

W. Caroline Trading Co. v. Kloulechad, 15 ROP 127 (2008)
WESTERN CAROLINE TRADING CO.,
Appellant,

v.

SUSAN KLOULECHAD,
Appellee.

CIVIL APPEAL NO. 07-034
Civil Action No. 07-007

Supreme Court, Appellate Division
Republic of Palau

Decided: September 5, 2008¹

Counsel for Appellant: David F. Shadel

Counsel for Appellees: *Pro Se*

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BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; C. QUAY POLLOI, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

Appellant, Western Caroline Trading Company, appeals a judgment entered by the Trial Division in an action to recover debt owed as a result of Appellee's passage of two worthless checks. While judgment was entered in favor of Plaintiff, Appellant challenges the Trial Division's deviation from the parties' stipulation, which called for an award of \$180 in attorney fees. The Trial Division awarded Plaintiff only \$53.26 in such fees. For the reasons which follow, we affirm the judgment of the Trial Division.

BACKGROUND

Briefly, the relevant facts are as follows. On December 30 and 31, 2005, Appellee wrote two checks to Appellant that were later returned for insufficient funds. The total amount owed on the checks was \$103.13. On January 8, 2007, Appellant filed a Complaint in the Trial Division seeking judgment for the amount of the debt, plus interest, returned check fees, and court costs. In addition, the Complaint sought punitive damages. Appellee, who was pro se, filed no responsive pleading but on January 23, 2007 entered, with Appellant, a stipulation for

¹ The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

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judgment. The stipulation stated that Appellee owed the amounts due under the checks, plus interest, check fees, court costs, as well as \$180 in attorney fees. On June 25, 2007, the Trial Division entered judgment based on that stipulation but did not award the attorney fees contained in the stipulation. Instead, the court awarded \$53.26 in the form of punitive damages. This appeal followed.

STANDARD OF REVIEW

Whether the amount in dispute is characterized as “attorney fees” or as “punitive damages,” the award of either is a matter of discretion. *See, e.g., WCTC v. Philip*, 13 ROP 28 (2006); Restatement (Second) of Torts § 908 cmt. d (1964) (“[P]unitive damages and the determination of amount are within the sound discretion of the trier of fact.”). Thus, the standard of review on appeal is whether the trial court abused its discretion.

DISCUSSION

At the outset, we note that punitive damages and attorney fees are separate and distinct, Appellant’s use of the concepts interchangeably notwithstanding. Punitive damages are meant to deter or punish. Restatement (Second) of Torts § 908 (1) (1964). Attorney fees, by contrast, are compensatory in nature. Neither is automatic, but both are within the discretion of the trial judge. In this action to collect debts owed under worthless checks, Appellant had no clear entitlement to any amount of attorney fees or punitive damages. Absent a statute or contract to the contrary, each party is L129 responsible for his own attorney fees. *See Rdialul v. Kirk & Shadel*, 12 ROP 89, 94 (2005); *Francisco v. Chin*, 10 ROP 44, 54 (2003). Appellant cites no statutory or contractual predicate for an award of attorney fees, and indeed there is none. The bad checks passed by Appellee do not contain an attorney fees provision or otherwise give rise to a legal or equitable right to such fees. In addition, punitive damages are generally not available in contract actions. *Fosterv. Bucket Dredger S/S "Digger One"*, 7 ROP Intrm. 234,241 (Tr. Div. 1997). However, as the Trial Division found that Appellees conduct was evidence of some measure of outrageous conduct, some punitive damages were awarded. *See Johnson v. Gibbons*, 11 ROP 271 (Tr. Div. 2004) (holding that punitive damages maybe awarded to punish outrageous conduct). Appellant cannot now be heard to complain that the judge abused her discretion in awarding \$53.26 in the form of punitive damages without legal or factual support for such conclusory statements. Likewise, Appellant’s arguments concerning its entitlement to attorney’s fees (and attorney’s fees masquerading as punitive damages) lack legal and factual support.

Factors to be considered in assessing punitive damages include “the character of the defendant’s act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.” Restatement (Second) of Torts § 908 (2) (1964). Citing the Second Restatement, the Trial Division evaluated Appellee’s passage of two bad checks and failure to pay the outstanding balance, as well as Defendant’s acknowledgment of the debt as soon as the action was filed, her willingness to cooperate by entering a stipulation, and the actual monetary loss suffered by the Plaintiff/Appellant. An abuse of discretion occurs when “a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper

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and no improper factors are considered, but the court in weighing those factors commits a clear error of judgment.” *Eller v. ROP*, 10 ROP 122, 128 (2003). Based on this standard and the Trial Division's reasoned and thoughtful weighing of the relevant factors, we find the amount awarded as punitive damages was an appropriate exercise of the court's discretion.

Despite Appellant's assertions to the contrary,² no basis in law existed for an award of attorney fees. The fact that Appellee stipulated to Appellant's entitlement to attorney fees makes no difference. “Courts have broad discretion in determining whether to hold a party to a stipulation, and may set aside a stipulation where enforcement would not be conducive to justice.” 73 Am. Jur. 2d *Stipulations* § 12 (2001). In other words, a stipulation maybe binding on the parties, but it is not binding on the court. In this case, the parties' stipulation to \$180 in attorney fees for a worthless check balance of \$103.13 **¶130** directly implicates a matter of public policy on which the OEK has seen fit to speak. *See* RPPL 7-11 § 3. The parties' attempt to stipulate to fees which the legislature has determined to be unjust does little to change the fact that a court is not bound to enforce a stipulation that is against public *policy*. *See id.*, at §§ 4,10. Whether or not the court was required to apply RPPL 7-11 is not before us. However, that the Trial Division's evaluation was informed by RPPL 711 and the concerns driving that legislation is in no way abusive of its discretion.

CONCLUSION

For the reasons set forth above, the judgment of the Trial Division is affirmed.

² Appellant implies that because trial judges presiding over bad check cases in the past have awarded punitive damages in amounts equal to attorney fees, Appellant was entitled to have the Trial Division exercise its discretion in Appellant's favor. However, the Court takes this opportunity to remind Appellant that past practices of various trial judges in the exercise of discretion does not amount to binding legal precedent. There is no getting around the fact that absent a statute or contractual provision at the time the debt is incurred, no entitlement to attorney fees exists.