



**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Submitted: August 9, 2005
Decided: November 14, 2005

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Re: *W.L. Gore & Associates, Inc. v. Huey Shen Wu, et al.*,
Civil Action No. 263-N

Dear Counsel:

Pending before the Court is Defendant Huey-Shen Wu's ("Wu") motion for reargument of the Preliminary Injunction Order entered on May 5, 2005. For the reasons stated below, the Court denies that motion subject to one modification of the Preliminary Injunction Order.

I. BACKGROUND

Beginning in 1990, Wu worked as a scientist for W.L. Gore & Associates, Inc. ("Gore"). Gore is in the business of research, development, manufacture and sales of a variety of polymer products. In February 2004, Gore terminated Wu's employment

based on its belief that Wu had breached his noncompete agreements and misappropriated trade secrets.

Gore filed a Complaint against Wu on February 18, 2004. In that Complaint, Gore alleged that Wu, through his involvement in Defendants ABC Health International, Inc. (“ABC”), Fountain Technology, LLC (“Fountain”), and Fulfill America Inc. (“Fulfill America”), is liable for breach of contract, breach of the duty of loyalty, conversion, tortious interference with contract and business relations, misappropriation of trade secrets, violating the Delaware Deceptive Trade Practices Act, aiding and abetting and civil conspiracy. The Complaint requested, among other things, an accounting and the imposition of a constructive trust.¹ In addition, Gore sought and received a Temporary Restraining Order prohibiting Wu from disclosing any confidential, proprietary or trade secret information he gained as a scientist at Gore and from competing with Gore.²

On March 10, 2004, Wu’s counsel stipulated to a Preliminary Injunction Order in lieu of a preliminary injunction hearing. Wu’s counsel withdrew from the case on July 13, 2004. From that time until October 25, 2005,³ Wu appeared pro se and

¹ Verified Compl. ¶¶ 71-118.

² T.R.O., Feb. 19, 2004.

³ On October 25, 2005, William M. Kelleher of Ballard, Spahr, Andrews & Ingersoll, LLP entered a limited appearance for Wu. Mr. Kelleher’s representation ceases at the conclusion of the trial.

continuously claimed that the scope of the Preliminary Injunction Order is too broad and prevents him from obtaining employment.

Wu filed his first Motion to Amend the Preliminary Injunction Order on September 1, 2004 and an additional Motion to Amend on April 6, 2005. The Court treated those motions as reflecting Wu's intention to retract his prior agreement to the stipulated Preliminary Injunction Order. Accordingly, in response to Wu's motions to amend, the Court required Gore to prove that it was entitled to a preliminary injunction. Following argument, the Court granted Gore's proposed preliminary injunction order on May 5, 2005 (the "Revised Preliminary Injunction Order"), thereby denying Wu's motions to amend.

Wu moved for reargument on June 1, 2005. On August 9, the Court heard argument on several pending motions in this case, including Wu's motion for reargument.

II. ANALYSIS

The standard applicable to a motion for reargument is well settled. To obtain reargument, "the moving party [must] demonstrate that the Court's decision was predicated upon a misunderstanding of a material fact or a misapplication of the law."⁴ In addition to the requirement that there be a misapprehension of fact or law, that misapprehension must be such that "the outcome of the decision would be affected."⁵

⁴ *Goldman v. Pogo.com Inc.*, 2002 WL 1824910, at *1 (Del. Ch. July 16, 2002).

⁵ *Stein v. Orloff*, 1985 WL 21136, at *2 (Del. Ch. Sept. 26, 1985).

Reargument under Court of Chancery Rule 59(f) is only available to re-examine the existing record; therefore, new evidence generally will not be considered on a Rule 59(f) motion.⁶ Further, a motion for reargument will not be granted when a party merely restates its prior arguments.⁷

A. The Court Did Not Misapprehend The Facts

In his motion, Wu alleges a laundry list of facts that he believes the Court misapprehended. In some cases, Wu merely restates arguments previously rejected; in other cases, he relies on facts that have little or no bearing on the Court's decision to grant a preliminary injunction. Regardless, I address below the primary facts that Wu contends were misapprehended.

Several facts Wu relies upon in support of his Motion are merely restatements of prior arguments. These include Wu's assertion that Fulfill America worked on technology that SG3F, a joint venture between Gore and an entity in China, never worked on, and therefore Wu did not breach his covenant not to compete or misappropriate any trade secrets.⁸ I understood those allegations in Wu's motions to amend and found them unpersuasive. Additionally, Wu continues to assert that Dr. Jack Hegenbarth told Wu

⁶ *Miles, Inc. v. Cookson America, Inc.*, 677 A.2d 505, 506 (Del. Ch. 1995) (citing *Maldonado v. Flynn*, 1980 WL 272822 (Del. Ch. July 7, 1980)).

⁷ *Id.*

⁸ Mot. of Def. Huey-Shen Wu to Amend Prelim. Inj. Order and to Declare Non-Compete Clause as Unenforceable at 16.

and other Gore employees that the Tetrafluoroethylene Polymers Confidentiality and Non-Competition Agreement (“TFE Agreement”) would be unenforceable.⁹ The Court also understood and addressed that allegation in connection with the motions to amend.¹⁰

Wu also asserts a number of facts that are irrelevant to his challenge to the Preliminary Injunction Order. These arguments include Wu’s claim that only SG3F, and not Gore, has the right to manufacture and sell certain fluoropolymers despite SG3F being a Gore joint venture. The TFE Agreements between Gore and Wu prohibited Wu from participating in any business that manufactures PTFE or other polymers containing TFE. Therefore, regardless of whether SG3F or Gore or both had the right to manufacture or sell certain fluoropolymers, Gore has established a likelihood of success on the merits of its claim simply by demonstrating Wu’s involvement with the work on such fluoropolymers.

Wu further claims that “the Court should reject Gore’s claims regarding [the] Chenguang matter” because “SG3F has never investigated production feasibility on any

⁹ Mot. of Def. Huey-Shen Wu for Prelim. Inj. Order Rearg. at ¶ 8 (“Mot. for Rearg.”).

¹⁰ See Tr. Apr. 29, 2005 Argument at 26 (“This evidence, together with the fact that Doctor Wu was paid \$400 per year as consideration for signing the TFE agreement, lead[s] me to conclude that Dr. Wu is not likely to succeed in proving that the TFE [Agreement] is unenforceable based on the statements of Doctor Hegenbarth.”). Wu reiterated the same contention at the August 9 Argument and the Court restated its disagreement with it. Tr. Aug. 9, 2005 Argument at 49.

proposed Fluoropolymers by Fountain Changuang joint venture.”¹¹ Again, Wu contracted with Gore to refrain from working with PTFE or other polymers containing TFE other than as an employee of Gore. It is not necessary that Gore or one of its affiliates manufacture a particular fluoropolymer. Moreover, the Court placed little, if any, reliance on Gore’s allegations regarding Chenguang in determining to continue the preliminary injunction against Wu.¹²

I also find immaterial Wu’s explanations of when he asserted his Fifth Amendment rights. The Court did not rely on whether or when Wu asserted his Fifth Amendment rights in resolving his motions to amend the preliminary injunction.

Wu submitted with his motion a letter purportedly from the Juhua Group Co. in China, denying that it purchased any technology from Fulfill America or Fountain. While the authenticity of that letter is open to question, a Rule 59(f) motion is not a proper vehicle for introducing new evidence. Even if it were, the Juhua letter provides no basis for altering this Court’s decision to enter the Preliminary Injunction Order.

B. The Court Did Not Misapply The Law

Wu also contends that the Court misapplied the law in granting the preliminary injunction. He claims that the injunction is too broad under *Monovis v. Aquino*.¹³ Wu

¹¹ Mot. for Rearg. at ¶ 3.

¹² Tr. Aug. 9, 2005 Argument at 44-45.

¹³ 905 F. Supp. 1205 (W.D.N.Y. 1994).

further argues that the subject matter that he is enjoined from working on is vague and ambiguous and that he cannot remember everything he has worked on during 15 years of employment at Gore.¹⁴

The Court understood and rejected the legal arguments Wu now reiterates challenging the scope of the injunction based on what he contends is in the public domain. Wu first made this argument in his September 1, 2004 motion to amend.¹⁵ Furthermore, as the Court explained in the August 9, 2005 argument, the cases relied upon by Wu are inapplicable because this litigation involves allegations of both misappropriation of trade secrets and breach of a noncompetition agreement.¹⁶

Lastly, Wu claims that the broad language of the preliminary injunction and the lack of additional guidance from Gore leaves Wu unable to find suitable employment. At the August 9 Argument, the Court expressed concern that Gore has not produced a list of TFE polymers and fluoropolymers that Wu worked on during his employment at Gore.¹⁷ Gore has yet to produce a list of this type.

¹⁴ Mot. for Rearg. at 7.

¹⁵ Mot. of Def. Huey-Shen Wu to Amend Prelim. Inj. Order Pursuant to Court of Chancery Order ¶¶ 1-7

¹⁶ Tr. Aug. 9, 2005 Argument at 59.

¹⁷ “I think that was one point you [Wu] made in your papers that had some resonance with me I don’t like the situation where there’s no way to know – if you’re sitting there and you are Dr. Wu and you’re deciding can I go work at this company and you are precluded from working on any TFE polymer he ever

During Wu's employment at Gore, Wu may have worked on or with hundreds, if not thousands, of fluoropolymers. He cannot be expected to remember everything that he has worked on during that time period. Accordingly, Gore is hereby directed to file with the Court a list of the fluoropolymers it believes are included under paragraph 2 of the Revised Preliminary Injunction Order granted on May 5, 2005.¹⁸ The list should be filed under seal no later than November 30, 2005 and include all TFE containing polymers and other fluoropolymers that Dr. Wu worked on during his employment with Gore that Gore believes should be subject to the injunction. The parties are to confer to resolve any other confidentiality issues that may arise regarding the list. After reviewing Gore's list of fluoropolymers, the Court will make that list, subject to any modifications that may be appropriate, Exhibit A to the Revised Preliminary Injunction Order and revise paragraph 2 of the Order to insert the following language at the end of that paragraph: "that are identified in confidential Exhibit A attached hereto."

This directive does not limit the scope of paragraph 1 of the Revised Preliminary Injunction Order. Wu is under an obligation not to disclose any trade secrets he became aware of during his employment at Gore, regardless of whether they are included in the list to be submitted by November 30.

worked [on] at Gore, he doesn't remember every single one he worked on. And I'm sure Gore is not willing to take his list of the ones he remembers, but I have no list from Gore." *Id.*

¹⁸ Revised Prelim. Inj. Order, May 5, 2005 at ¶ 2.

III. CONCLUSION

For the foregoing reasons, Wu's motion for reargument is denied, except with respect to the modification of paragraph 2 of the Revised Preliminary Injunction Order described above.

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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