

JURY DECISIONS ARE INVIOATE

RIGHT?



COUNSEL'S CORNER

Do you remember from your US History or US Government class the text of the Seventh Amendment to the US Constitution (Bill of Rights)? *In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.* Adopted in 1789, the Bill of Rights became effective through state ratification in 1791.

Is it coming back to you now? Recently Courts have become more willing to erode the power of juries and ignore the Constitutional prohibition from re-examining jury decisions. The case of *Drury Southwest v. Louie Ledeaux* is a good example.

Drury (as in Drury hotels) owned property in San Antonio, and leased some to Louie to operate Louie's Mexican Hacienda Restaurant. Problems arose regarding a construction permit, signage, and Loop 410 highway access. So Louie met with Drury to consider changing the restaurant format, and Drury responded by changing the door locks and filing a lawsuit. It seems that Louie was not delinquent in the payment of rent, although that part is not clear from the Court's opinion.

Louie counterclaimed for breach of contract and other matters. The Texas jury, hearing the evidence, awarded Louie \$625,000 in actual damages. Drury appealed, stating that the evidence heard by the jury was insufficient for them to grant such a large award.

The Texas Court of Appeals analyzed Louie's damages, tabulating a \$95,000 loan from Sterling Bank, \$50,000 line of credit also from Sterling Bank, \$176,500 loan from American Equipment Finance, \$18,000 bill owing to Sysco Foods, plus another \$35,000 in signage expenses. The sums total approximately \$375,000, not \$625,000.

Louie argued that the difference of \$250,000 was "sweat equity," reflecting the value of Louie's labor and the other owners who worked 14 to 16 hours a day to finish-out and then operate the restaurant. The Texas Court of Appeals, not persuaded by the "sweat equity" argument, could not readily find other evidence to support the balance of the \$625,000 award. So instead of refusing to re-examine the jury decision (*see the Seventh Amendment to the Bill of Rights!*), the Appellate Court reversed the decision of the jury and trial court, and remanded for further proceedings.

Jury decisions inviolate? Not such much. Not anymore. Both trial and appellate Courts have shown a willingness to erode and disregard jury decisions in Texas and elsewhere. And we wonder why it is so difficult to get citizens to serve as jurors . . . sorry . . . I digress.

Drury Southwest, Inc. v. Louie Ledeaux #1, Inc., No. 04-10-00016-CV, Texas 4th Court of Appeals, July 6, 2011.

Lessons learned:

1. Jury decisions will be reviewed on appeal.
2. Jury decision may be overturned on appeal.
3. The Seventh Amendment is dying.

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