

Ruling shows challenges to post-trial attacks on punitive damages

By Curt Cutting

Read any press report about a huge punitive damages award and you'll learn that the defendant disagrees with the verdict and vows to appeal. No surprise there. In practice, however, such appeals are often unnecessary. If the award is large enough to cause an appellate judge to raise a suspicious judicial eyebrow (to paraphrase from Justice O'Connor in *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 481 (1993)), the award is likely to provoke the same reaction from the trial judge, who will then grant the defendant's post-trial motions.

From the defendant's perspective, getting the trial judge to toss out a punitive damages award a few weeks after trial is much better than a reversal on appeal. Among other benefits, the defendant does not have to post an appeal bond, which can be prohibitively expensive if the award is large enough. For publicly traded corporations whose stock may be adversely affected by the publicity surrounding a big punitive damages award, ending that stigma quickly is priceless.

Securing these advantages can be tricky, even when the award is obviously unwarranted or excessive. To get post-trial relief the defendant needs to navigate a procedural minefield. The defendant has to timely file the right motions, seek the right relief, and make sure the judge doesn't make any false steps along the way. Even experienced trial judges are often unfamiliar with the procedural requirements that govern post-trial motions, especially when it comes to the specific rules for post-trial relief in connection with punitive damages.

A recent unpublished decision by the 2nd District Court of Appeal, Division Two, illustrates how procedural missteps can jeopardize a post-trial challenge to a punitive damages award. In *Vaughn v. Darwish*, B252762 (July 6, 2016), a Los Angeles jury awarded punitive damages totaling roughly \$5.5 million in a landlord-tenant dispute. The trial judge entered judgment on the jury's verdict and the defendants filed timely post-trial motions. After that things started to go awry.

A few days before the expiration of the 60-day period for ruling on the defendant's post-trial motions, the trial court issued a minute order stating the court's intention to grant a new trial unless the plaintiff agreed to a reduction of the punitive damages award. The minute order cross-referenced a separate formal order. That would have been fine, except that no formal order was ever signed or entered.

A few days later, with one day left before the expiration of the jurisdictional deadline, the trial court ruled that its previous order was merely tentative. After two more weeks the court issued an "amended" order, again purporting to grant a new trial unless the plaintiffs consented to a remittitur of the punitive damages. The trial court then purported to amend its ruling again another week later, changing the amount of the remittitur. The plaintiffs refused to agree to the remittitur, and instead filed an appeal challenging the validity of the new trial order.

So did the Court of Appeal agree with the plaintiffs that the post-trial motion was procedurally invalid? Or did it permit the new trial order to stand? The answer to both questions is "yes."

The Court of Appeal issued an unpublished opinion holding, among other things, that the new trial order was procedurally defective. For starters, the trial court failed to issue a signed statement of its reasons when it first said it would grant the post-trial motions. That might not have mattered anyway, in light of the judge's later order stating that the initial ruling was tentative. The judge failed to make any further ruling before the time ran out, so that tentative ruling was never finalized. The further amended rulings, issued after the deadline, came too late to have any legal effect.

The analysis might have ended there, leaving the defendants stuck with the original judgment and the full \$5.5 million in punitive damages. But the defendants had filed their own appeal from the original judgment, which required the Court of Appeal to independently review the amount of the jury's punitive damages award. The court found that amount constitutionally excessive and ordered the same relief that

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the trial court had attempted to order, i.e., a conditional new trial subject to the plaintiff's acceptance of a remittitur. And the Court of Appeal fixed the remittitur at the same amount that the trial court had selected. In other words, the Court of Appeal saved both the defendants and the trial court from the consequences of the bungled post-trial procedures.

Technically, however, even the Court of Appeal's ruling was procedurally imperfect. Instead of granting a conditional new trial, the court should have simply reduced the amount of punitive damages to the constitutional maximum. As the Supreme Court explained in *Simon v. San Paolo U.S. Holding Co.*, 35 Cal. 4th 1159 (2005), when a reviewing court concludes that a punitive damages award is constitutionally excessive, there is no value to giving the plaintiff the option of a new trial rather than accepting the constitutional maximum, because the plaintiff cannot possibly recover more than the constitutional maximum. The option of a new trial is nothing more than a "heads the defendants win, tails the plaintiffs lose" scenario. The plaintiffs in *Vaughn* wisely recognized the situation, and opted to accept the remittitur and forgo the new trial.

In the end, the defendants were able to hold on to the favorable post-trial ruling, despite the various procedural errors that led to that result. But the case is a cautionary tale for other defendants, who might not always be so lucky.

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