

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**EVENT SOLUTIONS
INTERNATIONAL, INC.,
Plaintiff,**

v.

**Case No. 18-167949-CB
Hon. James M. Alexander**

**TAULBEE & THOMPSON, LLC,
ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITIONS

This matter is before the Court on Defendants' Motions for Summary Disposition.

According to Plaintiff's Complaint, Plaintiff is in the business of providing service to the automobile industry to facilitate positive automobile experiences to generate favorable reviews from the media, opinion-makers, VIPs, and other industry influencers. As part of its services, Plaintiff partners with customers to design, plan, and operate vehicle launches to promote products and provide an opportunity for individuals to test drive vehicles.

Plaintiff employed non-party John Thompson from 2007 to October 2016 in various positions, most recent as President and CEO. Plaintiff also employed non-party Larry Taulbee from 2007 to October 2016 in various positions, most recently as COO. Both Thompson and Taulbee's employment with Plaintiff was governed by an Employment Agreement that contained non-compete

and confidentiality provisions.¹ On October 5, 2017, a day after Thompson and Taulbee's non-competition agreements expired, they formed Defendant TNT Drives, a competing entity.

Subsequent to Thompson and Taulbee's terminations (and prior to the formation of TNT Drives), Plaintiff began working with FCA to develop and plan a vehicle launch for Jeep Wrangler, which was scheduled to take place in Tucson, Arizona in December 2017. While employed with Plaintiff, Defendants Michael Sweeny, Chelsea Taulbee, and Joseph Camilleri were directly involved in developing, pricing, and marketing the Jeep Wrangler Launch. As such, the Individual Defendants had commercial information related to the event. After Plaintiff provided FCA with a comprehensive plan and pricing for the Jeep Wrangler Launch, FCA awarded the project to Plaintiff. Plaintiff anticipate gross revenue of approximately \$700,000 for the Jeep Wrangler Launch.

Shortly after TNT Drives was formed, the Individual Defendants terminated their employment with Plaintiff and began working for TNT Drives. Plaintiff believes that the Individual Defendants disclosed information related to the Jeep Wrangler Launch to Thompson and Taulbee. Shortly thereafter, in November 2017, FCA informed Plaintiff that FCA had decided to resource the Jeep Wrangler Launch, that was previously awarded to Plaintiff, to TNT Drives. Plaintiff claims that Defendants used Plaintiff's trade secrets and confidential information to persuade FCA to move the Jeep Wrangler Launch away from Plaintiff to TNT Drives.

On these general allegations, Plaintiff filed its Complaint on claims titled (Count 1) tortious interference with business expectancy; (Count II) misappropriation of trade secrets under MCL

¹ There is a separate pending action between Plaintiff, Thompson, and Taulbee currently in arbitration pursuant to the terms of the Employment Agreements.

445.1901; (Count IV) breach of confidentiality agreement as to Sweeney, Chelsea Taulbee, and Camilleri; (Count V) civil conspiracy; and (Count VI) unjust enrichment.²

As stated, Defendants now move for summary disposition under MCR 2.116(C)(8) and (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).³ And a (C)(10) motion tests the factual support for a plaintiff's claims. *Id.* at 120.⁴

I. Tortious Interference with Business Expectancy

First, Defendants argue that Plaintiff's tortious interference claim must be dismissed because (1) Plaintiff's claim is preempted by its misappropriation of trade secrets claim, and (2) there is no evidence that Defendants used Plaintiff's information to influence FCA's decision to terminate Plaintiff's work on the Jeep Wrangler Launch.

Defendants argue that since Plaintiff claim for tortious interference rests entirely on the notion that Defendants improperly used Plaintiff's trade secrets to secure the Jeep Wrangler Launch, the claim is properly brought under the Michigan Uniform Trade Secrets Act (MUTSA). To support

² Plaintiff's Complaint appears to be mislabeled, omitting Count III.

³ Such a motion may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Wade v Dept of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992). When considering such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade*, 439 Mich at 162-163. Additionally, when considering such motions, the court considers only the pleadings. MCR 2.116(G)(5).

Further, "[w]hen an action is based on a written contract, it is generally necessary to attach a copy of the contract to the complaint. Accordingly, the written contract becomes part of the pleadings themselves, even for purposes of review under MCR 2.116(C)(8)." *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007); citing MCR 2.113(F) and *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003).

⁴ In such a motion, the moving party must specifically identify the issues that he believes present no genuine issue of material fact. *Maiden*, 461 Mich at 120. The opposing party may not rest on mere allegations or denials in his pleadings, but must, by affidavits or as otherwise provided in the rule, set forth specific facts showing a genuine issue for trial. *Id.* at 120-121. Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

their position, Defendants' rely on an unpublished case from the United States District Court. The District Court held that:

Michigan has adopted the Uniform Trade Secrets Act ("UTSA"), which provides a statutory action and remedies for misappropriation of trade secrets. Section 8 of the Michigan statute preempts conflicting state tort law providing civil remedies for misappropriation of a trade secret. M.C.L.A. § 445.1908(a). In determining whether a cause of action is displaced, courts generally examine whether the claim is based solely on the misappropriation of a trade secret. The purpose of the UTSA was to "codify all the various common law remedies for theft of ideas" and that "plaintiffs who believe their ideas were pilfered may resort only to the UTSA." The Michigan Uniform Trade Secrets Act preempts Compuware's claim for tortious interference claim in this case where the alleged tortious interference relates exclusively to trade secret misappropriation. *Compuware Corp v Int'l Business Machines Corp*, 2003 WL 23212863 (Dec. 19, 2003) (internal citations omitted).

In response, Plaintiff argues that its claim for tortious interference is based on wrongful conduct independent of Defendants' misappropriation of trade secrets. Plaintiff argues that the wrongful conduct includes Thompson maintained in contact with FCA during his non-competition period, Chelsea Taulbee's email to FCA providing FCA with TNT Drives personal contact, and Sweeny's admission that he was provided information from Thompson that the Jeep Wrangler Launch would be awarded to TNT Drives. (See Response to Second Motion Exhibit C, at 99; Exhibit W; and Exhibit S, at 47-49). As such, Plaintiff argues that they have not only stated a claim for tortious interference, but also provided sufficient evidence to establish a question of fact as to its claim.

The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted. *Health Call of Detroit* at 268 Mich App 83, 89-90.

After a careful review of Plaintiff's Complaint, the Court finds that Plaintiff has properly stated a claim for tortious interference of a business expectancy independent of its claim for violation of MUTSA. Specifically, Plaintiff alleges that through the Individual Defendants, TNT Drives had knowledge of Plaintiff's business relationship with FCA, knowledge relating to the Jeep Wrangler Launch, that Defendants used the information to knowingly and intentionally interfere with Plaintiff's expectancy with FCA, and that as a result, Plaintiff lost the revenue that Plaintiff expected to receive from the Jeep Wrangler Launch. Plaintiff's claim for tortious interference does not allege that Defendants' used Plaintiff's trade secrets to tortuously interfere.

Next, it is undisputed that Defendants were aware of the existence of a valid business relationship between Plaintiff and FCA and the upcoming Jeep Wrangler Launch. In fact, in Defendants' Second Motion for Summary Disposition, Defendants admit that they used certain documents prepared by Plaintiff for the Jeep Wrangler Launch. Specifically, Defendants state that "[r]ather than reinvent the wheel, TNT Drives made use of or reference to certain documents" prepared by Plaintiff in the course of executing the Jeep Wrangler Launch.

Defendants' argument for dismissal pursuant to (C)(10) is that Plaintiff has failed to offer evidence that Defendants used Plaintiff's information to influence FCA's decision to terminate Plaintiff. Defendants maintain that FCA came to the decision to terminate Plaintiff on its own. Defendants argue that Plaintiff's failure to prove causation is fatal to their tortious interference claim.

On a motion for summary disposition, the party opposing the motion is not required to "prove" its claim. Rather, a party must set forth evidence that create an issue for trial. Here, Plaintiff has set for sufficient evidence to establish that a question of fact as to Defendants' tortious

interference exists. In addition to the evidence referenced above and Defendants' admission that they used Plaintiff's material, there is an email chain between Defendant Sweeney, FCA, and a vendor. (Response to Second Motion, Exhibit Y). On November 8, 2017, Sweeney sent a reply using his email address with Plaintiff. *Id.* Five days later, on November 13, 2017, on the same email chain, Sweeney sent another reply using his TNT Drives email address. *Id.*

As it relates to its claim for tortious interference of a business expectancy, Plaintiff has certainly submitted sufficient evidence that a trier of fact could infer that Defendants interfered with Plaintiff's business expectancy with FCA. Again, despite Defendants' assertion, Plaintiff is not required to prove its case at this stage of the proceeding. Plaintiff is only required to provide facts and evidence to establish that a question of fact exists, and it has satisfied that requirement.

Based on the foregoing, Plaintiff has stated a claim for tortious interference with a business expectancy and provided sufficient evidence to create a question of fact regarding the same. As such, Defendants' motion for summary disposition under (C)(8) and (C)(10) is DENIED.

II. Misappropriation of Trade Secrets under MCL 445.1901

Next Defendants dispute that any of the information they may have used constituted "trade secrets." Defendants maintain that the information was generally known and easily accessible. Further, Defendants argue that Plaintiff has failed to satisfy its burden of demonstrating the existence of any "formula, pattern, compilation, program, device, method, technique, or process" to establish a trade secret. Finally, Defendants argue that there is no evidence that Defendants used any trade secrets to persuade FCA to move the Jeep Wrangler Launch from Plaintiff to TNT Drives.

In response, Plaintiff argues that Defendants used Plaintiff’s pricing information, customer preferences, and employee information relative to the Jeep Wrangler Launch. Plaintiff argues that this information constitutes trade secrets because Plaintiff created it, it derived economic value, and Plaintiff took steps to protect it.

Under the Michigan Uniform Trade Secrets Act (MUTSA), “Trade secrets” are defined as information that both: (1) “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 (2) “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” MCL 445.1902(d).⁵

Our Supreme Court has explained, “a trade secret is ‘a secret formula or process not patented but known only to certain individuals using it in compounding some article of trade having a commercial value, and does not denote the mere privacy with which an ordinary commercial business is carried on.’” *Hayes-Albion v Kuberski*, 421 Mich 170, 181; 364 NW2d 609 (1984).

But “a trade secret **cannot** consist of ‘information which is readily ascertainable, i.e., capable of being acquired by competitors or the general public without undue difficulty or hardship.’” *Wysong Corp v MI Indus*, 412 F Supp 2d 612, 627 (ED Mich 2005) (emphasis added); quoting *Kubik, Inc v Hull*, 56 Mich App 335, 348; 224 NW2d 80 (1974).

“A plaintiff in a trade secrets case bears the burden of pleading and proving the specific nature of the trade secrets.” *Dura Glob. Techs., Inc v Magna Donnelly Corp*, 662 F Supp 2d 855, 859

⁵ Michigan’s Uniform Trade Secrets Act, at MCL 445.1904, provides:

Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator’s unauthorized disclosure or use of a trade secret.

(ED Mich 2009), quoting *Wilson v. Continental Dev. Co.*, 112 F.Supp.2d 648, 662 (W.D.Mich.1999). “A party alleging trade secret misappropriation must particularize and identify the purported misappropriated trade secrets with specificity.” *Id.* quoting *Compuware Corp. v. Int'l Business Machines*, 2003 WL 23212863, *6 (E.D.Mich. Dec. 19, 2003).

Both Plaintiff and Defendants seem to agree that pricing information may be classified as a trade secret. For this proposition, both parties cite to *Stryker Corp v. Ridgway*, 2015 WL 8759220 (W.D.Mich. Dec. 14, 2015). The *Stryker* Court explained:

Michigan courts, however, have generally recognized that pricing can be a trade secret. “An employer's 'pricing schemes, the details of its customer contacts, its markups, [and] employee information' are examples of possible 'trade secrets' under the MUTSA.” “Knowledge of vendors, vendor capabilities, and pricing can be a trade secret even if all of the information can be obtained through publicly available means so long as the information is not readily ascertainable.”

There is also some ambiguity in the case law as to whether customer preferences are trade secrets. Some Michigan courts have held that the knowledge a sales representative develops about each customer's business and peculiar needs is not protectable as a trade secret. “[C]ustomer identity, customer information, and customer lists, ... although protectable by a confidentiality agreement, is not a trade secret under MUTSA.” However, “[s]pecific information regarding resolution of the problems of particular customers is a trade secret.” Accordingly, “[k]nowledge developed by an employee about how to address a particular customer's peculiar needs, or having developed solutions to specialized needs, can constitute a trade secret.”

It appears that the lack of consistency in the case law reflects the fact-intensive nature of the trade secret inquiry. Michigan courts consider six factors in deciding if information is a trade secret:

(1) extent to which information is known outside of owner's business, (2) extent to which information is known by employees and others involved in business, (3) extent

of measures taken to guard secrecy of information, (4) value of information to owners and competitors, (5) amount of effort and money expended in developing information, and (6) ease or difficulty with which information could be properly acquired or duplicated by other.

Each one of these factors presents a question of fact. *Id.* at 10 (internal citations omitted).

Here, again, Defendants admit to using Plaintiffs materials in preparation and execution of the Jeep Wrangler Launch. Further, Defendant Sweeney sent an email on November 13, 2017, to Thompson at TNT Drives that included Plaintiff's budget estimate for the Jeep Wrangler Launch. (Response to Second Motion Exhibit V). The email stated that "[w]e will have to tweak a few things, but it is the approximate costs that [FCA] will be expecting." *Id.* The email was sent four days before FCA terminated its relationship with Plaintiff. And again, Defendants admit to using Plaintiff's budget information when they prepared TNT Drives' budget for the Jeep Wrangler Launch. (Response to Second Motion, Exhibit C, at 53). Additionally, Defendants admit that they were in possession of confidential information and that Plaintiff would not have voluntarily given Defendants the same. *Id.* at 55.

As the *Stryker* Court explained, a trade secret inquiry is fact-intensive, and Plaintiff has submitted evidence sufficient, when viewed in light most favorable to the non-moving party to establish a question of fact on its trade secret claim. As such, the Defendants' motion for summary disposition of Plaintiff's claim for misappropriation of trade secrets is DENIED.

III. Breach of Confidentiality Agreement

Next, the Individual Defendants argue that Plaintiff's claim for breach of the confidentiality agreements should be dismissed because there is no evidence of a contractual agreement. Defendant argues that the employee handbook and the "Confidential Information Policy" do not create a contract between the parties. Further, the Individual Defendants argue that they did not understand the handbook or policy to be contracts.

In order to prove breach of contract, a plaintiff must establish: (1) the existence of a contract; (2) a breach of that contract; and (3) damages resulting from that breach. *Stoken v JET Electronics & Technology, Inc.*, 174 Mich App 457, 463; 436 NW2d 389 (1988).

As it relates to Sweeney, the Employee Handbook contained an acknowledgment and receipt, which Sweeney signed. The acknowledgment included a provision that stated, "I acknowledge that this employee manual is not a contract of employment or a legal document and nothing in the employee manual creates an express or implied contract of employment." (Defendant's Motion Exhibit A).

As it related to Defendants Chelsea Taulbee and Camilleri, Defendant argues that the confidentiality policies did not include any that they were undertaking contractual commitments or that those commitments would remain post-termination. If fact, Defendants argue that any violation of the confidentiality policy could result in termination. The policy does not provide any duties or remedies that exist post-termination.

In response, Plaintiff argues that both the handbook and Confidentiality Policy can be construed as a contract because the Individual Defendants signed the policies and agreed to be that

they had a duty to follow the policies contained within. For this proposition, Plaintiff cites *Dumas v Auto Club Isn. Ass'n*, 437 Mich 521, 529; 473 NW2d 652 (1991).

Defendants, however, contend that *Heurtebise v Reliable Business Computers, Inc*, 452 Mich 405 (1996), is binding precedent in Michigan. Contrary to the *Dumas* Court, the *Heurtebise* Court found that the employee handbook did not create a binding contract. In *Heurtebise*, the Court was asked to determine whether the parties were bound by a valid arbitration agreement, which was included in the employee handbook. *Id.* at 413. The handbook provided:

This document is intended to establish and clarify certain employment policies, practices, rules and regulations (hereinafter collectively referred to as “Policies”) of Reliable Business Computers, Inc., (hereinafter referred to as the “company”). Except as may otherwise be provided, the Policies will apply to all company employees, and it is each employee's responsibility to assure that his/her own conduct is in conformity with those Policies. *It is important to recognize and clarify that the Policies specified herein do not create any employment or personal contract, express or implied, nor is it intended nor expected that the information provided in this document will provide sufficient detail to answer any and all questions which may arise. Notwithstanding any of the specific policies herein, each employee has the absolute right to terminate his/her own employment at any time, without notice, and for any reason whatsoever, and the company has the same right.*

From time to time, the company specifically reserves the right, and may make modifications to any or all of the Policies herein, at its sole discretion, and as future conditions may warrant. In the event employees have any questions relative to any of the Policies, they are urged to contact their supervisor for clarification purposes.

* * *

New employees will receive a copy of this document at the time of formal hire. Upon receipt, all employees will sign the Employee Acknowledgement, acknowledging receipt of this document. [Emphasis added.] *Id.* at 413-14.

The *Heurtebise* Court found that “[t]his demonstrates that the defendant did not intend to be bound to any provision contained in the handbook. Consequently, [the *Heurtebise* Court held] that the handbook has not created an enforceable arbitration agreement with respect to this dispute.”

Like the quoted provisions in *Heurtebise*, Plaintiff's handbook states that if an employee has any question, they are to ask their supervisor or the Human Resource Department. (Defendants' Exhibit 1). Plaintiff's handbook includes a section titled, "if you must leave us." Also, similar to *Heurtebise*, Plaintiff's handbook provides that Plaintiff "can, at its sole discretion, change, modify, eliminate, or deviate from any policy or procedure in this handbook at any time." *Id.* Nothing in that section provides that the handbook creates contractual obligations post-termination. *Id.*

Based on the foregoing, the instant case is analogous to *Heurtebsie*, and the Court cannot find that Plaintiff intended to be bound by any provision in its handbook, and therefore, does not create an enforceable contract with Defendant Sweeney.

As it relates to the Confidential Information Policies signed by Chelsea Taulbee and Camilleri, the policies set forth are for employees. Like the handbook, the Confidential Information Policies do not state that they create contractual duties post-termination or that legal action can be taken if the policy is violated. As previously stated, the policy does include disciplinary action, which includes termination. Plaintiff does not provide any evidence that the Confidential Information Policies created a post-termination contract with Defendants Chelsea Taulbee and Camilleri.

As such, Plaintiff fails to establish a question of fact regarding its claim against the Individual Defendants for breach of their confidentiality agreements. The Court, therefore, GRANTS the Individual Defendants' motion for summary disposition for breach of contract under (C)(10) and dismisses the same.

IV. Civil Conspiracy

Next, Defendants argue that it is entitled to summary disposition of Plaintiff's claim for civil conspiracy because Defendants were acting within the scope of their duties. And, where there is no evidence that individual defendants have a separate interest beyond the success of the company, a claim for civil conspiracy cannot stand. Here, Defendants argues that they were all acting within the scope of their employment. Further, Defendants argue that Plaintiff's claim must also be dismissed because there is no evidence that TNT Drives used alleged trade secrets to cause FCA to move the Jeep Wrangler Launch.

Plaintiff argues that there is a question of fact as to when the conspiracy began. Plaintiff argues that the Individual Defendants were not acting in their official capacities when the conspiracy began. Plaintiff argues that the conspiracy began when Thompson and Taulbee formed TNT Drives on October 5, 2017. Based on email communication, Plaintiff believes that there is sufficient evidence to establish that the Individual Defendants were acting in concert to usurp the Jeep Wrangler Launch before they were employees of TNT Drives.

The Michigan Court of Appeals has held that, "A civil conspiracy is [1] a combination of two or more persons, [2] by some concerted action, [3] to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992).

But "a claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable, tort." *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986); see also *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 384; 670 NW2d 569 (2003).

Although thin, the Court does find that Plaintiff has presented evidence to establish a question of fact as to whether the Individual Defendants began conspiring with TNT Drives to usurp Plaintiff's Jeep Wrangler Launch while they were still employed with Plaintiff. Specifically, the fact that there was no interruption of the Jeep Wrangler Launch when the project switched from Plaintiff to TNT Drives. As indicated above, Sweeney sent emails on the same email chain with both Plaintiff's email address and his TNT Drives email address. Although circumstantial, this does create a question of fact regarding any alleged civil conspiracy.

Based on the foregoing, Defendants' motion for summary as to Plaintiff's civil conspiracy claim is DENIED.

V. Unjust Enrichment

Finally, Defendants argue that Plaintiff's claim for unjust enrichment fails because Plaintiff has not established evidence that TNT Drives used any alleged trade secrets to obtain the Jeep Wrangler Launch from FCA.

To establish a claim for unjust enrichment, a plaintiff must show: (1) receipt of a benefit by the defendant from the plaintiff, and (2) an inequity resulting to the plaintiff because of the defendant's retention of the benefit. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). Where an express contract exists between the parties, a contract cannot be implied in law which covers the same subject matter. *Cascade Elec Co v. Rice*, 70 Mich App 420, 426; 245 NW2d 774 (1976).

However, if Plaintiff claims that there is a verbal agreement and that is disputed by Defendants, Plaintiff is "not required to elect to proceed under one theory or the other, but could

seek recovery on the basis either of an express verbal contract, or an implied contract if the jury found the express verbal contract did not exist.” *Id.* at 427.

As more fully discussed above, the Court has already determined that questions of fact do exist regarding Defendants’ use of any trade secrets. As such, a question of fact also exists as to whether Defendants’ were unjustly enriched by using the same. Based on the same, Defendants’ motion for summary disposition of Plaintiff’s unjust enrichment claim is DENIED.

VI. Conclusion

The Individual Defendants’ motions for summary disposition of Plaintiff’s claim for breach of the confidentiality policy are GRANTED. As to the remaining claims, Defendants’ motions for summary disposition are DENIED.

IT IS SO ORDERED.

August 28, 2019
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge