IN THE SUPREME COURT OF TEXAS

NO. 04-0961

TONY GULLO MOTORS I, L.P. AND BRIEN GARCIA, PETITIONERS,

v.

NURY CHAPA, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS

Argued October 19, 2005

JUSTICE JOHNSON, concurring.

I concur in the Court's judgment, and, except for part III.B. as to Exemplary Damages, I join its opinion.

The court of appeals properly identified *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003) and *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) as guiding authorities for its review of the $250,000 exemplary damages jury award. It then concluded that $125,000 exemplary damages is constitutionally permissible under this record. That amount is between 4.33 and 4.34 times the actual damages of $28,852 found by the jury. The court of appeals' analysis as to the exemplary damages issue is not as detailed as that in this Court's opinion. But, because the court of appeals did not give a detailed explanation for its conclusion does not mean that its conclusion is wrong.

The United States Supreme Court has not set a bright line constitutional limit for exemplary damages. Some of its specific language bears reviewing:

> We decline again to impose a bright-line ratio which a punitive damages award cannot exceed. Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards *exceeding* a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. In *Haslip*, in upholding a punitive damages award, we concluded that an award of *more than* four times the amount of compensatory damages *might be close* to the line of constitutional impropriety. 499 U.S., at 23-24. We cited that 4-to-1 ratio again in *Gore*. 517 U.S., at 581. The Court further referenced a long legislative history, dating back over 700 years and going forward to today, providing for sanctions of double, treble, or quadruple damages to deter and punish. *Id*., at 581, and n. 33. While *these ratios are not binding, they are instructive*. They demonstrate what should be obvious: Single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution, than awards with ratios in range of 500 to 1, *id*., at 582, or, in this case, of 145 to 1.
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> Nonetheless, because *there are no rigid benchmarks that a punitive damages award may not surpass*, ratios greater than those we have previously upheld may comport with due process [under certain circumstances].

Campbell, 538 U.S. at 425 (emphasis added).

The Court says that "The court of appeals' judgment at least pushes against, if not exceeds the constitutional limits." ___ S.W.3d ___. A ratio of 4.33 to 1 is clearly close to the ratio of 4 to 1 which "might be close to the line of constitutional impropriety." *Campbell*, 538 U.S. at 425. But, there are no rigid constitutional benchmarks that an exemplary damages award may not surpass. *Id*. Unless we determine that the court of appeals misapplied the standards enunciated by the Supreme Court, however, I consider a 4.33 ratio of exemplary damages to actual damages under this record to be within the discretion lodged in the court of appeals to determine the amount of remittitur to suggest. I would remand to the court of appeals for reconsideration of the exemplary damages issue

and more complete explanation of its analysis as to the remittitur. I would not instruct the court of appeals, at this juncture, that it should determine a different, more appropriate, remittitur.

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Phil Johnson
Justice

OPINION DELIVERED: December 22, 2006