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**INTEGRATED PHARMACEUTICALS, INC. vs. CHINMAY CHATTERJEE &
others.¹**

1 Nilu Chatterjee and Naples Marketing Systems, LLC.

14-P-955

APPEALS COURT OF MASSACHUSETTS

2015 Mass. App. Unpub. LEXIS 897

September 8, 2015, Entered

NOTICE: SUMMARY DECISIONS ISSUED BY THE APPEALS COURT PURSUANT TO ITS *RULE 1:28, AS AMENDED BY 73 MASS. APP. CT. 1001 (2009)*, ARE PRIMARILY DIRECTED TO THE PARTIES AND, THEREFORE, MAY NOT FULLY ADDRESS THE FACTS OF THE CASE OR THE PANEL'S DECISIONAL RATIONALE. MOREOVER, SUCH DECISIONS ARE NOT CIRCULATED TO THE ENTIRE COURT AND, THEREFORE, REPRESENT ONLY THE VIEWS OF THE PANEL THAT DECIDED THE CASE. A SUMMARY DECISION PURSUANT TO *RULE 1:28* ISSUED AFTER FEBRUARY 25, 2008, *MAY BE CITED FOR ITS PERSUASIVE VALUE BUT, BECAUSE OF THE LIMITATIONS NOTED ABOVE, NOT AS BINDING PRECEDENT. SEE CHACE V. CURRAN, 71 MASS. APP. CT. 258, 260 N.4 (2008)*.

JUDGES: Trainor, Wolohojian & Carhart, JJ.⁸

⁸ The panelists are listed in order of seniority.

OPINION

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Chinmay Chatterjee and Nilu Chatterjee (together, the Chatterjees) appeal from a Superior Court judgment in favor of Integrated Pharmaceuticals, Inc. (Integrated), on Integrated's claims for breach of fiduciary duty and the Chatterjees' claims under the Massachusetts Wage Act, *G. L. c. 149, § 148* (Wage Act). The Chatterjees

argue that the breach of fiduciary duty claim against Chinmay² is barred by the statute of limitations, and that the trial judge's damage award was improper. On May 18, 2015, we remanded the case to the Superior Court for further findings regarding the breach of fiduciary duty claim, the Wage Act claims, and the damage award. Having received the Superior Court judge's "Revised Findings of Fact Upon Remand," we now affirm.

² Because they share a last name, we refer to the individual Chatterjees by their first names.

Background. The following facts are taken from the judge's revised findings and from the record, with discussion of some facts reserved for the issues raised. In 2000, Chinmay, Nilu, and another individual formed Integrated.³ Chinmay was the president and chief executive officer (CEO) and Nilu was vice president of research and development. The Chatterjees had developed and owned patent rights to a highly purified, water-soluble calcium powder, and they licensed the technology to Integrated pursuant to a licensing agreement. Integrated intended to sell the calcium powder in packets that could be added to food and beverages without altering the taste.

³ The other person is not involved in these proceedings.

In 2004, Chinmay and his long-time friend Constantine Miserlis formed Naples Marketing Systems, LLC (Naples). Miserlis was a seventy-five year old retired engineer who had no marketing experience. Neverthe-

less, in early 2005, Chinmay proposed to Integrated's board of directors (board) that Naples be the distributor and marketing agent for Integrated's calcium powder, which Naples would call "Cal-Sap." Chinmay did not reveal his connection to Naples, and did not notify the board before they agreed to retain Naples that Naples already had applied for the registered trademark of "Cal-Sap."

In September, 2005, after board member Sally Johnson-Chin discovered that Naples's invoices were being sent to Miserlis's home, the board held an emergency meeting to confront Chinmay about the apparent conflict of interest. Chinmay apologized for not disclosing Miserlis's role in Naples, but insisted that Naples was the right company to market the calcium powder. The board succumbed to Chinmay's insistence that Integrated work with Naples, because Integrated needed Chinmay's technical knowledge and for him to continue producing the calcium product. That year, Integrated spent \$211,680 in marketing (including a \$200,000 transfer to Naples), and \$556,600 for consulting fees.⁴

4 In 2005, Integrated paid Miserlis over \$5,000 per month for consulting fees.

As a product for Integrated, Cal-Sap ultimately failed. In 2006, the board attempted to introduce a bottled water product containing the calcium powder. However, Nilu failed to "recertify" Integrated's stock of the powder, and the bottled water product never made it to market. On July 17, 2007, Chinmay resigned as CEO of Integrated. He formed Acotrix, Inc. (Acotrix) the next month. In September, 2007, Acotrix purchased Naples from Miserlis, and in November, 2007, Chinmay became the president of Naples. Nilu continued working for Integrated until August, 2008, when Integrated ran out of money and closed its doors.⁵ After the closure, Johnson-Chin discovered "Quickbook" accounting entries for Naples and Acotrix on Nilu's computer. Electronic mail messages (e-mails) on an external hard drive assigned to Nilu also showed that Nilu was coordinating shipments of Cal-Sap to Naples while she was an officer of Integrated.

5 The closure was precipitated by Integrated's failure to generate revenue from Cal-Sap or the bottled water product.

On June 2, 2010, Integrated sued the Chatterjees, Acotrix, Naples, and two other Integrated employees for breach of fiduciary duties, breach of contract, misappropriation of trade secrets, engagement in a civil conspiracy, fraud, conversion, and unjust enrichment. The Chatterjees filed a separate action under the Wage Act seeking payment for earned, unused vacation time. After the judge dismissed some of Integrated's claims at trial,

judgment entered against the Chatterjees on Integrated's claims for breach of fiduciary duties, against the Chatterjees on their Wage Act claims, and against Naples on Integrated's claim for breach of contract.

Discussion. "Upon appeal, we accept a trial judge's findings of fact unless they are 'clearly erroneous,' and do not review questions of fact if any reasonable view of the evidence and the rational inferences to be drawn therefrom support the judge's findings." *Martin v. Simmons Properties, LLC*, 467 Mass. 1, 8 (2014), quoting from *Millennium Equity Holdings, LLC v. Mahlowitz*, 456 Mass. 627, 636 (2010). While "[w]e uphold the findings of a judge who saw and heard the witnesses unless we are of the 'definite and firm conviction that a mistake' has been made," we review the judge's conclusions of law de novo. *Ibid.*, quoting from *Millennium Equity Holdings, LLC, supra* at 637.

1. *Breach of fiduciary duty.* We see no error in the judge's finding that both Chatterjees breached their fiduciary duties to Integrated. Arguing that the board had actual knowledge of the facts giving rise to its claim as early as September, 2005, Chinmay contends on appeal that the breach of fiduciary duty claim against him was untimely.

A claim for breach of fiduciary duty is subject to a three-year statute of limitations. *Lattuca v. Robsham*, 442 Mass. 205, 213 (2004). The "cause of action . . . does not accrue until the beneficiary has actual knowledge of the fiduciary's breach[;] [c]onstructive knowledge is insufficient." *Ibid.* The judge found that it was not until August, 2008, that Integrated and its officers actually knew that both Chatterjees were working for Naples and breaching their fiduciary duties to Integrated. Her finding is supported by testimony from Johnson-Chin and fellow board member David Smith, that they suspected in September, 2005, that Chinmay was being dishonest about Naples but did not know the extent of his involvement until the accounting records were discovered on Nilu's computer. Because Integrated commenced its action in 2010, two years after it had actual knowledge of Chinmay's breach and within the three-year limitations period, the action was timely.

2. *Wage Act claims.*⁶ The Wage Act "requires employers to make payment of 'wages' to employees within specific time periods." *Electronic Data Sys. Corp. v. Attorney Gen.*, 440 Mass. 1020, 1020 (2003). Under the statute, "[t]he word 'wages' shall include any holiday or vacation payments due an employee under an oral or written agreement." *G. L. c. 149, § 148*, as amended through St. 1966, c. 319. Here, the judge's finding that Integrated had no vacation policy is supported by the absence of a written policy and the conflicting testimony

of the witnesses. There being no policy, no additional wages were "due" within the meaning of the statute.⁷

6 Nothing in the record suggests that Integrated raised the three-year statute of limitations set forth in *G. L. c. 149, § 150*, as an affirmative defense to Chinmay's Wage Act claim, and we do not consider it. See *DeSantis v. Commonwealth Energy Sys.*, 68 Mass. App. Ct. 759, 766 n.10 (2007).

7 Moreover, nothing other than Chatterjees' testimony at trial suggests that the Chatterjees first filed a complaint with the Attorney General or received the Attorney General's permission to proceed with their suit. See *G. L. c. 149, § 150*; *Swanson v. Lord & Taylor LLC*, 278 F.R.D. 36, 39 (D. Mass. 2011), and cases cited ("A plaintiff seeking to bring a claim pursuant to *M.G.L. c. 149 §§ 148 and 150* must first file a complaint with the Massachusetts Attorney General and receive a right to sue letter"). Neither the Chatterjees' complaint alleging Integrated's violation of *G. L. c. 149, § 148*, nor a complaint to the Attorney General and a letter granting the Chatterjees permission to sue, appear in the record.

3. *Damages.* There was no error in the judge's assessment of damages against Naples for breach of contract. Nor was there error in the ultimate damage award against the Chatterjees. The judge found that both Chatterjees breached their fiduciary duties to Integrated starting in 2005, and that neither conferred any benefit on

Integrated from 2005 through 2008 because their loyalties were divided. The judge found that Integrated paid salaries to Chinmay totaling \$166,215 from 2005 through 2007, and to Nilu totaling \$173,615 from 2005 through 2008, and properly could order the Chatterjees to forfeit these amounts. See *Chelsea Indus., Inc. v. Gaffney*, 389 Mass. 1, 12-13 (1983). The judge further found that Nilu breached her fiduciary duty to Integrated when she allowed the company to transfer \$200,000 to Naples in 2005, a transfer the judge found to have been made at Chinmay's direction. The judge assigned one-half of that amount to each of the Chatterjees because Naples did not provide the marketing services for which it was paid, see *One to One Interactive, LLC v. Landrith*, 76 Mass. App. Ct. 142, 148 (2010), (noting that "damages recoverable for breach of fiduciary duty is the loss of those advantages but for the defendants' breach or interference that [the plaintiff] would have been able to attain or enjoy"), and awarded Integrated damages against Chinmay in the amount of \$266,215 plus interest and costs, and against Nilu in the amount of \$273,615 plus interest and costs. The damages are supported by the record.

Judgment affirmed.

By the Court (Trainor, Wolohojian & Carhart, JJ.*),

8 The panelists are listed in order of seniority.

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