

STATE OF MICHIGAN
SAGINAW COUNTY CIRCUIT COURT

CAPTUR TECHNOLOGIES CO, LLC

Plaintiff,

v.

CMS LAND COMPANY,

Defendant.

Case No. 15-027768-CB

Judge: M. Randall Jurrens (P27637)

**OPINION AND ORDER
DENYING DEFENDANT'S
MOTION FOR MORE
DEFINITE STATEMENT**

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In lieu of answering plaintiff's complaint, defendant filed a motion for more definite statement. For the reasons stated in this opinion, the court concludes that the motion should be denied.

Background

On September 21, 2015, plaintiff filed a complaint proffering five causes of action: breach of contract, repudiation/anticipatory breach of contract, conversion, unjust enrichment, and violation of Michigan's Uniform Trade Secrets Act.

In support of these claims, plaintiff alleges that water discharged from defendant's facilities at Bay Harbor Resort previously contained unacceptable levels of mercury (Complaint ¶¶ 8-18), plaintiff developed a process (the "Captur Process") that removed mercury sufficiently to meet EPA/MDEQ requirements (Complaint ¶¶ 19-30), the Captur Process is confidential and proprietary (Complaint ¶¶ 1, 37-38), defendant contracted with plaintiff to use the Captur Process in exchange for \$30,000 per month until January 15, 2021 (Complaint ¶¶ 2, 34-35), and defendant recently notified plaintiff of its intent to discontinue use of a portion of the Captur Process while continuing to use the rest of the Captur Process without plaintiff's consent or compensation (Complaint ¶¶ 3, 46-48).

Although service of process was effectuated October 6, 2015, plaintiff's counsel extended the time for answering through November 13, 2015 (Plaintiff's Response, Ex 2). On November 12, 2015, defendant filed a motion for a more definite statement, contending that plaintiff's complaint fails to specify "a protectable trade secret", and "[i]n order to prepare an answer and defend this case, [it] is entitled to know these omitted details".

Analysis

Motions for more definite statement are governed by MCR 2.115(A):

If a pleading is so vague or ambiguous that it fails to comply with the requirements of these rules, an opposing party may move for a more definite statement before filing a responsive pleading. The motion must point out the defects complained of and the details desired. * * *

The phrase "fails to comply with the requirements of these rules" refers primarily to the pleading rules of MCR 2.110 through 2.113. Dean and Longhofer, *Michigan Court Rules Practice*, § 2115.2, p 344.

In turn, MCR 2.111(B)(1) requires that every complaint contain:

A statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend.

This has been characterized as "notice pleading", *Johnson v QFD, Inc*, 292 Mich App 359, 368; 807 NW2d 719 (2011), as distinguished from "issue pleading" and "fact pleading". Dean and Longhofer, *Michigan Court Rules Practice*, § 2111.2, p 228.

Here, defendant contends plaintiff's complaint "is so vague and ambiguous as to what constitutes the 'Captur Process' and which 'portions of the Captur Process' [d]efendant is accused of planning to misappropriate that the [c]omplaint does not reasonably inform [defendant] of the nature of factual basis of the claim(s) that it is called on to defend."

Admittedly, in order to prevail on a misappropriation claim, an alleged trade secret must be identified “clearly, unambiguously, and with specificity”. *Compuware Corp v IBM*, 259 F Supp 2d 597, 605 (ED Mich, 2002).

However, this obligation is not controlling at the pleading stage. *Id.*; *Ajuba Int’l, LLC v Saharia*, 871 F Supp 2d 671, 691 (ED Mich, 2012). Rather, all that is presently required is presentation of factual allegations that reasonably inform defendant of the “nature of the claims” against which it is called on to defend. *Smith v Stolberg*, 231 Mich App 256, 260-261; 586 NW2d 103 (1998). This is a relatively low bar. *Ajuba*, at 691.¹

Here, although the complaint variously describes the alleged protectable trade secret (the “Captur Process”) (e.g. Complaint ¶¶ 1, 19, 26-29), the most extensive description (albeit, admittedly, tempered “[a]t the risk of over-simplification while also preserving the confidential nature of its intellectual property”), informs defendant:

21. * * * [T]he core concept of the Captur Process, which was that the contaminants at Bay Harbor collected in organics or humates, and the key to removal of the contaminants was to develop the needle-in-the-haystack chemical flocculants that would cause the organics or humates to collect through a flocculation process, followed by processes to remove the flocculated organics and contaminants. The Captur Process was developed and consisted of a series of chemical and physical processes in two basic stages. The first stage was conducted in a multi-chamber flocculating unit under continuous stirring and flowing of the contaminated water, adding hydrochloric acid to lower the pH levels of the contaminated water, and then adding flocculants which caused flocculation of the organics or humates that contained a majority of the contamination. Sludge or cake of flocculated organic humate was de-watered prior to discharge. The second stage was a “filtrating train” consisting of a series of processes that removed flocculated organics or humates and contaminants, with removal of the large flocculations followed by more refined filtering and other processes to remove residual contaminants.

¹ Context matters. Once beyond the pleading stage, plaintiffs in misappropriation cases are regularly required to identify their trade secrets with greater detail. For example, the degree of particularity needed to justify a preliminary injunction is observed in *Compuware Corp v IBM*, No 02-70906, 2003 WL 23212863 (ED Mich, 2003) (“with specificity”). The burden of establishing trade secrets during pre-trial discovery is addressed in *Dura Global Technologies Inc v Magna Donnelly Corp*, No 07-10945, 2007 WL 4303294 (ED Mich, 2007) (“reasonable particularity”). Summary disposition cases involving misappropriation include *Dura Global Technologies Inc v Magna Donnelly Corp*, 662 F Supp 2d 855 (ED Mich, 2009) (“with specificity”), and *Wilson v Continental Development Co*, 112 F Supp 2d 648 (WD Mich, 1999) (“specific nature”). Finally, the detail of trade secrets required at trial is characterized in *Shatterproof Glass Corp v Guardian Glass Co*, 322 F Supp 854 (ED Mich, 1970) (“clear and unambiguous specification[]”), and *Compuware Corp v IBM*, 259 F Supp 2d 597, 605 (ED Mich, 2002) (“clearly, unambiguously, and with specificity”).

While not as detailed as defendant desires, the court finds the complaint's description of the Captur Process sufficient to reasonably inform defendant of the "nature of the claims" against which it is called on to defend.²

Any missing details are obtainable by defendant through the discovery process. *Major v Schmidt Trucking Co*, 15 Mich App 75, 81-82; 166 NW2d 517 (1968); *Compuware, supra*, at 600, 605.

Conclusion

Plaintiff filed a 76 paragraph, multi-count complaint that includes allegations of trade secret misappropriation. In lieu of an answer, defendant filed a motion for more definite statement requesting the court compel plaintiff to file an amended complaint providing a more detailed description of the alleged trade secrets.

Having reviewed the complaint, the applicable court rules, and relevant case law, and having considered counsels' arguments, the court concludes that plaintiff's complaint is not "so vague or ambiguous that it fails to" "inform [defendant] of the nature of the claims [it] is called on to defend".

Accordingly, the court is denying defendant's motion for a more definite statement.

IT IS SO ORDERED.

Date: December 14, 2015

_____/s/_____
M. Randall Jurrens, Circuit Judge (P27637)

² This seems particularly true where, if there is any merit to the complaint's other allegations of fact (and reasonable inferences), defendant appears to be no stranger to the Captur Process (e.g. having been involved in the development of the Captur Process, having negotiated and executed a formal contract enabling its confidential use the Captur Process, having identified a portion of the Captur Process for discontinuance, etc.).