IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

Petter Packaging, LLC	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Charles Hutchcraft, Penny Hutchcraft, Kalison Warehousing, Inc., The Kalison Group, Inc. Kalison Fulfillment, Inc., And Kalison Packaging, Inc.	)	Case No. 10-MR-286
	)	
Defendants.	)	
	)	

ORDER

After a week-long bench trial, the Court made certain factual findings and conclusions on the record. The Court has considered the pleadings, post-trial submission of briefs with authorities, stipulated documents, and the arguments of counsel and makes the following formal findings and judgment.

BACKGROUND WITH FACTS NOT IN DISPUTE

Many of the facts in this case are not in dispute. Robert Petter, President of Petter Packaging (Petter), entered into an agreement with Charles Hutchcraft (Hutchcraft), to purchase Hutchcraft's business, Apex Packaging (Apex), a business involved in the sale of packaging products. On November 13, 2002, an Asset Purchase Agreement was signed. As part of the transaction, on November 27, 2002, two additional written agreements between the parties were executed: an employment contract under which Hutchcraft was hired as president of the company, and a non-compete agreement binding Hutchraft and Apex from competing with Petter Packaging for a period of up to three years following termination. Subsequently, Hutchcraft changed the name of his company from Apex to Kalison Warehousing, Inc.

Sometime in 2004 or 2005, a salesman employed by Petter, Chad Phelps (Phelps), informed Hutchcraft of an opportunity to sell custom labels to FG Quality Supply (FG), for resale to a steel company. Acting on this opportunity, Hutchcraft and Phelps traveled to Chicago to meet with FG at Petter expense to discuss the requirements for the product. Hutchcraft approached Wade Crooks (Crooks) owner of Adhere Label Products (Adhere) to attempt to find a label that would adequately stick to steel products and have identifying information and codes on its face. Hutchcraft, Phelps and Crooks, went to Chicago, joined up with FG and then journeyed to the steel mill to

assess the type of label that the steel mill needed and wanted. The nature of the steel products and their storage conditions required labels with special adhesives that would remain attached at extreme temperatures and oxidation conditions of the steel.

Repeated attempts at producing workable labels were made. In February of 2006, still pursuing the opportunity through Petter, Hutchcraft made a first sale of labels, and accessories to be used to finish the labels, to FG. Further, Hutchcraft and Crook reached an agreement that Adhere would not be paid for labels delivered to Hutchcraft until Hutchcraft had been paid by FG.

Approximately three months later, Hutchraft decided to handle further steel label transactions himself using Kalison Warehousing, Inc. Hutchcraft testified that the reason he chose to stop selling the labels through Petter was that Petter had a policy of selling products only on a 30-day payment due on invoice basis. Hutchcraft did not inform Petter that he was selling the labels outside of Petter. Hutchcraft agreed with Phelps to split the profits from the labels fifty-fifty. Had Hutchcraft made the sales through Petter, Hutchcraft and/or Phelps would have been paid a ten percent commission on the sales, and Petter would have received 90 percent of the profits. Instead Hutchcraft and Phelps received 100 percent of the profit working outside of Petter. Hutchcraft continued to make volume sales of the steel labels from mid 2006 forward. There were no significant expenses required of Hutchcraft before and after the right formulation of adhesive was found. The margin, the difference in the purchase

price of Adhere and the sale price to FG, was the profit realized by Hutchcraft and Phelps. The substantial sums realized by Hutchcraft and Phelps carried little risk given the agreement with Adhere that payment would only be due when payment was received from FG.

Hutchcraft continued to use his company Kalison Warehousing in conducting the steel label business. In the same time-frame Hutchcraft owned several other entities: Kalison Group, Inc., Kalison Fulfillment, Inc., and Kalison Packaging, Inc. The Kalison companies were owned by Mr. Hutchcraft, or Mr. Hutchcraft and Penny Hutchcraft (Ms. Hutchcraft) together. In September of 2008, Hutchcraft hired Ms. Hutchcraft, to work in the office at Petter. Ms Hutchcraft not only assisted her husband by performing work related to selling the steel labels at Petter during office hours, she used Petter resources to do other work for Kalison Warehousing.

At a point prior to November 12, 1010, Petter learned of the steel label transactions. On November 12, 2010, both Hutchcrafts were terminated from Petter. Hutchcraft continued to sell the steel labels and immediately began to compete in the sale of packaging supplies.

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The Court observed the evidence of the video deposition of Chad Phelps and it was clear from observation of Phelps' demeanor and answers that Phelps was

chagrined and regretful for his part in the transactions. He acknowledged that he realized early on that Hutchcraft and he were engaged in business that violated their duties to Petter. Phelps appeared embarrassed in describing their actions related to the sale of the steel labels. Phelps acknowledged that he was allowed to continue his employment with Petter, after agreeing with Petter to pay over to Petter his profits from the steel labels ($75,679.24) and in return for his co-operation. The Court found his testimony to be consistent and believable, and not the product of any deal with Petter.

The testimony of Hutchcraft, Wade Crook (Crook), Julie Amsden (Amsden), and Kevin Hollman, (Hollman) was an interesting study in business mores. Hutchcraft testified to his actions stoically, exhibiting the air of a man who believed he had done nothing wrong and that his reason for not offering the sale through Petter was completely reasonable and above board.

Wade Crook is the president-owner of Adhere Label. He testified in a video deposition regarding his meetings with Hutchcraft and Phelps, and his attempts to come up with a viable tape formulation for the steel labels. He had done business with Hutchcraft when Hutchcraft was owner of Apex Packaging, and was aware of Hutchcraft's position with Petter. Crook was aware of the change of the sale of the steel labels from Petter to Kalison.

Debbie Bicker, worked for Adhere and Wade Crook from early 2001 through 2015, but then, at the time of her deposition in September of 2015, worked for a different

company. She was intensively involved in the handling of the FG Labels and worked with both Chuck Hutchcraft and Penny Hutchcraft in the paperwork. She corresponded with both. She was well versed in the development of the labels and during the attempts to come up with a workable label she indicated that neither Petter nor Kalison were billed for samples. She was aware of the change-over of the FG Label transactions from Petter being the broker to Kalison. Bickers testified that, after the change in brokers, Crooks instructed her that "under no circumstances were we to send anything to Petter. That was Kalison's." She was told to deal only with Chuck or Penny, and to not deal with anyone else. She testified that she was later reprimanded by Crooks for accidentally faxing an FG invoice or paperwork to Petter instead of to Kalison. She testified that she was told Petter Packaging was not supposed to know about Kalison selling these products. The Court does not see any basis for assuming any bias or prejudice on the part of Bickers and finds her testimony to be credible.

Julie Amsden, held the duties of office manager for Petter Packaging during the relevant period. She testified that she basically saw everything that transpired in the office on a daily basis. She was familiar with all the aspects of the business and also conducted sales in her own name. She had a great relationship with Hutchcraft during the early part of her tenure, but later on started to become disillusioned when she discovered Hutchcraft was changing sales orders to show that either he or his wife Penny receive the commission on sales that otherwise would have gone to other

employees. She came back from vacation and discovered that Hutchcraft had changed an order from her name to Penny's name. She complained to him and he asked her what the commission was worth and threw fifty dollars at her. In early 2006, Hutchcraft took her with him to Adhere Label for the purpose of setting up the steel label transactions on behalf of Petter. He explained the business and how good it was going to be and promised that it would mean a bonus for her at the end of the year. Later she learned that the steel label business was being conducted through Kalison. She assisted Hutchcraft in the Kalison sales of the steel labels and had access to the files and transactions being conducted. After several months she realized that the conduct of business through Kalison meant that she would not be getting any bonus through Petter. Amsden testified she continued to work with Hutchcraft because she was intimidated by him and feared she would be fired from a good job. During this time Hutchcraft would confide in her and informed her that he had an exit plan (from Petter) to take over, with the help of Phelps, Petter's largest account, Continental Tire. Phelps was the main salesman for the Continental account and had good contacts within that company. Hutchcraft told her not to worry, that he would take her with him to a new company he would form if Petter shut him down.

Amsden's relationship with Hutchcraft worsened when he asked her to sign a non-compete agreement in June of 2009. She at first refused, then signed it under duress. After that, over the course of many months, Hutchcraft ceased treating her as

his right-hand man, and his wife, Penny, started assuming more and more of Amsden's duties within the office. Amsden testified that it became obvious to her that Hutchcraft was having his wife learn all of the business aspects of their major customers. Hutchcraft formally put Penny in charge of the main accounts and salesmen. Realizing that she was in effect being shut out, in late 2010 Amsden went to the human resources department and revealed what she knew about the FG label business.

Despite obvious credibility issues exhibited in Amsden's testimony. This Court finds that her account was clear and consistent. Her testimony on cross examination remained largely consistent and unshaken. Her testimony was consistent with other testimony and therefore largely believable.

Kevin Hollman was hired by Hutchcraft in October 2008 to be a salesman for Petter Packaging. He testified to various aspects of selling business products. He corroborated testimony from Julie Amsden concerning changes in the office, including the hiring of Penny Hutchcraft and the enlargement of her duties and roll in the office. He was called to establish that, after Hutchcraft's termination from the company, Hutchcraft's competition with Petter customers resulted in lost sales and reduced sales profits (margins). He testified that Hutchcraft knew Petter margins with respect to clients. As a result Petter salespeople were required to reduce their margin to keep business or regain lost business.

Hollman testified that he was approached by Hutchcraft in mid 2009 to sign a noncompete agreement. He told Hutchcraft he would need to show it to his attorney. Hutchcraft came back later and insisted that Hollman sign. Hellman told Hutchcraft that his attorney said not to sign and Hollman reminded Hutchcraft that Hutchcraft had told him when he hired him that one of the benefits of coming to work at Petter Packaging was that he would not be required to sign one. Hollman testified that Hutchcraft later told him if he did not sign Hutchraft would "make my life hell if I didn't sign it." Hollman signed the noncompete agreement on June 17, 2009. On cross-examination, Hollman was asked if he had telephoned defendant Hutchcraft in 2015 or 2016, during the pendency of this suit. Hollman acknowledged that he had and said the purpose was to discuss the noncompete agreement he had signed in 2009, whether Hutchcraft thought it was still legally binding. Hollman was pressed on cross-examination as to whether the real reason for the telephone call was to discuss Julie Amsden and how information he had might assist Hutchcraft in the trial. Hollman relied: "Hmm. Not that I recall."

This Court observed the witness and could see the palpable discomfort this exchange caused the witness. This Court cannot conceive of a reasonable basis under these circumstances for Hollman to contact Hutchcraft to inquire about a 2009 legal document for which the witness had already consulted his own attorney. A document that the witness said was forced upon him by Hutchcraft. One would think that

Hutchcraft would be pretty far down the list of possible consultants. That leaves two, more reasonable explanations. Hollman was trying to hedge his bets with employment, ingratiating himself to Hutchcraft, should he be let go by Petter, or he was fishing for information or admissions that may help Petter. One is more likely.

The foregoing certainly presents credibility problems for Mr. Hollman's testimony. However, much of his testimony is corroborated by other testimony, documentary evidence, and expert opinion testimony given later in the trial. In addition, much of the evidence is un-contradicted.

Robert Petter testified to the corporate entities that comprise his business. Petter Supply and Petter Packaging (formerly Apex) are separate entities, but nonetheless share certain corporate departments and have overlapping sales and purchases in overlapping geographic areas. A substantial portion of the sales by Petter Packaging from the beginning up to the present, was to Petter Supply. Such sales were processed as no-margin sales and resulted in no profit to Petter Packaging. Petter Supply was used as a conduit to serve other Petter corporate entities. Petter testified to an incident in 2009, wherein Petter had Hutchcraft review and sign a document that described the fiduciary duties of a corporate officer. Some months later he was presented with the evidence of the steel label sales shortly before terminating Hutchcraft. Much of the cross-examination of Petter related to the interpretation of the non-compete agreement signed by Hutchcraft. During the pendency of this suit, Petter had brought an action to

enforce the non-compete clause and had received certain relief at the trial level that, on appeal, was modified. Additional cross-examination of Petter related to interpretation of that order.

Thomas Zetlmeisl was called as an expert witness. Zetlmeisl testified to a long and extensive history in the field of accounting, holding certifications of Certified Public Accounting, Certified Fraud Examiner, and Certified Financial Forensics. Zetlmeisl spent over 50 hours of his personal time and his support staff spent over 300 hours in analyzing data accumulated from relevant sources. His analysis included computing profits Petter would have realized from the steel label sales had the sales gone through Petter Packaging rather than through Kalison Warehousing. Then, using historical data, Zetlmeisl determined that Petter suffered losses related to Hutchcraft competing against Petter after Hutchcraft's termination in November 2010. Zetlmeisl found that Petter profit margins fairly tracked the industry average, being just 2.8% below, from 2005 to 2011. After 2011, Petter margins dropped significantly. Zetlmeisl made inquiries and concluded that the only thing that changed in the market was competition from Hutchcraft. Zeitlmeisl computed and quantified this loss to Petter as "margin compression," or lost profits for each of the years after 2010. Zetlmeisl made separate calculations for the various type of transactions subsequent to 2010 that he directly attributed to the "but for" presence of Hutchcraft in the Petter market: Petter sales to Petter customers and Hutchcraft sales to Petter customers,

This Court found the expert testimony of Mr. Zetlmeisl to be logical and consistent, but the Court has a small but significant concern with the application of "margin compression" as used in relation to the FG steel labels sales. Hutchcraft was not in competition with anyone in selling the labels to FG. To the Court this means that margin compression plays no part in the sales transactions reached between Hutchcraft and the other parties. There is no evidence or logical necessity that would suggest that if the FG sales had gone through Petter that the margin or profit structure would be any different.

FINDINGS OF FACT AND LAW

Based upon the foregoing, and all of the other evidence not specifically discussed, the Court finds that the Plaintiff has met his burden of proving Charles Hutchcraft violated the fiduciary duty he assumed with his employment with Petter. The evidence clearly supports that Hutchcraft owed Petter the duty to exercise the utmost good faith and honesty in all dealings and transactions relating to the corporation. *Levy v. Markal Sales Corp.*, 268 Ill. App. 3d 355 (1994). Charles Hutchcraft violated that duty by taking advantage of the business opportunity, the FG Label transactions, that properly belonged to Petter. The explanation Charles Hutchcraft gave for taking that business opportunity for himself is patently unreasonable and

unbelievable. His claim that Robert Petter would not approve the financing structure was never tested because he never approached Petter with the proposal. In *Anest v. Audino*, 332 Ill. App. 3d 468 (2002) the Supreme Court cited the holding in *Graham v. Mimms*, 111 Ill. App. 3d 751 (1982) at 763.

> When a corporate fiduciary wants to take advantage of a business opportunity that is within the company's line of business, the fiduciary must first disclose and tender the opportunity to the corporation before he or she takes advantage it, notwithstanding the fiduciary's belief that the corporation is legally or financially incapable of taking advantage of the opportunity.

His lack of good faith is demonstrated by the steps he took to hide the FG Label business from Petter Packaging and his conduct with Julie Amsden. This Court concludes that Chuck Hutchcraft's lack of good faith is further demonstrated by the steps he took to prepare for the possibility that the FG Label transactions would be discovered. He put his wife. Penny, in the position, and assigned her duties, that would place her in control of servicing customers that he anticipated taking with him if terminated. These actions constitute separate, additional breaches of fiduciary duty by Charles Hutchcraft.

Plaintiff has the burden of proving that Petter was damaged by the breach of fiduciary duty. Petter was damaged by the loss of profits it would have received but for the usurpation of the FG Label business opportunity by Hutchcraft. This Court finds that the breaches by Charles Hutchcraft were willful, intentional and in disregard of the duties he owed Petter. The evidence supports a finding that the loss of profit to Petter

for the FG Label business is $142,872.00 for the period from January 1, 2007, to November 12, 2010, and $166,523.58 for the period of November 13, 2013, to November 12, 2013, for a total of $309,395.58 in lost profits. Judgment is granted in favor of Plaintiff for that amount.

Plaintiff claims that Charles Hutchcraft violated the noncompete agreement signed concurrently with the sale of the business and his employment contract in November of 2002. That contract provided:

> Noncompetition. Apex [n/k/a Kalison Warehousing] and Hutchcraft agree that while Hutchcraft is employed by Petter [Packaging]and for the period described in paragraph 2 hereafter (the "Restricted Period") neither Apex nor Hutchcraft shall directly or indirectly own, manage, operate, control, invest or acquire an interest in, provide assistance to or otherwise engage or participate in (whether as proprietor, partner, stockholder, director, officer, employee, joint venturer, investor, sales representative or other participants) any products packaging business or any business similar to or in competition, directly or indirectly, with Petter,, within Petter's market, without regard to (i) whether the competitive business has its office or other business facilities within Petter's market, or (ii) whether any activity of Hutchcraft occurs or is performed within Petter 14's market, or (iii)whether Hutchcraft resides or reports to an office within Petter's market. For the purposes of this Agreement, market shall mean within the states of Kentucky, Illinois, Missouri, Indiana, and Tennessee.
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> Commencement of Noncompetition Term. It is agreed that the Restricted Period will begin on the date of this Agreement and continue for (i) three years after the Employment between Hutchcraft and Petter has terminated, if such termination is "for cause." or (i) two years after the Employment Agreement is terminated, if termination is for any other reason. For the purposes of this Covenant Not to Compete, "for cause" shall be defined in the same manner as described in the Employment Agreement between Hutchcraft and Petter.

> Noninterference with Business. That commencing on the date of this Agreement and continuing through the Restricted Period, neither Apex nor Hutchcraft shall directly or indirectly solicit, induce or influence any customer, supplier, lenders lessors or any other person which has a business relationship with Petter to discontinue or to reduce the extent of such relationship with Petter.

Petter purchased Hutchcraft's business, including the good will developed by Hutchcraft. The customers that Hutchcraft had acquired while building the company was part of that good will and an important asset purchased by Petter. Noncompete agreements are proper means of protecting business interests. It is fair and reasonable for Petter to want to protect the business he purchased from competition from the person from whom he bought the business and employed to continue to develop customers for the business. Hutchcraft is a knowledgeable and experienced businessman and must be considered to have entered into the Covenant to Not Compete with a full and clear understanding of the agreement and its ramifications.

In considering the three agreements together there was sufficient consideration for the Covenant. The purchase of the business and the employment agreement would have satisfied the consideration requirement. There was also a $5,000.00 payment specifically for the covenant.

Counsel for Defendants asserts that the termination clause in the Employment Agreement requires additional consideration for extending more than three years past the Employment Agreement term. The Employment Agreement provided:

> The term of this Agreement shall begin on the 1st day of December, 2002, and shall continue through the 30th day of November, 2007, unless sooner terminated as provided hereafter in Section 6. This Agreement shall not give Employee any enforceable right to employment beyond this term. The parties presently anticipate that the employment relationship may continue beyond the original term.

Defense counsel argues that the termination clause gives no right to continued employment beyond November 30, 2007, that there is no consideration for the noncompete to extend more than three years past 2007, and that therefore the noncompete covenant lapsed on November 30, 2010.

The Petter-Hutchcraft agreements provide that the agreements be interpreted according to the law of Kentucky. Counsel for Plaintiff cites the 1917 case of *Stewart Dry Goods Co v. Hutchison*, 198 S.W. 17 (Ky. 1917) for the proposition that continued employment beyond the written contract continues under the terms of the old contract. "[I]t is presumed that the old contract continues; and this presumption must prevail, unless overcome by a new agreement or facts sufficient to show that a different hiring was intended by the parties." *Stewart Dry Goods*, at 17. (This case was noted by our Appellate Court in the injunctive action filed in this cause, *Petter Packaging, LLC v. Hutchcraft*, 2012 WL 7069968, IL. App. (5th) 110020-U. In its Rule 23 order regarding injunctive relief, the Court noted that it was not reaching the ultimate merits of the case, but did indicate approval of applying Kentucky law.)

The issue in *Stewart Dry Goods* arose from a suit by the employee for damages for wrongful termination of her employment. A written contract executed in January of

2012 provided that Hutchison was hired for a term of one year at a salary $1,500.00 a year. Her employment continued until August of 2015 when she was terminated. The Kentucky court found that since the employment continued, the terms of the contract continued. The Court affirmed a judgment in her favor against her employer for lost wages for the remainder of the year. The court in *Stewart Dry Goods* did not quote the contract, thus there is some concern whether the specific language in the termination clause in this case requires this Court to find *Stewart Dry Goods* inapplicable.

The termination clause only allows Petter to terminate Hutchcraft at any time. The parties continued to operate under the same terms and conditions of employment as contained in the agreement. The fact that Petter could terminate Hutchcraft at will does not change the provisions of the covenant. The covenant specifies that "the Restricted Period will begin on the date of this Agreement and continue for (i) three years after the **Employment ... has terminated.**" The covenant does not say at the end of the term of the employment contract. Because Petter clearly had the right to terminate Hutchcraft for cause, the covenant continued in effect for three years from the date of termination, up to November 12th, 2013.

Defense counsel argues that the covenant is too restrictive, that it is too broad and vague, and that it is impossible or too difficult to determine which transactions would come within the purview of the covenant. The Court disagrees. The Covenant is limited as to geographical area (five states) and is limited as to time in effect. This Court

cannot find that such contractual restraint is unreasonable. As president of Petter Packaging up to the time of his termination, Hutchcraft well knew who Petter's customers were, where they did business and the nature of that business. While enforcement may be dificult, the records maintained by Petter and Hutchcraft's own records should enable a court to determine violations and render appropriate relief. As strictly an aside, this Court notes the irony that Hutchcraft argues against noncompetes after insisting that persons on his staff execute noncompete covenants. The Court finds the Covenant Not to Compete to by valid and enforceable.

The Court finds that the testimony and exhibits support a finding that Hutchcraft did violate the non compete. The violations started before his termination (the FG Label transactions constitute violations of the covenant) and continued to the end of the covenant.. The testimony, particularly by Thomas Zetlmeisl, established profits lost through Hutchcraft sales to Petter customers for the period from November 13, 2010 through November 12, 2013, in the amount of $573,758.00. Zetlmeisl testified that Petter suffered additional losses through "margin compression." Zetlmeisl testified that because Hutchraft wrongfully sought business with Petter customers, Petter salespeople were required to reduce their margins to make the sales to those customers. Losses resulting from the margin compression described by Zetlmeisl were $593,514.00. In addition, Zetlmeisl determined that Hutchcraft made profits of $67,895.00 through Kalison Warehousing, Inc., for a period of time after the expiration of the covenant. It

was the opinion of Zetlmeisl that these were profits that Hutchcraft would not have made, but for the "head start" that his beginning competition with Petter prior to the expiration of the covenant.

The Court is somewhat concerned that much of Zetlmeisl's opinion was based on general business trends and anecdotal evidence he obtained largely through Petter personnel. Defense counsel rightly raised these concerns. However, there is little evidence to contradict the Zetlmeisl findings and no contradictory expert testimony. Hutchcraft testified as to his opinion that there were many others competing in the Petter market, but it was a general, unsupported and obviously biased opinion. No additional "new" competitors were identified by Hutchcraft. The testimony of James Heimos, the owner and head of a company that is a customer in Petter's market is of limited help to Defendants. Although he appeared to call into question the testimony of Kevin Hollman that indicated that Hutchcraft competed for Petter business with Heimos, he did not directly contradict Hollman. Hollman testified that a Heimos salesman reported to him that Hutchcraft was soliciting business from him causing Hollman to reduce margins on Petter sales to Heimos. There was no other evidence submitted by Defendants to contradict the main thesis of Zetlmeisl that there was significant change in Petter profit margins post 2013 that could not be explained by historical market data or circumstances other than Hutchcraft entering into the market in competition.

Total damages arising from the violation of the Covenant to Not Compete are $1,235,167.00. Judgment is entered in favor of Plaintiff for that amount.

This Court finds that Defendant Penny Hutchcraft and Kalison Warehousing, Inc., are jointly and severally liable for all of the damages awarded against Defendant Charles Hutchcraft in this judgment. The evidence strongly supports finding that Ms. Hutchcraft is a person of intelligence and knowledgeable about all aspects of the label business and had been active in the business for a long period of time. She was a knowing participant with her husband in the breaches of fiduciary duty and violations of his Covenant Not to Compete. The evidence establishes that she had executed a Covenant to Not Compete with Petter and violated her duty of good faith to her employer. She actively aided and assisted in the FG Label Transactions and in the attempts to engage in wrongful competition with Petter, both before and after termination. This liability rests both on her employee's duty of loyalty to her employer and under the civil conspiracy cause of action. Kalison Warehousing, Inc. is nothing more than Defendants' alter ego, the instrumentality that facilitated the wrongful acts. The Court agrees with Plaintiff that the doctrine of piercing the corporate veil applies in this case and extends all liability to all of the Kalison entities named defendant in this cause. Such liability is joint and severable and applies to all damages awarded in this judgment.

Plaintiff asks this Court to require both Defendants to be liable for forfeiture of all salary and benefits received by Charles Hutchcraft during the period of breach as additional damages for their wrongful conduct. For Charles Hutchcraft, forfeited wages would stand at $905,070.90 for the period from May of 2006, the date of the initial breach, to November 13, 2013. Other employment benefits provided to Hutchcraft for that period would stand at $101,538.78 for a total of $1,006,609.68. Plaintiff cites strong authority for the proposition that such damages are proper in a case where the breach of fiduciary duty is willful and deliberate. There is no question in the Court's opinion that the conduct of Defendants qualifies under the caselaw. However, the Court notes that such damages are not compensatory, but are intended as punitive damages. Caselaw suggests that courts have wide discretion in assessing such damages. The Court declines to award such damages in lieu of the award of punitive damages that will be assessed in this judgment.

Plaintiff notes that, as a general rule, attorney fees are not recoverable. Attorneys fees are recoverable where provided by contract in a contract action. Under the Covenant to Not Compete actions Plaintiff would be entitled to attorneys fees, and the same would be awarded in appropriate proportion to the cost of prosecuting the contract action. In that regard, the Court heard and received evidence, including affidavits, that Plaintiff had incurred total attorney fees in the amount of $702,746.72. A post-trial hearing was held wherein Defendants were afforded the opportunity to cross

examine on the issue of attorney fees. The Court finds that the attorney fees are fair and reasonable in this complex case. The work of Thomas Zetlmeisl, supported by affidavit, incurred costs of $82,354.75. The Court finds those costs to be fair, reasonable, and necessary in the prosecution of the case. The Court chooses to take attorneys fees and expert expenses in account in assessing punitive damages.

The Court finds that punitive damages are appropriate in this case. *Down & Dowd, Ltd. v. Gleason,* 352 Ill. App. 3d 365 (1st District 2004). Plaintiff has met its burden of proving the necessary elements of all of the causes of action plead in this case. The Court, based on the foregoing analysis sets punitive damages in the amount of $2,250,000.00. As the case with all judgments entered herein, punitive damages are joint and severable as to all defendants.

Entered

Hon. Judge Stephen R. Rice