

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

GEORGE DAVIS AND SUZANNE DAVIS, AND G & S SCHOOL SERVICES,
INC., RESPONDENT,

v.

CHATTER, INC. A/K/A FAMILY FIRST ALERTS, DAVID A RAINE AND TIM
MOSOSLINO, APPELLANTS.

WD69056

DATE: November 25, 2008

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE JACK RICHARD GRATE JR, JUDGE

Appellate Judges:
Division Two: James M. Smart, Jr., Lisa White Hardwick and James E. Welsh, JJ.

Attorneys:
Robert D. Gaines, Kansas City, MO, **for appellant.**

Douglas D. Silvius, Kansas City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

GEORGE DAVIS AND SUZANNE DAVIS, AND G & S SCHOOL SERVICES, INC., RESPONDENT

v.

CHATTER, INC. A/K/A FAMILY FIRST ALERTS, DAVID A RAINE AND TIM MOSOSLINO, APPELLANTS

WD69056

JACKSON COUNTY CIRCUIT COURT

Before Division Two Judges: James M. Smart, Jr., Lisa White Hardwick and James E. Welsh, JJ.

Plaintiffs George and Suzanne Davis brought suit against Defendants Chatter, Inc., David Raine, and Tim Mosolino alleging breach of contract, tortious interference with contract, securities violations, violation of the Telephone Consumer Protection Act, and quantum meruit or unjust enrichment. The suit arose from an agreement in which the plaintiffs were to have been exclusive sales representatives for a company providing satellite text notifications to public entities needing reliable communications during a crisis. Defendants' pleadings were struck as a sanction for failure to cooperate with discovery. Defendants appeal.

AFFIRMED IN PART AND VACATED IN PART. THE CASE IS REMANDED FOR FURTHER PROCEEDINGS.

The trial court's imposition of harsh sanctions was within its discretion. The court did not lack authority to award compensatory and punitive damages. The damages under the Telephone Consumer Protection Act were not shown to be improper because the evidence showed that the parties' business relationship had been terminated. The judgment as to compensatory damages is vacated, and the case is remanded for the trial court to enter a judgment for compensatory damages, specifying what portion of the compensatory damage award is under Count I and what portion of such award is under Count II. It is affirmed in all other respects.

Division Two holds:

- (1) The trial court did not exceed its authority when it granted plaintiffs' motion to enforce discovery and entered its order of default judgment where: defendants did not answer or otherwise respond properly to written discovery; notice was

reasonable under the facts and circumstances of the case; and notices were sent to counsel for all defendants.

- (2) Where defendants failed to respond to interrogatories, failed to appear at scheduled depositions, failed to respond to the motion to enforce discovery, and failed to appear at the hearing on the motion, the court's finding that the defendants acted with a deliberate disregard for the court's authority was reasonable.
- (3) The trial court's discretion was not exercised unjustly when it prohibited defendants from participating in the damages hearing where the trial court had carefully considered the circumstances, its actions, and the consequences thereof, was aware that the defendants brought to the table no good faith, and was aware that defendants had hindered plaintiffs' ability to prepare to obtain and present evidence of the amount of their damages on the tortious interference claim as well as the contract claim.
- (4) Punitive damages were appropriate on the tortious interference claim where plaintiffs presented substantial evidence of outrageous and entirely unjustified conduct by the defendants in destroying the plaintiffs' contractual business relationships with third parties.
- (5) Where the judgment states that compensatory damages are awarded on Counts I and II "in the total amount of \$4,102,300.00" but does not specify which portion of the damages are related to Count I and which are related to Count II, and where Chatter, Inc. is the only defendant liable under Count I while all three defendants are liable under Count II, that portion of the judgment must be vacated and the case must be remanded for determination of what portion of the \$4,102,300.00 in compensatory damage is under Count I and what portion is under Count II.

Opinion by James M. Smart, Jr., Judge

November 25, 2008

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