NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3777-14T3

SAMSUNG ELECTRONICS AMERICA, INC.,

Plaintiff-Respondent,

v.

WESTPARK ELECTRONICS, LLC
d/b/a ABE'S OF MAINE,

Defendant-Appellant.

Argued October 21, 2015 – Decided December 4, 2015

Before Judges Fuentes, Koblitz and Gilson.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-5446-14.

Ryan J. Cooper argued the cause for appellant (Pashman Stein, attorneys; Michael S. Stein, on the brief).

Richard B. Brosnick argued the cause for respondent (Akerman, attorneys; Mr. Brosnick, on the brief).

PER CURIAM

Plaintiff Samsung Electronics America, Inc. (SEA), filed a complaint against defendant Westpark Electronics, LLC, d/b/a Abe's Of Maine (Westpark), alleging tortious interference, as well as two violations of N.J.S.A. 56:4-1: unfair competition

and infringement of trademark. SEA alleged that Westpark repeatedly induced SEA's authorized resellers to breach their contracts with SEA, by selling to Westpark at reduced prices, thereby allowing Westpark to sell genuine SEA televisions online at reduced prices. Although Westpark claimed its supplier list was a trade secret, a November 21, 2014 order compelled Westpark to provide a list of its Samsung suppliers, and a February 26, 2015 order denied reconsideration, as well as denying the additional request for in camera review of the list. We granted leave to appeal both orders on April 17, 2015, and now affirm, substantially for the reasons provided by Judge Robert C. Wilson in his thoughtful written opinion attached to his February order.

As an initial matter, we "apply an abuse of discretion standard to decisions made by . . . trial courts relating to matters of discovery." Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011) (citing Bender v. Adelson, 187 N.J. 411, 428 (2006)). "New Jersey's discovery rules are to be construed liberally in favor of broad pretrial discovery." Payton v. N.J. Tpk. Auth., 148 N.J. 524, 535 (1997) (citing Jenkins v. Rainner, 69 N.J. 50, 56 (1976)).

Judge Wilson stated in his February 2015 opinion that defendant claimed to have generated $16 million to $18 million

in revenue from the sale of Samsung televisions since July 2013. Defendant claims to have purchased these televisions through proper means, and claims also that its suppliers have no contractual relationship with SEA. Without knowing their identity, it is extremely difficult to determine whether Westpark's suppliers are affiliated with SEA's authorized dealers.

To establish a claim of tortious interference with a contract a plaintiff must demonstrate that the defendant "intentionally and improperly interfere[d] with the performance of a contract . . . between [the plaintiff] and a third person by inducing or otherwise causing the third person not to perform the contract." Nostrame v. Santiago, 213 N.J. 109, 122 (2013) (quoting Restatement (Second) of Torts § 766 (Am. Law Inst. 1979)). "Interference with a contract is 'intentional if the actor desires to bring it about or if he knows that the interference is certain or substantially certain to occur as a result of his action.'" Russo v. Nagel, 358 N.J. Super. 254, 268 (App. Div. 2003) (quoting Restatement (Second) of Torts § 766A cmt. e (Am. Law Inst. 1979)).

The parties entered into a protective order in December 2014. The order mandated that confidential information obtained during discovery be used solely for the purpose of litigation of

the current action, and that it be made available only to specified personnel. This order laid to rest any concerns defendant might have about plaintiff taking legal action against the named suppliers. Pursuant to this agreement, a party needed only "a good-faith belief" to label information "confidential." Defendant claims it is not buying televisions from SEA's authorized dealers. Plaintiff maintains that it is not always easy to ascertain the precise identity of a supplier, so that a supplier might be connected with an authorized dealer even if the connection is not readily apparent, just as Westpark does business as Abe's of Maine. Defendant asserts that revealing the names of its suppliers would cause plaintiff to depose those suppliers, who would then be scared away from supplying defendant with Samsung televisions in the future. Such an argument could be made in any litigation, as witnesses rarely want to be drawn into court proceedings.

Westpark also claims that its list of suppliers is a trade secret. As the parties and Judge Wilson in his decision point out, no New Jersey case has expressly provided protection to a supplier list as a trade secret. Several foreign courts have acknowledged that supplier lists may constitute trade secrets. See Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1108 (9th Cir. 2001) (finding that supplier lists may be a trade

secret under Montana law); Hudson Hotels Corp. v. Choice Hotels Int'l, Inc., 995 F.2d 1173, 1176-77 (2d Cir. 1993) (stating that "[c]ompilations of information, traditionally viewed and protected under trade secret law, are items like customer and supplier lists and pricing and cost information."); John Paul Mitchell Sys. v. Randalls Food Mkts., 17 S.W.3d 721, 738 (Tex. App. 2000) (finding that supplier lists may be a trade secret under Texas law); Allen v. Hub Cap Heaven, 484 S.E.2d 259, 263 (Ga. Ct. App. 1997) (recognizing that tangible lists of suppliers may constitute a trade secret in some circumstances). But see Cent. Plastics Co. v. Goodson, 537 P.2d 330, 334-35 (Okla. 1975) (noting that a "majority of jurisdictions recognize the rule that the names and addresses of customers and suppliers which are easily ascertainable or available generally to the public or trade do not constitute trade secrets or confidential information").

In New Jersey, six factors are generally analyzed in determining whether the information sought is a trade secret:

> (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the owner to guard the secrecy of the information; (4) the value of the information to the business and to its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty

> with which the information could be properly acquired or duplicated by others.
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> [Ingersoll-Rand Co. v. Ciavatta, 110 N.J. 609, 637 (1988) (citing Restatement of Torts § 757 cmt. b (1939) (Am. Law Inst., amended 1979); see Hammock by Hammock v. Hoffmann-Laroche, 142 N.J. 356, 384 (1995).]

Evaluating these factors in light of the facts of this case, defendant did not demonstrate that its supplier list is a trade secret. Indeed, looking at the fourth factor, the "value of the information," the list of defendant's suppliers does not seem particularly valuable in light of defendant's claim that it uses only twelve suppliers, while there exists a pool of hundreds of available suppliers. Also, because the parties entered into a confidentiality agreement that will protect the supplier list, the analysis of these factors is not as useful as it might otherwise be. Additionally, as Judge Wilson noted, "[a] free market seller of consumer products would not have an expectation of privacy unless they were involved in some nefarious activity." It is not disputed by the parties that defendant is selling genuine Samsung televisions at a lower price than is permitted by the contracts between SEA and its authorized dealers. Although the consumer may benefit from this activity, from plaintiff's perspective it might well be perceived as "nefarious." Judge Wilson did not abuse his discretion in ordering defendant to supply its list of

suppliers, nor did he abuse his discretion when he refused to reconsider his order or review the list in camera.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION