STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: November 8, 2013)

ROBERT LEWIS HANKS	:	
	:	
V.	:	**C.A. No. KC 08-0329**
	:	
RANDOLPH GRANT TITSWORTH, Alias John Doe	:	

DECISION

K. RODGERS, J. The parties are before this Court on Plaintiff's Complaint for unlawful conversion, breach of contract and punitive damages. The genesis of Plaintiff Robert Lewis Hanks' (Plaintiff) Complaint arises from the 1989 dissolution of a Rhode Island corporation Insul-Reps, Inc. (Insul-Reps), of which Plaintiff and Defendant Randolph Grant Titsworth (Defendant), were equal shareholders. The parties waived their respective rights to a jury trial and the matter was tried before the Court.

Jurisdiction is pursuant to G.L. 1956 § 8-2-14. For the reasons set forth herein, Plaintiff is entitled to judgment in his favor.

I

Findings of Fact

Having reviewed the evidence presented by both parties, the Court makes the following findings of fact.

Insul-Reps was formed in 1986 by the parties for the purpose of selling insulation and building products. Plaintiff and Defendant each owned 50% of the shares of common stock in the company. While Insul-Reps was actively in business, Insul-Reps

sold products to a New Hampshire business known as Savon Insulation, which was owned and controlled by Roland and Celeste Martin (the Martins) of Londonderry, New Hampshire. As of June 1989, the Martins owed $20,761.52 to Insul-Reps for products sold and delivered. To secure this debt, Insul-Reps was granted a mortgage on June 26, 1989, on certain Londonderry property owned by the Martins, in the amount of $20,761.52. The Martins also executed a non-assumable mortgage note in favor of Insul-Reps in the same amount and on the same day.

Payments under the Martins' note were scheduled to commence on September 1, 1989 and continue through August 1, 1993, at the rate of $550 per month, which included 12% interest per annum. No payments were made during that time.

Within a month of the first missed payment, Plaintiff and Defendant agreed to wind down and dissolve Insul-Reps. The parties entered into a letter agreement to that effect, which was prepared by counsel and executed by the parties on September 29, 1989. Joint Ex. 1. That agreement provided in pertinent part:

> "1. As of October 1, 1989, [the company] will cease to do business, except for the collection of receivables and payment of payables . . .
> 2. [Titsworth] and [Hanks] as officers of [the company] will use their best efforts to collect for [the company] its receivables and pay its payables outstanding October 1, 1989, in each case as soon as feasible. No action will be taken by either detrimental to the interests of [the company] and no settlement of any of such receivables at less than the amount owed October 1, 1989 will be made by either of them in each case without the written consent of the other . . ." Id.

Thereafter, Plaintiff and Defendant were each tasked with handling the collection on accounts for which he had primary responsibility while the business was a going concern. Plaintiff was tasked with collecting on the Savon Insulation account, and, thus, the Martins' outstanding note to Insul-Reps. It is undisputed that Plaintiff did very little

to collect on the outstanding note when it became due. At most, he reminded the Martins that the mortgage was in place, that the note was accruing interest, and that it was in their best interest to pay off the note. Plaintiff also inquired of other vendors doing business with Savon Insulation or the Martins, to get a sense of whether the Martins had the financial wherewithal to satisfy the debt. At all times relevant hereto, Plaintiff remained satisfied that he and/or Insul-Reps did not need to do anything more to secure the Martins' debt.

As the wind down continued, the parties entered into a second letter agreement dated May 10, 1991, and executed by the parties on May 14, 1991. Joint Ex. 5. That second letter agreement provided in pertinent part:

> "1. [The company] will hereafter have no corporate activity other than the collection of accounts receivable, which have been or will be reduced to promissory notes and/or turned over to collection attorneys. All accounts receivable will be turned over to respective collection attorneys who have been previously used by [the company] by June 30, 1991. These collection attorneys will be asked to take responsibility for all collection efforts and to turn over to [the company] the net proceeds. [Hanks] and [Titsworth] will assist these attorneys when and if requested . . .
> 2. The net proceeds of the collection of accounts receivable will be added to the funds now on hand and applied (i) to the payment of expenses for the preparation of tax and other returns, dissolution and liquidation and (ii) the balance distributed equally to [Titsworth] and [Hanks] from time to time as [Hanks] and [Titsworth] shall agree after [a prior obligation to be paid to Hanks]." Id.

The parties also agreed in the 1991 agreement that, "[i]n the event of a discrepancy between this letter and the 1989 letter [agreement], this letter will control." Id.

By letter dated February 9, 1996, Defendant communicated to Plaintiff his dissatisfaction with the collection efforts on the Savon Insulation/Martins account.

Thereafter, New Hampshire attorney George LaRocque (LaRocque) was hired in 1996 to investigate the creditworthiness of the Martins and the likelihood of success in collecting the amount due under the 1989 note. The results of LaRocque's investigation were summarized in a letter from LaRocque to Defendant dated October 30, 1996. Def.'s Ex. G. LaRocque reported that the Martins appeared to have considerable financial difficulties based upon his review of Londonderry Tax Assessor records which revealed three mortgages totaling over $200,000, and $9000 in federal tax liens on the property that secured Savon Insulation's debt to Insul-Reps, as well as an attachment and execution of judgment in the amount of $28,000 by a local bank. Id. LaRocque concluded that filing a collection action against the Martins may result in the Martins filing bankruptcy and, in any event, would not guarantee a collectible judgment. Id.

Several years later, "out of the blue," according to Defendant, he received a telephone call from an attorney representing the Martins. That telephone call was followed up by a letter dated January 22, 2002 from the Martins' attorney offering to pay $10,000 as full and final payment of all amounts the Martins owed to Insul-Reps. Joint Ex. 7. The letter was addressed to Insul-Reps, at its former place of business on Wickenden Street in Providence and where Defendant had continued his own business, Insul-Mart, upon the dissolution of Insul-Reps.[1] Defendant never advised Plaintiff of this offer to settle the Martins' debt. Rather, he accepted the settlement offer from the Martins without any attempt to negotiate a better settlement and requested that the total

[1] Plaintiff refrained from going to that office sometime after the first letter agreement to wind down the business was executed in September 1989.

payment of $9990.00[2] be split into two checks payable to Defendant personally. See Pl.'s Exs. 1-3. Upon receipt of the certified checks totaling $9990.00, Defendant executed a discharge and release of the third mortgage that Insul-Reps had on the Martins' property. Joint Ex. 9. Defendant never informed Plaintiff of the discharge of the mortgage and was unable to recall ever reporting these two sums totaling $9990 on any corporate or personal income tax return or advising Insul-Reps' accountant about it.

Plaintiff learned of the discharge in 2006 or 2007 when he checked on the status of the mortgage on the Martins' Londonderry property. He immediately undertook to recover the amount he believed to be due to him from Defendant, which culminated in this lawsuit.

II

Presentation of Witnesses

The only witnesses before the Court were Plaintiff and Defendant. The animosity between the parties was evident. Plaintiff appeared angry at his former business associate so many years after they parted ways, stating on cross-examination that he distrusted Defendant and questioned Defendant's character back in 1986 but, nonetheless, elected to enter into this business opportunity with him. Notwithstanding his obvious distaste for Defendant, Plaintiff otherwise presented credible and forthright testimony.

Defendant, on the other hand, had difficulty answering questions directly on both direct and cross-examination, was distractingly fidgety, and continually evaded eye contact and looked down while answering. His demeanor alone gave this Court pause in

[2] The $10 difference from the $10,000 offer set forth in the January 22, 2002 letter was the result of Defendant's own offer to bear the expense of having the settlement checks certified by a financial institution.

accepting his testimony. The substance of his testimony gave this Court further concern in assessing Defendant's credibility, including, most importantly, the testimony central to Defendant's affirmative defense that the parties had orally modified the terms of their agreement relating to collection on the Savon Insulation/Martins account. Specifically, Defendant maintains that sometime in 1997, Plaintiff and Defendant met at an outdoor table at a pizza restaurant on Wickenden Street to discuss accounts receivable, that Defendant was following up on his February 9, 1996 letter to Plaintiff, and that Defendant suggested that Plaintiff should press the Martins harder in order to collect on the outstanding debt. According to Defendant, a heated exchange took place, Plaintiff threw the manila file folder with the Savon Insulation/Martins account information on the table towards Defendant, and Plaintiff stated something to the effect of, "If you think you can collect it better, fine. If you collect it, you can keep it." There were no witnesses to this conversation, there was no subsequent written communication confirming this shift in responsibility and agreement that Defendant would be entitled to all that he collected, and Plaintiff emphatically denied that this meeting ever took place.

The Court rejects Defendant's rendition of this encounter for the following reasons. First, the parties had, up to that time, been diligent both in placing their agreements in writing, as evidenced by the two letter agreements crafted by counsel, see Joint Exs. 1, 5, and in suggesting, in writing, means of collecting the debt and the likelihood of success thereon. See Joint Ex. 6, Def.'s Ex. G. Second, it is illogical for Plaintiff to have continued to review the status of the Martins' mortgage, albeit in the sporadic manner in which he did, subsequent to the alleged 1997 meeting if Plaintiff had indeed relinquished his interest in the debt at that meeting.

Additionally, Defendant's explanation of why he requested the Martins to issue two separate certified checks is wholly unbelievable, is more consistent with his attempt to conceal the payments from Plaintiff and Insul-Reps' accountants, and is further reason for this Court to find Defendant to be less than credible and, therefore, to outright disregard Defendant's version of the encounter with Plaintiff in 1997. With respect to the certified checks, Defendant justified his actions as follows: after 2001, presumably under the Patriot Act, transactions in excess of $10,000 were "reportable"; by using two smaller checks, it would not draw any attention from the bank; Insul-Reps no longer maintained a bank account; and he considered having the two checks issued in the names of his then five year old and then seven year old sons, but the Martins' attorney refused to put the checks into anyone else's name. Defendant then admitted he could not recall ever reporting these two sums totaling $9990 on any corporate or personal income tax return or advising Insul-Reps' accountant about it. He denied that he "concealed" the payment from Plaintiff, but rather he just did not tell Plaintiff about it because "there was no reason to tell him." Again, this line of testimony leads the Court to seriously question Defendant's veracity.

Finally, the Court finds Defendant's testimony to be lacking in credibility based upon his stated rationale for obtaining the mortgage and note from the Martins in the first instance. Although Plaintiff was primarily responsible for the Savon Insulation/Martins account, Defendant repeatedly testified that Insul-Reps sought a mortgage and note from the Martins specifically because the Martins had recently provided Insul-Reps with a check that was returned for insufficient funds and because there were tax liens on the Martins' property. While the former was true, as evidenced by Def.'s Ex. A (May 13,

1987 notice), all the documentary evidence reveals that tax liens were placed on the property beginning in October 1989, several months after the Martins executed the mortgage and note in Insul-Reps' favor. See Def.'s Exs. B-F (notices from October 5, 1989 to November 3, 1992). Defendant's specific and repeated testimony in this regard is wholly contradicted by his own exhibits before the Court.

In summary, this Court finds Defendant wholly lacking in credibility. Accordingly, this Court rejects his assertion that he was entitled to keep everything that he collected from the Martins for himself as a result of the exchange and encounter between the parties at the 1997 meeting on Wickenden Street.

III

Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure provides that, "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon." Super. R. Civ. P. 52(a). In a non-jury trial, "'the trial justice sits as a trier of fact as well as law.'" Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006) (quoting Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984)). "'Consequently, he [or she] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.'" Id. (quoting Hood, 478 A.2d at 184). It is well established that "assigning credibility to witnesses presented at trial is the function of the trial justice, who has the advantage of seeing and hearing the witnesses testify in court." McBurney v. Roszkowski, 875 A.2d 428, 436 (R.I. 2005) (citations omitted). The trial justice may also "'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as

other factual determinations.'" DeSimone Electric, Inc. v. CMG, Inc., 901 A.2d 613, 621 (R.I. 2006) (quoting Walton v. Baird, 433 A.2d 963, 964 (R.I. 1981)).

Furthermore, "[w]hen rendering a decision in a non-jury trial, a trial justice 'need not engage in extensive analysis and discussion of all the evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" Parella, 899 A.2d at 139 (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998) (citation omitted)). The trial justice need not '"categorically accept or reject each piece of evidence in his [or her] decision for [the Supreme] Court to uphold it because implicit in the trial justices [sic] decision are sufficient findings of fact to support his [or her] rulings."' Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008) (quoting Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 102 (R.I. 2006)).

IV

Analysis

A

Breach of Contract

Paragraph 12 of Plaintiff's Complaint alleges a claim for breach of contract. "The long-recognized essential elements of a contract are 'competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.'" R.I. Five v. Med. Assocs. of Bristol Cnty., Inc., 668 A.2d 1250, 1253 (R.I. 1996) (quoting Black's Law Dictionary 322 (6th ed. 1990); citing Lamoureux v. Burrillville Racing Ass'n, 91 R.I. 94, 98, 161 A.2d 213, 215 (1960)).

Rhode Island law also has long recognized that the parties can modify the terms of a written contract by way of a subsequent oral agreement. See, e.g., GBM

Acquisitions, Inc. v. Adams, 823 A.2d 1121, 1124 (R.I, 2003); Fondedile, S.A. v. C.E. Maguire, 610 A.2d 87, 92 (R.I. 1992); Menard & Co. Masonry Building Contractors v. Marshall Building Systems, Inc., 539 A.2d 523, 526-27 (R.I. 1987). However, the burden of proving the existence of the modification rests with the party alleging the new contract. Fondedile, 610 A.2d at 92 (citing In re Ewing, 39 Bankr. 59 (D.R.I. 1984)). It is the party alleging the modification who must show that the parties demonstrated both subjective and objective intent to be bound by the new contract's terms. Id. (citing Smith v. Boyd, 553 A.2d 131, 133 (R.I. 1989)).

Defendant contends that the parties orally modified the written letter agreements when Plaintiff threw the Savon Insulation/Martins manila folder at Defendant at the 1997 meeting and stated to the effect that whatever Defendant collects is Defendant's to keep. This Court finds that Defendant has failed to sustain his proof that the parties entered into a valid and enforceable oral modification of the terms of their written agreements. As Defendant's testimony is wholly lacking in credibility, the Court cannot find that the 1997 meeting and encounter between the parties at a pizza restaurant on Wickenden Street ever took place in the manner in which Defendant described. Accordingly, the Court finds that there was no oral modification of the letter agreements dated September 29, 1989 and May 10, 1991.

While the original dissolution letter agreement required each of the parties "to use their best efforts to collect for [the company]" and required written consent of the other if the settlement of any receivable was less than the amount owed as of October 1, 1989, see Joint Ex. 1, ¶ 2, the subsequent letter agreement of May 10, 1991 changed those responsibilities. Specifically, all accounts receivable were to be turned over to collection

attorneys who would "take responsibility for all collection efforts and [] turn over to [the company] the net proceeds." Joint Ex. 5, ¶ 1 (emphasis added).[3] Thus, the parties agreed as of May 1991, that they each were no longer responsible for collecting on their respective accounts using their best efforts, but would only be required to "assist [the collection] attorneys when and if requested." Id.

By accepting the moneys from the Martins, discharging the mortgage, and keeping the funds to himself, Defendant breached the May 10, 1991 letter agreement in which the parties agreed that collection attorneys would be responsible for all collection efforts and turn over the net proceeds to the company. Accordingly, this Court finds that Defendant is liable to Plaintiff for breach of contract.

B

Damages

Plaintiff contends that he is entitled to an award of damages based upon the total debt owed by the Martins to Insul-Reps, namely, one-half of the principal amount of the note of $20,761.52, plus one-half of the additional $56,846.55 in interest thereon pursuant to the terms of the note. Defendant maintains that Plaintiff's recovery must be capped at $4995, half of the amount Defendant actually did recover from the Martins.

[3] In light of this change in responsibilities, Defendant's contention that Plaintiff materially breached the September 29, 1989 contract by failing to use his own best efforts over the years to collect the Martins' debt is unavailing. As of May 10, 1991, the collection attorneys were responsible for all collection efforts, with the parties obligated only to "assist these attorneys when and if requested." Joint Ex. 5, ¶ 1. Moreover, the May 10, 1991 agreement specifically provides that, "[i]n the event of a discrepancy between this letter and the 1989 Letter, this letter will control." Id. Thus, this Court is satisfied that Plaintiff no longer had an obligation to use his best efforts to collect the Martins' debt as of May 10, 1991, but that the parties were bound to the terms of the May 10, 1991 letter agreement.

In awarding damages for breach of contract, Plaintiff is entitled to recover the value of the bargain that was originally contemplated by the parties when they entered into the contract. The underlying rationale on a breach of contract action is to place the innocent party in the position he or she would have been in if the contract had been fully performed. National Chain Co. v. Campbell, 487 A.2d 132, 135 (R.I. 1985) (citing George v. George F. Berkander, Inc., 92 R.I. 426, 430, 169 A.2d 370, 372 (1961)). Where damages are uncertain, conjectural or speculative, such damages cannot be recovered, and it is Plaintiff's burden to prove damages with reasonable certainty. National Chain, 487 A.2d at 135.

Here, the Court has found that Defendant breached the May 10, 1991 letter agreement by settling the Savon Insulation/Martins account receivable rather than allowing the collection attorneys to collect on the account and by failing to remit the net proceeds to the company to be distributed evenly between the parties in accordance with the May 10, 1991 letter agreement. There was no evidence presented, however, that had the May 10, 1991 contract been fully performed, any collection attorney would have realized a higher net result than Defendant did by settling the debt for $9990. There is no evidence whatsoever that Plaintiff would have realized exactly one-half of the outstanding amount due from the Martins had Defendant not breached the contract and had the contract been fully performed. Indeed, the evidence leans toward a contrary finding—that the Martins were faced with such serious financial difficulties for many years that satisfaction of their debt to Insul-Reps in an amount higher than $9990 was not likely. Accordingly, the damages that Plaintiff seeks are wholly speculative and without support in the record.

Had Defendant not breached the contract and allowed a collection attorney to collect the amount that Defendant did, then Plaintiff would be entitled to one-half the amount received from the Martins, or $4995. Plaintiff is entitled to compensatory damages in the amount of $4995 for the breach of the May 10, 1991 letter agreement.

C

Conversion

Paragraph 11 of Plaintiff's Complaint asserts that Defendant's actions are tantamount to an unlawful conversion. Although neither of the parties addressed the elements of conversion in their respective post-trial memoranda, it is well settled under Rhode Island law that the tort of conversion involves the intentional exercise of dominion or control over another's property such that the owner is deprived of the property by the unauthorized act and/or conduct of the other. See DeChristofaro v. Machala, 685 A.2d 258, 262 (R.I. 1996); Fuscellaro v. Industrial Nat'l Corp., 117 R.I. 558, 560, 368 A.2d 1227, 1230 (1977); Terrien v. Joseph, 73 R.I. 112, 115, 53 A.2d 923, 925 (1947). The focus of the inquiry is "whether [a] defendant has appropriated to his own use the chattel of another without the latter's permission and without legal right." Terrien, 73 R.I. at 115, 53 A.2d at 925. "[W]hether money can be the subject matter of an action for conversion generally depends on whether the defendant is under an obligation to deliver specific money to the plaintiff." DeChristofaro, 685 A.2d at 263 (citing Larson v. Dawson, 24 R.I. 317, 318, 53 A. 93, 94 (1902)).

The Court finds that Defendant had appropriated Plaintiff's share of the proceeds of the settlement of the Martins' debt to his own use, without Plaintiff's permission, and without legal right. Defendant concealed his settlement of the account and discharge of

the mortgage from Plaintiff in violation of the agreement which required collection attorneys to engage in all collection efforts. Further, the May 10, 1991 letter agreement provided that the net proceeds of the collection of accounts receivable would be added to the funds then on hand, with expenses to be paid and the balance to be distributed equally between the parties, subject to a certain additional amount to be paid to Plaintiff. Joint Ex. 5, ¶ 2. Defendant was then obligated to deliver the net proceeds to Insul-Reps to be distributed equally between the parties, and was without legal right to maintain Plaintiff's one-half share in the $9990 settlement with the Martins.[4] By retaining all the proceeds, Defendant appropriated Plaintiff's half of the funds for his own use.

For these reasons, this Court finds Defendant liable to Plaintiff for conversion of the sum of $4995.

D

Affirmative Defense of Waiver

Defendant contends that Plaintiff waived any right to recover any sums collected from the Martins when he failed to pursue the debt over a period of many years and when he made statements to Defendant at the alleged 1997 meeting that Defendant can keep for himself anything that he collects from the Martins. Waiver is defined as the "voluntary intentional relinquishment of a known right," and can result from action or inaction. D'Ellena v. Town of East Greenwich, 21 A.3d 389, 393 (R.I. 2011). Waiver may be "proved indirectly by facts and circumstances from which intention to waive may be

[4] There was no evidence presented which suggested that Plaintiff was entitled to more than a 50% share in the $9990 settlement amount based upon the additional sum Plaintiff may have been owed as discussed in the May 10, 1991 letter agreement. See Joint Ex. 5, ¶ 2.

clearly inferred." Sturbridge Home Builders, Inc. v. Downing Seaport, Inc., 890 A.2d 58, 65 (R.I. 2005).

Defendant has failed to establish that Plaintiff has waived his right to the proceeds from the Martins' debt collection. Again, this Court rejects Defendant's contention that a meeting and encounter between the parties took place in 1997 in the manner Defendant described. Moreover, both Plaintiff and Defendant agreed as of May 10, 1991 that all collection efforts would be transferred to collection attorneys, with the parties obligated only to "assist these attorneys when and if requested." Joint Ex. 5, ¶ 1. There was no evidence presented that Plaintiff had, at any time, been requested by a collection attorney to assist in collecting the Martins' debt and refused to do so. To argue that Plaintiff's actions over the course of many years constitute a waiver ignores the contractual responsibilities to which the parties agreed in May 1991, namely, that the collection attorneys would be responsible for "all collection efforts." Id. Accordingly, the Court finds that Defendant has failed to sustain his burden in asserting the affirmative defense of waiver.

E

Punitive Damages

It is well settled in Rhode Island that a party seeking punitive damages has a heavy burden of producing "evidence of such willfulness, recklessness or wickedness, on the part of the party at fault, as amounts to criminality, which for the good of society and warning to the individual, ought to be punished." Johnson v. Johnson, 654 A.2d 1212, 1217 (R.I. 1995); see also Zarrella v. Minnesota Mutual Life Ins. Co., 824 A.2d 1249, 1262 (R.I. 2003); Palmisano v. Toth, 624 A.2d 314, 317-18 (R.I. 1993).

As discussed at length in Section II, supra, Defendant was not credible and was anything but forthright in answering questions on both direct and cross-examination. Further, Defendant could not recall reporting the Martins' settlement proceeds on any corporate or personal income tax returns, and he admittedly was trying to avoid attention by any banks by separating the proceeds into two checks. The Court finds that Defendant's actions were willful and deliberate in accepting and concealing the settlement proceeds to the detriment of Plaintiff, which for the good of society and warning to Defendant ought to be punished. Certainly, society and the courts would benefit if business associates did not deliberately conceal their actions, conduct and money from other business associates.[5] Accordingly, there are adequate facts presented to support an award of punitive damages.

Once a trial judge has determined that there are adequate facts to support an award of punitive damages, the question of whether and to what extent the party is entitled to punitive damages is in the discretion of the trier of fact. Palmisano, 624 A.2d at 318 (emphasis added). Punitive damages are intended to provide compensation over and above an award of compensatory damages. Id. "[T]he financial ability of a defendant is always a matter of vital consideration in estimating the amount of punitive damages that should be awarded." Id. (citations omitted). Evidence regarding a defendant's financial condition allows the trier of fact to consider "a point of reference in assessing an amount of punitive damages that would adequately serve as a punishment." Id. at 319 (citing Vollert v. Summa Corp., 389 F. Supp. 1348, 1351-52 (D.Haw. 1975)).

[5] Indeed, such actions usually result in a claim of breach of fiduciary duty, which Plaintiff failed to raise in the pleadings or at trial. Accordingly, Plaintiff's belated argument in his Post-Trial Memorandum that Defendant breached his fiduciary duty to Plaintiff is untimely and is not considered in any way in this Court's Decision herein.

Here, the record is wholly bereft of any evidence of Defendant's financial condition. There was no evidence presented which would provide any insight into Defendant's present ability to pay a punitive damage award that would serve as a punishment and/or deterrence. It remains Plaintiff's burden to demonstrate the economic basis for a punitive damages award, which Plaintiff has failed to sustain. Accordingly, the Court declines to award any punitive damages.

V

Conclusion

For all foregoing reasons, this Court finds that Plaintiff is entitled to judgment in his favor on the breach of contract and conversion causes of action, and Plaintiff is awarded compensatory damages in the total amount of $4995. This Court declines to award Plaintiff punitive damages.

Counsel shall confer to prepare and submit a judgment consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Hanks v. Titsworth**
CASE NO:	**KC 08-0329**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**November 8, 2013**
JUSTICE/MAGISTRATE:	**K. Rodgers, J.**
ATTORNEYS:	
For Plaintiff:	**Mitchell S. Riffkin, Esq.**
For Defendant:	**Mark W. Freel, Esq.**