

IN THE COURT OF APPEALS OF IOWA

No. 9-945 / 09-0771
Filed December 17, 2009

O.M.J.C. SIGNAL, INC.,
Plaintiff-Appellee,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,
Defendant,

and

HORIZON SIGNAL TECHNOLOGIES,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, William J. Pattinson,
Judge.

On interlocutory appeal, Horizon Signal Technologies contends the district
court erred in denying its motion for an injunction. **AFFIRMED.**

Lisa R. Perdue of Grefe & Sideny, P.L.C., Des Moines, for appellant
Horizon Signal Technologies.

Robert W. Goodwin of Goodwin Law Office, P.C., Ames, for appellee
O.M.J.C. Signal, Inc.

Thomas J. Miller, Attorney General, and Richard E. Mull, Assistant
Attorney General, for Iowa Department of Transportation.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MAHAN, S.J.

On interlocutory appeal, Horizon Signal Technologies (Horizon) contends the district court erred in denying their request to enjoin the Iowa Department of Transportation (IDOT) from releasing to O.M.J.C. Signal, Inc. (O.M.J.C.) redacted test results regarding an electronic traffic signal it manufactures. It claims the report is a confidential public record under Iowa Code chapter 22 (2007). We review this claim de novo. Iowa R. App. P. 6.907 (2009).

O.M.J.C. and Horizon are competing manufacturers of temporary traffic signals. O.M.J.C. filed a petition for declaratory judgment asking the court to determine whether the IDOT was requiring Horizon to comply with federal regulations regarding the temporary traffic signals it provides the IDOT. As part of its discovery, O.M.J.C. sought copies of all reports of tests conducted on Horizon's products by MET Laboratories.¹ Horizon filed a motion to enjoin the production of the documents. In its ruling, the district court determined the test report generated by MET Laboratories is not a confidential record pursuant to section 22.7 and ordered Horizon to provide a copy of the redacted report to O.M.J.C. It is from this ruling Horizon appeals.

Generally, every person has the right to examine and copy the records of, or belonging to, the State.² Iowa Code §§ 22.1(3), .2(1). However, certain of these public records are required to be kept confidential. *Id.* § 22.7. Horizon asserts the district court's ruling was in error because the report is confidential as

¹ This report was commissioned by the IDOT and the IDOT possesses a full copy of the report.

² There is no dispute as to whether the report is a "public record" as defined in section 22.1(3).

a trade secret recognized and protected as such by law, *id.* § 22.7(3), and as a report to a governmental agency that, if released, would give its competitor an advantage and serve no public purpose. *Id.* § 22.7(6). Horizon bears the burden of demonstrating the report falls within one of these exemptions. See *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 45 (Iowa 1999).

We first address Horizon's claim that the report would reveal a trade secret recognized and protected as such by law. Iowa Code section 550.2(4) provides the legal definition of a "trade secret."

"Trade secret" means information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process that is both of the following:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use.
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Iowa Code § 550.2(4).

In support of its motion for an injunction, Horizon provided the affidavit of David Krahoulec, its vice president/chief operating officer. In contrast, O.M.J.C. provided the affidavit of Keith Niehaus, its vice president, which indicates the federal requirements placed on the temporary traffic control industry require standardized equipment be used. The district court found and ruled in part as follows:

First, the affidavit Horizon provided to supplement its motion for injunctive relief, that of David Krahoulec, did little more than parrot the language of Iowa Code section 550.2(4). Horizon provided nothing to support the notion that its temporary traffic signal was made NEMA TS1 compliant through the use of some

program, device, method, technique, etc., that was not generally known or readily ascertainable.

Instead, copies of the pertinent NEMA TS1 standards and an affidavit provided by O.M.J.C. appear to indicate that a temporary traffic signal, at least insofar as a conflict monitor system is concerned, requires the incorporation of a specific type of connector and a specific piece of electronic gear that have been standardized throughout the industry. Because of such I do not believe that a trade secret, in the legal sense of the term, is involved here.

Additionally, my personal *in camera* inspection of the questioned document convinced me that there was little, if any, technical information in the report relating to the machine's composition, as opposed to the machine's basic test results obtained by MET Laboratories. As such, I fail to see how disclosure of this public record will economically benefit O.M.J.C. or any other industry competitor.

The bottom line here is that the report in question is not a public record whose confidentiality must be maintained pursuant to Iowa Code section 22.7(3).

I reached the same conclusion after analyzing whether Iowa Code section 22.7(6) shielded the subject report from disclosure.

"Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose" must remain confidential as per Iowa Code Section 22.7(6). *Id.* Once again, Horizon had the burden of proof on this issue. See *Northeast Council on Substance Abuse v. Iowa Dep't of Public Health*, 513 N.W.2d at 760.

Much of the discussion pertaining to the trade secret exclusion is applicable to this issue as well. Specifically, a temporary traffic signal of the type involved here can only be NEMA TS1 compliant if it has specific parts and components. Nothing has been advanced to show that a temporary traffic signal can meet the Iowa Department of Transportation's development specifications concerning conflict monitors in some alternative fashion, or by using some other device or protocol. Either Horizon's device has the compliance-necessary and industry-standardized components, or it does not. The answer to that proposition will not provide O.M.J.C. or other competitor any economic advantage.

Further, Horizon failed to support in any fashion the second requirement for confidentiality under Iowa Code section 22.7(6); i.e., that the disclosure would serve no public purpose.

Indeed, it would be very difficult to convince me that there is no public interest in ascertaining whether the temporary traffic signals manufactured by Horizon, O.M.J.C., or any other similar manufacturer comply with established safety standards. As noted

above, the absence of a functioning conflict monitor of the type specified by NEMA (National Electrical Manufacturers Association) could cause vehicles to collide head-on with resulting property damage at the very least and the vehicle's occupants' death, at the very worst.

In light of the evidence before us, we agree with the district court and conclude Horizon has failed in its burden of proving it has a trade secret that is not readily ascertainable to the rest of the temporary traffic light industry.

For the reasons already stated, we likewise conclude Horizon has failed to establish the report would give O.M.J.C. an advantage, a requirement to meet the exemption provided in section 22.7(6). Because Horizon has failed to demonstrate it meets an exception to the open records rule, O.M.J.C. is entitled to discovery of the MET Laboratories redacted report.

AFFIRMED.