

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F I L E D

Clerk of the Superior Court

JAN 8 2008

By: **S. WEAVER, Deputy**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JESPER STEENSGAARD, an) CASE NO. GIC 872418
individual,)
)
Cross-Complainant,) **STATEMENT OF DECISION**
) **PUNITIVE DAMAGES**
)
v.)
)
RON COURTOIS, an individual;)
ICOUSTICS, LLC, a California)
limited liability company; and)
ROES 1 through 10, inclusive,)
)
Cross-Defendants.)

INTRODUCTION

This action came on regularly for trial of the Bifurcated issue of Punitive Damages on January 3, 2008 in Department 73 of the Superior Court, the Honorable Steven R. Denton, Judge presiding. Scott A. McMillan and Evan Kalooky appeared as attorneys for Cross-Complainant, JESPER STEENSGAARD. J. Daniel Holsenback appeared on behalf of Cross-Defendant, RON COURTOIS. The trial of the Bifurcated issue of Punitive Damages follows the Special Verdicts rendered by the jury on December 6, 2007 and the stipulation made that date by the parties to waive jury and permit the Court to

1 render its decision following an evidentiary hearing on punitive
2 damages.

3 On January 3, 2008, testimony was presented from RON COURTOIS,
4 John Blair, and JESPER STEENSGAARD. During the proceedings,
5 additional exhibits were introduced into evidence. After the
6 presentation of evidence and the arguments of counsel, the matter
7 was submitted to the Court which finds and rules as follows:

8 **THE JURY VERDICT**

9 The Special Verdict Form -- Breach of Fiduciary Duty returned
10 by the jury determined that Cross-Defendant RON COURTOIS breached
11 certain fiduciary duties owed to JESPER STEENSGAARD, which conduct
12 was a substantial factor in causing harm.

13 The finding of the jury was that the conduct of RON COURTOIS
14 resulted in no Non-Economic loss. The jury determined that there
15 were Past Economic Damages in the amount of \$20,000.00. The Court,
16 therefore, finds that the breach of fiduciary duty by RON COURTOIS
17 as determined by the jury arose solely from the manner in which he
18 conducted and managed the financial affairs of the "iCoustics, LLC"
19 entity of which the parties were joint participants. The breach of
20 fiduciary duty arose entirely from economic conduct by Cross-
21 Defendant RON COURTOIS. The jury determined by clear and convincing
22 evidence that RON COURTOIS acted with malice, oppression or fraud.

23 The jury returned special verdict forms: Special Verdict Form
24 -- Breach of Contract, Special Verdict Form -- Negligent
25 Misrepresentation, and Special Verdict Form -- Fraud, finding in
26 favor of Cross-Defendant RON COURTOIS on each of those causes of
27 action.

28 / / /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EVIDENTIARY FINDINGS

1. Cross-Defendant's breaches of fiduciary duty as demonstrated by the evidence involved self-dealing with funds and iCoustics' assets entrusted to him in his position as the marketing and administrative manager of iCoustics, LLC. According to his testimony, RON COURTOIS assumed responsibility for the financial aspects of the company.

2. The evidence demonstrated that RON COURTOIS controlled the financial accounts of iCoustics, LLC. He deposited contributions of capital into the business account, paid bills from the account and deposited receipts from sales into the account.

3. While managing the accounts of iCoustics, LLC, RON COURTOIS sold certain iCoustics' assets without the consent or knowledge of JESPER STEENSGAARD and used funds from iCoustics' account to pay for personal assets and expenses. He caused his wife to be added, over the express objection of JESPER STEENSGAARD, to the health insurance of iCoustics, LLC, and without prior consent added his wife as a member of iCoustics, LLC. The conduct of RON COURTOIS constituted self-dealing and a breach of his fiduciary duties to JESPER STEENSGAARD resulting in the jury's determination of damages as stated above.

4. The breaches of fiduciary duty by RON COURTOIS were comprised of a series of smaller transactions and manipulations, none of which was especially large in character.

5. The conduct of RON COURTOIS occurred over an extended period of time and reflected a number of individual decisions constituting self-dealing, and as warranted, the finding of the jury

///

1 that he breached his fiduciary duties and did so with "oppression,
2 fraud or malice".

3 6. RON COURTOIS has not had regular employment since
4 approximately 2001 when he left Microsemi Company. He has not had
5 significant income from any of his business ventures since that
6 time.

7 7. RON COURTOIS has been searching unsuccessfully for gainful
8 employment.

9 8. RON COURTOIS' spouse, Kathy, works on a part-time basis
10 for a construction company and made \$5,001.89 in 2007.

11 9. RON COURTOIS' personal tax returns prepared by Craig Betz,
12 CPA, indicate a "Net Operating Loss" of \$11,634.00 in 2005 and
13 \$30,752.00 in 2006.

14 10. RON COURTOIS has had for the last five years a net
15 negative annual income and has paid living expenses for his wife,
16 two children and himself using funds from Social Security (from the
17 death of his prior wife), Annuity Proceeds (children's funds from a
18 Wrongful Death lawsuit arising from their mother's death), and by
19 borrowing against the rising equity in the family home as necessary.

20 11. RON COURTOIS prepared Exhibit 6 which is a Net Worth
21 Report, Category Summary Report, and Reconciliation Report for the
22 period ending December 23, 2007.

23 12. The assets included in the Net Worth Report include an
24 AG Edwards Roth IRA in the amount of \$99,474.72 and Kathy Courtois'
25 IRA from her former employer which was substantially earned prior to
26 her present marriage.

27 13. RON COURTOIS has insubstantial liquid assets in bank
28 accounts amounting to less than \$6,000.00.

1 14. The COURTOIS family has two vehicles with a total value of
2 \$22,000.00 and loan obligations against one of them in the amount of
3 approximately \$16,198.00. The Exhibit 6 Net Worth Report failed to
4 accurately reflect the net value of the vehicles.

5 15. The single substantial asset owned by RON COURTOIS and his
6 wife is the family residence which is located at 1104 Stratford
7 Drive, Encinitas, California, 92024. This residence has been in the
8 process of being remodeled for a number of years. The current
9 Washington Mutual residential loan balance as against the property
10 is \$993,750.00. Based on the evidence from RON COURTOIS and from
11 appraiser John Blair, the current fair market value of the home is
12 \$1,250,000.00. This does not reflect what the net sale proceeds of
13 the home would be assuming a sale with standard sale costs.

14 16. Based on the totality of the evidence before the Court,
15 RON COURTOIS has a Net Worth of \$390,000.00 without consideration of
16 the costs of sale or tax consequences of liquidation of the
17 residence or other financial accounts.

18 THE LAW OF PUNITIVE DAMAGES

19 Punitive damages advance important state interests of
20 deterrence and retribution. (*State Farm Mut. Automobile Ins. Co. v.*
21 *Campbell* (2003) 538 U.S. 408, 416 [155 L.Ed.2d 585, 123 S.Ct. 1513]
22 (*State Farm*).) The due process clause, however, "prohibits the
23 imposition of grossly excessive or arbitrary punishments on a
24 tortfeasor. . . . '[E]lementary notions of fairness enshrined in
25 our constitutional jurisprudence dictate that a person receive fair
26 notice not only of the conduct that will subject him to punishment,
27 but also of the severity of the penalty that a State may impose."
28 (*Id.* at pp. 416-417.) Thus, "[t]o the extent an award is grossly

1 excessive, it furthers no legitimate purpose and constitutes an
2 arbitrary deprivation of property." (*Id.* at p. 417.)

3 To determine the constitutional limits of a punitive damages
4 award in any given case, a court examines three "guideposts"
5 articulated by the United States Supreme Court: "(1) the degree of
6 reprehensibility of the defendant's misconduct; (2) the disparity
7 between the actual or potential harm suffered by the plaintiff and
8 the punitive damages award; and (3) the difference between the
9 punitive damages awarded by the jury and the civil penalties
10 authorized or imposed in comparable cases." (*State Farm, supra*, 538
11 U.S. at p. 418, citing *BMW of North American, Inc. v. Gore* (1996)
12 517 U.S. 559, 575 [134 L.Ed.2d 809, 116 S.Ct. 1589]; *Gober v. Ralphs*
13 *Grocery Co.* (2006) 137 Cal.App.4th 204, 215 [40 Cal.Rptr.3d 92]
14 (*Gober*.) *Grassilli v. Barr*, 142 Cal.App.4th 1260, 1287
15 (Cal.Ct.App. 2006).

16 The United States Supreme Court has cautioned that the totality
17 of the circumstances must be considered in determining the level of
18 reprehensibility and has observed that a defendant's conduct -- even
19 where repetitive acts are involved -- may be less culpable for
20 purposes of punitive damages if the conduct caused no physical harm
21 and did not otherwise detrimentally affect the plaintiff's health or
22 safety. (*Ibid.*) That is the case here. *Grassilli v. Barr*, 142
23 Cal.App.4th 1260, 1288 (Cal.Ct.App. 2006).

24 The second relevant constitutional factor in evaluating whether
25 a punitive award is consistent with constitutional limits is the
26 ratio between the compensatory and punitive damages. (*State Farm,*
27 *supra*, 538 U.S. at p. 425.) "Although this ratio is not 'marked by
28 a simple mathematical formula' (*State Farm, supra*, 538 U.S. at

1 p. 424, citing *TXO Production Corp. v. Alliance Resources Corp.*
2 (1993) 509 U.S. 443, 458 [125 L.Ed.2d 366, 113 S.Ct. 2711]), the
3 United States Supreme Court has decreed that 'few awards exceeding a
4 single-digit ratio between punitive and compensatory damages, to a
5 significant degree, will satisfy due process' and has cautioned that
6 a 4 to 1 ratio 'might be close to the line of constitutional
7 impropriety.' (*State Farm, supra*, 538 U.S. at p. 425.)" (*Gober,*
8 *supra*, 137 Cal.App.4th at p. 222 *supra*, 137 Cal.App.4th at p. 222.)
9 "Nonetheless, extraordinary factors, such as extreme
10 reprehensibility or unusually small, hard-to-detect or hard-to-
11 measure compensatory damages, may justify punitive damages in excess
12 of a single-digit ratio." (*Ibid.*, citing *State Farm, supra*, 538
13 U.S. at p. 425; *Simon, supra*, 35 Cal.4th at p. 1182.) On the other
14 hand, "[w]hen compensatory damages are substantial, then a lesser
15 ratio, perhaps only equal to compensatory damages, can reach the
16 outermost limit of the due process guarantee. The precise award in
17 any case, of course, must be based upon the facts and circumstances
18 of the defendant's conduct and the harm to the plaintiff." (*State*
19 *Farm, supra*, 538 U.S. at p. 425.) *Grassilli v. Barr*, 142
20 Cal.App.4th 1260, 1289 (Cal.Ct.App. 2006).

21 In determining any award for punitive damages, the Court is
22 obligated to consider whether the award is within the defendant's
23 ability to pay. (*Patterson v. Balsamico* (2d Cir. 2006) 440 F.3d
24 104, 121-122 (*Patterson*); *Vasbinder v. Scott* (2d Cir. 1992) 976 F.2d
25 118, 121 (*Vasbinder*); *DiSorbo v. Hoy, supra*, 343 F.3d at p. 189,
26 fn. 9; see also *Newport v. Fact Concerts, Inc.* (1981) 453 U.S. 247,
27 269-270 [69 L.Ed.2d 616, 101 S.Ct. 2748].) *Grassilli v. Barr*, 142
28 Cal.App.4th 1260, 1291 (Cal.Ct.App. 2006).

1 **PUNITIVE DAMAGES DETERMINATION**

2 The Court's determination of the amount of punitive damages to
3 be awarded as against RON COURTOIS in this matter is considered in
4 the context of the relationship between the parties and the business
5 venture that was the subject matter of their dealings. "iCoustics,
6 LLC" was created by RON COURTOIS and JESPER STEENSGAARD as a
7 business venture to create and profit from intellectual property
8 that would be created by STEENSGAARD and managed and marketed by
9 COURTOIS.

10 The parties could never actually agree on an operating
11 agreement for the enterprise. They nonetheless attempted to
12 function as a business without much success. Both parties
13 contributed modest sums to establish the business and operated
14 without formal offices or employees. Their only commercial customer
15 yielded very little revenue. Their only other real business
16 prospect declined to engage in any contract with "iCoustics, LLC"
17 and withdrew from further negotiations. During the existence of
18 "iCoustics, LLC", no patents or patent applications were generated
19 for the three projects being worked on by STEENSGAARD.

20 When after about a year of operation without any substantial
21 business prospects, the parties came into increasing conflict about
22 the absence of a marketable product or prototype from STEENSGAARD
23 and lack of organizational efforts and successful conclusion of an
24 operating agreement on the part of COURTOIS.

25 The breach of fiduciary duty conduct of RON COURTOIS was
26 comprised of a series of smaller transactions which benefited him
27 personally at the expense of JESPER STEENSGARD and "iCoustics, LLC".
28 The conduct of RON COURTOIS in all of the involved transactions was

1 the result of separate decisions on his part to personally benefit
2 at the expense of JESPER STEENSGAARD, however, the degree of
3 reprehensibility of his conduct was relatively modest. The jury
4 rejected JESPER STEENSGAARD's assertion of liability for fraud and
5 negligent misrepresentation. Therefore, the Court has not
6 considered those assertions of bad conduct which are outside the
7 breach of fiduciary duty claims as against RON COURTOIS in the
8 assessment of punitive damages.

9 The actual damage, injury or harm to JESPER STEENSGAARD as
10 determined by the jury was entirely financial in nature. The
11 various financial improprieties were for the most part discovered
12 during the litigation and were not previously even known to
13 STEENSGAARD.

14 The discovery conducted prior to trial was very extensive.
15 STEENSGAARD's presentation of evidence concerning COURTOIS'
16 financial conduct was exhaustive and complete. The jury addressed
17 evidence of all of the financial dealings engaged in by "iCoustics,
18 LLC" and RON COURTOIS. The compensatory award rendered by the jury
19 was in the amount of \$20,000.00. The verdict represents a complete
20 determination of the economic damages due to the breach of fiduciary
21 duty by COURTOIS.

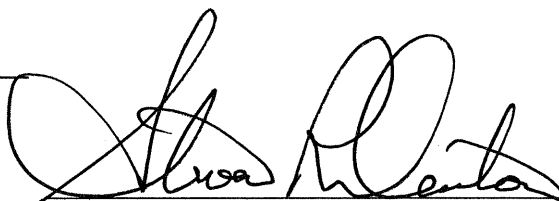
22 RON COURTOIS maintains that his conduct was unintentional and
23 the result of mere inadvertence and bad judgment in the manner he
24 accounted for the accounting of the business. The Court finds that
25 this testimony lacks credibility. The absence of recognition of and
26 contrition for his wrongful behavior indicates the need for some
27 degree of punitive damages commensurate with that conduct.

28 / / /

1 In determining the amount of punitive damages which is
2 warranted in this matter, the Court finds that the evidence
3 demonstrates a relatively low degree of reprehensibility. The Court
4 has also considered the relative absence of liquid assets available
5 to RON COURTOIS. The Court has also considered the net worth and
6 negative current cash income flow of RON COURTOIS. It is the
7 Court's determination that having considered all of the evidence and
8 legal factors relevant to the issue, that an adequate "deterrent" to
9 similar future conduct is achieved by an award of punitive damages
10 in the amount of \$10,000.00.

11
12 DATED:

1/8/08



13
14
15 STEVEN R. DENTON
16 Judge of the Superior Court
17
18
19
20
21
22
23
24
25
26
27
28