

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
FILED
LORAIN COUNTY

GIBSON BROS., INC., et al.,

Plaintiffs,

-vs.-

OBERLIN COLLEGE, et al.,

Defendants.

2019 JUN 25 P 9:47 AM No.: 17CV193761

COURT OF COMMON PLEAS
TOMORLANDO Judge: Hon. John R. Miraldi

Magistrate: Hon. Joseph Bott

**PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION
TO CAP COMPENSATORY AND PUNITIVE DAMAGES**

In order to correct the record, Plaintiffs¹ submit this limited response in opposition to Defendants'² Motion to cap compensatory and punitive damages.

I. LAW & ARGUMENT

A. Defendants ignored the first rule of statutory construction when they analyzed the R.C. 2315.21 cap on punitive damages.

Defendants' analysis of the R.C. 2315.21 punitive damages cap is wrong because they ignored the first rule of statutory construction: if the statute is unambiguous, courts *must apply the statute as written*. See, *State v. Waddell*, 71 Ohio St.3d 630, 631, 1995-Ohio-31, 646 N.E.2d 821 ("Courts must give effect to the words of a statute and may not modify an unambiguous statute by deleting words or inserting words not used."). Courts "*do not have the authority to dig deeper than the plain meaning of an unambiguous statute under the guise of either statutory interpretation or liberal construction*." *Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203, ¶ 8 [citations omitted] [emphasis added]. See *Sears v. Weimer*,

¹ "Plaintiffs" refers to Gibson Bros., Inc. ("Gibson's Bakery"), David Gibson ("Dave"), and Allyn W. Gibson ("Grandpa Gibson").

² "Defendants" refers to Oberlin College & Conservatory ("Oberlin College") and Meredith Raimondo ("V.P. Raimondo").

143 Ohio St. 312, 55 N.E.2d 413 (1944), paragraph five of the syllabus (“An unambiguous statute is to be applied, not interpreted.”)

1. R.C. 2315.21 is clear and unambiguous and must be applied as written.

Here, R.C. 2315.21 is clear and unambiguous. First, when a case involving punitive damages is tried to a jury, the jury must return a compensatory damages verdict in favor of the plaintiff and the general verdict must include an interrogatory providing the total amount of damages to that plaintiff:

In a tort action that is tried to a jury and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall instruct the jury to return, and **the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages** recoverable by the plaintiff from each defendant.

R.C. 2315.21(B)(2) [emphasis added]. *The written language in the statute clearly and unambiguously “refer[s] to the uncapped, total compensatory damages the jury awarded.”* *Faieta v. World Harvest Church*, 10th Dist. Franklin No. 08AP-527, 2008-Ohio-6959, ¶ 90 [emphasis added]. Any other interpretation would ignore the plain language of the statute.

This is particularly true because the parties and the Court are expressly forbidden from discussing the cap on noneconomic damages during the compensatory phase of trial. *See*, R.C. 2315.18(F)(2) (“If the trier of fact is a jury, the court shall not instruct the jury with respect to the limit on compensatory damages for noneconomic loss ... and neither counsel for any party nor a witness shall inform the jury or potential jurors of that limit.”). Because of this restriction, the damages discussed in R.C. 2315.21(B)(2) can only refer to the uncapped compensatory damages awarded by the jury. *See. Faieta* at ¶ 90. The jury is not permitted to issue a damages award based on the caps; meaning, the “total compensatory damages” referenced in R.C. 2315.21(B)(2)

must refer to the total amount awarded by the jury (*i.e.* the amount of damages specified within the damages interrogatory). Thus, when the Court is applying the punitive damages cap, it cannot enter judgment in excess of two-times the compensatory damages *awarded by the jury*. *See*, R.C. 2315.21(D)(2)(a).

2. *Defendants' analysis should be dismissed out of hand because they ignored the language of the statute.*

In their Motion, Defendants completely ignore the primary rule of statutory construction (*i.e.* apply the words as written) and instead plow headlong into legislative materials discussing the passage of the noneconomic and punitive damages caps. However, these materials *have no bearing on this case* because the statute is clear and unambiguous and must be applied as written. *See, Jacobson* at ¶ 8. *See also*, R.C. 1.49 [emphasis added] (“*If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters: ... (C) The legislative history*”).

And make no mistake – Defendants are asking the Court to rewrite R.C. 2315.21(D)(2)(a) to say: “The court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff from that defendant, as determined pursuant to ~~division (B)(2) or (3) of this section~~ R.C. 2315.18.” The Ohio Legislature chose to calculate the punitive damages cap based upon the jury award, not the amount after the Court applies the noneconomic caps. If they had wanted to calculate the punitive damages caps based on the damage award after the Court applies the noneconomic caps, they could have made reference to that separate statute and the Court’s post-cap award. The General Assembly chose not to do so and as a result, Defendants’ arguments must be rejected.

Finally, the legislative materials cited by Defendants do not provide any basis for the Court to rewrite R.C. 2315.21 to reference and incorporate the noneconomic damages caps in

R.C. 2315.18. Those legislative materials discuss a need for a reduction in punitive damages awards, *which is exactly what will happen should the punitive damages cap apply to this case.* The jury awarded Plaintiffs in excess of \$33.2 million in punitive damages. After R.C. 2315.21 is applied as written, the punitive damages will be \$19,874,500.00, a reduction of more than forty percent.³ The legislative materials do not state, or even suggest, that R.C. 2315.21 utilized and incorporated R.C. 2315.18's noneconomic caps to determine the amount of permissible punitive damages. As a result, even if R.C. 2315.21 was ambiguous (which it is not), Defendants have provided no basis for concluding that the Legislature intended the capped noneconomic damages award to be the "total compensatory damages" for purposes of calculating the cap on punitive damages.

II. CONCLUSION

Therefore, for the foregoing reasons, in addition to those stated in Plaintiffs' Bench Brief, and to the extent the caps on noneconomic and punitive damages apply, the Court should enter judgment as follows:

For Allyn W. Gibson:

- **Total Compensatory & Punitive Damages:** \$ 6,500,000.00
- Total Compensatory Damages: \$ 500,000.00
 - Economic Damages: \$ -0-
 - Noneconomic Damages: \$ 500,000.00
- Total Punitive Damages: \$ 6,000,000.00

For David R. Gibson:

- **Total Compensatory & Punitive Damages:** \$ 14,000,000.00
- Total Compensatory Damages: \$ 2,400,000.00

³ Peppered throughout Defendants' brief is a hypothetical about a billion-dollar noneconomic award followed by a \$2 billion punitive award. Resorting to such an absurd hypothetical shows the flaws in Defendants' arguments.

- Economic Damages: \$ 1,800,000.00
- Noneconomic Damages: \$ 600,000.00
- Total Punitive Damages: \$ 11,600,000.00

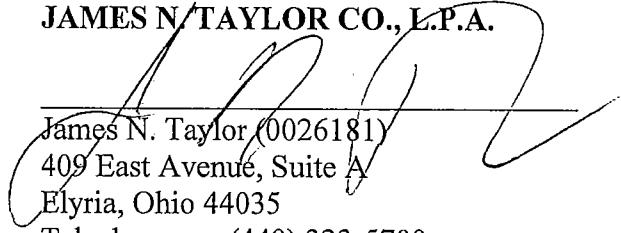
For Gibson Bros., Inc.:

- **Total Compensatory & Punitive Damages:** \$ 4,549,000.00
 - Total Compensatory Damages: \$ 2,274,500.00
 - Economic Damages: \$ 2,274,500.00
 - Noneconomic Damages: \$ -0-
 - Total Punitive Damages: \$ 2,274,500.00

DATED: June 25, 2019

Respectfully submitted,

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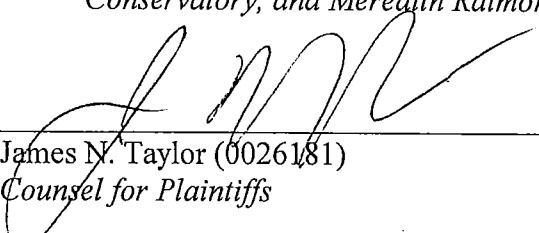
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PROOF OF SERVICE

A copy of the foregoing was served on June 25, 2019, pursuant to Civ.R. 5(B)(2)(f) by sending it by electronic means to the e-mail addresses identified below:

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