

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

WALTER BENNETT COMMUNICATIONS : CIVIL ACTION
OF PENNSYLVANIA, INC. :
 :
 v. :
 :
 JACK K. HIBBARD : NO. 09-3633

MEMORANDUM

Fullam, Sr. J.

November 18, 2009

The plaintiff has filed suit against its former president, the defendant, who left his employ and allegedly took unspecified confidential information with him. The defendant has moved to dismiss claims for misappropriation of trade secrets (Count II), violation of the Pennsylvania Uniform Trade Secrets Act, 53 Pa. Cons. Stat. Ann. § 5301, *et seq.* (Count V), and violation of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030(g) (Count VI).

The common-law claim for misappropriation of trade secrets is dismissed; the statute preempts such claims. Youtie v. Macy's Retail Holding, Inc., - F. Supp. 2d -, 2009 Westlaw 2902341 (E.D. Pa. Sept. 10, 2009) (O'Neill, J.). The claim under the Pennsylvania statute is itself deficient; no attempt has been made to identify trade secrets as defined by the statute. See 12 Pa. Cons. Stat. Ann. § 5302. Similarly, the claim under the federal computer fraud statute simply recites the elements of that law, which under recent Supreme Court authority, will not suffice. Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007).

The plaintiff will be permitted the opportunity to file an amended complaint, in which the "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." Id. at 555 (citations omitted)

An Order will be entered.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

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ORDER

AND NOW, this 18th day of November 2009, upon
consideration of the defendant's Motion to Dismiss, and the
response thereto, IT IS ORDERED:

That the Motion is GRANTED. Counts II, V, and VI are
DISMISSED WITHOUT PREJUDICE. The plaintiff is granted leave to
file an amended complaint within 20 days.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.