FILED
MAR 31 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

PATRICK L. MOUSEL,

Plaintiff-Appellee,

vs.

GMI, INC., a Delaware Corporation, BURGHER HAUS, a subsidiary of GMI, INC., WILFORD R. GIBSON and THEODORE REUESCH,

Defendants-Appellants.

Filed March 31, 1980

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2-63911

Appeal from Polk District Court - Harry Perkins, Judge.

Defendants appeal from trial court's award of compensatory and exemplary damages after a default judgment for plaintiff in his fraud action. - Affirmed.

Joseph B. Joyce, of Adler, Brennan, Joyce & Steger, Des Moines, for defendants-appellants.

Frederick Anderson, of Williams, Hart & LaMarca, West Des Moines, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendants, except Burgher Haus, appeal from the trial court's award of $4060 in compensatory damages and $12,180 in punitive damages after a default judgment in favor of plaintiff in his fraud action. Defendants assert that the evidence was insufficient to support the damage awards. We affirm.

This action arose out of a fast food franchise offer by defendants. Plaintiff answered defendants' advertisement offering a fast food franchise for an initial investment of less than $7500. After communications with defendants, plaintiff was established as an area distributor for defendants after an initial investment of $4020. Plaintiff contended in his petition that in the communications with defendants, defendants made false and fraudulent representations to plaintiff, that the representations were material and made with the intent to deceive plaintiff, and that in reliance on the representations, plaintiff suffered actual damages. In addition, plaintiff contended that defendants' wrongful conduct was willful, wanton, and malicious. Defendants answered denying the pertinent allegations. After defendants failed to answer plaintiff's interrogatories, the trial court sustained plaintiff's motion to compel discovery. Defendants failed to answer the interrogatories by the date set by the trial court, and the trial court entered a default judgment against defendants. A hearing was held to determine the amount of damages to be awarded plaintiff, and the trial court thereafter entered its award of compensatory and exemplary damages for plaintiff.

Defendants contend that there was insufficient evidence to support the damage awards. However, at a hearing on damages after a default judgment, all the plaintiff's material allegations are taken as true. Hallett Construction Co. v. Iowa State Highway Commission, 261 Iowa 290, 294, 154 N.W.2d 71, 74 (1967). All that remains is a determination of the amount to be awarded. Id. Consequently, defendants' contentions must be necessarily limited to the amount of damages awarded.

When the uncertainty lies only in the amount of damages awarded, the amount is appropriate if there is a reasonable basis from which it can be inferred or approximated. Northrup v. Miles Homes, Inc., 204 N.W.2d 850, 857 (Iowa 1973) (quoting Patterson v. Patterson, 189 N.W.2d 601, 605 (Iowa 1971) (quoting Orkin Exterminating Co. v. Burnett, 160 N.W.2d 427, 430 (Iowa 1968))). We conclude that there was such a reasonable basis for the trial court's damage awards.

The trial court awarded $4060 in compensatory damages. Plaintiff testified that he initially invested $4020 and thereafter incurred miscellaneous expenses of $40. Consequently, there was a reasonable basis to support the compensatory damage award.

The trial court awarded $12,180 in exemplary damages. An award of exemplary damages may be based on fraud, malice, gross negligence, or an illegal act. Northrup, 204 N.W.2d at 859. A corporation may be liable for exemplary damages for the wrongful acts of its agents. Id. at 858. The pertinent allegations in plaintiff's petition, which we must accept as true, see Hallett Construction Co., 261 Iowa at 294, 154 N.W.2d at 74, state that defendants' wrongful conduct, consisting of false and fraudulent material representations intended to deceive plaintiff, was willful, wanton, and malicious. Plaintiff's testimony reveals that the false and fraudulent statements were made by defendants' agent, acting under apparent authority. See State v. Sellers, 258 N.W.2d 292, 297 (Iowa 1977). Consequently, we conclude that the trial court could properly have awarded exemplary damages.

With regard to the amount of exemplary damages awarded, we note that exemplary damages are intended to punish the offender and to deter others from similar wrongful conduct. Smith v. Peterson, 282 N.W.2d 761, 767 (Iowa App. 1979). To effectively serve this purpose, the award must be relatively large. Grefe v. Ross, 231 N.W.2d 863, 868 (Iowa 1975). There is no precise mathematical ratio to be applied between compensatory and exemplary damages. Northrup, 204 N.W.2d at 861. The determination of the amount of exemplary damages is a matter peculiarly within the discretion of the trier of fact. Grefe, 231 N.W.2d at 868. Since an Iowa appellate court has no power to reduce or increase an exemplary damage award, Wildeboer v. Petersen, 182 Iowa 1185, 1188, 166 N.W. 464, 465 (1918), the only alternative would be to disallow the entire exemplary damage award. Claude v. Weaver Construction Co., 261 Iowa 1225, 1233, 158 N.W.2d 139, 145 (1968). Applying these principles to this case, we conclude that there was a reasonable basis for the trial court's award of exemplary damages.

AFFIRMED.