ... was devastated emotionally. It was difficult to carry on." Trial Tr., 16 (Mar. 13, 2007). She further testified that when she was unable to obtain answers from the defendants about the redevelopment plans, "it was near impossible [to go to work]. I would drive to work in the early hours of the morning and sometimes not be able to cross the Betsy Ross Bridge. I would have to pull to the side of the road and try to breathe. It was that horrific. Sometimes I would sit 20 minutes just trying to breathe." Id. at 26-27.

Luis Munoz also testified that "the hardest part was letting my family down" and that he had worked hard throughout his life to provide for his children but "[a]ll of that was taken away from us, all of it, because some people decided that they weren't going to tell us what the [Townhouses at Frankford Creek] project was going to be." Trial Tr., 31-32 (Mar. 14, 2007). When asked how the situation affected his relationship with his children, he also testified, "it's slowly healing, but yes, it has been affected. I mean, initially, they were incredibly angry

at me .... It's just that it's been very, very difficult for all of us." Id. at 32.

The emotional damages awards were well within the province of the jury. Accordingly, we will deny defendants' motion for judgment as a matter of law and, in the alternative, for a new trial or a remittitur.

IV.

At the close of evidence, this court granted FCDC's motion for judgment as a matter of law. Defendants do not contest this ruling. Instead, they seek a new trial on the ground that the court erred by failing to instruct the jury that the City and RDA could not be held liable for the actions of the FCDC, which it did not control.

When the court granted FCDC's motion, it stated:

> The motion of defendant, Frankford Community Development Corporation, for judgment as a matter of law under Rule 50 is granted. I find that the Frankford Community Development Corporation is not a state actor, and it was not acting under color of law with respect to the ... question of whether the notice [of] interest ... [was properly sent], which is the nub of the case.
>
> The FCDC had no authority, whatsoever, in that area. And, therefore they will be dismissed, and judgment as a matter of law is granted.

Trial Tr., 202 (Mar. 14, 2007).

The court thereafter explained its decision with respect to the FCDC to the jury:

> Members of the jury, the defendant, the Frankford Community Development Corporation, is no longer a party to this case. I have

> dismissed it from this lawsuit because the Uniform ... Relocation Act does not apply to it. You should no longer be concerned about any liability on the part of the Frankford Community Development Corporation.
>
> The Uniform Relocation Act, however, does apply to the City of Philadelphia and to the Redevelopment Authority. Accordingly, you will have to determine in due course whether they have violated the URA. Simply because the City and the Redevelopment Authority remain parties, does not mean that I have decided that they have, in fact, violated the law. That is for you to decide, not me.

Trial Tr., 4 (Mar. 16, 2007).

The charge instructed that plaintiffs' claim was against the City and RDA, only:

> The plaintiffs claim that the City and the Redevelopment [] Authority violated the URA because they did not tell plaintiffs of their interest in acquiring the Munozes' property at an early stage in the planning of the Twin Homes at Frankford Creek project, and provide them with a written description of the relocation programs of the City and the Redevelopment Authority.

Trial Tr., 71 (Mar. 16, 2007).

In addition, this court told the jury that the City and RDA must have caused plaintiffs' injury:

> In order to obtain a monetary award, plaintiffs must prove that the acts or omissions on the part of the City and the Redevelopment Authority played a substantial part in bringing about their injuries, and that the injuries were either a direct result or a reasonably probable consequence of those acts or omissions .... [I]f plaintiffs' injuries were caused by another event or other events that intervened between the City's and the Redevelopment Authority's acts or omissions and plaintiffs' injuries, then the City and the Redevelopment Authority are

> not liable unless the injuries were reasonably foreseeable by the City and the Redevelopment Authority.

Id. at 73-4.

Our Court of Appeals has stated, "the district court has substantial discretion with respect to specific wording of jury instructions and need not give a proposed instruction if essential points are covered by those that are given." Grazier v. City of Philadelphia, 328 F.3d 120, 127 (3d Cir. 2003) (quoting Douglas v. Owens, 50 F.3d 1226, 1233 (3d Cir. 1995) (citation omitted)). Although defendants may have preferred a different instruction absolving the City and RDA from liability for FCDC's conduct, defendants are not entitled to the jury instruction of their choice. Douglas, 50 F.3d at 1233. This court made clear that the FCDC was no longer part of the case and that the plaintiffs must prove by a preponderance of the evidence that the acts or omissions of the City and RDA caused their injuries. The jury charge was not "confusing and thereby misleading to the jury." United States v. Fischbach & Moore, Inc., 750 F.2d 1183, 1195 (3d Cir. 1984). We will therefore deny defendants' motion for a new trial on the ground that the court committed error in its jury instructions.

V.

Finally, defendants maintain that this court should have granted summary judgment in their favor based on a review of their conduct by the United States Department of Housing and Urban Development ("HUD"). At this point, defendants are in

essence moving for reconsideration of this court's February 21, 2007 order denying their motion for summary judgment. Defendants do not argue that this court made any errors at trial with regard to the HUD review.

Putting aside the question of whether defendants' motion for reconsideration is timely, see E.D. Pa. Loc. R. Civ. P. 7.1(g), we reiterate that there existed genuine issues of material fact. The evidence was presented to the jury at trial, and the jury reached a verdict resolving those issues. Accordingly, we will deny what is in effect defendants' motion for reconsideration of our denial of their motion for summary judgment.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LUIS E. MUNOZ, et al.	:	CIVIL ACTION
v.	:	
CITY OF PHILADELPHIA, et al.	:	NO. 05-5318

ORDER

AND NOW, this 10th day of October, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of defendants, the City of Philadelphia and the Philadelphia Redevelopment Authority, for judgment as a matter of law is GRANTED in part, and DENIED in part;

(2) the judgment in favor of General Farmer's Market, Inc. is reduced to $379,230; and

(3) a separate amended judgment will be entered.

BY THE COURT:

/s/ Harvey Bartle III
C.J.