

For Toyota, a trebling decision

Judge boosts damages award in trade practices case to \$9M

By: Phillip Bantz June 19, 2015

A federal judge has trebled a damages award of more than \$3 million against Toyota after a jury determined that the company interfered with a competitor's business deal.

The plaintiff, Kentucky-based forklift manufacturer Clark, entered into a contract with a Charlotte forklift dealer, Southeast Industrial Equipment. But when Toyota caught wind of the deal, it pressured SIE to drop Clark, according to a lawsuit filed with the U.S. District Court in Charlotte.

In late February, jurors found that Toyota interfered with the contract between Clark and SIE by pressuring the dealership to terminate the relationship. They awarded Clark \$3,040,090 in damages.



Judge Max Cogburn tripled the award to \$9,120,270 in a June 3 order based on his determination that Toyota had violated the state's Unfair and Deceptive Trade Practices Act, which entitled Clark to treble damages.

Cogburn also ordered Toyota to pay prejudgment interest, which amounts to about \$760,000, along with post-judgment interest and attorneys' fees. Those fees were still being calculated as of press time, but they will likely be substantial as Clark's attorneys say they have spent nearly 4,500 hours on the case. It has been going on since August 2012.

An attorney for Clark, Tami McKnew of Smith Moore Leatherwood in Greenville, South Carolina, said the jury's findings against Toyota made it "fairly clear that the court was required to treble the damages."

The jury found that when Toyota discovered SIE had entered into a contract to sell Clark forklifts, it threatened to terminate SIE's right to carry Toyota brand forklifts in Virginia. About 70 percent of SIE's business in terms of gross income is tied to Toyota sales, according to Cogburn's order.

Toyota put so much pressure on SIE that the company's president, Cory Thorne, testified that he had to check himself into the hospital. (SIE's website shows that it no longer sells Clark forklifts, though the dealership continues to offer Toyota's line of products.)

Toyota contended that its conduct was not unfair or deceptive because "it simply directed SIE to focus on its underperforming territory in Virginia rather than add a new brand to its dealership line," Cogburn wrote in his order.

It was up to the court, rather than jurors, to decide whether Toyota violated the law. And Cogburn answered in the affirmative, finding that Toyota's actions "went above and beyond mere aggressive (but lawful) competition."

He noted in his order that Toyota was aware of SIE's contract with Clark and "used its position as the primary supplier of SIE forklift products to coerce, intimidate, and intentionally interfere with the contract and future business relationship between SIE and Clark."

The line between aggressive competition and unfair business practices is not bright, said Steve DeGeorge, a commercial litigator at Robinson Bradshaw in Charlotte. He reviewed Cogburn's order and was not involved in the case.

But the evidence against Toyota, especially the fact that a contract already existed between Clark and SIE when Toyota started meddling in the deal, was compelling, DeGeorge said.

He was, however, surprised that Cogburn had awarded fees to Clark. Cogburn said that Toyota owed Clark fees because its conduct was willful and it "refused to engage in any serious effort to resolve the matter."

Toyota had offered to settle for \$800,000 about a week before trial, then raised its offer to \$1.5 million. Clark initially wanted \$15 million but lowered its offer to \$8 million after the jury awarded it more than \$3 million. Toyota countered with \$2 million following the verdict.

Cogburn said Toyota waited too long to put money on the table and its best offer was still less than the amount of the award, which didn't include attorneys' fees and costs.

"I'd be upset if I were Toyota," said DeGeorge, who felt that Toyota's offers were reasonable.

"The takeaway is if your client has been sued for violating the Unfair and Deceptive Trade Practices Act, try to make a record that you're exercising good faith in trying to settle the case early on," he added.

Toyota's attorneys at Poyner & Spruill in Charlotte and Barnes & Thornburg in Indiana stated in an email that they "respectfully disagree with the trial court's ruling as contrary to governing law" and planned to take the case to the 4th U.S. Circuit Court of Appeals.

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