

IN THE COURT OF APPEALS OF IOWA

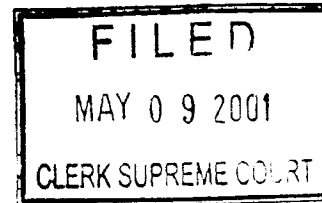
No. 0-384 / 99-0689

Filed May 9, 2001

EDUCATIONAL TECHNOLOGY, LTD.,
Plaintiff-Appellant,

vs.

DOUG MEINHARD, KRIS MEINHARD,
DON MILLAGE AND EDNET, INC.,
Defendants-Appellees.



KRIS MEINHARD, DOUG MEINHARD, and
DON MILLAGE,
Counterclaim Plaintiffs-Appellees,

vs.

EDUCATIONAL TECHNOLOGY, LTD.,
Counterclaim Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Timothy J. Finn,
Judge.

Plaintiff appeals from the district court entry of a directed verdict in
defendants' favor. **AFFIRMED IN PART, REVERSED IN PART, AND**
REMANDED WITH DIRECTIONS.

Jill Mataya-Corry and Lawrence F. Scalise of Sullivan & Ward, P.C.,
Des Moines, for appellant.

Ronald M. Sotak and James A. Brewer of Newbrough, Johnston, Brewer,
Maddux & Sotak, L.L.P., Ames, for appellees.

Heard by Vogel, P.J., and Miller and Hecht, JJ.

HECHT, J.

Plaintiff appeals the district court's pretrial ruling granting defendants' motions for leave to amend their answer and for directed verdict on some but not all of plaintiff's claims. Plaintiff also challenges one of the district court's jury instructions. We affirm in part, reverse in part, and remand for new trial.

I. Factual Background and Proceedings. Plaintiff Educational Technology, Ltd. ("EdTech") is an Iowa corporation engaged in the business of selling and servicing IBM computers. Allison Merrill was the sole shareholder of the company. Her father, Dr. William Merrill, a professor of economics at Iowa State University, was hired by the company to draft compensation agreements, recruit employees, prepare an employee handbook, consult, and otherwise assist in the start-up of the business. Dr. Merrill had previously performed similar services for Beacon Microcenter ("Beacon"), a computer store in which his wife, Mavis Merrill, held an ownership interest. In the early years of the company's existence, Beacon sold both IBM and Apple computers to Iowa educational institutions. However, in 1991, Apple informed Beacon of its preference that dealers sell only Apple products in the education market. This prompted the Merrills to organize EdTech to market IBM computers in the same market.

Kris Meinhard, who had been an employee of Beacon, was hired as EdTech's general manager and vice-president. Her initial compensation was set at \$2200 per month plus a commission of two percent on certain fees paid by IBM to EdTech. In her role as manager, Kris hired employees, managed accounts receivable and payable, compiled monthly financial information and

forwarded it to the company's accountant, scheduled installation, and directed the company's sales of computer hardware, software, and services. Don Millage and Kris's husband, Doug Meinhard, eventually joined the company as full-time employees. William Merrill directed Kris to require all full-time employees to sign an employment agreement containing a covenant not to compete. She did obtain covenants from some EdTech employees, but neither Kris nor Doug executed such an agreement.

EdTech and its employees formed several compensation agreements. In agreements formed for the period from August 1, 1993 through June 30, 1994, the company agreed to pay employees a base salary plus a commission of fifteen percent on certain fees paid to the company by IBM and on the gross margin from sales and support of computer products. The fifteen percent commissions were to be divided equally among all full-time employees directly involved in the sales and support of computer products. During the term of the August of 1993, agreements, three full-time employees worked for EdTech. Each one of the three full-time employees was to receive one-third of the total commissions paid by company. In 1995, the company added a fourth full-time employee, thereby diluting the commission share of each from one-third to one-fourth of the total. Kris prepared a monthly commission report detailing the amounts paid to each employee. She provided these reports to the company's accountant on a regular basis. In turn, the accountant prepared monthly financial statements which were reviewed by Dr. Merrill.

Kris and Doug Meinhard met with Allison and Dr. Merrill on at least three occasions in late 1996 and early 1997 to discuss the Meinhards' interest in buying EdTech. No agreement was reached, however, and in May of 1997, the Meinhards filed articles of incorporation for a company known as EdNet. The relationship between the Meinhards and the Merrills deteriorated in July of 1997. After Kris failed to honor Dr. Merrill's request Allison be added as an authorized signatory on EdTech's bank accounts, the Merrills went to the bank and discovered Kris had closed a money market account owned by EdTech. Further investigation disclosed Kris had distributed in excess of \$50,000 from the closed account as commissions to the company's full-time employees. Dr. Merrill testified this action by Kris was in contravention of his express instruction the funds in the money market account should not be distributed. Kris knew Dr. Merrill was the representative of EdTech's owner and board of directors. On July 10, 1997, the Merrills took control of the daily operations of the company. Thereafter, they discovered Kris had authorized and distributed to the employees commissions in excess of fifteen percent in both 1996 and 1997.

Defendants Kris Meinhard, Doug Meinhard, and Don Millage quit their employment with EdTech at the end of their workday on July 31, 1997, without advance notice to a board member or officer of the company. When they left work that day, they took their personal items and a Rolodex containing the names of distributors and suppliers accumulated by Kris during her tenure as EdTech's manager. On August 1, 1997, they began working for EdNet, the new company incorporated by the Meinhards in May of the same year. They were

able to immediately begin working for the new company because they had made preparations to do so while employed by EdTech. During July of 1997, they made an application for EdNet to become an authorized personal computer reseller for IBM, established a bank account for the corporation, sought credit for EdNet, and applied for a sales tax permit for the new company. During August and September of 1997, EdNet sold computer equipment and related services only to school districts that had been the customers of EdTech prior to August 1.

EdTech sued the Meinhards, Don Millage, and EdNet. Plaintiff sought compensatory damages under contract and tort theories, punitive damages, and injunctive relief. Defendants denied plaintiff's allegations and alleged a counterclaim for unpaid wages, liquidated damages, and attorney fees and costs pursuant to Iowa Code section 91A.8 (1997). Eleven days before the jury trial commenced, defendants sought leave to amend their answer to assert the affirmative defense of estoppel to the conversion claim alleged in Count IX of the petition. EdTech resisted on the grounds the motion was untimely and likely to change the issues after the deadline for discovery had passed.

The district court granted defendants' motion for directed verdict on plaintiff's claims for punitive damages, misappropriation of trade secrets, intentional interference with existing business relationships and prospective advantages. Defendants' motion for leave to amend the answer was granted and the district court instructed the jury on the defense of estoppel against plaintiff's claim alleged in Count XI of the petition against Kris Meinhard for breach of her duty as an officer. The jury returned a verdict (1) in favor of

defendants Don Millage and Doug Meinhard on all claims asserted against them by plaintiff; (2) against defendant Kris Meinhard in the amount of \$53,039.83 for conversion, (3) in favor of Doug Meinhard in the amount of \$6,996.75 on his counterclaim against EdTech for intentional failure to pay wages; (4) in favor of Kris Meinhard in the amount of \$6,996.75 on her counterclaim against EdTech for intentional failure to pay wages; and (5) in favor of Don Millage in the amount of \$4,198.05 on his counterclaim for intentional failure to pay wages. The jury's verdict also reported findings EdTech had sustained damages in the amount of \$51,100 as a result of Kris Meinhard's breach of duty as an officer, but she had proved her affirmative defense of estoppel on this claim.

EdTech contends on appeal the district court erred in (1) granting defendants' motion for directed verdict on its claims for punitive damages, misappropriation of trade secrets, intentional interference with existing contracts, and intentional interference with prospective advantages; (2) granting defendants' motion for leave to assert the defense of estoppel to EdTech's claim for conversion and instructing on the theory as a defense to the claim against Kris Meinhard for breach of her duty as an officer; and (3) failing to give a proper jury instruction on defendants' counterclaim for wages pursuant to Iowa Code section 91.8.

II. Standard of Review. We review rulings on motions for directed verdict for correction of errors of law. *Top of Iowa Coop v. Sime Farms, Inc.*, 608 N.W.2d 454, 466 (Iowa 2000). The issue before us is simply whether there was "sufficient evidence to generate a jury question." *See id.*, (quoting *Federal Land*

Bank v. Woods, 480 N.W.2d 61, 65 (Iowa 1992)). We first decide whether the nonmoving party has presented substantial evidence on each element of the claim. *Balmer v. Hawkeye Steel*, 604 N.W.2d 639, 641 (Iowa 2000) (citation omitted). Evidence is substantial if a jury could reasonably infer a fact from the evidence. *Id.* (citation omitted). If reasonable minds could differ on an issue of fact, the issue is for the jury. *Economy Roofing & Insulating Co. v. Zumaris*, 538 N.W.2d 641, 649 (Iowa 1995). In deciding this issue, we view the evidence in the light most favorable to the nonmoving party. *Top of Iowa Coop.*, 608 N.W.2d at 466. If the evidence is not substantial on any element of the claim, a directed verdict is appropriate. *Balmer*, 604 N.W.2d at 641; see also *Pierce v. Staley*, 587 N.W.2d 484, 485 (Iowa 1998). Evidence is not insubstantial merely because it would have supported contrary inferences. *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988).

The district court has considerable discretion in granting or denying a motion for leave to amend a pleading. We will reverse only when a clear abuse of discretion is shown. *Porter v. Good Eavespouting*, 505 N.W.2d 178, 180 (Iowa 1993). We review a challenge to jury instructions for errors of law. Iowa R. App. P. 4; *Lovick v. Wil-Rich*, 588 N.W.2d 688, 692 (Iowa 1999); *Sheets v. Ritt, Ritt & Ritt, Inc.*, 581 N.W.2d 602, 604 (Iowa 1998). Error in giving or refusing jury instructions without prejudice to the complaining party does not merit reversal. *Thavenet v. Davis*, 589 N.W.2d 233, 236 (Iowa 1999).

III. Directed Verdict on Punitive Damages Claim. EdTech presented evidence Kris closed a bank account and distributed the funds as commissions to

herself and the other full-time employees after she was expressly directed by Dr. Merrill to preserve the funds in the account. The jury found Kris liable for conversion. EdTech contends on appeal the district court erred in failing to submit the issue of punitive damages to the jury.

Punitive damages are justified when the acts of the defendant are malicious. *Beeck v. Aquaslide 'N' Dive Corp.*, 350 N.W.2d 149, 167 (Iowa 1984). Actual malice is characterized by such factors as personal spite, hatred, or ill will. *Schultz v. Security Nat'l Bank*, 583 N.W.2d 886, 888 (Iowa 1998). Legal malice is shown by wrongful conduct committed or continued with a willful or reckless disregard for another's rights. *Id.* Malice is implied where the defendant acts illegally or improperly with reckless disregard for another's rights. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d 871, 879-80 (Iowa 1983). An award of punitive damages may be made only if plaintiff proves "by a preponderance of clear, convincing, and satisfactory evidence, the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights . . . of another." Iowa Code § 668A.1(a).

A reasonable juror viewing the evidence in the light most favorable to EdTech could find Kris Meinhard acted with malice toward EdTech and in willful and wanton disregard of the company's interest. She testified she did not like Allison Merrill, characterizing her as a model who "thought herself really cute and above work." Kris acknowledged her resentment of the fact Allison did not work in the business, but benefited as sole owner from the labor of EdTech's employees. A reasonable juror could also credit Allison's testimony to the effect

that when she asked Kris to issue a check from the company in 1997 to pay estimated taxes, Kris told her she "would never see another dime out of the corporation." This evidence of Kris's personal antipathy toward EdTech's owner coupled with evidence of her disbursement of company funds to herself, her husband, and Don Millage after express direction from the representative of the owner and board of directors that the money should not be distributed was sufficient to generate a jury question on whether Kris Meinhard acted with malice or willful, wanton disregard for EdTech's rights. *See Condon Auto Sales & Serv., Inc. v. Crick*, 604 N.W.2d 587, 594 (Iowa 1999) (finding employee's retention of \$700 in cash incentives paid by an auto auction supported a finding by a preponderance of clear, convincing and satisfactory proof that employee retained the money with a willful and wanton disregard for his employer's rights). Although Kris Meinhard claimed she had the authority as general manager to distribute the proceeds of the bank account as commissions, there was substantial evidence tending to prove she had been expressly directed to preserve the funds in the account. A jury question was generated on punitive damages, and the district court erred in failing to instruct on the issue.

IV. Directed Verdict on Misappropriation of Trade Secrets. EdTech contends it presented substantial evidence defendants took its customer list, customer names and phone numbers, and computer information including data about the company's customer accounts, work in progress, bid history, pricing history, and work schedules. Defendants contend, and the district court found,

EdTech failed to produce substantial evidence of misappropriation of trade secrets. The Iowa Code defines a trade secret as:

[[I]nformation, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process that is both of the following:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use.**
- b. Is the subject to efforts that are reasonable under the circumstances to maintain its secrecy.**

Iowa Code § 550.2(4). We broadly define the type of "information" that may constitute a trade secret. *Zumaris*, 538 N.W.2d at 646 (finding the district court correctly denied a motion for directed verdict where evidence tended to prove defendant accessed plaintiff's bid computer on the day before his resignation and viewed, printed, and then deleted or copied to a disc and removed correspondence to and from customers, bid information and estimates, customer and pricing lists, profit margin reports, supply cost information and other confidential information). Business information, including such matters as maintenance of data on customer lists and needs, source of supplies, confidential costs, price data and figures, may fall within the definition of a trade secret. *US West Communications, Inc. v. Office of Consumer Advocate*, 498 N.W.2d 711, 714 (Iowa 1993). However, the law recognizes the fact, at the termination of a business relationship, an agent retains in his memory and can properly utilize certain business information in competition with his former principal. An agent "is entitled to use general information concerning the method of business of the principal and the names of the customers retained in his

memory, if not acquired in violation of his duty as an agent.” *Lemmon v. Hendrickson*, 559 N.W.2d 278, 280-81 (Iowa 1997) (quoting Restatement (Second) of Agency § 396 (1958)).

After carefully reviewing the record, we conclude the district court correctly directed a verdict in defendants' favor on this claim. When defendants left their employment with EdTech at the end of the workday on July 31, 1997, they took their personal effects, their memories, and a Rolodex¹ containing the names of distributors and suppliers accumulated by Kris during her tenure as EdTech's manager. We find no evidence in the record tending to establish any of the information in defendants' memories or taken with them on the Rolodex was acquired in violation of their duties as agents of EdTech. EdTech failed to produce substantial evidence tending to prove the names of distributors and suppliers contained on the Rolodex were information that derived “independent economic value . . . from not being generally known to, and not being readily ascertainable by proper means” by defendants. See Iowa Code § 550.2(4). Accordingly, we conclude the district court correctly granted the motion for directed verdict on this claim.

V. Directed Verdict on Claim for Intentional Interference With Existing Contract. The elements of tortious interference with existing contract are: (1) plaintiff had a contract with a third party; (2) defendant knew of the contract; (3) defendant intentionally and improperly interfered with the contract; (4) defendant's interference caused the third party not to perform or made performance

¹ The Rolodex was not offered as an exhibit and the record contains a paucity of information about its contents.

more burdensome or expensive; and (5) plaintiff suffered damages. *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 763 (Iowa 1999).

To support its claim of intentional interference with an existing contract, EdTech contends it produced substantial evidence tending to prove it had “ongoing projects” with Indianola and Saydel school districts during the summer of 1997. EdTech was paid for equipment and services it provided to these districts through July 31, 1997. Defendants were employed by EdNet when they provided computer services for these schools in August of 1997. EdTech asserts it “is quite possible that a jury could have determined that EdTech had an actual ongoing ‘contractual relationship’ with those customers.” We find no evidence in the record, however, tending to prove any existing contract of EdTech to provide either computer equipment or services was breached as a result of defendants’ conduct. At best, it appears EdTech had an expectancy for ongoing business transactions from the schools it had done business with before August 1, 1997. If EdTech had contracts with any of the school districts, they were terminable at will. Our supreme court has “previously held that contracts terminable at will are more properly protected as a prospective business advantage rather than as a contract.” *Compiano v. Hawkeye Bank & Trust*, 588 N.W.2d 462, 464 (Iowa 1999). Accordingly, we conclude the district court did not err in granting defendants’ motion for directed verdict on this theory.

VI. Directed Verdict on Claim for Tortious Interference With Prospective Advantage. EdTech contends it offered evidence sufficient to generate a jury question on whether defendants tortiously interfered with an

expectation of prospective advantage from its continuing business relationship with several school districts. To establish this claim, plaintiffs must establish defendant intentionally and improperly interfered with the relationship with the sole or predominant purpose to injure or financially destroy EdTech. *Id.* We conclude the district court erred in granting the directed verdict on this claim.

We begin our analysis with the proposition defendants' conduct in leaving their employment-at-will and establishing a business enterprise in direct competition with EdTech does not, by itself, constitute substantial evidence of a purpose to injure or destroy plaintiff. However, evidence of other conduct of defendants is minimally sufficient to generate a jury question on whether they were motivated by an improper purpose. A reasonable juror could find defendants did have as their predominant purpose the intent to injure or destroy EdTech. The substantial evidence supporting such a finding includes evidence Kris Meinhard resented and disliked EdTech's owner, Allison Merrill and she believed Allison did not deserve income generated by the efforts of EdTech's employees, and told her she would "never see another dime from the corporation." Furthermore, in 1996 and 1997, Kris distributed commissions to herself, her husband, and the two other full-time employees of EdTech in excess of the amounts authorized in prior years by Dr. Merrill, the owner's agent. In 1996, the record indicates IBM paid more than \$50,000 in "price protection money" to EdTech. Dr. Merrill testified commissions were not to be calculated or paid on such money. Although Dr. Merrill specifically instructed Kris to retain the price protection funds in EdTech's bank account and directed her not to distribute

them to employees, she did so in disregard for his instructions. When discussions with EdTech about the Meinhards' interest in purchasing the company proved unsuccessful, the Meinhards jointly decided to convert the price protection funds by distributing the money to themselves and two co-employees.

Further evidence showing defendants' intent to injure or destroy EdTech is evident from their actions in setting up EdNet while continuing to work for EdTech. While still employed by EdTech, the Meinhards made arrangements to obtain the necessary licenses, permits, and banking arrangements to organize EdNet. When defendants Kris and Doug Meinhard came to EdTech's business premises on August 1, 1997, to return the company vehicle and announce the immediate departure of three-fourths of the company's sales, management, and technical staff, and their formation of EdNet, Doug stated he wanted the transition of business from EdTech to EdNet to be as "transparent as possible from the standpoint of the customers." In addition, all of EdNet's customers during the first sixty days of the company's existence had been customers of EdTech until August 1, 1997. At least one of those customers, Indianola School District, had work in progress with EdTech on July 31, 1997. On and after August 1, 1997, while working as owners and agents of EdNet, the Meinhards undertook to finish that work for the school. In August of 1997, defendants sold thirty-three computers to Saydel School District for more than \$65,000. While working for EdTech during the preceding month, defendants sold thirteen computers to the same school. Defendant Don Millage knowingly violated the terms of his covenant not to compete against EdTech. Despite the Meinhards'

knowledge of Don Millage's covenant not to compete against EdTech for six months, they hired him as owners and agents of EdNet and paid him to do work for customers he had serviced while working as an employee of EdTech. A reasonable juror could find from this evidence the defendants intended to injure or destroy EdTech.

VII. Estoppel Defense. EdTech contends the district court abused its discretion by instructing the jury on the defense of estoppel against a claim to which the defense was not pled. We agree. Parties are entitled to have their legal theories submitted to a jury if they are supported by the pleadings and substantial evidence in the record. *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994). Defendants sought and obtained leave to plead the estoppel defense against EdTech's conversion claim. The district court erred when it instructed on the defense in connection with plaintiff's claim against Kris Meinhard for breach of a corporate officer's duty. We do not grant a reversal on the basis of error in giving or refusing to give a particular jury instruction unless the action resulted in prejudice to the defendant. *Foggia v. Des Moines Bowl-O-Mat*, 543 N.W.2d 889, 892 (Iowa 1996). EdTech has demonstrated the requisite prejudice in this case because the jury found in favor of Kris Meinhard on the estoppel defense to the breach of duty claim. The jury found EdTech proved its claim against Kris Meinhard for breach of her duties as an officer of the corporation and fixed damages in the amount of \$51,100. Under these circumstances, the district court's error may be corrected without a new trial on this claim. Accordingly, we

reverse on this issue and remand with directions to enter judgment in EdTech's favor in the amount of \$51,100.

VIII. Jury Instruction on Wage Claim. Defendants' counterclaim alleged EdTech failed to pay wages owed to them for the month of July, 1997. EdTech contended its failure to pay the wages was not intentional because a good faith dispute existed as to whether defendants had been paid more commissions than they were entitled to. The jury found EdTech intentionally failed to pay the wages and the district court entered judgment in defendants' favor pursuant to Iowa Code sections 91A.2(6) and 91A.8 in the amount of the unpaid wages plus liquidated damages.

The purpose of Iowa's Wage Payment Collection Law is to facilitate collection of wages by employees. *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 201 (Iowa 1997); *Davis v. Ottumwa Young Men's Christian Ass'n*, 438 N.W.2d 10, 12 (Iowa 1989); *Williams v. Davenport Communications Ltd. P'ship*, 438 N.W.2d 855, 857 (Iowa Ct. App. 1989). In the event of a dispute between an employer and employee concerning the amount of wages or expense reimbursement due, the employer is obligated to pay all wages and reimburse all expenses conceded to be due. See Iowa Code § 91A.7. If the employer fails to pay all wages and expenses due, he is liable for such unpaid wages and expenses, court costs and attorney fees incurred by the employee in recovering the amount owed. *Id.*; Iowa Code § 91A.8. If the employer's failure to pay is found to have been intentional, he is also liable for liquidated damages. Iowa Code § 91A.8. "Conversely, liquidated damages are not available if an

employer maintains a good faith dispute over the amount of wages.” *Condon Auto Sales & Serv., Inc.*, 604 N.W.2d at 598 (citing *Halverson v. Lincoln Commodities, Inc.*, 297 N.W.2d 518, 521 (Iowa 1980)).

EdTech challenges the district court’s failure to include the substance of its defense in the jury instruction on the wage claim. Specifically, EdTech argues the district court failed to properly instruct the jury on the issue of whether EdTech’s failure to pay wages to defendants was intentional or whether there was a good faith dispute as to the owed wages. As noted above, parties are entitled to have their legal theories submitted to a jury if they are supported by the pleadings and substantial evidence in the record. *Sonnek*, 522 N.W.2d at 47. Evidence is substantial to support a requested instruction when a reasonable mind would accept it as adequate to reach a conclusion. *Bride v. Heckart*, 556 N.W.2d 449, 452 (Iowa 1996). EdTech produced substantial evidence tending to prove defendants were paid more commissions than they were owed during their employment. In view of the claimed overpayment of wages, EdTech was entitled to present a “good faith dispute” defense to defendants’ claim for liquidated damages. EdTech objected to the wage claim jury instruction on the ground it omitted language addressing the defense. We conclude plaintiff was prejudiced by the erroneous instruction and therefore reverse the judgment for liquidated damages.

IX. Conclusion. We affirm the district court’s directed verdict on EdTech’s claims for misappropriation of trade secrets and tortious interference with contracts. We reverse and remand for a new trial on EdTech’s claims

against defendants Kris Meinhard, Doug Meinhard, and Don Millage for intentional interference with prospective advantage. We remand for entry of judgment consistent with our opinion in favor of EdTech against Kris Meinhard for breach of her duty as an officer. We reverse the directed verdict on EdTech's claim for punitive damages.² We affirm the judgment in favor of defendants against EdTech for wages, attorney fees, and costs. We reverse the judgment against EdTech for liquidated damages on the wage counterclaim and remand to the district court for new trial on that issue. The costs of this appeal are taxed one-half against EdTech and one-half against Kris Meinhard, Doug Meinhard, and Don Millage.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.

² A new trial on the punitive damages issue will be required on (1) Ed Tech's claim against Kris Meinhard for conversion and (2) Ed Tech's claim against all defendants for intentional interference with prospective advantage. The parties did not brief or argue the question of whether punitive damages may be recovered on EdTech's claim against Kris Meinhard for breach of her duty as an officer. The district court should adjudicate that issue after it is briefed and argued on remand.