

Speed Trac Technologies, Inc. v. Estes Express Lines, Inc.
Summary Judgment Hearing January 6, 2009

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

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SPEED TRAC TECHNOLOGIES, INC., :
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 PLAINTIFF, :
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 v. :
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 ESTES EXPRESS LINES, INC., :
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 DEFENDANT. :
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SUMMARY JUDGMENT HEARING
before Judge Graham Mullen
Charlotte, North Carolina
January 6, 2009

Reported by: Jackie Johnson
Court Reporter
Notary Public

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1 APPEARANCES

2
3 For the Plaintiff:

4 KENNETH C. OTIS III, Esq.

5 MATTHEW HALLMAN BRYANT, Esq.

6 Hendrick & Bryant, LLP

7 723 Coliseum Drive

8 Suite 101

9 Winston-Salem, North Carolina 27106-5326

10
11 For the Defendant:

12 JOSHUA BLAKE DURHAM, Esq.

13 JASON B. JAMES, Esq.

14 Poyner & Spruill, LLP

15 301 South College Street

16 Suite 2300

17 Charlotte, North Carolina 28202

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21 Summary Judgment Hearing before the Honorable
22 Judge Graham Mullen, at The Federal Courthouse, Charlotte,
23 North Carolina, on the 6th day of January, 2009 at 11:30
24 a.m., before Jackie Johnson, Court Reporter and Notary Public.
25

P R O C E E D I N G S

1
2 THE COURT: Let me thank both of you for a
3 thoroughly professional and competent job in
4 getting this case to this point. It was a
5 challenge to the Court and I'm sure to both of
6 you to get it to this stage.

7 The Court has read the briefs, considered
8 the evidence and oral argument on the motion by
9 Estes Express Lines for summary judgment in this
10 case. I am now prepared to make a ruling.

11 Summary judgment is appropriate when,
12 viewing the facts in the light most favorable to
13 the non-moving party, there is no genuine issue
14 of any material fact, and the movement is
15 entitled to judgment as a matter of law.

16 Because I believe this is the linchpin of
17 this entire case, I will first address the claim
18 for misappropriation of trade secrets.

19 To state a claim for misappropriation of
20 trade secrets, the alleged trade secret must be
21 a proper subject for trade secret protection,
22 must not be generally known, and reasonable
23 steps must have been taken to ensure its
24 secrecy.

25 For the following reasons, the Court finds

1 that Speed Trac's claim for misappropriation of
2 trade secrets fails:

3 First of all, Speed Trac has failed to
4 identify the trade secret with any sort of
5 specificity. Indeed, the Court has had a
6 difficult time trying to isolate what exactly
7 Speed Trac is alleging constitutes the trade
8 secret. Speed Trac has described the secret
9 only in vague generalities.

10 For example, in its response to
11 interrogatories, Speed Trac identified its trade
12 secret as "the configuration of the system," the
13 "wireless interface" of the forklift scales to
14 the processing station, realtime reporting and
15 invoicing, test data and reports.

16 In another response to Estes'
17 interrogatories, Speed Trac describes its trade
18 secret as "the demonstration of the operability,
19 feasibility, functionality and efficiencies" of
20 its systems.

21 In his deposition testimony, Speed Trac CEO
22 Joe Bochicchio described Speed Trac's trade
23 secret as "everything in the patent." In fact,
24 throughout his deposition, Bochicchio relies on
25 the patent when describing the basis for the

1 trade secret.

2 To the extent the "secret" is the concept
3 embodied in the patent application, it cannot be
4 the subject of a trade secret claim. Once
5 information is placed in the public domain by
6 publication of a patent, it can no longer be a
7 trade secret. Cite Sims v. Mack Truck Corp.,
8 488 F. Supp. 592, 599, (Eastern District of
9 Pennsylvania 1980); Robotron Corp. v. Lake Shore
10 Burial Vault Co. Inc., 712 F.2nd 1214 (7th
11 Circuit 1983).

12 Moreover, to the extent Speed Trac is
13 alleging that the "secret" is the economic value
14 or profitability of its system, this is likewise
15 not a proper subject for trade secret
16 protection. Sims v. Mack Truck Corp.,
17 F. Supp. 592, 599 (Eastern District of
18 Pennsylvania 1980).

19 Then even if the alleged "secret" was a
20 proper subject for trade secret protection, it
21 is undisputed that automated re-weigh systems
22 using RF technology were generally available for
23 purchase and were actively used by less than
24 truckload carriers prior to 2004.

25 Moreover, to the extent that Speed Trac

1 relies on the Estes test data as the subject of
2 the trade secret, it fails, because Speed Trac
3 did not take steps to ensure its secrecy. In
4 fact, Speed Trac circulated such data to
5 prospective customers in an effort to make a
6 sale.

7 Accordingly, the Court finds that there is
8 no genuine issue of material fact and grants
9 summary judgment in favor of Estes as to the
10 misappropriation of trade secrets claim.

11 Next, I will address the Plaintiff's claim
12 for breach of Non-Disclosure Agreement.
13 Specifically, Speed Trac claims that Estes
14 gained its knowledge of the feasibility and
15 financial justification of the RF weighing
16 systems through the use of Speed Trac's
17 confidential trial and then used this knowledge
18 to develop its own automated system. This claim
19 appears to suffer from, essentially, the same
20 problems as the misappropriation claim.

21 The Plaintiff does rely heavily on the
22 Potter case, which the Court finds
23 distinguishable. The Fourth Circuit has stated,
24 in *American Potato Dryers v. Peters*, 184 F. 2d
25 165, 171 (4th Circuit 1950) that "it would be

1 absurd to designate as a confidential disclosure
2 that which is publicly known." In
3 Colgate-Palmolive Co. v. Carter Products, Inc.,
4 230 F. 2d 855, 856 (4th Circuit 1956), the Court
5 reiterated that a process which is well known
6 cannot be treated as a trade secret or
7 confidential disclosure. Thus, it is clear that
8 the information that is the subject of a
9 Non-Disclosure Agreement must have some aspect
10 of secrecy. Since the concept of Speed Trac's
11 automated system was already in the public
12 domain, via its patent application, it cannot be
13 considered confidential.

14 To the extent that Speed Trac alleges that
15 the confidential information was the
16 determination that over 50 percent of the
17 freight was understated, its salesperson
18 intentionally disclosed that information to
19 another potential customer.

20 Because it does not appear that any
21 information was "confidential" the Court grants
22 Estes' motion for summary judgment as to this
23 claim.

24 Speed Trac's final claim is its North
25 Carolina Unfair and Deceptive Trade Practices

1 Claim. To establish a claim for unfair and
2 deceptive trade practices, Speed Trac must show:
3 (1) an unfair or deceptive act or practice; (2)
4 in or affecting commerce; (3) that proximately
5 caused actual injury to the plaintiff.

6 To the extent that Speed Trac's UDTA claim
7 is based on its claim for misappropriation of
8 trade secrets, it cannot stand, as the Court's
9 already determined that the misappropriation
10 claim fails.

11 Speed Trac, in essence, claims that it was
12 a violation of the N.C. Unfair and Deceptive
13 Trade Practices Act for Estes to "mislead" it by
14 failing to disclose that it was purchasing
15 scales from a competitor and already
16 investigating its own RF program, while allowing
17 Speed Trac to conduct the pilot testing. The
18 problem with this position is that there can be
19 no "misleading" where there is no duty to
20 disclose, citing Big Red LLC v. Davines S.P.A.,
21 31 Fed.Appendix 216 (4th Circuit 2002)
22 (unpublished), the Fourth Circuit held that
23 there is no duty for a purchaser of goods to
24 disclose its dealings with other vendors, but
25 that the defendant had a right to contract

1 freely with whomever it chose until the deal was
2 done.

3 Indeed, courts in North Carolina have
4 consistently upheld a party's right to contract
5 freely with whomever it chooses. See, for
6 example, Computer Decisions, Inc. v. Rouse
7 Office Management of North Carolina, Inc., 124
8 N.C. App. 383, 477 S.E.2nd 262 (1996).

9 There was nothing in the agreement between
10 the parties that precluded Estes from pursuing
11 other options. Speed Trac's arguments, carried
12 to their logical end, would result in an
13 obligation by Estes to buy an automated RF
14 system from Speed Trac the minute the trial
15 started and would prevent Estes from buying the
16 system from anyone else or allowing its
17 technology contractor to develop an independent
18 system to meet its unique needs. From a policy
19 standpoint, this result would be disastrous.

20 Accordingly, Speed Trac's claim, under the
21 N.C. UDTPA, cannot stand. As there is no
22 genuine issue of material fact as to these three
23 claims, the Court finds that summary judgment in
24 favor of Defendant Estes is proper and hereby
25 grants its motion.

1 The Plaintiff's claim for unjust enrichment
2 stands on the same basis as the claims the Court
3 rejects and must also fail. Therefore, summary
4 judgment for the defense is granted by the
5 Court.

6 Madam Clerk, prepare an appropriate
7 judgment consistent with this. There will be an
8 Order entered today which will say, basically,
9 that for the reasons stated in open court, Estes
10 Express Lines' motion for summary judgment is
11 granted, and the Plaintiff's claim is ordered
12 dismissed.

13 Again, let me thank both of you for an
14 outstanding presentation and outstanding work in
15 a difficult area. Thank you very much.

16 (Thereupon the hearing was concluded)

1 CERTIFICATE OF REPORTER

2
3 STATE OF NORTH CAROLINA)
4 COUNTY OF CLEVELAND)

5
6 I, JACKIE JOHNSON, the officer before whom
7 the foregoing proceedings were held, do hereby certify
8 that the proceedings were taken by me to the best
9 of my ability and thereafter reduced to typewriting
10 under my direction; that I am neither counsel for,
11 related to, nor employed by any of the parties to the
12 action in which this proceeding was held, and
13 further that I am not a relative or employee of any
14 attorney or counsel employed by the parties thereto,
15 nor financially or otherwise interested in the
16 outcome of the action.

17
18 _____
19 JACKIE JOHNSON
20 My Commission Expires
21 August 30, 2011.
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