

Tennessee Litigation Update (3)

August 27, 2020

Media Contact

Erica Gianetti

Marketing & Communications Supervisor

erica.gianetti@mgclaw.com

“More on the Punitive Damages Front”

The case of *Hudson, Holeyfield & Banks, G.P. v. MNR Hospitality, LLC*^[i] dealt with a lease dispute. Denny’s Restaurant entered into a lease with the Benchmark Hotel. Denny’s was owned by a partnership, Hudson, Holeyfield & Banks, G.P. (“HHB”). The Denny’s operated on the ground level of the hotel and inside the hotel structure. The lease, which began in 2001 and extended through 2008, had five additional three-year options. In 2008, HHB exercised its first option, and elected to do the same in 2011. In 2012, MNR Hospitality, LLC (“MNR”) purchased the hotel. MNR notified HHB it wanted to buy back the lease because it could not locate a major hotel franchise that would accept a Denny’s inside the hotel. MNR offered \$100,000.00 and stated if HHB would not agree, MNR would have to sell the hotel. HHB refused the offer and stated it expected full performance of the lease.^[ii]

In response, MNR began interior construction on the building, which caused leaks in the Denny’s restaurant and other associated problems. Again, in 2014, HHB exercised its option to renew the lease for another three years. It instituted a lawsuit in August 2014 alleging specific performance, unlawful ouster, retaliatory eviction and tortious interference with peaceful and quiet possession. HHB demanded both compensatory and punitive damages. The trial court eventually held MNR to be liable for net profits as well as punitive damages.^[iii] Several issues were taken up to the Court of Appeals, including the way the trial court calculated the damages. The case is a good read on those issues; however, this article will focus on the punitive damages analysis in the case.

The main issue regarding the punitive damages argument was the fact the Defendant did not demand a bifurcated hearing in its pleadings. The question was whether a bifurcated hearing was optional for punitive damages or required under the current law. The Court of Appeals, Western Section, held a bifurcated hearing was required on punitive damages at the trial level, even if not requested by a defendant.^[iv] Punitive damages were demanded in the Complaint, but the issue barely came up at the trial of the main case. Defendant did mention it in its motion for involuntary dismissal at the close of plaintiff’s proof. However, at the end of the trial, the trial court awarded punitive damages against MNR for reckless, intentional and knowing activities to destroy HHB’s business.

One would have to be asleep under the proverbial rock to miss the judicial activity, federal and state, regarding damage caps in how damages are derived under the Tennessee Civil Justice Act of 2011. Cases such as *Lindenberg v. Jackson Nat'l Life Ins. Co.*,^[v] and *McClay v. Airport Management Services, LLC*^[vi] are important cases in regard to the topic. The *Hudson* case is a part of the continuing jurisprudence in that regard. First of all, the Court of Appeals held the case would have to be remanded based on the calculation of the damage award itself.^[vii]

The Court first looked at *Hodges v. S.C. Toof & Co.*,^[viii] the Tennessee Supreme Court case that formulated the basis for the statutory framework for punitive damages under the Civil Justice Act.^[ix] The Court held, in reviewing *Hodges*, the common law punitive damages opinion required the demand of a bifurcated hearing by the defendant. However, the statute does not require a demand. It mandates a bifurcated hearing whether requested or not, and even in the instance of a bench trial.^[x] The Court reviewed cases since the enactment of the Civil Justice Act holding a demand for bifurcation was needed; however, the Court concluded that all of those cases were not under the Civil Justice Act due to the age of those cases when the punitive damages statute was enacted. It further noted that since the punitive damages statute was fairly young, there were not very many cases addressing it. The Court ultimately remanded the case to instruct the trial court, in a bench trial, to have two hearings, (1) to establish factors for punitive damages by clear and convincing evidence, and (2) to bifurcate the punitive damages hearing under the further procedures mandated by the statutes.

The *Hudson* case is a logical case proceeding from the statute itself. It will be interesting to see if the other appeals courts in the state agree. It, and other cases, also tend to signal the fact specific issues are starting to come to the forefront regarding the Tennessee Civil Justice Act of 2011. As a practice pointer, it is still probably a good idea to demand bifurcation while practicing in the Middle and Eastern Sections, in order to be safe.

ABOUT THE AUTHOR

joined MGC in May of 2017 to open the firm's Knoxville, Tennessee office. His practice focuses on employment law, personal injury, including premises liability, automobile and trucking defense, as well as products liability and construction law defense. David has practiced law for over 25 years and strives to provide his clients with strategies to achieve the most successful outcome possible. David can be contacted by [email](#) or 865.243.2744.

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^[i] 2020 Tenn. App. LEXIS 358, No. W2019-00123-COA-R3-CV (Tenn. Ct. App., June 23, 2020)

[\[iii\]](#) Id, at * 2-3.

[\[iii\]](#) Id. at * 4-5.

[\[iv\]](#) Id. at *15.

[\[v\]](#) 912 F.3d 348 (6th Cir. 2018).

[\[vi\]](#) 596 S.W.3d 686 (Tenn. 2020).

[\[vii\]](#) The Court of Appeals modified the damages calculation.

[\[viii\]](#) 833 S.W.2d 896, 901 (Tenn. 1992).

[\[ix\]](#) Tenn. Code Ann. Sec. 29-39-104.

[\[x\]](#) Id., and Hodges, at 13-16.