

Commonwealth Of Kentucky

Court of Appeals

NO. 2000-CA-000641-MR
AND
NO. 2000-CA-001521-MR

GEORGE W. GRIFFIN

APPELLANT

ON REMAND FROM KENTUCKY SUPREME COURT
NO. 01-SC-09200-D

v. APPEALS FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 99-CI-02126

STRAND PROPERTIES, LTD.,
DEBTOR IN POSSESSION

APPELLEE

OPINION
VACATING IN PART AND REMANDING

** ** * * * * *

BEFORE: KNOPF, SCHRODER, AND TACKETT, JUDGES.

TACKETT, JUDGE: This case is before us on remand from the
Kentucky Supreme Court, which vacated our prior opinion in this
matter for further consideration of the issue of punitive
damages, in light of Sand Hill Energy, Inc. v. Ford Motor Co.,
Ky., 83 S.W.3d 483 (2002), and Cooper Industries, Inc. v.

Leatherman Tool Group, Inc., 532 U.S. 424, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001). Subsequent to the Kentucky Supreme Court's decision in this case, Sand Hill was itself vacated and remanded by the United States Supreme Court for reconsideration in light of State Farm Mut. Automobile Ins. Co. v. Campbell, ___ U.S. ___, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003). However, State Farm reinforced the holding of BMW v. Gore, 517 U.S. 559, 574-75, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), on which Leatherman and Sand Hill rely, and so we apply that law to this case. We need not restate the facts of the case, nor do we need to revisit the issue of the propriety of the default judgment, but instead confine this opinion to the issue of the punitive damages.

According to Leatherman and Sand Hill, we review the award of punitive damages de novo. The Leatherman case reiterated the three factors set forth in the Supreme Court's opinion in BMW v. Gore. Those factors are "1) the degree of reprehensibility of the defendant's misconduct, 2) the disparity between the harm (or potential harm) suffered by the plaintiff and the punitive damages awarded, and 3) the difference between the punitive damages awarded . . . and the civil penalties authorized or imposed in comparable cases." Sand Hill at 494, citing Gore, *supra*.

Considering these factors, we conclude that while the reprehensibility of the conduct was great, in that Griffin recklessly put Strand in a position that risked the very existence of its business, we must conclude that the other two Gore factors may not justify such a large amount of punitive damages. However, as the judgment below was a default judgment, we believe it is appropriate to remand the matter to the circuit court for a hearing, and instruct the circuit court to consider the issue in light of the above-cited cases. We therefore vacate the punitive damage award and remand the matter for further proceedings consistent with this opinion.

For the foregoing reasons, the judgment of the Fayette Circuit Court is vacated in part and remanded.

ALL CONCUR.

BRIEF FOR APPELLANT:

David A. Franklin
McCoy & West
Lexington, Kentucky

BRIEF FOR APPELLEE:

William C. Hurt, Jr.
Wethington, Hurt & Crosbie
PLLC
Lexington, Kentucky