

[Cite as *Alice's Home v. Childcraft Edn. Corp.*, 2010-Ohio-4121.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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| Alice's Home et al., | : | |
| | : | |
| Plaintiffs-Appellants/ [Cross-Appellees], | : | |
| | : | |
| v. | : | No. 09AP-299 |
| | : | (C.P.C. No. 05CVH-05-5417) |
| Childcraft Education Corporation, | : | |
| | : | (REGULAR CALENDAR) |
| Defendant-Appellee/ [Cross-Appellant]. | : | |

D E C I S I O N

Rendered on September 2, 2010

Law Offices of James P. Connors, and James P. Connors, for appellants/cross-appellees.

Thompson Hine LLP, Mark S. Floyd, Christopher R. Johnson, Jennifer S. Roach and Samir Dahman, for appellee/cross-appellant.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} The parties in this case are William Wedd ("Mr. Wedd"), in his capacity as sole proprietor of a business trading as Alice's Home; his wife Alice Wedd ("Mrs. Wedd"); and Childcraft Education Corporation ("Childcraft").

{¶2} Mr. and Mrs. Wedd started their company, Alice's Home, in 1992 to engage in the business of designing, developing, and selling children's learning materials. In 1995, Mrs. Wedd began work as an independent sales representative for Childcraft,

which also sold children's educational products. Mr. and Mrs. Wedd decided at that time that Mr. Wedd would continue to do business as Alice's Home, but would focus on items that did not conflict with Childcraft's extensive line of childhood educational products. Mrs. Wedd disassociated herself from the operation of Alice's Home after she began work with Childcraft, although both she and her husband continued to work from their home, albeit in separate home offices.

{¶3} Childcraft eventually expressed interest in selling an Alice's Home product known as the Extra Wide Language Easel. Alice's Home had designed and sold permutations of this easel, manufactured by various suppliers to Alice's Home specifications, for some time, but allowed Childcraft to place a version of it in its 1997 catalog. Alice's Home designated this easel sold through Childcraft as the Model A-116. Alice's Home and Childcraft initially entered into an exclusivity agreement governing the sale of the easel, under which Alice's Home supplied an exclusive model of the easel to Childcraft for resale. In 1998 Childcraft requested, and Alice's Home agreed to, a more comprehensive licensing agreement under which Childcraft would arrange for manufacture of the easel, relieving Alice's Home of this burden, and simply pay royalties to Alice's Home.

{¶4} Meanwhile, Mrs. Wedd continued to work as an independent sales representative under contract with Childcraft. Mr. and Mrs. Wedd eventually noticed that the Childcraft catalog for 2002 sold easel products comparable to the Model A-116 Extra Wide Language Easel that Childcraft sold under license with Alice's Home. Although concerned that sales of the comparable easel products would cut into Childcraft's sales of the Extra Wide Language Easel, the Wedds took no immediate action and Mrs. Wedd

continued to work for Childcraft. Alice's Home also continued to sell comparable, but not identical, extra wide easels. At no time did the Wedds personally or Alice's Home seek any type of patent or other intellectual property protection for the design or features embodied in their easel line.

{¶5} In May of 2003, the relationship between the Wedds and Childcraft collapsed in several respects. Mrs. Wedd, who was working under a new supervisor whom she disliked, was terminated on May 15, 2003 as a contracting independent salesperson. Shortly thereafter, legal counsel for Childcraft sent Mr. Wedd a letter threatening legal action and demanding that Alice's Home cease and desist from selling any Extra Wide Language Easels comparable to the licensed product sold by Childcraft. Mr. Wedd responded with a demand that Childcraft itself stop selling easels that he thought were "knockoffs" of the Model A-116 easel licensed by Alice's Home to Childcraft. Neither party followed through on the threats.

{¶6} Childcraft's 2004 catalog contained, along side the Model A-116 easel, a new competing product that was essentially identical but obtained from another supplier. Royalties from the Model A-116 further declined and Alice's Home eventually ceased business.

{¶7} Mrs. Wedd and Alice's Home filed their first amended complaint in the Franklin County Court of Common Pleas stating claims for misappropriation of trade secrets, unjust enrichment, unfair competition, and breach of contract. Mrs. Wedd included an additional claim for wrongful discharge. Childcraft responded with counterclaims for breach of contract, breach of duty of loyalty, and unjust enrichment.

{¶8} The trial court referred the matter to a magistrate who presided over a jury trial. After Alice's Home and Mrs. Wedd presented their case-in-chief, the magistrate granted Childcraft's motion for directed verdict on their claims for misappropriation of trade secrets, unjust enrichment, and unfair competition. The magistrate did not grant directed verdict on Alice's Home's breach of contract claim, and together with Mrs. Wedd's claim for wrongful discharge this went to the jury.

{¶9} Conversely, the magistrate granted directed verdict in favor of Alice's Home and Mrs. Wedd on Childcraft's counterclaim for unjust enrichment and in favor of Alice's Home on Childcraft's counterclaim for breach of contract.

{¶10} The jury returned a verdict in favor of Childcraft on its remaining claim for breach of duty of loyalty against Mrs. Wedd, but awarded no damages. The jury also found in favor of Childcraft on Mrs. Wedd's claim for wrongful discharge. Finally, the jury rendered a verdict in favor of Alice's Home on its claim for breach of contract against Childcraft and awarded damages in the amount of \$3,951.60.

{¶11} Alice's Home and Mrs. Wedd moved for a new trial on various grounds. The trial court denied the motion. Childcraft thereafter moved for an award of attorney fees under R.C. 1333.64, allowing an award of fees incurred in defending a trade secret claim. The trial court denied this motion as well.

{¶12} Alice's Home and Mrs. Wedd have appealed bringing the following assignments of error:

1. The magistrate, while acting as the trial judge, erred by granting directed verdicts on the plaintiffs' claims for trade secret violations, unjust enrichment, and unfair competition.
2. The magistrate, while acting as the trial judge, erred by denying the plaintiffs' motion for a new trial.

{¶13} Childcraft has cross-appealed and brings the following sole assignment of error:

Assignment of Error Number 1: The trial court committed reversible error by denying Childcraft Education Corporation's Motion for Attorneys' Fees and failing to award Childcraft its attorneys' fees, costs, and expenses in successfully defending the bad faith claim for misappropriation of trade secrets brought by Appellants/Cross-Appellees Alice Wedd and Alice's Home a/k/a William Wedd.

{¶14} The first assignment of error brought by Alice's Home and Mrs. Wedd addresses the grant of a directed verdict in favor of Childcraft on their claims for misappropriation of trade secrets, unjust enrichment, and unfair competition. The magistrate's oral decision granting this directed verdict set forth two grounds for the ruling. First, the magistrate found that, based on the evidence presented, the Extra Wide Language Easel and its component features could not be trade secrets because all aspects of the item were readily ascertainable by casual observation and the easel could easily be "reversed-engineered." The magistrate also found that the license agreement between the parties governed their business relationship, and the sole basis of recovery would be found within the terms of that contract, rather than by resorting to quasi-contractual remedies such as unjust enrichment. The magistrate also found that the license agreement permitted most of the conduct by Childcraft that Alice's Home asserted would constitute unfair competition, and that there was nothing to support an unfair competition claim based on malicious litigation purportedly undertaken by Childcraft.

{¶15} A motion for directed verdict should be granted where the movant is entitled to judgment as a matter of law when the evidence is construed most strongly in favor of the non-moving party. *Sanek v. Duracote Corp.* (1989), 43 Ohio St.3d 169, 172. The

motion must be denied when reasonable minds could reach differing conclusions on that evidence. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282. On review, we applied the same standard de novo. *McConnell v. Hunt Sports Ent.* (1999), 132 Ohio App.3d 657, 687.

{¶16} With respect to the trade secret claim, Alice's Home argues that the magistrate erred in granting directed verdict on the basis of a contractual agreement between the parties because the trade secret claim did not solely involve the Model A-116 easel that was the subject of the 1998 license agreement, but dissemination and disclosure of proprietary information in 1996 through 1998, when the parties operated under an exclusivity agreement. Alice's Home also argues that, even if the Model A-116 easel could be "reversed-engineered" and its characteristics were open and obvious, it was still a question for the jury whether such reverse-engineering was possible and whether the information embodied in the design of the Model A-116 easel constituted a trade secret.

{¶17} For purposes of this case, the definition of a "trade secret" is found in R.C. 1333.61(D), the definitional section of Ohio's adopted version of the Uniformed Trade Secrets Act:

"Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

(1) It 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.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

{¶18} Alice's Home never fully articulated, either at trial or in its brief before this court, precisely what aspects of the Model A-116 easel, either in design, material, or function, constituted a protectable trade secret. It is undisputed that Alice's Home never took formal steps, either through patent application or any contractual agreement outside of the exclusivity and license agreements with Childcraft, to protect its easel design. Moreover, the essential construction specifications and aspects of the Model A-116 easel were widely publicized in Alice's Home's catalog and brochures; this included the principal attributes identified by Mr. Wedd in his testimony: the existence of a shelf on the bottom of the easel, the easel's dimensions, the quality and type of materials used in the easel (especially the use of durable porcelain-on-steel for the writing surface rather than glossy melamine over composition board), and the various proposed uses in the educational context. Significantly, Mr. Wedd testified in his deposition that the process by which the easel was made and assembled, either by his own contracted manufacturers or those employed by Childcraft, was not a trade secret. (Wedd deposition, R. 324 at 134.)

{¶19} R.C. 1333.61(D) presents two conjunctive requirements to be satisfied if information is to be deemed a trade secret: The information must be not "readily ascertainable by proper means by, other persons who can obtain economic value from a disclosure or use," *and* it must be subject of reasonable efforts to maintain its secrecy. Nothing in the record suggest that anything in the Model A-116 design or construction was not readily ascertainable by proper means, or from a casual reading of Alice's Home's own marketing materials. Although Mrs. Wedd did present testimony regarding her attempts to safeguard the drawings under which her various easels were produced,

the statute, as stated above, presents a conjunctive requirement. Any reasonable attempt by Alice's Home to reasonably maintain the secrecy of the design is irrelevant when the nature of the design and materials are readily examinable, as was the case here. We need not even consider the fact that comparable easels, according to Childcraft's testimony, have been marketed by other companies since well before the parties entered into their relationship in 1996; even if the Model A-116 easel was utterly unique, this would not, in the absence of any formal intellectual property protection or agreement between the parties regarding use of the design, elevate the Model A-116 design to the level of a trade secret. See, e.g., *Hildreth Mfg., L.L.C. v. Semco, Inc.*, 151 Ohio App.3d 693, 2003-Ohio-741, ¶35, *R & R Plastics, Inc. v. F.E. Myers Co.* (1993), 92 Ohio App.3d 789, 801.

{¶20} With respect to its unjust enrichment claim, Alice's Home argues that the magistrate incorrectly concluded that this claim was barred by the existence of a license agreement between the parties that governed their commercial relationship and precluded resort to equity. The elements constituting a claim for unjust enrichment under Ohio law are (1) a benefit conferred by a plaintiff upon a defendant, (2) knowledge by the defendant of the benefits, and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *Hambleton v. R.G. Barry Corp.* (1984), 12 Ohio St.3d 179, 183.

{¶21} Alice's Home's complaint asserted the unjust enrichment claim on the basis that Childcraft's "retention of the benefits obtained by converting Alice's Home's confidential business and product information is unfair and unjust." (Complaint, R. 27 at ¶39.) As such, the unjust enrichment claim is, in this case, a restatement of the trade

secret misappropriation claim, based upon the same operative facts and therefore subject to directed verdict on the same grounds. While we do not agree with the magistrate's partial reliance on the premise that the existence of a contract between the parties precluded any remedy in quasi-contract under all circumstances, since the object of the equitable claim might fall outside the scope of the contractual provisions and thus that aspect of the parties relations governed by the contract, we do find that the court properly granted directed verdict on this claim because the unjust enrichment claim simply cannot survive without a showing of an underlying misappropriation of trade secrets. We therefore find that the trial court did not err in directing verdict against Alice's Home's unjust enrichment claim.

{¶22} In accordance with the foregoing, Appellants Alice's Home and Mrs. Wedd's first assignment of error is overruled.

{¶23} Appellants' second assignment of error asserts that the trial court erred by denying a new trial. Appellants' sole argument supporting this assignment of error is a brief assertion that the error in granting a directed verdict on some claims in favor of Childcraft warrants a new trial on the merits. Having found no error in granting a directed verdict, and having before us no other argument asserting the need for a new trial, Alice's Home and Alice Wedd's second assignment of error is overruled.

{¶24} We now turn to Childcraft's assignment on cross-appeal, which asserts the trial court erred in denying Childcraft's motion for an award of attorney's fees incurred in defending the action.

{¶25} Childcraft moved for fees under R.C. 1333.64, which provides an award for reasonable attorney fees to a prevailing party if a claim of misappropriation of trade

secrets is made in bad faith or willful misappropriation exists. R.C. 1333.64(A) and (C). Childcraft argued that the misappropriation of trade secrets claim brought by Alice's Home was vexatious and frivolous and the action was pursued in bad faith. The trial court denied fees, finding there was no indication in the present case of objective speciousness of the misappropriation claim or subjective bad faith in bringing or maintaining the claim.

{¶26} This court recently rejected the narrower "objectively specious" standard, *Am. Chem. Soc. v. Leadscope*, 10th Dist. No. 08AP-1026, 2010-Ohio-2725, as a predicate for an award of fees under this statute. Even applying the more all-encompassing standard of simple bad faith, we find that the circumstances in this case do not support an award of fees. We review a trial court's award of fees under R.C. 1333.64(A) under an abuse of discretion standard. *Becker Equip., Inc. v. Flynn*, 12th Dist. No. CA2002-12-313, 2004-Ohio-1190. We accordingly defer to the trial court's superior knowledge of the development and conduct of litigation in this case, noting that the trial court in this case initially denied summary judgment in favor of Childcraft on the misappropriation of trade secrets claim, and that the matter proceeded through extensive discovery and even presentation of Alice's Home's case-in-chief on a misappropriation claim.

{¶27} The term "abuse of discretion" connotes more than a mere error of law or judgment, but rather a decision by the trial court that evinces an attitude that is unreasonable, arbitrary, or unconscionable. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87. The record in the present case does not support such a finding. The lengthy commercial history between the parties necessarily entailed considerable factual

development as the case proceeded, and although the matter was ultimately decided by directed verdict, this does not mandate the conclusion of the matter was fundamentally untenable from the outset. Childcraft can not impose the superior clarity of appellate hindsight in preference to the trial court's contemporary view of the matter in order to mandate an award of fees.

{¶28} We accordingly find the trial court did not abuse its discretion in declining to award fees under R.C. 1333.64(A) and Childcraft's assignment of error is overruled.

{¶29} In accordance with the foregoing, Alice's Home and Mrs. Wedd's first and second assignments of error are overruled. Childcraft's sole assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed in its entirety.

Judgment affirmed.

BROWN and McGRATH, JJ., concur.
