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A Pizza in the Face Leads to a Fistfight, and \$1.8M Verdict

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A Fulton County jury awarded \$1.8 million to a man for injuries he suffered during a sauce-splattering fistfight with a cheezed-off Pizza Hut manager following a profanity-laced exchange over bad service.

The verdict was \$1.4 million more than the plaintiff had offered to settle the case, said his attorneys, Tucker husband-and-wife team James and Sharon Howard.

The injuries ultimately cost their client, Frank Clark, his job, and even after three surgeries left his hand permanently disabled, according to the lawyers and filings in the case.

Clark turned 52 the day of the verdict, said Sharon Howard, "so he had a nice birthday present."

The trouble started around 8:30 p.m. in September 2010, when Clark went to pick up a pizza he'd ordered from a Pizza Hut in Alpharetta. There was no one behind the counter, Sharon Howard said, and Clark joined "these four super-tall guys" who had placed an order and were waiting for their food.

"Turns out these guys were hip-hop producers working nearby, taking a break," she said. "They'd placed a huge order for wings and pizza, and they tell him, 'the service isn't that good tonight.'"

Clark could see someone on the phone in the kitchen, she said, and after waiting 10 or 15 minutes, he entered the "employees-only" area and asked the man on the phone, 32-year-old shift manager Gary King, for his pizza.

According to the defense portion of the pretrial order, Clark and King "exchanged words—including profanities—and subsequently a physical altercation ensued," during which both sustained injuries, Clark to his hand and King to the "face and head area."

Sharon Howard described the incident like this: King "storms out, yelling, 'Here's your fucking pizza,' and slams it down so hard some of the pizza splashes out and hits my client," she said. "[Clark] said, 'No, you take this fucking pizza, I don't want it. I'm going to report you to your manager.'"

Clark left the restaurant with King on his heels, "yelling, 'Oh, no, you'll take this fucking pizza, I'm going to give you this pizza for free, where's your fucking car,'" the attorney said. Clark was stepping into his car, Sharon Howard said, "when he turns around and the pizza hits him in the face. Hot pizza goes all over him—we put his pizza-stained shirt into evidence—and he had the foresight to take a picture of himself."

King was "coming at him like a raging bull," she said, and Clark threw some defensive punches before both men hit the concrete, got back up, and kept fighting until Clark heard his hand snap. King was bleeding from the head, and the two finally called it quits.

Clark's girlfriend, who was waiting in the car, had called the police, and an officer—after speaking with the witnesses—charged King with aggravated battery. Both men went to the emergency room, and Clark was diagnosed with multiple fractures to his right hand.

Clark claimed damages that included \$103,000 in medical bills, loss of income, pain and suffering and attorney fees.

At the time of the incident, Clark was a technician for a small company that delivered, assembled, maintained and repaired medical equipment, and he also marketed the firm's services. Much of his work required delicate manual dexterity, Sharon Howard said, which suffered due to his injuries. The company's revenues steadily declined and it went out of business; he has been unable to find comparable work since and is currently unemployed, she said.

King, she said, was fired from his job with Pizza Hut.

In October 2011 the Howards filed suit on Clark's behalf in Fulton County Superior Court, naming the Alpharetta Pizza Hut's parent company, Kansas-based NPC International, and King as defendants. The complaint alleged breach of duty and tortious misconduct, assault and battery, and negligent and intentional infliction of emotional distress.

A key element of the suit, according to filings and the Howards, was Pizza Hut's practice of monitoring each restaurant's "tickets per labor hour" ratio, a calculation based on the number of sales orders and the number of hours worked by the employees.

King was under pressure to keep the number of labor hours as low as possible, Sharon Howard said, and had been denied a promotion at another store over the issue. On the night in question, he had sent the entire restaurant staff home except for himself and a Spanish-speaking cook who spoke no English and couldn't help with customers, leaving King to handle the counter duties and take phone-in delivery orders.

King had been counseled for job-related stress previously, and he told the police officer he had "lost it" during a "very stressful" day, according to Clark's lawyers. But the officer's taped interview with King was unusable because his police radio had obscured the audio portion, Sharon Howard said.

There were two mediations before former Fulton County Superior Court Judge M. Gino Brogdon Sr. During the course of the litigation, the Howards said the highest defense offer was \$200,000, and Clark's lowest was \$400,000.

Just before trial, King was dismissed from the suit; his attorney, Swift, Currie, McGhee & Hiers partner Terry Brantley, did not respond to a request for comment.

The case went to trial Oct. 28 before Fulton County Chief Judge Cynthia Wright, with Carlock, Copeland & Stair partners Scott Huray and Jason Hammer representing NPC. Huray said he was not authorized to discuss the case.

Wright granted defense requests to limit the scope of the claims, and the case that went before the jury only concerned the assault and battery claim.

Even though the tape with King's statement wasn't usable, the officer testified about what King said, and the plaintiffs' lawyers also introduced video depositions from three of the music producers backing Clark's version of events.

"Our position was that Gary King was not a bad guy—he was just trying to get promoted and he left himself vulnerable by letting everybody go early to try to keep his labor costs down," said Sharon Howard. "He couldn't handle it, and he blew a gasket."

Clark's doctor testified that Clark had suffered a 24 percent permanent impairment in his hand, she said.

In its portion of the pretrial order, NPC wrote that it "denies that Mr. King was acting within the course and scope of his employment or that Mr. King was acting in furtherance of the business of NPC International, Inc. with regard to any verbal or physical altercation" with Clark.

"Their contention was that [Clark] hurt his hand hitting the skull of their guy," said Sharon Howard. "Mr. King's testimony was that this big bully was hitting him again and again, beating him to a pulp."

At the close of evidence, Sharon Howard said they asked the jury for almost \$1.5 million in damages, including lost wages and medical expenses.

On Nov. 1, the panel took less than two hours to award Clark \$1.8 million.

Afterward, Sharon Howard said, jurors told her that they credited the eyewitnesses and police officer's testimony, and agreed that King was acting within the scope of his employment at the time of the fight.

The case is *Clark v. NPC International Inc.*, No. 2011CV206983.

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