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Lewellen v. Franklin: Missouri Supreme Court Holds Statutory Cap on Punitive Damages Unconstitutional

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On September 9, 2014, the Missouri Supreme Court unanimously struck down the State's punitive damage cap in *Lewellen v. Franklin*, 2014 WL 4425202 (Mo. banc Sept. 9, 2014).

The plaintiff in *Lewellen* was a 77-year-old widow with less than \$1,000 of monthly income who contracted to purchase a vehicle with National Auto Sales North's (National) owner Chad Franklin. Upset with low sales, Franklin implemented an aggressive advertising scheme targeting financially vulnerable customers like the plaintiff that allowed them to purchase a vehicle for only \$49, \$69, or \$89 per month.

Based on this ad, the plaintiff chose a 2002 Lincoln but emphasized she could only afford a \$49 monthly payment to two National salespeople. Both National employees assured the plaintiff she would only be responsible for \$49 per month even though the total sales price was \$19,940.45 and the monthly payment was \$387.45. National agreed to reimburse the plaintiff for the difference.

Thereafter, National failed to provide the promised reimbursement. Although National eventually paid the difference after the plaintiff contacted the dealership multiple times, the reimbursement was only for nine months. Moreover, the vehicle was ultimately repossessed when the plaintiff eventually defaulted on her loan, and the loaning bank also sued her for breach of contract.

The plaintiff subsequently sued Franklin for fraudulent misrepresentation and National for unlawful merchandising practices under the Missouri Merchandising Practices Act (MMPA). A jury awarded \$25,000 in actual damages assessed jointly and severally against Franklin and National and separate \$1 million punitive damage verdicts against each. The punitive damage awards were reduced to \$500,000 and \$539,500 against Franklin and National, respectively, pursuant to R.S.Mo. § 510.265.

On appeal, the Missouri Supreme Court relied on an earlier opinion striking down noneconomic damage caps to argue the punitive damage reduction violated the plaintiff's right to a jury trial. See *Watts v. Lester E. Cox Med. Ctrs.*, 376 S.W.3d 633 (Mo. banc 2012). The Court reasoned the right to a jury trial guaranteed by Missouri Constitution article I, § 22(a) means any change in the right to a jury determination of damages as it existed in 1820 is unconstitutional. Additionally, the Court noted juries in 1820 determined the amount of damages at common law and there were no legislative limits on damages. Consequently, any statutory damage caps on causes of action existing in 1820, including Lewellen's common law claim for fraudulent misrepresentation, "necessarily changes and impairs the right of a trial by jury 'as heretofore enjoyed'" and unconstitutionally infringed upon the right to a jury trial.

Further, the Court held the \$1 million punitive damage award against Franklin did not violate his due process rights (the reduction as to National was not appealed). In its assessment, the Court considered 1) the reprehensibility of the defendant's misconduct, 2) the disparity between the harm and the award, and 3) the difference between the award and the civil penalties authorized or imposed in comparable cases. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574-75 (1996). Franklin's and National's conduct was reprehensible because "Mr. Franklin and National engaged in trickery, malice or deceit by using deceptive and misleading advertisements." *Lewellen*, 2014 WL 4425202, at *7. Further, the Court justified the double-digit 40:1 punitive damage ratio because Franklin's and National's conduct was "particularly egregious."

Thus, the Missouri Supreme Court has now struck down not only noneconomic damage caps, but punitive damage caps as well. Nonetheless, this ruling still allows Missouri legislatures to limit damages for statutory causes of action.

By S. Linda Habibi