IN THE CHANCERY COURT, STATE OF WYOMING

2024 WYCH 7

AishangYou Limited, Dada Business Trading Co., Limited, Dongping Liu, Fengzhen Ai, Min Li, Peifeng Yu, Pijun Liu, Wenwen Yu, and Yanqin Chen,

Plaintiffs and Counterclaim-Defendants,

v.

WeTrade Group, Inc.,

Defendant, Counterclaimant, and Third-Party Plaintiff,

Biming Guo,

Defendant
(dismissed from action)

v.

Zheng Dai and Lina Jiang,

Third-Party Defendants
(dismissed from action).

Case No. CH-2023-0000028

Order Denying WeTrade Group, Inc.'s Motion for Summary Judgment

[¶ 1] Before the court is WeTrade Group, Inc.'s motion for summary judgment. (FSX No. 73112295). WeTrade's key argument is that the stipulated dismissal with prejudice of Plaintiffs' *First Amended Complaint* serves as the predicate for collateral estoppel which establishes their liability for WeTrade's counterclaims as a matter of law. Because the *Stipulated Notice of Dismissal With Prejudice* does not express an intent to preclude further litigation on any of the issues presented, the court concludes it does not support issue preclusion. Absent reliance on preclusion, WeTrade's motion does not meet the initial burden of establishing a prima facie

case supporting summary judgment. Therefore, WeTrade's motion for summary judgment should be denied.

BACKGROUND

Pleadings

[¶ 2] WeTrade filed its two-count *Counterclaims for Tortious Interference; Breach of Fiduciary Duties, and Aiding and Abetting of These Acts* on October 25, 2023. (FSX No. 71194804). Count I alleges interference with contractual or prospective economic relations, including aiding and abetting liability, against Plaintiffs and former Third-Party Defendants Zheng Dai and Lina Jiang.

[¶ 3] Count I generally alleges Plaintiffs and Third-Party Defendants, (1) attempted to halt or reverse a share issuance that occurred September 27, 2023; (2) impeded WeTrade's ability to submit SEC filings by altering its access codes; (3) otherwise disrupted WeTrade's prospective economic and business relations with investors, customers, vendors, agents, or service providers. *Id.* at 10-11, ¶¶ 68-78.

[¶ 4] Count II alleges breach of fiduciary duty by one of the Plaintiffs, WeTrade's former CEO, Pijun Liu, and one of the former Third-Party Defendants, WeTrade's former board chairman, Zheng Dai. Count II generally alleges Liu and Dai signed improper guaranty agreements for their personal benefit to regain control of WeTrade after their resignations, and subsequently falsely claimed to control WeTrade, caused shareholders to falsely claim to act as a majority, and disrupted WeTrade's operations. Count II alleges the other Plaintiffs and Third-Party Defendants aided and abetted Liu and Dai. *Id*., at 11-12, ¶¶ 79-82.

[¶ 5] Plaintiffs/Counterclaim-Defendants filed their *First Amended Verified Complaint* against WeTrade and Biming Guo on November 10, 2023. (FSX No. 71378369). Plaintiffs filed their *Answer & Affirmative Defenses* to WeTrade's counterclaim on November 14, 2023. (FSX No. 71401049).

Dismissal

[¶ 6] WeTrade dismissed its claims against Dai and Jiang under Rule 41(a)(1)(A)(i) and (c)(1) in order to moot the Third-Party Defendants' Rule 3(a) objection to proceeding in Chancery Court. *Not. of Dism*., Mar. 5, 2024 (FSX No. 72248245) and *Rsp to Not. of Int. to Dism.*, Mar. 7, 2024 (FSX No. 72322990).

[¶ 7] On April 3, 2024, the parties filed a *Stipulated Notice of Dismissal With Prejudice* along with a proposed order. (FSX. No. 72670765.) The court granted the *Order Re: Stipulated Notice of Dismissal With Prejudice* on April 8, 2024. (FSX No. 72698614). Because they are crucial to the argument, they are set forth in full herein:

> **STIPULATED NOTICE OF DISMISSAL WITH PREJUDICE**
>
> Plaintiffs AiShangyou Limited, Dada Business Trading Co., Limited, Dongping Liu, Fengzhen Ai, Min Li, Peifeng Yu, Pijun Liu, Wenwen Yu, and Yanqin Chen (collectively, **"Plaintiffs"**) stipulate to the dismissal with prejudice under Wyo. R. Civ. P. Ch. Ct. 41(a)(1)(A)(ii) of all claims pending in this case against WeTrade Group, Inc. (**"WETG"**) and Biming Guo (**"Guo"**). WETG hereby reserves the right to seek expenses and attorneys' fees from Plaintiffs to the fullest extent allowed by applicable law, and the parties further agree that this stipulation shall not be deemed a waiver of such rights, which agreement is a pre-condition to WETG's stipulation to this dismissal.
>
> WHEREFORE, Plaintiffs respectfully request that the Court enter an order dismissing under Wyo. R. Civ. P. Ch. Ct. 41(a)(1)(A)(ii) all claims pending in this case against WETG and Guo with prejudice.
>
> **ORDER RE: STIPULATED NOTICE OF DISMISSAL WITH PREJUDICE**
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> THE COURT, having received and reviewed the *Stipulated Notice of Dismissal with Prejudice* filed by Plaintiffs AiShangyou Limited, Dada Business Trading Co., Limited, Dongping Liu, Fengzhen Ai, Min Li, Peifeng Yu, Pijun Liu, Wenwen Yu, and Yanqin Chen ("Plaintiffs") under Wyo. R. Civ. P. Ch. Ct. 41(a)(1)(A)(ii) and being otherwise fully advised in the premises, hereby FINDS and ORDERS as follows:
>
> Plaintiffs['] claims against WeTrade Group, Inc. and Biming Guo are dismissed with prejudice. WeTrade may move for fees under any applicable law.

STANDARD OF REVIEW

[¶ 8] The summary judgment standard of review requires a court to examine the record from the vantage point most favorable to the party opposing the motion, giving that party the benefit of all favorable inferences which may fairly be drawn from the record, and grant summary judgment if the party moving for summary judgment demonstrates there is no genuine issue as to any material fact and the

moving party is entitled to judgment as a matter of law. *Lindsey v. Harriet*, 2011 WY 80, ¶ 18, 255 P.3d 873, 880 (Wyo. 2011); *Harper v. Fid. & Guar. Life Ins. Co.*, 2010 WY 89, ¶ 30, 234 P.3d 1211, 1220-21 (Wyo. 2010); *Jones v. Schabron*, 2005 WY 65, ¶ 10, 113 P.3d 34, 37 (Wyo. 2005); *Hoflund v. Airport Golf Club*, 2005 WY 17, ¶ 29, 105 P.3d 1079, 1090 (Wyo. 2005); *Ahrenholtz v. Laramie Econ. Dev. Corp.*, 2003 WY 149, ¶ 21, 79 P.3d 511, 516 (Wyo. 2003).

[¶ 9] If the moving party meets the initial burden of establishing a prima facie case by presenting materials demonstrating no genuine issue of material fact exists, and the facts support judgment as a matter of law, the burden is shifted to the non-moving party to present appropriate supporting materials posing a genuine issue of a material fact for trial. *Bogdanski v. Budzik*, 2018 WY 7, ¶ 18, 408 P.3d 1156, 1160 (Wyo. 2018); *Lindsey*, ¶ 18, 25 P.3d at 880. "Speculation, conjecture, the suggestion of a possibility, guesses, or even probability are insufficient to establish an issue of material fact." *Kaufman*, *v. Rural Health Dev., Inc.*, 2019 WY 62, ¶ 23, 442 P.3d 303, 311 (Wyo. 2019) (quoting *RB, Jr. by and through Brown v. Big Horn County Sch. Dist. No. 3*, 2017 WY 13, ¶ 30, 388 P.3d 542, 551 (Wyo. 2017) (quoting *Jones v. Schabron*, 2005 WY 65, ¶ 11, 113 P.3d 34, 38 (Wyo. 2005))); *see also Cook v. Shoshone First Bank*, 2006 WY 13, ¶ 44, 126 P.3d 886, 896 (Wyo. 2006) ("Guesswork is not a substitute for evidence or inference, and inference cannot be based on mere possibility") (quoting *Jones v. Schabron*, ¶ 23, 113 P.3d at 39-40). "No genuine issue exists if the evidence presented in an opposing affidavit 'is of insufficient caliber or quantity to allow a rational finder of fact' to find for the nonmoving party applying the applicable quantum of proof." *Scranton v. Woodhouse*, 2020 WY 63, ¶ 23, 463 P.3d 785, 791 (Wyo. 2020) (quoting *Lee v. LPP Mortg. Ltd.*, 2003 WY 92, ¶ 12, 74 P.3d 152, 158 (Wyo. 2003)).

[¶ 10] The parties' cross motions for summary judgment "are the inverse of one another." *WETG's Opp'n Pls.' Mot. Summ. J.* at 2 (FSX No. 73267616). The court bears in mind the importance of considering each motion independently:

> [E]ach party, as a movant for summary judgment, bears the burden of establishing that no genuine dispute of material fact exists and that the movant is entitled to a judgment as a matter of law. The fact that one party fails to satisfy that burden on his own Rule 56 motion does not automatically indicate that the opposing party has satisfied its burden and should be granted summary judgment on the other motion. The court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be

> entered in accordance with the Rule 56 standard. Both motions must be denied if the court finds that there is a genuine dispute of material fact. But if there is no genuine dispute and one or the other party is entitled to prevail as a matter of law, the court will render judgment.

Skyco Res., LLP v. Fam. Tree Corp., 2022 WY 72, ¶ 16, 512 P.3d 11, 18–19 (Wyo. 2022) (quoting *White v. Wheeler*, 2017 WY 146, ¶ 39, 406 P.3d 1241, 1251 n.5 (Wyo. 2017) (quoting 10A Charles A. Wright et al., *Federal Practice and Procedure* § 2720 (4th ed. 2016))).

DISCUSSION

Issue preclusion does not support WeTrade's motion for summary judgment

[¶ 11] WeTrade's motion relies on the proposition that collateral estoppel establishes the "core facts." "The doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion) incorporate a universal legal principle of common-law jurisprudence to the effect that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction ... cannot be disputed in a subsequent suit between the same parties or their privies." *Ward v. Belden*, 2023 WY 111, ¶ 23, 538 P.3d 980, 988 (Wyo. 2023) (quoting *Wyoming Dep't of Revenue v. Exxon Mobil Corp.*, 2007 WY 112, ¶ 17, 162 P.3d 515, 522 (Wyo. 2007) (internal quotations omitted)).

> [R]es judicata bars the relitigation of previously litigated claims or causes of action and … four factors are examined to determine whether the doctrine of res judicata applies: (1) identity in parties; (2) identity in subject matter; (3) the issues are the same and relate to the subject matter; and (4) the capacities of the persons are identical in reference to both the subject matter and the issues between them. Collateral estoppel bars relitigation of previously litigated issues and involves an analysis of four similar factors: (1) whether the issue decided in the prior adjudication[1] was identical with the issue presented in the present action; (2) whether the prior adjudication resulted in a judgment on the merits; (3) whether the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and (4) whether the party against whom collateral

[1] WeTrade's motion states the elements of issue preclusion, but doesn't address the requirement of a "prior adjudication." Generally, the more flexible doctrine of law of the case, rather than issue preclusion, applies within the limits of a single lawsuit. 18 Wright & Miller, *Fed. Prac. & Proc. Juris.* § 4418 (3d ed. June 2024 Update).

> estoppel is asserted had a full and fair opportunity to litigate the issue in the prior proceeding.

Markstein v. Countryside I, L.L.C., 2003 WY 122, ¶ 15, 77 P.3d 389, 394–95 (Wyo. 2003).

[¶ 12] Issue and claim preclusion are related but distinct concepts with different effects on consent decrees, settlements, and voluntary dismissals. The Wyoming Supreme Court first addressed this distinction in *Eklund v. PRI Environmental, Inc*. Ash and Eklund were injured when the car they were riding in was rear-ended by a car driven by a co-worker, Tebben. 2001 WY 55, ¶¶ 1, 6, 25 P.3d 511, 513-14 (Wyo. 2001). Eklund and Ash separately sued Tebben and their employer, PRI. *Id*., ¶¶ 6-7, 25 P.3d at 514. Ash and PRI settled, and the district court granted a joint motion to dismiss with prejudice. *Id*., ¶¶ 6-7, 14, 25 P.3d at 514, 517. Eklund argued that by settling in favor of Ash, the question of whether Ash was acting in the scope of employment was decided against PRI as a necessary predicate of the settlement, and as a consequence, PRI was precluded from relitigating that issue. *Id*., ¶¶ 8, 16, 25 P.3d at 514, 517.

[¶ 13] *Eklund* noted that consent judgments and dismissals had previously been considered as judgments on the merits for purposes of claim preclusion. *Id*., ¶¶ 17-18, 25 P.3d at 517-18 (citing *CLS v. CLJ*, 693 P.2d 774 (Wyo. 1985) and *Day v. Davidson*, 951 P.2d 378 (Wyo. 1997)). The court explained:

> We have never addressed the effect of collateral estoppel on settlements or consent judgments. Other authorities have set forth the rule as follows:
>
> > Issue preclusion does not attach unless it is clearly shown that the parties intended that the issue be foreclosed in other litigation.
> >
> > ....
> >
> > ... **In most circumstances, it is recognized that consent agreements ordinarily are intended to preclude any further litigation on the claim presented but are not intended to preclude further litigation on any of the issues presented.** Thus **consent judgments ordinarily support claim preclusion but not issue preclusion.**
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> 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure: Jurisdiction § 4443, at 382–85 (1981) (emphasis added). See also, *Linder v. Missoula County*, 251 Mont. 292, 824 P.2d 1004, 1006–07 (1992); and *Hofsommer v. Hofsommer*

> *Excavating, Inc.*, 488 N.W.2d 380, 385 (N.D.1992). The logic behind not applying collateral estoppel to settlements and consent judgments absent an expressed intention of the parties to be bound in further proceedings is quite obvious: **Application of the doctrine absent an intent to be bound in subsequent proceedings would act as a deterrent to voluntary settlements**. **If, by settling one lawsuit, a party forsakes the right to challenge all issues at stake in any future litigation, then the incentive to settle short of trial is reduced**.

Id., ¶ 20, 25 P.3d at 518 (emphasis added); *see also United States v. Int'l Bldg. Co.*, 345 U.S. 502, 506, 73 S. Ct. 807, 809, 97 L. Ed. 1182 (1953) (an agreement to settle a controversy for an undisclosed reason is res judicata of those claims, but agreement may be based on the merits or on some collateral consideration or exigency, and has no collateral estoppel effect); Restatement (Second) of Judgments § 27 cmt. e (1982) ("In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated. Therefore, the rule of this Section does not apply with respect to any issue in a subsequent action. The judgment may be conclusive, however, with respect to one or more issues, if the parties have entered an agreement manifesting such an intention.")

[¶ 14] The same rule was applied in *Amoco*, where there was no evidence of an intent to foreclose relitigation of an issue and expressly excepted the issue. *Amoco Prod. Co. v. Bd. of Cnty. Comm'rs of Cnty. of Sweetwater*, 2002 WY 154, ¶¶ 15-16, 55 P.3d 1246, 1251-52 (Wyo. 2002). The exception was applied in *Markstein v. Countryside I, L.L.C.*, where there was evidence of agreements, entered into as part of bankruptcy proceedings, for Thorton and his successors, including Countryside, to be bound by Markstein's fishing and club use rights. 2003 WY 122, ¶¶ 25-26, 77 P.3d 389, 397 (Wyo. 2003); *see also Johnson v. King*, No. 10-CV-279-S, 2011 WL 4963902, at *4, 8 (D. Wyo. Oct. 17, 2011).

[¶ 15] As in *Eklund,* there is nothing in the stipulated motion or order signed by the court in this case, nor any other evidence, suggesting that Plaintiffs were foregoing their right to contest any issue before the court in their *First Amended Verified Complaint*. The stipulation and order leave all other claims pending and open for further litigation. Absent evidence of express intent of the parties to a consent decree, settlement, or voluntary dismissal to be bound as to an issue raised, it cannot be said such issue was actually litigated and actually decided. Thus, issue preclusion would not apply.

[¶ 16] In reply, WeTrade does not argue that the stipulation or order of dismissal with prejudice of Plaintiffs' claims show an intent to foreclose relitigation of any particular issue. Instead, WeTrade argues the course of proceedings makes clear the parties' intent. The parties had "tested" the relative strengths of their cases multiple times in the District of Wyoming and in this court, resulting in a stipulated preliminary injunction. The parties had a significant sense of the relative strengths of their respective cases, which indicates that the stipulation was a deliberate and strategic choice "to put the issues to bed."

[¶ 17] The Restatement persuasively explains why auguring the reasons for a party's strategic choice not to contest particular issues is unsound:

> **There are many reasons why a party may choose not to raise an issue, or to contest an assertion, in a particular action.** The action may involve so small an amount that litigation of the issue may cost more than the value of the lawsuit. Or the forum may be an inconvenient one in which to produce the necessary evidence or in which to litigate at all. The interests of conserving judicial resources, of maintaining consistency, and of avoiding oppression or harassment of the adverse party are less compelling when the issue on which preclusion is sought has not actually been litigated before. **And if preclusive effect were given to issues not litigated, the result might serve to discourage compromise, to decrease the likelihood that the issues in an action would be narrowed by stipulation, and thus to intensify litigation.**
> It is true that it is sometimes difficult to determine whether an issue was actually litigated; **even if it was not litigated, the party's reasons for not litigating in the prior action may be such that preclusion would be appropriate. But the policy considerations outlined above weigh strongly in favor of nonpreclusion,** and it is in the interest of predictability and simplicity for such a result to obtain uniformly.

Restatement (Second) of Judgments § 27 cmt. e (1982) (emphasis added). It is impossible for the court to know whether Plaintiffs' litigation strategy of capitulation on their claims was motivated by the strength of their case, conservation of party resources, or other factors.[2] If the parties intended dismissal

[2] Possibly including an unalloyed, cockeyed optimism that complete abandonment of Plaintiffs' claims could be the first step in a move toward détente. Or perhaps their views as to the management of the business has changed. (E.g, one of the disputes in this case concerns purchase of bitcoin, and it is common knowledge that the market value of bitcoin

with prejudice to finally settle specific **issues**, not merely to dispose of Plaintiffs' **claims**, they could have included that in their notice of stipulation, or included findings in the stipulated order. Where, as here, parties plead inverse claims arising out of the same facts, the fact that one party ceases prosecution of its claims does not, without more, establish the opposing party's case.

[¶ 18] WeTrade also notes that Plaintiffs concede the issue of control of WeTrade was resolved by the preliminary injunction. *See Resp. in Opp. to WeTrade Grp., Inc.'s Mot. Sum. Judg.* at 3, 13 (FSX No. 73271510). WeTrade argues this effectively concedes issue preclusion via another route. WeTrade misapprehends Plaintiffs' argument. Plaintiffs take issue with WeTrade's argument to the effect "that issue preclusion transforms all of the [Plaintiff]s' allegations in their First Amended Complaint into admissions favorable to" WeTrade. *Id*., at 10. Plaintiffs argue because issue preclusion is unavailable, WeTrade must prove each element of its claims with admissible evidence.

WeTrade's motion does not make a prima facie case for summary judgment

[¶ 19] In a run-of-the-mine summary judgment motion where the moving party does not have the burden of proof at trial, it suffices to "carry [the movant's] initial burden by providing 'affirmative evidence that negates a[single] essential element of the nonmoving party's claim.' " *Tesone v. Empire Mktg. Strategies*, 942 F.3d 979, 994 (10th Cir. 2019). A party seeking summary judgment in its favor on its claim for relief faces a higher burden to make a prima facie case by presenting evidence showing affirmatively the absence of a genuine issue of material fact as to each element of its claim:

> "Summary judgment in favor of the party with the burden of persuasion ... is inappropriate when the evidence is susceptible of different interpretations or inferences by the trier of fact." *Hunt v. Cromartie,* 526 U.S. 541, 553, 119 S.Ct. 1545, 143 L.Ed.2d 731 (1999). Significantly for the instant case, "*where the moving party has the burden* [of proof]—the plaintiff on a claim for relief or the defendant on an affirmative defense—*his showing must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party*." *Calderone v. United States,* 799 F.2d 254, 259 (6th Cir. 1986)

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has increased geometrically in recent months). Or they were embarrassed by the attempted use of fabricated evidence. Or they ran out of money to pay attorney fees. Or something else. Speculation and conjecture as to the true motive for dropping a lawsuit could be endless.

> (quoting Schwartzer, *Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact*, 99 F.R.D. 465, 487–88 (1984)) (emphasis in original). *See also Fontenot v. Upjohn Co.,* 780 F.2d 1190, 1194 (5th Cir. 1986) ("[I]f the movant bears the burden of proof on an issue, either because he is the plaintiff or as a defendant he is asserting an affirmative defense, he must establish beyond peradventure *all* of the essential elements of the claim or defense to warrant judgment in his favor.") (emphasis in original); *Rich v. Sec'y, Fla. Dep't of Corr.,* 716 F.3d 525, 530 (11th Cir. 2013) ("When the *moving* party has the burden of proof at trial, that party must show *affirmatively* the absence of a genuine issue of material fact: it must support its motion with credible evidence that would entitle it to a directed verdict if not controverted at trial.") (emphasis in original) (quotation marks and citation omitted); *Smith v. Ozmint,* 578 F.3d 246, 250 (4th Cir. 2009) ("As to those elements on which it bears the burden of proof, a [movant] is only entitled to summary judgment if the proffered evidence is such that a rational factfinder could only find for the [movant]." (citation omitted)); *Torres Vargas v. Santiago Cummings,* 149 F.3d 29, 35–36 (1st Cir. 1988) ("The party who has the burden of proof on a dispositive issue cannot attain summary judgment unless the evidence that he provides on that issue is conclusive." (citing *Calderone,* 799 F.2d at 258)). "In other words, the evidence in the movant's favor must be so powerful that no reasonable jury would be free to disbelieve it. Anything less should result in denial of summary judgment." 11 *Moore's Federal Practice*, § 56.40[1][c] (Matthew Bender 3d Ed. 2015).

Leone v. Owsley, 810 F.3d 1149, 1153–54 (10th Cir. 2015) (emphasis in original) (cited in 10A Wright & Miller, *Fed. Prac. & Proc. Civ.* § 2727.1 (4th ed. June 2024). Because WeTrade's motion does not make an initial showing of undisputed evidence as to each element of its claims, the court must deny the motion.

Intentional interference with a contract or prospective contractual relations

[¶ 20] Wyoming has adopted the elements of these torts as stated in the Restatement (Second) of Torts:

> This Court has adopted the Restatement (Second) of Torts §§ 766 and 766B, intentional interference with a contract and intentional interference with prospective contractual relations, respectively. *First Wyoming Bank, Casper v. Mudge,* 748 P.2d 713, 715 (Wyo. 1988), and *Martin v. Wing,* 667 P.2d 1159, 1161–63 (Wyo. 1983). The elements of

intentional interference with a contract are: (1) the existence of the contract; (2) the defendant's knowledge; (3) intentional and improper interference inducing or causing a breach; and (4) resulting damages. *Mudge,* 748 P.2d at 715. The elements for intentional interference with prospective contractual relations[3] provide:

> "One who intentionally and improperly interferes with another's prospective contractual relation (except a contract to marry) is subject to liability to the other for the pecuniary harm resulting from loss of the benefits of the relation, whether the interference consists of
>
> > "(a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or
> >
> > "(b) preventing the other from acquiring or continuing the prospective relation."

Martin, 667 P.2d at 1162.

[¶ 21] *Lever v. Cmty. First Bancshares, Inc.*, 989 P.2d 634, 639–40 (Wyo. 1999) (cited in *Birt v. Wells Fargo Home Mortg., Inc.*, 2003 WY 102, ¶ 73, 75 P.3d 640, 663 (Wyo. 2003)).

[¶ 22] For purposes of this motion, the court assumes[4] that WeTrade had contractual relationships with its stock transfer agent, its SEC filing agent, the NASDAQ, or its subsidiary. (It's unclear what WeTrade means by its argument that it had a contractual relationship with the SEC. WeTrade doesn't explain whether that is separate and distinct from its regulatory relationship with the SEC.)

[¶ 23] WeTrade's motion acknowledges that it has been largely successful in limiting the interference with its contractual relationships. Plaintiffs argue that WeTrade hasn't shown a breach or termination of a contract, as WeTrade continues to do business with these entities. But it is generally not necessary to show a third

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[3] WeTrade's motion mentions "There are three avenues to liability here: 1. Interference with contract; 2. Interference with prospective economic relations; and 3. Aiding and abetting either or both." *WeTrade Mot. Sum. J.* at 10 (FSX No. 73112295). The motion does not develop any argument with respect to prospective economic relations or aiding and abetting liability. The court need not consider perfunctory or no argument in support of a contention. *E.g.*, *McGuire v. Solis*, 2005 WY 129, ¶ 25, 120 P.3d 1020, 1026 (Wyo. 2005).

[4] It is not sufficient, contrary to WeTrade's reply, to say "some contracts and business expectancies are matters of reported public record and knowledge." *WeTrade Rply. to Resp. in Opp. to Mot. Sum. J.* at 8-9 (FSX No. 73308932). To properly support a motion for summary judgment, public records must be presented in the form of evidentiary materials per Rule 56.

party was induced to break the contract – showing interference with the third party's performance, including misdirecting or giving the third party wrong information, can be sufficient. Restatement (Second) of Torts § 766 cmt. k (1979).

[¶ 24] With respect to the element of intentional and improper interference inducing or causing a breach or termination of the contractual relationship, the entire argument in WeTrade's motion is:

> ***Intentional interference***: Plaintiffs undertook all of the acts set forth above intentionally because the acts were directed, sophisticated, and not accidental.
>
> ***The interference was improper***: Plaintiffs cannot claim their acts were proper because they have already dismissed their own claims (which formed the basis and justification for their actions) with prejudice. Impropriety is further demonstrated by Plaintiffs' proven and brazen use of faked evidence.

WeTrade Mot. Sum. J. at 10-11 (FSX No. 73112295) (emphasis in original).

[¶ 25] It does not follow that interference is intentional because acts were directed, sophisticated, and not accidental. In some contexts, intentional may mean voluntarily, not accidentally. *See State v. Keffer*, 860 P.2d 1118, 1138 (Wyo. 1993). Here, intentionally means for the purpose of interfering with the contract or knowing that interference is substantially certain to occur, but not merely awareness interference will result as a consequence of endeavoring to protect the actor's own interests. Restatement (Second) of Torts § 766 cmt. j (1979).

[¶ 26] WeTrade cannot rely on issue preclusion to establish that the claimed interference was improper. WeTrade offers no evidentiary support for the argument that it has demonstrated "Plaintiffs' proven and brazen use of faked evidence." Before the preliminary injunction hearing scheduled for December 5, 2023, WeTrade filed its proposed Exhibit BB, a report of an audio authentication analysis of a putative WeChat audio message. (FSX No. 71535656). The report concluded the audio was manipulated. Naturally, a party may very well view this as blockbuster evidence.

[¶ 27] Yet, WeTrade's motion does not offer evidence to show there is no genuine issue of material fact that Plaintiffs used faked evidence, much less that it was "brazen." Who created it? When did Plaintiffs come to possess it? How did Plaintiffs come to possess it? Which Plaintiffs came to possess it? Did each (or any) of the Plaintiffs have reason to doubt its authenticity? The lack of basic contextual facts

vitiates the value of this evidence to support this element of WeTrade's prima facie case.

[¶ 28] WeTrade recognizes that "To be 'improper,' an interference must be 'wrongful by some measure beyond the fact of the interference itself.' " *WeTrade Mot. Sum. J.* at 10 (FSX No. 73112295). This requires weighing the actor's motives along with the interests the actor seeks to protect and those invaded. Restatement (Second) of Torts § 767 cmt. d-g (1979). WeTrade's motion does not, and thus does not make a prima facie showing of improper interference.

Breach of fiduciary duty claim against Liu[5]

[¶ 29] "To establish a claim for breach of fiduciary duties, the plaintiff must show a duty based on a fiduciary relationship, breach of the duty, and the breach caused him damage." *Matter of J. Kent Kinniburgh Revocable Tr. Dated Jan. 27, 1992, as Amended & Restated*, 2023 WY 56, ¶ 23, 530 P.3d 579, 587 (Wyo. 2023) (quoting *Gowdy v. Cook*, 2020 WY 3, ¶ 27, 455 P.3d 1201, 1208 (Wyo. 2020) (citing *Acorn v. Moncecchi*, 2016 WY 124, ¶ 80, 386 P.3d 739, 762 (Wyo. 2016))). "Corporate officers and directors have a fundamental duty of loyalty and fiduciary responsibility to their corporation." *Squaw Mountain Cattle Co. v. Bowen*, 804 P.2d 1292, 1296 (Wyo. 1991). Officers have statutorily-imposed duties of care and good faith and fair dealing which require an officer to conduct business in a manner that the officer reasonably believes to be in the best interests or not opposed to the best interests of the corporation. Wyo. Stat. Ann. § 17-16-842 (LexisNexis 2023).

[¶ 30] With respect to breach of fiduciary duty, WeTrade's entire substantive argument is:

> Here, Liu breached his fiduciary duty to the corporation by entering into a "guaranty" that was obviously not in the corporation's interest, all so that he could invoke it to retake control of the company long after resigning. Worse, in executing the scheme to retake control, Liu undertook actions that were against WeTrade's interests. See, e.g., *Squaw Mountain Cattle Co. v. Bowen*, 804 P.2d 1292, 1297 (Wyo. 1991) (director breached fiduciary duty by failing to disclose noteworthy financial information to shareholders); *Lynch v. Patterson*, 701 P.2d

[5] Though Count II of WeTrade's counterclaim pleaded aiding and abetting breach of fiduciary duty, its motion does not develop any argument with respect to aiding and abetting breach of fiduciary duty. The court need not consider perfunctory or no argument in support of a contention. *E.g.*, *McGuire v. Solis*, 2005 WY 129, ¶ 25, 120 P.3d 1020, 1026 (Wyo. 2005).

> 1126, 1131-32 (Wyo. 1985) (directors breached fiduciary duty by diverting corporate assets to their benefit); *Voss Oil Company v. Voss*, 367 P.2d 977, 979 (Wyo. 1962) (interlocking directors breached fiduciary duty by entering transaction from which they profited to the disadvantage of the corporation).

WeTrade Mot. Sum. J. at 12 (FSX No. 73112295). The motion asserts it has already been established that the guaranty was ultra vires and not in WeTrade's interest. *WeTrade Mot. Sum. J.* at 3 (FSX No. 73112295). WeTrade cannot rely on issue preclusion to establish breach of fiduciary duty. WeTrade's motion describes what might be interpreted as bizarre and inexplicable, or as merely an unwisely made bargain. *WeTrade Mot. Sum. J.* at 4 (FSX No. 73112295). No evidentiary support is offered for the conclusory assertion that the guaranty was so obviously not in the corporation's interests to the extent that it constitutes a breach of fiduciary duty as a matter of law.

[¶ 31] Additionally, Plaintiffs responded with Liu's affidavit that he did not receive a personal pecuniary benefit from the guarantees and the creditors were important customers who also resold WeTrade's software products. Ex. 18, ¶¶ 6-10 (FSX No. 73271510). Officers may consider the interests of customers. Wyo. Stat. Ann. § 17-16-842(e)(i) (LexisNexis 2023). For purposes of summary judgment, there is a dispute whether the guarantees helped WeTrade by helping it increase its sales or harmed WeTrade via its unfavorable terms. Plaintiffs' response didn't address the part of the guarantees that purported to require resignations of new directors and officers. But as it seems that they did not resign, it's not clear at the summary judgment stage of the case whether that feature of the guarantees caused any damages.

[¶ 32] In conclusion, this court rules that WeTrade may not rely on issue preclusion predicated on the stipulated dismissal of Plaintiffs' claims. WeTrade's motion for summary judgment does not meet the burden to show it is entitled to judgment as a matter of law in WeTrade's favor on WeTrade's affirmative claims. WeTrade's motion for summary judgment is **DENIED.**

Dated: 06/07/2024 /s/ Richard L. Lavery
HONORABLE RICHARD LAVERY