

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 6, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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No. 99-1797

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**CHARLES ST. PIERRE AND LINDA ST. PIERRE,
HUSBAND AND WIFE,**

PLAINTIFFS-RESPONDENTS,

v.

LOGCRAFTERS, LLC, AND ROBERT J. SCHAEFER,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment and an order of the circuit court for Oconto County: LARRY JESKE, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 HOOVER, P.J. Robert Schaefer and Logcrafters, L.L.C. (Schaefer) appeal the judgment entered in favor of Charles and Linda St. Pierre and the order denying Schaefer's motion for judgment notwithstanding the verdict. The jury found that Schaefer made intentional misrepresentations to the St. Pierres,

awarded the St. Pierres compensatory and punitive damages, and determined that the St. Pierres were not causally negligent in connection with Schaefer's counterclaim.

¶2 Schaefer contends that there was no actionable misrepresentation because (1) his statements to the St. Pierres were legitimate puffery and promises of future action; (2) the St. Pierres could not have reasonably relied upon his statements; and (3) the St. Pierres are improperly attempting to recover in tort for the breach of an employment contract. Schaefer also claims that there was insufficient evidence to support the compensatory and punitive damages awards. Schaefer finally contends that the jury disregarded the uncontradicted evidence when it found the St. Pierres were not causally negligent in the construction of the home.

¶3 We determine that the misrepresentations were actionable and supported by the evidence. Although the representations went to future performance and opinions, they were actionable because the jury determined upon credible evidence that Schaefer had a present intent not to perform, or failed to disclose contrary facts relevant to his opinion at the time he made the misrepresentation. We further decide that it was for the jury to determine whether the St. Pierres' reliance on Schaefer's representations was reasonable and whether the evidence to support its determination of reasonable reliance was credible. We also reject Schaefer's contention that the St. Pierres impermissibly attempted to recover in tort for a breach of an employment agreement. The representations predated the employment relationship and, in fact, induced the St. Pierres to enter the employment agreement.

¶4 We also conclude that there was adequate evidence for the jury to award compensatory damages. Further, there was sufficient evidence of Schaefer's reckless disregard of the St. Pierres' rights for the trial court to send the punitive damages issue to the jury. Finally, the jury's determination that the St. Pierres were not causally negligent for the defects with the rails and steps is supported by credible evidence. Accordingly, the judgment and order are affirmed.

FACTS

¶5 In early 1996, the St. Pierres had full-time jobs. Linda worked for a title company and Charles was the director of human resources for a hospital. In their spare time, they also operated their own log home construction business, working primarily on weekends. In 1995, the St. Pierres met Schaefer, who was having a log home built. After the St. Pierres showed him the log home they had built for themselves, Schaefer indicated that he wanted one built just like it. The St. Pierres were then subcontracted to perform the log work in connection with the log home being constructed for Schaefer. At some point, Charles replaced the original general contractor on the project.

¶6 In the course of constructing Schaefer's log home, the St. Pierres became better acquainted with Schaefer. Schaefer was the owner and chief executive officer of a successful computer consulting company. He tried to persuade the St. Pierres to go into the log home building business full time. Schaefer represented to them that he was wealthy and had the financial resources to start up the business. He stated, however, that he did not have the technical knowledge to build log homes, but that the St. Pierres could provide the

knowledge. The St. Pierres initially rebuffed him because they both had other careers.

¶7 Schaefer subsequently represented to the St. Pierres that they would become wealthy if they went to work with him and reiterated his willingness to fund the business. The parties discussed that there would be a startup period of two years. They agreed that during that time, the St. Pierres would construct three log homes and a gazebo for Schaefer and his children that the business would use as models for selling other homes. Schaefer also represented that Charles would be the general manager of the new business, Logcrafters. The St. Pierres understood from Schaefer's representations that at the end of two years, they would become partners with Schaefer. They anticipated the business would sustain losses for the first two years and that Schaefer, according to him, would use those losses to offset his tax liabilities. Schaefer represented that he needed someplace to "hide some money."

¶8 The St. Pierres, relying on Schaefer's representations, agreed to enter into a business relationship with Schaefer. The St. Pierres sent Schaefer a letter outlining their salary requirements and exclaiming their excitement at the prospect of serving as Schaefer's "property managers, general contractors, and authentic log home builders."

¶9 Charles resigned his job, and Schaefer had an employment contract prepared for Charles. After reviewing the contract, Charles suggested several changes that were incorporated into it. The employment contract provided, among other things, that Charles could be terminated for cause and, alternatively, terminated without cause, in which case he would be paid six months' salary. The term of the employment contract was two years.

¶10 Shortly after becoming Schaefer's employees, discussions about building additional log homes, becoming wealthy and becoming partners ended. Schaefer's focus became completion of his log home. Schaefer "went ballistic" when Charles ordered logs for the additional houses and gazebo, even though the logs needed to be stripped and permitted to dry for an extended period. He later testified that had the St. Pierres not left their jobs to work full time building log homes, he would have hired full-time subcontractors to finish the work on his log home.

¶11 In July, a little more than a month after beginning to work for Logcrafters, the St. Pierres wrote to Schaefer expressing concern that the relationship had changed. They emphasized that they had left their careers to be partners in a business venture with Schaefer and were committed to making the venture work.

¶12 Progress on Schaefer's log home was slow. The parties differ over the causes. The St. Pierres attribute it to numerous rain delays, Schaefer's changes to the original plans requiring additional work, and Schaefer's refusal to permit them to employ adequate labor. Schaefer apparently attributes it to the slowness of the construction method the St. Pierres used and their failure to stay on the job.

¶13 In August, Schaefer retained a consultant to inspect the property without the St. Pierres' knowledge. The consultant alerted Schaefer to a number of items that he considered defects or code violations. These included the spacing between stiles in the railings and the distance between posts in the railings. Schaefer discussed the report with Charles, but told him that the problems were minor. They discussed the railings, and Charles indicated that he could put in

piping to alleviate part of the problem, but he was terminated before he could do so.

¶14 The St. Pierres completed the portions of the house that needed log-crafting expertise in December 1996 and were terminated on January 3, 1997. Schaefer informed them by letter that they were being terminated because they were not on the job on specific days, failed to follow instructions and failed to complete the log home in a timely fashion. A subsequent letter from Schaefer indicated that he could not "afford to carry Logcrafters for another year."

¶15 Logcrafters has not been active in the construction of any other homes since the St. Pierres were terminated. It made no sales and never had any clients. It was "discontinued" in 1997. Schaefer took losses sustained by Logcrafters as deductions on his personal income tax return for 1996. Logcrafters records also reflect that it paid for insurance on some of Schaefer's snowmobiles and snowplowing expenses in 1997.

¶16 Charles attempted to find work in the human resources field, but was unable to do so. Prospective employers gave him the impression that they were concerned that he would abandon them at some future point to build log homes. He concluded that his career in human resources was over and, consequently, started another log home building business. At the time of trial, that business did not generate enough cash flow to pay him a salary equivalent to what he made before joining Schaefer.

¶17 The St. Pierres subsequently sued Schaefer and Logcrafters for intentional misrepresentation.¹ Schaefer counterclaimed for negligent construction of the log home. The case proceeded to trial.

¶18 The jury's special verdict found that Schaefer represented to the St. Pierres "that if the St. Pierres would leave their careers, Schaefer and Logcrafters were prepared to keep [them] as employees ... for a sufficient time to make them wealthy." The jury further found that the representation was untrue, that it was made knowing it was untrue with the intent to deceive and induce the St. Pierres to act upon it and that the St. Pierres believed and justifiably relied on the representation. The jury assessed compensatory damages of \$160,000 and punitive damages of \$100,000. The jury also found that the St. Pierres were not causally negligent in the construction of the log home. Schaefer filed a post-trial motion for directed verdict. The trial court denied the motion.

ANALYSIS

1. STANDARD OF REVIEW

¶19 Schaefer challenges the trial court's denial of his motion for a directed verdict on several bases that invoke different standards of review. He asserts that the misrepresentations, even if true, are not actionable as a matter of law. We review this contention de novo. *See Meyer v. Classified Ins. Corp.*, 179 Wis. 2d 386, 396, 507 N.W.2d 149 (Ct. App. 1993) (the application of facts to a

¹ Charles also sought to recover six months' salary under the employment contract, claiming that he had been discharged without cause. At trial, however, he elected not to pursue that claim and only the misrepresentation claim was submitted to the jury.

legal standard is a question of law an appellate court reviews independently of the trial court).

¶20 Schaefer also asserts that the evidence does not support the verdict. The standard for reviewing the sufficiency of the evidence to sustain a jury verdict is set forth in WIS. STAT. § 805.14(1):²

TEST OF SUFFICIENCY OF EVIDENCE. No motion challenging the sufficiency of the evidence as a matter of law to support a verdict, or an answer in a verdict, shall be granted unless the court is satisfied that, considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party.

See also Helmbrecht v. St. Paul Ins. Co., 122 Wis. 2d 94, 109-10, 362 N.W.2d 118 (1985). When more than one inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact. *See Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶21 Moreover, “[a] circuit court's denial of a motion for directed verdict should be overturned only if such ruling is clearly erroneous.” *Miller v. Wal-Mart Stores*, 219 Wis. 2d 250, 273, 580 N.W.2d 233 (1998). “[T]he trial court has such superior advantages for judging of the weight of the testimony and its relevancy and effect that this court should ... disturb the decision [to deny a motion for directed verdict] only when the mind is clearly convinced that the conclusion of the trial judge is wrong.” *Olfe v. Gordon*, 93 Wis. 2d 173, 186, 286 N.W.2d 573

² All references to the Wisconsin Statutes are to the 1997-98 version.

(1980) (quoting *Trogun v. Fruchtman*, 58 Wis. 2d 569, 585, 207 N.W.2d 297 (1973)).

2. INTENTIONAL MISREPRESENTATION

¶22 The elements of an intentional misrepresentation claim are well established: “[F]irst, there must be a false representation of fact; second, it must be made with intent to defraud and for the purpose of inducing another to act upon it; third, such other person must rely on it and thereby be induced to act, to his own injury or damage.” *Lundin v. Shimanski*, 124 Wis. 2d 175, 184, 368 N.W.2d 676 (1985). “In intentional deceit the defendant must either know the representation is untrue or the representation was made recklessly without caring whether it was true or false ...” *Ollerman v. O'Rourke Co.*, 94 Wis. 2d 17, 25, 288 N.W.2d 95 (1980) (quoting *Whipp v. Iverson*, 43 Wis. 2d 166, 169, 168 N.W.2d 201 (1969)). The party alleging the fraud has the burden of proving the elements by clear and convincing evidence. *See Lundin*, 124 Wis. 2d at 184.

A. Representations of Fact

¶23 Schaefer contends that the alleged representations that the St. Pierres would be employed to operate Logcrafters as an ongoing business to build log homes and become wealthy are statements of opinion or future performance and are not actionable as a matter of law. He further asserts that the statements he made concerning the St. Pierres' anticipated wealth were merely puffery and so vague and ambiguous that it would be impossible to ascertain when the goal was met. The St. Pierres respond that Schaefer's statements were “material and ... not mere puffery because they were critical to creating the illusion of security and were designed to get the [St. Pierres] to leave their careers and come and work for him.”

¶24 We agree that Schaefer's statements that the St. Pierres would be part of a log home building business and become wealthy are statements of opinion and future performance. Opinions and promises of future performance do not generally give rise to an actionable misrepresentation. See *Consolidated Papers v. Dorr-Oliver, Inc.*, 153 Wis. 2d 589, 594, 451 N.W.2d 456 (Ct. App. 1989). The general rule is that in actions for fraudulent misrepresentations, “the representations must relate to present or pre-existing facts” *Alropa Corp. v. Flatley*, 226 Wis. 561, 565-66, 277 N.W. 108 (1938). “Ordinarily a prediction as to events to occur in the future is to be regarded as a statement of opinion only, on which the adverse party has no right to rely.” *Hartwig v. Bitter*, 29 Wis. 2d 653, 657, 139 N.W.2d 644 (1966).

¶25 The “pre-existing fact” rule, however, “does not apply where the promisor has a present intention not to perform. In addition, though a matter asserted is an opinion, it is actionable if the maker is aware of present facts incompatible with that opinion.” *Id.* at 658. Thus, for the statements to be actionable, Schaefer must have had either a present intent not to employ the St. Pierres to operate the log home construction business (thereby not allowing them to become wealthy), or known of facts that would prevent that from occurring.

¶26 The jury could have inferred from the evidence in the record that the only log home Schaefer was ever interested in completing was his own. It could have further inferred that he never intended to keep the St. Pierres employed after that home was constructed, much less enter into a partnership with them to build log homes. Schaefer wooed the St. Pierres with his promises of wealth and the prospect of building log homes full time for an ongoing business. Yet, after they began working exclusively for Schaefer, he directed their attention and efforts

solely to finishing his home to the exclusion of matters necessary for an ongoing business. Moreover, although Schaefer represented that he was wealthy and expected and desired losses, one of his reasons for terminating the St. Pierres was that he could not "afford to carry Logcrafters for another year."

¶27 Although there is evidence in the record to support contrary inferences, we do not review the record for theories the jury could have, but did not accept. *See State v. Bodoh*, 226 Wis. 2d 718, 727-28, 595 N.W.2d 330 (1999). Our review is limited to whether any credible evidence supports the jury's findings. *See id.* The jury found that Schaefer made misrepresentations to the St. Pierres that were untrue when made. There was credible evidence in the record upon which the jury could make that finding.

B. Reasonable Reliance

¶28 To establish their intentional misrepresentation claim, the St. Pierres had to prove, inter alia, that they believed Schaefer's representations and that their reliance on the representations was justifiable. Negligent reliance is not justifiable. *See Bank of Sun Prairie v. Esser*, 155 Wis. 2d 724, 732, 456 N.W.2d 585 (1989). When the relevant facts are disputed, whether reliance is justifiable is a question of fact for the jury.³ *See Hennig v. Ahearn*, 230 Wis. 2d 149, 170, 601 N.W.2d 14 (Ct. App. 1999). Moreover, there is no Wisconsin case establishing that as a matter of law, a party is barred from claiming misrepresentation to induce

³ In *Hennig v. Ahearn*, 230 Wis. 2d 149, 170, 601 N.W.2d 14 (1999), we said:

The general rule in Wisconsin, as elsewhere, is that the recipient of a fraudulent misrepresentation is justified in relying on it, unless the falsity is actually known or is obvious to ordinary observation. And, whether falsity is obvious is usually a question of fact. (Citations omitted.)

the formation of a contract when the subsequent written contract contains provisions contrary to the representations. *See id.* The cases reveal that the individual facts of each action are determinative. *See id.*

¶29 The St. Pierres' reliance on Schaefer's representation is obvious in that they quit their jobs and began building log homes full time, the first being Schaefer's. Schaefer claims that the St. Pierres "could not have reasonably and justifiably relied upon the alleged representations as a matter of law." He argues that the St. Pierres' letter confirming the conversations regarding their employment makes no mention that they were guaranteed wealth or that they had any concerns about job security. Schaefer further asserts that the employment agreement Charles signed clearly provided that his term of employment was two years but that he could be terminated at any time. Based on these facts, Schaefer claims that there could be no reasonable or justifiable reliance on representations he purportedly made. We disagree.

¶30 We conclude that the circuit court properly permitted the issue to go to the jury. The employment contract did not foreclose the jury's determination that the St. Pierres justifiably relied on Schaefer's representations. The employment contract presupposed an ongoing business. The parties presented conflicting evidence as to the nature of the business. It was for the trier of fact to determine the weight to be given to the employment contract when compared to the representations Schaefer made regarding the business, that is, whether the representations prevented the St. Pierres from attaching to the employment contract the significance it would otherwise have had.

¶31 The jury's finding that the St. Pierres' reliance was reasonable is supported by credible evidence. Schaefer promised the St. Pierres that they would

operate the business, building three homes for Schaefer and his family in the first two years that would be used as models. Schaefer was a successful and wealthy businessman. He represented that he had the financial resources necessary to fund the log home construction business and could use the tax benefits from the anticipated losses incurred in those initial years to "hide some money." At the end of two years, the St. Pierres would become Schaefer's partners and become wealthy.

¶32 Further, even if the St. Pierres knew of their at-will status, they were entitled to assess the risk of termination against the general landscape of possibilities.⁴ The jury inferred that Schaefer intended to keep the St. Pierres employed only until his log home was completed. Instead of informing the St. Pierres of his intent, he lured them with the promise of a creating a log home building business. Because the St. Pierres understood from Schaefer's representations that they would be employed in an ongoing business, they could not assess the risk that they would be employed simply to complete Schaefer's log home. Under the circumstances of this case, the trial court properly denied Schaefer's motion for a directed verdict on the St. Pierres' misrepresentation claim.

3. BREACH OF CONTRACT

¶33 Schaefer, relying on *Tatge v. Chambers & Owen, Inc.*, 219 Wis. 2d 99, 579 N.W.2d 217 (1998), argues that "plaintiffs' claims for misrepresentation

⁴ Where the employer has a secret intent to terminate the employment at a particular point, the employee cannot take that risk into account. See Sandra J. Mullings, *Truth-in-Hiring Claims and the At-Will Rule: Should an Employer Have a License to Lie?*, 1997 COLUM. BUS. L. REV.105, 123 (cited in *Mackenzie v. Miller Brewing Co.*, 2000 WI App. 48, ¶30 n.5, 608 N.W.2d 331 (Ct. App. 2000)). Thus, because of the employer's silence, the employee has been misled into believing that his employment is something it is not: indefinite. See *id.*

are inextricably tied to their employment with Logcrafters, and as such are inactionable as a matter of law.” Schaefer claims that “no duty to refrain from any misrepresentation existed independently of the performance of the employment contract.” We are unpersuaded.

¶34 Schaefer's reliance on *Tatge* is misplaced. *Tatge* does not address misrepresentations made to induce an individual to accept employment, but rather involves misrepresentations made while employed.⁵ In contrast, the supreme court recognized in *Hartwig* that misrepresentations that induced an individual to accept employment are actionable. *See id.* at 658-59.

¶35 In *Hartwig*, the employer's misrepresentations allegedly induced two real estate agents to work for him. *See id.* at 655. The employer misrepresented, among other things, that he had a list of "prospects" who were interested in buying

⁵ Tatge, an at-will employee, had objected to the nondisclosure/noncompete provisions of a "Management Agreement" that modified his job duties and compensation arrangements. *See Tatge v. Chambers & Owen, Inc.*, 219 Wis. 2d 99, 102-03, 579 N.W.2d 217 (1998). He refused to sign the agreement only after being assured that his refusal would not affect his employment. *See id.* at 103. Ultimately, however, he was fired for refusing to sign. *See id.* He brought several claims against his employer and prevailed at a jury trial on his tort claim of negligent misrepresentation. *See id.* at 104-05. On post-verdict motions, however, the trial court dismissed his claim. *See id.* at 105. Tatge appealed, challenging not only the dismissal of the negligent misrepresentation claim, but also the trial court's dismissal, on summary judgment, of his wrongful discharge claim. *See id.* at 101, 105.

Tatge contended that the supreme court should “address his misrepresentation claim under tort law—not as a wrongful discharge or breach of contract claim under contract law.” *Id.* at 107. As the supreme court explained, Tatge “advocate[d] this approach by arguing that employers have an independent duty to their employees to refrain from misrepresentation.” *Id.* Rejecting Tatge's argument, the supreme court declared, “[w]e decline to give our blessing to such an irreverent marriage of tort and contract law.” *Id.* The court reiterated that there “must be a duty existing independently of the performance of the contract for a cause of action in tort to exist.” *Id.* (quoting *Landwehr v. Citizens Trust Co.*, 110 Wis. 2d 716, 723, 329 N.W.2d 411 (1983)). Moreover, in *Tatge*, the supreme court held that “[b]ecause it is tied inextricably to his termination from employment, Tatge’s misrepresentation claim was properly dismissed by the circuit court.” *Id.* at 108.

or selling business enterprises; that the agents would earn a lot of money by selling to these prospects; and that he, the employer, was closing a considerable number of sales. *See id.* The supreme court concluded that the complaint pled a viable cause of action for misrepresentation. *See id.* at 658-59.

¶36 *Tatge* did not overrule *Hartwig*, but rather distinguished it on the grounds that the misrepresentations in *Hartwig* predated the employment relationship. *See Tatge*, 219 Wis. 2d at 108-09. While *Tatge* addresses misrepresentations made during employment, *Hartwig* addresses misrepresentations made before the existence of the employment relationship that are used to induce formation of the relationship. *See Tatge*, 219 Wis. 2d at 109; *Hartwig*, 29 Wis. 2d at 658-59.

¶37 Here, similar to *Hartwig*, the St. Pierres were not employees at the time Schaefer's misrepresentations induced them to leave their jobs and begin full-time work for him. Under *Hartwig*, Schaefer's misrepresentations were actionable.

¶38 Moreover, the St. Pierres' damages did not result from the termination itself, but from Schaefer's misrepresentations inducing the employment relationship. That Schaefer's misrepresentations were exposed at the time of termination is irrelevant. Absent the misrepresentations, Schaefer would not have been in the position to terminate the St. Pierres because they would not have consented to the employment in the first instance. Therefore, *Tatge* is inapposite.

4. DAMAGES

A. Compensatory Damages

¶39 Schaefer claims that the St. Pierres failed to prove their damages. He complains that their damage evidence was limited to calculating what their income would have been had they remained with their prior employers and then subtracted from that the estimated profits from the new business. He asserts that this method was inadequate because the St. Pierres failed to produce evidence of the financial records of their business and damages could not be adequately calculated without that information.

¶40 We agree with Schaefer that the general rule regarding proof of damages is that “[w]here damages are susceptible of precise proof, or of estimation by those having knowledge, or are capable of proof with certainty, such proof must be adduced.” *Skrupky v. Elbert*, 189 Wis. 2d 31, 50, 526 N.W.2d 264 (Ct. App. 1994). We conclude, however, that the St. Pierres provided adequate evidence of their damages to support the jury award.

¶41 The St. Pierres’ accountant provided an estimate of how long it would take the St. Pierres to attain the same level of income they had prior to being induced to leave their careers. In doing so, he reviewed a list of their expenditures, tax returns and had discussions with the St. Pierres. Although he did not provide an analysis of the St. Pierres’ net worth and how that changed, Linda testified about the value of their assets and debts. The jury had adequate evidence to determine damages.

B. Punitive Damages

¶42 Schaefer contends that the question of punitive damages should not have gone to the jury because “no evidence was presented which would suggest that [his] conduct was improper or wrongful, let alone sufficiently malicious to support a claim for punitive damages.” Rather, Schaefer claims that the St. Pierres were terminated for justifiable reasons and that they received everything to which they were entitled under the employment contract. We are unpersuaded.

¶43 Punitive damages “are designed to punish and deter conduct that is willful or wanton, in a reckless disregard of rights or interests.” *Lievrouw v. Roth*, 157 Wis. 2d 332, 342, 459 N.W.2d 850 (Ct. App. 1990); *see also* WIS. STAT. § 895.85.⁶ For a plaintiff to obtain punitive damages, there must be clear and convincing evidence that a defendant’s conduct was “outrageous.” *Brown v. Maxey*, 124 Wis. 2d 426, 433, 369 N.W.2d 677 (1985). Before a question on punitive damages can be put to a jury, a trial court must determine whether, as a matter of law, the evidence will support a punitive damages award. *See Jacque v. Steenberg Homes, Inc.*, 209 Wis. 2d 605, 614, 563 N.W.2d 154 (1997). If this standard is met, the trial court should submit the punitive damages question to the jury; otherwise, it should not. We review this question de novo. *See id.*

¶44 Contrary to Schaefer's suggestion, our focus is not on his actions in terminating the St. Pierres, but rather on his misrepresentations inducing the employment relationship. The jury ascertained Schaefer’s intent by examining his words and subsequent acts. Our review of the record convinces us that there was

⁶ WISCONSIN STAT. § 895.85(3) provides that a “plaintiff may receive punitive damages if evidence is submitted showing that the defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff.”

clear and convincing evidence from which the jury could infer that Schaefer had no intention of keeping the St. Pierres employed beyond the completion of his own home.

¶45 Almost immediately upon the St. Pierres becoming full-time employees, Schaefer's focus was solely on completion of his log home. He chastised Charles just two weeks after beginning for purchasing the additional logs necessary to construct Schaefer's children's log homes. The additional homes that the St. Pierres were to have constructed for Schaefer's children were never built.

¶46 Although Schaefer told the St. Pierres that Charles would be the general manager, in May of 1996, Schaefer hired his son-in-law, Vince Peterson, to work for Logcrafters.⁷ Schaefer testified that he was attempting to give Peterson experience running the business. Without St. Pierre's knowledge, Peterson contacted companies that built log homes for estimates and examined alternative log home construction techniques. Further, Peterson sought to restructure Charles's contract.

¶47 The St. Pierres had also begun construction of a pole barn on their own property with Schaefer's knowledge, to enable them to do log work during inclement weather. The days that Schaefer's termination letter cited the St. Pierres for not working on his home were days on which they were constructing the pole barn, in furtherance of Logcrafters' future business.

⁷ Peterson and his wife lived in California. Schaefer persuaded his daughter to return to Wisconsin and work for him, and set up this job for Peterson. In addition to paying Peterson a salary, Logcrafters purchased a \$31,000 truck for Peterson's use.

¶48 Furthermore, Schaefer's self-interest is reflected in the tax and financial benefits he received by creating Logcrafters to build his home. Because Logcrafters was set up to pass losses directly through to Schaefer, he was able to reduce his own personal tax liabilities. Before the creation of Logcrafters, Schaefer was paying for the construction of his log home out of his own pocket, with none of the expenses tax deductible. After Logcrafters was created, he deducted various costs of constructing the log home as Logcrafters' business costs. Additionally, Schaefer used Logcrafters to pay for personal items connected with the log home, including bar stools, snowplowing, insurance, and \$11,000 for four all-terrain vehicles. Some of these expenditures occurred well after Logcrafters was no longer operating.

¶49 Schaefer never conveyed to the St. Pierres his secret agenda of completing only his log home or creating a business for his son-in-law to run, and instead acted to further his own interests with reckless indifference to the rights of the St. Pierres. Had he been forthright with the St. Pierres, they would not have left their careers. Schaefer induced them to compromise their careers so that his log home would be completed more quickly and he could take tax deductions for its construction. When the motive of self-interest rises to the level of wanton, willful or reckless disregard of the rights of others, as here, a jury may award punitive damages. *See Jeffers v. Nysse*, 98 Wis. 2d 543, 552-53, 297 N.W.2d 495 (1980). Accordingly, we agree with the trial court that the evidence was sufficient to send the question of punitive damages to the jury.

5. FAULTY CONSTRUCTION

¶50 Finally, regarding Schaefer's counterclaim, he contends that he presented uncontradicted evidence at trial demonstrating that the St. Pierres

negligently constructed his log home. Schaefer claims that the log stairs and interior and exterior railings grossly violated Wisconsin's building codes. He asserts that the St. Pierres offered no contrary evidence. We disagree.

¶51 The jury heard evidence that Schaefer wanted a rustic log home with “all the rustic amenities” and a set of authentic log steps free-cut with a chain saw. The St. Pierres provided Schaefer with what he asked for: a log home just like the one they had built for themselves. Their home suffered from some of the same alleged defects that Schaefer complains of. Moreover, despite the code violations and the passage of over two years, Schaefer had not rectified the claimed problems with the steps or railings as of the time of trial.

¶52 Further, the St. Pierres presented evidence that they had proposed solutions to problems with the railings but were unable to implement them or fix any other problems because Schaefer terminated them. Based on the record, the jury could find that Schaefer had authorized the deviations from the building code to have an authentic log home and failed to permit the St. Pierres to rehabilitate their work.

CONCLUSION

¶53 We determine that the misrepresentations were actionable and supported by the evidence. Although the representations went to future performance and opinions, they were actionable because the jury determined that Schaefer had a present intent not to perform, or failed to disclose contrary facts relevant to his opinion at the time he made the misrepresentations. We further hold that the jury could conclude that the St. Pierres' reliance on Schaefer's representations was reasonable. Although the employment contract provided for at-will employment, the St. Pierres understood the employment to be in

connection with a log building business, not simply completing Schaefer's home. We also reject Schaefer's contention that the St. Pierres impermissibly attempted to recover in tort for breach of an employment agreement. The representations predated the employment relationship, and in fact induced the St. Pierres to enter the employment agreement.

¶54 Regarding compensatory damages, we conclude that there was evidence sufficient to support the award. There was also adequate evidence of Schaefer's reckless disregard of the St. Pierres' rights for the trial court to submit the issue of punitive damages to the jury. Finally, the jury's determination that the St. Pierres were not causally negligent for the defects with the railings and steps is supported by evidence. Accordingly, the judgment and order are affirmed.

By the Court.—Judgment and order affirmed.

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