Dur-a-Flex, Inc. v. Samet Dy

Superior Court at Hartford
No. X07-HHD-CV-17-6081405 S
Memorandum Filed October 26, 2018

Discovery – Bill of Discovery – Misc. Cases – Opinion Grants a Bill of Discovery to Explore Whether the Defendant Has Stolen the Plaintiff's Trade Secrets Concerning the Composition of Its Poly-Crete Floor Coating Product.

Trade Regulation – Trade Secrets – Discovery – Opinion Grants a Bill of Discovery to Explore Whether the Defendant Has Stolen the Plaintiff's Trade Secrets Concerning the Composition of Its Poly-Crete Floor Coating Product. This opinion grants a bill discovery to explore whether the defendant, a chemist formerly employed by the plaintiff, has stolen the plaintiff's trade secrets. The matter involves the composition of chemicals used to make a floor covering manufactured by the plaintiff and known as Poly-Crete.

MOUKAWSHER, THOMAS G., J. Plaintiff Dur-a-flex makes floor coatings. Defendant Samet Dy is a chemist who used to work for Dur-a-flex. Dy helped Dur-a-flex develop a successful floor coating called Poly-Crete—a cementitious urethane used on commercial floors.

Dy left Dur-a-flex in 2013 and set up a consulting business. Since then he has been hired to consult with several of Dur-a-flex's competitors. Dur-a-flex accuses Dy of stealing its trade secrets—its formula and research—and selling them to these competitors, some of whom Dur-a-flex has already sued. Rather than suing defendant Crown Polymers and its affiliates (Crown) right away, Dur-a-flex has brought this bill of discovery to see if Dy gave Crown Dur-a-flex's allegedly stolen trade secrets.

Both sides agree the court may grant the bill if it believes that a reasonable person in Dur-a-flex's shoes would believe the company was justified in suing Dy for stealing its secrets and giving them to Crown. This standard is similar to the standard to determine whether a lawsuit would be vexatious. It was articulated by our Supreme Court in 1994 in *Berger v. Cuomo*.[(1)]

The evidence at the hearing on the discovery bill showed that Dy learned everything he knew about cementitious urethane from Dur-a-flex. Crown did relatively little business with

cementitious urethanes before hiring Dy as a consultant. During exchanges between Dy and Crown about his work for Crown, it was clear that cementitious urethane development was the company's chief interest in Dy. More importantly, these exchanges included at least one overt reference to comparing Crown and Dur-a-flex products.

Not only did Dy get the job, he was called the "go-to for Crown's new product technology." And he was important enough to Crown that it took the unusual step of amending its original consulting agreement with him to loan him $50,000. After these information exchanges, Dy's work for Crown and his receipt of the $50,000 loan and other compensation, Crown admits it changed its own cementitious urethane product and started selling more of it.

After getting wind of all this, Dur-a-flex's chief chemist tested Crown's new urethane product. Having tested several competitors' products over the years, he said the new Crown product's resin and hardener looked and behaved in ways "remarkably similar" to Dur-a-flex's product in the way it flowed, healed and accepted the spread of ornamental bits of stone, etc. The chemist said he has no idea what information Dy gave Crown but he does believe from what he saw that Dy has taken and used Dur-a-flex trade secrets.

Crown rejects this. It insists the Dur-a-flex chemist got what he wanted out of his testing of the product by sticking with subjective analysis instead of applying several available objective scientific tests to it—tests like infrared spectroscopy for instance. The chemist countered that the objective tests mentioned couldn't give him Crown's actual formula no matter what he did with them and that what matters most without the precise formula is how the product performs when applied.

Crown also insists that to win a case against it Dur-a-flex would have to prove something it can't prove—that there is a trade secret to protect. Using publicly available patent and manufacturer publications, Crown says there is nothing independently valuable about a cementitious urethane formula worth protecting.

Crown has demonstrated that the basic components of cementitious urethane products are well known: an aggregate, a resin, and a hardener. Indeed, it is clear that the range of available aggregates, resins, and hardeners is also widely available from public sources. But that does not mean that Dur-a-flex couldn't reasonably believe that the precise ingredients and ratios in its formula have independent value worth defending. Indeed, Dur-a-flex does defend it. It has never made its formula public and has had Dy and other employees sign agreements promising to keep matters like this secret.

Tellingly, Crown does the same thing. It keeps its cementitious urethane formula a secret and indeed Crown is mightily resisting this bill of discovery brought to get a look at it. In response to the evident contradiction in keeping its formula secret while saying every important thing about cementitious urethanes is public, Crown merely says its formula is "proprietary." It doesn't distinguish this from a claim of trade secret and, of course, Crown hasn't openly disclaimed its formula is a trade secret. But Crown's behavior about its own product certainly suggests that Dur-a-flex's belief that it has a trade secret is both sincere and reasonable. We can't

tell if Dur-a-flex has a trade secret to protect at this stage, but it does seem to claim so reasonably and sincerely.

Given the communications, the payments, the evidence about the formulas, and the parties' efforts to guard them, the court concludes that a reasonable person making decisions for Dur-a-flex could believe that it had a trade secret that Dy and Crown have misappropriated. This by no means is a conclusion that Crown has misappropriated anything. But in light of all the evidence in front of the Court a reasonable person might think this and want to pursue such a claim.

The bill of discovery is granted. The parties will submit proposed discovery orders including appropriate protective orders within 14 days of this decision, and the court will then schedule a hearing on the proposals. No judgment will enter at this time.

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[1]230 Conn. 1, 7.