

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

TEKSTROM INC., )  
)  
Plaintiff-Counterclaim )  
Defendant Below-Appellant, )  
)  
and )  
)  
CHARAN MINHAS, ) C.A. No. 05A-12-006 (JTV)  
)  
Third-Party Defendant )  
Below-Appellant, )  
)  
v. )  
)  
SAMEER K. SAVLA, )  
)  
Defendant-Counterclaim )  
Plaintiff Below-Appellee. )

*Submitted: April 11, 2006*

*Decided: July 31, 2006*

John S. Grady, Esq., Grady & Hampton, Dover, Delaware. Attorney for Appellee.

David E. Wilks, Esq., and Thad J. Bracegirdle, Esq., Buchanan Ingersoll, P.C.,  
Wilmington, Delaware. Attorney for Appellants.

*Upon Consideration of Appellants' Appeal  
From Decision of the Court of Common Pleas*

**AFFIRMED IN PART  
REVERSED IN PART**

**VAUGHN, President Judge**

## OPINION

This is an appeal from a decision of the Court of Common Pleas. Tekstrom, Inc. (“Tekstrom” or “the employer”), and its former vice president and current president and owner, Charan Minhas (“Minhas”), initiated litigation in the Court of Common Pleas against its former employee, Sameer K. Savla (“Savla”), for breach of contract seeking \$18,000 in damages. Savla cross-appealed alleging a variety of wrongful employment practices, including breach of the covenant of good faith and fair dealing; fraudulent employment practices; violation of 42 U.S.C. § 1981; intentional infliction of emotional distress; and violation of Delaware and federal minimum wage laws, 19 *Del. C.* § 902 and 29 U.S.C. § 206. Tekstrom and Minhas now appeal. For the following reasons, the trial court’s decision will be *affirmed in part* and *reversed in part*.

### THE TRIAL COURT’S DECISION

After a bench trial in May 2005, the trial court entered judgment in favor of Savla and against Tekstrom and Minhas in a September 9, 2005, decision. The trial court denied Tekstrom’s cause of action for breach of contract based on its finding that Tekstrom and Minhas made material false representations. The court also found that a liquidation clause in the contract was void as a matter of public policy as a penalty.

As to Savla’s claims, the court found that Tekstrom and Minhas intentionally and falsely represented the employee contract, intentionally inflicted emotional distress on Savla and violated state and federal wage laws. The court awarded \$11,200 in unpaid wages; \$11,200 in liquidated damages; \$28,800 compensatory

damages for lost wages; \$20,000 for pain and suffering; and \$20,000 in punitive damages. The court also ruled that Tekstrom and Minhas did not violate 42 U.S.C. § 1981. Savla cross-appeals as to this issue.

The trial court later denied Savla's motion for reargument on the § 1981 claim. On November 22, 2005, the trial court awarded \$73,711.25 in attorneys' fees and court costs.

### **FACTS**

The facts found by the Trial Court are adopted herein as follows:

Savla is a twenty-six year old man from India who came to America in August of 2000 on a student visa. He graduated with a master's degree from the University of Houston in December 2002.

In December 2002, Tekstrom sent an email [*sic*] to the Indian Student Association for the University of Houston at Deer Lake, Texas. The email [*sic*] recited that Tekstrom had job openings and would process an H1-B visa quickly. The email [*sic*] had a link to Tekstrom's website and the web-site represented that Tekstrom had Fortune 500 companies as clients.

In response to this email [*sic*], Savla sent his resume by email [*sic*] to Tekstrom and a few days later, Minhas, the vice president of the company, contacted Savla by telephone and interviewed him about his qualifications. Although Minhas testified that he had no recollection of the conversation, Savla testified that he was told that Tekstrom had job openings and would process the H1-B visa immediately. He was informed about a training period and was told that after the training period, he would begin working immediately. Two or three days later, Minhas called Savla and offered him an employment position and Savla was told to report to Dover, Delaware on or about January 17, 2003.

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Savla traveled to Dover at his own expense and arrived in Dover around January 18, 2003. The next day, Minhas presented Savla and five other people in the training group with a contract. All of the people in the training group were aliens and needed a visa.

Before the contract was signed, Minhas had a conversation with each of the persons concerning the contract. Each of the applicants in the group had questions about health insurance, but Minhas indicated that health insurance would start immediately. Although the contract provided that the company would not pay for any expenses concerning the visa, Minhas promised to obtain a visa for Savla. After Savla brought this matter to Minhas's attention, this language was stricken from paragraph 11 of the contract.

Both Savla and Ms. Dharani, another member of the training group, were told that the training would be for three weeks, and that after that time they would be absorbed into ongoing projects. Each person in the training group was under the impression that when the contract was signed, he or she would receive a job.

A few days after the signing of the contract, the alleged training began. Mr. Mokkarala, an employee of Tekstrom, would call at night and give instructions to the trainees from 7 to 9 p.m. Mr. Mokkarala was working full time during the day. There were no books or manuals provided to the trainees and the only instruction manuals that were available came from the software. Since Savla had a master's degree in computer science, he found that the training was unnecessary. The employees were required to be in the office every day and every night during the so-called training period. Minhas testified in prior testimony and at trial that if the trainee started the training and left the company, that he or she would owe Tekstrom \$18,000.

During this time in Dover, Savla stayed in an apartment in Dover Country Club Apartments. There was only one bed in this apartment

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and this bed was shared by two female employees who were participating in the training program. Savla slept on the floor in a sleeping bag provided by Tekstrom. Savla had been told that he would be provided with comfortable one-bedroom-per-person housing, but he stayed in the apartment under the above conditions for four months.

After the training was completed, the group was told that they were not going to be absorbed into ongoing group projects. Savla and Dharani asked Minhas about their pay, health insurance and visas, and they again received assurances from Minhas, but Tekstrom and Minhas never provided these items. Savla did not have any work experience, but Tekstrom provided him with a false resume which he was to use in order to find a job placement.

In April 2003, Dharani left Dover and returned home. Minhas told Savla that if he tried to leave like Dharani he would make an example out of him.

In late April 2003, Savla was contacted by Nirmal Ramaswamy of Aria Consulting, who was trying to fill a position for a vendor. Savla informed Ms. Ramaswamy that she should contact Tekstrom directly and negotiate a contract. Thereafter, Tekstrom negotiated a contract with Ms. Ramaswamy so that Savla could begin working at Bearing Point, New York. Before Savla left for New York, Minhas bought him a laptop computer at Sam's Club, but he did not provide him with any software. During his time in Dover, Savla was not paid by Tekstrom.

Savla began working at Bearing Point on May 5, 2003, and he worked at that client site project until May 23, 2003. On Friday, May 5, 2003, Savla sent an email [*sic*] to Minhas that requested information concerning his pay. On May 16, 2003, Savla again sent an email [*sic*] to Minhas and requested information concerning his pay and also told him he was having problems with the laptop. Minhas told Savla in a telephone conversation that Savla needed to come to Delaware to return

the laptop. Savla gave the laptop to a friend and requested that he mail it to Tekstrom.

In a telephone call on either May 18, or 19, 2003, Minhas told Savla to quit, but Savla was also told that if he quit he would be sued. Savla questioned Minhas about his pay, his visa and other problems that he was having with Tekstrom, but received no satisfactory answers. Savla was under a lot of stress at Bearing Point and he indicated that he was not feeling well.

On May 18, or 19, 2003, Minhas wrote to Savla and requested that he provide Tekstrom with the address of Dharani because Tekstrom wanted to file a lawsuit against her. On May 23, 2003, Ms. Ramaswamy wrote to Satish Dola, president of Tekstrom, and requested a copy of Savla's H1-B visa, recent pay stubs, and a copy of the contract. On or about May 23, 2003, Satish Dola wrote Ms. Ramaswamy stating that they were going ahead with the lawsuit against Savla and filing criminal charges for theft. Minhas ordered Savla to come to Dover personally by May 27 in order 'to report to us and account for all of your actions and misactions, failing which we will start our legal course.' On May 23, 2003, Savla was so upset over the threats that he became sick to his stomach and testified that he really felt sick. He returned to Houston on that date to live with his fiancée.

On May 28, 2003, Stuti Vora, Savla's fiancée, sent an email [*sic*] to Minhas informing him that Savla was in bad health and that the shipment of the laptop was in the Delaware Fed Ex [*sic*] office. In response to this email [*sic*], Minhas threatened Savla with a civil lawsuit, criminal charges, possible deportation and the destruction of his career. Minhas again ordered Savla to appear personally in Dover because he questioned whether or not Savla was sick. He further stated that a criminal complaint had been prepared and they were holding back from filing it as it could lead to his deportation and he may never be able to come back here. Minhas ended the email [*sic*] by promising to make

good on all of their threats.

On June 2, 2003, Savla responded to the email [*sic*] and said that he had sent the laptop to Dover, but Satish Dola had refused it. He also informed Minhas that he was in Houston and would not be working anywhere else. He further told Minhas that he had been very sick the last ten days.

On June 10, 2003, Tekstrom filed a complaint against Savla seeking damages in the amount of \$19,397.24. Thereafter, Savla filed his counterclaim against Tekstrom and Minhas. At trial, Tekstrom abandoned its claim for conversion of the laptop computer and thereby reduced its claim to \$18,000.<sup>1</sup>

### STANDARD OF REVIEW

When addressing appeals from the Court of Common Pleas, the court sits as an intermediate appellate court.<sup>2</sup> As such, its function is the same as that of the Supreme Court.<sup>3</sup> Therefore, the court's role is to "correct errors of law and to review the factual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process."<sup>4</sup> Appellate courts are bound by findings of fact made by the trial court that are supported by substantial evidence on the record, and are the product of an orderly and

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<sup>1</sup> *Tekstrom, Inc., et al. v. Minhas*, Del. CCP, C.A. No. 03-06-0033, Trader, J. (Sept. 9, 2005), tr. at A11 - A15.

<sup>2</sup> *State v. Richards*, 1998 Del. Super. LEXIS 454.

<sup>3</sup> *Baker v. Connell*, 488 A.2d 1303 (Del. 1985).

<sup>4</sup> *State v. Huss*, 1993 Del. Super. LEXIS 481, at \*2, citing *Levitt v. Bowier*, 287 A.2d 671, 673 (Del. 1972).

logically deductive process.<sup>5</sup> If substantial evidence exists for a finding of fact, this Court must accept that ruling, as it must not make its own factual conclusions, weigh evidence, or make credibility determinations.<sup>6</sup> Errors of law are reviewed *de novo*.<sup>7</sup>

### **PARTIES' CONTENTIONS**

Tekstrom and Minhas contend (1) the court held incorrectly that Savla's contract was void and/or unenforceable; (2) the court held incorrectly that Tekstrom and Minhas violated the Fair Labor Standards Act; (3) the court held incorrectly that Minhas is personally liable for a breach of the implied covenant of good faith and fair dealing; (4) the court held incorrectly that Savla relied justifiably upon Tekstrom's allegedly false statements; (5) the court held incorrectly that appellants intentionally inflicted emotional distress; (6) the court incorrectly calculated the damages to Savla; and (7) the court incorrectly calculated the attorneys' fees.

Savla contends that the Trial Court was correct in its holdings with the exception of its decision regarding the § 1981 claim.

### **DISCUSSION**

#### **I. The Contract's Legality**

Tekstrom and Minhas argue the trial court erred in holding that Savla's contract was voidable and/or unenforceable by reason of Tekstrom's alleged misrepresentations to Savla. They also argue the liquidated damages clause was not

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<sup>5</sup> *Shahan v. Landing*, 643 A.2d 1357 (Del. 1994); *Downs v. State*, 570 A.2d 1142, 1144 (Del. 1990).

<sup>6</sup> *Johnson v. Chrysler*, 213 A.2d 64 (Del. 1965).

<sup>7</sup> *Downs*, 570 A.2d at 1144.



a penalty.

**A. *The contract is voidable.***

The trial court held the January 22, 2003, contract was voidable at the option of Savla because he signed a contract based on material false representations made by Minhas. These include Savla being told he would receive top training, pay, a job, immediate visa assistance, adequate housing and health insurance. None of those items were provided. Thus the trial court concluded Savla was falsely induced to sign the contract.

Tekstrom and Minhas argue the trial court did not consider whether Minhas' statements to Savla induced him to enter into the contract or whether Savla's reliance was reasonable. Tekstrom and Minhas argue both inquiries are required under Delaware law, stating Savla was required to demonstrate that the misrepresentation induced him to enter into the contract and that his reliance on that misrepresentation was reasonable. They argue Savla was not falsely induced because he could have made changes to the contract prior to signing it just as he did when he noticed it did not contain assistance with the visa as previously promised. Also, they argue Savla's educational background would make any reliance on misrepresentations unreasonable.

In support of the trial court's decision, Savla points to the trial court's acceptance of the testimony of Savla and specific rejection of the testimony of Minhas and Tekstrom's other witnesses.

A contract may be voidable on the grounds of misrepresentation.<sup>8</sup> For a contract to be voidable, a party must show:

- (1) that there was a misrepresentation;
- (2) that the misrepresentation was either fraudulent or material;
- (3) that the misrepresentation induced the recipient to enter into the contract; and
- (4) that the recipient's reliance on the misrepresentation was reasonable.<sup>9</sup>

“[A]lthough a statement or assertion may be facially true, it may constitute an actionable misrepresentation if it causes a false impression as to the true state of affairs, and the actor fails to provide qualifying information to cure the mistaken belief.”<sup>10</sup>

The Court finds there was substantial evidence in the record to support the trial court's finding that the contract is voidable at Savla's option because of material misrepresentations made by Tekstrom and Minhas. While Savla was able to correct one misrepresentation in the written contract – specifically that Tekstrom would not pay visa expenses – that does not necessarily indicate that it would have been reasonable for Savla to detect each and every misrepresentation made by Tekstrom and Minhas. Indeed, the misrepresentations were numerous. Savla moved to Delaware because he was told he would receive benefits, visa assistance, pay and a job. None of those were provided as promised. Further, it was reasonable for Savla

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<sup>8</sup> *Alabi v. DHL Airways*, 583 A.2d 1358, 1361, Herlihy, J. (Del. Super. 1990).

<sup>9</sup> *Id.* citing 1 Restatement (Second) of Contracts § 164.

<sup>10</sup> *Norton v. Poplos*, 443 A.2d 1, 5 (1982).

to rely on the misrepresentations, most of which were recited in the written agreement. In agreeing to work for Tekstrom, Savla had to relocate from Texas to Delaware and agree to undergo a training period for an extensive length of time. It would be reasonable for him to expect pay, health insurance, and visa assistance in exchange. For those reasons, the Court finds that contract was voidable at the option of Savla and the decision of the trial court is *affirmed*.

***B. The liquidated damages clause is void as a penalty.***

Next, Tekstrom and Minhas argue the trial court erred in holding that the liquidated damages provision of Savla's contract is void as a matter of public policy as a penalty.

Language in the contract pertaining to liquidate damages reads:

Applicant understands that company is investing a lot of time, money, and other resources in training, marketing, coordinating, and arranging interviews with its clients. Although it is difficult to assess the damage caused because of the breach of this contract, however, applicant agrees to pay \$1000 for each month less served as paid employee of the company.

A two-part test set forth in *S.H. Deliveries v. TriState Courier & Carriage, Inc.*<sup>11</sup> determines whether a provision is a valid liquidated damages clause or an improper penalty. A liquidated damages provision will be deemed valid when: "(1) the damages which the parties might reasonably anticipate are difficult to ascertain (at the time of contractin g) because of their indefiniteness or uncertainty; and (2) the amount

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<sup>11</sup> 1997 Del. Super. LEXIS 217, at \*7-9, Quillen, J.

stipulated is *either* a reasonable estimate of the damages which would probably be caused by the breach or is reasonably proportionate to the damages which have actually been caused by the breach.”<sup>12</sup>

In this case, the trial court found Minhas’ testimony not credible regarding the uncertainty of damages. Additionally, the trial court determined the damages were not unascertainable nor were they a reasonable estimate or reasonably proportionate.

Here, Tekstrom and Minhas argue the trial court has incorrectly held the clause is a penalty because Savla agreed to the clause because “it is difficult to assess the damage [to Tekstrom] caused because of the breach of this contract.” The \$1,000 per month represents the company’s estimate of its investment in a trainee, including housing, training, software licensing fees, marketing efforts and work performed by Tekstrom’s staff as well as potential lost revenues from the early termination of a prospective work assignment. Tekstrom and Minhas argue the court did not consider significant, less quantifiable factors such as marketing efforts and lost profits that would support a liquidated damages clause. Also, they argue the trial court improperly placed the burden on Tekstrom and Minhas to prove the validity of the liquidated damages clause.

The Court finds there is substantial evidence to support the trial court’s holding that the clause is a penalty and thus void. Specifically, the Court finds that Tekstrom and Minhas could have easily estimated the costs for housing and training as they are quick to point out in other instances that they paid \$699 a month to rent an apartment

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<sup>12</sup> *Id.*

for several trainees to share. Training costs also are not difficult to forecast. Savla was not the first Tekstrom trainee. Surely, the company had to know what its costs were in relation to the entire training program and could have apportioned that figure according to the number of trainees. Marketing and potential lost revenues may be more difficult to estimate, but when balanced against the second prong of the test – whether they are a reasonable estimate or reasonably proportionate to the breach – it is even more clear the clause is a penalty. As the trial court correctly noted, Savla would have had to pay the \$18,000 in penalty whether he was working for one day or eighteen months. There is nothing in the record to show how the amount was arrived at or whether it is proportionate to whatever actual damage would result from a contract breach. For those reasons, the trial court’s determination that the contract clause was a penalty also is *affirmed*.

## **II. The Fair Labor Standards Act**

Tekstrom and Minhas next claim the trial court held incorrectly (1) Savla was an “employee” as defined in the Fair Labor Standards Act (“FLSA” or “Act”), 29 U.S.C. § 206, and 19 *Del. C.* § 902; (2) non-monetary compensation provided to Savla did not satisfy minimum wage requirements; and (3) Minhas did not have operational control of the company at the time of the relevant events making him an “employer” under the Act.

### **A. Savla was an “employee” at the conclusion of the training program.**

The trial court concluded Savla became a Tekstrom employee at the conclusion of the three-week training period and, therefore, is entitled to damages for lost wages and liquidated damages for the amount of unpaid wages. The trial court applied a six-

factor test to determine whether a person is an employee:

1) the degree of the alleged employer's right to control the manner in which the work is to be performed; 2) the alleged employee's opportunity for profit or loss depending upon his managerial skill; 3) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers; 4) whether the services rendered requires a special skill; 5) the degree of permanence of the working relationship; and 6) whether the service rendered is an integral part of the alleged employer's business.<sup>13</sup>

Applying those factors to this case, the trial court noted:

Tekstrom and Minhas had a right to control what work was done. Secondly, Mr. Savla had a master's degree in computer science from the University of Houston at Clear Lake Texas. Thirdly, there was a degree of permanence in the working relationship since Tekstrom and Minhas expected Savla to work for at least eighteen months. Lastly, Tekstrom is a broker for computer software specialists and it is an integral part of their business to obtain employment for persons with the qualifications of Savla.

Tekstrom and Minhas argue Savla was not an employee prior to beginning his assignment at Bearing Point because he did not perform any services for Tekstrom nor was he expected to until he began work with a client. Tekstrom contends it did not have a right to control the work being done nor was there a permanence in the

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<sup>13</sup> *Martin v. Albrecht*, 802 F.Supp. 1311, 1313 (W.D. Pa. 1992) quoting *Martin v. Selker Bros. Inc.*, 949 F.2d 1286, 1293 (3d. Cir. 1991).

working relationship during this time because (1) while Savla was being marketed to clients, he was not performing any “work” which could be controlled and (2) neither party expected the period of time during which Tekstrom and Savla were seeking a job assignment to be permanent.

The Act requires every employer to pay minimum wages to its employees, who are defined as “any individual employed by an employer.” The term “employ” means “to suffer or permit to work.”<sup>14</sup> The statutory definitions are broad to effectuate the remedial purposes of the Act, and courts should consider the “economic realities of the relationship” in determining employee status.<sup>15</sup> “[T]he determination of the employment relationship does not depend on isolated factors but rather upon the ‘circumstances of the whole activity.’”<sup>16</sup> Another consideration is whether the individuals are dependent upon the business.<sup>17</sup>

There was substantial evidence from which the trial court could determine that Savla was an “employee” for purposes of the Act. The Court disagrees with Tekstrom and Minhas that Savla did not perform any services prior to his assignment at Bearing Point. It is true Savla did not perform software engineering work. However, he went to work daily at Tekstrom’s demand and helped Tekstrom secure

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<sup>14</sup> 29 U.S.C. 203 (e)(1).

<sup>15</sup> *Martin v. Selker Bros. Inc.*, 949 F.2d 1286, 1293 (3d. Cir. 1991).

<sup>16</sup> *Id.* quoting *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730 (1947).

<sup>17</sup> *Id.* citing *Donovan v. DialAmerica Marketing, Inc.*, 757 F.2d 1376, 1382 (3d. Cir. 1985) *cert. denied*, 474 U.S. 919 (1985).

a client where Savla ultimately was assigned. At trial, Tekstrom was described as being in the business of providing human capital for end clients that require software testing services. In other words, Tekstrom was a placement agency that worked with other agencies to place its trainees with an end client. At trial, Savla testified that at the end of the training period, he was required to report to Tekstrom daily from 9 a.m. to 6 p.m. where he had to research information on false resumes Tekstrom provided to him and then post those resumes on various job search web sites. When he or others did not report to work by 9:30 a.m., Minhas or the company's then president would call on their cell phones asking why they were not at work. This went on from the end of the training program in February until he was hired for the Bearing Point position.

Tekstrom and Minhas argue the case of *Donovan v. American Airlines, Inc.*<sup>18</sup> is more on point with the facts of this case. The inquiry in that case, however, centered around whether trainees are employees within the meaning of the Act. Courts employ a distinct analysis when evaluating whether individuals in a training program are employees.<sup>19</sup> In this case, the trial court held specifically that Savla was not an employee during Tekstrom's training period. For the foregoing reasons, the trial court's conclusion that Savla was an employee at the conclusion of the training period is *affirmed*.

**2. *Tekstrom and Minhas are not entitled to a credit for non-monetary compensation.***

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<sup>18</sup> 686 F.2d 267, 273 (5<sup>th</sup> Cir. 1982).

<sup>19</sup> See *Donovan v. American Airlines, Inc.*, 686 F.2d 267 (5<sup>th</sup> Cir. 1982).



Tekstrom and Minhas next contend the trial court erred in concluding that Savla did not receive benefits in terms of training, food and lodging to satisfy the minimum wage requirements of the Act or 19 *Del. C.* § 902. While Tekstrom may have provided housing to Savla, it did not produce evidence that showed the reasonable cost of these items as required under the Act. Section 203(m) provides that “wage” includes:

the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees.

The burden is on the employer to show it is entitled to credits under the Act, and those credits are limited to the “reasonable cost” of providing board, lodging or other facilities.<sup>20</sup> “Reasonable cost” is not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by the employer to his employees.<sup>21</sup> It does not include a profit to the employer or any affiliated person.<sup>22</sup> The cost of furnishing “facilities” primarily for the benefit or convenience of the employer will not be recognized as reasonable, and this includes tools of the trade and other materials and services incidental to carrying on the employer’s business.<sup>23</sup>

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<sup>20</sup> *Donovan v. New Floridian Hotel, Inc.*, 676 F.2d 468, 474 (11<sup>th</sup> Cir. 1982).

<sup>21</sup> 29 C.F.R. § 531.3 (a).

<sup>22</sup> 29 C.F.R. § 531.3 (b).

<sup>23</sup> 29 C.F.R. § 531.3 (d)(1) & (d)(2).

The trial court denied a credit because neither Tekstrom nor Minhas provided any evidence at trial that training, food or housing provided a substitute for wages.

Tekstrom and Minhas argue the trial court's ruling was erroneous because the lodging and training were provided for Savla's benefit and they did produce evidence, including a lease that shows Tekstrom paid \$699 per month in rent for the apartment where Savla resided. They also contend they presented evidence of costs for apartment furnishings and training, including instructor salaries and licensing fees.

The training provided by Tekstrom to Savla is not a reasonable cost entitling Tekstrom to a credit. The program was conducted for Tekstrom's benefit, not the trainees', as the company was able to use it as a marketing tool in placing consultants with clients. Additionally, Tekstrom is not entitled to a credit for the housing it provided to Savla because it failed to meet its burden of producing evidence of its reasonable costs. Tekstrom paid \$699 a month for the apartment Savla lived in, however, he shared that apartment with several people. A credit for the amount of rent for the apartment would be unreasonable. The Act prohibits giving "a profit to the employer or to any affiliated person."<sup>24</sup>

For the foregoing reasons, the trial court's decision declaring non-monetary compensation did not satisfy the Act requirements is *affirmed*.

***C. Minhas is not personally liable for unpaid wages***

Tekstrom and Minhas argue that the trial court's holding that Minhas is personally liable for Tekstrom's alleged failure to pay minimum wages under the Act

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<sup>24</sup> 29 C.F.R. § 531.3(b).

and the Delaware Wage and Labor Law is legally and factually incorrect because Minhas did not own Tekstrom or have operational control over the company.

The trial court found Minhas' testimony that he lacked operational control not credible. The trial court noted Minhas was in charge of recruitment and personally hired Savla and at that time was in charge of the operation of the company. Additionally, Minhas threatened to sue Savla if he left the company and, the trial court noted, Minhas conducted the company's day-to-day operations.

The Act defines employer as "any person acting directly or indirectly in the interest of an employer in relation to an employee."<sup>25</sup> "More than one 'employer' can be responsible for FLSA obligations. Thus, a corporate officer who has operational control of the corporation's covered enterprise is an 'employer' under the FLSA, along with the corporation itself."<sup>26</sup> Being an employee of a corporate authority does not insulate one from liability "because 'the overwhelming weight of authority is that a corporate officer with operational control of a corporation's covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages.'"<sup>27</sup>

This Court finds that the trial court did not have substantial evidence to support a finding that Minhas had operational control of Tekstrom such as to be deemed an

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<sup>25</sup> 29 U.S.C. 203(d).

<sup>26</sup> *United States Department of Labor v. Cole*, 62 F.3d 775 (6<sup>th</sup> Cir. 1995) (holding a chief executive officer an "employer" for purposes of liability).

<sup>27</sup> *Sandom v. Travelers Mortgage Services, Inc.*, 752 F.Supp. 1240, 1251 (N.J. 1990) citing *Donovan v. Agnew*, 712 F.2d 1509, 1511 (1<sup>st</sup> Cir. 1983).

employer for purposes of the Act. The trial court based its determination that Minhas was personally liable on his being in charge of recruitment and personally hiring Savla, and “at that time he was in charge of the operation of the company.” The trial court also cited Minhas’ lawsuit threats and said he conducted day-to-day operations of Tekstrom. However, this is not enough to establish that Minhas had operational control of Tekstrom.

While courts have held corporate officers personally liable for unpaid wages under the Act, the evidence in those cases regarding those individuals’ control over a company has been far more substantial than in this case. For example, in *Donovan v. Agnew*,<sup>28</sup> the individuals had an ownership interest in a parent company and also were the president, treasurer, secretary and sole members of the board of directors.<sup>29</sup> In general, cases holding corporate officers personally liable have more direct evidence pertaining to the officers’ operational control of a corporation than those facts presented here.<sup>30</sup> While Minhas served as vice president, recruited and hired Savla and later threatened him with lawsuits, those actions alone do not prove he had operational control of Tekstrom during the events in question. For these reasons, the trial court’s determination that Minhas is an employer for liability under the Act is

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<sup>28</sup> 712 F.2d 1509, 1511 (1<sup>st</sup> Cir. 1983).

<sup>29</sup> *Donovan v. Agnew*, 712 F.2d 1509, 1511 (1<sup>st</sup> Cir. 1983).

<sup>30</sup> See *United States Dep’t of Labor v. Cole*, 62 F.3d 775 (6<sup>th</sup> Cir. 1995)(president of corporation who owned 50 percent of the corporation deemed “employer” for FLSA liability); *Donovan v. Sabine Irrigation Co., Inc. Gusdonovich v. Business Information Co.*, 705 F.Supp. 262 (W.D. Pa. 1987) (three sole owners of corporation who also were officers and responsible for day-to-day affairs “employers” under FLSA).

*reversed.*

### III. **Covenant of Good Faith and Fair Dealing**

Tekstrom and Minhas next challenge the trial court's holding that Minhas is personally liable for breach of the implied covenant of good faith and fair dealing because Minhas was not a party to the contract. The trial court held Savla prevailed on causes of action against both Tekstrom and Minhas because both made false material representations – including promising health benefits and visa assistance – to induce him to sign the employment contract.

Minhas and Tekstrom claim the trial court held incorrectly that Minhas is personally liable for a breach of the implied covenant of good faith and fair dealing. This Court agrees. This is not an issue of tort liability where corporate officers may be liable for torts they commit even if done in the name of a corporation. The covenant of good faith and fair dealing is a duty that arises under contract law.

Every Delaware contract includes an implied covenant of good faith and fair dealing.<sup>31</sup> “An employer acts in bad faith when it induces another to enter into an employment contract through actions, words, or the withholding of information, which is intentionally deceptive in some way material to the contract. Such conduct constitutes ‘an aspect of fraud, deceit or misrepresentation.’”<sup>32</sup>

The trial court construed *Hudson v. Wesley College*<sup>33</sup> and *E.I. Dupont de*

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<sup>31</sup> *Merrill v. Crothall-American, Inc.*, 606 A.2d 96 (Del. 1992).

<sup>32</sup> *Id.* at 101.

<sup>33</sup> 1994 WL 469138 (Del. Ch. 1994).

*Nemours v. Pressman*<sup>34</sup> to hold a college president and a supervisor, respectively, personally liable for breaches of the covenant. However, the central holdings in those cases dealt with breadth of the covenant, not personal liability.

This Court finds that the question of personal liability on breaches of the implied duty of good faith and fair dealing should be governed by contract law. “As a general rule, so far as personal liability on corporate contracts is concerned, officers of corporations are in the same position as agents of private individuals and are not liable on corporate contracts as long as they do not act and purport to bind themselves individually.”<sup>35</sup> In *Brandt v. Rokeby Realty Co.*,<sup>36</sup> this Court held that whether a realty company president who entered into a lease with the plaintiff could be held personally liable on an implied contract theory depended on agency law and the capacity in which he signed a lease for the realty company. The court determined the president was not personally liable because he signed the lease as an agent for the realty company.<sup>37</sup>

In this case, Minhas acted as an agent of Tekstrom both in recruiting Savla and later in signing the employment contract. Savla’s dealings with Minhas began when Savla responded to a Tekstrom recruitment e-mail. Minhas interviewed him in his capacity as vice president of Tekstrom and all of Minhas’ dealings with Savla were

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<sup>34</sup> 679 A.2d 436 (Del. 1996).

<sup>35</sup> *Brown v. Colonial Chevrolet Co.*, 249 A.2d 439 (Del. 1968) *citing* 19 Am.Jur.2d “Corporations” § 1341 (1965).

<sup>36</sup> 2004 Del. Super. LEXIS 297, at \*27-28, Stokes, J.

<sup>37</sup> *Id.* *citing* at \*27-28.

regarding Tekstrom, not Minhas individually. Even the contract Savla and Minhas signed clearly establish that the parties to the agreement were Savla and Tekstrom, not Savla and Minhas. While Minhas signed the agreement, he did so for “Tekstrom, Inc.”

According to the Restatement (Second) of Agency, an agent prevents himself from becoming a party to an instrument if he makes clear he is acting solely in a representative capacity for a disclosed principal. According to the Restatement:

An unsealed written instrument, in one portion of which there is a manifestation that the agent is acting only for the principal, is interpreted as the instrument of the principal and not of the agent, although in other portions of the instrument or in the signature the agent’s name appears without designation.<sup>38</sup>

Because Minhas was acting as a representative of Tekstrom in his dealings with Savla and the covenant of good faith and fair dealing is a contractual issue, the Court finds that the trial court erred as a matter of law in holding Minhas personally liable for the breach of the covenant of good faith and fair dealing. Therefore, the trial court is *reversed* in holding Minhas personally liable for the breach of the covenant of good faith and fair dealing.

#### **IV. Justifiable Reliance**

Tekstrom and Minhas next claim the trial court erred in finding fraud in Savla's employment contract. Specifically, they challenge the trial court's finding that Savla

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<sup>38</sup> Restatement (Second) of Agency § 157.

demonstrated justifiable reliance on alleged false representations. Citing *Hollinger International, Inc. v. Black*,<sup>39</sup> they argue Savla's failure to take even the simplest of steps to protect himself bars his fraud claim because his reliance is *per se* unreasonable. Additionally, they point to Savla's fluency in English and educational background as evidence he failed to demonstrate justifiable reliance upon the representation.

In Delaware, to demonstrate a claim of fraud, a party must demonstrate:

- 1) a false representation, usually one of fact, made by the defendant;
- 2) the defendant's knowledge or belief that the representation was false, or was made with reckless indifference to the truth;
- 3) an intent to induce the plaintiff to act or to refrain from acting;
- 4) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and
- 5) damage to the plaintiff as a result of such reliance.<sup>40</sup>

The trial court held that Savla's reliance on Tekstrom's and Minhas' representations was reasonable, stating "[d]espite the fact that representations are contrary to the contract that Savla signed, it is clear that he would not have come to Dover except for the promise of a job and the processing of the visa." The misrepresentations that Savla justifiably relied on include the following: Tekstrom had Fortune 500 companies as corporate clients; Savla would be absorbed into ongoing projects; he would receive assistance processing a visa application; health benefits would be provided; and he would receive clean, single living accommodations during training.

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<sup>39</sup> 844 A.2d 1022 (Del. Ch. 2004)

<sup>40</sup> *Lord v. Souder*, 748 A.2d 393, 402 (Del. 2000).



To establish justifiable reliance, Savla must demonstrate he did not have either the awareness or opportunity to discover the accurate information. According to Restatement(Second) of Torts § 541: “The recipient of a fraudulent misrepresentation is not justified in relying upon its truth if he knows that it is false or its falsity is obvious to him.” In Delaware, “[w]hether a plaintiff has the right to rely on specific representations depends on whether ‘the representations relied upon involve matters which a reasonable person would consider important in determining his course of action in the transaction in question.’”<sup>41</sup> The recipient of the information is “required to use his senses, and cannot recover if he blindly relies upon a misrepresentation the falsity of which would be patent to him if he had utilized his opportunity to make a cursory examination or investigation.”<sup>42</sup>

The Court finds there is substantial evidence to support the trial court’s determination that Savla justifiably relied on Tekstrom’s and Minhas’ misrepresentations. Arguably Savla could have looked more thoroughly into Tekstrom prior to moving to Delaware. For instance, he could have asked to see a roster of Tekstrom’s alleged Fortune 500 clients or asked specific questions about the promised health benefits. Nonetheless, there is substantial evidence to support a conclusion that many of Tekstrom’s and Minhas’ misrepresentations – and those most crucial to Savla deciding to come to Delaware – could not have been clarified through a cursory examination. For example, no investigation would have shed any light on

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<sup>41</sup> *WSFS v. Chillibilly’s, Inc.*, 2005 Del. Super. LEXIS 96, Graves, J.

<sup>42</sup> Restatement (Second) of Torts Section 541, cmt. a.

promises made to Savla that he would be absorbed into ongoing projects or given visa assistance. Additionally, until he was handed a sleeping bag when he arrived in Delaware, he was under the impression that he would be living alone in a one-bedroom apartment. For those reasons, the trial court's finding that Savla's reliance on the false representations was not unreasonable is *affirmed*.

#### **V. Intentional Infliction of Emotional Distress**

Tekstrom and Minhas claim the trial court erred by finding intentional infliction of emotional distress because their pursuit of legal action was justified and not tortious. Additionally, they claim the trial court erred in admitting non-expert evidence on causation that Savla became ill as a result of their conduct. Prior to trial, the trial court denied Tekstrom's and Minhas' motion to exclude non-expert testimony of Savla and his wife about what caused him to become ill.

The trial court considered the following in determining Tekstrom and Minhas committed intentional infliction of emotional distress:

When an employer threatens an employee with deportation, lawsuits, false criminal charges, and sabotage of his professional career, this conduct should be regarded as intolerable in a civilized community. The evidence presented at trial shows that Tekstrom and Minhas chose to threaten Savla with criminal charges, possible deportation, and destruction of his career, and as a result of this conduct, he became sick. He was vomiting, dizzy, and lost weight.

According to Restatement (Second) of Torts § 46, “[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to

another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.” Bodily harm is not required to establish a claim for intentional infliction of emotional distress if the conduct is outrageous.<sup>43</sup> The trier of fact must determine whether there has been sufficiently extreme and outrageous conduct and liability “has only been found to result where the conduct is so outrageous and extreme in degree that it exceeds the bounds of decency and is regarded as intolerable in a civilized community.”<sup>44</sup>

First, Tekstrom and Minhas claim the trial court erroneously labeled their pursuit of legal rights as infliction of emotional distress. They argue Savla admitted that nobody at Tekstrom threatened to pursue criminal or legal action against him prior to May 25, 2003. Their actions occurred after they believed Savla breached his contract and absconded with company property. In support, Tekstrom and Minhas cite Comment g of § 46 of the Restatement: “the actor is never liable ... where he has done no more than to insist upon his legal rights in a permissible way, even though he is well aware that such insistence is certain to cause emotional distress.”

Here, there was substantial evidence for the trial court to find that Minhas and Tekstrom committed tortious intentional infliction of emotional distress and were motivated not by the desire to exercise their legal rights but to scare Savla. In this case, Tekstrom and Minhas threatened Savla with a lawsuit days after he asked questions about when he was going to be paid. Minhas asked Savla for a former co-

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<sup>43</sup> *Thomas v. Harford Mutual Insurance Co.*, 2004 Del. Super. LEXIS 151, at \*8, *citing Cummings v. Pinder*, 574 A.2d 843 (Del. 1990).

<sup>44</sup> *Id. citing Mattern v. Hudson*, 532 A.2d 85, 86 (Del. Super. Ct. 1987).

worker's address so Tekstrom could sue her and later e-mailed Savla threatening the same thing against him. Tekstrom president Dola wrote an e-mail to the consulting company it was working with in placing Savla, informing the consulting company that Tekstrom was pondering whether to pursue legal and criminal charges against Savla. After Savla left New York to return to Houston, Minhas wrote Savla's fiancée demanding that Savla come to Dover to return a laptop and warning her that Savla's career could be destroyed and that he could be prosecuted criminally and deported.

Tekstrom's and Minhas' argument that they were just pursuing their legal rights might have greater weight if they had not used other people to coerce and intimidate Savla. The law protects individuals who are pursuing their rights in a permissible manner. Here, Tekstrom and Minhas were using scare tactics and intimidation in an outrageous manner. The trial court's finding was supported by substantial evidence.

Next, Tekstrom and Minhas argue the trial court erred in allowing Savla and his wife to testify regarding the physical effects of the emotional distress. They cite *Rea v. Midway Realty Corp.*,<sup>45</sup> which held that expert testimony was required to establish proximate cause between an act and an injury for an intentional infliction of emotional distress case. *Rea*, however, was decided prior to *Cummings v. Pinder*, which held that a claimant need not show bodily harm to establish a claim for intentional infliction of emotional distress. Therefore, expert testimony is not required to discuss the effects of that distress. For those reasons, the trial court's decision is ***affirmed***.

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<sup>45</sup> 1990 WL 35285, at \*1 (Del. Super.), Graves, J.

## **VI. Savla's Section 1981 Claim**

The trial court did not commit legal error in holding that Savla did not present a *prima facie* case establishing a violation of 42 U.S.C. § 1981. Section 1981, which prohibits racial discrimination in the making of contracts provides:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other.

A plaintiff must adequately allege the following to state a *prima facie* case of racial discrimination under § 1981: (1) he is a member of a protected class: (2) the defendant had the intent to discriminate on the basis of race: and (3) the discrimination interfered with the protected activity as defined in § 1981. Section 1981 provides a cause of action for discrimination based on race or alienage.<sup>46</sup>

The trial court determined that Savla did not make a *prima facie* case of discrimination because he did not show that he was deprived of the right to contract with the company due to his race or alienage. Additionally, the trial court found Savla did not show he was treated differently than any other group in terms of the contract offered to him. Savla contends the trial court's decision is erroneous and not based on substantial evidence because the undisputed evidence in the case is that

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<sup>46</sup> *Duane v. Gov't Employees, Inc.*, 37 F.3d 1036, 1043 (4<sup>th</sup> Cir. 1994).

Tekstrom specifically recruited Savla and other Indians based on their alienage. Evidence of this includes Tekstrom's promise to provide visa assistance; job postings on the Indian Student Association web site; and evidence that no other individual, who was not an Indian, was offered a contract similar to that received by Savla.

Tekstrom and Minhas counter that the trial court properly rejected the § 1981 claim because Savla did not demonstrate by a preponderance of the evidence that Tekstrom and Minhas intentionally discriminated against him because of his national origin. They point to the fact that Tekstrom posted job listings in race and nationality-neutral advertisements in newspapers and on the Internet. Tekstrom acknowledges that most of its employees are aliens and attributes this to the United States not producing enough technically proficient computer science graduates to meet industry demands. Tekstrom and Minhas argue the fact that its market niche may be locating, sponsoring and employing such individuals does not make its business discriminatory.

The Court agrees with the trial court. Savla failed to demonstrate that he was deprived of any right because he is Indian. Therefore, the trial court's conclusion that Savla did not prove intentional discrimination in violation of Section 1981 is *affirmed*.

## **VII. Damages**

Next, Tekstrom and Minhas argue the trial court incorrectly calculated the damages awarded to Savla. They object to (1) liquidated damages pursuant to 19 *Del. C.* § 1103; (2) \$28,000 in compensatory damages for "lost wages" during the period between May 2003 and January 2004; (3) \$20,000 compensation for pain and

suffering; and (4) \$20,000 in punitive damages.

The Superior Court in its appellate capacity “will not disturb the findings of a trial judge if they are sufficiently supported by the record and are the product of an orderly and logical deductive process.”<sup>47</sup>

Tekstrom and Minhas argue no liquidated damages pursuant to 19 *Del. C.* § 1103 should be awarded because Savla did not assert a claim for these damages in his complaint. The complaint, they argue, set forth a claim for back pay pursuant to Chapter 9, the Minimum Wage Act, which provides its own remedies.

Savla argues that the trial court had authority to award liquidated damages pursuant to 19 *Del. C.* § 1103 because he requested these damages in his second amended answer. He also states his third amended answer asserted requirements to prove the complaint, namely that he was an employee, had to go to an office on a daily basis and was never paid for any of his work.

Chapter 11, which is the Wage Payment and Collection Act, prohibits the withholding of wages with certain limited exceptions and provides specific remedies for violations of the chapter. Section 1103(b) of the act imposes liquidated damages against an employer who “without reasonable grounds for dispute, fails to pay an employee wages, *as required under this chapter.*” It allows for “liquidated damages in the amount of 10 percent of the unpaid wages for each day ... or in an amount equal to the unpaid wages, whichever is smaller.”

I am satisfied that the issue was sufficiently raised to allow the trial court to

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<sup>47</sup> *Joswick v. Murphy*, 1990 Del. Super. LEXIS 385, at \*5 citing *State v. Cagle*, 332 A.2d 140, 142 (Del. 1974).

properly rule upon it. Therefore, I conclude that the trial court's award of liquidated damages should be *affirmed*.

Minhas and Tekstrom next argue that the trial court erroneously awarded Savla “lost wages” in the amount of \$28,000 for the time Savla was unemployed. They argue Savla’s inability to work is unsupported by the record and the award fails to consider that Savla voluntarily quit his position with Tekstrom. Savla argues the award is justified because Savla never voluntarily quit his position as he left because he was never paid for his work and was threatened with lawsuits and thus he was constructively discharged.

In its decision, the trial court stated Savla is entitled to be compensated for any damages to him reasonably foreseeable by Tekstrom and Minhas. “Because of the conduct of Tekstrom and Minhas, Savla was unable to work for a long period of time.” The trial court based its decision on its findings that Tekstrom committed the torts of intentional infliction of emotional distress, intentional misrepresentation and violation of the covenant of good faith and fair dealing.

This Court finds the trial court’s findings in regard to compensatory damages are sufficiently supported by the record. Savla testified that his experience with Tekstrom caused him to feel “disturbed” to the point where he was too distraught to find work and instead considered going to graduate school instead of pursuing employment. Additionally, he testified that he had difficulty finding a position because of the gap in his resume due to the Tekstrom experience. Savla finally got another job in January 2004. Compensatory damages “impose satisfaction for an



injury done” such that an award is directly related to the harm caused.<sup>48</sup> Here, the trial court established liability for intentional misrepresentation, violation of the covenant of good faith and fair dealing and intentional infliction of emotional distress and found Savla was unable to work as a result of these wrongs. The compensatory damages award therefore is *affirmed*.

Tekstrom and Minhas argue the trial court erred in awarding compensatory damages for pain and suffering because the court’s decision relied on its finding that Savla’s physical illness was proximately caused by the appellant’s conduct without corroborating expert testimony. Savla argues the trial court’s award was proper given the testimony regarding Savla’s emotional distress during his time with Tekstrom and following when he was jobless and feared deportation. The trial court stated its award for \$20,000 was fair and just for pain and suffering caused by intentional misrepresentation of the employment contract and intentional infliction of emotional distress. The trial court stated, “Savla’s emotional distress was manifested by insomnia, dizziness, weight loss, and vomiting. It was compounded by the extreme financial hardship he suffered, his separation from his home and family, and the inconvenience of his having to relocate from Texas to Delaware and back to Texas.” In Delaware, an individual may recover for the intentional infliction of emotional distress in the absence of bodily harm. Therefore, the damages award for compensation for pain and suffering and mental anguish is *affirmed*.

Finally, Tekstrom and Minhas contend the trial court’s award of \$20,000 in

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<sup>48</sup> *Jardel Co. Inc. v. Hughes*, 523 A.2d 518, 528 (Del. 1987) citing 22 Am.Jur.2d Damages § 1, at 13 (1965).

punitive damages constituted legal error because the trial court did not undertake an analysis to determine “whether the defendant’s conduct is ‘outrageous,’ because of ‘evil motive’ or ‘reckless indifference to the rights of others’” as required by *Jardel Co., Inc. v. Hughes*.<sup>49</sup> They argue the trial court based its award on Tekstrom’s and Minhas’ alleged misrepresentations and threats without considering their states of mind.

The trial court based its punitive damages award upon its findings regarding breach of the covenant of good faith and fair dealing, intentional misrepresentation and intentional infliction of emotional distress. Punitive damages may only be imposed after an examination of the defendant’s conduct, inquiring whether it was outrageous, because of evil motive or with reckless indifference to the rights of others.<sup>50</sup> “It is not enough that a decision be wrong. It must result from a conscious indifference to the decision’s foreseeable effect.”<sup>51</sup> The trial court based its decision on willful and outrageous threats against Savla that Tekstrom and Minhas knew were false; contract misrepresentations; and the need to deter Tekstrom and Minhas from engaging in similar conduct in the future. I have no doubt that the trial court is aware of the legal standard for awarding punitive damages. The Court finds that the trial court's analysis met the legal requirements for punitive damages for the misrepresentation and intentional infliction of emotional distress claims.

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<sup>49</sup> 523 A.2d 518, 529 (Del. 1987) *quoting* Restatement (Second) of Torts § 908 cmt. b. (1979).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

However, the trial court did commit legal error in including breach of the covenant of good faith and fair dealing in its consideration of punitive damages. The Delaware Supreme Court in *Pressman*<sup>52</sup> held punitive damages were unavailable for the breach of the covenant of good faith and fair dealing. In doing so, the Court expressed its reluctance to expand punitive damages to breach of contract cases, noting that the traditional goal of contract law “has not been compulsion of the promisor to perform but compensation of the promisee for the loss resulting from the breach.”<sup>53</sup> The Court noted punitive damage awards have not been recoverable for a breach of contract unless the conduct also amounted independently to a tort.<sup>54</sup> While the trial court noted this Court has awarded punitive damages for a breach of the covenant of good faith and fair dealing when the defendant committed a willful wrong in the nature of deceit,<sup>55</sup> the facts in this breach of the covenant of good faith and fair dealing do not rise to the level of a tort and, therefore, punitive damages are not appropriate on this claim. However, I believe that this error was harmless. After reviewing the trial court's analysis of punitive damages, I am unpersuaded that the award would have been any different had the trial court not included a reference to the covenant of good faith and fair dealing. Therefore, the award of punitive damages is *affirmed*.

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<sup>52</sup> *Pressman*, 679 A.2d at 448.

<sup>53</sup> *Id.* at 445 citing *Restatement (Second) of Contracts*.

<sup>54</sup> *Id.*

<sup>55</sup> See *Gillendardo v. Connor Broadcasting Delaware Co.*, 2002 WL 99110, at \*11, Witham, J.

### **VIII. Attorneys' Fees**

Lastly, Tekstrom and Minhas contend that the trial court's award of \$73,711.25 in attorneys' fees to Savla is disproportionate and an abuse of discretion. They contend Savla was awarded attorneys' fees far in excess of those he is allowed to receive because only one of the claims on which he succeeded – specifically wage collection – permits reasonable attorneys' fees by statute. Tekstrom and Minhas claim the trial court improperly attributed more than 87 percent of the fees incurred by Savla's attorney from the single wage collection claim.

The trial court specifically rejected awarding all of the \$84,541.50 in fees he was seeking. Savla asserted he was entitled to all of the fees under the bad faith exception to the American rule, which ordinarily holds courts may not award attorneys' fees unless authorized by statute or contract. Savla contended the litigation was brought in bad faith, but the trial court rejected this assertion. The trial court stated it did not need to limit Savla's fee award to one-sixth of his requested fees because, although there were different legal theories, the case was controlled by one common set of facts, the non-wage claims arose from the failure to pay wages, and it was necessary for Savla to defend against Tekstrom's claim in order for him to prevail on his claims.

Under the circumstances presented here, including the interrelationship of the claims, I am satisfied that the decision of the trial court was the product of an orderly and logical deductive process and should be *affirmed*.

***Tekstrom Inc., et al. v. Savla***  
C.A. No. 05A-12-006 (JTV)  
July 31, 2006

**CONCLUSION**

For the foregoing reasons, the decision of the Court of Common Pleas is ***affirmed in part*** and ***reversed in part***.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.  
President Judge

oc: Prothonotary  
cc: Order Distribution  
File