

WESTERN CAROLINE TRADING CO.,
Appellant,

v.

KAELANI KINNEY,
Appellee.

CIVIL APPEAL NO. 10-034
 Civil Action No. 10-077

Supreme Court, Appellate Division
 Republic of Palau

Decided: February 3, 2011

[1] **Appeal and Error:** Abuse of Discretion

The proper standard of review of a trial court's decision denying punitive damages and attorney fees is abuse of discretion. Under the abuse of discretion standard, a trial court's decision will not be overturned on appeal unless the decision was arbitrary, capricious, or manifestly unreasonable or because it stemmed from an improper motive.

[2] **Civil Procedure:** Default Judgment

Under ROP R. Civ. P. 55(a), the Clerk of Courts shall enter default against a party who does not plead or defend as provided by the Palau Rules of Civil Procedure.

[3] **Civil Procedure:** Default Judgment

Upon entry of default, the trial court takes all well-pleaded allegations of fact related to liability as true.

[4] **Civil Procedure:** Default Judgment

Before entry of default judgment, the trial court has an obligation to review the allegations of the complaint to determine whether it established all the elements of a cause of action.

Counsel for Appellant: David F. Shadel
 Counsel for Appellee: Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEXANDRA F. FOSTER, Associate Justice; and RICHARD H. BENSON, Part-Time Associate Justice.

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

PER CURIAM:

Appellant Western Caroline Trading Company ("WCTC") appeals the Trial Division's Judgment in its favor. WCTC's appeal takes issue with the Trial Division's denial of punitive damages and attorney fees. For the following reasons, the Judgment is **VACATED**, and this matter is **REMANDED** to the Trial Division for further proceedings.

BACKGROUND

WCTC appeals the Trial Division's June 27, 2010 Judgment granting its Motion for Default and Default Judgment. This case began when WCTC filed a Complaint against Kaelani Kinney for allegedly issuing three bad checks to WCTC and refusing to pay or respond to WCTC's requests to pay. The Complaint was served on Kinney on May 31, 2010, Kinney neither appeared nor answered. WCTC filed a Motion for Default and Default Judgment on July 16, 2010. The motion

requested a total of \$663.71 in damages and attached an affidavit from a WCTC employee and an itemized list of attorney fees.

The Clerk of Court entered default against Kinney on July 16, 2010, and the Clerk entered Judgment against Kinney the same day. The Trial Division's June 27, 2010, Judgment held that WCTC was entitled to relief. In issuing the Judgment, the Court used the proposed judgment submitted by WCTC, which stated the following:

IT IS HEREBY ADJUDGED, DECREED, AND ORDERED that judgment is entered in favor of plaintiff and against defendant for \$663.71 (\$275.05 of principal, \$18.65 of prejudgment interest, \$90.00 of returned check fees, \$220.00 of punitive damages and attorney fees, and \$60.01 of court costs) as of July 15, 2010, and further interests, costs, and reasonable attorney fees thereafter.

However, the Trial Division edited the proposed judgment before issuing it. It permitted the \$275.05 of principal, \$18.65 of prejudgment interest, \$90.00 of returned check fees, and \$60.01 of court costs. But the Trial Division modified the proposed order by crossing out the phrase "\$220.00 of punitive damages," and crossing out the phrase "reasonable attorney fees." The court also wrote, "Punitive damages not warranted. Denied." The Judgment did not include a summary of facts or legal reasoning for that denial. See *WCTC v. Meteolechol*, 14 ROP 58, 61 (2007). And the Judgment did not

change the \$663.71 proposed total. WCTC appealed this Judgment on November 22, 2010, and Kinney has not responded as of the date of this Opinion.

STANDARD OF REVIEW

[1] We review the trial court's findings of fact for clear error. *Meteolechol*, 14 ROP at 59. Under this standard, the factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Dilubech Clan v. Ngaremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002). The proper standard of review of the Trial Division's decision to deny punitive damages and attorneys fees is abuse of discretion. *WCTC v. Philip*, 13 ROP 28, 30 (2005). Under the abuse of discretion standard, a trial court's decision will not be overturned on appeal unless the decision was arbitrary, capricious, or manifestly unreasonable or because it stemmed from an improper motive. *Ngoriakl v. Gulibert*, 16 ROP 105, 107 (2008).

DISCUSSION

WCTC presents three arguments: (1) the trial court erred as a matter of law and abused its discretion in failing to show that it evaluated the facts and law, and in failing to offer explanation for its failure to award punitive damages or attorney fees; (2) the trial court erred in failing to award punitive damages or attorney fees; and (3) the Appellate Division may direct the trial court to enter judgment for an amount including the proposed punitive damages and attorney fees.

[2-4] Under ROP R. Civ. P. 55(a), when a party against whom judgment is sought does not plead or defend as provided by the Palau Rules of Civil Procedure, the Clerk of Courts shall enter the party's default. Upon entry of default, the trial court takes all the well-pleaded allegations of fact related to liability as true. *Meteolechol*, 14 ROP at 60. However, the trial court has an obligation to review the allegations of the complaint to determine whether it establishes all the elements of a cause of action, whether jurisdictional elements are met, and whether the amounts sought are justified. *Id.* And after entry of default, the court "must satisfy itself that the proposed judgment is supported by the record and may use its discretion to amend or deny the requested relief as warranted by the circumstances." *Id.* (citing Wright, Miller & Kane, 10A *Federal Practice and Procedure: Civil 3d* § 2685).

This Judgment suffers from two errors. First, the Judgment is incomplete because it did not include findings of fact or conclusions of law to explain why WCTC was not awarded attorney fees or punitive damages. Such an omission disregards the Trial Division's obligation to analyze the applicable law and facts in reaching a judgment. *See Meteolechol*, 14 ROP at 61. Second, the Judgment is confusing. As mentioned, the proposed Judgment stated the total amount of damages to be \$663.71 followed by a parenthetical stating the amounts for principal, prejudgment interest, punitive damages and attorney fees, and court costs. The Trial Division created an inconsistency by crossing out the award for attorney fees and punitive damages within the parenthetical, but not changing the total amount awarded. Due to these deficiencies, the Trial Division erred in

failing to explain its award of damages.

We do not agree with WCTC's remaining arguments, however. Namely, the Court cannot conclude that the Trial Division abused its discretion in denying punitive damages and attorney fees, and we will not direct the Trial Division to award punitive damages and attorney fees. The decision to award punitive damages and attorney fees is discretionary. 14 PNC § 702 ("The court shall have the final authority to determine and assess the amount of reasonable attorney's fees that may be awarded."). Given that the abuse of discretion standard is so high, and the record so sparse, we cannot agree that the Trial Division abused its discretion in denying punitive damages and attorney fees.

The record includes the Complaint, Motion for Default and Default Judgment, Entry of Default, and Judgment. The Complaint states that Kinney's failure to pay was "so vexatious, obdurate, egregious, wanton, oppressive, unreasonable, in bad faith, reckless, or intentional as to warrant an award of punitive damages against her in the amount of, at least, the attorney fees." (Compl. ¶ 5.) But the facts alleged are straightforward and brief, stating in ten concise paragraphs that Kinney issued three checks to WCTC that were returned, and that she failed to pay or reply to WCTC's requests to pay. Even taking the fraud allegation as true, the facts alleged in the Complaint are not so alarming that a decision denying punitive damages and attorney fees is arbitrary, capricious, or unreasonable. Further, WCTC's motion requests punitive damages and attorney fees, but it does not explain why WCTC is entitled to these additional damages. And finally, the hand-written portion of the

Judgment indicates that the Trial Division considered and rejected those damages. Thus, given that such damages are discretionary, and the absence of egregious facts that favor awarding punitive damages and attorney fees, we are unconvinced that the Trial Division's conclusion was so unreasonable that it constitutes an abuse of discretion.

WCTC cites numerous cases where punitive damages and attorney fees were granted. However, it does not cite cases which hold that the denial of such damages constitutes an abuse of discretion. Our role is to evaluate whether an abuse of discretion occurred, not whether the court could or should have awarded the damages. Thus, mere examples of discretionary decisions different from the one we now review do not convince us that an abuse of discretion occurred.

WCTC further argues that the Trial Division abused its discretion in not evaluating punitive damages and attorney fees separately. This argument fails because WCTC repeatedly requested punitive damages and attorney fees as a unit. Specifically, in the Complaint, the relief requested for bad checks was "an award of punitive damages against [Kinney] in the amount of, at least, the attorney fees." (Compl. ¶ 5.) And the relief requested for fraud was "an award of punitive damages of at least \$137.50 (including plaintiff's attorney fees) against her." (*Id.* ¶ 10.) Finally, in the Motion for Default and Default Judgment, the total amount requested for attorney fees and punitive damages combined to total \$220.00. Given how WCTC presented these damages, WCTC cannot now claim that the Trial Division's conflation of punitive damages and attorney

fees was an abuse of discretion.

The record presently before the Court does not indicate that the Trial Division abused its discretion. However, because the Trial Division erred in failing to explain the factual and legal basis for its decision to disallow punitive damages and attorney fees, the most appropriate course of action is to remand this matter to ensure that a proper judgment is issued.

CONCLUSION

For the foregoing reasons, the Trial Division's Decision is **VACATED**, and this matter is **REMANDED** to the Trial Division for further proceedings.