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OF THE COMMITTEE ON OPINIONS

SAMSUNG ELECTRONICS AMERICA,
INC.,

Plaintiff,

vs.

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

Defendant.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

BERGEN COUNTY

DOCKET No. BER-L-5446-14

CIVIL ACTION

OPINION

Argued: February 13, 2014

Decided: February 26, 2014

Honorable Robert C. Wilson, J.S.C.

Richard S. Brosnick, Esq. appearing on behalf of Plaintiff, Samsung Electronics America, Inc. (Akerman LLP).

Michael S. Stein, Esq. appearing on behalf of Defendant, Westpark Electronics, LLC d/b/a Abe's of Maine (Pashman Stein, P.C.).

INTRODUCTION

Before the Court is a motion for reconsideration of this Court's November 21, 2014 Order in the above-captioned matter, filed by Defendant, Michael S. Stein, Esq. (Pashman Stein, P.C.) on behalf of Westpark Electronics, LLC d/b/a Abe's of Maine ("Westpark"). Richard S. Brosnick, Esq. (Akerman LLP) filed opposition to this motion, as well as a Cross-Motion for an Order in Aid of Litigant's Rights, on behalf of the Plaintiff, Samsung Electronics America, Inc ("SEA"). The motion was originally returnable on February 6, 2015, and upon the renewed request of counsel, oral argument was heard on February 13, 2015.

FACTUAL BACKGROUND

This matter arises out of Defendant's business practices, which consist largely of selling a variety of consumer products. Of the approximately \$40 million in revenue that Defendant claims to have generated since July of 2013, it estimates that 40-45% of that revenue, or \$16-\$18 million, is attributable to Defendant's sales of Samsung television sets. Plaintiff filed the instant action on June 6, 2014, alleging that Defendant's sales of Samsung television sets amount to a tortious interference with contract.

Plaintiff's business sells television sets through a highly regulated chain of distributors and resellers. This network consists of authorized resellers, who are permitted to sell Samsung televisions to end users (consumers), and authorized distributors, who are authorized to sell Samsung televisions to authorized resellers, and to retail outlets. SEA has approximately seven hundred authorized resellers of its products, but Westpark contends that "there are also hundreds of unauthorized resellers [who] regularly buy and sell thousands of Samsung television sets to retailers like Westpark." Certification of Jacob Orfali in Support of Motion for Reconsideration, ¶ 8. Any sales to non-authorized resellers, such as Defendant, must therefore come from an authorized seller or distributor, or from a third or even fourth party who has purchased the product from such an authorized seller or distributor. More importantly, any sales by an authorized reseller or distributor are purportedly prohibited under SEA's standard distribution agreements.

Plaintiff's theory of liability for the Defendant Westpark is simply that, if Westpark is selling Samsung television sets, and is not itself an authorized reseller of those televisions, then it must be obtaining those televisions from an authorized reseller or distributor who is acting in violation of their contract. Westpark flatly denies this, and states that none of their suppliers are

authorized resellers or distributors, or have contractual relationships with SEA for the distribution of its goods. Instead, Westpark notes that their suppliers “are likely buying Samsung television sets from authorized SEA dealers and distributors who do” have a contractual relationship with SEA. Orfali Cert., ¶ 9. Westpark further notes that, in the past, it unwittingly purchased televisions from authorized resellers, in violation of those resellers’ contracts. As soon as it discovered that those entities were authorized resellers, it stopped ordering television sets from them, and has since not knowingly bought any television sets from SEA authorized resellers or distributors.

The parties in this matter entered into a confidentiality order by consent which governed the discovery produced in this matter. Plaintiff’s discovery requests at issue sought the production by Westpark of the names of all suppliers who sell Samsung televisions to Westpark, even those suppliers who have no contractual relationship with SEA. This Court granted SEA’s motion to compel the production of that information on November 21, 2014. Defendant asks the Court herein to reconsider its Order of that date, and to prevent the full disclosure of this information, as a protected trade secret. Defendant proposes that the Court, or a Special Discovery Master, receive the requested names of suppliers from Westpark, and compare it to the list of authorized resellers and distributors, and author a report confirming Westpark’s contention that it does not purchase products from SEA’s authorized resellers and distributors.

In moving this Court to reconsider its prior Order, Westpark argues that the Court failed to consider relevant case law providing that supplier information can be considered a trade secret, and therefore be protectable from discovery; failed to fully appreciate the detrimental impact that disclosure of this information would have on Westpark; and failed to consider less

injurious means of confirming that Westpark does not purchase Samsung television sets directly from authorized distributors or resellers.

RULES OF LAW

Reconsideration motions are governed by R. 4:49-2, which provides “the motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or to which it has erred.” Such motions are “within the sound discretion of the Court, to be exercised in the interest of justice.” Cummings v. Bahr, 295 NJ Super, 374, 384 (App. Div. 1996) (quoting D’Atria v. D’Atria, 242 N.J. Super 392, 401 (Ch. Div. 1990)). The motion will be granted only if the court is satisfied that the judgment was based upon plainly incorrect reasoning, that the court had failed to consider material evidence or that new information should be considered under the circumstances. Town of Phillipsburg v. Block, 380 N.J. Super. 159 (App. Div. 2005). Further, “a litigant should not seek reconsideration merely because of dissatisfaction with a decision of the Court.” D’Atria, 242 N.J. Super 392 at 401. More specifically, the movant must show that the Court acted in “an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process.” Id.

The proper scope and extent of discovery is governed by Rule 4:10-2, which provides that “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” R. 4:10-2. “The relevance standard . . . does not, of course, refer only to matters which would necessarily be admissible in evidence but includes information reasonably calculated to lead to admissible evidence respecting the cause of action or its defense.” Pressler & Verniero, Current N.J. Court Rules, comment 1 on R. 4:10-2 (2015) (citing Pfenninger v. Hunterdon Central, 167 N.J. 230, 237 (2001) (string citation omitted)). The Rules

of Court further provide that a court may, upon an application demonstrating good cause, order “[t]hat a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.” R. 4:10-3.

DECISION

This Court’s November 21, 2014 Order compelling Defendant to produce the names of its suppliers of Samsung televisions was well-reasoned and appropriate in light of the factual circumstances and the governing law, and shall not be reconsidered or reversed in light of Westpark’s application. First, the decision of whether or not to reconsider a prior Order is “within the sound discretion of the Court, to be exercised in the interest of justice.” Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). These motions are to be granted only if the Court is satisfied that its prior judgment was based upon plainly incorrect reasoning, that it had failed to consider material evidence, or that new information should be considered under the circumstances. Town of Phillipsburg v. Block, 380 N.J. Super. 159 (App. Div. 2005). “[A] litigant should not seek reconsideration merely because of dissatisfaction with a decision of the Court.” D’Atria, 242 N.J. Super. 392 at 401. More specifically, the movant must show that the Court acted in “an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process.” Id.

The interests of justice do not dictate that this Court reconsider and reverse its prior Order compelling discovery in this matter. Plaintiff has alleged tortious conduct on the part of the Defendant, and is seeking any and all information that is relevant to that allegation, or that is reasonably calculated to lead to the discovery of information relevant to that allegation. The Rules of Court and considerations of due process mandate that Plaintiff be entitled to conduct

such discovery, unless Defendant can demonstrate some protection against discovery in the form of a privilege or other protectable interest. Given the fact that this Court fully considered Defendant's position as outlined in its opposition to Plaintiff's motion to compel prior to issuing its decision on the motion to compel, there is no basis for the Court to now conclude that its decision rested upon plainly incorrect reasoning. As such, the standards for reconsideration have not been met, as Defendant largely reargues its prior position, and attempts to demonstrate how significant this decision's impact will be on Defendant's business. Defendant contends that the Court's prior decision, issued orally, failed to cite or distinguish important case law. Although the oral decision did not explicitly cite or distinguish certain cases, Defendant is mistaken in asserting that the Court had not considered the written submissions of the parties. Moreover, the Court notes that it is not bound to pay any deference whatsoever to non-controlling precedents from foreign courts, and as such, does not find that a purported failure to consider those cases as grounds for reconsideration.

Even if this Court were to consider anew Defendant's position, the law dictates that Plaintiff have the right to discover Defendant's supplier list. Rule 4:10-2 and interpretive case law indicate the sheer breadth of the matters to which discovery may be appropriate in any given case, and the exceptions to the scope of discovery are exceedingly narrow. Defendant's assertion that its supplier lists are a trade secret remains unpersuasive under the laws of New Jersey.

Defendant is, of course, correct to say that in New Jersey, a party may have a legitimate protectable interest in protecting "trade secrets and other proprietary information." Ingersoll-Rand v. Ciavatta, 110 N.J. 609, 636 (1988) (internal citations omitted). Our Supreme Court noted that "[t]here is no exact definition of a trade secret," but that "[g]enerally, cases rely on the broad

definition of trade secret found in the Restatement of Torts § 757 comment b (1939).” Id. The Restatement explains that:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers.

Restatement of Torts § 757 cmt. b (1939).

The Restatement further provides six factors to help courts determine whether something is a trade secret or not.

- (1) The extent to which the information is known outside 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.

Ingersoll-Rand, 110 N.J. at 637.

“In all instances, a substantial measure of secrecy must exist in order for information to be treated as a trade secret.” Lamorte Burns & Co. v. Walters, 167 N.J. 285, 299 (2001). Although there is no precedent in New Jersey for protecting supplier lists as trade secrets, courts in this state have protected customer lists as trade secrets. Id. Applying the Restatement factors to the topic at hand – Defendant’s list of suppliers for Samsung brand televisions – the Court finds that no trade secret exists in this matter.

Defendant contends that it has devoted substantial resources to the procurement of its Samsung television suppliers, and to maintaining the confidentiality of those sources, even amongst its own company. This fact is not disputed by Plaintiff, and the fact that Plaintiff sought

an Order of this Court to compel the production of this information confirms its confidential nature. Moreover, Westpark notes that up to 40% of its substantial revenue comes from the sale of Samsung televisions, and that these facts provide good cause for this Court to protect Westpark from having to provide its supplier lists to SEA.

However, the Court notes that Westpark has stated it uses 12 suppliers for SEA televisions, and that there are many other suppliers for SEA televisions who are not authorized by contract with SEA. If, as Westpark contends, disclosure of its supplier list will result in its suppliers ceasing to conduct business with Westpark, and the facts support Westpark's assertion that no tortious interference has in fact occurred, Westpark will be free to find new suppliers from an apparently rather large source. Moreover, even if Westpark was unable to find new suppliers readily, the Court notes that good cause for the protection of information as a trade secret cannot be demonstrated in the present circumstances.

This Court will not shield from discovery information which is directly relevant to, or reasonably calculated to lead to the discovery of evidence relevant to, the existence and operation of a business enterprise that may be wholly or partially unlawful. Given the fact that New Jersey courts recognize the tort of intentional interference with a contractual relationship, and act to prohibit such conduct, there can be no shielding of information that is directly relevant to such claims, or reasonably calculated to lead to the discovery of evidence relevant to those claims, in the absence of a statutory privilege. The protection of a trade secret presumes the legitimacy of the information – here, no such presumption can apply.

Plaintiff's counsel contended at oral argument that Defendant's position is analogous to a commercial purchaser of stolen or grey market goods claiming that the source of these goods is a protectable trade secret. The Court finds that Westpark's fanciful argument cannot stand as a bar

to a meritorious discovery request. A free market seller of consumer products would not have an expectation of privacy unless they were involved in some nefarious activity. Such a seller may not hide under the rubric of a claimed trade secret to shirk their discovery obligations.

Here, the parties do not dispute that SEA's business practice is to only distribute its televisions to parties with whom it has contracts that contain restrictions prohibiting them from selling to unauthorized resellers. Indeed, Westpark does not contend, nor could it, that its supply chain is not directly emanating from the tortious interference with contracts with Plaintiff, SEA. Instead, Westpark contends that it is at least one step removed from the tort, and that revelation of possible tortfeasors will result in harm to its business. This does not suffice as a matter of law for protection from discovery. As such, there is truly no basis for this Court to reconsider its November 21, 2014 Order, nor was there any basis in law for this Court to decide SEA's original motion to compel otherwise.

For the foregoing reasons, Defendant's Motion for Reconsideration is **DENIED**.

Plaintiff's Notice of Cross-Motion seeks monetary sanctions to be levied against the Defendant for their failure to produce Court-ordered discovery and necessitating motions to compel the same, pursuant to Rule 4:23-1. It is within this Court's sound discretion whether or not to award sanctions for discovery violations such as those claimed by the Plaintiff.

The Court finds that the Defendant's delays in producing discovery to this point are not so egregious as to warrant the imposition of sanctions by this Court at this time. Moreover, the mere disagreement by the Defendant with Plaintiff or with this Court is not necessarily a basis for sanctions, particularly where said disagreement results in a Motion for Reconsideration, and not outright defiance. The Court does note, however, that should delays in production persist in light

of this Court's instant ruling, Plaintiff may move the Court pursuant to Rule 4:23-5 for an Order striking Defendant's Answer and suppressing its Defenses without prejudice in this matter.

For the foregoing reasons, Plaintiff's Motion for Sanctions is hereby **DENIED**.

CONCLUSION

The Court finds no basis for the reconsideration of its prior Order, entered November 21, 2014, and notes Defendant's obligation to produce a list of its suppliers to Plaintiff in accord with Plaintiff's specific discovery demand. As such, and for the aforementioned reasons stated at length above, Defendant's motion for reconsideration is **DENIED**.

Plaintiff's Cross-Motion is furthermore **DENIED** as the Court finds no conduct worthy of sanction in Defendant's response to this Court's November 21, 2014 Order.

It is so ordered.