

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-21

HOLIDAY INN FRANCHISING, INC.,
Now Known As HOLIDAY
HOSPITALITY FRANCHISING, INC.
APPELLANT

V.

HOTEL ASSOCIATES, INC.
APPELLEE

Opinion Delivered October 5, 2011

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CIV2005-485]

HONORABLE PAMELA
HONEYCUTT, JUDGE

MOTION DENIED

PER CURIAM

Appellee Hotel Associates Inc. (HAI) sued Holiday Inn Franchising Inc. (Holiday Inn) on August 15, 2005, seeking compensatory and punitive damages and asserting causes of action for breach of contract, promissory estoppel, and fraud.¹ At the close of the proof, the circuit court granted Holiday Inn's motion for a directed verdict on the breach-of-contract count but denied its directed-verdict motion on the promissory-estoppel and fraud counts. The jury awarded HAI \$13,000,000 in compensatory damages and \$12,000,000 in punitive damages. Holiday Inn moved for a judgment notwithstanding the verdict or, in the alternative, for a new trial and remittitur. The circuit court let the jury's liability verdict stand, but remitted the damage awards. Both parties appealed. We affirmed on direct and

¹ HAI also sued for breach of the Arkansas and Texas Deceptive Trade Practices Acts. Those counts were dismissed prior to trial.

cross appeal, except we reversed the trial court's remittitur of the punitive damages award and reinstated the jury's verdict on that issue. *Holiday Inn Franchising, Inc. v. Hotel Assocs., Inc.*, 2011 Ark. App. 147, ___ S.W.3d ____. Holiday Inn filed a petition for rehearing, which was denied without opinion on April 6, 2011. Holiday Inn also filed a petition for review with the Arkansas Supreme Court, which was denied on September 8, 2011. Our mandate issued on September 8, 2011.

Holiday Inn has now filed a motion to recall the mandate. In its amended motion,² petitioner Holiday Inn cites Ark. Sup. Ct. R. 5-3, indicating that it will seek review of this court's punitive damages ruling with the United States Supreme Court by Petition for Writ of Certiorari. Holiday Inn states that the issues to be addressed in its petition are (1) whether this court departed from the constitutional reprehensibility analysis established under *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996), and created a new subjective test; and (2) whether this court's punitive damages ruling conflicted with the constitutional punitive-damages analysis found in *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003). Holiday Inn asserts that these issues are important issues of federal law that have not been decided by the United States Supreme Court or that conflict with the decisions of that court.

We have reviewed the issues presented by Holiday Inn and find that the foregoing issues do not demonstrate a basis for an entitlement to certiorari. We specifically addressed the

² Holiday Inn's original motion to recall the mandate did not satisfy our requirements under Rule 5-3. HAI, in its response to the motion, noted the deficiencies and asked that the motion be denied. Holiday Inn tendered a reply curing the deficiencies. We treated the reply as an amended motion and allowed HAI additional time to respond.

Cite as 2011 Ark. App. 601

Gore and *Campbell* cases in our analysis of the punitive damages award and believe that our decision in this case properly applied the law as addressed therein. As a result, we find that Holiday Inn has failed to show that the petition for a writ of certiorari presents a substantial question or that good cause for a stay or recall exists, as required by Rule 5-3.

Because we are denying the motion to recall the mandate, we need not address HAI's request for a supersedeas bond.