

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD B. BLOCK, : CIVIL ACTION
Plaintiff :
 :
v. :
 :
MARION BLAKELY, et al., :
Defendants : NO. 02-8053

MEMORANDUM AND ORDER

McLaughlin, J.

August 24, 2004

The plaintiff alleges that the Boeing Company misappropriated trade secrets and breached an implied-in-law contract involving aircraft wiring. Boeing moves for summary judgment on both claims.¹ The Court grants the motion.

I. Background

The plaintiff has been involved for many years in efforts to identify aircraft wiring problems and wiring maintenance safety practices. At issue in this case is a manual

¹ The plaintiff identifies Boeing as Boeing Corporation. Boeing states that its correct name is the Boeing Company. For the purposes of this memorandum, the Court will refer to the Boeing Company as "Boeing" or "the defendant."

The plaintiff originally named the following defendants: (1) Marion Blakely, Administrator of the Federal Aeronautics Administration ("FAA"); (2) Sean O'Keefe, Administrator of the National Aeronautic and Space Administration ("NASA"); and (3) Boeing. The Court granted the FAA and NASA's motion to dismiss in April of 2003.

regarding aircraft wiring ("the document" or "Why Wire Type Matters") developed by the plaintiff.

The Aging Transport System Rulemaking Advisory Committee ("ATSRAC") is a formal standing committee commissioned by the Federal Aviation Administration ("FAA"). Several working groups were a part of ATSRAC, made up of representatives of the aviation industry, associations, and government agencies. The plaintiff was not a member of ATSRAC but has attended numerous meetings and was a member of a few working groups.

One particular working group ("Working Group 5") had the goal of creating training sessions regarding the inspection, maintenance, and repair of aircraft wiring systems. Paul Lapwood, the chair of that group, created a draft curriculum. Boeing's ATSRAC member, Michael Nancarrow, filled in as the chair and communicated Mr. Lapwood's request for comments to the draft. The plaintiff handed a copy of his Why Wire Type Matters document, in a manilla envelope that was not marked, to Mr. Nancarrow at the July 2000 ATSRAC meeting in response to the request. Block Dep. Tr. at 137-39.

The document consists of six pages of text, fourteen slides, and twenty-five pages of documents, most of which were created by third parties. According to its introduction:

It is the intent of this paper to familiarize the audience with not only the history of aircraft wiring insulating choices, but also to point to the considerations that are becoming

more significant daily; service life, flammability, smoke generation, toxicity of that smoke, temperature ratings, abrasion resistances (particularly in mixing wire types), and the concern for the development of a Federal Aviation Administration policy on the resetting of circuit-breakers unique to certain wire insulation types. The statement that "wire is wire," will certainly be disproved by the information contained herein, but more importantly the value of the type of wire chosen for the life of your aircraft, will become even more important.

Block Dep. Exh. E at 1.

The plaintiff claims that Boeing used some of the material in this document in its training course. According to the plaintiff, Boeing's use of this material amounted to a misappropriation of his trade secrets and a breach of an implied-in-law contract. At the Rule 16 conference in this case, the plaintiff's counsel informed the Court that the plaintiff did not intend to bring the implied-in-fact contract claim in the complaint against Boeing, but only against the FAA and NASA. During the summary judgment stage, however, the plaintiff maintained its argument that there was an implied-in-law contract that had been breached by Boeing.

The defendant argues that the plaintiff took no steps to keep the document confidential and, in fact, affirmatively disclosed the information in opinions contained in the document. The defendant specifically contends that the plaintiff publicly shared his document on several occasions and never alerted Mr.

Nancarrow or Mr. Lapwood that the document was a trade secret. The plaintiff maintains that he handed his document to Mr. Nancarrow for the implied limited purpose of Working Group 5 and not for any use by Boeing in any of its training courses.

II. Misappropriation of Trade Secrets Claim

A misappropriation of trade secret claim is governed by state law. See Rohm & Haas Co. v. Adco Chemical Co., 689 F.2d 424, 429 (3d Cir. 1982). Either Washington or Pennsylvania state law could apply here. A choice of law analysis is not necessary, however, because the law on this claim is not in conflict. The parties do not dispute that Pennsylvania and Washington trade secret law are essentially the same for the purposes of this motion. June 9, 2004 Hr'g Tr. ("Hr'g Tr.") at 5.

The parties agree that the elements of a trade secret claim are: "(1) the existence of a trade secret; (2) communication of the trade secret pursuant to a confidential relationship; (3) use of the trade secret, in violation of that confidence; and (4) harm to the plaintiff." See Moore v. Kulicke & Soffa Industries, Inc., 318 F.3d 561 (3d Cir. 2003). The defendant argues that the plaintiff cannot prove any element of the claim.

The defendants rely on two main cases to support its argument. In Sears, Roebuck & Co. v. L-M Mfg. Co., 256 F.2d 517

(3d Cir. 1958), the Third Circuit held that there was no implied agreement of confidentiality when Sears gave customers' warranty cards to L-M, because L-M, as a chain saw manufacturer, had a business interest in the cards. There also was no restriction placed on the delivery of the warranty cards. Id. at 520. In a Washington case, the court held: "Gratuitous, unsolicited disclosure of information does not impose upon a recipient a contractual or fiduciary obligation not to disclose it." Matchen, Inc. v. Aircraft Designs, Inc., 828 P.2d 73, 78 (Wash. Ct. App. 1992), overruled in part on other grounds by Waterjet Tech., Inc. v. Flow Int'l Corp., 996 P.2d 598 (Wash. 2000).

The Court is persuaded by the defendant's argument. The plaintiff admitted in his deposition that the information in the document was supposed to be incorporated into the FAA issued training curriculum. The plaintiff understood that that material would become public. There is no confidentiality marking on the document. At the oral argument on the motion, counsel for the plaintiff conceded that Boeing could have made the document public. "They could have debated it. They could have talked about it. It could have been discussed with the FAA." Tr. p. 14. However, what they could not do was take it and use it. The problem with that argument is that the plaintiff never told Boeing that. Even had they told Boeing that, it is questionable that a trade secret that could have been made public is still a

trade secret. Counsel for the plaintiff conceded at oral argument that there is no evidence in the record that the plaintiff told anyone at Boeing about his desire that Boeing not use it itself. Tr. p. 14.

The defendant argues that in addition to failing to keep the document confidential, the plaintiff actively and publicly disclosed the information in the document. The Court is also persuaded by this argument. Again, during the oral argument, counsel for the plaintiff was not able to point to anything in the document that had not been previously disclosed by the plaintiff in other fora. Tr. p. 27, p. 29.

The defendant also makes strong arguments on the other two elements of the trade secret claim: the document does not contain a legally protectible trade secret; and there is insufficient evidence that Boeing used or disclosed any information from the document. The Court will not reach these issues, however, because the failure to make out one element of the misappropriation of trade secret claim defeats that claim.

III. Implied-in-Law Contract Claim

The Court stated above that at the Rule 16 conference, counsel for the plaintiff said that he was not pursuing the implied-in-law contract claim against Boeing. It appears that the plaintiff changed his mind during the litigation and did

argue this claim during the summary judgment stage. The Court will not hold the plaintiff to the statement made at the Rule 16 conference and has gone forward and evaluated the claim.

The parties agree that the elements of unjust enrichment are "benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value." Styer v. Hugo, 422 Pa. Super. 262, 267 (Pa. Super. 1993) (citations omitted); see also Allegheny Gen. Hosp. v. Philip Morris, Inc., 228 F.3d 429, 447 (3d Cir. 2000).

This claim is not made out here. The summary judgment record establishes that the plaintiff had no expectation of being paid for use of the document and that, even if he had, Boeing would have no way of knowing that.

An appropriate Order follows.

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ORDER

AND NOW, this 24th day of August, 2004, upon consideration of the defendant's Motion for Summary Judgment (Docket No. 39), and all responses thereto, and following a hearing held on June 9, 2004, IT IS HEREBY ORDERED that the motion is GRANTED for the reasons stated in a memorandum of today's date. JUDGMENT IS HEREBY ENTERED for the defendant, Boeing Company, and against the plaintiff, Edward B. Block.

BY THE COURT:

MARY A. MCLAUGHLIN, J.