

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**Apr 22 2024**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 13-CP-40-0319

Daniel O’Shields and Roger W. Whitley  
A Partnership d/b/a O&W Cars ..... Appellants,

v.

Columbia Automotive Company, LLC  
d/b/a Midlands Honda ..... Respondent

**RETURN TO PETITION FOR REHEARING**

As requested by the Court, Columbia Automotive Company, LLC d/b/a Midlands Honda (“Midlands”) submits this return in response to the petition for rehearing (“Petition”) submitted by Daniel O’Shields and Roger W. Whitley, A Partnership d/b/a O&W Cars (“O&W”). As shown below, the Court correctly affirmed the rulings of the trial court and the court of appeals relating to the upper limit of punitive damages in this case, which stems from a dispute between two car dealers relating to the sale of a used Honda Civic for \$5,200 in 2010. O&W has not raised any issues in its Petition that were overlooked or misapprehended by the Court as contemplated by Rule 221, SCACR.

**ARGUMENT IN RESPONSE**

The arguments raised in the Petition are not new. Midlands will not repeat the arguments raised in its Respondent’s brief here, but incorporates those arguments by reference.

**I. The Court’s opinion is supported by the record.**

Despite O&W’s arguments, the Court’s opinion is well-supported by the record as reflected in the prior arguments of the parties. With respect to the three itemized points in Argument I of the Petition, the Court did not “sua sponte” find that Midlands sold the Civic at a wholesale auction “to avoid returning the car to the hands of a consumer.” This finding is supported by the testimony quoted by Midlands on page 18 of its Respondent’s brief as follows:

O&W’s counsel asked the former general manager at Midlands the following question, “But you don’t assume any responsibility for making sure that know that they’re buying an unsafe vehicle.” (R. at 218:1-2). The former manager responded:

On a wholesale unit, sell it to a wholeseller that plans to turn it around and sell it himself, and service it properly, and get it conditioned and sell it as a retail unit, no, I do not assume any responsibility on that because it is a wholesale unit, as-is, buyer beware, red light. So no, I don’t feel like we should have serviced that car and did a full inspection on a wholesale unit. No, sir, I don’t feel like that.

(R. at 440:3-10; *see also* R. at 444:6-445:14). This wholesale versus consumer distinction was meaningful to Midlands. (R. at 444:11-13 (“When you go to a wholesale auction, it’s wholesale, and it’s stamped buyer beware, red light, to me that is different than a consumer coming in and trading a car in.”)).

In addition, there is no evidence that Midlands was aware of any violation of the ADESA auction rules or the North Carolina damage disclosure statute, N.C.G.S. § 20-71.4(a), at the time the Civic was sold. Midlands was not aware of the changed rule (R. at 397:8-22, 408:13-409:16, 434:3-16), and Midlands did not fill out the North Carolina damage disclosure form. An ADESA representative completed and signed the form without consulting Midlands. (R. at 313:5-13, 411:8-18, 936-37). To the extent O&W argues that the ADESA representative made an affirmative representation on the North Carolina damage disclosure form and that Midlands is liable for this representation because Midlands had appointed ADESA as its agent under a power of attorney, it is sufficient to note that N.C.G.S. § 1D-15(c) provides that “[p]unitive damages shall not be awarded against a person solely on the basis of vicarious liability for the acts or omissions of

another.” Thus, the representations made by ADESA’s representative on the damage disclosure form cannot support a punitive damages award under North Carolina law.<sup>1</sup>

With respect to when Midlands discovered that the car had been clipped, the evidence showed the Civic came in with a clean title and underwent a standard inspection for certification. (R. at 382:10-14, 393:10-21). Midlands did not discover the prior damage in this process as far as it could ascertain from its records. (*Id.*; R. at 1024-25). It was only after Charles Ecklund returned the Civic that Midlands became aware of the prior damage. (R. at 131:2-20, 136:2-5). Nothing in the Court’s opinion on this point is inconsistent with the record.

O&W has not presented any facts that were overlooked or misapprehended by the Court, and as such, there is not a basis for rehearing under Rule 221.

**II. The “upper limit of the range of punitive damages awards consistent with due process” affirmed by the Court is consistent with precedent and justified under the facts of this case.**

The issue of the maximum allowable punitive damages award was fully briefed before the court of appeals and this Court and was fully addressed at each level of review. Nothing in the opinion invalidates or finds unconstitutional statutes setting caps for punitive damages. The existence of N.C.G.S. § 1D-25, which caps punitive damages in North Carolina, does not mean that courts should not conduct a due process review. *See Rhyne v. K-Mart Corp.*, 562 S.E.2d 82, 93 (N.C. Ct. App. 2002), *aff’d*, 594 S.E.2d 1 (N.C. 2004) (applying statute to reduce punitive award and then applying due process analysis required by *Gore*); *Everhart v. O’Charley’s, Inc.*, 683 S.E.2d 728, 740 (N.C. Ct. App. 2009) (considering whether punitive award satisfied due

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<sup>1</sup> O&W makes repeated statements that Midlands knew it was violating the law in connection with the sale of the Civic without specifying which law it contends Midlands knew it was violating. There is no prohibition on buying or selling clipped cars. The issues here relate to disclosure of the damage, and the evidence shows that ADESA completed the North Carolina form without input from Midlands.

process even after reduction to statutory limit). The outer limit ratio allowable as a matter of due process as determined by the trial court and affirmed by the court of appeals and this Court was consistent with this Court's precedent and the guidance provided by the United States Supreme Court. There is nothing new in the Petition, and there is nothing further for this Court to consider.

### **CONCLUSION**

For these reasons and those previously presented, the Petition should be denied.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Sarah P. Spruill

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April 22, 2024