

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2019 CA 0739

CAMSOFT DATA SYSTEMS, INC.

VERSUS

**SOUTHERN ELECTRONICS SUPPLY, INC.
AND ACTIVE SOLUTIONS, LLC**

Judgment Rendered: JUL 02 2019

**Appealed from the Nineteenth Judicial District Court
Parish of East Baton Rouge
State of Louisiana**

Case No. 582,741

The Honorable Janice Clark, Judge Presiding

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BEFORE: CRAIN, THERIOT and HOLDRIDGE, JJ.

THERIOT, J.

In this appeal, Dell, Inc. and Dell Marketing, L.P. (sometimes referred to collectively as “Dell”) seek review of the trial court’s judgment denying their Motion for Partial Summary Judgment on CamSoft’s Claim For Lost Business Value Damages. For the following reasons, we vacate the trial court’s judgment and remand this matter to the trial court for further proceedings.

FACTS AND PROCEDURAL HISTORY

The facts and procedural history are laid out in more detail in this court’s opinion in **CamSoft Data Systems, Inc. v. Southern Electronics Supply, Inc.**, 2019-0730 (La. App. 1st Cir. 7/2/19) (unpublished), which is also being issued this date.

Relevant hereto, CamSoft Data Systems, Inc. (“CamSoft”) seeks to recover “lost business value” damages under four distinct theories in four different markets: (1) the U.S. wireless mesh networking market; (2) the worldwide wireless mesh networking market; (3) the U.S. IP video surveillance market; and (4) the worldwide IP video surveillance market.

For its lost business value theories, CamSoft utilizes a valuation date of July 8, 2004, when, at a purported “secret meeting” among representatives from the City of New Orleans, Dell, Active Solutions, LLC, and Southern Electronics Supply, Inc., alleged misappropriation of CamSoft’s trade secrets related to the wireless video surveillance system took place. But for this alleged misconduct, CamSoft claims that it would have captured 10% of the U.S. and worldwide wireless mesh networking markets.

Dell filed a motion for partial summary judgment seeking dismissal of CamSoft’s claim for lost business value damages. After a hearing, the trial court signed a judgment on April 2, 2019, denying Dell’s motion for partial summary

judgment on the lost business value damages claim. From this judgment, Dell appeals pursuant to La. R.S. 51:135.¹

SUMMARY JUDGMENT AND THE STANDARD OF REVIEW

A motion for summary judgment is a procedural device used to avoid a full scale trial when there is no genuine issue of material fact. **M/V Resources LLC v. Louisiana Hardwood Products LLC**, 2016-0758, p. 8 (La. App. 1st Cir. 7/26/17), 225 So.3d 1104, 1109, writ denied, 2017-1748 (La. 12/5/17), 231 So.3d 624. A motion for summary judgment is properly granted if, after an opportunity for adequate discovery, the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(A)(3). The burden of proof rests with the mover. La. Code Civ. P. art. 966(D)(1). Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. **Id.** In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **M/V Resources LLC**, 2016-0758 at p. 9, 25 So.3d at 1109.

A fact is material if it potentially ensures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. A

¹ As set forth in La. R.S. 51:135, all interlocutory judgments in cases involving antitrust claims shall be appealable within five days and shall be heard and determined within twenty days after the appeal is lodged.

genuine issue of material fact is one to which reasonable persons could disagree. If reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. **Doyle v. Lonesome Development, Limited Liability Company**, 2017-0787, p. 6 (La. App. 1st Cir. 7/18/18), 254 So.3d 714, 718-19, writ denied, 2018-1369 (La. 11/14/18), 256 So.3d 291, quoting Jackson v. City of New Orleans, 2012-2742, pp. 5-6 (La. 1/28/14), 144 So.3d 876, 882, cert. denied, — U.S. —, 135 S.Ct. 197, 190 L.Ed.2d 130 (2014). Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. **Succession of Hickman v. State Through Board of Supervisors of Louisiana State University Agricultural and Mechanical College**, 2016-1069, p. 5 (La. App. 1st Cir. 4/12/17), 217 So.3d 1240, 1244.

Although summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. See Quality Environmental Processes, Inc. v. Energy Development Corporation, 2016-0171, p. 14 (La. App. 1st Cir. 4/12/17), 218 So.3d 1045, 1059.

DISCUSSION

Dell asserts that if some form of “business value” is a legally proper measure of damages to recover, CamSoft’s attempt to recover the full purported value of its business forecast in perpetuity is improper. See Achee v. National Tea Co., 95-2556, pp. 7-9 (La. App. 1st Cir. 12/20/96), 686 So.2d 121, 125.² Dell avers that

² In Achee, 95-2556 at pp. 8-9, 686 So.2d at 125, this court noted that business valuation methods must have flexibility:

Business valuations methods are not exact and are basically guides for buyers and sellers to use in an effort to determine what would be the fair market value for a given business. Given the dynamics of businesses and business practices, and factoring in circumstances that may be unique to the parties, an inflexible formula for determining loss of value would be impractical. Consequently, the trier of fact has much discretion in fixing the amount of damages due, and this

CamSoft’s “lost business value” claim is based on a hypothetical projection from the reports of what its cash flows could have been into perpetuity under a series of assumptions made by its experts, Chetan Sharma and Stephen Dell, about CamSoft’s future performance from July 9, 2004, through 2013, and beyond. Dell also argues that CamSoft’s attempt to recover “lost business value” is contrary to established law because CamSoft’s experts fail to tie the damages CamSoft seeks to the specific opportunities from which CamSoft alleges it was wrongfully excluded. Rather, Dell avers that CamSoft’s experts tie all damages to the defendants’ actions, without considering any other factors. See e.g., MCI Communications Corp. v. American Tel. and Tel. Co., 708 F.2d 1081, 1162 (7th Cir.), certs. denied, 464 U.S. 891, 104 S.Ct. 234, 78 L.Ed.2d 226 (1983) (“When a plaintiff improperly attributes all losses to a defendant’s illegal acts, despite the presence of significant other factors, the evidence does not permit a jury to make a reasonable and principled estimate of the amount of damage.”)

In our decision in **CamSoft Data Systems, Inc. v. Southern Electronics Supply, Inc.**, 2019-0736, 2019-0741, 2019-0742 (La. App. 1st Cir. 7/2/19) (unpublished), also being handed down this date, we vacated the trial court’s judgment denying Dell’s motion seeking to exclude CamSoft’s mobile wireless telecommunications industry expert, Chetan Sharma, and its damage expert, Stephen Dell, from testifying at trial given that the trial court failed to comply with the requirements of La. Code Civ. P. art. 1425(F)(4). In the instant motion for partial summary judgment, Dell, in essence, questions whether the methodologies utilized by Mr. Sharma to determine market share and by Mr. Dell to determine damages meet the requirements of the Louisiana Code of Evidence; **Daubert v. Merrell Dow Pharmaceuticals, Inc.**, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d

determination will not be disturbed on appeal unless there is an abuse of discretion. [Citation omitted.]

469 (1993); and **State v. Foret**, 628 So.2d 1116 (La. 1993). Because the basis for CamSoft's lost business value damages claim relies upon the methodologies utilized by Mr. Sharma and Mr. Dell, and because we have vacated the trial court's judgment regarding the admissibility of their testimony, we likewise vacate the trial court's denial of Dell's motion for partial summary judgment on the lost business value damages claim given that it is necessarily tied to whether CamSoft's experts can testify at trial. See e.g., Versata Software, Inc. v. SAP America, Inc., 717 F.3d 1255, 1264 (Fed. Cir. 2013), cert. denied, 571 U.S. 1164, 134 S.Ct. 1013, 187 L.Ed.2d 851 (2014) ("Under the guise of sufficiency of the evidence, SAP questions the admissibility of Versata's expert testimony and whether his damages model is properly tied to the facts of the case. Such questions should be resolved under the framework of the Federal Rules of Evidence and through a [**Daubert**] challenge.").

CONCLUSION

For the above and foregoing reasons, we vacate the trial court's April 2, 2019 judgment denying Dell's Motion for Partial Summary Judgment on CamSoft's Claim for Lost Business Value Damages. We remand this matter to the trial court to consider the merits of the referenced motion for partial summary judgment in connection with its analysis of the admissibility of the expert opinions of Chetan Sharma and Stephen Dell. All costs of this appeal shall be assessed equally to appellants, Dell, Inc. and Dell Marketing, L.P., and appellee, CamSoft Data Systems, Inc.

JUDGMENT VACATED; MATTER REMANDED.