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No. 3-08-0412

Order filed March 2, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

VEROTIX SYSTEMS, INC.,)	Appeal from the Circuit Court
)	of the Twelfth Judicial Circuit
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	No. 02-CH-2041
)	
FOLLETT LIBRARY RESOURCES, INC.,)	
FOLLETT LIBRARY RESOURCES, a)	
division of FOLLETT CORPORATION,)	
and TECH KING OPERATIONS, INC.,)	The Honorable
)	Bobbi Petrungaro,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter and Justice Schmidt concurred in the judgment.

ORDER

Held: Where the plaintiff had factual and legal support for its complaint for violation of the Illinois Trade Secrets Act, the trial court's order denying defendants' motion for attorney fees was affirmed.

Plaintiff, Verotix Systems, Inc., filed a complaint against defendants, Follett Library Resources, Inc., and Follett Library Resources, a division of Follett Corporation (collectively Follett), and Tech King Operations, Inc., to recover damages under the Illinois Trade Secrets Act

(Act), for breach of a license agreement, breach of a service and maintenance agreement, and for conversion. Following a bench trial, the circuit court of Will County entered summary judgment in defendants' favor on all counts. Defendants filed a posttrial motion for attorney fees and costs pursuant to section 5 of the Act and Supreme Court Rule 137. The trial court denied defendants' posttrial motions for fees and costs. For the reasons that follow, we affirm.

BACKGROUND

In 1996 Follett hired plaintiff to implement a warehouse control system. Plaintiff installed an entirely new system. Plaintiff's system was controlled by its software program. In 2002, Follett sought to expand its capacity by installing an additional conveyor belt to the existing system. Defendant awarded World Source Integration (WSI) and Tech King the contract for its new warehouse control system. After Follett hired WSI and Tech King, plaintiff attempted to retrieve its software, and learned that Follett planned to phase out use of plaintiff's software during the transition period. Plaintiff feared this would give its competitor access to proprietary information used in the warehouse control system. At that point, plaintiff elected to file the instant complaint.

Plaintiff filed a complaint against defendants alleging a violation of the Illinois Trade Secrets Act, breach of license agreement, breach of service and maintenance agreement, and conversion. Plaintiff argued that defendants violated the Act by misappropriating plaintiff's engineering electrical drawings of the conveyor system, a flow chart setting forth plaintiff's control process, and source code used to control the conveyor system. Following a bench trial, the circuit court of Will County entered judgment in defendants' favor. Defendants filed a posttrial motion pursuant to section 5 of the Act which reads, in pertinent part, as follows:

“If (i) a claim of misappropriation is made in bad faith, ***
the court may award reasonable attorney's fees to the prevailing
party.” 765 ILCS 1065/5 (West 2006).

Defendants also filed a motion for fees against plaintiff and plaintiff's counsel pursuant to Supreme Court Rule 137.

"Supreme Court Rule 137 allows a court to impose sanctions against a party or counsel who files a pleading or motion which is not well grounded in fact, is not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, or is interposed for any improper purpose. [Citation.] Because this rule is penal in nature, it must be strictly construed. [Citations.]" *Bennett & Kahnweiler, Inc. v. American National Bank and Trust Co. of Chicago*, 256 Ill. App. 3d 1002, 1006 (1993).

The trial court denied defendants' posttrial motions. Plaintiff filed a Notice of Appeal of the trial court's judgment in defendants' favor. Defendants' filed a notice of cross-appeal of the trial court's judgment denying their posttrial motions for fees. In May 2009, plaintiff's counsel withdrew as counsel for Verotix. This court dismissed Verotix's appeal of the trial court's judgment in defendants' favor for want of prosecution. Defendants maintained their cross-appeal of the trial court's judgment denying their motions for fees. Plaintiff, now *pro se*, did not file a brief in these proceedings. Plaintiff's former counsel filed a motion to dismiss defendants' appeal, which this court denied. The only issue remaining before this court is defendants' appeal

of the trial court's judgment denying their motions for fees.

ANALYSIS

Defendants argue that an award of fees under the Act is appropriate because plaintiff and its counsel persisted in the complaint although the complaint was factually and legally baseless. Defendants also argue that because they are entitled to an award of fees under the Act, they should also be allowed to collect fees for defending the remaining counts in plaintiff's complaint because those counts arise from the same set of operative facts as the counts for which fees are statutorily allowed. Counsel responds defendants have failed to demonstrate what if any of it or plaintiff's statements were false or objectively unreasonable, or how counsel breached its duties under Supreme Court Rule 137. Counsel argues that all of the allegations were supported by fact and law, and that it properly alleged alternative theories of recovery under the Act and for common law conversion. It argues that defendants' arguments on appeal raise only substantive issues as to the legal sufficiency of the complaint which ultimately determined the outcome of the case but which fail to demonstrate a basis for an award of attorney fees.

Although this court has not had occasion to construe the meaning of bad faith in section 5 of the Act directly, the court has held that bad faith for purposes of a statutory award of attorney fees "requires the party seeking relief to establish both that statements in the pleadings were untrue and that they were made without reasonable cause." *Bouhl v. Gross*, 133 Ill. App. 3d 6, 13 (1985) (construing section 2-611 of the Code of Civil Procedure (735 ILCS 5/2-611 (West 1984))). Also, "[t]he standard for evaluating a party's conduct under [Rule 137] is one of reasonableness under the circumstances existing at the time of the filing." *Bennett & Kahnweiler, Inc.*, 256 Ill. App. 3d at 1006. Finally, a trial court's decision on a motion for

attorney fees is an abuse of discretion only when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *Morris v. Harvey Cycle and Camper, Inc.*, 392 Ill. App. 3d 399, 407 (2009).

We can find no abuse of discretion in the trial court's judgment denying defendants' motions for fees and costs on the grounds that plaintiff's complaint was made in bad faith, or was not well grounded in fact or law. The record reflects that the trial court carefully considered all of the facts adduced at trial. We find that there are facts that provided plaintiff with reasonable cause to file its complaint.

“[T]o state a cause of action for misappropriation of trade secrets, a plaintiff must allege facts that the information at issue was: (1) a trade secret; (2) that was misappropriated; and (3) used in the defendant's business. [Citations.] A trade secret is defined in pertinent part as:

‘information, including but not limited to *** data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that:

(1) is sufficiently secret to derive economic value, actual or

potential, from not being generally known to 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 or confidentiality.’ [Citation.]”

Alpha School Bus Co., Inc. v.

Wagner, 391 Ill. App. 3d 722, 740

(2009).

The facts supported plaintiff’s filing of the complaint. The trial court found that plaintiff created and installed computer software to control Follett’s conveyor distribution system and that plaintiff’s computers ran that system. While in use at Follett’s warehouse, plaintiff’s computers were isolated from all the other computers at the facility. Plaintiff did not turn over the title to any software to Follett, but provided Follett a perpetual license to run the software. Subsequently, and before plaintiff filed its complaint under the Act, Follett issued a request for proposals to replace or enhance plaintiff’s system. The court found that after Follett awarded that project to Tech King, Follett provided Tech King with information concerning plaintiff’s conveyor control system, including a data file plaintiff created. The trial court found that it was undisputed that Tech King used the download file as a starting point for its software.

The trial court’s findings also indicate that plaintiff’s complaint was well-grounded in

law. Plaintiff alleged that defendants misappropriated its engineering electrical drawings of the conveyor system, the flow chart setting forth its process, and the source code used to control the conveyor system. The court found that plaintiff's electrical drawings and source code were in fact trade secrets as defined in the Act. However, the court found that the evidence failed to establish misappropriation of those trade secrets through improper acquisition, disclosure, or use by Follett, or by being provided to Tech King. Conversely, the trial court simply disagreed with plaintiff's assertion that the flow chart and download file are trade secrets under the Act. The court also found that the evidence failed to establish that Tech King used the process in the flow chart in its software at Follett's facility. Thus the court concluded that the flow chart and download file were not trade secrets and were not misappropriated by improper means.

The court concluded that "although [plaintiff's] source codes, software, electrical engineering drawings and manuals may well have constituted 'trade secrets' under the Act, there is no evidence that [defendants] misappropriated these items. Further, the flow chart and download file are not 'trade secrets' under the Act. Thus, neither [defendant] violated the [Act.]" The trial court's reasoning and disposition of the complaint demonstrate that plaintiff's allegations were not completely baseless, but that plaintiff failed to meet its burden of proof. This court has consistently held that the purpose of an award of attorney fees "is to prevent parties from abusing the judicial process with vexatious actions unsupported by fact or law, not to punish litigants and their attorneys merely because they were unsuccessful in the litigation." *Edwards v. City of Henry*, 385 Ill. App. 3d 1026, 1034 (2008).

Similarly, the trial court's finding that Follett did not breach the license agreement is not based on a finding that plaintiff's claim, that Follett breached the agreement "by using

[plaintiff's] software during the turnover period where [Tech King] had access to [plaintiff's] 'copyrighted materials, proprietary information and trade secrets,' " had no good faith basis in fact or law. The court's judgment in defendants' favor on that count gives particular weight to the security measures Follett undertook to prevent Tech King from gaining access to plaintiff's software. The trial court's judgment relies on finding that Follett's security measures to prevent such access succeeded. The court's rationale, therefore, supports finding that plaintiff's allegation was not only made in good faith, but that there was a very real possibility that Tech King did access plaintiff's proprietary information during the turnover period.

The trial court also found that Follett "most certainly" breached the service and maintenance agreement, but found that plaintiff failed to prove that it suffered damages. Finally, the court recognized that conversion, though preempted by statute for violations of the Act, might provide an alternative remedy. The court specifically found that "*to the extent* that this Court has found that the software, manuals and engineering drawings constitute trade secrets under the Act, these claims are preempted." (Emphasis added.) But the court also found that other properties were not trade secrets under the Act, and, therefore, claims they were converted were not preempted. The court merely held that "[t]he evidence *** does not support a claim for conversion" of those items.

The trial court did not abuse its discretion in denying defendant's motions for fees. The facts adduced at trial establish that plaintiff had good faith bases in fact and law to file its complaint against defendants.

CONCLUSION

The judgment of the circuit court of Will County denying defendants' motion for attorney

fees and costs is affirmed.

Affirmed.