

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
CUMSC-CV-14-102

STATE OF MAINE
Cumberland ss Clerk's Office
JOSEPH F. ALGER, SR. and
ALCO COMPANY, INC.,

JUN 22 2015

RECEIVED

Plaintiffs

v.

ORDER ON DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

ACE TRAILER AGENCY, KEITH
ROBBINS, LAURA ROBBINS, and
SHERI ROBBINS-ALGER,

Defendants

Defendants Ace Trailer Agency, Keith Robbins, and Laura Robbins ("Ace defendants") have moved for summary judgment on all counts of the plaintiffs' complaint. Defendant Sheri Robbins-Alger ("Sheri Robbins") has not joined in the motion. For the following reasons, the motion is granted in part and denied in part.

Facts

The following facts are presented in a light most favorable to plaintiffs as the non-moving parties. Plaintiff Joseph Alger owns plaintiff Alco Company, Inc. ("Alco"), a Maine trailer registration business. (Def.'s Supp. S.M.F. ¶ 1.) Sheri Robbins is Joe Alger's ex-wife and former employee, and defendant Keith Robbins's brother. (Def.'s Supp. S.M.F. ¶ 2.) Sheri Robbins worked for Joe Alger for 18 years, including time both before and after the two divorced. (Pl.'s Add. S.M.F. ¶¶ 5-6.) Sheri Robbins did not acquire any interest in Alco pursuant to the couples' divorce. (Pl.'s Add. S.M.F. ¶ 10.) In August 2012, after Joe Alger and Sheri Robbins divorced, Sheri was laid off from Alco. (Pl.'s Add. S.M.F. ¶ 8.)

While working at Alco, Sheri had access to certain back-up discs that contained customer information, including special pricing information, contact information, numbers and types of registrations, and other client data. (Pl.'s Add. S.M.F. ¶¶ 1, 10.) According to Joe Alger, the back-up discs were password protected and were locked in the company's safe. (Pl.'s Add. S.M.F. ¶ 12.) Joe Alger was unaware, however, that Sheri Robbins had another copy of the back-up discs that she used when she worked from home. (Pl.'s Add. S.M.F. ¶ 10.) Joe Alger never consented to Sheri Robbins's use of the discs outside of the company. (Pl.'s Add. S.M.F. ¶ 10.)

When Sheri Robbins was laid off, she did not return her extra copy of the back-up discs. (Pl.'s Add. S.M.F. ¶ 14.) In 2013, defendants Keith and Laura Robbins started their own trailer registration business, defendant Ace Trailer Agency ("Ace"). (Def.'s Supp. S.M.F. ¶ 6.) Sheri Robbins delivered a copy of the discs to Keith and Laura Robbins for use in their new business. (Pl.'s Add. S.M.F. ¶ 15.) Sheri recognized that the information was valuable and could be considered a trade secret. (Pl.'s Add. S.M.F. ¶¶ 17-18.) She told Keith and Laura that the information could be used to "crush Alco." (Pl.'s Add. S.M.F. ¶ 18.) The Ace defendants used the information on the discs to solicit Alco's customers. (Pl.'s Add. S.M.F. ¶ 18.)

Analysis

1. Standard of Review

"Summary judgment is appropriate if the record reflects that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law." Dussault v. RRE Coach Lantern Holdings, LLC, 2014 ME 8, ¶ 12, 86 A.3d 52 (quoting F.R. Carroll, Inc. v. TD Bank, N.A., 2010 ME 115, ¶ 8, 8 A.3d 646). "A

material fact is one that can affect the outcome of the case, and there is a genuine issue when there is sufficient evidence for a fact-finder to choose between competing versions of the fact.” McIlroy v. Gibson’s Apple Orchard, 2012 ME 59, ¶ 7, 43 A.3d 948 (quoting N. E. Ins. Co. v. Young, 2011 ME 89, ¶ 17, 26 A.3d 794). “Even when one party’s version of the facts appears more credible and persuasive to the court, any genuine factual dispute must be resolved through fact-finding, regardless of the nonmoving party’s likelihood of success.” Lewis v. Concord Gen. Mut. Ins. Co., 2014 ME 34, ¶ 10, 87 A.3d 732. If facts are undisputed but nevertheless capable of supporting conflicting, plausible inferences, “the choice between those inferences is not for the court on summary judgment.” Id.

2. Interference with an Economic Advantage (Count I)

In count I, plaintiffs assert tortious interference with an advantageous relationship and allege that all defendants conspired to acquire and use Alco’s confidential business information to steal Alco’s customers. “To establish the tort of interference with an advantageous relationship, a plaintiff must show a valid contract or prospective economic advantage, interference with that contract or advantage through fraud or intimidation, and damages proximately caused by the interference.” Ne. Coating Techs. v. Vacuum Metallurgical Co., 684 A.2d 1322, 1325 (Me. 1996). Plaintiffs have not identified any fraud on the part of defendants Laura and Keith Robbins or Ace. See Barnes v. McGough, 623 A.2d 144, 146 (Me. 1993) (circumstances constituting allegation of fraud must be stated with particularity). Plaintiffs argue that their interference claim is based on intimidation.

Plaintiffs fail to identify any facts that constitute intimidation. Although intimidation is not limited to “frightening a person for coercive purposes”, Pombriant v. Blue Cross/Blue Shield of Me., 562 A.2d 656, 650 (Me. 1989), plaintiffs have not identified any behavior on the part of Laura and Keith Robbins or Ace that could be construed as intimidating. The Ace defendants are entitled to judgment on count I of the complaint.

3. Counts II and III

Plaintiffs do not challenge dismissal of counts II and III against the Ace defendants. (Pl.’s Response, at 1.) Accordingly, these counts are dismissed against the Ace defendants.

4. Misappropriation of a Trade Secret (Count IV)

Plaintiffs focus their attention on count IV of the complaint, which alleges misappropriation of a trade secret under 10 M.R.S. § 1544. To prevail on their claim, plaintiffs must demonstrate that the information on the discs constitutes a trade secret and that defendants misappropriated that information.

a. Whether the Discs Contained Trade Secrets

“Trade secret” is defined as “information, including but not limited to, a formula, pattern, compilation, program, device, method, technique or process that:

- A. Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- B. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

10 M.R.S. § 1542(4) (2014). The court will address each element of this two-part test individually.

i. Independent Economic Value

The court may consider the following factors in deciding whether information “derives independent economic value . . . from not being generally known”:

(1) the value of the information to the plaintiff and to its competitors; (2) the amount of effort or money the plaintiff expended in developing the information; (3) the extent of measures the plaintiff took to guard the secrecy of the information; (4) the ease or difficulty with which others could properly acquire or duplicate the information; and (5) the degree to which third parties have placed the information in the public domain or rendered the information ‘readily ascertainable’ through patent applications or unrestricted product marketing.

Spottiswoode v. Levine, 1999 ME 79, ¶ 27 n.6, 730 A.2d 166. Defendants argue that the information on the discs was publicly available. See OfficeMax, Inc. v. County Qwick Print, 751 F. Supp. 2d 221, 251 (D. Me. 2010).¹ Several of the factors, however, weigh in favor of plaintiffs.

First, both Joe Alger and Sheri Robbins believed the information on the discs was valuable. Second, according to plaintiffs, the information took them 30 years to accrue. Third, plaintiffs locked up back-up copies of the information in the company safe and password-protected the files. Fourth, although some of the information on the discs could likely have been duplicated, it would require significant effort to compile a comparable list. Finally, although much of the information was likely publicly available, certain data such as special pricing

¹ The court notes that the OfficeMax case was a decision on a motion for a preliminary injunction and not a motion for summary judgment. OfficeMax, Inc., 751 F. Supp. 2d at 250. Although OfficeMax cast doubt on whether certain customer information that was publicly available could constitute a trade secret, id. at 250-51, the court’s analysis involved weighing facts, which would not be appropriate in deciding a motion for summary judgment.

information for certain clients was not. Plaintiffs have generated a genuine issue of material fact on the independent value prong of the trade secrets test.

ii. Reasonable Efforts to Maintain Secrecy

The court may consider the following factors in determining whether the efforts to retain the information's secrecy were reasonable under the circumstances:

(1) the extent to which the information is known outside the plaintiff's business; (2) the extent to which employees and others involved in the plaintiff's business know the information; (3) the nature and extent of measures the plaintiff took to guard the secrecy of the information; (4) the existence or absence of an express agreement restricting disclosure; and (5) the circumstances under which the information was disclosed to any employee, to the extent that the circumstances give rise to a reasonable inference that further disclosure without the plaintiff's consent is prohibited.

Spottiswoode, 1999 ME 79, ¶ 27 n.7, 730 A.2d 166.

These factors cut both ways. In the plaintiffs favor, the information was password-protected and stored in a locked safe. Although Sheri Robbins had access to the information, Joe Alger was unaware that she retained a copy of it after she left Alco. While some of the information was publicly available, some if it would be difficult to obtain and some of it was likely confidential information. In the defendants' favor, Joe Alger did not require Sheri Robbins to sign a non-disclosure agreement. Sheri Robbins was also able to use the information while working from home, which demonstrates that Joe Alger was comfortable allowing the information out of the company. Because there are conflicting factual accounts, summary judgment is inappropriate on the issue of whether the information constitutes a trade secret.

b. Whether the Discs were Misappropriated

Defendants next dispute whether the information on the discs was misappropriated. "Misappropriation" is defined by statute as:

A. Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

B. Disclosure or use of a trade secret of another without express or implied consent by a person who:

1) Used improper means to acquire knowledge of the trade secret;

2) At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

i) Derived from or through a person who had utilized improper means to acquire it;

ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

3) Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

10 M.R.S. § 1542(2). The term "improper means" includes "theft, bribery, misrepresentation, breach or inducement of a breach of duty to maintain secrecy or espionage through electronic or other means." 10 M.R.S. § 1542(1).

The Ace defendants argue that Sheri Robbins represented that she was a 50% owner of Alco and that she was giving them a list of her own clients. They therefore had no idea that the information could have been misappropriated. This argument is unconvincing. Sheri Robbins was recently laid off from Alco and was upset. She brought the information to the Ace defendants and told them they could use it to "crush" Alco. A reasonable fact-finder could conclude that the Ace defendants knew that Sheri Robbins may have stolen or improperly

retained the discs, which contained Alco's client information. Defendants are not entitled to summary judgment on count IV of the complaint.

5. Lost Profits Claim

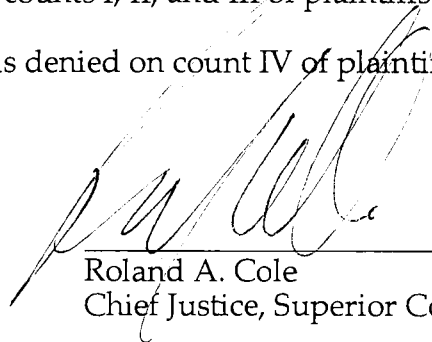
Finally, defendants argue that they are entitled to judgment on plaintiffs' request for lost profits because the claim is speculative and too difficult to calculate. Plaintiffs will be able to show, however, which of its customers Ace contacted and whether they subsequently gave their business to Ace. Although some of these customers may have switched companies regardless of the information on the discs, plaintiffs will at least have the opportunity to show that without the information from Sheri Robbins, the Ace defendants would not have been able to convince certain Alco customers to switch companies.

The entry is:

Summary judgment is granted to defendants Laura Robbins, Keith Robbins, and Ace on counts I, II, and III of plaintiffs' complaint.

Summary judgment is denied on count IV of plaintiffs' complaint.

Date: June 22, 2015



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