STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JAC PRODUCTS, INC,

Plaintiff,

Case No: 2013-136251-CK

v.

Hon. Wendy Potts

DONALD L. MUNOZ, et al,

Defendants.
_____/

OPINION AND ORDER RE: MOTION TO DISMISS SECOND AMENDED COMPLAINT PURSUANT TO MCR 2.116(C)(7)

At a session of Court
Held in Pontiac, Michigan
On
MAY 22 2014

Plaintiff JAC Products, Inc. produces automotive parts including vehicle roof racking systems. JAC Products employed Defendant Donald Munoz from April 1998 until it terminated him in August 2011. From 2009 through his termination, Munoz worked for a subsidiary of JAC Products called JAC-RACK that was developing a solar technology mounting system. When Munoz left JAC Products, he formed his own company, Defendant Solar Solutions International, Inc. to continue pursuing the solar business. JAC Products and Solar Solutions entered into an agreement to allow Solar Solutions to purchase JAC-RACK materials and parts from JAC Products. In July 2013, JAC Products filed a Business Court case against Munoz and Solar Solutions that was assigned to Judge Alexander. *JAC Products, Inc v Solar Solutions International, Inc, et al*, 2013-135197-CK. Although JAC Products alleged various theories of

recovery, the essence of its claim in the July 2013 case was that Solar Solutions failed to pay for materials purchased from JAC Products. That case resolved in September 2013 through JAC Products's acceptance of the Defendants' offer of judgment.

JAC Products filed this action on September 16, 2013, after it agreed to the judgment in the July 2013 case but before the judgment was entered. The initial complaint in this case named Munoz and Solar Solutions as Defendants and included another former JAC Products's employee Defendant John Heuchert. JAC Products alleged that Munoz and Heuchert breached confidentiality agreements and Defendants violated the Michigan Uniform Trade Secrets Act (MUTSA), unfairly competed with JAC Products, converted JAC Products's confidential information and trade secrets, were unjustly enriched, and tortiously interfered with JAC Products's business expectancies. JAC Products amended its complaint in this case twice adding claims against another Munoz company, Defendant Level One Development Group, LLC, and another former JAC Products's employee Defendant Charles Fazio.

Munoz, Solar Solutions, and Level One now move for summary disposition under MCR 2.116(C)(7), which determines if a claim is barred as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). The Munoz Defendants first assert that JAC Products claims in this case are barred because under the compulsory joinder rule, MCR 2.203(A), these claims should have been raised in the July 2013 case. The rule states that a party "must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction." MCR 2.203(A). However, the Munoz Defendants fail to show that the claims in this action arise out of the same transaction or occurrence that was at issue in the July

2013 case. An action arises from the same transaction or occurrence for the purpose of the court rule if it arises from the identical events leading to the other action. *Ross v Onyx Oil & Gas Corp*, 128 Mich App 660, 669; 341 NW2d 783 (1983). JAC Products claims in the July 2013 case arose from its material supply agreement with Solar Solutions and an unpaid debt. The claims in this case arise from JAC Products's alleged confidentiality agreements with its former employees and alleged misappropriation of confidential information. Because the claims and allegations in this case do not arise from identical events as the July 2013 case, JAC Products was not obligated under MCR 2.203(A) to assert these claims in the first case.

The Munoz Defendants also argue that the claims against them in this case are barred by res judicata because they were or could have been raised in the July 2013 case. Res judicata bars a subsequent action between the same parties when (1) the first action was decided on the merits, (2) the claims in the second action were or could have been raised in the first action, and (3) both actions involve the same parties or their privies. *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575 (2001). The Munoz Defendants and JAC Products were all parties to the July 2013 case, and the consent judgment in the July 2013 case was a decision on the merits. *Schwartz v City of Flint*, 187 Mich App 191, 194; 466 NW2d 357 (1991). The only question is whether the claims in this case could have been raised in the July 2013 case.

Res judicata bars not only claims that were raised but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Sewell, supra* at 575. The Munoz Defendants assert that JAC Products was aware of the facts or allegations giving rise to the claims in this case at the time it filed the July 2013 case. Notably, in November 2012 JAC Products wrote Munoz demanding that he stop disparaging JAC Products or using JAC Products confidential information. In addition, JAC Products sought discovery

from Munoz and Solar Solutions in the July 2013 case that has no apparent relevance to the collection claims in that case but that appears to be intended to seek evidence to support its claims in this case. For example, JAC Products asked the Defendants in the July 2013 case to admit that Heuchert is an employee of Solar Solutions, that they submitted bids, quotations, or proposals for roof rack equipment, and that they used JAC Products specifications or drawings to quote new business. Although JAC Products claims that it did not learn about the "extent" of the Munoz Defendants' alleged improper competition until after they filed the July 2013 case, there is no material dispute that at some point before filing the July 2013 case JAC Products knew or had reason to know about the claims asserted in this case.

However, the fact that JAC Products was aware of the facts and allegations underlying the claims in this case before it filed the July 2013 is insufficient to show that JAC Products is now barred from raising them. The key question is whether the claims in this case arise from the same transaction as the claims in the July 2013 case. *Sewell*, *supra* at 575. Claims arise from the same transaction if a single group of operative facts give rise to the relief sought. *Washington v Sinai Hosp*, 478 Mich 412, 420; 733 NW2d 755 (2007). The Court determines this by considering whether the facts and allegations in this case are related in time, space, origin, or motivation to the facts in the July 2013 case. *Washington*, *supra*.

As noted above, the claims in this case are distinct from the claims in the July 2013 case and arise from different agreements and operative facts. JAC Products's claims in the July 2013 arise from the allegations that Munoz and Solar Solutions agreed to pay for materials and failed to do so. In this case it alleges that Munoz violated a separate agreement to keep JAC Products's information and trade secrets confidential, Defendants violated MUTSA by disclosing or using JAC Products's trade secrets, Defendants converted JAC Products's confidential information,

Defendants tortiously interfered with JAC Products's business relationships and expectancies, Defendants unfairly competed against JAC Products, and Defendants were unjustly enriched by using JAC Products's confidential information. Thus, the claims in this case do not arise from the same operative facts as the claims in the July 2013 case.

The Munoz Defendants assert that the claims in both cases arise from the same operative facts because both cases are based on the relationship between the parties. However, Defendants cite no authority for this position, and the Court is not aware of any appellate decision holding that res judicata barred a subsequent claim merely because the parties had a relationship. Rather, the question is whether the same facts or evidence are essential to the maintenance of the two actions. *Jones v State Farm Mutual Auto Ins Co*, 202 Mich App 393, 401; 509 NW2d 829 (1993). Because the facts or evidence supporting JAC Products's claim in the July 2013 case are not essential to the maintenance of the claims in this case, the claims in this case are not barred by res judicata.

For all of these reasons, the Court denies summary disposition of JAC Products's claims against Munoz, Solar Solutions, and Level One.

IT IS SO ORDERED.

Dated: MAY 22 2014

Hon. Wendy Potts