

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

TRANSWORLD MATERIALS, LLC, a
Maryland limited liability company; and
SPECTRA EQUIPMENT SYSTEMS, LTD,
a Maryland corporation,

Plaintiffs,

Case No. 14-04248-CZB

HON. CHRISTOPHER P. YATES

vs.

BAY BLOCK, LLC, a Michigan limited
liability company; WILLIAM B. HUNT;
and SUSAN ELLEN HUNT,

Defendants.

OPINION AND ORDER GRANTING IN PART, AND DENYING IN
PART, DEFENDANTS' MOTIONS FOR SUMMARY DISPOSITION

For more than 15 years, Plaintiffs TransWorld Materials, LLC (“TransWorld”) and Spectra Equipment Systems, Ltd (“Spectra”) enjoyed an amicable relationship with Mark Van Poppelen and his entities, Van Poppelen Maintenance and Delivery, Inc. (“VPMD”) and Van Poppelen Brothers, Inc. (“VPB”). Specifically, the plaintiffs leased custom machines to VPMD and VPB for grinding and splitting decorative concrete. But that relationship soured when Mark Van Poppelen leased his operations to Defendant Bay Block, LLC (“Bay Block”) in June of 2011 and the plaintiffs thereafter attempted to enter into an equipment lease with Bay Block. After the parties failed to reach a lease agreement, the plaintiffs repossessed the equipment in 2012, so Bay Block then engineered similar equipment based upon the plaintiffs’ designs. That prompted the plaintiffs to file suit for damages related to Bay Block’s temporary use and re-engineering of the custom equipment. Now, Bay Block and Defendants William and Susan Hunt have moved for summary disposition.

I. Factual Background

The defendants have moved for summary disposition under MCR 2.116(C)(8) and (10), but because discovery is still in progress and the defendants have sought relief based on the statute of frauds and the statute of limitations, the Court shall review the summary-disposition motions under the standards set forth in MCR 2.116(C)(7) and (8). Although a party “may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence[,]” Maiden v Rozwood, 461 Mich 109, 119 (1999), the movant “is not required to file supportive material, and the opposing party need not reply with supportive material.” Id. In contrast, “[w]hen reviewing a motion brought under MCR 2.116(C)(8), the court considers only the pleadings.” Michigan ex rel Gurganus v CVS Caremark Corp, 496 Mich 45, __ (2014). Accordingly, the Court shall present the facts by relying primarily upon the allegations in the complaint and supplementing those allegations only as needed to adequately frame the statute-of-frauds issue.

On February 23, 1996, Russell Rich, in his capacity as principal of Plaintiff Spectra, entered into an equipment lease and confidentiality agreement with Mark Van Poppelen on behalf of VPMD for the lease of custom grinding machines engineered to be used in the manufacturing of decorative concrete blocks. See Second Amended Complaint, Exhibit A. Under that lease, Spectra permitted VPMD to utilize the custom grinding machines in exchange for toll charges calculated based upon VPMD’s actual use of the equipment. See id., Exhibit A (Schedule A – Equipment). Additionally, VPMD agreed to be bound by a confidentiality agreement, which, *inter alia*, prohibited VPMD from competing with Spectra or attempting to duplicate Spectra’s custom machines for two years after the termination of the lease. See id., Exhibit A (Schedule B – Confidentiality Procedures, ¶ J). Twelve years later, on October 23, 2008, Russell Rich, acting on behalf of Plaintiff TransWorld, entered into

another equipment lease with Mark Van Poppelen on behalf of VPB for custom splitters that were also engineered to assist with the manufacturing of decorative concrete blocks. See id., Exhibit B. Pursuant to the terms of that lease, TransWorld permitted VPB to use the custom splitting machines in exchange for toll charges calculated on the basis of VPB's use of the equipment. Id., Exhibit B (Van Poppelen Brothers Equipment Agreement, ¶ 3). Further, VPB agreed to be bound by the terms of the confidentiality agreement Mark Van Poppelen and Russell Rich signed on February 23, 1996. See id., ¶ 9.

After 15 years of harmonious commercial relationships, Mark Van Poppelen decided to lease his manufacturing operations to Bay Block in June of 2011. See Second Amended Complaint, ¶ 10. When the plaintiffs learned of that development, they immediately informed Bay Block that it had to cease using the custom grinding and splitting machines until Bay Block entered into a formal lease and confidentiality agreement with the plaintiffs. Id., ¶ 11. After some discussion, Russell Rich and William Martin (the principal of Bay Block) verbally agreed to abide by the terms of the agreements negotiated between Russell Rich and Mark Van Poppelen until the parties could work out their own contract in the near future, see id., Exhibit C, and in September 2011, Bay Block paid the plaintiffs \$5,000 for the use of the equipment. See id., Exhibit D.

Shortly thereafter, in November of 2011, William Martin sold Bay Block to Coryell Limited, LLC ("Coryell"), which was operated by William Hunt. See Second Amended Complaint, ¶¶ 16-17. When the plaintiffs learned of that transfer, they again directed Bay Block to cease using the custom grinding and splitting machines until Bay Block remitted payment for the use of that equipment in the latter half of 2011 and entered into a new lease and confidentiality agreement. Id., Exhibit E. The parties tried to negotiate such a new agreement, but the plaintiffs rejected Bay Block's proposals

and decided to repossess the grinding and splitting equipment. See id., ¶ 25. The plaintiffs contend that Bay Block then re-engineered similar grinding and splitting machines based upon the plaintiffs' designs. Id., ¶ 27. Accordingly, the plaintiffs filed suit in Bay County Circuit Court on July 9, 2012, against William Hunt, Bay Block, and several related entities. After engaging in discovery for nearly two years, the plaintiffs sought leave to amend their complaint to add a claim against Susan Hunt, William Hunt's wife, for a violation of the Uniform Fraudulent Transfer Act, MCL 566.31, *et seq.* Bay County Circuit Judge Harry P. Gill granted the plaintiffs' request, so the plaintiffs filed a second amended complaint on March 7, 2014, asserting claims against Bay Block, William Hunt, and Susan Hunt. Then, on May 1, 2014, Judge Gill transferred the case to Kent County Circuit Court on change of venue. Now, in the wake of that transfer, each of the defendants has sought summary disposition under MCR 2.116(C)(8) and (10). But because discovery is still open and the defendants have asked for relief based on the statute of frauds and statute of limitations, the Court will review the motions pursuant to the standards set forth by MCR 2.116(C)(7) and (8).

II. Legal Analysis

“A motion under MCR 2.116(C)(8) tests the legal sufficiency of a complaint.” Maiden, 461 Mich at 119. Therefore, when evaluating whether the plaintiffs have stated claims upon which relief may be granted, “well-pleaded factual allegations are accepted as true and construed in the light most favorable to the nonmovant.” Id. In contrast, when reviewing a motion under MCR 2.116(C)(7), the Court “must consider not only the pleadings, but also any affidavits, depositions, admissions or other documentary evidence filed or submitted by the parties.” RDM Holdings, Ltd v Continental Plastics Co, 281 Mich App 678, 687 (2008). If the Court finds no factual dispute, whether a “claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide.”

Id. “If a factual dispute exists, however, summary disposition is not appropriate.” Id. In the instant case, the plaintiffs have pleaded eight claims: (1) breach of contract against Bay Block; (2) violation of the Michigan Uniform Trade Secrets Act (“MUTSA”), MCL 445.1901, *et seq.*, against Bay Block and William Hunt; (3) unjust enrichment against Bay Block; (4) promissory estoppel against Bay Block; (5) conversion against Bay Block and William Hunt; (6) fraud against Bay Block and William Hunt; (7) piercing the corporate veil against William Hunt and Susan Hunt; and (8) violation of the Uniform Fraudulent Transfer Act (“UFTA”), MCL 566.31 *et seq.*, against Susan Hunt. Each of the defendants has moved for summary disposition on all claims, so the Court must evaluate each claim individually to determine whether the plaintiffs may proceed on each theory.

A. Counts One, Three, and Four against Bay Block.

The plaintiffs have advanced closely related claims for breach of contract (Count One), unjust enrichment (Count Three), and promissory estoppel (Count Four) against Bay Block. The breach-of-contract claim rests upon an alleged oral agreement between Russell Rich (on behalf of the plaintiffs) and William Martin (on behalf of Bay Block) to follow the terms of the preexisting contract between the plaintiffs and the Van Poppelen entities until the parties could negotiate their own agreement. See Second Amended Complaint, Exhibit C. Although this agreement was never reduced to writing, the plaintiffs contend – and Bay Block does not contest – that Bay Block paid the plaintiffs \$5,000 in connection with Bay Block’s use of the plaintiffs’ custom grinding and splitting equipment during the negotiation period. Id., Exhibit D. Therefore, because Bay Block partially performed under the oral agreement to abide by the terms of the Van Poppelen contracts until the parties could negotiate their own contract, Bay Block cannot rely upon the statute of frauds to support its motion to dismiss

the plaintiffs' claim for breach of contract pursuant to MCR 2.116(C)(7). See Barclae v Zarb, 300 Mich App 455, 475 (2013).

Additionally, the Court cannot grant summary disposition against the plaintiffs on their claim for unjust enrichment based upon Bay Block's use of the plaintiffs' grinding and splitting equipment, but the Court must award summary disposition to the defendants on the unjust-enrichment claim to the extent that the claim relies upon alleged misappropriation of trade secrets. Under Michigan law, the MUTSA displaces civil remedies, except those arising under contract, for misappropriation of trade secrets. See MCL 445.1908; see also CMI Int'l, Inc v Internet Int'l Corp, 251 Mich App 125, 132 (2002). Therefore, the Court must dismiss the plaintiffs' claim for unjust enrichment pursuant to MCR 2.116(C)(8) to the extent that the plaintiffs seek recovery for the misappropriation of trade secrets under that theory.

Finally, the Court cannot award summary disposition on the plaintiffs' claim for promissory estoppel. To state a claim for promissory estoppel, the plaintiffs must allege: "(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided." See Novak v Nationwide Ins Co, 235 Mich App 675, 686-687 (1999). Although the Court must "exercise caution in evaluating an estoppel claim and should apply the doctrine only where the facts are unquestionable and the wrong to be prevented undoubted[,]" id. at 687, the second amended complaint sets forth all of the elements necessary to allege a promissory-estoppel claim. Therefore, based upon the Court's analysis of the pleadings, the Court cannot grant summary disposition to the defendants on the claim for promissory estoppel, even though the plaintiffs plainly will struggle to prevail on that theory.

B. Counts Two, Five, and Six against Bay Block and William Hunt.

The plaintiffs have presented three claims against Defendants Bay Block and William Hunt arising from the purported misappropriation of the plaintiffs' process for modifying the grinding and splitting equipment: violation of MUTSA (Count Two); conversion (Count Five); and fraud (Count Six). Bay Block and William Hunt contend that the plaintiffs cannot assert a MUTSA claim because the plaintiffs failed to allege that William Hunt or Bay Block misappropriated the plaintiffs' process for modifying the grinding and splitting equipment. The MUTSA defines misappropriation as:

(i) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means.

(ii) Disclosure or use of a trade secret of another without express or implied consent by a person who did 1 or more of the following:

(A) Used improper means to acquire knowledge of the trade secret.

(B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it, acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or derived from or through a person who owed a duty to the person to maintain its secrecy or limit its use.

See MCL 445.1902(b). The plaintiffs allege that William Hunt instructed Bay Block employees to inspect and measure the custom machines so that Bay Block could copy the modification procedure and re-engineer similar custom grinding and splitting machines. See Second Amended Complaint ¶ 26. Furthermore, the plaintiffs allege that Bay Block and William Hunt had agreed to abide by the confidentiality agreement between the plaintiffs and the Van Poppelen entities, see id., ¶¶ 20-21 & Exhibit E, including an agreement by the Van Poppelen entities not to “attempt to independently duplicate its process for a period of at least two years.” Id., Exhibit A (Schedule B – Confidentiality Procedures, ¶ J). Thus, the plaintiffs have adequately alleged that the modification procedures were

“acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use,” see MCL 445.1902(b)(ii)(B), so the Court cannot grant summary disposition on the MUTSA claim pursuant to MCR 2.116(C)(8).

The Court must, however, dismiss the claims for conversion and fraud. First, the plaintiffs are foreclosed from raising a claim for conversion of the modification process because Michigan law does not recognize conversion of an idea that has not been expressed in a legally protected manner, such as by patent, trademark, or copyright. See Sarver v Detroit Edison Co, 225 Mich App 580, 586, 587-588 (1997). Second, as the Court discussed in connection with the claim for unjust enrichment, MUTSA displaces all civil remedies, except those arising under contract, for the misappropriation of trade secrets. See MCL 445.1908; see also CMI Int'l, 251 Mich App at 132. Thus, the claims for conversion and fraud, which relate directly to the misappropriation of the modification process for the grinding and splitting machines, cannot survive the defendants’ motions for summary disposition under MCR 2.116(C)(8).

C. Claim Seven against William Hunt and Susan Hunt.

In Count Seven of the second amended complaint, the plaintiffs assert a claim for piercing the corporate veil against William Hunt and Susan Hunt. Under Michigan law, “piercing the corporate veil is not itself an independent cause of action, but rather, it is means of imposing liability on the underlying cause of action.” See, e.g., Kostopoulos v Crimmins, No 299478, slip op at 4 (Mich App Dec 29, 2011) (unpublished decision). Thus, the plaintiffs may rely upon such a theory to impose liability upon William Hunt and Susan Hunt for the underlying claims asserted against Bay Block, but the plaintiffs cannot assert this theory as an independent cause of action. Accordingly, the Court must dismiss the claim for piercing the corporate veil pursuant to MCR 2.116(C)(8).

D. Claim Eight against Susan Hunt.

Finally, the plaintiffs allege that Susan Hunt is liable for violations of the UFTA based upon her allegedly fraudulent acceptance of funds from Bay Block. A plaintiff may assert UFTA claims based on fraudulent transfers made or obligations incurred under four circumstances. See MCL 566.34(1)(a) & (b) and MCL 566.35(1) & (2). Here, the plaintiffs contend that the funds received by Susan Hunt from Bay Block as the repayment of a loan extended after Bay Block had been put on notice of the plaintiffs' claims violates each of the four UFTA provisions. Susan Hunt challenges whether the facts actually support the UFTA claims, but the Court can only evaluate the UFTA claims under MCR 2.116(C)(8) at this point in the proceedings. Accordingly, the Court finds that the plaintiffs have adequately pleaded facts supporting their UFTA claims, so summary disposition is not appropriate under MCR 2.116(C)(8). However, Susan Hunt correctly asserts that a claim under MCL 566.35(2) must be raised within one year of the allegedly fraudulent transfer. See MCL 566.39(b). Therefore, any claims for fraudulent transfers based upon MCL 566.35(2) that were made to Susan Hunt prior to March 7, 2013, are barred by MCL 2.116(C)(7).

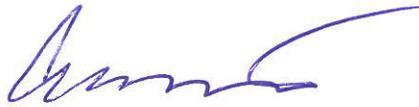
III. Conclusion

For the reasons set forth in this opinion, the Court must grant in part, and deny in part, the motions for summary disposition filed by Defendants Bay Block, William Hunt, and Susan Hunt. First, the Court cannot grant summary disposition on the plaintiffs' claims against Bay Block for breach of contract and promissory estoppel, but the Court must dismiss the claim for unjust enrichment to the limited extent that that claim relates to the misappropriation of trade secrets. Likewise, the Court must dismiss the plaintiffs' claims against Bay Block and William Hunt for conversion and fraud because those claims relate to the misappropriation of trade secrets, but the Court cannot dismiss the claim against Bay Block and William Hunt for MUTSA violations. Further, the Court must dismiss the claim against William Hunt and Susan

Hunt for piercing the corporate veil because that theory may only be used to impose liability upon William Hunt and Susan Hunt for the underlying claims asserted against Bay Block, rather than an independent cause of action. Finally, the Court cannot dismiss the UFTA claims against Susan Hunt, but the plaintiffs are precluded from advancing any claim under MCL 566.35(2) based upon allegedly fraudulent transfers that were made prior to March 7, 2013.

IT IS SO ORDERED.

Dated: August 28, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge