IN THE SUPREME COURT OF IOWA

NO.: **15-1766**

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR JEFFERSON COUNTY

JEFFERY ANDERSON,

Plaintiff,

vs. Case No. **LALA003886**

ANDERSON TOOLING, INC.,
DEAN E. ANDERSON, and
CAROL A. ANDERSON,

Defendants.

ANDERSON TOOLING, INC.,

Plaintiff,

vs.
LALA003886

No. LALA004034
Consolidated with

LORI J. ANDERSON and
FABRICATION AND CONSTRUCTION
SERVICES, INC.,

Defendants.

APPELLANT'S FINAL BRIEF

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ROUTING STATEMENT

The issues raised in this appeal are matters of settled law in Iowa, and the Court of Appeals is an appropriate venue for the hearing of this matter. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Course of proceedings. Jeff Anderson filed Petition at Law and Jury Demand bringing claims against Anderson Tooling, Inc., Dean Anderson and Carol Anderson for Violation of Iowa Wage Payment Collection Law, Breach of Contract, Tortious Discharge, and Interference with Contractual Relations. (App. pp. 1 – 4, 5 - 9). Anderson Tooling, Inc., Dean Anderson and Carol Anderson filed Answer and Counterclaim. In their counterclaim they brought claims against Jeff Anderson for Conversion, Intentional Interference with Contracts, Interference with a Prospective Business Advantage, Breach of Fiduciary Duty, and Misappropriation of Trade Secrets. (App. pp. 10 - 28). Anderson Tooling, Inc., brought a Petition at Law against Lori Anderson making claims for Breach of Fiduciary Duty. (App. pp. 30 - 45). In addition, Anderson Tooling, Inc., brought a Petition at Law against Lori Anderson and Fabrication and Construction Services, Inc. making claims for Conversion, Intentional Interference with Contracts, Interference with a Prospective Business Advantage, and Conspiracy. (App.

pp. 30 - 45). Anderson Tooling, Inc. and Fabrication and Construction Services, Inc. answered denying the claims.

The claims in all of the above cases were consolidated by order of the District Court. (App. pp. 46 - 48). All of the claims were ultimately brought to trial in the Jefferson County, Iowa District Court on May 14, 2015. On June 5, 2015 a jury returned verdicts on each claim as follows:

VERDICT FORM NO.1 WITH SPECIAL INTERROGATORIES REGARDING CLAIMS BY JEFFERY ANDERSON

I. The jury found Anderson Tooling, Inc. had not violated the Iowa Wage Payment Collection Law. $0 amount awarded. (App. pp. 99 - 100).

II. The jury found there was no Breach of Employment Contract by Anderson Tooling, Inc. $0 amount awarded. (App. pp. 100 - 101).

III. The jury found there was Tortious Discharge by Anderson Tooling, Inc. $89,387.01 awarded for Lost Earnings From Discharge to Present and $5,000 awarded for Emotional Distress From Discharge to Present. (App. pp. 101 - 102).

IV. The jury found no Intentional Interference with a Contract by Dean Anderson and Carol Anderson. $0 amount awarded. (App. pp. 102 - 103).

V. The jury found Dean and Carol Anderson had not Pierced the Corporate Veil. $0 amount awarded. (App. pp. 103 - 104).

VI. The jury found for Jeffery Anderson with regard to Punitive Damages Special Interrogatories. $52,000 awarded. (App. pp. 104 - 105).

VERDICT FORM NO.2 WITH SPECIAL INTERROGATORIES REGARDING CLAIMS BY ANDERSON TOOLING, INC.

I. The jury found there was no Conversion by Jeffery Anderson. $0 amount awarded. (App. pp. 106 - 107).

II. The jury found there was no Conversion by Lori Anderson. $0 amount awarded. (App. p. 107).

III. The jury found there was no Conversion by Fabrication and Construction Services, Inc. $0 amount awarded. (App. pp. 107 - 108).

IV. The jury found there was Interference with Prospective Business Relationships by Jeff Anderson. $336,072.54 amount awarded. (App. pp. 108 - 109).

V. The jury found there was no Interference with Prospective Business Relationships by Lori Anderson. $0 amount awarded. (App. pp. 109 - 110).

VI. The jury found there was no Interference with Prospective Business Relationships by Fabcon. $0 amount awarded. (App. pp. 110 - 111).

VII. The jury found that Jeff Anderson Breached his Fiduciary Duty. $436,225.18 amount awarded. (App. p. 12).

VIII. The jury found that Lori Anderson did not Breach her Fiduciary Duty. $0 amount awarded. (App. pp. 112 - 113).

IX. The jury found there was no damage from Misappropriation of Trade Secrets by Jeff Anderson. $0 amount awarded. (App. pp. 113 - 114).

X. The jury found there were damages to Anderson Tooling, Inc. as a result of conspiracy. $0 "duplicative" amount awarded. (App. p. 114).

XI. The jury found there were no Punitive Damage Special Interrogatories. $0 amount awarded. (App. pp. 114 - 115).

Post-trial motions were filed by each party contesting certain issues involved in the jury verdicts and seeking entry of judgments. Ruling on post-trial motions was issued by the court on September 17, 2015. (App. pp. 205 - 223).

Ultimately, judgments were entered as follows:

Judgment was entered in favor of Plaintiff, Jeffery Anderson, and against Defendant, Anderson Tooling, Inc., In the amount of $94,387.01 in compensatory damages plus $52,000 in punitive damages.

Judgment was entered in favor of Counter-claim Plaintiff Anderson Tooling, Inc. and against Counter-claim Defendant Jeffery Anderson in the amount of $772,297.72 in compensatory damages.

Judgments shall accrue on said judgments at the statutory rate of 2.33% from and after the date of the filing of the Petition in this case on December 28, 2011.

Judgment was entered against Jeffery Anderson for one-half of all court costs and against Anderson Tooling, Inc. for one-half of all court costs.

Plaintiff's Motion for New Trial and Amended Motion for New Trial on Verdict Form No. 1 was overruled and denied. (App. pp. 205 - 223).

Plaintiff's Motion for Judgment Notwithstanding the Verdict on Verdict Form No. 1 was overruled and denied. (App. pp. 205-223).

Plaintiff's Motion for Judgment Notwithstanding the Verdict and Supplement to Motion for New Trial and/or Judgment Notwithstanding the Verdict on Verdict Form No. 2 was overruled and denied. (App. pp. 205 - 223).

Plaintiff's Motion for Remittitur or New Trial on Verdict Form No. 2 was overruled and denied. (App. pp. 205 - 223).

Defendants' Motion for Entry of Judgment was sustained and granted. (App. pp. 205 - 223).

Defendants' Combined Motion to Enlarge, Amend and Modify was sustained and granted. (App. pp. 205 - 223).

Defendants' Motion for Judgment Notwithstanding the Verdict was overruled and denied. (App. pp. 205 - 223).

Defendants' Motion to Tax Costs sustained and granted. (App. pp. 205 - 223).

Jeff Anderson, Lori Anderson and Fabrication and Construction Services, Inc., filed timely of Notice of Appeal on October 16, 2015. Anderson Tooling, Inc., Dean Anderson and Carol Anderson did not appeal from any adverse rulings.

STATEMENT OF FACTS

Anderson Tooling, Inc., (Hereinafter "ATI") is a Fairfield, Iowa business involved in rigging, buying and selling machinery, and scrapping machinery. (App. p. 232). Dean Anderson (Hereinafter "Dean") is president and an owner of the company. (App. p. 260). Dean's wife Carol Anderson (hereinafter "Carol") is also an owner of the company. (App. p. 796). Dean's brother, Jeff Anderson (Hereinafter "Jeff") was at all material times the general manager of ATI after becoming employed there in 2005. (App. pp. 229, 329, 359).

Fabrication and Construction Services, Inc. (Hereinafter "Fabcon") was formed by Dean Anderson and Jeff Anderson as a company to undertake equipment moving, repairs, and renovations at ATI following

major flooding damage. (App. pp. 300 - 301). Jeff was the sole owner of Fabcon. (App. pp. 313 - 314).

JDA Enterprises, LLC (Hereinafter "JDA") is a limited liability company owned by Dean Anderson (60%) and Jeff Anderson (40%). (App. p. 254). The only major asset of JDA is the building at which ATI and Fabcon are located. (App. p. 302).

Jeff is married to Lori Anderson (Hereinafter "Lori"). (App. p. 378). Jeff currently lives in Wisconsin employed with John Deere as a supervisor of the maintenance department at the Horicon, Wisconsin plant. (App. pp. 378 - 379). Jeff has a bachelor's degree in industrial technology and a master's in business administration. (App. pp. 380 - 383).

In 2005, Dean contacted Jeff about the possible purchase of the "Acco-Louden" building and coming to work for Anderson Tooling, Inc. (Hereinafter "ATI"). (App. pp. 385 – 388). Jeff took notes during these discussions. (App. pp. 1064 – 1078, 389 - 390). Dean took notes during these discussions. (App. pp. 1079 – 1080, 401). These discussions resulted in an employment agreement. (App. pp. 1061; 392, 394, 401, 402).

Jeff and Dean both initialed Exhibit 1. (App. p. 394). Bookkeeper Sherryll Norton recognized the initials of both Jeff and Dean. (App. pp. 239

- 240). The discussions also resulted in an agreement for the ownership of the building. (App. pp. 1063, 393, 401).

The JDA building where the ATI business was located sustained substantial flooding damage in 2009. (App. pp. 514, 515, 526).

As a result of the flood damage and difficulties with insurance coverage issues, Dean and Jeff decided to form a new company to be owned by Jeff to perform flood damage work and other millright and fabrication services. (App. pp. 404, 372, 375).

This company ultimately came to be known as Fabrication & Construction Services, Inc. (hereinafter "Fabcon"). Dean informed the flood insurance company of the formation of this new company and Jeff's dual roles with ATI and Fabcon. (App. pp. 569, 570, 592, 594).

Fabcon submitted bids to Cincinnati Insurance Company (hereinafter "Cincinnati") which were approved by Cincinnati. (App. pp. 1155 - 1202). Fabcon performed the flood damage work to Cincinnati's satisfaction. (App. pp. 566 - 567). Cincinnati paid ATI for work performed by Fabcon in the approved bid amounts. (App. pp. 1155 - 1202; 562, 566 - 567). The Cincinnati checks were endorsed by either Dean or Jeff payable to Fabcon for the work performed. (App. pp. 1155 – 1202). Cincinnati understood and agreed these payments would ultimately go to Fabcon. (App. pp. 562 - 563).

Cincinnati was informed by Dean that he did not want ATI performing the insurance related work for ATI. (App. p. 873). Dean also advised Cincinnati that Jeff was forming another company, Fabcon, that would be bidding to perform the work. (App. pp. 569, 570, 592). Cincinnati did not believe there was any fraud in the bidding process to Fabcon. (App. pp. 571 - 572).

Sherryll Norton (Hereinafter "Norton") was an accountant for ATI from November 2010 to February 2012. (App. p. 229). Jeff was Norton's supervisor at ATI until his termination from employment. (App. pp. 229 - 230). She observed Jeff to be thorough, competent, reliable and dependable. (App. p. 230). In her opinion, Jeff was a truthful and honest person. (App. p. 231).

When asked whether Jeff performed his work for the best of the company, ATI, Norton responded, "Jeff was doing everything possible to keep the company afloat and his employees paid." (App. p. 263). She never observed anything to conclude Jeff was improperly taking money from the company. (App. pp. 284 - 285).

Norton testified that Dean had a reputation in the community for being "very untruthful". (App. p. 259). It was also her personal opinion, based on her own personal interaction with him, that he was "very

untruthful". (App. pp. 259 - 260). She also testified that Dean, as president, was in charge of ATI money decisions. (App. pp. 260 - 261). He treated the company as his personal company. (App. p. 232). There was no separation between Dean's personal property and ATI. (App. pp. 232 - 233). Dean commonly conducted cash transactions not accounted for on the books of ATI. (App. pp. 233 - 234). When questioned, Dean would commonly tell her it was for "personal stuff" and "nothing for you to worry about." (App. pp. 234 - 235).

Norton testified that ATI had serious cash flow problems. (App. p. 261). It was her opinion that cash flow problems were caused by Dean and Carol. (App. p. 261). Norton also testified that in her opinion Carol was untruthful and had a reputation in the community for being untruthful. (App. p. 262).

Elizabeth Bell (Hereinafter "Bell") is a license local pastor, was employed as the ATI office manager and bookkeeper prior to Norton. (App. pp. 323, 325). Bell testified that both Dean and Carol had reputations for being untruthful individuals. (App. pp. 327 - 328). As a result of her work with Dean and Carol, she also formed the personal opinion they were untruthful people. (App. p. 328). On the other hand, she found Jeff to be a

truthful person. (App. p. 328). She was also of the opinion that Jeff never breached his responsibilities as a manager of the company. (App. p. 343).

Bell testified that Dean was in control of all the financial aspects of the company. (App. pp. 329 - 331). Dean and Carol's personal expenses were paid by the company, often double or triple paid. (App. pp. 331 - 335). Checks for ATI inventory would often end up in Dean and Carols' "pocket" as well as their children. (App. p. 338). Sixty (60) percent of scrap metal checks would go directly to Dean or Carol. (App. p. 339). She also testified Carol and Dean would often claim loans were owed to them by the company without any documentary support. (App. pp. 346 - 348).

Dean and Jeff's brother Irwin Anderson (Hereinafter "Irwin") testified he had personally observed Dean take cash from the company. (App. pp. 366 - 367). When Irwin mentioned Jeff's interest in the cash under his employment agreement, Dean responded "Fuck him. He don't get the cash. I get the cash. That's not in the contract. It's my company, it's my fucking money. I'll do with it what I want to with it." (App. p. 368). Irwin observed machines disappearing. (App. pp. 368 - 369). When Irwin observed Dean conducting cash transactions Dean would say "you didn't see that." (App. p. 369).

On one work related trip, Dean admitted to Irwin, "You know, I steal at least fifty grand a year out of this company." (App. p. 370). When Irwin responded that it's probably at least a hundred, Dean responded "You're probably closer to the truth." (App. p. 370).

Chivonne Anderson (hereinafter "Chivonne") was hired at ATI as a director of finance and operations in 2013. (App. pp. 451 - 452). She testified that Dean and Carol's practices of taking money and cash from ATI continued, as well as placing undocumented loan's on the company books. (App. pp. 453 - 458). She described ATI as "a shell company for Dean and Carol to get funds from." (App. pp. 462 - 463). She described Dean as "definitely an untruthful person." (App. p. 464). She was also of the opinion that Carol was "untruthful", "manipulative" and "vindictive." (App. p. 465).

Chivonne's husband, Brian Anderson (hereinafter "Brian") also became employed with ATI in 2013. (App. pp. 486 - 487). He testified Dean's common practice was to keep inventory off the ATI books. (Tr. p. 738). He also confirmed the common practice of cash transactions going directly to Dean (Tr. p. 739) and the practice of undocumented loan repayment. (Tr. p. 741). It was his opinion the business was "a big piggy bank." (App. p. 494).

Bell testified that during her employment with ATI she became aware of an employee contract between Dean, ATI and Jeff for the payment of profit sharing to Jeff. (App. pp. 349 - 350). She was provided a copy of the contract. (App. p. 350). She later observed that the original documentation was destroyed. (App. p. 351). They were destroyed because "when you don't want to pay someone, you are gonna make sure that those documents become unavailable in whatever way possible. (App. p. 351).

Norton testified that in August 2011, ATI received a substantial insurance check from Cincinnati for business income loss caused by the flood. (App. p. 235). Following receipt of the insurance check, Dean requested Norton perform a calculation of deferred compensation owed to Jeff under his contract of employment. (App. p. 236). He said he had an agreement with Jeff and it needed to be calculated and placed on the books. (App. p. 236). When she asked for the documentation about the agreement, Dean told her to "get it from Jeff." (App. p. 236). Norton testified that Dean acknowledged the existence of the agreement to pay Jeff deferred compensation. (App. pp. 236 - 237). She obtained the documentation form Jeff (App. pp. 237 – 238, 1061, 1063). She recognized the initials on Exhibit 1 as those of Jeff and Dean. (App. pp. 239 - 240).

Norton then calculated the deferred compensation owed Jeff under the contract. (App. pp. 242 – 243, 1081 - 1083). She sent her initial calculations to the company CPA. (App. pp. 242 - 243). The CPA directed her to make some revisions to the calculations. (App. p. 243). The CPA then made his own final revisions. (App. p. 245). The CPA then approved placing the deferred compensation on the books at ATI. (App. p. 247). Before doing so, Norton showed the final figure for Jeff's deferred compensation to Dean. (App. pp. 247 - 248). He told her to "Take care of It." (App. p. 248). She then placed the amount owing on the books of the company. (App. pp. 248, 1084 - 1085). The final calculated sum was $243,653.91. (App. p. 248).

Within a week of booking the deferred compensation owed Jeff, his employment with ATI was terminated. (App. p. 250). A few days after placing the deferred compensation on the books, Carol came in to ATI and told Norton, "Why did you do that? It is wrong. Take it off." (App. pp. 250 - 251). Carol claims she had no knowledge about the deferred compensation until after Jeff's termination. (App. p. 803). She also claims Dean didn't know about it as well. (App. p. 806). "He never knew anything about it." (App. p. 806). Carol claimed that Norton and Jeff placed the figure on the books, removed the emails about the calculations from Dean's email account

and obtained CPA approval without Carol or Dean knowing about it. (App. p. 807). Norton testified she told Carol the deferred compensation was placed on the books with Dean's instructions. (App. p. 251). This was prior to Jeff's termination. (App. p. 251).

After Carol learned about the deferred compensation, Dean instructed Norton to take it off the books. (App. p. 263). He stated, "He would never give away his profit." (App. pp. 263 - 264).

Carol admitted in her testimony that there was "an oral contract." (App. p. 808). She admitted she was present at the meeting in 2005 when Jeff was hired. (App. p. 808). She stated the oral contract agreed to at that meeting was, "Jeff was to receive 20 percent of everything that Dean and I could pull out as extra from the business… not money that we paid back out … that we got paid back from our loan payments to Anderson Tooling, not money that we were entitled to for reimbursements, but money that we could pull out of the company as profit, Jeff was to get 20 percent of that." (App. pp. 809 - 810).

Jeff testified that Exhibit 1 was the written agreement of the parties. (App. pp. 392 - 394, 401, 450). He also testified that Exhibit 2 were his notes of the 2005 meeting and Exhibit 3 were Dean's notes from that

meeting. (App. pp. 389, 401). He stated he watched Dean place his initials on Exhibit 1. (App. p. 394).

Jeff had a meeting/discussion with Dean on October 21, 2011, to request payment of this deferred compensation. (App. p. 406). He told Dean it had been booked and he wanted paid. (App. p. 406). He also had a meeting with the ATI CPA who indicated he would talk to Dean about coming up with a payment plan. (App. p. 407).

On October 23, 2011, Dean terminated Jeff's employment. (App. p. 411). The written contract (App. pp. 1073, 1075) disappeared from Jeff's office prior to his termination. (App. pp. 413 - 414). After his termination Dean denied the existence of the written contract. (App. p. 414).

On the Monday following his termination, Dean and Carol notified Jeff he was also being removed as an officer of JDA and Lori was removed as secretary and bookkeeper. (App. pp. 415 – 416, 1268). Dean took over all activities at JDA. (App. p. 428). Jeff, 40 percent owner of JDA, has not received a JDA distribution since that date. (App. pp. 428 - 429).

In September 2011, ATI was awarded a bid to perform work at River Bend Industries in Victor, Iowa. (App. pp. 647, 649, 1465). Dean was River Bend's contact person at ATI. (App. p. 647). The River Bend project

lasted eight months from September 2011 until well into 2012. (App. p. 647).

During the River Bend project, Dean informed David Doran at River Bend that he was going to bring Jeff and his crew, referring to Fabcon, to help out with the move. (App. p. 648). Dean told Doran it was to get things moving quicker. (App. p. 648). Doran described it as, "there was Dean's guys in there, Jeff's guys in, back and forth, back and forth, just to get the move done." (App. p. 651). He testified he understood there were both ATI people and Fabcon people performing the work "because that's when Dean first brought Jeff and his group in…to help expedite the move…". (App. p. 653). Dean introduced Jeff and his crew (Fabcon) and said his crew's gonna be doing some of the work. (App. p. 655). Doran testified it didn't matter to him as long as the job got done. (App. p. 655).

Fabcon billed River Bend for the work it performed and was paid. (App. pp. 1465 - 1467). ATI in this lawsuit claimed these facts constituted interference with ATI prospective business relations with River Bend. (App. pp. 22 - 40). It also claimed Lori and Fabcon conspired with Jeff to cause this interference. (App. pp. 13 - 16). Over motion for directed verdict, the Court submitted this claim to the Jury. (App. p. 124). The jury awarded damages. (App. pp. 120 - 121). Jeff, Lori and Fabcon filed motion for

judgment notwithstanding the verdict and motion for new trial which were overruled.

In November 2011, following Jeff's termination from employment, Fabcon was awarded contracts with American Ordnance for a total of $221,500.00. (App. pp. 626 – 627, 1486). ATI had performed "a couple of small projects" for American Ordnance in 2005. (App. p. 339).

Fabcon's bids to American Ordnance listed ATI and Dean Anderson as work references. (App. pp. 631, 1495). Timothy Licko of American Ordnance testified that they would commonly call work references provided to them in written bids. (App. p. 631).

ATI claimed Jeff interfered with ATI prospective relations with American Ordnance by reason of these contracts. (App. pp. 22 - 40). It also claimed Lori and Fabcon conspired with Jeff to commit this interference. (App. pp. 13 - 16). These claims were also submitted to the jury after Jeff moved for directed verdict.

ARGUMENT

I. THE JURY VERDICT FINDING THAT JEFFERY ANDERSON DID NOT HAVE A CONTRACT OF EMPLOYMENT WITH ATI IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE DISTRICT COURT SHOULD HAVE A GRANTED A NEW TRIAL ON ALL CLAIMS RELATED TO THE CONTRACT.

Preservation of Error: Jeff Anderson moved for directed verdict on this claim, filed a motion for new trial, and filed a timely notice of appeal so error has been preserved. (App. pp. 1060 – 1061, 158 – 160, 236 – 237).

Standard of Review: Appellate Courts review trial court's "ruling on a motion for a new trial depend[ing] on the grounds asserted in the motion. To the extent the motion is based on a discretionary ground, we review for an abuse of discretion. But if the motion is based on a legal question, our review is on error." *Roling v. Daily*, 596 N.W.2d 72, 76 (Iowa 1999). "Our review of a motion for a new trial based on a verdict not sustained by sufficient evidence is for corrections of errors of law." *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004).

Argument: The jury made a finding that Jeff did not have a contract of employment with ATI. (App. pp. 112, 119). This special interrogatory verdict is not supported by, and directly contrary to the evidence. The District Court should therefore have granted a new trial on all his claims with exception of Tortious Discharge and Punitive Damages.

"Iowa Rule of Civil Procedure 1.1004(6) authorizes the trial court to grant a new trial when the verdict 'is not sustained by sufficient evidence' and the movant's substantial rights have been materially affected." *Estate of Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004). "Evidence is

substantial '[w]hen reasonable minds would accept the evidence as adequate to reach the same findings.'" *Fry v. Blauvelt*, 818 N.W.2d 123, 134 (Iowa 2012) (citing *Easton v. Howard*, 751 N.W.2d 1, 5 (Iowa 2008)). Either party can move for a new trial under Rule 1.1004(6) if there was insufficient evidence to support the verdict reached by the jury. *O'Bryan v. Henry Carlson Co.*, 2013 Iowa App. LEXIS 8 at 13. Sufficiency of evidence presents a legal question; appellate courts review these decisions for correction of errors of law. *Peterson*, 690 N.W.2d at 87; *O'Bryan*, 2013 Iowa App. LEXIS 8 at 8-9. Appellate courts in determining whether substantial evidence supports the verdict "review evidence in the light most favorable to the verdict and need only consider the evidence favorable to plaintiff whether it is contradicted or not." *Estate of Pearson ex. rel. Latta v. Interstate Power & Light Co.*, 700 N.W.2d 333, 345 (Iowa 2005).

The verdict reached by the jury against Jeff was not supported by substantial evidence and should result in a new trial being granted. *See Peterson*, 690 N.W.2d at 87. The jury found there was not a contract between Jeff and ATI but this result is not supported by the testimony given by all the parties involved, Jeff, Dean, Carol, as well as others. (App. p. 112).

All parties admitted there was an agreement; their only disagreement was as to the terms of the contract. The evidence establishes that Jeff, Dean, Carol as well as others admitted there was an employment agreement between them. The jury verdict was not supported by the evidence and should result in a new trial being granted.

Jeff testified extensively to the contract of employment. Exhibit 2 is a copy of Jeff's notes illustrating the start of an agreement between Jeff, ATI and Dean. (App. p. 401). These discussions resulted in a specific written agreement. (App. p. 404). Exhibit 1 is the written agreement. (App. pp. 404 - 406, 413, 462). Exhibit 3 is Dean's handwritten notes about the discussion leading to the agreement. (App. p. 413). Jeff testified he observed Dean place his initials on the contract of employment. (App. p. 406, 1073, 1075).

Dean admits there was a contract of employment, albeit oral as compared to his dispute there was a written agreement. (App. pp. 956 - 957) ("… was there an agreement…? I think so…"); (App. pp. 953 - 955) ("We'll take you up on it). Dean later admits an offer and acceptance.

"Q. Tell me what you said or what he said,

A. I said – I said, "Jeff, I want to remind you of what I offered you, that I would give you 20 percent of whatever you enable me to take out. Remember, the company owes you twenty grand,

that's writing me a check for eighty. And it don't have any money."

(App. pp. 1002 - 1003).

Carol readily admitted a contract for employment existed with Jeff, although again oral, while disputing a written contract. "I know of an oral contract, um…" (App. p. 820). "The oral contract was – and Dean and I discussed this before we hired Jeff". (App. p. 821). "Jeff was to receive 20 percent of everything that Dean and I could pull out as extra from the business…" (App. p. 821).

Every company bookkeeper that testified at trial testified to the existence of a contract of employment. Company accountant Sherryll Norton testified to the contract of employment between ATI, Dean and Jeff. (App. pp. 240 - 241). "…, he said that he had an agreement with Jeff, and I needed to get it calculated and on the books…" (App. p. 248). She testified that Dean admitted to the agreement for deferred compensation. (App. pp. 248 - 249). Dean said "that there was an agreement and that I should have access to it to do this calculation." (App. p. 249). When presented with the written agreement (App. p. 1073), Ms. Norton testified she recognized the initials on the document as those of Jeff and Dean. (App. pp. 251 - 252).

After calculating the deferred compensation owed to Jeff, the ATI company CPA authorized Ms. Norton to place it on the books of the

company. (App. p. 259). She also showed the calculations to Dean. (App. p. 259). Dean's response was "Take care of it." (App. p. 260). The deferred compensation she calculated owing Jeff under his contract of employment was spread upon the company books in October, 2011. (App. pp. 1096 – 1097, 260 - 262). Jeff was terminated from employment within a week. (App. p. 262). In addition, although Carol denied knowledge that the deferred compensation had been placed on the books, she approached Ms. Norton a few days after it was booked and instructed her to "Take it off." (App. p. 263). Dean later told Ms. Norton that "he would never give away his profit." (App. p. 264).

Elizabeth Bell, a former office manager and bookkeeper for ATI testified at trial as well. (App. pp. 334, 337). She testified she was replaced by Ms. Norton. (App. p. 337). Ms. Bell acknowledged she was aware of the contract between Dean, ATI and Jeff. (App. p. 361). She obtained a copy of the contract. (App. p. 362). She stated it was a copy of the "original agreement between Dean and Jeff regarding Jeff's employment with the company." (App. pp. 365 - 366).

Ms. Bell testified to her conversation with Dean about this employment agreement. Dean told her he wanted to know how much the money was and he knew that he owed Jeff the money. (App. p. 372). He

also told her that it didn't matter what the agreement was, because there was no cash anyway because there was no profit in the company. (App. pp. 372, 1057). Ms. Bell admitted her frustrations with Dean's comments as she personally knew there was profit in the company, it just wasn't on the books. (App. p. 1058). The profit was being "funneled" through machines as currency, and also cash "going into their pockets." (App. p. 1058).

The written contract of employment contains Dean's initials. (App. pp. 406, 1073, 1075). Jeff personally observed Dean place his initials on the contract. (App. p. 406). Dean's own notes of the agreement contain almost identical terms. (App. pp. 1091 -1092, 1013, 1014, 1016). Dean then admits there was an agreement. (App. p. 956).

The evidence establishes a contract of employment between Jeff and ATI. Although Jeff, Dean and Carol have disputes over the meaning and content, Dean and Carol, the owners of ATI, admit that an offer of employment was made and accepted. They admit there was an agreement. ATI and its owners are bound by these admissions.

All contracts must contain mutual assent. *Magnusson Agency v. Public Entity Nat'l Co. - Midwest*, 560 N.W.2d 20, 26 (Iowa 1997). Mutual assent is established through an offer and acceptance. *Id.* "An offer is a 'manifestation of willingness to enter into a bargain, so made as to justify

another person in understanding that his assent to that bargain is invited and will conclude it.'" *Id.* An "acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." *Heartland Express, Inc., v. Terry*, 631 N.W.2d 260, 270 (Iowa 2001). Courts examine the existence of an offer objectively, not subjectively. *Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 285 (Iowa 1995).

Parties are bound by their admissions made during trial while testifying. *Wright v. Mahaffa*, 270 N.W. 402, 406 (Iowa 1936). "An admission *in testimony* of a party is binding on him and dispenses with the necessity of proving the fact admitted. . . ." *Id.* Jeff, Dean and Carol all testified there was an agreement established between them. After this was admitted by all parties involved there is no longer a need to prove this fact and it is binding on all parties. *Id.*

The jury special interrogatory finding no contract of employment was not supported by substantial evidence in the trial record. The Court should have therefore granted Jeff a new trial on all claims related to the contract and the parties' obligations under that contract, including unpaid wages, breach of contract, interference with contract, and piercing the corporate veil. The Court should reverse the District Court and grant new trial on

these claims and direct a ruling, as a matter of law, that there was a contract of employment.

II THE JURY VERDICT FINDING THAT JEFF ANDERSON INTERFERED WITH PROSPECTIVE BUSINESS RELATIONS OF ATI IS INCONSISTENT WITH THE VERDICT FORM FINDING THAT THE CONDUCT OF JEFF ANDERSON WAS NOT DIRECTED SPECIFICALLY AT ANDERSON TOOLING AND JUDGMENT FOR JEFF OR NEW TRIAL SHOULD THEREFORE HAVE BEEN ORDERED.

Preservation of Error: Jeff Anderson, Lori Anderson, and Fabcon moved for directed verdict on this claim and filed a motion for new trial, a motion for judgment notwithstanding the verdict, and filed a timely notice of appeal. (App. pp. 1062, 1063, 163, 236). Error was preserved.

Standard of Review: "The scope of our review of a district court's ruling on a motion for new trial depends on the grounds raised in the motion." *Channon v. United Parcel Serv., Inc.*, 629 N.W.2d 835, 859 (Iowa 2001). If a motion for a new trial was "based on a legal question, our review is on error." *Roling v. Daily*, 596 N.W.2d 72, 76 (Iowa 1999). "The question of whether verdicts are legally inconsistent is a question of law . . . ." *State v. Leake*, 699 N.W.2d 312, 32 (Minn. 2005). As we claim, the verdicts are inconsistent warranting a new trial, the standard of review should be for corrections of errors at law.

Argument: In response to Verdict Form 2, Section IV, Questions 10 through 15, the jury found that Jeff Anderson intentionally interfered with ATI's prospective business relations causing damages of $336,072.54. In response to the Verdict Form 2, Section XI on Punitive Damages, the jury found that Jeff Andersons conduct was **not directed specifically at Anderson Tooling**. (App pp. 126 - 127). There they found by special interrogatory:

> Q44 *Was the conduct of Jeffery Anderson, Lori Anderson and Fabrication & Construction Services, Inc. directed specifically at Anderson Tooling, Inc., Dean Anderson and Carol Anderson?*
>
> *Answer "yes" or "no"*
>
> *ANSWER:* *No*

(App. p. 127). These verdicts are so inconsistent that they cannot be harmonized, no judgment should have been entered and new trial should have been granted by the District Court.

To recover on a claim for intentional interference with contractual relations, the jury is required to find the specific intent to financially injure or destroy the complaining party. *See Nesler v. Fisher and Co. Inc.*, 452 N.W.2d 191, 199 (Iowa 1990); *See Page Cnty Appliance Center v. Honeywell Inc.*, 347 N.W.2d 171, 177 (Iowa 1984); *See Harsha v. State Sav. Bank*, 346 N.W.2d 791, 799 (Iowa 1984). The jury was specifically

instructed that the interference with prospective business relations claim required the specific intent to injure ATI. (App. p. 141). The jury verdict for interference with prospective business relations is not supported by substantial evidence that Jeff had the sole or predominant purpose to injure or financially destroy ATI. *See Compiano v. Hawkeye Bank & Trust of Des Moines*, 588 N.W.2d 462, 464 (Iowa 1999); *See Burke v. Hawkeye Nat'l Life Ins. Co.*, 474 N.W.2d 110, 114 (Iowa 1991). The jury actually made a specific finding in answer to special interrogatory that Jeff's conduct was not directed at ATI. (App. p. 127). That jury finding is inconsistent with the required finding that Jeff intended to financially injure or destroy ATI. The jury finding of no intent is factually determinative and binding on the Court. The finding is inconsistent with the required elements of a claim for interference with prospective relations. The court should therefore have granted judgment for Jeff. At minimum, the court should have ordered a new trial.

The jury reached verdicts that are inconsistent and could not have been harmonized by the District Court. Courts are prohibited from entering judgment in the face of inconsistent answers when the verdicts cannot be harmonized with the law and the instructions issued in the case. *Halterman v. Jackson*, 746 N.W.2d 278, 2008 WL 141485, 3 (Iowa Ct. App.). The

standard of review while considering inconsistent verdicts is for corrections of error at law. *Pavone v. Kirke*, 801 N.W.2d 477, 496 (Iowa 2011).

District Courts are prohibited from entering judgment in the face of inconsistent answers because this involves some degree of speculation. *Clinton Physical Therapy Servs., P.C., v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 614 (Iowa 2006). Verdicts can be reformed when the change "clearly and definitely expresses the jury's intentions" but may not be reformed in an attempt to reconcile inconsistent verdicts leading to speculation. *Id.* "Where a jury verdict is the result of confusion or is inconsistent in law, the trial court should grant a new trial; a new trial is necessary because, once the jury is dismissed, any attempt to reconcile the inconsistencies in a verdict must be based on mere speculation about the jury's intent." *City of Bessemer v. Foreman*, 678 So.2d 759, 760 (Ala. 1996).

No evidence was produced showing that Jeff Anderson had any intent to financially injure or destroy ATI. The jury reached this same conclusion when it decided that Jeff had not directed any conduct specifically at ATI. (App. p. 127). Without directing conduct specifically at ATI, there could not be specific intent to injure or destroy and there could not, therefore have been interference with prospective business relations, as found by the jury.

The verdicts reached regarding whether Jeff's conduct is directed at ATI are directly inconsistent with finding interference with prospective business relations. These inconsistent verdicts cannot be harmonized and the District Court should have granted judgment in Jeff's favor on the interference claim, or in the alternative granted new trial on this claim.

III. THE JURY VERDICTS OF $336,072.54 FOR INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS AND $436,225.18 FOR BREACH OF FIDUCIARY DUTY ARE NOT SUPPORTED BY THE EVIDENCE AND THE DISTRICT COURT SHOULD HAVE GRANTED A NEW TRIAL OR JUDGMENT FOR JEFF ANDERSON ON THESE CLAIMS

Preservation of Error: Jeff Anderson, Lori Anderson, and Fabcon moved for directed verdict on this claim and filed a motion for new trial, a motion for judgment notwithstanding the verdict, and filed a timely notice of appeal. (App. pp. 1062 – 1063, 172 – 173, 165 – 167, 236 - 237). Error was preserved.

Standard of Review: Appellate Courts review trial court's "ruling on a motion for a new trial depend[ing] on the grounds asserted in the motion. To the extent the motion is based on a discretionary ground, we review for an abuse of discretion. But if the motion is based on a legal question, our review is on error." *Roling v. Daily*, 596 N.W.2d 72, 76 (Iowa 1999). "Our review of a motion for a new trial based on a verdict not sustained by

sufficient evidence is for corrections of errors of law." *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004).

Argument: The jury entered a verdict finding Jeff had interfered with ATI prospective business relations and awarded damages of $336,072.54. (App. pp. 120 - 121). The jury also entered a verdict finding Jeff had breached his fiduciary duties to ATI and awarded damages of $436,225.18. (App. p. 124). These damages awards are not supported by the evidence. The District Court should have alternatively granted judgment for Jeff or granted a new trial on these claims by ATI.

"Iowa Rule of Civil Procedure 1.1004(6) authorizes the trial court to grant a new trial when the verdict 'is not sustained by sufficient evidence' and the movant's substantial rights have been materially affected." *Estate of Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004). "Evidence is substantial '[w]hen reasonable minds would accept the evidence as adequate to reach the same findings.'" *Fry v. Blauvelt*, 818 N.W.2d 123, 134 (Iowa 2012) (citing *Easton v. Howard*, 751 N.W.2d 1, 5 (Iowa 2008)). Either party can move for a new trial under Rule 1.1004(6) if there was insufficient evidence to support the verdict reached by the jury. *O'Bryan v. Henry Carlson Co.*, 2013 Iowa App. LEXIS 8 at 13. Sufficiency of evidence presents a legal question; appellate courts review these decisions for

correction of errors of law. *Peterson*, 690 N.W.2d at 87; *O'Bryan*, 2013 Iowa App. LEXIS 8 at 8-9. Appellate courts in determining whether substantial evidence supports the verdict "review evidence in the light most favorable to the verdict and need only consider the evidence favorable to plaintiff whether it is contradicted or not." *Estate of Pearson ex. rel. Latta v. Interstate Power & Light Co.*, 700 N.W.2d 333, 345 (Iowa 2005).

The verdict of $336,072.54 is not supported by the evidence. First, it should be noted, that the verdict does not reveal how the jury determined the amounts of damage for the individual companies listed on the verdict form, Dr. Pepper, Whirlpool, Riverbend Plastics, and American Ordnance (App. p. 120) ("Did Anderson Tooling, Inc. have prospective business relationships with Dr. Pepper, Whirlpool, Riverbend Plastics, American Ordnance, or others?"). Despite that, the only manner in which the amount of the damage verdict can be rationalized, the jury would had to have awarded damages for interference with ATI prospective relations with American Ordnance.

ATI presented evidence claiming that Fabcon had received contracts with American Ordnance totaling $261,500.00. (App. pp. 626 – 627, 1486). ATI claimed Jeff interfered with ATI prospective relations by securing these contracts for Fabcon.

The proposal for American Ordnance work was submitted on November 9, 2011, after Jeff was discharged from employment by ATI. (App. pp. 633, 1488 - 1489).

ATI did not have any prospective relations with American Ordnance in November, 2011. The only evidence presented by ATI claiming to have a prospective relationship with American Ordnance was the following testimony of American Ordnance employee Timothy Licko:

> *" Q In that time, has American Ordnance received purchase orders -- or excuse me, received bids or quotations from a company called Anderson Tooling, if you know?*
>
> *A I believe we did a couple small projects with Anderson Tooling.*
>
> *Q Do you have any idea when that was?*
>
> *A Approximately I'd say -- 2005, somewhere around"*

(App. p. 951).

The Fact that ATI performed a "few small jobs" for American Ordnance in 2005 is not substantial evidence that ATI had a prospective relationship with this company in November 2011. Evidence of "small bids" in 2005 does not show either a prospective relationship or establish that Jeff interfered. Fabcon work bids to American Ordnance in November 2011, after Jeff had been terminated from his employment with ATI, does not prove interference with relations with a company ATI has not performed

work since 2005. The evidence does not establish ATI's claim for damages for Fabcon bids with American Ordnance. The verdict is therefore not supported by the evidence.

The evidence also shows that the 2011 Fabcon bids to American Ordnance actually gave the names of ATI and Dean Anderson as a "Work Reference" for the bids. (App. pp. 631, 1495). Timothy Licko, the American Ordnance employee who testified, stated that American Ordnance would commonly call "work reference" about the company submitting the bid. (App. p. 631). It defies logic that Jeff was intentionally interfering with ATI's prospective relationship with American Ordnance, with the specific intent to injure or destroy ATI when the bid specifically gives ATI as a work reference. That is like saying, "here is my company bid which I am submitting to you because we/I don't want ATI to get the bid, but by the way, you can call ATI to determine the quality of our work and the reasonableness of our prices." This evidence directly contradicts intent to interfere with ATI prospects. ATI did not present any other evidence that Jeff intended to interfere with ATI's prospective relations with American Ordnance.

In summary, ATI did not present substantial evidence of any prospective relations with American Ordnance. ATI did not present

substantial evidence that Jeff interfered with ATI prospects with American Ordnance. ATI did not present substantial evidence that Jeff intended to injure or destroy ATI when submitting bids giving ATI as a reference. The District Court should have directed a verdict on claims that Jeff interfered with ATI prospects with American Ordnance. Having failed to do so, it is impossible to determine the amounts improperly awarded by the jury for this claim that was improperly submitted. Judgment should therefore have been entered for Jeff on this claim or new trial should have been granted.

The Court should next consider ATI's claim that Jeff interfered with prospective business relations with River Bend Industries of Victor, Iowa. ATI claims it lost $8,000.00 by such interference. (App. pp. 1120 - 1214). But the testimony of River Bend employee David Doran fails to support that claim. Mr. Doran's testimony was the only evidence presented by ATI on this claim.

When questioned what his understanding was of the difference between Fabcon and ATI, Mr. Doran responded:

"A. Uh, I – well, how it all came about, we were moving, and the move started – our customers requirements changed, so we had to bump up the move, get things going faster. And **Dean** said he was going to bring in

Jeff and his crew to help out with the move and ---and, you know get things moving a little quicker." (emphasis added); (App. p. 648).

Then on cross examination he testified to the following:

Q *But again, was this related to when Dean said he's going to send the Fabcon people in order that your job can get done quicker?*

A *It all - - I mean, it all kind of came about - - there was Dean's crew, you know, there was Dean's guys in there, Jeff's guys in, back and forth, back and forth, just to get the move done. So it was -- it was all kind of running together for the last five months of the project.*

(App. p. 651).

Then Doran concluded his testimony as follows:

Q *Did you know all along that -- that FabCon was subcontracting for ATI?*

A *No. I mean, I -- I guess I didn't ask the questions, I just kind of assumed that Dean and Jeff – it was kind of one and the same, maybe a different division of the same company, but I never asked that question.*

Q *Okay. You just know that Dean introduced you to Jeff and said his crew's gonna be doing some of the work?*

A *Correct. And at that time, it didn't matter to me as long as the job got done, I was under a time crunch, and our customers kept changing timelines, and we had to get the job done.*

Q *And you say you first met Dean August, September of '11. How long did the project last?*

A *I think it was roughly eight months by the time we were completely done.*

Q *So this project, interaction between FabCon and ATI employees, would have gone all the way into 2012?*

A *Yes.*

(App. pp. 654 - 655)

This record fails to provide any support for a claim for interference with prospective business relations between ATI and River Bend. The uncontroverted testimony of Mr. Doran is that Fabcon was brought in to the project by Dean to perform needed work and to speed up the project. (App. p. 658). Dean brought "Jeff and his crew" into the project just weeks before Jeff's termination (App. pp. 1465 - 1466). The project then lasted months following Jeff's termination. (App. p. 655). All the while Fabcon was performing work for River Bend because "Dean" needed the help. (App. pp. 651, 655). Dean and ATI cannot complain of the work performed or payments received by Fabcon, when Dean himself was the person who requested Fabcon to perform the work.

The evidence failed to support a claim for interference with business relations with River Bend. Fabcon performed the work at Dean's request and then kept Fabcon working for months after Jeff's termination.

Not only did this evidence not support a claim against Jeff, it obviously fails to support any claims against Lori or Fabcon for conspiracy. (App. p. 126).

All claims against Jeff for interference and against Lori and Fabcon for conspiracy related to River Bend Industries should have been directed out. The failure to do so and submission to the jury makes it impossible to determine what amount of improper damages were awarded by the jury for this claim of interference with prospective relations with River Bend. (App. p. 120). As part or all of the damages for Interference may relate to River Bend, the entire verdict should be set aside and a new trial granted.

The jury also awarded ATI damages of $436,225.18 against Jeff for breach of fiduciary duties. (App. p. 124). This damage award is not supported by substantial evidence. The District Court should have granted judgment for Jeff or a new trial in this claim.

The only evidence in the record to justify this jury award is the payments made by Cincinnati Insurance Company for moving and clean-up expenses performed by Fabcon for the ATI flood damage. This work resulted in Cincinnati checks to ATI totaling $445,196.00. (App. pp. 1167 - 1214, 1353). Kathy Barkalow, ATI's purported expert witness, opined that deposit of these checks to Fabcon accounts was a breach of fiduciary duties because in her opinion they should have been deposited to ATI accounts.

Fabcon was a corporation originally formed to perform the ATI flood damage work. (App. pp. 312, 313, 581, 582, 604, 606). It was established

with the knowledge and consent of ATI and Dean Anderson. (App. pp. 385 - 387). Cincinnati Insurance approved the Fabcon bids with the knowledge that Jeff was running the company separate from his duties at ATI (App. pp. 577, 580 - 582, 604, 606, 1272 – 1336). The invoices for the work performed were submitted to and approved by Cincinnati Insurance although the checks for this work was payable to ATI, it was fully aware the work was performed by Fabcon. (App. pp. 863, 888, 889, 1272 - 1336). Jeff and Dean's endorsement of the Cincinnati check to Fabcon for this work was not improper. (App. pp. 583 - 584).

The award of damages against Jeff for breach of fiduciary duties, by reason of Fabcon's receipt of payment for work it performed, is not supported by substantial evidence. Fabcon satisfactorily performed the work, invoiced Cincinnati for the work and was paid in the proper amount. This does not amount to a breach of fiduciary duties nor does it justify an award of damages.

IV. THE JURY VERDICTS FINDING LORI ANDERSON AND FABCON DID NOT INTERFERE WITH ATI'S PROSPECTIVE BUSINESS RELATIONS AND THAT LORI DID NOT BREACH FIDUCIARY DUTIES IS INCONSISTENT WITH THE COURTS DETERMINATION THAT THE CONSPIRACY VERDICT APPLIED TO THOSE TORTS.

Preservation of Error: Lori Anderson and Fabcon moved for directed verdict on this claim and filed a motion for new trial, a motion for judgment notwithstanding the verdict, and filed a timely notice of appeal. (App. pp. 1062 -1063, 163 – 164, 236 - 237). Error was therefore preserved.

Standard of Review: "The scope of our review of a district court's ruling on a motion for new trial depends on the grounds raised in the motion." *Channon v. United Parcel Serv., Inc.*, 629 N.W.2d 835, 859 (Iowa 2001). If a motion for a new trial was "based on a legal question, our review is on error." *Roling v. Daily*, 596 N.W.2d 72, 76 (Iowa 1999). "The question of whether verdicts are legally inconsistent is a question of law . . ." *State v. Leake*, 699 N.W.2d 312, 32 (Minn. 2005). As we claim, the verdicts are inconsistent warranting a new trial, the standard of review should be for corrections of errors at law.

Argument: The jury verdicts included the jury finding that Lori Anderson did not intentionally and improperly interfere with ATI prospective business relationships. (App. p. 122). The verdicts also included a finding Lori did not breach her fiduciary duties. (App. p. 134). Regarding Fabcon, the jury found that Fabcon did interfere with prospective relations, but that interference did not cause ATI to not enter into those relations. (App. p. 123). The jury then found that Lori and Fabcon participated in a conspiracy

with Jeff "to appropriate funds and projects belonging" to ATI. (App. p. 126). The jury verdict that Lori and Fabcon conspired with Jeff "to appropriate funds or property belonging to ATI" is inconsistent with the findings in Questions 18, 24, 25, and 31 above and the Court erred in entry of judgment against Lori and Fabcon on the claims for interference and breach of fiduciary duties.

"Civil conspiracy is not in itself actionable; rather it is the acts causing injury undertaken in furtherance of the conspiracy [that] give rise to the action." *Basic Chems. Inc. v. Benson*, 251 N.W.2d 220, 233 (Iowa 1977). If there were no actions taken by Lori or Fabcon that are themselves actionable then there can be no claim for civil conspiracy. As conspiracy is not itself actionable no judgment can be entered against those parties whose conduct has been determined is not actionable. *See Brown v. Kerkhoff*, 279 F.R.D. 497, 498 (S.D. Iowa 2012); *See Criterion 508 Solutions, Inc. v. Lockheed Martin Servs., Inc.*, 806 F. Supp. 2d 1078, 1103 (S.D. Iowa 2009). Civil conspiracy is not in itself actionable but "is merely an avenue for imposing vicarious liability on a party for the wrongful conduct of another with whom the party has acted in concert." *Wright v. Brooke Group Ltd.*, 652 N.W.2d 159, 172 (Iowa 2002). The Supreme Court of Iowa stated, "a conspiracy cannot be the subject of a civil action unless something is done

pursuant to it which, without the conspiracy, would give a right of action." *Nelson v. Melvin*, 19 N.W.2d 685, 687 (Iowa 1945).

It is not necessary for an underlying wrongful act to be an intentional tort, but it must be actionable in some way absent the conspiracy. *Wright*, 652 N.W.2d at 172-74. "It has been said that there is no such thing as a civil action for conspiracy; the action is one for damages arising out of the acts committed pursuant to the conspiracy. Thus, if the acts alleged to constitute the underlying wrong provide no cause of action, then neither is there a cause of action for the conspiracy itself." 16 Am. Jur. 2d Conspiracy § 50. The Jury found that Lori had not committed any wrong that could be pursued individually; therefore, Lori could not have committed civil conspiracy. The jury found that Fabcon's conduct did not cause damage; therefore judgment could not be entered against Fabcon for conduct of another.

For conspiracy to be present there must be an established plan between two or more persons "to accomplish an unlawful end or to accomplish a lawful end by unlawful means." *Countryman v. Mt. Pleasant Bank & Trust Co.*, 357 N.W.2d 599, 602 (Iowa 1984). "The agreement must involve some mutual mental action coupled with an intent to commit the act that causes injury." *Ezzone v. Riccardi*, 525 N.W.2d 388, 398 (Iowa 1994).

(The Restatement (Second) of Torts § 876 further explains and defines conspiracy involves both an agreement and committing a wrong against another.) An individual committing conspiracy, "results only from a defendant's knowing and voluntary participation in a common scheme to take action, lawful or unlawful, that ultimately subjects the actor to liability to another." *Wright*, 652 N.W.2d at 174.

Speculation, relationship, or association and companionship do not establish conspiracy. *Am. Sec. Benevolent Ass'n, Inc. v. District Court*, 147 N.W.2d 55 (Iowa 1966). The relationship of Jeff and Lori cannot be used against them to show a conspiracy against another party. "The mere knowledge, acquiescence or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy. There must be an intentional participation in the transaction with a view to the furtherance of the common design and purpose." *Id.* at 996. The jury found no underlying wrongful conduct or cause of action against Lori and this eliminates the possibility of granting a verdict for civil conspiracy against her for Jeff's conduct. The Court therefore erred in entering judgment for damages for conspiracy against Lori. Such judgment should be reversed and claims against Lori dismissed.

Likewise, the relationship between Jeff and Fabcon cannot be used to enter judgment against Fabcon for conspiracy when the jury found Fabcon's conduct did not result in damages to ATI for interference. (App. p. 123).

A corporation cannot act by itself only through individuals acting on its behalf. This rule is so elementary, that it normally needs no citation. (See *Wright v. Iowa Power and Light Co.*, 223 Iowa 1192, 1196 (1938)). The jury made a special interrogatory finding that conduct of Fabcon did not cause ATI "not to enter into any… relationships." (App. p. 123). No findings were made that anyone acting on behalf of Fabcon committed any improper conduct. This also eliminates the possibility of granting a verdict for civil conspiracy against Fabcon for interference. The judgement against Fabcon should be reversed and claims against Fabcon dismissed.

Likewise, the jury finding that Lori and Fabcon conspired with Jeff to appropriate funds and projects belonging to ATI is not factually consistent with concluding they conspired with Jeff to breach fiduciary duties. The entry of judgment against Lori and Fabcon for Jeff's alleged breach of fiduciary duties was therefore also in error.

The court should reverse the judgments against Lori and Fabcon and order entry of judgment in their favor on all claims against Lori and Fabcon.

V. THE JURY VERDICT FINDING LORI ANDERSON AND FABCON CONSPIRED WITH JEFF ANDERSON "TO

APPROPRIATE FUNDS AND PROJECTS BELONGING TO ATI" WITH DAMAGES OF "0" IS NOT CONSISTENT WITH A JUDGMENT AWARDING DAMAGES AGAINST LORI AND FABCON FOR CONSPIRACY. THE DISTRICT COURT ERRED IN ENTERING THOSE JUDGMENTS.

Preservation of Error: Lori and Fabcon preserved error by moving for directed verdict on this claim, filing motions for new trial, and for judgment notwithstanding the verdict, and filing a timely notice of appeal. (App. pp. 1061 – 1065, 158 – 160, 172 – 173, 236 - 237). Error was therefore preserved.

Standard of Review: "The scope of our review of a district court's ruling on a motion for new trial depends on the grounds raised in the motion." *Channon v. United Parcel Serv., Inc.*, 629 N.W.2d 835, 859 (Iowa 2001). If a motion for a new trial was "based on a legal question, our review is on error." *Roling v. Daily*, 596 N.W.2d 72, 76 (Iowa 1999). "The question of whether verdicts are legally inconsistent is a question of law . . . ." *State v. Leake*, 699 N.W.2d 312, 32 (Minn. 2005). As we claim, the verdicts are inconsistent warranting a new trial, the standard of review should be for corrections of errors at law.

Argument: The jury verdicts including jury findings that Lori Anderson and Fabcon participated in a conspiracy to "**appropriate funds and projects**" belonging to ATI, ATI was damaged and the amount of damage

sustained by ATI was "0". (App. p. 126). The jury verdicts did not make specific findings that Lori or Fabcon conspired with Jeff to interfere with prospective business relations or breach of fiduciary duties. (App. p. 126). As there was no finding of conspiracy on either of these claims the Court erred in entering judgment against Lori and Fabcon for conspiracy. In addition the verdict did not find damages for conspiracy. (App. p. 126). The court incorrectly then entered a damage verdict for conspiracy even though no damages were awarded. Judgment should therefore have been entered for Lori and Fabcon and the claims dismissed.

The jury verdict also did not specifically determine whether its verdict finding conspiracy was for misappropriation of trade secrets by Jeff or alternatively for the claim for interference or the claim for breach of duties. The jury found Jeff had committed misappropriation of trade secrets but found no damages on that claim. (App. p. 125). The only way to harmonize the verdict of "0" for conspiracy is the verdict of "No" damages for misappropriation. (App. pp. 125 - 126). This is especially true as the only jury finding on conspiracy was "to appropriate funds and projects" belonging to ATI. (App. p. 126).

The jury found Lori and Fabcon did not commit the torts of interference with prospective relations and breach of fiduciary duties. The

District Court then unilaterally imposed damages against Lori and Fabcon on these claims against Jeff even though the jury did not specifically find conspiracy on these claims. The jury made specific findings that Jeff committed torts of interference with prospective business relations, breach of fiduciary duty and misappropriate of trade secrets. (App. pp. 125 -127). It awarded damages for interference and breach of duties (App. pp. 121, 124), but did not award damages for misappropriations. (App. p. 125). The jury found Lori and Fabcon conspired "to appropriate funds and projects" but awarded no damages. (App. p. 126). The District Court's unilateral interpretation that this verdict applied to the interference and breach of duties claims and did not apply to the misappropriation claim was in error.

The jury did not find that Lori and Fabcon conspired to interfere with prospective relations. It also did not find they conspired to breach fiduciary duties. The District Court decision to impose damages against Lori and Jeff on those claims is therefore unsupported by the jury findings and without explanation. The jury may well have found no conspiracy on these two claims. Regardless, it clearly found "0" damages which is inconsistent with the damages awarded against Jeff for interference and breach of duties.

On the other hand the jury finding of conspiracy could, and probably did, apply to misappropriation of trade secrets. In fact, this is likely what the

jury intended when finding on damages, "0 – duplication." (App. p. 126). The jury specially found the Jeff's misappropriation of trade secrets was not a cause of damage. (App. p. 125). The finding of no damages for misappropriation is consistent with the finding of zero "0" damages for conspiracy. In fact those finding would be "duplicative", the word used by the jury in answer to the conspiracy special interrogatory on damages. (App. p. 126). The District Court on the other hand, without support in the verdict forms, determines the jury found a conspiracy on claims for interference and fiduciary duties. The Court also determined the damages awarded against Jeff should be imposed against Lori and Fabcon even though the jury found "0" damages. The District Court entry of this judgment against Lori and Fabcon was entirely speculation.

District Courts are prohibited from entering judgment in the face of inconsistent answers because this involves some degree of speculation. *Clinton Physical Therapy Servs., P.C., v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 614 (Iowa 2006). Verdicts can be reformed when the change "clearly and definitely expresses the jury's intentions" but may not be reformed in an attempt to reconcile inconsistent verdicts leading to speculation. *Id.* "Where a jury verdict is the result of confusion or is inconsistent in law, the trial court should grant a new trial; a new trial is

necessary because, once the jury is dismissed, any attempt to reconcile the inconsistencies in a verdict must be based on mere speculation about the jury's intent." *City of Bessemer v. Foreman*, 678 So.2d 759, 760 (Ala. 1996).

The jury found verdicts against Lori and Fabcon for conspiracy that were inconsistent with other verdicts entered by the jury. One issue regards Jury Question No. 41 which stated "State the amount of damages sustained by Anderson Tooling, Inc. as a result of the conspiracy." The jury found no "0" damages, but then wrote the word "duplicative." (App. p. 126). There is no conclusion made by the jury as to which claim there was a conspiracy found; the verdict does not explain which claim the damages are tied to. The District Court was not in a position to know whether the conspiracy related to interference, fiduciary duties or misappropriation. The trial court was not in a position to speculate on the jury's intentions and should not have entered judgment for conspiracy damages against Lori and Fabcon. *See Clinton Physical Therapy Servs., P.C.,* 714 N.W.2d at 614.

The entry of judgment here against Lori and Fabcon for interference and breach of fiduciary duties was purely based on speculation by the court that the conspiracy found applied to those torts. The jury verdict finding zero "0" damages completely contradicts that speculative judgment entry.

The jury verdict of zero "0" would be consistent with the jury verdict finding no damage causation on misappropriation of trade secrets. The special interrogatory find conspiracy "to appropriate funds or property belonging to" ATI is inconsistent with both torts of interference and breach of fiduciary duties but consistent on damages with the special interrogatories verdict against Jeff for misappropriation. That verdict awarded no damages. The entry of judgment against Lori and ATI based on these jury findings and verdicts was inappropriate. The District Court should not have entered judgment against Lori and Fabcon and those judgments should be reversed. This Court should order judgment in favor of Lori and Fabcon on the conspiracy claims against them.

CONCLUSION

The jury verdict finding no contract of employment was not supported by the evidence as a matter of law. The Court should grant a new trial on all Jeff's claims other than wrongful discharge and punitive damages.

The jury verdict awarding damages for interference with prospective business relations is inconstant with the verdict find that Jeff's conduct was not specifically directed at ATI. The Court should grant judgment for Jeff on this claim or in the alternative new trial. The jury verdict awarding damages for claims of interference with relations with American Ordnance

and River Bend Industries is not supported by the evidence. The Court should grant new trial on this claim.

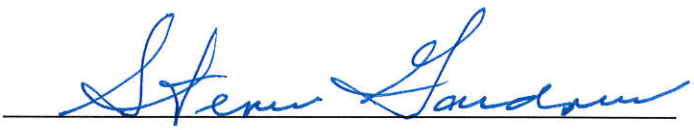
The jury verdict awarding damages for breach of fiduciary duties is not supported by the evidence. The Court should grant judgment for Jeff or in the alternative new trial on this claim.

The jury verdicts finding Lori and Fabcon did not interfere with prospective relations or breach of fiduciary duties, or did not cause damage, is inconsistent with the verdict finding conspiracy. The Court should grant judgment for Lori and Fabcon.

The District Court erred in determining the conspiracy verdict applied to claims against Jeff for interference with prospective relations and breach of fiduciary duties and awarding damages jointly and severally and in failing to determine the conspiracy verdict applied to claims for misappropriation of the trade secrets. The Court should enter judgment in favor of Lori and Fabcon.

The jury verdict awarding zero (0) damages for conspiracy is inconsistent and contrary to awarding damages for conspiracy. The Court should enter judgment in favor of Lori and Fabcon.

Respectfully submitted,



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REQUEST FOR ORAL ARGUMENT

Attorney for Appellants Jeffery Anderson, Lori Anderson and Fabrication Construction & Services, Inc., hereby request permission to be heard in oral argument upon submission of this case.

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Dated March 28, 2017.

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The undersigned hereby certifies that a true copy of the Appellant's Final Brief was served on March 28, 2017, upon the following parties:

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