

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8209

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INDUSTRIAS MACON, d/b/a SUNLAND COOLERS,

Plaintiff-Appellee,

v.

BACCHUS INDUSTRIES, INC.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
(EP-91-CV-94)

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(March 14, 1994)

Before POLITZ, Chief Judge, JONES, Circuit Judge, and FULLAM\*,  
District Judge:\*\*

PER CURIAM:

Industrias Macon ("Macon") sued Bacchus Industries, Inc. ("Bacchus Industries") in a diversity suit for breach of contract, and Bacchus cross-claimed. The jury awarded compensatory damages in favor of both Macon and Bacchus Industries and assessed punitive damages on a fraud claim against Bacchus. Bacchus now appeals, asserting only that the jury's verdict was inconsistent. We affirm in part and vacate and remand in part.

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\* Senior District Judge of the Eastern District of Pennsylvania,  
sitting by designation.

\*\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

## **BACKGROUND**

Rick Bacchus, the president of Bacchus Industries, arranged with Tom Evans and Jesus Martinez of Macon for Macon to supply Bacchus Industries with metal evaporative coolers. The agreement was that Macon would deliver 4000 coolers to Bacchus Industries within the first year. Bacchus Industries specified the manner in which the coolers were to be constructed. The verbal agreement between Macon and Bacchus Industries was never reduced to written form.

By the time Macon had shipped 1079 coolers to Bacchus Industries, Bacchus Industries had failed to demonstrate an ability to distribute or sell the coolers, contradicting what it had represented to Macon. Additionally, Bacchus Industries failed to make timely payments to Macon. As a result, Macon stopped shipping the merchandise to Bacchus Industries.

Macon sued Bacchus Industries for breach of contract and fraud. Bacchus Industries filed a counterclaim complaining that the coolers did not meet the specifications on which they had agreed. The jury found both Bacchus Industries and Macon to have breached their contract. Additionally, the jury found that Bacchus had acted fraudulently in dealing with Macon and awarded Macon punitive damages based on Bacchus Industries' fraudulent acts.

## **DISCUSSION**

Bacchus Industries now argues that the jury's answers were inconsistent in finding both Macon liable to Bacchus for compensatory damages and Bacchus liable to Macon for fraud.<sup>1</sup>

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<sup>1</sup> The jury's answers to interrogatories were, in relevant part, as follows:

Question No. 1

Did [Macon] perform compensable services for [Bacchus Industries]?

ANSWER: YES.

. . .

Question No. 2

What is the balance due and owing by [Bacchus Industries] to [Macon] for the reasonable value of such compensable service as of the time and place it was performed?

. . .  
\$68,830.

Question No. 3

Did Bacchus Industries' conduct toward [Macon] in connection with the purchase of air conditioners constitute fraud?

ANSWER: YES.

. . .

Question No. 4

Do you find from a preponderance of the evidence that the fraud found by you in question no. 3 was a producing cause of any damages which adversely affected [Macon]?

ANSWER: YES.

. . .

Question No. 5

What sum of money, if any, if paid now in cash would fairly and reasonably compensate [Macon] for its actual damages cause by Bacchus' fraud?

. . .  
\$78,749.

. . .

Question No. 6

What sum of money, if any, if paid in cash do you find would serve to punish and deter [Bacchus Industries] from committing such acts in the future?

A district court is required to enter judgment on the jury's answers to interrogatories if the jury's answers are clear and consistent, see P & L Contractors, Inc. v. American Norit Co., 5 F.3d 133, 138 (5th Cir. 1993), and the jury's answers may be entered into judgment if there is some possible view of the case which would make the jury's answers consistent, see Nance v. Gulf Oil Corp., 817 F.2d 1176, 1178 (5th Cir. 1987). The jury in the instant case found that both parties breached their respective duties owed to one another under their agreement--namely, Bacchus did not adequately compensate Macon for the coolers and Macon did not supply Bacchus with the quality of coolers upon which they agreed. There is no inconsistency in finding that each party breached a portion of its performance. The jury also found that Bacchus Industries acted fraudulently toward Macon and assessed actual and punitive damages against Bacchus for that wrong. Bacchus contends that the fraud findings were irreconcilably inconsistent with the jury's finding that Macon breached its

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\$100,000.

Question No. 7

Did [Macon] fail to deliver the quality of cooler ordered by Bacchus Industries?

ANSWER: YES.

. . .

Question No. 8

What amount of damages were sustained by Bacchus Industries, if any . . . ?

\$100,000.

obligations.<sup>2</sup> Bacchus cites no cases in its favor, and its argument rehashes the facts found against it at trial. These issues were factually complex and hotly disputed by the parties. It is not correct to assert, as Bacchus does, that on the testimony before it, the jury could not have decided both that Macon breached its obligation and also that Bacchus intentionally perpetrated a fraud. The district court did not commit error in refusing to find an inconsistent jury verdict.

In light of a recent Texas Supreme Court decision, we will, however, vacate and remand that part of the judgment assessing punitive damages against Bacchus Industries. As that court held, in Texas, "[t]he threshold of bad faith [sufficient to support an award of punitive damages] is reached when a breach of contract is accompanied by an independent tort." Transportation Insurance Co. v. Moriel, 1994 WL 27030, \*6 (Tex. 1994). Bad faith alone is insufficient to support an award of punitive damages unless accompanied by "malicious, intentional, fraudulent, or grossly negligent conduct." Id. "Every tort involves conduct that the law considers wrong, but punitive damages are proper only in the most exceptional cases." Id. While this is a fraud case, and Moriel suggests that punitive damages remain available for fraud, the trial of this case did not comport with the court's announced procedural guidelines or substantive criteria for imposition of

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<sup>2</sup> Exchanging tit for tat, Macon in its brief asserts that Bacchus should not have received damages for Macon's breach because of the finding of fraud against it. As Macon did not file a cross-appeal asserting such affirmative relief, we cannot consider this point.

punitive damages. The trial court has a better understanding of the facts and interrelation of issues than we can glean from a cold record. In the interest of justice, we vacate and remand the punitive damages award for reconsideration in light of Moriel.

#### **CONCLUSION**

That part of the judgment which assesses punitive damages against Bacchus Industries is vacated and remanded. The remainder of the district court's judgment regarding actual damages is affirmed.

**AFFIRMED** in part, **VACATED** and **REMANDED** in part.