Third District Court of Appeal

State of Florida

Opinion filed October 7, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1339
Lower Tribunal No. 17-26920

Poet Theatricals Marine, LLC, et al.,
Appellants,

vs.

Celebrity Cruises, Inc.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, William Thomas, Judge.

Kramer, Green, Zuckerman, Greene & Buchsbaum, P.A., and Gray Proctor (Hollywood); Mintz Truppman, P.A., and Mark Mintz, for appellants.

Holland & Knight, LLP, Sanford L. Bohrer, Scott D. Ponce and Benjamin A. Taormina, for appellee.

Before FERNANDEZ, HENDON, and LOBREE, JJ.

FERNANDEZ, J.

Poet Theatricals Marine, LLC, ("Poet") appeals the trial court's final order dismissing Poet's complaint, alleging trade secret misappropriation against Celebrity Cruises, Inc., ("Celebrity"), for failure to state a cause of action. Upon a thorough review of the complaint, we reverse the trial court's order and remand for the trial court to reinstate the lawsuit.

Final orders granting a motion to dismiss for failure to state a cause of action are reviewed *de novo*. Locker v. United Pharm. Group, Inc., 46 So. 3d 1126, 1128 (Fla. 1st DCA 2010). "[O]n a motion to dismiss [a claim for trade secret misappropriation], the movant must present 'clear authority' that the information a plaintiff identifies is not protected." Allegiance Healthcare Corp. v. Coleman, 232 F. Supp. 2d 1329, 1335 (S.D. Fla. 2002). Celebrity has failed to present clear authority on which this Court can find that the information that Poet identified was not protected. Further, upon review of the Second Amended Complaint, we find that Poet sufficiently stated a cause of action upon which relief can be granted under the Florida Uniform Trade Secrets Act ("FUTSA")[1].

[1] Florida Uniform Trade Secrets Act, sections 688.001-.002, Florida Statutes (2020):

(2) "Misappropriation" means:
(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; or

To successfully state a cause of action under FUTSA, a plaintiff must allege that: "(1) the plaintiff possessed secret information[, (2)] took reasonable steps to protect its secrecy[, and (3)] the secret it possessed was misappropriated, either by one who knew or had reason to know that the secret was improperly obtained or by one who used improper means to obtain it." Del Monte Fresh Produce Co. v. Dole Food Co., Inc., 136 F. Supp. 2d 1271, 1291 (S.D. Fla. 2001). Poet's complaint satisfies all three elements by alleging that Poet owned trade secrets regarding a valuable proprietary training system and a digital tracking system used in aerial acrobatics entertainment aboard cruise ships, which it protected through password-protection and confidentiality agreements. The complaint additionally provides that

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> 2. At the time of disclosure or use, knew or had reason to know that her or his knowledge of the trade secret was:
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> a. Derived from or through a person who had utilized improper means to acquire it;
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> b. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
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> c. 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 her or 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.
>
> . . .
>
> (4) "Trade secret" means information, including 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.

Celebrity, which knew of the proprietary nature of the technology through signing such confidentiality agreements, misappropriated the systems in order to start a competing business of its own apart from Poet.

Poet described the trade secrets with sufficient or reasonable particularity to avoid dismissal. Treco Intern. S.A. v. Kromka, 706 F. Supp. 2d 1283, 1285 (S.D. Fla. 2010) ("[A] party proceeding under FUTSA need only describe the misappropriated trade secrets with 'reasonable particularity.' Moreover, '[w]hether a particular type of information constitutes a trade secret is a question of fact.'" (internal citations omitted)). Specifically, Poet has satisfied this burden by identifying its trade secrets as follows: (1) "proprietary digital and tracking and management systems over the operation and functioning of equipment used in the shows," and (2) a "unique training system that enabled a cruise line to hire non[-]acrobatic performers (dancers) who would be trained to perform as skilled aerialists/acrobats in a fraction of the time typically required for acquiring such skills, all while maintaining a high level of safety of the performers, staff, and passengers." Additionally, Poet alleged that the economic value of the systems stems from the fact that the technology is not known to others in the business. Poet claims that it intended to promote the systems to other cruise lines after the expiration of its contracts with Celebrity. After comparing Poet's trade secret descriptions with approved trade secret descriptions from analogous cases, we find that Poet's trade

secrets were described with reasonable particularity to avoid dismissal. See DynCorp Int 'l v. AAR Airlift Group, Inc., 664 Fed. Appx. 844, 849 (11th Cir. 2016) ("[F]inancial and technical data, but specifically identified financial and technical data related to DynCorp's pre-existing WASS contract, including personnel lists, salary and pay differentials, and pricing data related to staffing and business operations . . . ."); Disability Law Claims, P.A. v. IM Solutions, LLC, 2014 WL 12589140 at *3 (S.D. Fla. Sept. 5, 2014) ("'[A] confidential and proprietary system' that creates leads in the SSD industry and 'provides a competitive advantage' which 'generate[s] a premium marketplace price' . . . ."); Am. Registry, LLC v. Hanaw, 2014 WL 12606501, at *1 (M.D. Fla. July 16, 2014) ("[I]ts business plan; customer lists; system architecture; financial data; profits and profit margins; statistical history with its customers and vendors; computer programs and software concerning its entire business operations; research and development information related to its customers and products offered for sale; information about its strategic partners and relationships with them; and data and information on its employees, independent contractors, and third party vendors . . . ."); Treco Intern. S.A., 706 F. Supp. 2d at 1286 ("(1) [C]onfidential information on the development, structure and marketing of the xMax network; (2) the timing of the xMax network's commercial deployment; (3) technical information about the feasibility of the xMax network obtained through a highly confidential and high-level due diligence report and through discussions

with xG researcher and development and engineering personnel . . . ." (internal citations omitted)).

Secondly, Poet sufficiently showed that it took reasonable steps to protect its secrets. Poet made reasonable efforts to safeguard its systems through confidentiality agreements and through password protection as is evidenced by the four-corners of the complaint. Del Monte Fresh Produce Co., 136 F. Supp. 2d at 1291.

Lastly, as to Celebrity's misappropriation of trade secrets, Poet claims that misappropriation is evidenced by: (1) Celebrity using similar language to advertise to actors who do not need prior acrobatic experience; (2) Celebrity using photos from Poet's shows to advertise for its new show; and (3) Celebrity setting up its studio in a similar way to Poet's training and rehearsal studio. Celebrity claims that it is an unwarranted deduction to say that only Poet can teach professional dancers to do aerial work and thereby was necessarily using Poet's trade secrets. Celebrity asserts that it is simply too wide of a gap to bridge based on similarities in audition posting. However, Poet's allegations of misappropriation must not be divorced from the context of Celebrity bringing its entertainment in-house after years of contracting with Poet to provide allegedly similar entertainment. Celebrity was fully aware of the efforts Poet made to keep its information confidential through contract and through password protection but proceeded anyway. Therefore, Poet's claims of misappropriation aren't simply "unwarranted deductions" when provided in context.

Accordingly, Poet's complaint sufficiently met all three elements required to state a cause of action under FUTSA by sufficiently identifying trade secrets, showing evidence that Poet sought to protect those secrets, and alleging Celebrity's misappropriation of those trade secrets. Therefore, upon review of the record, we reverse the trial court's order dismissing the complaint and remand for the case to be reinstated.

Reversed and remanded with instructions.