

CERTIFIED FOR PARTIAL PUBLICATION¹
COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

DIANNE GOBER et al.,

Plaintiffs and Appellants,

v.

RALPHS GROCERY COMPANY,

Defendant and Appellant.

D040473

(Super. Ct. No. N72142)

ORDER DENYING PETITION FOR
REHEARING AND MODIFICATION
OF OPINION

[NO CHANGE IN JUDGMENT]

THE COURT:

The petition for rehearing is denied.

The opinion is modified as follows:

On page 2, the second paragraph is deleted and replaced with the following:

On appeal, Ralphs attempts to challenge the constitutional propriety of the amount of the punitive damages awards by appealing the court's order denying its request for judgment notwithstanding the verdict (JNOV). We conclude the challenge is not properly brought by such an appeal. Accordingly, we affirm the trial court's order conditionally granting a new trial on the amount of the punitive damages and Ralphs's purported appeal from the judgment vacated thereby is dismissed."

¹ Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of part IIB.

On pages 6 through 8, section I entitled "*Ralphs's Appeal*" is deleted and replaced with the following:

I. *Ralphs's Appeal*

Ralphs contends the trial court erred by denying its JNOV motion because the punitive damages awards were unconstitutionally excessive. It argues we should reverse the order denying JNOV and direct the entry of judgment for the Finton Plaintiffs that includes punitive damages in a constitutionally permissive amount. Alternatively, it asks us to remand the matter for retrial of the punitive damages issue. We conclude that the trial court properly denied Ralphs's JNOV motion because the evidence supported a punitive damages verdict.

The trial court has discretion to grant a JNOV motion if there is no substantial evidence to support the verdict. (*Teitel v. First Los Angeles Bank* (1991) 231 Cal.App.3d 1593, 1603 (*Teitel*)). In its motion, Ralphs argued that the amount of punitive damages awarded was excessive as a matter of law and asked the trial court to reduce the award to a sum that did not violate its due process rights. It did not contend that the evidence was insufficient to support the verdict, nor could it make this argument as the jury was presented with the same evidence that our prior opinion concluded was sufficient to support a finding of liability against Ralphs for punitive damages. Where, as here, the trial court believes that the evidence supports a punitive damages award, but finds the award excessive, the proper procedure is for it to grant a conditional order for a new trial subject to the plaintiff's consent to a remittitur. (*Teitel, supra*, 231 Cal.App.3d at pp. 1604-1605.) The trial court properly denied Ralphs's JNOV motion and issued the conditional order for a new trial.

We note that after the trial court granted the new trial motion, Gober and Swann accepted the remittitur and the trial court entered modified judgments as to these plaintiffs. To the extent Ralphs contends that the remitted punitive damage award was still constitutionally excessive, it could have raised this issue by way of an appeal from the modified judgments entered as to Gober and Swann. Instead, it chose to pay these modified judgments.

[NO CHANGE IN JUDGMENT]