

Foster v. Bucket Dredger S/S "Digger One," 7 ROP Intrm. 234 (Tr. Div. 1997)

**BRIAN FOSTER,
AIRAI STATE GOVERNMENT**

v.

BUCKET DREDGER S/S "DIGGER ONE" et. al.

CIVIL ACTION NO. 416-92

Supreme Court, Trial Division
Republic of Palau

Issued: June 5, 1997

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice.

On October 8, 1992, Plaintiff Brian Foster brought this breach of contract action for damages against in personam defendants Illman Jones, Inc., a corporation; Illman-Jones, a partnership; and Jimmie L. Jones ("Jones"), an individual (referred to collectively herein as "In Personam Defendants" or "Defendants"); and against in rem defendants Bucket Dredger S/S "Digger No. 1," a dredge presently anchored east of the K-B Bridge in Airai State; "Titan A," a motor tug built in Holland and registered under the Gibraltar flag in 1988; and all gear, appurtenances, equipment and vehicles of the dredger and tugboat (collectively, "In Rem Defendants") ("In Personam Defendants" and "In Rem defendants" sometimes are referred to collectively herein as "Defendants").

On the day that Foster filed suit, the Trial Division of the Supreme Court issued a warrant for the arrest of "Digger No. 1" and "Titan A." "Digger No. 1" was arrested. The tugboat arrested, however, bore the name "Amee Two" instead of "Titan A," and its builder's plate had been burned off of it. Defendants argued that the wrong tugboat had been seized. Foster and Airai State **1235** Government (collectively, "Plaintiffs") contended in an amended complaint filed October 13, 1992 that In Personam Defendants had changed the name "Titan A" to "Amee Two" and that, accordingly, the tugboat seized was indeed the proper tugboat. In their amended complaint, Plaintiffs also alleged fraud in connection with Defendants' alleged attempts to misrepresent the identity of the seized tugboat. At a hearing held in October 1992, Defendants' witness Danny Mollasco, an employee of In Personam Defendants, first contended that "Titan A" and "Amee Two" were two separate tugboats. After further questioning, however, Mollasco conceded that "Amee Two" had been "Titan A," but argued that such vessel had been "substantially rebuilt" due to the replacement of two large steel sheets. In Personam Defendants further contended that the tugboat had been sold to Conchita Zialcita, a good faith purchaser for value and, accordingly, was no longer the property of In Personam Defendants.

Plaintiff Airai State Government brings the present action for restitution in connection with unpaid anchorage fees against all In Personam Defendants and In Rem Defendants.

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Jones died during the course of these proceedings. Contrary to this Court's Order, Defendants failed to substitute a party defendant for Jones.

A trial in connection with these actions commenced on March 5, 1997.

FINDINGS OF FACT

Parties' and witnesses' testimony regarding the facts of this case diverged significantly; accordingly, the credibility of witnesses was central to this Court's findings of fact. After careful analysis of the evidence presented to it, the Court has made the following findings of fact:

In August 1986, at a meeting attended by Foster, Jones and Jim Simons,¹ Jones and Illman Jones Inc. offered Foster employment as (i) supervising engineer in the Philippines in connection with the repair and rehabilitation of the dredge "Digger No. 1," and (ii) operations and maintenance engineer in Palau in connection with dredging projects to be completed after repair and rehabilitation of "Digger No. 1." Jones and Illman Jones Inc. were to pay Foster U.S. \$1500 per month for services performed in the Philippines, and U. S. \$3000 per month for services performed in Palau.² The parties did not discuss whether Foster would be entitled to bonuses, repatriation, local vacation, home leave or **1236** reimbursement for out-of-pocket expenses incurred by Foster. Anticipating that the Compact of Free Association between the Republic of Palau and the United States would be executed, the parties believed that Jones would require Foster's services in Palau for at least five years. This oral contract for services to be performed in the Philippines and in Palau was an ongoing, continuous service contract, the term of which commenced September 1986 and expired in October 1992 upon the filing of this lawsuit.³

In accordance with the foregoing, Foster worked for Jones and Illman Jones Inc. in the

¹ Jones had approached Simons, the Manila-based owner of a metal process equipment fabricator, about performing repair work on the dredge. Simons, who knew Foster from Foster's welding and engineering work for Simons' customers, in turn recommended that Jones consider engaging Foster for the repair work.

² Defendants contend that Jones and Foster agreed that Foster would be paid \$1500 per month for services to be rendered in Palau. In weighing this inconsistent evidence, this Court places great emphasis on the testimony of Simons, a disinterested third party: on Foster's testimony that in October 1987, at a meeting with Jones, Jones' stepson John Jones and Foster, Foster requested payment of back wages and Jones promised to make such payments over time; on a letter sent by Foster to Jones regarding back wages in the amount of \$3000 per month; on a response to Foster's letter in which John Jones wrote of an inability to pay at that time, but failed to refute the \$3000 monthly amount allegedly owed; and on a letter sent by John Jones to Foster in which John Jones promised to bring Foster up to date with respect to amounts owed.

³ This court rejects Defendants' content that the term of the contract was month-to-month. In rejecting this content, the Court notes that Foster would be unlikely to move his family and household items from his residence in the Philippines to Palau in order to accept month-to-month employment. The Court further notes that Jones continued to promise work and payments to Foster as late as the summer of 1992.

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Philippines from 1986 until October 1987. During this time Foster worked on both "Digger No. 1" and the tugboat then-named "Titan A." Moreover, during some portion of this time, Foster lived aboard this tugboat. While still in the Philippines, Jones and Illan Jones Inc. failed to provide Foster with accountings of wages owed and failed to keep Foster current in wage payments.

In late November 1987 at a meeting in the Philippines attended by Jones, Jones' stepson John Jones ("John") and Foster, Foster requested payment of \$1000 of unpaid back wages earned in the Philippines. Jones stated that he was unable to make payment at that time but would do so in the future. Moreover, Jones agreed at this meeting to provide Foster with annual leave as follows: (i) two weeks of local leave; and (ii) two weeks of home leaves in the United Kingdom, including round-trip airfare. At this meeting, Jones also told Foster that the Palau contracts for which Foster had been hired would last for approximately five years.

In December 1987, Foster rode "Digger No. 1" on the tugboat "Titan A" to Palau in connection with dredging contracts in Palau. At this time, Roman Tmetuchel -- then the governor of Airai -- agreed that Illman Jones Inc. could anchor the dredge in Airai without paying anchorage fees. It is important to note, however, that when Charles Obichang succeeded Roman Tmetuchel in April 1990 as Governor of Airai, Governor Obichang requested anchorage fees from In Personam Defendants. Defendants, however, did not pay such fees.

Although the record is unclear and replete with conflicting testimony, this Court finds that Foster worked for Defendants in Palau pursuant to the employment contract from October 1987 until the end of 1991. Moreover, between January 1988 and December 1991, Foster incurred various expenses - such as costs of gas, oil, paint, repair items, equipment and the like - on behalf of his employers. While Foster was working on the dredge and tugboat, and thereafter, Jones and Illman Jones Inc. failed (i) to provide Foster with accountings; (ii) to keep Foster current on wages owed; (iii) to provide Foster with home leave or local leave; and (iv) to reimburse Foster for out-of-pocket expenses incurred on behalf of Defendants. Until shortly before the commencement of this suit in October 8, 1992, Jones and Illman Jones Inc. provided Foster with continual promises of payment of back wages once the dredge would begin to make money, notwithstanding that the dredge was, at such time, generating income in connection with dredging projects in Airai and Melekeok.

¶237 Based on evidence provided at a hearing held in October 1992 and at the trial held in March 1997, this court finds that in 1991 Defendants replaced two sheets on "Titan A", renamed it "Amee Two," and represented "Amee Two" as newly-built vessel. ⁴ Defendants retained custody and control of "Amee Two" but placed it under the name of Conchita Zialcita ("Zialcita"), a citizen of the Philippines (resident of Manila) and mother-in-law of Jones. 5

⁴ Upon close questioning at the hearing in October 1991, Defendants' witness conceded that "Amee Two" had indeed been "titan A," but argued that due to the replacement of two sheets the tugboat was "substantially rebuilt" and therefore; no longer the "Titan A."

⁵ Defendants argue that Zialcita was a good-faith purchaser for value. Based on Defendants' failure to produce any documentation relating to a sale, in conjunction with Defendants' interest in placing the vessel into the ownership of a seemingly-unrelated third-party

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Defendants then orchestrated the reflagging of the vessel to fly the Philippines flag. To accomplish this goal, Defendants procured the necessary documentation and registered the vessel, based on such documentation, with the Seventh Coast Guard District in Pura Point, Philippines.⁶ Such documentation fraudulently set forth that the vessel was built for Zialcita in the Philippines in April 1991; moreover, Zialcita swore to the foregoing. Defendants contended that Zialcita was a good-faith purchaser for value of the vessel, and that she and a company named "White Albatross Shipping Corporation" had obtained work for the tugboat in the Philippines. For this purported reason, Defendant sought to return "Amee Two" to the Philippines.

Finally, in October 1992, shortly after suit was filed on October 8, 1992 seeking to enforce maritime liens through in rem arrest of both the tugboat and the dredge, this Court ordered that the tugboat and dredge must remain where they were then anchored in Palau. Notwithstanding this Court's order filed October 29, 1992, on November 11-12, 1992 Defendants attempted to break arrest of "Digger No. 1" and "Titan A" in order to return them to the Philippines through a scheme orchestrated and financed by Jones. Simultaneously, Jones had been arranging for the repatriation of his crew to the Philippines.

ISSUES

This case raises a number of legal issues which will be addressed in turn:

- (1) Whether Defendants breached the employment contract entered into by Defendants and Foster, and, if so, an appropriate measure of compensatory damages therefore;
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- (2) Whether the actions of defendants constituted attempted fraudulent misrepresentation for which punitive damages should be awarded;
- (3) Whether Foster is entitled to an award of attorney's fees;
- (4) Whether Airai State Government is entitled to anchorage fees for the period commencing when Charles Obichang took office as governor of Airai and requested such payment, until commencement of this suit;
- (5) Which parties and/or successors-in-interest are liable for payment of the judgment.

in order to attempt to circumvent Foster's maritime lien, this Court finds that the transfer of ownership was not a sale, but rather a thinly-veiled attempt to disguise assets and thereby protect such assets from the liens of creditor. Further support for this conclusion comes from that fact that when Roman Tmetuchel purchased "Amee One" (another tugboat also purportedly sold to Zialcita by Jones), the check was made payable to the "1992 Jones Family Trust."

⁶ Since Zialcita lived in Manila at all relevant times, one would assume that the registration purportedly done by Zialcita -- would have been accomplished in the Main coast Guard district in Manila; such registration, however, was done 250 miles north of Manila in the seventh coast guard district in Puro point. Plaintiffs provided compelling evidence to suggest that Manila and that, accordingly, a scheme of the type perpetrated by Defendants is more easily accomplished in Puro Point than in Manila.

CONCLUSIONS OF LAW

(1) Whether Defendants breached the employment contract entered into by Defendants and Foster, and, if so, an appropriate measure of compensatory damages therefor.

Plaintiff Foster proved the existence, terms and breach by Defendants of an ongoing, continuous service contract.⁷ The contract term commenced October 1987 at the meeting attended by Jones, Simons and Foster. Defendants never brought Foster current on his wages earned pursuant to the employment contract for services rendered in Palau and owed Foster \$1000 in back wages for work performed in the Philippines. Notwithstanding that the work performed by the dredge in Airai and Melekeok generated income of approximately \$304,000 for Defendants, Defendants contended -- virtually until this lawsuit was filed on October 8, 1992 -- that the dredge had not yet generated income and that Foster would be brought current on his wages as soon as it did generate income. For this reason, this Court finds that the employment contract terminated upon the filing of this lawsuit on October 8, 1992. Between 1991 and October 1992 Foster sporadically found other work, thereby mitigating his damages. Accordingly, Defendants are ordered to pay Foster back wages, at a rate of \$3000 per month for work performed in Palau (less amounts earned in mitigation), including prejudgment interest thereon, in the total amount of \$ 187,869.93.⁸ Defendants are further ordered to pay Foster back wages for work performed in the Philippines, including prejudgment interest thereon, in the total amount of \$554.76

From the date the contract was modified in November 1987 to include annual 1239 leave, until termination of the contract on October 8, 1992, Foster also was entitled annually to two weeks of local leave, two weeks of home leave in the United Kingdom, and airfare expenses incurred in connection with home leave. Since Foster was not granted these benefits, he is entitled to the monetary value thereof and prejudgment interest thereon. Accordingly, Defendants are further ordered to pay Foster \$ 23,010.04 to compensate him for four weeks of annual leave during the period from November 1987 until October 8, 1992, including prejudgment interest thereon, as well as \$ 22,534.51 representing home leave airfare expenses

⁷ A Preliminary issue raised by Defendants relates to whether this breach of contract action is barred by the statute of limitations applicable to such actions. Actions for breach of contract are subject to a six-year statute of limitations. 14 PNC § 405. This Court hereby disposes of defendants' argument without reaching its merits inasmuch as Foster brought this breach of contract action in October 1992 for amounts payable between November 1987 and October 1992; accordingly, Foster brought this action within the six-year limitation period, even in connection with the earliest owed payments. This Court expressly reserves the question of whether the circumstances of this case--namely, continual promises to comply with the contract on a going-forward basis and to make up for past breaches--serve to toll the statute of limitations.

⁸ In finding that the employment contract provided for monthly payments of \$3000, this court finds unperuasive Defendants' argument that Foster's "silence" notwithstanding Defendants' tender of certain checks in the amount of \$1500 constitutes estoppel. Foster was not "silent" and had been consistently and repeatedly demanding wages in the amount of \$3000 monthly for work performed in Palau.

Foster v. Bucket Dredger S/S "Digger One," 7 ROP Intrm. 234 (Tr. Div. 1997) and prejudgment interest thereon for such period.

Foster expended monies on behalf of his employer of services and supplies required in connection with the dredge, tugboat and crew. Implicit in the employment contract was the reimbursement for expenditures made by Foster as engineer of the dredge. Accordingly, Defendants hereby are ordered to pay Foster \$ 697.94⁹ as reimbursement for expenses incurred by Foster as engineer of the dredge and prejudgment interest thereon.¹⁰

The court arrived at the final wage figure based on the wage figures set forth in the evidence as owed and payable between 1987 and 1992, less any amounts earned by Foster in mitigation, plus prejudgment interest. The calculations made by the court in connection with back wages owed - as well as calculations in connection with all other elements of the compensatory damage award - are set forth in the exhibit attached hereto and filed in connection herewith.

Foster is entitled to 9% simple prejudgment interest on amounts owed, and such interest has been calculated from the date on which such amounts became due. *See Ngirausui v. Baiei*, 4 ROP Intrm 140 (1994); *A.J.J. Enterprises v. Renguul*, 3 ROP Intrm. 29 (1991). *See also NECO v. Rdialul*, 2 ROP Intrm. 211 (1991).

Finally, postjudgment interest on all amounts payable pursuant to the Judgment filed contemporaneously herewith will be awarded at the rate of 9% simple interest per annum from the date of filing of this decision. *See* 14 PNC § 2001; *accord Yamamoto v. Ulechong*, 1 ROP Intrm. 12 (High Ct. 1982).

⁹ Although Foster expended more money than this amount awarded, the Court has offset such expenditures by \$3000 for paint of Defendants sold by Foster.

¹⁰ Judgment entered in connection with compensatory damages as set forth in this section of this opinion is final for the purposes of appeal.

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(2) Whether the actions of Defendants constituted attempted fraudulent misrepresentation for which punitive damages should be awarded.

The admiralty and maritime law of the Republic of Palau, Palau National Code Title 7, includes the "Seamen's Protection Act," 7 PNC § 521 et. seq ("SPA"). Due to the special vulnerability of seamen in relation to their employers, the SPA provides seamen with special, strong protections, including liens on the ships on which seamen are working. 7 PNC § 527. As noted in the Court Order filed October 29, 1992, this Court found that (i) Foster is a "seaman" and, accordingly, is entitled to the protections of the SPA, and (ii) Foster has a maritime lien for unpaid wages against both the dredge and the tugboat.¹¹

¶240 In his amended complaint, Foster has alleged fraudulent conduct on the part of Defendants in attempting to conceal the identity of the tugboat originally called "Titan A."

As noted in the statement of facts, in 1991 Defendants attempted to conceal the identity of "Titan A" by renaming it "Amee Two," representing it as a boat built in 1991, and flagging it as such in the Philippines. The Court holds that such actions constitute attempted fraudulent misrepresentation undertaken in an attempt to deceive Foster into believing that he did not have a lien on "Amee Two." Such a fraudulent attempt -- had Foster been deceived -- would have struck at the very core of the protections of the SPA by undermining Foster's lien.

In concluding that Defendants' actions constituted attempted fraudulent misrepresentation, the Court has looked closely at the law of fraud. "No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling, and unfair ways by which another is deceived." *Armstrong v. Wasson*, 220 P. 643 (Okla. 1923), *cited by Wells v. Zenz*, 256 P. 484, 485 (Cal. 1927), *cited by Arnold v. Howell*, 219 P.2d 854, 859 (Cal. 1950).

Fraud is a generic term, which embraces all the multifarious means which human ingenuity can devise and which are resorted to by one individual to gain an advantage over another by false suggestions or by the suppression of truth. No definite and invariable rule can be laid down as a general proposition defining fraud, and it includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.

Stapleton v. Holt, 250 P.2d 451, 453-54 (Okla. 1952).

Notwithstanding the vagueness of such definitions of fraud, the prima facie action in fraud is straightforward. "The five elements of fraud [are] representation, falsity, deception, scienter and injury . . ." *E.g., Hackner v. Morgan*, 130 F.2d 300 (2nd Cir. 1942). The key

¹¹ Contrary to the arguments of Defendants, the statute of limitations set forth in the SPA do not bar this breach of contract action. Foster has not brought suit under the SPA: instead, Foster brought a breach of contract action and claimed a lien pursuant to the SPA. The statute of limitations for breach of contract actions is six years, and Foster brought this action within such time the statute limitations provisions of the SPA.

Foster v. Bucket Dredger S/S "Digger One," 7 ROP Intrm. 234 (Tr. Div. 1997) elements of an action in fraud are falsity and scienter: "[M]isrepresentation made for the purpose of inducing reliance upon the false statement is fraud." *Chiarella v. U.S.*, 100 S.Ct. 1108, 1114 (1980). Finally, such misrepresentation can take any number of verbal and nonverbal forms:

The gist of [a fraud] action is fraudulently producing a false impression upon the mind of the other party; and, if this result is accomplished, it is unimportant whether the means of accomplishing it are words or acts of the defendant, or his concealment or suppression of material facts not equally within the knowledge or reach of the plaintiff.

Stewart v. Wyoming Cattle Ranche Co., 9 S.Ct. 101, 103 (1888), *cited by Sime v. Malouf*, 212 P.2d 946, 956 (Cal. 1949).

¶241 Defendants represented to Foster - and to this Court - that "Amee Two" was not the same vessel as "Titan A". Defendants knew the falsity of this proposition, but nevertheless set it forth in an attempt to deceive Foster into believing that Foster did not have a lien on "Amee Two". Defendants' actions in connection with "Amee Two" as well as false representations Defendants made to Foster in connection therewith, constitute the false representations made with knowledge of their falsity necessary for a fraud action.¹²

As noted above, having worked and lived on "Titan A," Foster was not deceived into believing that "Amee Two" was a vessel on which he did not have a maritime lien: accordingly, Foster did not incur actual damages as a result of the attempted fraudulent misrepresentation. Foster contends, however, that punitive damages nevertheless should be assessed against Defendants.

Although punitive damages generally are not recoverable in an action for breach of contract, *Owens v House of Delegates*, 1 ROP Intrm. 320 (Tr. Div. 1986), this Court has not yet passed on the question of whether punitive damages may be awarded in an action for fraud. Although the law of the United States is not controlling, this Court finds such law is appropriate for Palau.

Assessing punitive damages in actions for fraud even in the absence of actual damages is

¹² The Court notes the strict burden of proof applicable when fraud has been alleged

[I]t is settled law that fraud is not to be presumed and that something more is required than the mere weight or preponderance of evidence. To establish fraud it is essential that the evidence should be clear, unequivocal and convincing. It must be cogent and leave the mind well satisfied that the allegations are true.

Lavkawanna Pants Mfg. Co. v. Wiseman, 133 F.2d 482, 486 (1943), *citing Equitable Life Assurance Society v. Johnson*, 81 F.2d 543, 547 (6 Cir. 1936).

The Court finds that Foster has met this burden of proof in proving fraud on the part of Defendants.

Foster v. Bucket Dredger S/S "Digger One," 7 ROP Intrm. 234 (Tr. Div. 1997) permissible in most United States jurisdictions e.g., *Tackett v. Kidder*, 615 F.2d 1050 (86 Cir. 1980); *Computer Sys. Eng'ring*, 571 F. Supp. 1356 (Mass. Dist. Ct. 1983), *aff'd* 740 F.2d 59 (1984), especially under the circumstances of reckless or aggravated misconduct. E.g., *Contractor Utility Sales Co. v. Certain-Teed Corp.*, 748 F.2d 1151 (7th Cir. 1984), *cert. denied*, 105 S.Ct. 1397 (1985); *Byrnes v. Faulkner*, 550 F.2d 1303 (2nd Cir. 1977); *P&S Business Machs v Olympia U.S.A.*, 707 F.2d 1321 (11th Cir. 1983); *Nieto Santos v. Fletcher Farms*, 743 F.2d 638 (9th Cir. 1984). In light of the deterrence function of punitive damages, awarding punitive damages in cases of attempted -- yet thwarted -- fraud is desirable. In assessing compensatory damages which are awarded to make a plaintiff whole, actual deception and injury is key; since the goal of punitive damages is to deter specific behavior, however, allowing the assessing of punitive damages is to hinge on the fortuity of whether the intended victim was actually deceived - rather than on the behavior of the defendant - makes little sense.

Accordingly, this Court holds that punitive damages may be awarded in an action for fraud under the circumstances of reckless or aggravated misconduct. At this juncture this Court need not decide, however, whether fraud perpetrated without aggravated misconduct is a sufficient basis upon which to 1242 impose punitive damages.¹³ The behavior of Defendants in the case at bar was so extreme that "aggravation" undoubtedly was present in this case. Defendants' behavior constituted a calculated scheme of international deception involving the practice of fraud upon the government of the Philippines; attempted fraud upon this Court; and attempts to undermine some of Palau's most central policies as set forth in the SPA, an act of extreme importance in the Republic of Palau where the maritime industry and its development are cornerstones of the economic growth of Palau and the well-being of its people. Defendants attempted to undermine the authority of this Court by attempting to break arrest, thereby violating this Court's order requiring maintenance of the status quo. Defendants' bad faith was apparent when they attempted to convince Foster and this Court that White Albatross Shipping Corporation -- a mere corporate shell with no office or operations -- was an existing, operating corporation which had obtained work for "Amee Two" in the Philippines. Defendants' extreme bad faith was also betrayed by Defendants' repeated promises to Foster that payment would be forthcoming once the dredge began to generate income, notwithstanding that the dredge already had been generating income. Defendants also acted in bad faith in connection with this litigation: Defendants stonewalled discovery by failing to produce documents as ordered and flagrantly ignoring court orders in connection with substitution of Defendant Jones after his death during these proceedings. Finally, Defendants owed unpaid taxes to the Republic of Palau in the past, and it is unclear to this Court -- and, indeed, to Defendants themselves -- whether all taxes have been paid in full. In light of Defendants' aggravated behavior and the need to deter such abhorrent behavior, it is clear that an award of punitive damages is appropriate and desirable.

Accordingly, Defendants are hereby ordered to pay Foster punitive damages in the amount of \$150,000.¹⁴

¹³ The Court expressly reserves this question.

¹⁴ Judgment entered in connection with punitive damages as set forth in this section of this opinion is final purpose of appeal.

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(3) Whether Foster is entitled to an award of attorney's fees.

A prevailing plaintiff in an action for fraud is entitled to an award of attorney's fees. *Deets v. Hamilton Management Corp.*, 581 P.2d 826 (Kan. 1978); *accord Gnash v. Saari*, 267 P.2d 674 (Wash. 1954).

Moreover, in a breach of contract action, compensatory damages are designed to make the prevailing plaintiff whole. *Ink Mill. Mach Co. v. M/V Bodena*, 829 F.2d 293 (2nd Cir. 1987), *cert. denied*, 108 S.Ct. 774 (1988). It follows that if incurring attorney's fees to enforce the contract at issue is a direct and foreseeable consequence of breach of contract, then such attorney's fees are compensable as part of the compensatory damages award. *Id.*

Accordingly, Defendants are hereby ordered to pay attorney's fees incurred by Foster in connection with this action. Counsel for Foster, however, failed to provide evidence from which this Court may calculate such fees. The bald assertion that \$100,000 in attorney's fees was incurred does not comport with this Court's notion of the type of evidence required to prove attorney's fees. Moreover, Foster's, counsel failed to indicate how he arrived at the daily rate of \$500 per day for the services rendered in connection with the attempted break of arrest.

¶243 Foster is ordered to file a brief with this Court within 45 days of the filing hereof in connection with this issue. Defendants may file a response brief within 30 days thereafter, in response to which Foster may file a reply within 15 days thereafter. After all briefs have been filed, a hearing shall be held in connection with the amount of attorney's fees incurred by Foster in connection with this action.

(4) Whether Airai State Government is entitled to anchorage fees for the period commencing when Chalres Obichang took office as governor of Airai and requested such payment, until commencement of this suit.

While he was governor of Airai, Tmetuchel had agreed that Defendants could anchor the dredge in Airai State without paying anchorage fees. This unorthodox situation could be explained at least in part by an independent business relationship between Defendants and Tmetuchel, separate from the dredging operation. The existence of this personal business relationship should have put Defendants on notice - and is deemed to have put them on constructive notice - that this arrangement was not typical for Airai State and would not continue if Tmetuchel were replaced as governor of Airai.¹⁵ When Governor Obichang replaced Tmetuchel as governor of Airai, Governor Obichang requested anchorage fees. Defendants may not rely on the deal they struck Tmetuchel with whom they had an independent business dealing -- even after Governor Obichang replaced Tmetuchel as governor of Airai and requested payment of anchorage fees. For this reason, Defendants must pay anchorage fees to Airai State Government for the period commencing in April 1990 when Charles Obichang became Governor of Airai and requested defendants to pay anchorage fees, through the date of the filing of this suit.

¹⁵ Such notice negates Defendants' argument relating to laches, waiver and estoppel.

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Airai State Government argued that the anchorage fee tariff was one cent per ton per day, and assumed that Defendants therefore owed a total of \$10 per day for the period commencing April 1990 and ending October 1992. Airai State Government, however, failed to explain how it arrived at the conclusion that \$10 per day is owed. Airai State Government is ordered to file a brief with this Court within 45 days of the filing hereof in connection with this issue. Defendants may file a response brief within 30 days thereafter, in response to which Airai State Government may file a reply brief within 15 days thereafter. After all briefs have been filed, a hearing shall be in connection with that amount which constitutes the anchorage fee payable by Defendants.

(5) Whether parties and/or successors-in-interest are liable for payment of the judgment.

All In Personam Defendants shall be jointly and severally liable for payment of the amounts assigned in the Judgment filed contemporaneously herewith.

Illman Jones Inc. is a family business which shared a bank account with the Jones Family Trust. Moreover, income payable to Illman Jones Inc. sometimes was made payable to the Jones Family Trust.¹⁶ This Court finds that the Jones Family Trust is, in reality, an alter ego of Jones and Illman Jones Inc.; accordingly, all assets of the Jones Family Trust are to be considered the assets of all Personam Defendants for the purpose of **¶244** satisfying the Judgment filed contemporaneously herewith.

Finally, In Rem Defendants shall remain in the custody of the Court until the judgment is paid in full. Should the assets of the In Personam Defendants prove insufficient to satisfy the judgment, this Court shall conduct a judicial sale of In Rem Defendants, the proceeds of which shall be used to satisfy the judgment. If the proceeds of such sale exceed the balance of the judgement owed, such excess amounts shall be remitted to In Personam Defendant Illman Jones Inc.

CONCLUSION

For the foregoing reasons, the Court finds Defendants liable to plaintiff Foster for breach of contract and attempted fraudulent misrepresentation. The Court also finds Defendants liable to plaintiff Airai State government for restitution in connection with unpaid anchorage fees. Defendants are ordered to remit to Plaintiffs the amount assigned in the Judgment filed contemporaneously herewith.

¹⁶ This was the case in connection with the sale of the vessels "Amee O Tmetuchel."