

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**
KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

CHARLES W. WELCH, III
JUDGE

September 25, 2014

Clark C. Kingery, Esq.
Carla K. Jarosz, Esq.
Clark C. Kingery, P.A.
203 West 18th St.
Wilmington, DE 19802

Mr. Stephen B. Meyers
15602 S. DuPont Highway
Harrington, DE 19952

RE: Talon Construction, Inc. v. Wyatt and Brown, Inc., and Stephen B. Meyers
C.A.No.: CPU5-13-001090

Decision on Inquisition Hearing for Punitive Damages

Dear Mr. Kingery, Ms. Jarosz and Mr. Meyers:

This matter involves a civil action for common law fraud brought against defendant Stephen B. Meyers (“Meyers”). A default judgment for common law fraud was entered for the plaintiff, Talon Construction, Inc., and against Meyers on May 30, 2014, and compensatory damages were awarded in the amount of \$33,500.00, plus interest and court costs. An inquisition hearing for the fraud count of the plaintiff’s complaint has now been held to determine if punitive damages are appropriate in this case. The Court finds that the plaintiff is entitled to punitive damages in the amount of \$16,500.00.¹

FACTS

At the inquisition hearing for this matter, the following facts were proven by the plaintiff on the record by a preponderance of the evidence:

¹ The punitive damages awarded in this matter together with the compensatory damages awarded total \$50,000, which is the jurisdictional limit for the Court of Common Pleas.

Meyers owns and operates a collection agency. The plaintiff, which is a construction company, was owed a substantial amount of money from a general contractor. It hired Meyers, and his company, to collect the sum it was due from the general contractor. After some negotiation, Meyers, and his company, negotiated a settlement amount for the sum due to the plaintiff from the general contractor for the amount of \$61,500.00, which was received by Meyers, and his company. From that amount, the plaintiff was to receive a total of \$50,000.00 and Meyers, and his company, would keep \$11,500.00. Over a five month period, the plaintiff received a total of \$31,000.00 of the \$50,000.00 due to it from Meyers and his company. Meyers advised the plaintiff that one of his employees took the money but that he would personally make good on the \$19,000.00 balance due. Neither Meyers or his company ever paid anything further on the balance due.

The facts provided at the inquisition hearing for this matter can only lead the Court to conclude that Meyers intentionally converted the \$19,000.00 sum due to the plaintiff for his personal use and had intended to do so during the whole time of their business relationship. Intentionally withholding funds from collection clients so that they may be converted to his personal use is nothing new to Meyers. He has been a principal owner of previous collection companies where funds have inexplicably gone missing. In at least one of those companies, he was the only person with access to the funds. In that instance, when confronted by a business associate, Meyers could not explain where over a million dollars had gone, even though he was the only person handling the accounting functions of the business and was the only person who could write checks. His behavior here conforms to this pattern.

NATURE AND STAGE OF THE PROCEEDINGS

Default judgment for the tort of fraud was entered against Meyers in this case pursuant to Court of Common Pleas Civil Rule 55(b)(2) (“Rule 55(b)(2)”). A default judgment “has the effect of admitting acts pleaded in the complaint and not responded to by the other side.” *Gebelein v. Four State Builders*, 1982 WL 17829, at *2 (Del. Ch. Oct. 8, 1982) (citing *TWA v. Hughes*, 2d Cir., 449 F.2d 51, 69-70 (1971)). Once a default judgment is entered, “the defaulting party has no further standing to contest the factual

allegations of the claim.” *Id.* (citing *Thomson v. Woosten*, 114 U.S. 104 (1885)). A default judgment is “final and conclusive and has the same effect as a trial on the merits.” *Id.* (citing *Moyer v. Mathias*, 5th Cir., 458 F.2d 431 (1972)).

While the default judgment that has been entered against Meyers for fraud conclusively establishes liability, it does not determine the unliquidated relief to which the moving party is entitled. Rule 55(b)(2) permits the court to hold an inquisition hearing “to determine the amount of damages to which the plaintiff is entitled.” While an inquisition hearing was held to determine whether punitive damages for fraud are appropriate in this case, the Court notes that it was not permitted to admit or consider any evidence which contested the underlying liability of the defaulting party at the inquisition hearing. *See id.* The Court only considered evidence going to the extent of the damage caused by Meyers. *Id.* (citing *TWA v. Hughes*, 449 F.2d at 69-70; *Eisler v. Stritzler*, 1st Cir., 535 F.2d 148, 154 (1976); *Millison v. Ades of Lexington*, Md. Ct. App., 277 A.2d 579, 584 (1971); *Vaughn v. Veasey*, 125 A.2d 251, 254 (Del. Super. 1956)).

DECISION

In Delaware, punitive damages for tort actions are “imposed only after a close examination of whether the defendant’s conduct is ‘outrageous,’ because of ‘evil motive’ or ‘reckless indifference to the rights of others.’” *Jardel Co., Inc. v. Hughes*, 523 A.2d 518, 529 (Del. 1987). “Mere inadvertence, mistake or errors of judgment which constitute mere negligence will not suffice.” *Id.* Punitive damages generally “serve a dual purpose—to punish wrongdoers and deter others from similar conduct.” *Id.*

The issue before the Court is whether Meyers’ conduct to convert the sums of the plaintiff to his own personal use was “outrageous,” or because of an “evil motive.” The Court concludes that it was.

The Court is satisfied that Meyers’ conduct meets the punitive damage requirement set forth in *Jardel*. Meyers acted outrageously and with an evil motive when he decided to convert the \$19,000.00 sum due to the plaintiff for his personal use. From the facts presented to the Court at the inquisition hearing for punitive damages in this matter, the Court can reach no other conclusion but that Meyers intended to defraud the plaintiff during the entire time of their business relationship. Money had inexplicably

vanished for unforeseen reasons on a number of occasions during business relationships he had in the past. Such prior conduct is consistent with his conduct in this case. His conduct resulted in great expense and inconvenience to the plaintiff.

Given its conclusions of fact and law, the Court finds that punitive damages are appropriate in this case. The plaintiff is awarded a total of \$16,500.00 in punitive damages against Meyers.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is written in a cursive, somewhat stylized font.

Charles W. Welch, III

CWW:mek