NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued February 22, 2023
Decided July 14, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2420

EPIC SYSTEMS CORP.,
Plaintiff-Appellee,

v.

TATA CONSULTANCY SERVICES LTD. & TATA AMERICA INTERNATIONAL CORP. d/b/a TCS AMERICA,
Defendants-Appellants.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 3:14-cv-00748

William M. Conley,
Judge.

O R D E R

This is the second time this case has come before the court. In the first appeal, we held, among other things, that a $280 million punitive damages award in favor of Epic Systems Corporation ("Epic") and against Tata Consultancy Services ("TCS")[1] exceeded

[1] Tata Consultancy Services Limited is an Indian company; Tata America International Corp. is a New York corporation that is wholly owned by Tata Consultancy Services. We refer to these companies collectively as "TCS."

the outermost limit of the Fourteenth Amendment's due process guarantee. We remanded for the district court to "reduce punitive damages to, at most, $140 million." *Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, 971 F.3d 662, 688 (7th Cir. 2020), *as amended*, 980 F.3d 1117, 1145 (7th Cir. 2020). The district court did so, concluding that the case warranted a punitive damages award equal to that constitutional ceiling. No. 14-cv-748, 2022 WL 2390179 (W.D. Wis. 2022).

TCS now argues that the district court failed to follow this court's directives when it declined to further reduce the punitive damages award to an amount between $10 and $25 million. Because the district court properly justified the $140 million punitive damages award, we affirm.

BACKGROUND

Epic and TCS are competitors in the electronic-health-record-software field. From 2012 to 2014, TCS employees accessed Epic's confidential customer web portal without authorization and downloaded thousands of documents containing Epic trade secrets. Armed with this stolen information, TCS created a "comparative analysis" outlining the differences between its software and Epic's. TCS then used this analysis to try to persuade one of Epic's largest customers to abandon Epic in favor of TCS. To make matters worse, when Epic filed suit, TCS failed to preserve relevant evidence, resulting in an adverse inference sanction at trial. The jury ruled for Epic on all counts, including multiple Wisconsin tort claims. The jury then awarded Epic $240 million in compensatory damages—$140 million for TCS's use of Epic's information to create the "comparative analysis" and $100 million for TCS's "other uses" of the confidential information—as well as $700 million in punitive damages.

Although the district court upheld the jury's liability verdict and the $140 million in compensatory damages based on TCS's use of Epic's confidential information in the "comparative analysis," it struck the $100 million compensatory award for "other uses" of Epic's information. The district court also reduced punitive damages to $280 million to comply with a Wisconsin law capping punitive awards at two times the amount of compensatory damages. Wis. Stat. § 895.043(6).

On the first appeal, we applied the guideposts established in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), to determine whether the $280 million punitive damages award entered by the district court was constitutionally sound. Considering "(1) the reprehensibility of the defendant's conduct; (2) the disparity between the actual harm suffered and the punitive award; and (3) the difference between the award

authorized by the jury and the penalties imposed in comparable cases," *Rainey v. Taylor*, 941 F.3d 243, 254 (7th Cir. 2019) (citing *Gore*, 517 U.S. at 575), we concluded that $140 million—a 1:1 ratio relative to the compensatory award—was the maximum constitutionally permissible punitive award in this case. *Epic*, 980 F.3d at 1140–45. *See also Trinity Evangelical Lutheran Church v. Tower Ins. Co.*, 661 N.W.2d 789, 800 (Wis. 2003) (explaining that Wisconsin courts apply a "virtually identical test").

We reasoned that although TCS's conduct warranted punishment, it was not reprehensible "to an extreme degree." *Epic*, 980 F.3d at 1142. Courts apply five factors to evaluate reprehensibility, considering whether: (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct was financially vulnerable; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, or merely an accident. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003). Here, three of these factors weighed against deeming TCS's conduct reprehensible. In particular, TCS caused financial, rather than physical, harm; its actions did not evince an indifference to or reckless disregard for the safety of others; and Epic was not a financially vulnerable victim. Looking to the remaining factors, however, we found that TCS's wrongdoing was not an isolated incident and the harm Epic suffered was a direct result of TCS's deceit.

We further agreed, upon examining *Gore*'s second guidepost, that the disparity between the $280 million punitive damages award and the harm suffered by Epic was too great. As for the third guidepost, we observed that the award entered by the district court complied with Wisconsin's statutory cap on damages, which implied that it was not an outlier in the state. Still, considered together, the *Gore* factors supported a finding that the $280 million award was unconstitutional. We remanded for the district court to reduce the punitive damages to, at most, $140 million.

On remand, the district court did precisely that. TCS now asserts that the court's analysis was insufficient because it simply rehashed the *Gore* factors already considered by this Court in the first appeal. We disagree.

LEGAL STANDARD

We review a district court's determination of the scope of remand de novo. *United States v. Purham*, 795 F.3d 761, 764 (7th Cir. 2015). We also review challenges to punitive damages de novo when constitutional issues are raised. *Cooper Indus. Inc. v.*

Leatherman Tool Grp., Inc., 532 U.S. 424, 436 (2001). If no constitutional issue is raised, our review of punitive damages is for abuse of discretion. *Gracia v. SigmaTron Int'l, Inc.*, 842 F.3d 1010, 1022 (7th Cir. 2016).

ANALYSIS

When punitive damages arise out of state law claims, as the award in this case did, "the Constitution imposes the only federal restraint." *Beard v. Wexford Health Sources, Inc.*, 900 F.3d 951, 955 (7th Cir. 2018); *see also Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 430 n.12 (1996) ("For rights that are state created, state law governs the amount properly awarded as punitive damages, subject to an ultimate federal constitutional check for exorbitancy."). We have already identified the line over which a punitive damages award would be unconstitutionally excessive here: $140 million.

Still, as TCS notes, "the Constitution is not the most relevant limit to a federal court when assessing punitive damages, as it comes into play 'only after the assessment has been tested against statutory and common-law principles.'" *Saccameno v. U.S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1086 (7th Cir. 2019) (quoting *Perez v. Z Frank Oldsmobile, Inc.*, 223 F.3d 617, 625 (7th Cir. 2000)). We are satisfied that the district court thoroughly assessed the relevant principles on remand and concluded that the award was sensible and justified. *See Perez*, 223 F.3d at 625 ("Federal judges may, and should, insist that the award be sensible and justified by a sound theory of deterrence.").

First, the court revisited the question of reprehensibility. It described how TCS employees—knowing full well that they were unauthorized to view Epic's web portal—deliberately and repeatedly accessed and downloaded confidential information that Epic had spent years developing, and then used that information to attempt to compete with Epic. The district court also described the steps TCS leadership took to conceal their scheme: disciplining an internal whistleblower, failing to preserve relevant documents, lying when questioned by Epic, and then lying again when questioned under oath. The court described this conduct as "repeated, deliberate, and cynical."

Turning to other considerations, the court noted that the punitive damages were proportional to the compensatory damages and the harm Epic suffered; that but for being caught, TCS would have gotten away with a massive gain; and that the cases TCS cited to support further reduction were "not at all comparable" to this one. The court emphasized that TCS is one of the largest companies in the world and, therefore, only a significant punishment would have a deterrent effect.

Now, on appeal, TCS repeats many of the same arguments that have already been considered by this court. It suggests that its conduct was not especially reprehensible and that the deterrent purpose of punitive damages was adequately served by the $140 million in compensatory damages.

Insisting that this case is an outlier for punitive damages, TCS cites various opinions ordering lower awards. Generally, however, these cases involved much smaller compensatory awards than the $140 million used as a denominator here. *See, e.g., Synergetics, Inc. v. Hurst*, 477 F.3d 949, 954, 959 (8th Cir. 2007) (awarding $1.75 million in compensatory damages and about $600,000 in punitive damages). As we noted in our earlier decision, TCS "waived any argument that the compensatory award is the incorrect denominator in the ratio analysis." *Epic*, 980 F.3d at 1143. TCS also cites cases in which courts applied the *Gore* guideposts to conclude that the Constitution mandated reducing the punitive damages to an amount lower than that awarded to Epic. *See, e.g., Inter Med. Supplies Ltd. v. EBI Med. Sys., Inc.*, 181 F.3d 446, 467 (3d Cir. 1999). But this court already determined that a $140 million award would be constitutional here. TCS does not ask us to overturn that decision and we see no reason to. Finally, TCS opines that it could find only two Wisconsin cases in which juries awarded more than $100 million in damages, both of which involved physical harm. Critically, neither of the defendants in those cases were nearly as large as TCS. When the goal of punitive damages is "to punish the defendant and deter outrageous conduct," *Welty v. Heggy*, 429 N.W.2d 546, 550 (Wis. 1988), such matters must be considered.

In sum, we agree with the district court that, given TCS's repeated and brazen misconduct, a $140 million punitive damages award is constitutional, as well as justified under Wisconsin law.

AFFIRMED.