

**COURT OF COMMON PLEAS PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PHILADELPHIA
TRIAL DIVISION - CIVIL**

RICHARD RANSOM,	:	APRIL TERM 2018
<i>Plaintiff,</i>	:	NO. 1597
v.	:	COMMERCE PROGRAM
	:	891 EDA 2023
ICTV BRANDS, INC. and ICTV-CEO	:	1010 EDA 2023
KELVIN CLANEY,	:	
<i>Defendants.</i>	:	

JUDICIAL RECORDS
FIRST JUDICIAL DISTRICT
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OPINION

Djerassi, J.

January 3, 2024

This appeal follows lengthy pre-trial proceedings and an eight-day bench trial conducted on Zoom during the summer of 2021. The case involves the termination of Plaintiff Richard Ransom (“Ransom”) from his post as president of Defendant ICTV Brands, Inc (“ICTV”) after a unilateral action by the company’s Chief Executive Officer, Defendant Kelvin Claney (“Claney”). It also involves subsequent defamation with actual malice against Ransom by Claney through submission of a false and misleading report on a Form 8k filing with the Securities Exchange Commission (“SEC”).

This appeal poses a situation where Plaintiff Ransom, who was awarded an aggregate \$1,146,713.01, nonetheless claims he was under-awarded. For reasons explained here, Ransom’s failure to prove economic damages limited his defamation award to emotional distress, humiliation, and reputational harm for which he was awarded \$250,000 for compensatory damages and an additional \$300,000 in punitive damages. This court requests that judgment in the amount of \$1,146,713.01 be affirmed in his favor.

OPFLD-Ransom Vs Ictv Brands, Inc Etal



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I. PROCEDURAL HISTORY

On April 12, 2018, Plaintiff Ransom filed a Complaint averring that Defendants ICTV and Kelvin Claney breached a written agreement signed on January 1, 2017, that governed the terms of Ransom's employment as the company's president. He alleged three counts: Count 1--- Breach of Contract; Count 2--- Violation of Pennsylvania Wage and Collection Law; and Count 3--- Defamation. On October 29, 2018, Defendants ICTV and Claney filed an Answer with New Matter raising various defenses, including termination for cause, and asserted a counterclaim for declaratory judgment, breach of fiduciary duty and misappropriation/conversion. Plaintiff filed a First Amended Complaint on May 22, 2018, and Defendants' subsequent objections were overruled on September 17, 2018.

Various pre-trial motions were filed and decided, and none are in dispute here. On May 20, 2021, a bench trial commenced via Zoom and continued for eight (8) days through the spring and summer.

Findings of Fact and Conclusions of Law

On July 20, 2022, this court entered Findings of Facts and Conclusions of Law ("FFCL") which are incorporated by reference here with the following decisions:

Plaintiff's Count I (Breach of Contract- Plaintiff v. ICTV)

In favor of Plaintiff Ransom and against ICTV in the amount of \$803,422.
(FFCL, 7/20/22, p.13).

Plaintiff's Count II (Wage Payment and Collection Act- Plaintiff v. ICTV and Claney)

In favor of Plaintiff Ransom and against ICTV in the amount of \$608,422, plus attorneys' fees and costs. There was no finding against Claney on this count. (FFCL, 7/20/22, p. 13).

Plaintiff's Count III (Defamation- Plaintiff v. ICTV and Claney)

In favor of Ransom and against Claney in the amount of \$250,000 for compensatory damages for anxiety, stress, and reputational harm and \$300,000 for punitive damages, both caused by defamatory conduct committed with actual malice.

The court also found in favor of Ransom and against ICTV in the amount of \$200,000 for compensatory damages caused by ICTV's negligence. The court permitted ICTV to mitigate this award to a nominal sum by moving to remove a defamatory sentence from its offending SEC 8-K filing according to legal procedures of the SEC. (FFCL, 7/20/22, p. 13).

On review, this court recommends that the Superior Court reverse this damage award as Ransom's failure to prove economic damages precludes recovery against ICTV because its defamatory conduct was negligent but not malicious. If Ransom had shown economic damages, he would have been eligible to collect special damages for pecuniary loss from ICTV, but Ransom did not do so, and he is therefore limited to presumed damages for emotional injury---and only from Claney.

Defendant ICTV's Counterclaim Count 1 (Declaratory Judgment)

In favor of Plaintiff Ransom and against Defendant/Counterclaimant ICTV Brands, rejecting ICTV's claim for declaratory judgment upon our finding that ICTV violated its Employment Agreement with Ransom. (FFCL, pp. 13-14).

Defendant ICTV's Counterclaim II (Breach of Fiduciary Duty by Ransom)

In favor of Plaintiff Ransom and against Defendant/Counterclaimant ICTV on this court's finding that Ransom did not breach a fiduciary duty. (FFCL, pp. 13-14).

Defendant ICTV's Counterclaim III (Misappropriation/Conversion)

In favor of Plaintiff Ransom and against Defendant/Counterclaimant ICTV Brands as this court found no misappropriation or conversion by Ransom. *Id.*

Post-Trial Motions

On August 1, 2022, Ransom filed a Motion for Post-Trial Relief to (i) amend the Count III--- Defamation award to include “compensatory defamation” damages for special harm, *i.e.*, against both Defendants ICTV and Claney jointly and severally; (ii) amend the damage award in Count I--- Breach of Contract, to include \$195,000 as the value of ICTV’s common shares in March 2018; (iii) to correct a typographical/mathematical error and award a corrected sum of \$782,834.49; and (iv) to increase the punitive damage award at Count III. The Defendants filed their opposition on August 23, 2022. Plaintiff filed a reply brief on September 1, 2022, with Defendants filing a sur reply on September 12, 2022.

On August 11, 2022, Defendant ICTV filed a post-trial motion seeking to modify the damages award on Count I for breach of contract to reflect a compensatory damage award of \$608,422, and an updated pre-judgment interest award through September 1, 2022, in the amount of \$162,422.13 with an additional \$101.01 per day in pre-judgment interest between September 1, 2022, and the date of final judgment.

On November 16, 2022, upon review of the post-trial filings by the parties since the entry of the July 20, 2022, Findings of Fact and Conclusions of Law, this court ruled on post-trial motions and ORDERED the following:

1. Plaintiff's motion to modify the compensatory damages awarded at Count III to include defendant ICTV jointly and severally with defendant Claney is DENIED.¹
2. Plaintiff's motion to modify and correct the compensatory Count I award to include \$195,000 as the value of ICTV common shares due to plaintiff is DENIED.²
3. Plaintiff's and Defendant ICTV's motion to correct the aggregate amount of the compensation award at Count I-breach of contract is GRANTED. The correct award is \$782,834.49 as of July 20, 2022, plus additional interest going forward at 6% per annum. The "Wherefore" clause at page 13 of the Findings of Fact and Conclusions of Law is amended to read: "In favor of Plaintiff Richard Ransom and against Defendant ICTV Brands, Inc. in the amount of \$782,834.49."
4. Plaintiff's motion for *additur* relating to punitive damages is DENIED.³

¹ This court has found that ICTV's defamation tort was wrongful through negligence and not actual malice. A party whose defamation does not rise to the level of actual malice is not subject to pay presumed damages; they are responsible only for actual injury that has been shown-such as economic loss proven by sufficient evidence at trial. *Joseph v Scranton Times, L.P.* 634 Pa. 35, 76, 129 A.3d 404, 429 (2015). (when a private figure plaintiff establishes liability based on negligence, recovery is limited to compensation for actual injury, thus eliminating the specters of presumed and punitive damages in this regard"). See *Gertz v Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974) (a defamed party who has proven that a false statement was published with actual malice may recover presumed damages).

The \$250,000 compensatory award to Ransom at Count III to be paid by Claney stems from Claney's actual malice when he defamed Ransom. Defamation committed with actual malice is subject to presumed damages in stress and anxiety suffered by Ransom. ICTV's defamatory conduct, however, does not rise to the level of Claney's actual malice. We find it was negligent conduct and accordingly, ICTV is not liable to pay damages to Ransom for presumed reputational damages. If Ransom had proven economic loss, ICTV's negligence would have been sufficient to merit damages for such economic loss, but this is not the situation here because Ransom presented no evidence of economic loss.

² Plaintiff Ransom failed to establish valuation at trial. Belatedly at post-trial motions, he asked the court to take "judicial notice" of the monetary value of these shares in March 2018. He has offered unauthenticated documents from an internet search. We rejected this approach as the documents were never introduced at trial and they are not the kind of financial information that is readily known to meet the requirements of judicial notice.

³ Claney is liable for damages resulting from emotional distress caused by injury to Plaintiff's reputation because he defamed Ransom with actual malice. Punitive damages are permitted for defamation by actual malice. Ransom has not submitted persuasive reasons to add to the punitive damage award. He himself did not offer evidence of economic harm at trial and he presented limited evidence of Claney's financial wherewithal.

On December 14, 2022, an evidentiary hearing was held to determine attorney's fees and costs in favor of Plaintiff. Also, on December 14, 2022, the court denied ICTV's post-trial motions because they were moot following entry of our November 16, 2022, Order.

On April 4, 2023, this court determined under Count II---the Wage and Collection Act, that attorney fees amounted to \$271,382.49 with litigation costs totaling \$61,183.27. Regrettably, on April 4, 2023, the court issued an erroneous Judgment at Count II mistakenly stating that these attorney fees and costs were awarded jointly and severally for payment by Defendant ICTV and Defendant Claney. This joint and several declaration is contrary to our Findings of Fact and Conclusions of Law at page 13 where we wrote:

"Plaintiff's Count II (Wage Payment and Collection Act-Plaintiff v ICTV and Claney

There is no finding against Kelvin Claney on this count."

The next day, on April 5, 2023, Plaintiff appealed the mistaken April 4, 2023, Judgment and his appeal is docketed at 891 EDA 2023. On April 15, 2023, Claney filed a motion to reconsider the April 4, 2023, Judgment.

On April 19, 2023, Claney filed a Notice of Cross-Appeal docketed at 1010 EDA 2023. This appeal challenges our mistaken judgment holding Claney jointly and severally liable for Wage and Collection Act damages.

The Superior Court has consolidated both appeals.

On July 6, 2023, this court signed an Amended Judgment pursuant to Pa. R.A.P. 1701 (b) to correct formal errors in papers relating to the matter. Docketed on July 7, 2023, the Amended Judgment conforms our Findings and Conclusion to the court's original intention that ICTV is solely liable to Ransom at Count II. The judgment reads as follows:

At Count II – Wage Payment and Collection Act, Defendant ICTV Brands, Inc. shall pay \$814,147.49 in salary loss plus interest, and attorney fees in the amount of \$271,382.49 and litigation costs of \$61,183.27, for an aggregate of \$1,146,713.01.

II. FACTUAL HISTORY

This case involves a boardroom struggle that ended with the termination of Plaintiff Ransom's employment as President of ICTV where Claney was ICTV's Chairman of the Board. Claney was also employed as ICTV's Chief Executive Officer. (FFCL, 07/20/22, par. 2).

Ransom began his employment at ICTV in July 2008 as the company's Director of Finance. He was promoted to Chief Financial Officer in December 2008 and continued in that role through 2013. (*Id.* at par. 4). In 2011, ICTV's Board of Directors, with Claney as Chair, selected Ransom to be the company's President. Ransom served thereafter as both Chief Financial Officer and President until a new CFO was selected two years later. The new CFO reported directly to Ransom through March 20, 2018. (*Id.* at par. 5).

At all times relevant to the events of this case, ICTV was a direct marketing business with a niche in developing audio/visual advertisements for cable television. Claney was the company's production specialist, and he enjoyed a strong positive reputation with ICTV's Board members and staff for his creativity and marketing savvy. In his employment role as CEO, Claney favored a corporate strategy that involved marketing the manufactured products of other companies especially in the health and cosmetic industries. (*Id.* at par. 6).

Evidence established that Ransom's job as President was to develop ICTV's business prospects while also administering the company's operations under the authority of CEO Claney. Testimony from multiple witnesses established that both men worked harmoniously for many years, but trouble developed in late 2017. (*Id.* at par. 8). By December 2017, Ransom was

implementing an alternative vision for the company which involved purchasing manufacturing companies whose products ICTV would market as its own. Ransom's strategy caused ICTV to take on new debt purchased by new shareholders, some of whom joined the company's Board of Directors and favored Ransom's approach. (*Id.* at par. 9).

During his employment, Ransom harbored an ambition to succeed Claney upon his retirement. This became suspected within the executive ranks of the company after Claney had signed a new Employment Agreement with ICTV on January 1, 2017, that included language that this would be Claney's final contract. ("Claney Employment Agreement"). (Exhibit P-3a) (FFCL at par. 10). On March 9, 2018, Ransom openly expressed his hope to succeed Claney in a conversation with Ernest Kollias, Jr., ICTV's Chief Financial Officer ("Kollias"). (N.T. 05/05/21, pp.110- 111).

Although Claney has described Ransom's conversation with Kollias as an "ultimatum", we do not agree. We found instead that Kollias's testimony is biased against Ransom. He was disingenuous about his own role in the chain of events that led to Ransom's ouster. An example of this bias is Kollias' letter to ICTV's Board of Directors on March 20, 2018, at 7:24 am (Exhibit P-208A). Kollias had written the Board that Ransom was planning to take a "sabbatical" in the U.K. during the summer of 2018---even though Kollias knew that at a Board meeting on December 17, 2017, the Board had given its permission to Ransom to spend the summer of 2018 in the U.K. to work on business development for ICTV's U.K subsidiary. The Board had authorized travel and housing allowances and was aware that Ransom's family would be with him during the summer. Kollias had been present at this December 17, 2017, Board meeting. (N.T. 05/05/21, pp. 34-39).

The fact that Ransom wanted to be Claney's successor is clear, but defense claims that

Ransom was planning to try to replace Claney in 2018 were not proven, nor was it shown how Ransom would do so. (FFCL at par. 11). While Ransom was aware that Claney wished to renegotiate his own employment contract to extend his time as CEO, Ransom testified credibly that he had not spoken to any Board members about this and was not opposed to it. (N.T. 05/03/21, p. 203). As of March 20, 2018, the ICTV Board had neither approved an extension of Claney's time as CEO, nor had an extension been proposed.

Claney's existing Employment Agreement (Exhibit P-3A) protected Claney in much the same way as Ransom's Employment Agreement (Exhibit P-1). (FFCL at par. 12). Any change in Claney's substantive responsibilities as CEO would trigger "termination without cause" provisions that would have been costly to ICTV. Claney's Employment Agreement specifically states that ICTV promised Claney that he would serve "the Company as Chief Executive officer during the first three years of the term of this Agreement, and thereafter as Creative Director."

At all times relevant to this case, ICTV was a publicly owned corporation registered with the Securities Exchange Commission ("SEC") (FFCL at par. 5). As the first three months of 2018 proceeded, Claney made attempts to lower the option price of ICTV shares available to ICTV employees. (*Id.* at par. 13). Ransom opposed this idea as susceptible to insider trading inquiry. (N.T. 05/03/18, pp. 205-208).

Ransom was credible when on cross examination he testified that he believed lowering the options price might test SEC insider trading rules. *Id.* Ransom did not want to be part of the options plan, and Claney would have potentially benefitted from the options price reduction if the Board approved the change.

During the week of March 8, 2018, Ransom travelled to Europe on a business trip for ICTV. He returned to his office at ICTV headquarters in Wayne, Pennsylvania on March 20,

2018, at approximately 8:00 am. (*Id.* at par. 14). Shortly before, at 7:24 am, Kollias had sent to Claney and the rest of the ICTV Board the email previously referenced at Exhibit P-208A.

After Ransom arrived at his office, Claney immediately stripped substantive responsibilities from Ransom's job as ICTV President. (FFCL at par. 15). These changes included taking away Ransom's management of ICTV's international projects in the United Kingdom and China, along with direct supervision of ICTV's in-house legal counsel, ICTV's finance officer, and ICTV's marketing officer. (Exhibit P-209A). A few days later, on March 26, 2018, Claney barred Ransom from his office at headquarters. (Exhibit 225A) (N.T. 05/03/21, pp. 130-131, 187, Ins. 20-25) (FFCL at par. 16).

Paragraph 8 of Ransom's June 1, 2017, Employment Agreement (Exhibit P-1) provides that if Ransom is terminated without cause, he is entitled to "a lump sum payment on the date of his termination equal to his base salary through the remaining term of this agreement." (FFCL at par. 17). Ransom's base salary at that time was \$225,000 as provided at Paragraph 2 of Ransom's June 1, 2017, Employment Contract. (FFCL at par.18).

Paragraph 8(b)(i) of Ransom's Employment Agreement states in pertinent part that a termination without cause occurs when "Employee's substantive responsibilities are changed without the prior approval of the Employee". (*Id.* at 19). This court finds Claney's actions on March 20, 2018 and March 26, 2018, when he stripped Ransom of responsibilities and barred him from office, to be substantive changes under his Employment Agreement, thereby triggering the termination clause of paragraph 8(b)(i).⁴

After Ransom was relieved of substantive responsibilities, Claney and the ICTV Board of

⁴ The court finds that when Ransom was locked out, he not only lost access to his business files but also his ability to supervise all ICTV staffers. The court finds Ransom's supervision of all staffers was a specific substantive job responsibility before March 20, 2018, as shown in an Organizational Chart admitted into evidence at Exhibit P - 8.1 (*Id.* at 21).

Directors engaged in pretextual conduct to try to convert Ransom's termination without cause into a termination with cause. (*Id.* at par. 22). In this regard, the court finds the following events took place:

1. Chief Financial Officer Kollias sent an email to Claney at 7:24 am on Tuesday, March 20, 2018, that a "serious governance issue" had arisen that related to the relationship between Ransom and Claney. (Exhibit P-208A). Claney reacted within the hour to strip Ransom of direct supervision of legal counsel John Carrino in a written emailed statement as follows: "Please take this email as formal notice that from this moment on Carrino in all his capacities is to cease reporting to the President of ICTV and in all his capacities from this moment on is to report directly to Kelvin Claney CEO ICTV Brands, Inc. Such capacities include but are not limited to, HR, patents/trademarks intellectual property and all general legal duties, including contracts." (Exhibit P-209A) (Email from Kelvin Claney, Tuesday, March 20, 2018, 8:00am.) (FFCL at par. 23b).
2. This was followed minutes later with another email from Claney at 8:02 am on March 20, 2018. (Exhibit 209.3A) (*Id.* at par. 23c). This time Claney's email was to Nikki Kearney, ICTV Vice President of Marketing, who is on the ICTV organizational diagram at P-8.1---directly reporting to Ransom. Claney's 8:02 am email to Kearney stated, "Nikki, please see the below email (referring to Exhibit P-209A); would you please immediately change ICTV's org chart to show John Carrino reporting directly to the CEO and not the President. Send a copy to me, but no need to send out to all the staff right at this moment-I will inform you when it is time to do that". (*Id.* at par. 23d).
3. Ransom emailed a response to Claney a minute later at 8:03 as follows: "Let it be noted that I disagree with this decision. (Exhibit P-209) (FFCL at par. 23e).

4. At 9:21 am same morning, Kearney sent an email to Claney confirming that she had carried out Claney's directive. Kearney wrote, "Per your request, I have attached the updated org chart with this change, please let me know if you need anything else. Thank you." (Exhibit P-209.3A) (FFCL at par. 23f).

5. At 9:23 am on March 20, 2018, Ransom sent an email letter to Claney, with a copy to all ICTV Board members, advising that he believed these changes constituted a violation of his Employment Agreement. Ransom quoted from his Employment Agreement in part as follows:

"During the entire term of his employment, Employee shall be responsible for carrying out all aspects of the business operations of the Company. Employee shall serve under the direction and supervision of the Company's Chief Executive Officer and Board of Directors,". (Exhibit P-213A).

(FFCL at par. 23g).

6. At 9:55 am same morning, Ransom sent an email to Kavita Sahaia, a contact at a company called 21 Drops, advising that ICTV was declining to pursue a business opportunity involving taking a 21 Drops product line to the UK market or anywhere else. (Exhibit P-210A). (*Id.* at par. 23h).

7. This notification to 21 Drops was confirmed and acknowledged by email at 9:55 am from Cary Cluster ("Cluster"), Founder of 21 Drops. (Exhibit P-210A). (FFCL at par. 23i).

8. At 7:16 pm on March 20, 2018, Claney sent an email to both Ransom and Kollias spelling out specific changes involving how, and to whom, Kollias was to perform his duties as CFO. The email conveys another change in Ransom's substantive responsibilities which had included supervisory responsibility over the CFO. In the second to last sentence of the 7:16 pm email, Claney wrote: "Further from this moment on, the CFO is to report directly to the CEO, not the President and the org chart is to change to reflect this." (Exhibit P-212A) (FFCL at par. 23j).

9. On March 25, 2018, the same day that Ransom was locked out of his work office, the

ICTV Board of Directors, under Claney's signature sent Ransom a "Notice of Intent to Terminate" (Exhibit P- 220A), a document which purportedly gave Ransom thirty days to cure. The ICTV Boards's declared reasons were Ransom's alleged failure to carry out his responsibilities in a 'professional manner' which if not cured would result in termination. The unprofessional conduct cited was "numerous insubordinate and unprofessional responses delivered by you in front of staff members, plus numerous unprofessional responses to decisions ultimately made by the CEO, which have created unacceptable working conditions for the Company's staff, which will lead to a decline in the Company's performance." Two specific examples given were "your refusal to cancel your intended trip to China next month and your refusal to inform the representative of Relief Band that ICTV will not be marketing this product." (FFCL at par. 23k).

10. The court finds Ransom had not known of Claney's decision to stop Ransom's business trip to China until after March 20, 2018; and by March 26, 2022, Ransom had cancelled the previously booked travel arrangements there. (Exhibits P-227A, P- 227.2A, P-227.3A). This was done within the thirty-day "cure" period. (FFCL at 2l).

11. The court finds Ransom also followed Claney's directive to cancel ICTV's relationship with Relief Band, a health care product manufacturer. There are no emails or writings that record this, but we find Ransom's testimony on this point is credible as he is corroborated by Christopher Dominello, a businessman who had worked as a product-finder. He had linked ICTV to Relief Band. Ransom had wanted ICTV to acquire Relief Band as part of Ransom's business strategy. Dominello testified, "I did get a call from Rich that he was not doing Relief Band anymore, that their plan was not to do external products anymore. They were only going to focus on their products. That was the directive that he had, so he couldn't---they don't do any external

products anymore". (N.T. 5/5/21, p. 138). The court finds Ransom had cancelled Relief Band during the thirty day "cure" period. (FFCL at par. 23m).

12. On the vague charge of "unprofessionalism", the evidence reflects a professional disagreement between two men over company business strategy, a strategy that was not theirs to control or decide unilaterally. While a rivalry appears to have been brewing by the beginning of 2018, the court was shown no persuasive evidence that Ransom was insubordinate or unprofessional in his dealings with board members or ICTV staff. The court does not find that Ransom's email to members of the Board on March 20, 2018, was unprofessional under the circumstances when he warned the Board as their company president that he believed his Employment Agreement was being violated. (*Id.* at par. 23n).

In any event, the court finds that Ransom had already been terminated involuntarily before the March 25, 2018, Notice of Intent to Terminate. Of relevance in reviewing the wage and defamation claims in this case is what happened after the Board issued its March 25, 2018, Notice and its 30 day offer to cure. The court finds that ICTV and Claney were not straight forward and pursued alleged travel expense fraud by Ransom as a pretextual reason to terminate with cause. This court, however, finds there was no such fraud. (*Id.* at par. 24).

Additionally, especially given Ransom's banishment from his own office, the court finds Claney's and ICTV's line- by- line review of years of Ransom's expense reporting does not correlate with the reasons given by the Board in its Notice of Intent to Terminate. *Id.* at 25. This pretextual conduct was followed by what we find was defamatory conduct by Claney individually with actual malice, and by ICTV negligently, in connection with the submission of ITEM 5.02 as part of ICTV's April 23, 2018, Form 8-K Current Report to the SEC. (Exhibit P-391).

Concerning alleged travel and entertainment expense fraud of Ransom, the court finds this is untrue. *Id.* at 26. Testimony on this was heard over two trial days but Claney and ICTV failed to show that Ransom's accounting of his travel and entertainment expenses was deceitful. For example, Ransom's explanation of why a few hundred dollars of cash were withdrawn during various international trips was credible and the court accepts his testimony that it was necessary for him to charge his corporate credit card small sums of money to obtain petty cash in foreign currency for expenses such as local taxi fares. (N.T. 04/28/21, pp.115, 119-120).

Hours of testimony revolved around expenses for "Gentlemen's Club" entertainment that were charged by Ransom as business expenses totaling less than \$1500.00 over several years. (*See e.g.*, N.T. 04/28/21, pp.133-136). (FFCL 7/21/22, par. 27). The court finds Ransom was credible that these Gentlemen's Club events were entertainment expenses for corporate clients that were not forbidden by then existing corporate policy, regulations, or protocol. Actual expenses for these events were accurately reported and accounted.

On facts directly relating to Ransom's defamation claim, the court has reviewed Exhibit P-391, ICTV's Form 8-K Current Report dated April 23, 2018

ITEM 5.02 at the top of the second page of the Current Report which has an entry that states:

"On April 18, 2018, the Board of Directors (the "Board") of ICTV Brands, Inc. ("The Company") terminated the employment agreement of its President, Richard Ransom "for cause" as such term is defined in his employment agreement. The Board terminated Mr. Ransom's employment agreement because of certain breaches thereunder. ***The Company is currently performing an internal investigation concerning potential additional breaches by Mr. Ransom of his fiduciary duties to the Company and other contractual, statutory and common law violations.***" (*Emphasis added*).

The court finds the bolded/italicized ITEM 5.02 language is false as the phrase "concerning additional breaches by Mr. Ransom of his fiduciary duties to the Company" is untrue *Id.* at 29. The court does not find that there were any breaches of fiduciary duty by Ransom and the phrase "additional breaches by Mr. Ransom of his fiduciary duties" is false.

The court finds ICTV's ITEM 5.02 would cause a reasonable person to believe 1) that there have already been violations of fiduciary duties by Ransom or 2) that there were other fiduciary duty violations suspected including contractual, statutory, and common law ones. These "other fiduciary duty violations" could reasonably suggest negligence, fraud, or criminal activity. In any event, the court finds no evidence of such potential "additional violations." The court finds that Item 5.02's language stating that Ransom was under investigation for "other fiduciary violations suspected including contractual, statutory and common law violations" is false as there is no evidence presented by Defendants to show any contractual, statutory, or common law violations at all. (*Id.* at par. 30).

It is this allusion in ICTV's ITEM 5.02 to investigations of "other fiduciary duty violations" that is the defamation in this case. The credible testimony of defense witness Gerald Gritter ("Gritter"), ICTV's longtime securities compliance attorney, supports this finding. Gritter testified that ITEM 5.02's third sentence was added at the sole insistence of Claney. (*Id.* at par. 32). Again, the sentence reads: "[T]he Company is currently performing an internal investigation concerning potential additional breaches by Mr. Ransom of his fiduciary duties to the Company and other contractual, statutory and common law violations." The court believes Gritter's testimony that he did not draft the text of this third sentence and that Gritter did not believe it should have been included in the April 23, 2018, Form 8-K Current Report. In Gritter's words, "The third sentence was added because he (Claney) wanted to go further. "I prepared the initial

draft of that 8-K with the first two sentences, content, short, sweet to the point. I was willing to stop there. I didn't think we needed to go further." (N.T., 07/08/21, p.119).

The court finds that Claney had final authority in what went into the April 23, 2018, Form 8-K Current Report and the court accepts Gritter's testimony that it was Claney, and Claney alone, who gave final approval for ICTV's Form 8-K Current Report dated April 23, 2018, and its false third sentence. N.T., 07/08/21, pp. 120-121. *Id.* at 33. The court also finds Claney acted with actual malice when he orchestrated the drafting of this sentence and submitted it as part of his company's April 23, 2018, Form 8-K Current Report.

No evidence was introduced at trial that the April 23, 2018, Form 8-K Current Report has ever been amended or modified. The court finds ICTV's Board acted negligently in its failure to oversee Claney's initial submission of the April 23, 2018, Form 8-K Report and continues to act negligently in its failure to correct it. *Id.* at 34.

The court observed and heard Ransom's testimony and finds he was sincere and credible when he explained his actual defamatory injury as follows:

THE WITNESS: "The only thing I'll say, Your Honor, is I'm 42 years old. I've worked really hard to establish a reputation of being honest, of being forthright with my employers. I've always dedicated myself, as you could see from the amount of travel, the amount of effort I put into this. And in a few sentences on a public forum that I believe even you referenced, anyone can Google and find very quickly if you put my name and ICTV Brands together. I will have this chasing me the rest of my life as long as that's out there. And I don't know what damages will be long-term, but this has caused me stress. It's caused me, you know, will this come up, with these people if I'm in a negotiation or a meeting or anything like that. So that's what this has done to me, Your Honor. And it's just not true and it's not fair." (N.T. 5/3/21, p. 164).

(*Id.* at par. 35).

On May 2, 2018, ICTV filed a subsequent and separate Form 8-K Current Report

(Exhibit P-21) (FFCL at par. 36). This new SEC publication has nothing to do with Ransom.

Instead, the court finds it was a fulfillment of Clancy's effort to have ICTV authorize new stock options as objected to by Ransom. (*Id.* at par. 13). The ICTV Board's authorization was for Clancy's benefit only and no one else.

The court finds ICTV's Board, just weeks after Ransom was removed, authorized the sale of 210,000 shares of convertible preferred stock to Clancy, payable at 8% interest per year at a value of \$1.92 per share. These preferred shares were redeemable within three years. (*Id.* at par. 37). The Board's authorization states that if Clancy were not to seek redemption within the three years, he could convert his new preferred shares to ICTV common stock at the ratio of eight common shares for each preferred share.

On May 1, 2018, the Board of Directors of ICTV designated 210,000 shares of the Company's preferred stock, par value \$0.001 per share, as Series A Preferred stock (the "Series A Preferred Stock"), and authorized the sale of the Series A Preferred Stock to Kelvin Clancy.⁵ (*Id.* at par. 38). On May 2, 2018, the ICTV Board of Directors filed a Certificate of Designation, Preferences, Rights and Limitations of the Series A Preferred Stock (the "Certificate of Designation") with the Nevada Secretary of State. A copy of the Certificate of Designation is attached to this Current Report on Form 8-K. (Exhibit P-4.1) (*Id.* at par. 38).

On May 2, 2018, ICTV and Clancy entered into a subscription agreement (the

⁵ The Series A Preferred stock has dividend rights per share equal to the dividend rights of the Company's common stock and has a liquidation preference in the amount of \$1.92 per share. Each share of Series A Preferred Stock is entitled to 100 votes on all matters to be voted upon by the Company's shareholders. The Series A Preferred Stock is redeemable at the option of the Company for a redemption price per share of \$1.92, plus 8% per annum from the date of issuance until the date of redemption. If any Series A Preferred Stock is not redeemed within three years from the date of issuance, the holder may convert the Series A Preferred Stock into common stock at a ratio of eight shares of common stock for each share of series A Preferred Stock. The Series A Preferred Stock is a non-certificated security.

"Subscription Agreement") pursuant to which the company issued to Mr. Claney 210,000 shares of Series A Preferred Stock for cash consideration of \$403,200, or \$1.92 per share. A copy of the Subscription Agreement is attached to the Current Report on Form 8-K as Exhibit 10.0.

The court notes this ICTV stock option gave Claney an option to buy 1,680,000 common shares through conversion of the 210,000 preferred shares in lieu of redemption. *Id.* In other words, this special ICTV option---available to Claney only--- gave Claney a chance to buy 1,680,000 common shares at the May 2018 price of \$1.92 and benefit from any rise over three years in ICTV's common stock value. Hypothetically, if in May 2021, ICTV's common stock was priced at \$2.92 cents a share, Claney would be eligible to own common shares worth \$1,680,000 on the \$403,200 he invested.

The court's damage calculations in favor of Ransom for breach of contract are based on the termination without cause provisions of Ransom's Employment Agreement. The court finds that ICTV owes Ransom \$608,422 for lost salary, and 1,000,000 ICTV common shares but the actual monetary worth of these shares is speculative as Ransom failed to present timely or admissible evidence on which a reliable calculation can be made. (*Id.* at par. 40). We cannot simply take judicial notice of this value. Nor can we admit documentary evidence that was not presented at trial, nor admitted without authentication, nor explained through live testimony subject to examination.

The court finds Ransom is entitled to pre-judgment interest at the legal rate of 6% on the \$608,422 since March 20, 2018. This sum is \$174,412.49. The aggregate number for ICTV's breach of contract by termination without cause is \$728,834.49 which shall be paid to Ransom by ICTV with pre-judgment interest going forward. *Id.*

In addition to breach of contract, the court finds the “without cause” provision in Ransom's Employment Agreement is a severance pay provision that is governed by a labor statute, Pennsylvania’s Wage and Collection Act. (N.T. 7/8/21, p. 12) (FFCL at par. 41). The court finds Claney exercised a policy-making function at ICTV, but he was not responsible himself for appropriating company money to employees. This responsibility resides with the company’s Board of Directors. *Id.* at 42. Money owed to Ransom for breach of contract is ICTV’s responsibility only.

On April 4, 2023, this court ordered and directed that ICTV pay Ransom attorney fees in the amount of \$271,382.49 and litigation costs in the amount of \$61,183.27 for successfully proving Count II for a total of \$332,565.76.

Adding these attorney fees and costs to the principal sum owed under the Wage and Collection Act, this court’s Amended Judgment at Count II issued on July 6, 2023, states a final sum of \$1,146,713.01. This represents \$814,147.49 in salary loss plus pre-judgment interest, attorney fees in the amount of \$271,382.49 and litigation costs of \$61,183.27.

The July 6, 2023, Order also corrected Count II’s judgment to make clear that only ICTV is responsible and liable to Ransom under the Wage and Collection Act.

III. QUESTIONS PRESENTED

On appeal, Plaintiff raises the following three issues for appellate review:

1. Did the court err by refusing to modify the award of compensatory damages for defamation to add damages for "special harm," i.e., the economic harm and pecuniary loss?
2. Did the court err by declining to modify the award of compensatory damages by monetizing the value on March 20, 2018, of 1,000,000 shares of ICTV common stock when this was not established at trial?

3. Did the court err by declining to modify our punitive damages award with additional sums?

IV. DISCUSSION

A. Standard of Review

Plaintiff challenges the trial court's verdict after a non-jury trial. The Superior Court's standard of review is settled. "We may reverse the trial court only if its findings of fact are predicated on an error of law or are unsupported by competent evidence in the record. As fact finder, the judge has the authority to weigh the testimony of each party's witnesses and to decide which are most credible." *Parker Oil Co. v. Mico Petro and Heating Oil, LLC*, 979 A.2d 854, 856 (Pa. Super. 2009). "Issues of credibility and conflicts in evidence are for the trial court to resolve." *Ruthrauff, Inc. v. Ravin, Inc.*, 914 A.2d 880, 888 (Pa. Super. 2006).

The trial judge's findings must be given the same weight and effect as a jury verdict and will not be disturbed on appeal unless they are not supported by competent evidence in the record. *Levitt v. Patrick*, 976 A.2d 581, 589 (Pa. Super. 2009). ("Furthermore, our standard of review demands that we consider the evidence in the light most favorable to the verdict winner.").

Defamation, of which libel, slander, and invasion of privacy are methods, is the tort of detracting from a person's reputation, or injuring a person's character, fame, or reputation, by false and malicious statements. *Zartman v. Lehigh County Humane Society*, 482 A.2d 266, 268 (Pa. Super. 1984). A publication is defamatory if it tends to blacken a person's reputation or expose him to public hatred, contempt, or ridicule, or injure him in his business or profession. See *MacElree v. Philadelphia Newspapers, Inc.*, 544 Pa. 117, 124-25, 674 A.2d 1050, 1054 (1996). To be actionable, the words must be untrue, unjustifiable, and injurious to the reputation

of another. See 42 Pa.C.S.A. § 8343(a). When communications tend to lower a person in the estimation of the community, deter third persons from associating with him, or adversely affect his fitness for the proper conduct of his lawful business or profession, they are deemed defamatory. *Green v. Mizner*, 692 A.2d 169, 172 (Pa. Super. 1997). The court must view the allegedly defamatory statements in context. *Baker v. Lafayette College*, 516 Pa. 291, 532 A.2d 399, 402 (1987).

In the case *sub judice*, no party challenges judgment in favor of Ransom and against Claney at Count III---Defamation. Ransom's appellate questions concern damages.

B. Plaintiff is Not Entitled to Compensatory Damages for "Special Harm"

Compensatory damages recoverable for defamation include actual damages for proven harm caused by the publication. *Walker v. Grand Cen. Sanitation, Inc.*, 634 A.2d 237, 244 (Pa. Super. 1993). Actual damage includes general damages and special damages. *Sprague v. Am. Bar Ass'n*, 276 F.Supp.2d 365, 368 (E.D. Pa. 2003). On the one hand, "general" actual damages refer to presumed damages generally associated with the pain and suffering experienced by people who are defamed. On the other hand, "special" actual damages are specific liquidated economic or pecuniary loss. *Sprague*, supra. at 369-370; Restatement (Second) of Torts §575 comment b ("Special harm, as the words used in this Chapter [regarding defamation] is the loss of something having economic or pecuniary value").

There is some interchange among courts with the terms "general" and "presumed" damages. In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349 (1974), for example, the Court uses the phrase "presumed damages" to mean the kind of reputational harm that we are referring to here as general damages---the kind of injury that does not need be quantified such as economic damages.

Moreover, recovery of presumed or general damages is contingent on proof of a defamer's actual malice as opposed to mere negligence. "States may not permit recovery of presumed or punitive damages, at least when liability is not based on a showing of knowledge of falsity or reckless disregard for truth" *Id.* In other words, recovery for injuries in emotional distress for reputational harm---general damages---is constitutionally sound only with a showing of actual malice.

In the case of Kelvin Claney, Ransom proved Claney's actual malice by his conduct leading to the publication of the defamatory third sentence of the Form 8-K Current Report. However, it does not follow that simply because Claney acted with actual malice that Ransom is somehow excused from presenting sufficient evidence at trial to quantify special damages for economic harm.

For purposes of defamation action under Pennsylvania law, special damages are actual concrete damages capable of being liquidated in money. Examples of special damages include actual loss due to withdrawal of trade of customers, or actual loss due to refusal of credit by specific persons, all expressed in figures. Special harm is the loss of something having economic or pecuniary value. *Walker v. Grand Central Sanitation Inc.*, 634 A.2d 237, 243 (Pa. Super. 1993) citing *Solosko v. Paxton*, 383 Pa. 419, 119 A.2d 230, 232 (1956)); 42 Pa.C.S. § 8343(a)(7). In this case we found Ransom offered no evidence of actual economic loss and no special damages were awarded even though Claney's defamatory conduct was done with actual malice.⁶

Finally, proof of actual malice is not required to recover special damages. *Joseph v Scranton Times, LP*, 634 Pa. 35, 129 A.3d 404 (2015). However, special damages---economic

⁶ After his wrongful termination by ICTV, Ransom was hired by Relief Band, one of the companies he had done business with as ICTV's president. (See, N.T. 05/04/21, p. 19).

pecuniary loss must be proven *Walker*, supra. *Soloski*, id. In this context, this court regrets our decision at Count III to award prospective economic damages to Ransom in the amount of \$200,000 based on ICTV's negligence in failing to remove the offending Form 8-K language. Our regret stems from recognition that since Ransom failed to offer any evidence of potential economic harm, quantifying such damages is purely speculative. This court therefore recommends a reversal of the \$200,000 damage compensation from ICTV to Ransom in favor of a finding of liability with nominal damages. We also recommend reversal of our mitigation process as moot.

We do not recommend a reversal of the actual judgment of defamation against ICTV, however, as this may be used by Ransom to seek SEC removal of offending Form 8-K Current Report language, which reasonably should include all three sentences as this court has found in this case that Ransom never breached his fiduciary duty to ICTV.

C. Plaintiff is Not Entitled to Compensatory Damages to Include the March 20, 2018 Value of 1,000,000 Shares of ICTV Common Stock

Ransom is entitled to own 1,000,000 shares of ICTV common stock at their value on March 20, 2018, but we are unable to quantify the value of these shares in this proceeding as no competent evidence was given to the court to do so.

As stated in our November 16, 2022, Post-Trial Order at Paragraph 2:

“Plaintiff’s motion to modify and correct the compensatory count I award to include \$195,000 as the value of ICTV common shared due to plaintiff is DENIED. Plaintiff seeks this valuation as a basis for an amended finding of economic damages and pecuniary loss at Count III.

At post-trial motions Ransom asked the court to take “judicial notice” of the monetary value of these shares in March 2018. However, he did so with documents submitted after trial and prima facially inadmissible, having been copied from a webpage. Documents such as these would need to be authenticated, admitted through a live witness subject to examination.

D. Plaintiff is Not Entitled to Additional Punitive Damages

Generally, a plaintiff may recover punitive damages when a defendant's acts are the result of reckless indifference to the rights of others or an evil or malicious motive. *Rizzo v. Michener*, 584 A.2d 973, 979 (Pa. Super. 1990), *appeal denied*, 528 Pa. 613, 596 A.2d 159 (1991). For a defamation claim, punitive damages are available when a defamed party shows that the publisher acted with actual malice. *Bargerstock v. Washington Greene Community Action Corp.*, 580 A.2d 361, 366 (Pa. Super. 1990), *appeal denied*, 529 Pa. 655, 604 A.2d 247 (1992). Actual malice exists if the publisher made the defamatory statement with knowledge that it was false or with reckless disregard whether it was true or false. *Id.*

Kelvin Claney’s malicious defamation qualifies for punitive damages. Our decision on the amount of punitive damages at Count III was guided in part by evidence that Claney paid cash consideration of \$403,200 to purchase ICTV preferred stock in May 2018. We considered this available liquidity as evidence of Claney’s wherewithal in assessing his financial status in the context of a punitive award to Ransom, but we had no further information on his wealth or income. We decline to add to the award.

E. The Award of Attorney’s Fees and Costs are Based on Facts Found by the Court

On April 15, 2023, Defendant Claney filed a motion to reconsider our mistaken judgment imposing joint and several liability on him for damages, attorney fees and cost at Count II, Wage

Payment and Collection Act (“WPCL”), 433 P.S. § 260.1 et seq. On April 19, 2023, Claney also took the issue on appeal by filing a Notice of Cross-Appeal indexed at 1010 EDA 2023. On July 6, 2023, this court made the necessary correction amending paragraph 4 of our April 4, 2023, judgment as follows:

4. At Count II – Wage Payment and Collection Act, Defendant ICTV Brands, Inc. shall pay \$814,147.49 in salary loss plus interest, and attorney fees in the amount of \$271,382.49 and litigation costs of \$61,183.27, for an aggregate of \$1,146,713.01.”

In his own appeal at 891 EDA 2023, Ransom appears to object to our authority to amend a judgment to correct a formal error in papers pursuant to Pa. R.A.P. 1701 (b). This objection is misplaced.

This court was clear in our Findings of Fact and Conclusion of Law at Paragraph 2 C that Claney was **not** individually liable for ICTV’s corporate Wage Payment and Collection Act violation a Count II.

Accordingly, our July 6, 2023, Amended Judgment states:

“Although Claney exercised policy responsibilities, he was not solely responsible for the finances of ICTV. The court therefore concludes that he is not personally liable for violations against Ransom under the Pennsylvania Wage and Collection Law.”

As our mistake is plain, trial courts may correct patent and obvious mistakes in response to motions to modify or after entry of a notice of appeal, or both as in this case. 42 Pa.C.S. § 5505, Pa R. A. P. 1701 (b), *Manack v Sandlin*, 812 A.2d 676, 680 (Pa. Super. 2002) citing *Commonwealth v. Cole*, 437 Pa. 88, 263 A.2d 339, 341 (1970) (“a court retains its inherent power to correct any patent mistakes in its orders”).

V. CONCLUSION

Accordingly, the Court is, respectfully, asked to affirm with modification of our compensatory damage award at Count III against ICTV Brands, Inc from \$200,000 to nominal.

BY THE COURT

A handwritten signature in black ink, appearing to read 'R. I. Djerasi', written over a horizontal line.

RAMI I. DJERASSI, J.