

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**APPLIED MANUFACTURING TECHNOLOGIES, LLC, ET AL,  
Plaintiffs,**

v.

**Case No. 13-138043-CK  
Hon. James M. Alexander**

**4D SYSTEMS, LLC, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on cross motions for summary disposition. Plaintiffs are in the business of engineering automation systems for the automotive industry. In their Complaint, Plaintiffs allege that Defendant Jean-Pierre Rasaiah was a former managerial-level employee. In February 2010, Mr. Rasaiah terminated his employment at Applied Manufacturing.

Plaintiffs allege that Mr. Rasaiah initially claimed that he was going to work selling software for a non-competing business. But Plaintiffs claim that they later learned that Mr. Rasaiah worked for or had an ownership interest in several competing companies – including Defendant 4D Systems. Plaintiffs also claim that Mr. Rasaiah competed while he was still employed with them.

Particularly relevant to the current motions, Plaintiffs claim that Mr. Rasaiah signed three Non-Disclosure and Non-Compete Agreements over the years. Once Plaintiffs discovered that he may be competing, they attempted to enforce the agreements, but found that the signature pages of these agreements “had been secretly removed.” Mr. Rasaiah, on the other hand, claims that he

never signed the documents because he had a problem with the non-solicitation and non-compete provisions. This dispute is central to both sides' motions for summary disposition.

In relevant part, Plaintiffs sued on claims of: (Count II) Breach of Contract, (Count III) Breach of Fiduciary Duty, (Count IV) Unjust Enrichment, (Count V) Violation of the Uniform Trade Secret Act, (Counts VI and VII) Tortious Interference; (Count VIII) Fraudulent Misrepresentation; and (Count IX) Unfair Competition.

Defendants 4D and Mr. Rasaiah filed the present motion for summary under MCR 2.116(C)(7) and (C)(10). And Plaintiffs filed their motion under (C)(10). A motion under (C)(7) determines whether a claim is barred, among other grounds, by the statute of frauds. And a (C)(10) motion tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

### **1. Breach of Contract (Count II) based on 2006 Employee Agreement.**

As stated, a large part of both parties' motions hinges on the enforceability of a 2006 Employee Non-Disclosure and Non-Competition Agreement. Plaintiff claims that Mr. Rasaiah signed the agreement and the signature page went missing. And Mr. Rasaiah claims that he never signed the agreement because he was unhappy with its terms. Both parties present evidence in support of their positions in the form of deposition testimony and supporting documentation.

Defendants claim that absent a writing, the non-competition agreement is unenforceable as it contains a two-year term. As such, enforcement of the same is barred by MCL 566.132(1)(a). The cited statute provides:

In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise:

(a) An agreement that, by its terms, is not to be performed within 1 year from the making of the agreement.

Both parties generally cite to the same law for determining the enforceability of a written agreement that is incomplete. Michigan law is well established “that extrinsic evidence may be used to supplement, but not contradict, the terms of a written agreement, including lost documents.” *Zander v Ogihara Corp*, 213 Mich App 438, 443-444; 540 NW2d 702 (1995), citing *Opdyke Investment Co v Norris Grain Co*, 413 Mich. 354, 367; 320 N.W.2d 836 (1982).

When considering such issues, our appellate courts have adopted “a case-by-case approach.” *Kelly-Stehney & Assocs v MacDonald’s Indus Prods*, 265 Mich App 105, 111; 693 NW2d 394 (2005).

The *Zander* Court also concluded that a plaintiff must present “‘clear, strong, and unequivocal,’ i.e., clear and convincing” evidence of the alleged signature in order to enforce a contract lacking a signature. *Zander*, 213 Mich App at 444, quoting *Weinsier v Soffer*, 358 So 2d 61, 62-63 (Fla App, 1978)

Further, as quoted by Plaintiff:

Clear and convincing evidence is defined as evidence that “produce[s] **in the mind of the trier of fact** a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [**the factfinder**] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *Kefgen v Davidson*, 241 Mich App 611, 625; 617 NW2d 351 (2000) (emphasis added); quoting *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995)

In other words, the parties acknowledge that resolution of this issue depends on a determination by the trier-of-fact. Yet, both sides oddly move for summary disposition, citing competing evidence in support of their positions. But whether Mr. Rasaiah signed the agreement is disputed question of fact that requires both parties’ motions on this claim to be DENIED.

## 2. Plaintiffs' motion for summary.

Plaintiffs also request summary disposition on their Counts III and VII for breach of fiduciary duty and fraudulent misrepresentation respectively.

With respect to Plaintiffs' breach of fiduciary duty claim, Plaintiffs argue that it is undisputed that Ms. Rasaiah started competing more than three years before resigning by incorporating his first competing company.

Generally, "[a] fiduciary owes a duty of good faith to his principal and is not permitted to act for himself at his principal's expense during the course of his agency." *Prentis Family Fund, Inc v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 49; 698 NW2d 900 (2005); quoting *Central Cartage v Fewless*, 232 Mich App 517, 524; 591 NW2d 422 (1998).

In response to Plaintiffs' motion, Defendants dispute whether Mr. Rasaiah was in a fiduciary relationship with Plaintiffs. The Court of Appeals has reasoned:

A fiduciary relationship is "[a] relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships—such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client—require the highest duty of care. Fiduciary relationships [usually] arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer." *Calhoun County v Blue Cross & Blue Shield*, 297 Mich App 1, 20; 824 NW2d 202 (2012); quoting *In re Karmey Estate*, 468 Mich 68, 75 n 2; 658 NW2d 796 (2003).

Indeed, Plaintiffs offer little analysis on this issue other than broad conclusions that Mr. Rasaiah breached his fiduciary duty. And in their Reply Brief, Plaintiffs only cite federal caselaw that purports to establish that, regardless of the existence of a non-compete agreement; an employee owes a duty of loyalty to her employer. But Plaintiffs' analysis on this issue is thin,

and Michigan law is clear that, “A party may not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the claim.” *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007). Because Plaintiffs fail to present any meaningful analysis on this issue, their request for summary on their Count III is DENIED.

Next, Plaintiffs move for summary of their fraudulent misrepresentation claim. Plaintiffs base this claim on allegations that Mr. Rasaiah misrepresented that he was in competition with them. In other words, Plaintiffs’ fraudulent misrepresentation claim is simply a re-cast breach of contract claim based on a non-competition provision. Plaintiffs have entirely failed to convince the Court that they are entitled to judgment as a matter of law on said claim.

### **3. Defendants’ alternative motion for summary.**

Finally, Defendants filed a second, alternative motion for summary disposition – arguing that they are entitled to dismissal of Plaintiffs’ remaining claims under (C)(10).

Defendants first claim that Plaintiffs have not identified any protected trade secret that would allow their trade secret claim to succeed.

Under the Michigan Uniform Trade Secrets Act (MUTSA), “Trade secrets” are defined as information that both: (1) “derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, 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.” MCL 445.1902(d).

Our Supreme Court has explained, “a trade secret is ‘a secret formula or process not patented but known only to certain individuals using it in compounding some article of trade

having a commercial value, and does not denote the mere privacy with which an ordinary commercial business is carried on.” *Hayes-Albion v Kuberski*, 421 Mich 170, 181; 364 NW2d 609 (1984).

In their motion, Defendants argue that Plaintiffs have failed to identify any protectable trade secret. Rather, Defendants argue that Plaintiffs’ employees receive no specialized training, and therefore, there can be no trade secret.

In response, Plaintiffs identify the following as trade secrets: (1) employee compensation and benefits; (2) employee recruitment and retention strategies; (3) pricing and quoting strategies; (4) project execution templates, processes, and strategies; (5) client lists; and (6) engineering processes and standards.

Although there is some authority that client lists may not be protectable trade secrets within the meaning of the statute, Plaintiff has identified several other categories of trade secrets that appear to fall within the *Hayes-Albion* Court’s definition. And in their Reply Brief, Defendants offer little argument about the specific classes of information identified as trade secrets by Plaintiffs. This leaves the Court in the position to make a dispositive ruling on cursory arguments and little evidence. The Court will not so do.

The parties spend so much time and effort on their breach-of-contract/lack-of-signature arguments that they (for the most part) fail to establish their entitlement to judgment as a matter of law on other claims. In any event, on Plaintiffs’ trade secrets claim, the Court finds that the parties have not presented enough information or reasoning to make an informed decision on Defendants’ motion. As a result, Defendants’ motion on this claim is DENIED.

Defendants next move for summary disposition of Plaintiffs’ remaining claims of breach of fiduciary duty, unjust enrichment, tortious interference, fraudulent misrepresentation; and

unfair competition. In support of this request, Defendants argue that Plaintiffs' alternative claims are simply re-cast breach of contract claims pled in an effort to strengthen their position in this litigation.

In support, Defendants generally cite to the *Hayes-Albion* Court for the proposition that: "In general, there is nothing improper in an employee establishing his own business and communicating with customers for whom he had formerly done work in his previous employment." *Hayes-Albion*, 421 Mich at 183.

Our Supreme Court continued that a former employee's knowledge of particular client needs "is not a trade secret at common law, [but] an employer may have a protectable interest in information about client needs that an employee gains by virtue of his employment." *Hayes-Albion*, 421 Mich at 183. The Court continued, however, that "in violation **of an agreement** respecting the employee providing services to the customer after termination of employment," a plaintiff could seek money damages. *Id.* (emphasis added).

But, as stated previously, Plaintiffs allege that Mr. Rasaiah did more than just contact customers with his knowledge of particular client needs. And should the trier-of-fact find that the Employee Agreement is enforceable, then Plaintiffs may pursue damages for a violation thereof – including contact with former customers.

In any event, Defendants' motion on these remaining claims again lacks meaningful analysis. That said, the Court finds that two of Plaintiffs' claims are simply re-cast breach of contract claims subject to dismissal – Plaintiffs' Count IV for Unjust Enrichment and Count VIII for Fraudulent Misrepresentation.

With respect to the unjust enrichment claim, it is well settled that "[a] contract will be implied **only where no express contract exists**. There cannot be an express and implied contract

covering the same subject matter at the same time.” *Campbell v Troy*, 42 Mich App 534, 537; 202 NW2d 547 (1972), citing *Superior Ambulance Service v Lincoln Park*, 19 Mich App 655; 173 NW2d 236 (1969).

Additionally, Plaintiffs claim that breaches of the 2006 Employee Agreement are the foundation of their unjust enrichment claim. But non-compete and non-solicitation provisions are matters of **contract** – not quasi-contract. See *Coates v Bastian Bros, Inc*, 276 Mich App 498, 506-508; 741 NW2d 539 (2007); MCL 445.774a(1). And Plaintiffs cite no authority for the proposition that such provisions are enforceable under an unjust enrichment theory and absent an express contract. As a result, Plaintiffs’ unjust enrichment claim fails as a matter of law.

Similarly, Plaintiffs’ fraudulent misrepresentation claim fails because it is based solely on allegations that Mr. Rasaiah made certain misrepresentations with respect to the non-competition provision of said Employee Agreement. While this may be the basis for a breach of contract claim, Plaintiffs fail to convince the Court that it can also be the basis for a fraud claim.

### **Summary**

To summarize, Defendants’ motion for summary disposition is GRANTED IN PART. Plaintiffs’ Count IV for Unjust Enrichment and Count VIII for Fraudulent Misrepresentation are DISMISSED under (C)(10).

In all other respects, both parties’ motions for summary disposition are DENIED.

**IT IS SO ORDERED.**

March 25, 2015  
Date

/s/ James M. Alexander  
Hon. James M. Alexander, Circuit Court Judge