

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC,

Plaintiffs,

vs.

Case No. 2013-2742-CB

NARTRON CORPORATION, n/k/a GEN X MICROSYSTEMS and a/k/a OLDNAR CORPORATION, a Michigan corporation and UUSI, LLC, d/b/a NARTRON, a Michigan limited liability company,

Defendants,

and

UUSI, LLC, d/b/a NARTON, a Michigan limited liability company,

Defendant/Counter and Third-Party Plaintiff

vs.

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC

Counter-Defendants,

and

FUTABA CORPORATION OF AMERICA, a foreign corporation, THOMAS J. GRONSKI, RANDY GRIFFIN, and GINA TERRY,

Third-Party Defendants.

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## OPINION AND ORDER

Defendant UUSI, LLC d/b/a Nartron's ("Defendant") has filed a motion for reconsideration of the Court's February 29, 2016 Opinion and Order granting Plaintiffs' motion for summary disposition of Counts I and VIII of Defendant's counter/third-party complaint ("Counter-Complaint").

In the interests of judicial economy the factual and procedural statements set forth in the Court's February 29, 2016 Opinion and Order are herein incorporated.

### I. Standard of Review

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

### II. Arguments and Analysis

In its motion, Defendant contends that Plaintiffs did not legally reverse engineered the PCBs; rather, Defendant asserts that Plaintiff misappropriated the PCBs. Specifically, Defendant avers that reverse engineering is not a valid defense in this case because Plaintiffs came into possession of the PCBs and other materials at issue through a breach of confidence. Accordingly, a prerequisite to Defendant's position is a finding that Defendant and Plaintiffs had a confidential relationship.

In this case, it is undisputed that the parties did not enter into an express confidentiality agreement. Moreover, David Maronek, who acted as Defendant's vice president of sales and marketing during all times relevant to this matter, testified that Plaintiffs expressly refused to sign a confidentiality agreement and rejected Defendant's request to preserve its ownership of all materials provided to Plaintiffs. (See Plaintiffs' Exhibit 1 to their response to original motion, at ¶7.) Similarly, Jason Murar, JUSA's president, testified that Plaintiffs rejected Defendant's request to keep all information exchanged confidential. (See Exhibit 2 to Plaintiff's response to original motion, at ¶¶6-7.)

Defendant has cited to authority holding that an express confidentiality agreement is not needed in order for a confidential relationship to exist. See *Heyman v AR Winarick, Inc.*, 325 F2d 584, 587 (2<sup>nd</sup> Cir, 1963). However, "[w]here the parties negotiated at arm's length, or where one party expressly disclaimed any intent to enter into a confidential relationship, an implied contract does not arise. The mere fact that one who discloses information trusts the recipient to keep it in confidence is not enough to create a confidential relationship in the face of an express agreement to the contrary." Callman on Unfair Comp., Tr. & Mono. § 14:7 (4<sup>th</sup> Ed.) In this case, Plaintiffs have presented uncontested testimony of the agents of both sides at the time the parties' negotiations took place, and both of them have testified that Plaintiffs expressly rejected Defendant's request to keep information exchanged between them confidential, and that the rejection was made before the Defendant agreed to move forward with the parties' relationship. The Court is convinced that Defendant's position that a confidential

relationship existed, and that Plaintiffs' violated the confidential relationship, despite Plaintiffs' express refusal to enter into such a relationship, is without merit.

In addition, Defendant asserts that the evidence it has presented in this matter demonstrates that Plaintiffs wrongfully provided parts to Futaba so that they could reap the benefits of Defendant's work without paying for the benefits. In support of their position, Defendant relies on various exhibits. The first categories of exhibits are purchase orders sent by Plaintiffs requesting various parts and Plaintiffs' internal purchase requisitions. (See Defendant's Exhibits E-K) However, the purchase orders and requisitions merely evidence that Plaintiffs ordered parts in exchange for payment. (Id.) Accordingly, the purchase orders and purchase requisitions do not evidence any wrongful behavior.

The next category of exhibits evidence that Defendant provided the PCBs to Futaba. (See Defendant's Exhibits N-R.) Although this exhibits indicate that PCBs were provided to Futaba by Plaintiffs, the documents does not evidence that the PCBs were acquired without compensating Defendant or in violation of a non-disclosure or confidential agreement. As a result, the Court is convinced that Exhibits N-R does not support Defendant's position that the PCBs Plaintiffs provided to Futaba were acquired in a wrongful manner.

In addition to the PCBs, Defendant also avers that Plaintiffs improperly provided Futaba with gerber files and S19 software. In support of its position, Defendant relies on the minutes of an October 29, 2012 meeting between Plaintiffs and Futaba where Plaintiffs agreed to provide Futaba with the gerber files for each of the PCBs Futaba was to reverse engineer (See Defendant's Exhibit P), an internal October 22, 2012

Futaba email that states that “the attached...gerber files and panel drawings are of an old version but will do for the quote” (See Defendant’s Exhibit X), a change order in which Plaintiffs requested new “S19” files from Defendant (See Defendant’s Exhibit T), Defendant’s quote for the new files (See Defendant’s Exhibit U), and an email which indicates that the S19 file was given to Futaba (See Defendant’s Exhibit V). However, Defendant failed to present any of this evidence in its original motion and reply.

A trial court has discretion on a motion for reconsideration to decline to consider new evidence that could have been presented when the motion was initially decided. *Yost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012). This case has been highly litigious, the briefing in this matter has been voluminous, and the firms representing both sides are well-respected and have access to numerous resources. Nevertheless, Defendant’s counsel failed to attach many of the exhibits attached to Defendant’s instant motion, including exhibits P, T, U, V and X, to any of Defendant’s previous pleadings. Nevertheless, the Court will, in this instance, entertain Defendant’s new evidence. However, the Court is also convinced that Plaintiffs should have any opportunity to respond to Defendant’s position and new evidence. Consequently, the Plaintiffs shall have 14 days from the date of this Opinion and Order to file a limited response to Defendant’s motion.

Lastly, Defendant contends that the Plaintiffs and Futaba are not entitled to summary disposition of Count VIII because that claim for declaratory relief seeks a declaration that it is the owner of the PCBs, and all of the tangible and intangible proceeds within the PCBs. In the February 29, 2016 Opinion and Order, this Court held that while it is undisputed that Plaintiffs purchased the physical boards, a genuine issue

of material facts exists as to whether they also purchased the design, engineering and software materials. Accordingly, the Court agrees that Plaintiffs' are only entitled to summary disposition of the portion of Count VIII seeking a declaration that Defendant is the owner of the PCB, as the issue of who owns the engineering, software and other supporting material remains open.

### III. Conclusion

For the reasons set forth above, Defendant's motion for reconsideration of the Court's February 29, 2016 Opinion and Order is GRANTED, IN PART, DENIED, IN PART, and a portion of the motion remains under advisement. Specifically:

- 1) The portion of the February 29, 2016 Opinion and Order granting Plaintiffs summary disposition of the portion of Count VIII seeking a declaration that Defendant is the owner of the engineering, software and other supporting material within the PCBs is VACATED;
- 2) The portion of Defendant's motion asserting that the parties had a confidential relationship is DENIED; and
- 3) The portion of Defendant's motion addressing whether Plaintiffs misappropriated its proposed trade secrets REMAINS UNDER ADVISEMENT. Plaintiffs shall have 14 days from the date of this Opinion and Order to file a response, not to exceed 10 pages (exclusive of exhibits), addressing the portion of Defendant's motion not addressed above. A hearing on the portion of Defendant's motion remaining under advisement shall be held on July 5, 2016 at 8:30 am.

In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: JUN 14 2016

Kathryn A. Viviano  
Hon. Kathryn A. Viviano, Circuit Court Judge