

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION  
AT COVINGTON

Eastern District of Kentucky  
**FILED**

APR - 4 2011

AT COVINGTON  
LESLIE G WHITMER  
CLERK U S DISTRICT COURT

**MAZAK CORPORATION**

**Plaintiff**

v.

**WILLIAM P. KING**

**Defendant**

: **Case No. 05-230-WOB**

:  
: **MEMORANDUM OPINION AND**  
: **ORDER**

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The Court has previously directed the entry of judgment in favor of Plaintiff Mazak Corporation ("Mazak") against Defendant William P. King, concluding that Defendant breached his fiduciary duties to Mazak by failing to fully and completely disclose his and his subordinate's ownership interests in two outside vendor companies doing business with Plaintiff, United International of Cincinnati ("United") and WT Financial & Associates ("WT") (doc.# 177). This matter is now before the Court on Plaintiff's Renewed Motion for Summary Judgment on the Issue of Damages for Defendant's Breach of Fiduciary Duty (doc. # 282).

The measure of damages in a "secret profits" case is defined as a matter of law. "Profits realized by an agent in execution of his agency belong to the principal in the absence of an agreement to the contrary." *Conklin v. Joseph C. Hofgesang Sand Co.*, 407 F.Supp. 1090 (W.D. Ky. 1975), quoting *Byer v. International Paper Co.*, 314 F.2d 831, 833 (10<sup>th</sup> Cir. 1963). "He will be required to account to his employer or principal for any gift, gratuity or benefit received by him in violation of his duty, or any interest acquired adverse to his principal without a full disclosure, though it does not appear that

the principal has suffered any actual loss by fraud or otherwise.” *Stewart v. Kentucky Paving Co.*, Ky. App., 557 S.W.2d 435, 437-38 (1977), quoting *Hoge v. Kentucky River Coal Corp.*, 216 Ky. 51, 287 S.W. 226 (1926).

Additionally, a person, such as Defendant, who aids and abets another, such as his subordinate Tim Fisher, in the breach of a fiduciary duty, is liable for that breach and the profits flowing from it. “As to the claim of aiding and abetting, it has been held that a person who knowingly joins with or aids and abets a fiduciary in an enterprise constituting a breach of fiduciary relationship becomes jointly and severally liable with the fiduciary for any profits that may accrue.” *Steelvest, Inc. v. Scansteel Service Center*, Ky., 807 S.W.2d 476, 485 (1991).

The facts supporting those profits obtained by Defendant and his subordinate in breach of their fiduciary duties are undisputed. Specifically, the evidence establishes, and Defendant has not disputed, the following profits obtained from United and WT:

\$1,510,738	Distribution to Defendant from United;
\$ 133,537	Profit sharing contribution to Defendant from United;
\$ 204,346	Distribution to Defendant from WT;
\$1,490,738	Distribution to Defendant’s subordinate from United;
\$ 133,537	Profit sharing contribution to Defendant’s subordinate from United.

Accordingly, the Court concludes that there are no genuine issues of material fact on the issue of damages, and Plaintiff is entitled to judgment as a matter of law.

The Court being otherwise sufficiently advised;

**IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. Plaintiff’s Motion for Summary Judgment on the Issue of Damages for Defendant’s Breach of Fiduciary Duty (Doc. #282) is GRANTED;

2. Plaintiff, Mazak Corporation, is granted JUDGMENT against Defendant William P. King in the amount of \$3,472,896, with interest at the statutory rate.

3. Plaintiff's claim for punitive damages is withdrawn.

4. As a judgment debtor, Defendant is entitled to credit against this Judgment for any portion of the damages awarded herein that Plaintiff recovers from any third parties; and

5. A judgment shall enter concurrently herewith.

This 4<sup>th</sup> day of April, 2011.

  
WILLIAM O. BERTELSMAN, JUDGE

Tendered by:

/s/ Kevin L. Murphy  
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