

) IN THE COURT OF COMMON PLEAS  
 ) SS.  
 ) Civil Case No. 678675

## JOURNAL ENTRY AND OPINION

V.

**Defendants.**

IT IS SO ORDERED:

At the hearing, Plaintiff called three witnesses: first, the Plaintiff, James Ridge; second, Defendant Ed Couvrette; and third, LeeAnn Harris, an employee of Defendant E. F. Couvrette Co. Inc. Counsel were provided with broad latitude in the scope of their questions and spent more than ample time making their cases. In addition, counsel were provided with several days to submit written, closing arguments.

## **I. Law**

The non-competition agreement, by its own terms, is governed by the law of California. In California, non-competition agreements are generally invalid. See Cal. Bus. & Prof. Code §16600. California law continues to recognize, however, a trade secret exception to the general prohibition on employee non-competition agreements. See, e.g., *ReadyLink Healthcare v. Cotton* (2005), 126 Cal. App. 4th 1006, 1021-1022.

“Trade secret,” as defined by California law,

means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or 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.

Cal. Civ. Code §3426.1(d). The question at issue, therefore, is whether the trade secret exception applies to the agreement in this case.

## **II. The Court’s Findings**

### **A. The Events Giving Rise to the Lawsuit**

Plaintiff worked for Defendants from 1992 to 2008. Defendants’ business includes the designing of ATM kiosks. Plaintiff’s job was to network with Defendants’ business partners and put packages together for prospective customers. Plaintiff’s responsibilities included taking site surveys and measurements, taking photographs, and making two-dimensional drawings of proposed kiosks. Defendants’ business partners would then take these drawings to the customers for review.

When Plaintiff began working for the Defendants, he signed an Employment Agreement. In the agreement, Plaintiff acknowledged what constitutes the proprietary trade secrets of the company and represented that such information would not be disclosed during his employment or afterward. Plaintiff also represented that his obligations would survive the termination of his employment and that he would return all work product after his employment had ended.

The Employment Agreement also contained a section called "post-employment obligations," in which Plaintiff agreed, for a period of one year after leaving employment, that he would not: (1) disclose Defendants' customers; (2) solicit or take away Defendants' customers; or (3) "accept remuneration . . . for the purpose of competing" with Defendants where Plaintiff's "special knowledge of Couvrette's confidential business or proprietary information, or confidential trade secret information . . . would serve to advance the interests of another with respect to the competitive advantage held by Couvrette."

Since the time when Plaintiff's employment with the Defendants ended, however, Plaintiff has created additional two-dimensional drawings for at least one of Defendants' customers, and Plaintiff admitted that he has created these drawings using the laptop that belonged to the Defendants. Furthermore, Plaintiff revealed that he had retained Defendants' property, including drawings, photographs, and old files, for several months after Plaintiff's employment had ended.

#### B. Analysis

The testimony provided at the hearing reveals that Plaintiff possesses knowledge of Defendants' trade secrets. Defendants' trade secrets include conceptions, designs,

inventions, and work product. As a result, Plaintiff is aware of Defendants' formulas, patterns, compilations, programs, devices, methods, techniques, and processes in designing and constructing Defendants' ATM kiosks. This is evident from the combined testimony of all three witnesses, who described the unique and proprietary information that comprises this line of work. In particular, Defendant Couvrette testified that while working for the Defendants, Plaintiff had access to proprietary information and work product such as specifications, photographs, and customer names. Couvrette further testified that all trade secrets are proprietary, and proprietary designs include designs created by the Defendants.

The Court finds that Defendants' proprietary, trade secret information derives independent economic value from not being generally known to the public or Defendants' competitors. The independent economic value is evident from the fact that at least one of Defendants' clients has employed Plaintiff after Plaintiff's employment with Defendants had ended.

Defendant Couvrette testified that Defendants' specifications are not known to the public and that it would be difficult for someone to build Defendants' products because many facets of those products are not publicly known. Although Plaintiff testified that the drawings he created for Defendants were shared with third parties such as municipalities and contractors, this does not make Plaintiff's knowledge of proprietary information nor the drawings themselves generally known to the public. As Defendant Couvrette testified, showing someone a proprietary design does not take away its proprietary nature. It is still a trade secret, even though it may not be a "secret" in the absolute sense of the word.

Plaintiff's testimony relies on the fact that the public can easily view or measure the dimensions of the finished, ATM kiosk. The fact that the dimensions of an kiosk are open to the public view, however, is not dispositive. As Defendant Couvrette testified, his company's work product and trade secrets are proprietary due to the nature of the process involved in arriving at a drawing. Anyone can measure the dimensions of any product open to public view, from clothing to appliances to cars. To determine whether information constitutes a trade secret does not turn on whether someone can see the end product, but whether someone has the specialized knowledge or can learn the processes involved in making that end product. A layperson cannot design ATM kiosks the way Plaintiff does simply by looking at them, measuring them, and drawing pictures. Rather, only someone with the specialized, proprietary knowledge of Defendants' processes and trade secrets can make drawings that look like Plaintiff's.

The Court further finds that Defendants have taken more than reasonable efforts to maintain the secrecy of their trade secrets. For example, Couvrette testified that all of his sixty-two employees have signed confidentiality agreements, and eleven people have been sued by Defendants over employment agreements since 2002. Every contract with a customer includes a confidentiality agreement, and Defendants' computers, which contain proprietary information such as photographs, are password protected.

Defendant Couvrette testified that he will mention a customer name from time to time or show a photograph. This does not mean that Defendant does not take reasonable measures to maintain the confidentiality of the information. Couvrette testified that Defendants' customer list is located in Defendants' computer, and no one other than Defendants' employees has access to the customer list.

Plaintiff testified that Defendants put company labels on their products. The inference to be drawn from this testimony is that if Defendants label their products, then their customer list is not confidential. There is marked difference, however, in labeling one's products and publicizing a customer list. Although it may be true that a competitor could travel to all ATM kiosks and ascertain whether they contain Defendants' label, this is a highly unlikely scenario due to the amount of time and money it would cost. Placing company labels on products, therefore, is not analogous to disclosing a list of customers.

Plaintiff also attempted to distinguish his current work from his past work by pointing out that when he worked for the Defendants, he was only paid for sales, but now he is getting paid directly for the drawings he creates. The Court does not find this argument persuasive. The question in this case is not whether Plaintiff is being compensated in the same manner, but whether he is utilizing or disclosing Defendants' trade secrets. Although it is theoretically possible to perform Plaintiff's work without Defendants' trade secrets, it is clear from Plaintiff's post-employment work that Defendants' software is an integral part of Plaintiff's drawings, and it is clear, therefore, that Plaintiff is utilizing his knowledge of Defendants' trade secrets in his post-employment work.

Plaintiff also claimed that the Defendants have received projects based on Plaintiff's post-employment work. This does not deprive the Defendants, however, of their right to enforce the terms of the Employment Agreement. Furthermore, whether some of Plaintiff's post-employment work has benefited the Defendants does not

necessarily mean that other work does not advance the interests of Defendants' competitors.

In essence, Plaintiff attempted to paint a picture that Plaintiff's job required nothing more than a layperson to measure the dimensions of an ATM kiosk and draw those dimensions on a piece of paper. This argument is disingenuous. Plaintiff's own testimony reveals that customers want to utilize Plaintiff's skills in particular because Plaintiff has specialized knowledge, which Plaintiff now seeks to minimize. This specialized knowledge comes from the work product and specifications generated by Defendant's work processes, uniquely modified software, pricing practices, and customer lists. Under California law, this information is precisely what is meant to be protected in the trade secret exception to the general prohibition on non-competition agreements.

For the foregoing reasons, the Court finds that the trade secret exception is applicable to the Employment Agreement in this case.

### **III. Conclusion**

It is, therefore, ORDERED, ADJUDGED, and DECREED:

The Employment Agreement at issue in this case is valid and enforceable under California's trade secret exception to the general prohibition on non-competition agreements. As Plaintiff has failed to carry his burden on Counts Three and Four of Plaintiff's Amended Complaint, these claims are dismissed with prejudice. Counts One and Two of Plaintiff's Amended Complaint remain pending. PARTIAL.

DATE: February 26, 2009

  
KATHLEEN ANN SUTULA, JUDGE

**CERTIFICATE OF SERVICE**

A copy of the foregoing Journal Entry and Opinion has been sent via regular U.S.

mail on this 26 day of February, 2009, to the following:

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