

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2019 CA 0734

2019 CW 0507

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

**Michael T. Beckers
Brent P. Frederick
Danielle N. Goren
Tiffany T. Kopfinger
Baton Rouge, Louisiana**

**Counsel for Defendants/Appellants
MMR Constructors, Inc., MMR Group,
Inc. & MMR Offshore Services, Inc.**

**Jason L. Melancon
Robert C. Rimes
R. Lee Daquanno, Jr.
Frank Tomeny, III
Baton Rouge, Louisiana**

**Counsel for Plaintiff/Appellee
CamSoft Data Systems, Inc.**

**and
Marx D. Sterbcow
New Orleans, Louisiana
and
Mark D. Plaisance
Marcus J. Plaisance
Prairieville, Louisiana**

*Not
C.A.M., J. concurs*

**Karli Glascock Johnson
Vance A. Gibbs
Tara M. Madison
Baton Rouge, Louisiana
and
James C. Grant
Christopher A. Riley
Elizabeth Helmer
Michael P. Kenny
Atlanta, Georgia**

**Counsel for Defendants/Appellees
Dell, Inc. & Dell Marketing, L.P.**

**Gus A. Fritchie, III
New Orleans, Louisiana**

**Counsel for Defendant/Appellee
Continental Casualty Company**

**Christine Lipsey
Amanda Stout
Baton Rouge, Louisiana
and
Mark J. Chaney
New Orleans, Louisiana
and
Christopher H. Toll
Pro Hac Vice
Greenwood Village, Colorado**

**Counsel for Defendant/Appellee
Ciber, Inc.**

BEFORE: CRAIN, THERIOT, and HOLDRIDGE, JJ.

THERIOT, J.

In this appeal, MMR Constructors, Inc., MMR Group, Inc., and MMR Offshore Services, Inc. (sometimes referred to collectively as “MMR”) seek review of the trial court’s judgment denying their Motion for Partial Summary Judgment on Louisiana Uniform Trade Secrets Act. For the following reasons, we affirm the trial court’s judgment. We deny the companion writ application, as well as CamSoft Data Systems, Inc.’s (“CamSoft”) motion to strike, referred to this panel, as moot.

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 App. 1st Cir. 7/2/19) (unpublished), which is also being issued this date.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 filed a Master Petition for Declaratory Judgment, Supplemental Relief, Damages, and Attorney’s Fees, alleging that the defendants, including MMR, engaged in a conspiracy to steal, and did steal, its trade secrets in violation of the Louisiana Uniform Trade Secrets Act (“LUTSA”), La. R.S. 51:1431, *et seq.*

In response, MMR filed a motion for partial summary judgment seeking to dismiss these claims. After a hearing, the trial court signed a judgment on April 2, 2019, denying MMR’s Motion for Partial Summary Judgment on Louisiana Uniform Trade Secrets Act. From this judgment, MMR 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.**

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.

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. 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, 225 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 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

In its motion and on appeal, MMR argues that, in its reseller agreements with Tropos Networks, Inc. ("Tropos"), CamSoft contractually agreed to forego all intellectual property rights for trade secrets that "have anything to do with Tropos equipment." MMR asserts that all trade secrets claimed by CamSoft directly involve Tropos's wireless networking equipment; therefore, any intellectual rights in these systems belong to Tropos, not CamSoft.

In response, CamSoft argues that the Crime Camera System, sometimes referred to as CamSoft's "wireless Security Canopy system," incorporates products manufactured by several companies, not only Tropos. According to CamSoft, its agreements with FHP Wireless, Inc. ("FHP"), Tropos's predecessor, and Tropos do not preclude it from owning a trade secret comprised of a unique combination or equipment compilation that includes FHP/Tropos equipment as a component part. Instead, CamSoft contends that FHP/Tropos reserved intellectual property rights in and to its own products only. CamSoft urges that nothing in these agreements

precludes it from owning or claiming ownership to a “unique packaged system or equipment compilation trade secret.”

In its Master Petition, CamSoft described its trade secrets as:

...the compatibility of networking and camera equipment, the use of various equipment settings and features, the proper distances for transmitting the signals, the proper method of powering the devices, the proper arrangement of network nodes, the proper data backhaul routing methods for live video signals, the method of controlling public and private access to the wireless network, the design of custom software to access the Crime Camera System, marketing plans for governmental agency presentations, pricing information, and strategic business development plans.

In response to discovery requests, CamSoft identified and described five purported trade secrets:

(1) “Backend Authentication System for a Tropos Mesh Network.”

CamSoft described this purported trade secret as a customized authentication software system written to permit dual public and private use of the Tropos network.

(2) “Multi-Level Registration and Authentication System.” According to CamSoft, this computer program allowed municipal wireless users to register new accounts to log into the public/private municipal wireless network. The program enabled both private and public users to access the system and “permitted a single unitary networking system for simultaneous private and public safety purposes.”

(3) “Design of IP Based Surveillance Cameras and Multi-Purpose Muni-Wireless Network.” CamSoft refers to this trade secret as its “wireless Security Canopy system,” which, it appears the parties have also called the “Crime Camera System.” CamSoft provided substantial details regarding its efforts to develop the Crime Camera System in its discovery response.

(4) “Customized Web Based Mug Shots [sic] Database.” CamSoft developed a mugshot database program to promote the potential public safety features of the municipal wireless network.

(5) “Telemedicine Solution.” Using its prior municipal wireless network designs, CamSoft developed this “solution” to provide a wireless data communications network capable of relaying in-field medical information from ambulances to hospital doctors and staff.

For purposes of this appeal, the parties make no distinction between these trade secrets and, instead, discuss the trade secrets collectively. Therefore, we likewise make no distinction and refer to CamSoft’s purported trade secrets collectively as the “Crime Camera System.”

To succeed on a LUTSA claim, the plaintiff must establish: (1) the information at issue is a legally protected trade secret; (2) an express or implied contractual or confidential relationship existed between the parties which obligated the party receiving the secret information not to disclose it; and (3) the party receiving the secret information wrongfully disclosed the information to the injury of the plaintiff. **Bihm v. Deca Systems, Inc.**, 2016-0356, p. 20 (La. App. 1st Cir. 8/8/17), 226 So.3d 466, 483, citing **B & G Crane Service, L.L.C. v. Duvic**, 2005-1798, p. 4 (La. App. 1st Cir. 5/5/06), 935 So.2d 164, 167, writ denied, 2006-1820 (La. 10/27/06), 939 So.2d 1280.

LUTSA defines “trade secret” as:

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.

La. R.S. 51:1431(4).

MMR argues that whether CamSoft “can prove that it developed a trade secret using Tropos[’s] equipment is of no consequence because contractual provisions state that any such trade secrets belong to Tropos.”

To resolve the issue before the court, we must apply the general rules of contract interpretation. “Interpretation of a contract is the determination of the common intent of the parties.” La. Civ. Code art. 2045. When a contract can be construed from the four corners of the instrument without looking to extrinsic evidence, the question of contractual interpretation is answered as a matter of law. **Sims v. Mulhearn Funeral Home, Inc.**, 2007-0054, p. 10 (La. 5/22/07), 956 So.2d 583, 590. The reasonable intention of the parties to a contract is to be sought by examining the words of the contract itself and not assumed. **Prejean v. Guillory**, 2010-0740, pp. 6-7 (La. 7/2/10), 38 So.3d 274, 279 (per curiam). Common intent is determined in accordance with the general, ordinary, plain and popular meaning of the words used in the contract. **Prejean**, 2010-0740 at p. 7, 38 So.3d at 279. “When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties’ intent.” La. Civ. Code art. 2046. Accordingly, when a clause in a contract is clear and unambiguous, the letter of that clause should not be disregarded under the pretext of pursuing its spirit, as it is not the duty of the courts to bend the meaning of the words of a contract into harmony with a supposed reasonable intention of the parties. **Prejean**, 2010-0740 at p. 7, 38 So.3d at 279.

In 2002, CamSoft contracted with FHP to use and evaluate certain FHP products. The agreement, referred to as the “Head Start Evaluation Agreement,” defines “Products.” Although this section of the agreement contained in the record is illegible, it appears to reference “Exhibit A” to the agreement, which identifies “Products” as various antennas. Concerning intellectual property rights, the agreement provides:

5. **Ownership.** Company [CamSoft] acknowledges and agrees that FHP owns all right, title and interest (including without limitation all patents, copyrights, trade secrets or other proprietary rights) **in the FHP Product, and any modifications, corrections or enhancements thereto created**

after the Effective Date, whether or not made by FHP. Company further acknowledges that the FHP Product contains valuable trade secrets and confidential information of FHP, including but not limited to the specifications, functionality and performance thereof, and shall take all reasonable precautions to prevent any disclosure of such information except as expressly permitted in this Agreement. [Emphasis added.]

CamSoft and FHP entered a second agreement in 2002, a “Head Start Reseller Agreement.” CamSoft was granted a non-exclusive, non-transferable license to market and distribute certain FHP products, identified on Exhibit A to the agreement, to end customers in North America.² Exhibit A listed various pieces of equipment, primarily antennas. The Head Start Reseller Agreement provided:

7. **Property Rights.**

(a) **Intellectual Property Rights, Assignment.** FHP and the Reseller [CamSoft] acknowledge and agree that FHP owns all of the Proprietary Rights **to the Products**. The use by the Reseller of such Proprietary Rights is authorized only for the purposes herein set forth and upon termination of this Agreement for any reason, such authorization will cease. [Emphasis added.]

(b) **No Other Rights.** The Reseller may not, directly or through any person or entity, in any form or manner, copy, distribute, reproduce, incorporate, use or allow access to the Products or modify, prepare derivative works of, decompile, reverse engineer, disassemble or otherwise attempt to derive source code or object code from the Products, except as explicitly permitted under this Agreement or otherwise agreed in writing. The Reseller will take appropriate steps with the End Customers, as FHP may request, to inform them of and assure their compliance with the restrictions contained in this Agreement.

The agreement defines “**Proprietary Rights**” as:

all rights held by FHP **in the Products and its Confidential Information**, including, but not limited to, patents, copyrights, authors’ rights, trademarks, tradenames, know-how and trade secrets, irrespective of whether such rights arise under United States or international intellectual property, unfair competition or trade secret laws. [Emphasis added.]

² The agreement defines “**Product(s)**” as “the FHP products set forth on Exhibit A attached hereto, including the accompanying user documentation.”

“Confidential Information” is defined as:

all information provided by FHP to the Reseller under this Agreement which is marked to be confidential or verbally indicated as such prior to an oral/visual presentation, including without limitation, technical information not included in user documentation related to the Products, customer lists, marketing plans, financial information and the terms of this Agreement.

The final agreement between CamSoft and Tropos, the “Premier Reseller Agreement,” was entered in 2003. The Premier Reseller Agreement contains substantively identical provisions concerning proprietary rights as those contained in the Head Start Agreement.³ The Premier Reseller Agreement defines **“Product(s)”** as:

the Tropos products, including hardware products and machine-executable object code licensed by Tropos for use with the hardware (including any embedded microcode) (“Software”), as set forth on the Price List, including the accompanying user documentation.

The plain wording of these agreements reveals that FHP/Tropos reserved its intellectual property rights *to its products* only. MMR’s argument to the contrary conflicts with the clear and unambiguous language of the agreements. We agree with CamSoft that these contracts do not preclude CamSoft from obtaining trade secret protection of its Crime Camera System.

In accordance with these agreements, CamSoft does not claim trade secret protection in Tropos’s products or to any modification, correction, or enhancement to such products. Contrary to MMR’s assertion on appeal, the evidence before this court does not establish that the Crime Camera System is a “derivative work” of Tropos’s equipment. Rather, we find that genuine issues of material fact remain in this regard.

³ The provisions at issue differ only to the extent that “FHP” is replaced with “Tropos.”

The agreements between CamSoft and FHP/Tropos do not define “derivative works.” For purposes of the Copyright Act, 17 U.S.C.A. §101, *et seq.*, a “derivative work” is defined as:

a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work.”

Black’s Law Dictionary provides a similar definition and states, in part: “A copyrightable creation that is based on a preexisting product; a translation, musical arrangement, fictionalization, motion-picture version, abridgment, or any other recast or adapted form of an original work.” WORK, Black’s Law Dictionary (11th ed. 2019).

MMR offers nothing to establish that the Crime Camera System is simply a “derivative work” of Tropos’s equipment, and we conclude that genuine issues of material fact remain.⁴ It appears to this court, viewing the evidence in the light most favorable to CamSoft, that the Crime Camera System does not simply recast, transform, or adapt Tropos’s products. Instead, it appears from the summary judgment evidence that CamSoft’s purported trade secret(s) are a compilation of products manufactured by multiple companies, including Tropos, and includes CamSoft’s network design specifications and unique equipment configurations. According to CamSoft’s discovery responses, wherein it described its purported trade secret, “[t]he wireless video surveillance and multi-purpose network constituted a compilation of specific devices, including designs, methods and techniques for connecting same.” As noted above, compilations, programs, methods, techniques, and processes are “trade secrets” within the meaning of

⁴ Although we address MMR’s argument that the Crime Camera System is a “derivative work” for purposes of CamSoft’s claim under LUTSA, we do not find or rule, as a matter of law, that derivative works are included within the analysis of a LUTSA claim or are otherwise considered outside of copyright law.

LUTSA. See La. R.S. 51:1431(4). “[E]ven if all of the information is publicly available, a unique combination of that information which adds value to the information also may qualify as a trade secret.” **Rain CII Carbon, LLC v. Kurczy**, No. 12-2014 (E.D. La. 8/20/2012), 2012 WL 3577534, at *3, quoting **Penalty Kick Management Ltd. v. Coca Cola Co.**, 318 F.3d 1284, 1291 (11th Cir. 2003).

CONCLUSION

For the above and foregoing reasons, the April 2, 2019 judgment denying MMR Constructors, Inc., MMR Group, Inc., and MMR Offshore Services, Inc.’s Motion for Partial Summary Judgment on Louisiana’s Uniform Trade Secrets Act is affirmed. We deny the companion writ application, as well as CamSoft Data Systems, Inc.’s motion to strike, referred to this panel, as moot. Costs of this appeal are assessed against appellants, MMR Constructors, Inc., MMR Group, Inc., and MMR Offshore Services, Inc.

AFFIRMED; WRIT AND MOTION TO STRIKE DENIED AS MOOT.