

IN THE SUPREME COURT OF THE STATE OF NEVADA

INTER-COUNTY TITLE COMPANY, A  
NEVADA CORPORATION,  
Appellant,

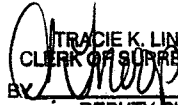
vs.

FOUNDERS TITLE COMPANY OF  
NEVADA, A NEVADA CORPORATION;  
AND FIRST AMERICAN TITLE  
COMPANY OF NEVADA, A NEVADA  
CORPORATION,  
Respondents.

No. 45394

**FILED**

FEB 15 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a conversion and misappropriation of trade secrets bench trial. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

We will not set aside findings of fact unless they are clearly erroneous or not supported by substantial evidence.<sup>1</sup> We review the record for substantial evidence to support an award of compensatory damages.<sup>2</sup> Nevada law requires clear and convincing evidence of malice before punitive damages may be recovered.<sup>3</sup>

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<sup>1</sup>Sandy Valley Associates v. Sky Ranch Estate Owners Ass'n, 117 Nev. 948, 954, 35 P.3d 964, 968 (2001), (overruled on other grounds by Horgan v. Felton, 123 Nev. \_\_\_\_, 170 P.3d 982, 988 (Adv. Op. No. 53, November 21, 2007)).

<sup>2</sup>Kellar v. Brown, 101 Nev. 273, 274, 701 P.2d 359, 359 (1985).

<sup>3</sup>NRS 42.005(1).

The parties are familiar with the facts of this case; consequently we will not review them here. FATCO and Founders Title Company (Founders) sought damages under NRS Chapter 600A for trade secret misappropriation of valuable title plants. The district court awarded compensatory and punitive damages and attorney fees to FATCO and Founders.

We review the following issues: 1) whether the district court properly found that the title plants are trade secrets that were misappropriated by Ormsby and ICTC; 2) whether the district court properly found that ICTC and Ormsby converted base files, starters, and preliminary title reports; 3) whether the district court properly calculated and awarded compensatory damages for trade secret misappropriation and conversion; and 4) whether the district court properly awarded punitive damages for misappropriation of trade secrets and conversion.

NRS 600A.030(5) provides:

'Trade secret' means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Ormsby and ICTC contend that the district court erred in finding that the title plants are trade secrets under NRS Chapter 600A. In reaching its findings, the district court determined that while title plants are a compilation of public information materials, consisting of subdivision files and preliminary title reports, they require an expensive and time consuming effort to assemble. The district court further noted that title plants provide the basis for title searching and use of them considerably reduces the time needed to research title.

Whether the title plants are a trade secret depends on whether the information on the title plants is known outside the business, easily acquired, and, therefore, not a secret and the efforts FATCO took to protect the information or the title plants.

We conclude that the record supports the district court's finding that the compilation of public records for a title plant produces a unique combination of common elements from which FATCO derives economic value. We further conclude that this unique combination of public records in a title plant gives its owner an advantage in title searching. Consequently, we conclude that the information on the title plants was not easily acquired and is therefore a secret.<sup>4</sup>

The record further suggests that FATCO took reasonable efforts to protect the title plants. The plants were kept in a non-public area to which only entrusted employees had access. The record reveals that although preliminary reports may have been given out to a customer,

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<sup>4</sup>See Basic American, Inc. v. Shatila, 992 P.2d 175, 184-186 (Idaho 1999) (which determined that a compilation of readily ascertainable elements could still be a trade secret when viewed as a whole).

entire title plants were never given out for free. Consequently, we conclude that FATCO took reasonable efforts to protect the title plants.

Therefore, we conclude that the record supports the district court's findings that the title plants are a trade secret.

ICTC contends that the district court's finding that ICTC misappropriated the title plants is not supported by substantial evidence. Following review of the record, we note that under McCaffrey's settlement with FATCO, he paid FATCO \$100,000 and was required to testify truthfully regarding his part in the taking of the title plants. McCaffrey testified that he took a copy of the title plant to ICTC to be copied. Furthermore, the record shows that all properly obtained copies of the title plant come from Data Trace. According to the record, ICTC was found to have a non-Data Trace copy. Consequently, we conclude that substantial evidence was presented to support the district court's finding that ICTC misappropriated the title plants.

ICTC next contends that the district court's finding that ICTC and Ormsby converted base files, starters, and preliminary title reports, is not supported by substantial evidence.

NRS 600A.090 provides, in pertinent part:

1. Except as otherwise provided in subsection 2, this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

2. This chapter does not affect:

(a) Contractual remedies, whether or not based upon misappropriation of a trade secret;

(b) Other civil remedies that are not based upon misappropriation of a trade secret.

As previously discussed, the district court found the title plants to be a trade secret under NRS Chapter 600A. The district court also found that appellant misappropriated the three title plants from FATCO as provided under NRS 600A.050. The district court further found that appellant converted FATCO's base files, starters, and preliminary reports to aid appellant in starting a new business.

We conclude that the district court clearly distinguished between the misappropriation of the title plants, a trade secret, and the conversion of the base files, starters, and preliminary reports, which were not trade secrets. Consequently, we conclude that the record supports the district court's finding of conversion of various materials, which is not impeded by a finding of misappropriation for the title plants.

ICTC further contends that substantial evidence did not support the district court's calculation and award of compensatory damages for trade secret misappropriation and conversion. The district court awarded compensatory damages in the amount of \$150,000. The district court awarded the damages using the reasonable royalty method provided under NRS 600A.050(1).

NRS 600A.050(1) provides, in pertinent part:

In lieu of damages measured by any other methods, damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

We note that the compensatory damages award was based upon testimony that a title researcher could spend up to half a day researching a title at \$20 per hour. Estimates provided in the record range from \$10 to \$160, and are stated as being reasonable values for a per transaction royalty fee. We conclude that the record supports the

district court's finding of \$50 per transaction to be reasonable. The record shows that approximately 3000 title searches were performed during the relevant time period. Furthermore, the award was to compensate FATCO for the misappropriation of the title plant. Consequently, the fact that the title plant was returned does not affect the award. The aforementioned testimony supports the finding that ICTC was unjustly enriched by the misappropriation of the title plants. We further conclude that McCaffrey's settlement was independent of any damages award against ICTC, and therefore conclude that the district court was correct in not offsetting McCaffrey's settlement from the damages award against ICTC. In summation, we conclude that the record supports the district court's finding and calculation of compensatory damages against ICTC in the amount of \$150,000.

Finally, ICTC contends that the district court erred by awarding punitive damages for misappropriation of trade secrets and conversion.

NRS 600A.050(2) provides:

If willful, wanton or reckless misappropriation or disregard of the rights of the owner of the trade secret exists, the court may award exemplary damages in an amount not exceeding twice the award made [as compensatory damages].

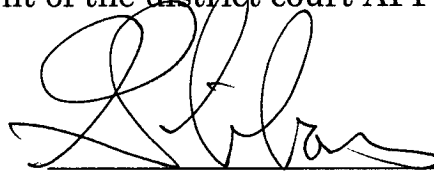
The district court found "ample evidence of willfulness in the actions of both Ormsby and [ICTC] due to the cooperation between Ormsby and McCaffrey in the taking, copying, and surreptitiously returning the title plants, and the fact that Ormsby's testimony was not credible in his denial of involvement, when compared to McCaffrey's."

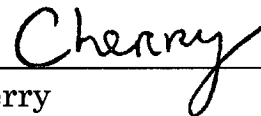
Consequently, the district court found it proper to award punitive damages in the amount of \$300,000, under NRS 600A.050(2).


After reviewing the record, we conclude that substantial evidence was provided in the form of testimony and various records to support the district court's punitive damages award. McCaffrey's testimony describes a plan on behalf of ICTC to willfully misappropriate the title plants. Consequently, we conclude that the district court did not err in awarding punitive damages against ICTC.

We have reviewed other contentions brought by the parties and conclude that they lack merit. Accordingly we,

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C. J.  
Gibbons

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Second Judicial District Court Dept. 9, District Judge  
Philip A. Olsen, Settlement Judge  
Walsh, Baker & Rosevear, P.C.  
Lemons Grundy & Eisenberg  
Robert E. Lyle  
Washoe District Court Clerk