

SUPREME COURT MAKES IT EASIER TO OBTAIN TREBLE DAMAGES UNDER UTPCPL

In Schwartz v. Rockey et al., the Supreme Court of Pennsylvania lowered the standard for Plaintiffs to win punitive damages in a private action under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL). The court also made a somewhat limited ruling regarding the application of the election of remedies doctrine.

§9.2 of UTPCPL governs private actions and allows a court, in its discretion, to award “up to three times the actual damages sustained,” and also allows such additional relief as the court deems necessary and proper, including costs and reasonable attorneys fees. However, the statute does not explicitly provide a standard for awarding treble damages. In construing the terms of the statute, the Schwartz Court looked at the principles of statutory construction pertaining to the occasion and necessity of the statute, the mischief to be remedied, the object to be attained and the consequences of a particular interpretation.

The Court found, as a matter of statutory construction, that the court’s discretion to award treble damages under the UTPCPL should not be closely constrained by the common law requirements for punitive damages. Essentially, the court is saying that treble damages in UTPCPL cases should be awarded more generously than punitive damages. However, the court does limit its ruling by requiring a court to consider intentional or reckless wrongful conduct for which an award of treble damages would be remedial in nature when deciding whether to award treble damages. The Court also warns that there is plenary appellate review of decisions regarding punitive damages. The reasoning set forth by the court for its decision is that a consumer protection statute that awards treble damages for a violation is both punitive and remedial, and thus, should not be bound only by the stricter punitive considerations.

With regard to the election of remedies issue, the Court points out that the substantive application of this doctrine has been to prevent double recovery for a single injury. The justices point out that the tangential purpose of preventing parties from pleading and pursuing inconsistent forms of relief in litigation has been nearly eliminated by the permissive rules of pleading.

In the Schwartz case, the Court declines to make a more general ruling regarding the admissibility of simultaneously pursuing inconsistent remedies in a civil action in Pennsylvania. Rather it makes the more limited ruling that a Complaint containing a prayer of relief seeking contract-based damages does NOT foreclose a subsequent amendment substituting an inconsistent equitable remedy. The Court’s rationale for this decision is that the Plaintiff may not know the extent of the damages at the time the Complaint is filed.

Chief Justice Cappy wrote a concurring and dissenting opinion. He concurred with the portion of the opinion relating to election of remedies, but stresses that the decision in this case should be based more closely on the principles of rescission, and not on the principles of election of remedies. However, Chief Justice Cappy dissents from the majority on the treble damages issues. Chief Justice Cappy points out that the Court purports to make its decision on the plain

language of the statute then proceeds to consider external considerations such as legislative intent. Chief Justice Cappy argues that if the legislature intended a departure from the traditional, well-established standards for punitive damages, it would have specifically set forth the standard for awarding treble damages in the statute. Since the statute does not so specify and treble damages are very much akin to punitive damages, the standards for punitive damages should apply.