

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**DAVID AND DIANA HECKADON,
RESPONDENTS**

vs.

**CFS ENTERPRISES, INC. AND CHAD FRANKLIN,
APPELLANTS**

DOCKET NUMBER WD74288

DATE: MARCH 19, 2013

Appeal from:

The Circuit Court of Clay County, Missouri
The Honorable Anthony Rex Gabbert, Judge

Appellate Judges:

Division One: Thomas H. Newton, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

Attorneys:

Douglass F. Noland, for Respondents

Patric Linden, for Appellants

MISSOURI APPELLATE COURT OPINION SUMMARY

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DAVID AND DIANA HECKADON, RESPONDENTS

v.

CFS ENTERPRISES, INC. AND CHAD FRANKLIN, APPELLANTS

WD74288

Clay County, Missouri

Before Division One Judges: Thomas H. Newton, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

Respondents David and Diana Lynn Heckadon purchased two vehicles from Appellants CFS Enterprises, Inc. ("CFS") and Chad Franklin ("Franklin") as part of a promotional program. Upon learning that promotional program was a scam, Respondents filed suit against CFS and Franklin as well as American Motor Suzuki Company ("ASMC"), who distributed vehicles to CFS.

Respondents ultimately entered into a settlement agreement with ASMC, but went to trial against Appellants CFS and Franklin, alleging both CFS and Franklin violated the Missouri Merchandising Practices Act ("MMPA") by making misrepresentations about the promotional program and one of the vehicles they purchased. The jury returned verdicts in favor of Respondents on their MMPA claim against CFS and their MMPA claim against Franklin. The jury awarded \$2,144.87 in actual damages against CFS and \$2,144.87 in actual damages against Franklin. The jury also awarded \$100,000 in punitive damages against CFS and \$400,000 in punitive damages against Franklin.

Following the trial, Appellants brought several post-trial motions. One motion was to amend the judgment by reducing the judgment by the amount of Respondents' settlement with ASMC and by merging the awards of actual damages entered against CFS and Franklin. Appellants also filed a motion for remittitur, which asserted that the amount of punitive damages awarded was grossly excessive and, thus, violated Appellants' constitutional due process rights under the Fourteenth Amendment. The trial court denied all of Appellants' post-trial motions. Appellants now appeal from the denial of their post-trial motions.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Division One holds:

1. The trial court did not err in denying Appellants' motion to reduce the judgment by the amount of Respondents' settlement with ASMC because although Appellants

satisfied their burden of pleading reduction as an affirmative defense and proving a settlement existed between ASMC and Respondents, Appellants failed to prove the amount of the settlement and its applicability to the case where Appellants offered no evidence whatsoever regarding the nature or terms of the settlement but instead relied on the fact that the settlement agreement had been filed with the trial court under seal to prove they were entitled to a reduction. The fact that the settlement agreement was in the court file under seal did not relieve Appellants of their burden of proving the amount of the settlement, nor did it constitute proof of the amount.

2. The trial court did err in denying Appellants' motion to reduce the judgment by merging the awards of actual damages entered against CFS and Franklin because Respondents submitted the same benefit-of-the-bargain damage instruction with respect to both Appellants. Thus, Respondents failed to establish a separate injury with respect to each MMPA claim because each instruction requested the jury to assess the damages flowing from the same injury – the misrepresentations regarding the purchase of the 2008 vehicle and Appellants' profit therefrom. Accordingly, the actual damage awards of \$2,144.87 entered against each Appellant must be merged to prevent Respondents from recovering twice for the misrepresentations made regarding their purchase of the 2008 vehicle.

3. The trial court did not err in denying Appellants' motion for remittitur because the punitive damage awards against each Appellant were not grossly excessive in that although the harm actually sustained by Respondents in this case was economic and did not evince any indifference to health or safety of others, Appellants' repeated use of trickery and deceit to sell Suzuki vehicles to financially vulnerable targets such as Respondents constituted reprehensible conduct, the degree of which was sufficient to justify the amount of punitive damages awarded against Appellants. Furthermore, the fact that Appellants engaged in sufficiently reprehensible conduct for which a small amount of economic damages was awarded supports the jury's deviation from the single-digit ratio between actual and punitive damages.

Opinion by Joseph M. Ellis, Judge

Date: March 19, 2013

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