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2001 Survey of Rhode Island Law: Cases: Damages

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Damages. *McFarland v. Brier*, 769 A.2d 605 (R.I. 2001). When analyzing a case under the Uniform Trade Secrets Act the specific intent of the legislature concerning the imposition of punitive damages and award of attorney's fees overrides the ordinary common law standards. Further, a corporation can be held liable under the Trade Secrets Act when the conduct of its employees constitutes a piercing of the corporate veil.

FACTS AND TRAVEL

The plaintiff, Mr. McFarland, was the owner of Read & Lundy, Inc. (R&L), an industrial supply business.¹ McFarland hired the defendant, Mr. Bibeau as a sales representative.² In 1990 the two men agreed that McFarland would finance Bibeau's purchase of R&L.³ In 1995 Bibeau fell behind in his payments to McFarland and a new agreement was reached. This new agreement contained a reciprocal non-compete provision and reacquired a \$700,000 down payment to be made by August 31, 1995.⁴ When Bibeau failed to make the down payment, McFarland required the company.⁵

During Bibeau's time as president of R&L, Michael Brier and his accounting company, Brier and Company were hired to assist Bibeau in the financing and buyout of McFarland's interest in R&L.⁶ Brier and his firm had access to all of R&L's financial records, customer lists, billing histories and supplier information.⁷

Upon Bibeau's departure from R&L in 1995, he and Mr. Brier formed Consigned Systems, Inc. (CSI), as a direct competitor with R&L.⁸ Brier and Company was a major investor in this new enterprise. Brier and Bibeau used R&L's records to contact and attempt to steal R&L's clients and also made some efforts to disguise their blatant violation of the non-compete clause.⁹

McFarland prevailed in a series of lawsuits against Bibeau, Brier and CSI. The United States District Court for the District of

1. *McFarland v. Brier*, 769 A.2d 605, 607 (R.I. 2001).

2. *Id.*

3. *Id.*

4. *Id.* at 607-08.

5. *Id.* at 608.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

Rhode Island upheld the non-compete clause and found that Bibeau had violated the Trade Secrets Act.¹⁰ The Rhode Island Superior Court found that CSI had misappropriated trade secrets from R&L and that Brier was guilty of tortious interference with the contractual relationship between McFarland and Bibeau.¹¹

ANALYSIS AND HOLDINGS

McFarland raised four issues on appeal. First, that the trial judge erred in finding that R&L failed to mitigate its damages by not raising its prices after CSI was restrained from encroaching on R&L's customer base.¹² The court agreed with McFarland, finding that R&L did in fact mitigate their damages by lowering their prices since "[u]nder the circumstances . . . in an act of self preservation, plaintiffs mitigated their damages by reducing the markup in the first instance rather than increasing it."¹³

Second, it was argued that the trial court erred in its determination that Brier and Company, as a corporate defendant, was not liable for damages under the Uniform Trade Secrets Act.¹⁴ In agreeing with McFarland, the supreme court found that while normally a corporation cannot be held liable for damages under the Trade Secrets Act, when, as in this case, "there is such a unity of interest and ownership' that separate personalities of the individual and the corporation no longer exist in reality, 'adherence to the principle of their separate existence would, under the circumstances, result in injustice.'"¹⁵ Under the facts in this case, the court held that the conduct of Brier was so closely intertwined with the corporate defendant, Brier and Company, as to be acting as alter egos and thus was held jointly and severely liable.¹⁶

McFarland's third and fourth issues on appeal concerned the proper standard to be applied under the Uniform Trade Secrets Act for the imposition of punitive damages and attorney's fees.¹⁷

10. *Id.* at 608-09.

11. *Id.* at 609.

12. *Id.*

13. *Id.* at 610.

14. *Id.* at 609; *see* Uniform Trade Secrets Act, R.I. Gen. Laws §6-41-1 *et. seq.* (2001).

15. *Id.* at 613 (quoting *Muirhead v. Fairlawn Enter., Inc.*, 48 A.2d 414, 419 (R.I. 1946)).

16. *Id.* at 614.

17. *Id.* at 609.

McFarland argued that the court need only determine if a “willful and malicious” misappropriation of trade secrets occurred for punitive damages to be awarded rather than the customary common law standard of criminality that the superior court used.¹⁸ Again the supreme court agreed with McFarland. The supreme court acknowledged that normally punitive damages are restricted in Rhode Island, requiring evidence of criminality or conduct that should be punished.¹⁹ However, it is clear that when applying the Uniform Trade Secrets Act the legislature specifically established the lower standard of “willful and malicious misappropriation” when considering the imposition of punitive damages.²⁰ Finding willful and malicious misappropriation in this case, the court awarded McFarland the statutory maximum of twice the compensatory award as punitive damages.²¹ Lastly, the court found that the award of attorney’s fees was specifically provided for in Rhode Island General Laws section 6-41-4.²²

CONCLUSION

The Uniform Trade Secrets Act provides that a “willful and malicious” standard will be applied when determining if the action of the defendant justifies the imposition of punitive damages in trade secret misappropriation cases. In passing the uniform act, the legislature has specifically overruled the common law standard that requires a finding of “criminality” on the part of the defendant before awarding punitive damages. The statute applies the same standard when determining an award of attorney’s fees. Further, a corporation can be held liable under the Trade Secrets Act when the actions of its employees have acted in such a way as to pierce the corporate veil.

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18. *Id.*

19. *Id.* at 611.

20. *Id.* at 612 (quoting R.I. Gen. Laws §6-41-3 (2001)).

21. *Id.*

22. *Id.*