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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0

SPENCER SAVINGS BANK SLA,
a New Jersey savings and loan
association,

Plaintiff-Appellant,

v.

MICHAEL J. McGROVER, an individual,
and UNION CENTER NATIONAL BANK,
a national bank,

Defendants-Respondents.

March 5, 2015

Argued January 5, 2015 – Decided

Before Judges Simonelli, Guadagno, and Leone.

On appeal from the Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. C-173-12.

Anthony J. Marchetta argued the cause for appellant (Day Pitney LLP, attorneys; Mr. Marchetta and Maureen C. Pavely, on the brief).

Jeffrey T. Bray argued the cause for respondent Union Center National Bank (Bray & Bray, L.L.C., attorneys; Peter R. Bray, on the brief).

Jan Alan Brody argued the cause for respondent Michael J. McGrover (Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., attorneys, join in the brief of respondent Union Center National Bank).

PER CURIAM

Before leaving his position at Spencer Savings Bank to begin a new job at Union Center National Bank, Michael J. McGrover downloaded certain documents from

Spencer's computer system into his private email account. When McGrover began to solicit some of his former clients, Spencer learned that he had taken the documents. Spencer sued McGrover and Union, claiming that McGrover stole trade secrets and confidential and proprietary documents and used those materials in his subsequent employment to solicit Spencer's customers.

After a six-day bench trial, Judge Menelaos W. Toskos, entered an order on November 8, 2013, dismissing Spencer's complaint. In a written decision, Judge Toskos determined that the disputed documents were neither confidential nor proprietary, and that Spencer had failed to show compensable damages.

Spencer now challenges that decision on appeal. We affirm substantially for the reasons contained in the thorough and well-reasoned decision of Judge Toskos.

I.

McGrover began his banking career with National Community Bank, which merged with and became known as the Bank of New York (collectively NCB/BNY). In 1996, McGrover left NCB/BNY to work as a commercial loan officer at United Jersey Bank, which after a series of mergers became known as Fleet Bank.

The commercial lending departments at each of those institutions used similar documents in their operations, including pipeline reports, underwriting forms,

customer lists, and loan policy and procedure manuals (loan manuals).[1] McGrover kept copies of these materials and utilized them each time he changed employment.

Spencer hired McGrover in March 2003 as Vice President and Director of the Commercial and Industrial Lending (C&I) Department. Spencer did not have a C&I lending department when McGrover joined, and he was tasked with establishing the unit and creating a C&I loan manual. McGrover's supervisors at Spencer were aware that he would be adopting language from some of the materials he had amassed from his prior positions. One supervisor, John Duncan, gave McGrover loan manuals obtained from other institutions so that he could incorporate relevant language into Spencer's manual. McGrover regularly used documents from his collection while working for Spencer and even uploaded several of his forms to a shared drive for other Spencer employees to use.

In early 2012, McGrover received a negative review based on the poor performance of the C&I department. Concerned about his job security, McGrover began searching for new employment and, on February 23, 2012, interviewed with Union for a position in its C&I department. On February 26, McGrover used his personal Yahoo! email account to send himself multiple reference documents from the Spencer shared drive he had created.

On March 2, 2012, Union offered McGrover a position, which he accepted. On March 3, McGrover informed Duncan that he had accepted employment as a senior lender at a commercial bank that he did not identify. After learning that he was leaving, Spencer made no efforts to restrict McGrover's access to his computer or to documents he had emailed himself. On March 6, McGrover sent a final email to his Yahoo! email

account, attaching several forms from the Spencer shared drive. We refer to all forty of the documents McGrover transferred from the Spencer shared drive to his Yahoo! email account as the "Yahoo! Documents."

Spencer eventually learned that McGrover was leaving to join Union and immediately terminated his employment. Spencer took no steps to limit McGrover's access to his documents, or to prevent him from taking any materials. Shortly after he began working at Union, McGrover emailed himself some of the forms from his Yahoo! account and downloaded them to his personal drive at Union. Of all the files downloaded, the court found, and the parties do not dispute, that McGrover only shared two of the files with other Union employees, a pipeline report and a glossary of generic lending terms.

On March 26, 2012, McGrover emailed his prior Spencer customers to advise them that he had left Spencer and shared his new contact information. When Jane Rey, Spencer's executive vice president and chief operating officer, learned that McGrover had contacted Spencer's customers, she directed the information and technology (IT) department to investigate McGrover's activities on Spencer's computer systems. The emails McGrover had sent to himself were then discovered.

On April 30, 2012, Spencer's counsel contacted McGrover and Union to communicate concerns it had about the emails: "Spencer has heard from various customers . . . that you may have improperly solicited them. Without further explanation from you, Spencer will have to conclude that you have taken and/or are using its confidential information to solicit . . . customers of Spencer."

On May 30, 2012, Spencer sued McGrover and Union. The complaint alleged that McGrover, individually, breached the confidentiality agreement (count one); breached an implied covenant of good faith and fair dealing (count two); breached his duty of loyalty (count three); breached his fiduciary duty (count four); and violated the Computer Related Offenses Act (CROA), N.J.S.A. 2A:38A-3 (count eight). Spencer accused McGrover and Union collectively of misappropriating its confidential information in violation of the New Jersey Trade Secrets Act (NJTSA), N.J.S.A. 56:15-1 to -9 (count five); common law misappropriation (count six); converting its documents and proprietary information (count seven); causing the disclosure of its trade secrets (count nine); and unfair competition (count ten).

Judge Harry G. Carroll issued a temporary injunction requiring defendants to return the disputed documents and prohibiting them from disclosing or using any purportedly confidential information.

In an amended complaint, Spencer added claims specific to Union, including tortious interference with prospective economic advantage (count eleven) and assisting and abetting McGrover's breach of his obligations (count twelve).

Trial began on June 25, 2013. Rey testified as to Spencer's security and privacy policies and why she believed the Yahoo! Documents were confidential and proprietary to Spencer. Spencer's Privacy and Security Program (PSP) document described the bank's policies regarding computer use and the privacy and confidentiality of the bank's information. The PSP limited the use of computing resources to business purposes and

prohibited a number of actions, including the unauthorized examination, inspection, or browsing of customer information. The PSP also stated that such data could only be disclosed pursuant to established policies and with the approval and oversight of management. As to email use, the PSP provided:

> [Spencer] severely restricts users and the use of communication with the customer and third parties via electronic mail . . . and requires employees to be prudent with usage regarding [email] to protect the confidentiality, integrity and accessibility of [Spencer's] technology, customer privacy and information assets.

Spencer claimed that all messages composed, sent, or received on the email system constituted its property. The PSP defined computer crimes to include the "unauthorized disclosure, modification or destruction of data, programs, or hardware" and the "theft of hardware, software, peripherals, data or printouts."

Spencer disseminated this information to its employees on an annual basis in the form of an Employee Confidentiality, Computer Usage and Privacy Agreement (confidentiality agreement), an Employee Handbook (handbook), and a handbook acknowledgement form (handbook acknowledgement). Both the confidentiality agreement and handbook incorporated the PSP.

Paragraph three of the confidentiality agreement prohibited employees from using Spencer's email system "to send (upload) or receive (download) copyrighted materials, trade secrets, proprietary financial information or similar materials without

prior authorization." Paragraph seventeen disallowed the removal or copying of "any records, reports or copies from their storage location except in the performance of [an employee's] duties." Paragraph twenty of the confidentiality agreement authorized employees to make only "incidental personal use" of their work computers and online resources, and paragraph twenty-four provided that employees would continue to abide by the agreement's requirements even after ending his or her employment.

The handbook also contained provisions regarding employee use of Spencer's property and its security and confidentiality protocols. It also emphasized that employment with Spencer was at-will, and that

> neither the language [in the] handbook, nor any other company guidelines, policies, or practices [should be] construed as an employment contract (express or implied) for employment or otherwise between [Spencer] and any of its employees, or as a legal document; but rather [is] presented solely for informational purposes [and is] intended as a general guide in [the] day-to-day handling of employment issues.

Rey testified that McGrover's actions violated these security policies because the Yahoo! Documents had been stored on Spencer's computer system, and McGrover was not permitted to take the documents per the PSP because those documents were "bank

property" and contained confidential information. She conceded that Spencer had no way to "control [the] information in [McGrover's] head" after he left the bank and that it would not have been improper for McGrover to recreate from memory the information contained in the documents.

Nonetheless, she claimed that all of the Yahoo! Documents, even those that did not contain customer information, were of "considerable value" to the bank because they summarized the bank's C&I protocols. According to Rey, the procedure manual on C&I lending was a "cookbook" on how to loan, and Spencer had taken considerable time and effort to prepare it.

Rey acknowledged that McGrover had been an at-will employee and was not contractually barred from contacting his former banking clients, even though Spencer did have non-compete covenants with some of its senior managers. Rey did not consult the employee handbook or the PSP to determine whether Spencer's employees were permitted to take forms with them at the end of their employment, but insisted that all documents in Spencer's computer system were confidential.

Rey further maintained that McGrover's actions violated paragraph seventeen of the confidentiality agreement. She noted that some of the documents contained customer information, but later conceded that out of the forty documents in question, only a few had actually contained customer information or trade secrets.

When asked to detail the damages Spencer suffered as a result of McGrover's actions, Rey mentioned legal fees incurred after he left, the salary paid to its IT person to investigate the matter, and McGrover's salary and benefits.

McGrover testified that, at the time of trial, he had nearly thirty years of experience in the banking industry. He admitted that he took several documents at the end of his employment with Spencer but claimed that they were merely forms that he had collected over the years. The documents had come from various sources. Some documents came from his prior employers and colleagues, and he had personally developed others.

McGrover testified that he downloaded the documents before Union offered him a position and asserted that his sole motivation for taking the documents was to maintain the reference library that he had developed during his career. He denied that there was anything improper about what he had done because, he claimed, maintaining such resources was common practice among banking professionals. McGrover noted that other Spencer employees, including Duncan, had provided him with manuals and documents of other financial institutions to assist in his development of Spencer's loan manual. He also noted that both Rey and Duncan approved of his use of other institutions' forms and manuals even though they knew that he had brought those documents from his prior employers.

Although he did attempt to delete any customer information in those documents, McGrover acknowledged that he may have inadvertently overlooked information in some instances. He did not dispute that such customer information was confidential, but he disagreed with Spencer's position that the documents themselves were confidential because they were generic forms in general use within the banking industry.

Although McGrover attended Spencer seminars on confidential information and understood the importance of protecting customer information such as Social Security

numbers, personal financial statements, and tax returns, he stated that the seminars did not identify any of the disputed documents as being confidential. He pointed out that when Spencer's IT staff trained employees on how to download documents, IT instructed employees that IT approval was required to download computer software programs but not required to download the type of materials he had emailed himself. McGrover also noted that other Spencer employees had similarly downloaded Spencer's internal documents without consequence.

McGrover admitted that his actions violated the general language in paragraph seventeen of the confidentiality agreement, which prohibited employees from removing or copying "any records, reports or copies from their storage location except in the performance of [the employee's] duties[.]" However, he testified that the only documents that he shared with other Union employees were a loan covenants glossary and a pipeline report, neither of which was confidential or unique to Spencer. He asserted that none of Union's employees actually used those materials. Finally, although he contacted his prior Spencer customers after he joined Union, he had obtained their email addresses from business cards that he had collected.

Judge Toskos determined that McGrover's actions were customary in the banking industry and that, in fact, "many of the employees at Spencer including Mr. McGrover's immediate supervisor . . . acted in a similar manner with the use of banking forms from their prior employer." The judge also found that McGrover had created and compiled many of the contested documents over the course of his career and noted "that of the forms downloaded . . . only two were distributed to other employees at Union. The two documents were . . . the Loan Covenants Glossary . . . [and] the Pipeline Report."

However, the judge found no evidence that Union had used either document. Moreover, although one document had contained customer information, the judge considered it to be de minimus because it was not used to damage Spencer.

Judge Toskos agreed with Spencer that McGrover had violated the general prohibition contained in paragraph seventeen of the confidentiality agreement, but dismissed Spencer's breach of contract claim (count one) and breach of loyalty claim (count three) because he found no proof that Spencer had incurred any compensatory damages attributable to McGrover. The judge dismissed Spencer's CROA claim (count eight) on similar grounds and, in so doing, specifically rejected Spencer's contention that its investigation costs and legal fees rendered it "damaged in business or property."

The judge also dismissed Spencer's claim under the NJTSA (count five) noting:

> Based on the uncontroverted testimony of McGrover, the documents he downloaded were standard forms generally recognized in the banking industry without any uniqueness attributed to Spencer. The court determines that these documents do not meet the definition of a trade secret. Although Ms. Rey attributed some unspecified general value to these forms, the court determines that Spencer has not met its burden to establish that the documents themselves derived an independent economic value from not being generally known. Based upon Mr. McGrover's testimony, the court comes to just the opposite conclusion. The documents were forms generally

known in the banking industry
and had no independent value.

Consistent with the determination that the forms were not a trade secret, the judge dismissed Spencer's common law misappropriation claim (count six). It likewise found no merit to Spencer's conversion claim (count seven), noting that the laws governing conversion did not apply to intangible property; there was no evidence that McGrover had seriously interfered with Spencer's right to control those documents; and Spencer did not sustain any harm. The court also found insufficient evidence to support Spencer's claim for breach of fiduciary duty (count four) by McGrover, because the record contained nothing to suggest that McGrover had ever been in a superior or dominant position.

As to Spencer's claims against Union, Judge Toskos found no evidence that Union had benefited from McGrover's breach of Spencer's confidentiality agreement, thus, he dismissed the unfair competition claim (count ten). Finally, because the record contained no proof that Union had known about McGrover's actions, the judge dismissed Spencer's tortious interference claim (count eleven) and its allegation that Union had assisted and aided McGrover's actions (count twelve).

On appeal, Spencer raises the following points:

I.

THE CHANCERY DIVISION
ERRED AS A MATTER OF LAW
IN HOLDING THAT SPENCER'S
ATTORNEYS' FEES AND COSTS

WERE NOT "DAMAGE IN BUSINESS OR PROPERTY" FOR PURPOSES OF NJCROA.

A. SPENCER IS ENTITLED TO ATTORNEYS' FEES AND COSTS FOR DEFENDANTS' VIOLATION OF NJCROA.

B. MCGROVER VIOLATED NJCROA.

1. MCGROVER ADMITTED THAT HE KNOWINGLY AND/OR RECKLESSLY ACCESSED SPENCER'S COMPUTER SYSTEM.

2. MCGROVER'S ACCESS WAS UNAUTHORIZED.

II.

THE CHANCERY COURT ERRED IN FAILING TO HOLD UNION VICARIOUSLY LIABLE UNDER NJCROA.

III.

THE CHANCERY COURT ERRED AS A MATTER OF LAW WHEN HOLDING THAT SPENCER'S CLAIMS FAILED DUE TO A LACK OF COMPENSATORY DAMAGES.

IV.

THE CHANCERY COURT ERRED AS A MATTER OF LAW IN NOT FINDING A BREACH OF THE DUTY OF LOYALTY.

A. MCGROVER'S WRONGFUL CONDUCT, WHICH INCLUDED VIOLATION OF SPENCER'S POLICIES, PRIVACY LAWS TO PROTECT CUSTOMERS, AND THE CONFIDENTIALITY AGREEMENT, CONSTITUTED A BREACH OF THE DUTY OF LOYALTY.

B. THE CHANCERY COURT ERRED AS A MATTER OF LAW WHEN CONCLUDING THAT REASONABLE ARRANGEMENTS FOR NEW EMPLOYMENT INCLUDED DOWNLOADING DOCUMENTS FOR FUTURE USE IN DIRECT

VIOLATION OF THE CONFIDENTIALITY AGREEMENT AND DUTY OF LOYALTY.

C. THE CHANCERY COURT ERRED IN HOLDING THAT MCGROVER DID NOT BREACH HIS DUTY OF LOYALTY BECAUSE HE DID NOT READ HIS CONFIDENTIALITY AGREEMENT AND THEREFORE HIS CONDUCT WAS NOT EGREGIOUS.

D. THE CHANCERY COURT IGNORED THE CHANGE IN PRIVACY LAWS AND CHANGED CIRCUMSTANCES THAT MANDATED A CHANGE IN THE INDUSTRY'S CUSTOMS AND PRACTICES.

E. THE CHANCERY COURT ERRED WHEN DENYING THE EQUITABLE REMEDY OF DISGORGEMENT.

V.

THE CHANCERY COURT ERRED IN HOLDING THAT MCGROVER DID NOT MISAPPROPRIATE SPENCER'S DOCUMENTS.

A. THE CHANCERY COURT ERRED IN FAILING TO CONSIDER WHETHER SPENCER'S DOCUMENTS WERE CONFIDENTIAL, EVEN THOUGH THEY WERE NOT TRADE SECRET DOCUMENTS.

B. THE CHANCERY COURT ERRED IN HOLDING THAT THERE WAS NO "USE" OF THE CONFIDENTIAL DOCUMENTS.

C. THE CHANCERY COURT ERRED IN HOLDING THAT THE MISAPPROPRIATION OF CUSTOMER INFORMATION WAS DE MINIMIS.

VI.

THE CHANCERY COURT ERRED IN HOLDING THAT THE EVIDENCE DOES NOT SUPPORT A CLAIM FOR UNFAIR COMPETITION.

II.

A.

Spencer first argues that Judge Toskos erred in dismissing its CROA claim. Spencer claims that McGrover's conduct caused it to incur investigation costs and attorneys' fees, thus it was damaged "in business or property."

Judge Toskos found that Spencer's costs and fees were not cognizable damages within the meaning of the CROA. We begin by noting that a trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Therefore, questions of statutory interpretation are subject to de novo review. Real v. Radir Wheels, Inc., 198 N.J. 511, 524 (2009).

The plain language of a statute is always our starting point in discerning and implementing the legislative intent underlying a statute. James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 565 (2014). If the language is unambiguous on its face, we must enforce a statute in accordance with that plain meaning. Fairway Dodge, L.L.C. v. Decker Dodge, Inc., 191 N.J. 460, 469 (2007).

N.J.S.A. 2A:38A-3 provides, in relevant part, that

> [a] person or enterprise damaged in business or property as a result of any of the following actions may sue the actor therefor . . . and may recover compensatory and punitive damages and the cost of the suit including a reasonable attorney's fee, costs of investigation and litigation:
>
> a. The purposeful or knowing, and unauthorized altering, damaging, taking or

> destruction of any data, data base, computer program, computer software or computer equipment existing internally or externally to a computer, computer system or computer network;
>
> . . . .
>
> c. The purposeful or knowing, and unauthorized accessing or attempt to access any computer, computer system or computer network[.]

The statute has two elements. The first imposes liability against an "actor" when there has been a showing of "purposeful or knowing" conduct proscribed by the statute. The second requires a showing that a person or enterprise was damaged in business or property. If a plaintiff satisfies those factors, a court may award compensatory and punitive damages and litigation costs, including reasonable attorney's fees and costs of investigation. N.J.S.A. 2A:38A-3.

The statute requires proof that a plaintiff was damaged in business or property as a result of the proscribed conduct. Spencer urges that "public policy" requires that we interpret this plainly-worded phrase expansively to include their costs of investigation and attorneys' fees as damage to its business. Bedrock principles of statutory construction preclude such an indulgence.

"If the statute is clear and unambiguous on its face and admits of only one interpretation, we need delve no deeper than the act's literal terms to divine the Legislature's intent." State v.

Butler, 89 N.J. 220, 226 (1982). We find no ambiguity in the "damaged in business or property" requirement under CROA; therefore, we see no need to resort to extrinsic interpretive aids to determine the legislative intent as suggested by Spencer. We are satisfied that Spencer has provided no evidence that it was damaged in business or property as a result of McGrover's actions, and Judge Toskos properly dismissed its CROA claim.

Even if Spencer had been able to meet the damage prong of CROA, it is not at all clear that Spencer established that McGrover knowingly or purposefully violated CROA. While McGrover admitted that his conduct violated his confidentiality agreement, that standing alone does not satisfy the knowing and purposeful requirement of CROA. The facts at trial established that McGrover believed that he had a right to access the Yahoo! Documents because he had developed many of them himself and had brought some of the materials with him from banks where he worked previously. When McGrover left Spencer to join Union, he took the same types of documents that he had brought from other banks when he joined Spencer. This proof was insufficient to establish a knowing and purposeful violation of CROA.

Because Spencer failed to prove the elements necessary for a CROA claim, we must reject its claim that Union is vicariously liable for McGrover's conduct.

B.

Spencer next challenges the court's finding that it failed to show that it incurred any compensable damages in support of its claims for breach of the confidentiality agreement (count one), breach of the duty of loyalty (count three), breach of fiduciary duty (count four), and tortious interference (count eleven). Judge Toskos dismissed several of these claims on a common core of facts. Counts one (breach of contract) and eight (CROA) were dismissed as there was no proof of damages. We uphold their dismissal for the reasons set forth above.

The dismissal of count four (breach of fiduciary duty) was predicated on Judge Toskos's finding that McGrover had not been in a superior position to Spencer, thus, he did not owe Spencer a fiduciary duty. With respect to count eleven (tortious interference), the judge found that Union could not have intentionally interfered with Spencer's expectation of prospective economic gain because it had not even known about McGrover's actions.

Spencer fails to address these conclusions and ignores the fact that Judge Toskos disposed of those claims on their merits. Instead, Spencer argues that the court dismissed those counts based solely on the finding that plaintiff had not shown damages. We reject these contentions as to counts four and eleven because they are based on a misreading of the court's reasoning.

Also unavailing are Spencer's claims as to count three (duty of loyalty), suggesting that McGrover took and then disclosed a great number of documents that contained sensitive customer information. Spencer claims that this conduct requires special consideration because of the unique obligation of banking institutions to

safeguard the privacy of their customers. Spencer's sweeping claims find no support in the record.

Judge Toskos found that one of the Yahoo! Documents contained customer information but that the impact was de minimus because it had consisted of a single customer's account number that had been inadvertently included on a document that McGrover never disclosed or otherwise shared with anyone. The judge also determined that the only materials McGrover actually disclosed were the glossary and the pipeline report. However, he found that those documents were not confidential and Spencer has not presented either a factual or legal basis to disturb these findings.

"Loyalty from an employee to an employer consists of certain very basic and common sense obligations." Lamorte Burns & Co. v. Walters, 167 N.J. 285, 302 (2001). It is undisputed that "employees have a common law duty to safeguard confidential information they have learned through their employment relationship and that they are generally precluded from sharing that information with unauthorized third parties." Quinlan v. Curtiss-Wright Corp., 204 N.J. 239, 260 (2010). The employer's right, however, is not absolute. Id. at 261. Whether an employee has breached his or her duty is a fact-sensitive inquiry that requires a balancing of the "employer's legitimate right to conduct its business, including its right to safeguard its confidential documents" and the competing rights of the employee. Ibid.

In Quinlan, the Supreme Court provided guidance on how to strike such a balance. Id. at 269-70. Quinlan highlighted the factors that a court should consider in identifying the circumstances under which an employee's taking of information from his or her employer can be deemed disloyal:

First, the court should evaluate how the employee came to have possession of, or access to, the document. If the employee came upon it innocently, for example, in the ordinary course of his or her duties for the employer, this factor will generally favor the employee. . . . If, however, the . . . employee . . . [found the] document by rummaging through files or by snooping around in [the] offices of supervisors or other employees [the employee] will not be entitled to claim the benefit of this factor.

Second, the court should evaluate what the employee did with the document. . . .

Third, the court should evaluate the nature and content of the particular document in order to weigh the strength of the employer's interest in keeping the document confidential. . . .

Fourth, the court should also consider whether there is a clearly identified company policy on privacy or confidentiality that the employee's disclosure has violated. The evaluation of this factor should take into account considerations about whether the employer has routinely enforced that policy, and whether, in the absence of a clear policy, the employee has acted in violation of

> a common law duty of loyalty to the employer.
>
> Fifth, the court should evaluate the circumstances relating to the disclosure of the document to balance its relevance against considerations about whether its use or disclosure was unduly disruptive to the employer's ordinary business. . . .
>
> Sixth, the court should evaluate the strength of the employee's expressed reason for copying the document[.]
>
> [Id. at 269-70.]

The Court also stressed that any decision must be mindful that "both employers and employees have legitimate rights." Id. at 271.

When the facts of this case are viewed through the Quinlan prism, McGrover's conduct with respect to the glossary and pipeline report cannot reasonably be deemed a breach of his duty of loyalty. It is undisputed that McGrover obtained the materials in the course of his employment and that, in fact, he had authored some and otherwise participated in the development of others. The documents also contained generic information that was common knowledge in the banking industry. Moreover, Spencer presented no evidence that McGrover's disclosure of those materials disrupted its business operations, a point that is supported by the fact that it sustained no compensable damages. Spencer also has not shown that it had a particularly strong

interest in keeping the Yahoo! Documents confidential or why its purported interest in those documents should prevail over McGrover's competing right to maintain the collection of reference materials that he began collecting long before he joined Spencer. See Sun Dial Corp. v. Rideout, 16 N.J. 252, 261 (1954) ("Our judicial decisions have faithfully sought to vindicate both policies by preserving to employees their unfettered right to leave their employment and use elsewhere their acquired skill and knowledge[.]"). Indeed, Spencer asserts that other Spencer employees contributed to the development of the documents and that they belonged to Spencer because they were stored on its computer system. However, it cites no supporting evidence to determine the extent of those alleged contributions.

Similarly, despite Rey's testimony that the lending process described in the pipeline report was proprietary, McGrover asserted that the report simply tracked processes used by other banks. Spencer has not presented evidence to the contrary, and in any event, the factual dispute as to whether the process set forth in the pipeline report was unique to Spencer raised a question of credibility that the court was in the best position to assess. Pascale v. Pascale, 113 N.J. 20, 33 (1988).

Finally, Spencer's claim that it owned the Yahoo! Documents by virtue of the fact that they were stored on its computer servers is problematic because the record shows that McGrover arrived at Spencer with considerable experience in C&I lending and that his extensive background clearly benefited the bank. In Spencer's view, however, McGrover effectively abandoned any rights he possessed over the data based solely on where the information was stored. Spencer cites no authority to support such a broad claim as to many of these documents, which had been developed at other banks.

We reject Spencer's claim that Judge Toskos erred in concluding that it did not present proof of having incurred any compensable damages and affirm the dismissal of Spencer's claim against McGrover for his alleged breach of his duty of loyalty.

C.

Spencer next argues that Judge Toskos erred in dismissing its misappropriation claim (count six). We find that Spencer's reasoning on this point is premised on a misstatement of the judge's ruling and is without factual support.

Judge Toskos concluded that the Yahoo! Documents were neither trade secrets nor confidential because, in part, they were generic forms used throughout the banking industry. Additionally, the judge found that McGrover's practice of saving and recycling such documents was common not only within the industry at large, but within Spencer itself. These determinations are well supported in the record.

It is well established that "information need not rise to the level of a trade secret to be protected." Lamorte, supra, 167 N.J. at 299. Confidential information is legally protectable. Id. at 301. "The key to determining the misuse of information is the relationship of the parties at the time of disclosure and the intended use of the information." Id. at 299.

Spencer argues that Judge Toskos never determined whether the documents were legally protectable confidential information. Contrary to Spencer's position, Judge Toskos did determine that the information was not confidential. The record contains

ample support for the court's conclusion that McGrover's taking of the Yahoo! Documents did not constitute a misappropriation. Thus, Spencer's claim that the court overlooked the confidential nature of the materials amounts to little more than a disagreement with the court's threshold finding that they were not confidential.

D.

Spencer next claims that the court erred in dismissing count ten (unfair competition). Judge Toskos ruled that there was no basis to sustain Spencer's unfair competition claim, because he found no evidence that Union had benefited from McGrover's conduct.

The essence of unfair competition claims is to ensure fair play and to "promote higher ethical standards in the business world." Ryan v. Carmona Bolen Home for Funerals, 341 N.J. Super. 87, 92 (App. Div. 2001). Thus, the "judicial goal should be to discourage, or prohibit the use of misleading or deceptive practices which renders competition unfair." Ibid.

The record shows that defendants acted in accordance with industry customs. Moreover, Spencer has proffered no objective evidence to show that defendants attempted to damage its ability to compete, or to harm or exploit Spencer for their own benefit. Thus, there is no basis to sustain Spencer's unfair competition claim.

Spencer also claims that the court misapplied controlling law when it noted that the concept of unfair competition is subsumed by tortious interference claims. We do not address this critique of the court's opinion because it did not animate the court's ruling and amounted to little more than dicta. See Glaser v. Downes, 126 N.J. Super. 10,

16 (App. Div. 1973) ("[A]ppeals are taken from judgments and not from opinions, let alone dicta."), certif. denied, 64 N.J. 513 (1974).

Affirmed.

[1] A pipeline report is a tracking document used to monitor loan applications from inception to closing; underwriting forms are documents with blank fields for such data as the borrower's name and address, the loan amount, and the terms and conditions of the loan approval; customer lists consist of names and contact information of the institution's customers; and loan manuals set forth a bank's lending criteria and its loan approval procedures.
