IN THE COURT OF APPEALS OF IOWA

No. 8-860 / 07-0976
Filed March 26, 2009

HALLETT CONSTRUCTION COMPANY,
A Minnesota Corporation,
Plaintiff-Appellee,

vs.

FRANCIS A. MEISTER and IRENE M. MEISTER, MICHAEL F. MEISTER, and THOMAS J. MEISTER,
Defendants-Appellants.

FRANCIS A. MEISTER and IRENE M. MEISTER, MICHAEL F. MEISTER, and THOMAS J. MEISTER,
Counterclaimants-Appellants.

vs.

HALLETT CONSTRUCTION COMPANY,
A Minnesota Corporation,
Counterclaim Defendant-Appellee.

Appeal from the Iowa District Court for Sac County, William C. Ostlund, Judge.

Counterclaimants appeal from a district court's summary judgment rulings in an action for the recovery of real property. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Thaddeus Cosgrove of Cosgrove Law Firm, Holstein, and Joseph J. Heidenreich of Dresselhuis & Heidenreich, Odebolt, for appellants.

David P. Jennett, Storm Lake, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MILLER, J.

Francis and Irene Meister and their sons, Michael and Thomas Meister, appeal from a district court's summary judgment rulings in an action for the recovery of real property. We affirm in part, reverse in part, and remand for further proceedings.

I. BACKGROUND FACTS AND PROCEEDINGS.

This is the second appeal in this case, which involves a protracted dispute over sand and gravel rights in property owned by the Meisters and leased by Hallett Construction Company. Background facts concerning the controversy are detailed in *Hallett Construction Co. v. Meister*, 713 N.W.2d 225 (Iowa 2006). Those relevant to this appeal, when viewed in the light most favorable to the Meisters as the parties opposing summary judgment, *see Hallett Constr. Co.*, 713 N.W.2d at 228, are as follows.

The Meister family owns ninety acres of real estate in Sac County. They negotiated a lease with Hallett for the sand and gravel rights to this property in 1987. On July 7, 1987, Hallett presented a proposed ten-year and twelve-month lease to the Meisters. The Meisters objected to paragraph eleven of the lease that would allow Hallett to renew the lease "for an additional period of 10 years from the date of its termination." Hallett removed this provision from the proposed lease. The Meisters then signed two copies of the lease. One copy was retained by Irene Meister and placed in a file at her home, and the other copy was kept by Hallett to be signed by its company officers.

On August 4, 1987, a representative from Hallett went to the Meisters' farm with a copy of the lease that had been signed by Hallett's officers. The

Meisters initialed each page, with the exception of the signature page. Unbeknownst to the Meisters, this copy of the lease [lease 2] contained the original provision giving Hallett the option to renew the lease for an additional ten years.

In 1996, the Meisters contacted an attorney about terminating the lease at the end of its ten-year term due to their dissatisfaction with Hallett's payment for sand and gravel it had taken off their property. Upon reviewing the lease initialed by the Meisters on August 4, 1987, their attorney informed them that despite their recollection otherwise their lease contained a ten-year option to renew. In the fall of 2001, the Meisters found the original lease they had signed on July 7, 1987, and discovered their recollection that the renewal provision had been eliminated was correct.

Around that same time, the Meisters began blocking Hallett's access to the property, and in October 2001 they instructed their attorney to pursue a termination of the lease. Hallett responded by filing a petition on October 29, 2001, seeking temporary and permanent injunctions prohibiting the Meisters from obstructing or interfering with Hallett's use and enjoyment of the property. An ex parte temporary injunction was issued that same day, enjoining the Meisters "from interfering with the lease hold rights of [Hallett] and from interfering with their quiet enjoyment."

Following a contested hearing, the district court entered an order on November 15, 2001, finding Hallett was entitled to the requested temporary injunction because "[g]enerally speaking a tenant is entitled to the quiet enjoyment of its leasehold property and here there has been no showing of a

termination of the lease by [the Meisters]." A hearing on the permanent injunction was scheduled for June 2002, but prior to that hearing the Meisters consented to the entry of a permanent injunction as requested by Hallett. The district court accordingly entered an order on June 13, 2002, making the temporary injunction permanent.

Unfortunately, the Meisters' disagreements with Hallett continued and on December 18, 2002, they served Hallett with a "Notice of Termination of Lease." That notice stated, "This termination is due to your failure to timely cure the default of which you were given written notice of pursuant to paragraph nine of the Lease."[1] The Meisters claimed Hallett had failed to pay the correct rate for sand and gravel it removed from the property in 1987 and 1988, had failed to pay for certain sand and gravel in 2001 and 2002, and that Hallett's lease had expired under the original written lease provisions. The notice demanded that Hallett vacate the property.

Hallett refused and filed an action against the Meisters on March 19, 2003, seeking a declaratory judgment establishing its rights in the property under the ten-year renewal provision in lease 2 and damages related to the Meisters' interference with its use of the property. The Meisters filed a four-count counterclaim on April 4, 2003. In count I, they claimed there was no valid written

[1] Paragraph nine of both leases provides that

> at any time when [Hallett] is in default on payment of rentals or royalties due hereunder, or in any of the covenants and agreements herein contained to be kept by [Hallett], [the Meisters] shall give to [Hallett] notice in writing of the amount of rentals and royalties due, or of any other default. Thereafter, on receipt of such notice, [Hallett] shall have sixty (60) days in which to cure and correct such defaults. If such defaults are not corrected within said sixty (60) days, or at least a reasonable attempt made by [Hallett] to do so, then [the Meisters] may cancel this Lease by mailing notice of such cancellation to [Hallett].

contract and sought recovery of the real property. Count II sought compensatory and exemplary damages for Hallett's alleged intentional and wanton holding over. In count III, the Meisters claimed Hallett breached its agreement to pay the agreed-upon rents and royalties, and count IV requested damages for Hallett's alleged fraud in altering the lease.

Hallett filed a motion for summary judgment, arguing all of the Meisters' counterclaims were barred by the five-year statute of limitations for fraud and unwritten contracts. *See* Iowa Code § 614.1(4) (2003). The district court agreed and entered summary judgment in favor of Hallett as to the Meisters' four counterclaims. Hallett thereafter dismissed without prejudice its requests for declaratory judgment and damages.

The Meisters appealed, and our supreme court affirmed the district court in part and reversed in part. *Hallett Constr. Co.*, 713 N.W.2d at 233. The court agreed with the district court that the Meisters were on inquiry notice of their fraud claim in 1996 and that claim was thus barred by the five-year statute of limitations set forth in section 614.1(4). *Id.* at 230-31. The remainder of the district court's summary judgment ruling was reversed. *Id.* at 233. The court found the ten-year statute of limitations in section 614.1(5) applied to the Meisters' claim for recovery of their real property, which did not accrue until December 18, 2002, when the Meisters terminated Hallett's tenancy. *Id*. at 232. The court determined that the Meisters' claims seeking damages for Hallett's alleged holding over and failure to pay agreed-upon rents and royalties were governed by the five-year statute of limitations in section 614.1(4) and were not

barred by that section. *Id.* at 233. The case was remanded for reinstatement of the Meisters' three viable counterclaims and for further proceedings on them. *Id.*

On remand, Hallett again moved for summary judgment as to the Meisters' three remaining claims. It filed a summary judgment motion on December 7, 2006, arguing in relevant part that any claim "that the lease is void and voidable due to fraud" should have been raised as a compulsory counterclaim in the October 29, 2001 injunctive relief action, and because it was not, such a claim should now be barred by Iowa Rule of Civil Procedure 1.241. Hallett filed another motion for summary judgment on December 11, 2006, arguing the Meisters were not entitled to any of the damages sought in their three counterclaims.

The district court entered a ruling on April 30, 2007, agreeing with Hallett "that any claims regarding the voidness or voidability of the lease were compulsory counterclaims during the injunction action." In so ruling, it did not, however, dismiss any of the Meisters' three counterclaims. The court then went on to deny Hallett's motion for summary judgment as to the damages sought by the Meisters in those three counterclaims, with the exception of the requested exemplary damages in count II for Hallett's alleged intentional and wanton holding over. As to that claim, the court found that because "Hallett was granted a permanent injunction for the use of the land and the Meisters' entire claim was originally dismissed on summary judgment," the Meisters could not, as a matter of law, establish the "wanton aggression" required under Iowa Code section 646.21 for an award of exemplary damages. With respect to Hallett's December 7, 2006 summary judgment motion, the court ordered that "the

argument based on issue preclusion is denied[2] and granted in regard to compulsory counterclaims." The court denied Hallett's December 11, 2006 motion "in all regards, except the claim for exemplary damages pursuant to Iowa Code § 646.21 is dismissed."

The Meisters filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2). In denying that motion, the court clarified that with respect to the December 7 motion, "[t]he issue brought before this court and addressed was whether any claim that the lease was void or voidable was a compulsory counterclaim in the action for the injunction." It rejected the Meisters' argument that such a claim was not mature at the time of the October 29, 2001 injunctive relief action and stated that its order "granting summary judgment for the compulsory counterclaim issue shall not be disturbed." The court also rejected the Meisters' argument that Hallett's alleged alteration of its lease agreement with them "was an illegal act sufficient to support" an award of exemplary damages.

The Meisters filed a notice of appeal, which Hallett moved to dismiss, arguing the summary judgment rulings appealed from were "not dispositive of [the Meisters'] entire case and no final judgment has been entered." Assuming without deciding that the challenged rulings were interlocutory, our supreme court granted the Meisters permission to appeal. The Meisters raise the following issues on appeal:

> ISSUE I: DID THE DISTRICT COURT ERR IN GRANTING HALLETT'S DECEMBER 7, 2006, COMPULSORY

[2] Hallett's December 7 motion had also raised a claim of issue preclusion, an issue not involved in this appeal.

COUNTERCLAIM MOTION FOR SUMMARY JUDGMENT WHEN THE DISTRICT COURT FAILED TO FIND, AS A MATTER OF LAW, THAT THE MEISTERS' THREE COUNTERCLAIM COUNTS WERE NOT "MATURED" AT THE TIME OF HALLETT'S PREVIOUS ACTION FOR INJUNCTIVE RELIEF?

ISSUE II: DID THE DISTRICT COURT ERR IN GRANTING HALLETT'S DECEMBER 11, 2006, DAMAGES MOTION FOR SUMMARY JUDGMENT WHEN THE DISTRICT COURT FOUND, AS A MATTER OF LAW, THAT THE MEISTERS CANNOT RECOVER PUNITIVE DAMAGES ON THEIR SECOND COUNTERCLAIM COUNT?

II. SCOPE AND STANDARDS OF REVIEW.

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.4; *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). We review the record in the light most favorable to the party opposing the motion. *Tenney v. Atlantic Assocs.*, 594 N.W.2d 11, 14 (Iowa 1999). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. No fact question arises if the only conflict concerns legal consequences flowing from undisputed facts. *McNertney v. Kahler*, 710 N.W.2d 209, 210 (Iowa 2006).

III. MERITS.

A. Compulsory Counterclaim.

Iowa Rule of Civil Procedure 1.241 provides that

> [a] pleading must contain a counterclaim for every claim then matured, and not the subject of a pending action, held by the pleader against any opposing party and arising out of the transaction or occurrence that is the basis of such opposing party's claim, unless its adjudication would require the presence of indispensable parties of whom jurisdiction cannot be acquired. A final judgment on the merits shall bar such a counterclaim, although not pleaded.

This rule "compels a defendant to present certain claims for trial in the original action." *Harrington v. Polk County Fed. Sav. & Loan Ass'n*, 196 N.W.2d 543, 545 (Iowa 1972). "Its objective is to discourage separate litigations covering the same subject matter by requiring that all logically related claims be brought in the same action through the penalty of precluding the later assertion of omitted claims." *Id.*

> A counterclaim is compulsory under rule 1.241
>
> where it arises out of the transaction or occurrence that is the basis of the opposing party's claim if: (1) it is then matured, (2) it is not the subject of a pending action, (3) it is held by the pleader against the opposing party, and (4) it does not require the presence of indispensable parties of whom jurisdiction cannot be acquired.

Sky View Fin., Inc. v. Bellinger, 554 N.W.2d 694, 697 (Iowa 1996). These four elements are "fairly clear and do not often provide a battleground for litigation." *Harrington*, 196 N.W.2d at 545. Rather, argument more frequently centers on determining whether the disputed claim arises out of the transaction or occurrence that is the basis of the opposing parties' claim. *Id.* This factor is met if "there [is] any logical relation between the plaintiff's claim and the counterclaim." *Id.*

The district court in this case determined "[t]here was a logical relationship between the injunction and the lease's validity. The issuance of the injunction was directly tied to the presence of a lease agreement and the validity of that

agreement." The court accordingly concluded "that any claims regarding the voidness or voidability of the lease were compulsory counterclaims during the injunction action." The Meisters claim the district court erred in so finding because, regardless of the logical relationship between issuance of the injunction and the lease's validity, their three counterclaims were not mature at the time of the injunctive relief action.[3] *But see* Iowa R. Civ. P. 1.241 cmt. ("If the counterclaim arises out of the transaction sued on, it must also be 'matured.'"). They argue those claims, which sought recovery of their property and damages for Hallett's holding over and failure to pay agreed-upon rents and royalties, did not become enforceable until they terminated the lease with Hallett on December 18, 2002.

Before addressing the merits of this claim, we must first dispel what we believe to be the Meisters' mistaken interpretation of the district court's summary judgment ruling on Hallett's December 7, 2006 motion, which is borne out in the manner in which the Meisters appealed from that ruling. As the Meisters' arguments regarding the court's compulsory counterclaim ruling make clear, they seem to believe the court dismissed all of their counterclaims as barred by the compulsory counterclaim rule. Hallett, however, did not read the court's ruling in that manner and unsuccessfully moved to dismiss the Meisters' appeal, arguing that ruling was "not dispositive of [the Meisters'] entire case and no final

[3] It is important to our analysis and resolution of this issue to note that the Meisters do not argue that their claims are not properly identified as "counterclaims" to Hallett's earlier injunction action, and they do not argue that their claims were not compulsory if then mature. Rather, they argue only that their present claims were not then mature.

judgment has been entered." We agree with Hallett's interpretation of the court's ruling.

We first note that in granting Hallett's December 7, 2006 summary judgment motion, the district court did not specifically dismiss any of the Meisters' three counterclaims. It instead ruled that Hallett's "argument based on" compulsory counterclaims was granted. This is in contrast to the court's granting of Hallett's December 11, 2006 summary judgment motion on the exemplary damages claimed in count II, which it expressly dismissed as follows: "[Hallett's] Motions for Summary judgment filed on December 11, 2006, is denied in all regards, except the claim for exemplary damages pursuant to Iowa Code § 646.21 is dismissed." We also find it significant that after determining "that any claims regarding the voidness or voidability of the lease were compulsory counterclaims during the injunction action," the court proceeded to address Hallett's summary judgment motion regarding the relief sought in each of the Meisters' three counterclaims. Such an analysis would have been unnecessary had the court's determination as to Hallett's compulsory counterclaim argument operated as a dismissal of all of Meisters' counterclaims. Finally, in denying the Meisters' rule 1.904(2) motion, the court clarified that the issue before it was simply "whether any claim that the lease was void or voidable was a compulsory counterclaim in the action for the injunction." With this view of the court's ruling in mind, we conclude the court correctly determined that "[a]ny claim based upon the lease being void or voidable" due to Hallett's alleged fraud was mature at the time of Hallett's injunctive relief action.

"A compulsory counterclaim is mature when the party possessing it is entitled to a legal remedy." *Sky View Fin., Inc.*, 554 N.W.2d at 697. Stated another way, a claim "has not yet matured until the events giving rise to the cause of action develop." *Id.* A right mature enough to be a compulsory counterclaim "must be presently enforceable, not merely determinable." *Telegraph Herald, Inc. v. McDowell*, 397 N.W.2d 518, 520 (Iowa 1986); *see also Hettinger v. Farmers & Merch. Sav. Bank*, 436 N.W.2d 377, 379 (Iowa Ct. App. 1988) ("A cause of action matures when a claimant has sustained an actual loss.").

The Meisters' retained rights in their property were diminished as of August 4, 1987, the date they signed lease 2 with the option to renew, because that option was a contractual right claimed by Hallett and a burden on the property as of that date. *See Hallett Constr. Co.*, 713 N.W.2d at 230-31; *see also B & B Asphalt Co. v. T.S. McShane Co.*, 242 N.W.2d 279, 285 (Iowa 1976) ("When the fraud occurs in the sale of personal property, the usual measure of that loss is the difference between the actual value of the property at the time of the transaction and the value it would have had if the representations had been true, the loss of benefit of the bargain."). The Meisters thus sustained damage at that time. Furthermore, the Meisters discovered in 1996 that lease 2 contained the renewal provision to which they had previously objected, and they located the first lease they signed without the renewal provision in the fall of 2001 before Hallett obtained its permanent injunction with the Meisters' consent in June 2002.

In light of the foregoing, we agree with the district court that any claim that the lease was void or voidable based upon Hallett's alleged fraud in altering the

lease was mature at the time of Hallett's injunctive relief action. The Meisters are thus barred from obtaining relief on their claims to the extent, and only to the extent, that the claims are based on the written lease being void or voidable.[4] We must next determine whether the district court erred in dismissing the Meisters' claim for exemplary damages under Iowa Code section 646.21.

B. Exemplary Damages.

Count II of the Meisters' amended counterclaim sought exemplary damages under Iowa Code section 646.21 for Hallett's alleged "malicious, willful, wanton and unlawful conduct" in wrongfully possessing the property. The district court determined "[a]s a matter of law, no reasonable inference from the facts provides the wanton aggression necessary for exemplary damages" because "Hallett was granted a permanent injunction for the use of the land and the Meisters' entire claim was originally dismissed on summary judgment." We conclude otherwise.

Section 646.21 provides that "[i]n case of wanton aggression on the part of the defendant, the jury may award exemplary damages." "Exemplary damages" are those awarded to the plaintiff "'over and above what will barely compensate him for his property loss.'" *Nelson v. Rests. of Iowa, Inc.*, 338 N.W.2d 881, 884

[4] We do not agree with the Meisters that

> [f]or the District Court to have held that any portion of the Meisters' Counterclaim count claims for recovery of their real property and damages mature prior to December 18, 2002, is inconsistent with [the] Court's ruling on the first appeal and its instructions on remand.

The issue presented in this appeal—whether any claim "that the lease is void and voidable due to fraud" was a compulsory counterclaim in the injunctive relief action—was not before our supreme court in the Meisters' first appeal. *See Hallett Constr. Co.*, 713 N.W.2d at 228. Thus, the court's statements in its statute of limitations analysis in *Hallett*, 713 N.W.2d at 232, regarding the Meisters' ability to use evidence of Hallett's alleged fraud in proving their recovery of real property claim do not foreclose our conclusion in this case.

(Iowa 1983) (quoting Black's Law Dictionary 352 (rev. 5th ed. 1979)). They are intended to "solace the plaintiff or else to punish the defendant or make an example of him." *Id.* at 885. A party seeking exemplary damages "is not required to show the defendant acted out of spite or with wicked intent or actual malice." *Hagenson v. United Tel. Co.*, 209 N.W.2d 76, 82 (Iowa 1973) (finding sufficient evidence to submit exemplary damages claim to jury in trespass case).

As the court in *Hagenson* explained,

> "[m]alice" need not be actual ill will or [ ]hatred toward another. When that state of mind is present, there is actual malice. However, more commonly in cases of this kind there is simply legal malice, which may be established by showing wrongful or illegal conduct committed or continued with a willful or reckless disregard regard of another's rights. We have also defined legal malice as the intentional commission of a wrongful act without just cause or excuse.

Id. (citation omitted); *see also* Iowa Code § 668A.1(1)(a) (stating punitive or exemplary damages are appropriate where "the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another"). In interpreting section 668A.1(1)(a), our supreme court has held that "willful and wanton" means

> the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow, and which thus is usually accompanied by a conscious indifference to the consequences.

Kuta v. Newberg, 600 N.W.2d 280, 288 (Iowa 1999); *see also Sechler v. State*, 340 N.W.2d 759, 764 (Iowa 1983) ("Without defining the misconduct of wantonness, it means something more than recklessness.").

The Meisters' exemplary damages claim is based on Hallett's alleged fraud in obtaining the ten-year option to renew in lease 2. The Meisters argue "there is a dispute of fact as to whether or not the Meisters were the victims of legal malice or a wrongful act when Hallett reinserted in the lease the ten-year option to re-new the lease without the knowledge or consent of Meisters" and thereafter refused to vacate the property on the basis of that supposedly fraudulently obtained lease. We agree.

Upon affording the Meisters "every legitimate inference the record will bear," *Kern v. Palmer College of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008), we believe a reasonable fact finder could find that Hallett fraudulently obtained the ten-year option to renew provision in the lease on which it bases its claim to the property.[5] Hallett struck the renewal option from the lease the Meisters signed on July 7, 1987, after the Meisters objected to that provision. Its representative then presented a lease with the ten-year option to renew to the Meisters on August 4, 1987. Without notice from Hallett that the lease again contained an option to renew, the Meisters assumed they were signing the lease as it had been modified on July 7. Based on those circumstances, a reasonable fact finder could conclude that Hallett intentionally committed a wrongful act without just cause or excuse in refusing to vacate the property after the Meisters demanded that it do so.

[5] However, we reject the Meisters' argument that "the Iowa Supreme Court found the facts of Hallett's fraud established" in *Hallett Constr. Co.*, 713 N.W.2d at 228-29. In reviewing the district court's summary judgment ruling in that case, the court simply viewed, as it must under the applicable standard of review, "the facts in a light most favorable to the Meisters, the parties opposing summary judgment." *Hallett Constr. Co.*, 713 N.W.2d at 228.

We reject Hallett's argument under *Nelson v. Deering Implement Co.*, that because the undisputed facts establish it is a "bona fide possessor of the land," it could not have acted with the "wanton aggression" necessary for an award of exemplary damages under section 646.21. 241 Iowa 1248, 1258, 42 N.W.2d 522, 527 (1950) (Oliver, J., concurring specially) ("[T]he general rule appears to be that if the holding over is under a bona fide claim of right based on reasonable grounds, the tenant is not liable for double the rental value."). Hallet argues it was a bona fide possessor of the land pursuant to the permanent injunction entered in June 2002 and pursuant to the district court's initial dismissal of all of Meisters' counterclaims in March 2004. We do not agree.

The permanent injunction entered in June 2002 enjoined the Meisters from interfering with Hallett's use and enjoyment of the property only for "so long as [Hallett] or its successors have leased said premises." The Meisters terminated the lease with Hallett on December 18, 2002, due to Hallett's supposed failure to timely cure its default on payment of agreed-upon rent and royalties and its alleged fraud in obtaining the ten-year renewal provision. Furthermore, our supreme court reversed the district court's dismissal of three of the Meisters' counterclaims and remanded the case for further proceedings as to those claims, which questioned Hallett's right to possess the land. *Hallett Constr. Co.*, 713 N.W.2d at 233.

We thus conclude upon viewing the facts in the light most favorable to the Meisters, that there is a genuine issue of material fact as to whether Hallett acted with the requisite "wanton aggression" for an award of exemplary damages under section 646.21 in holding over after the Meisters terminated its lease. The district

court accordingly erred in granting Hallett's summary judgment motion dismissing the exemplary damages claim in count II of the Meisters' amended counterclaim.

IV. CONCLUSION.

We conclude the district court was correct in concluding that any claim that the lease was void or voidable based upon Hallett's alleged fraud in altering the lease was mature at the time of Hallett's injunctive relief action. The Meisters are thus barred from litigating such a claim in this action. We further conclude the court did err in granting Hallett's summary judgment motion dismissing the section 646.21 exemplary damages claim in count II of the Meisters' amended counterclaim because there is a genuine issue of material fact as to whether Hallett acted with "wanton aggression" in holding over after the Meisters terminated its lease. We therefore affirm in part, reverse in part, and remand for further proceedings. Costs on appeal are assessed one-half to each party.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.