

STATE OF MICHIGAN

IN THE 6TH JUDICIAL CIRCUIT FOR THE COUNTY OF OAKLAND

CASTERDEPOT, INC., a Michigan
corporation,

Plaintiff/Counter-Defendant,

v

MICHAEL MILLER,

Defendant/Counter-Plaintiff.

Case No. 23-198155-CB

Hon. Victoria Valentine

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**OPINION AND ORDER REGARDING DEFENDANT/COUNTER-PLAINTIFF'S
MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)**

At a session of said Court held on the
23rd day of October 2024 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant/Counter-Plaintiff's Motion for Summary Disposition under MCR 2.116(C)(10). Defendant/Counter-Plaintiff, Michael Miller ("Miller and/or Defendant") asks the Court to dismiss the three-count Complaint filed against him by Plaintiff/Counter-Defendant CasterDepot Inc ("CasterDepot and/or Plaintiff"), which alleges breach of contract, breach of fiduciary, and misappropriation of trade secret. For the reasons

set forth below, Miller's Motion is DENIED in PART and GRANTED in PART.

OVERVIEW

For judicial efficiency, the Court refers to the facts and Standard of Review outlined in the Court's Opinion regarding CasterDepot's Motion for Summary Disposition under MCR 2.116(C)(10) ("Companion Opinion"), which dismissed Miller's Counterclaim.

ANALYSIS

A. Breach of Contract

Under Michigan law "[a] party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178 (2014). "[D]amages that are speculative or based on conjecture are not recoverable. However, it is not necessary that damages be determined with mathematical certainty; rather, it is sufficient if a reasonable basis for computation exists." *Chelsea Investment Grp, LLC v City of Chelsea*, 288 Mich App 239, 255 (2010) (citation omitted). Under Michigan law, "expectancy" damages, such as lost profits, awarded for common-law breach of contract are intended to make the plaintiff whole following the breach. See, e.g., *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 586 n 4; (2001).

Here, it is undisputed that the contract at issue is the Employee Confidentiality and Technology Agreement. It is also undisputed that this Contract contains neither a non-competition provision nor a non-solicitation provision. It does, however, provide as follows:



Employee Confidentiality and Technology Agreement

Employee's Name: MICHAEL Miller.
Date: 9/10/15
Company: CasterDepot

I understand and agree that CasterDepot has made significant and extensive investments in time, materials, and money to develop confidential and proprietary trade secrets which provide CasterDepot with a business advantage. In consideration for my continued employment in any capacity with CasterDepot, and as consideration for the salary and benefits paid for my services during my employment, I agree as follows:

1. Confidential Information. Except as required by my work for CasterDepot, during and after my employment with CasterDepot, I agree to not use or disclose to others any of CasterDepot's confidential and proprietary information including, but not limited to, production methods and processes, financial data, customer information (including names, needs, and contacts), computer data and software, work in process, research and development, vendors, and technological developments. During my employment by CasterDepot, I will not improperly use or disclose any confidential or proprietary information of any former employer or any other person to whom I have an obligation of confidentiality unless consented to in writing by that former employer or person.

3. Removal or Duplication of Company Property. Except as required by my work for CasterDepot, I agree that I will not remove any Company property from CasterDepot's premises or duplicate any of CasterDepot's property, whether by photocopy, computer, photograph, videotape, audio tape, or otherwise.

Miller asks the Court to dismiss this breach of contract claim because he argues that there was not a non-competition restriction in the agreement; because he was free to terminate his employment and then work for any employer; and because he was not prohibited from using his work or personal emails interchangeably. He also argues that Plaintiff cannot sustain its burden of establishing damages with reasonable certainty.

CasterDepot argues that Mr. Miller breached the above agreement by wrongfully duplicating and transmitting confidential CasterDepot information to Durable Superior Casters ("Durable")¹ during Mr. Miller's employment with CasterDepot, and by admittedly using confidential CasterDepot information in conducting his own new business, MTM01, LLC, beginning in January 2023.

¹ As discussed in the Court's Companion Opinion, Durable is a non-party that offered Miller a job opportunity.

After reviewing the briefs, the exhibits, and after hearing oral arguments, the Court finds that genuine issues of fact exist. While it is undisputed that the Agreement does not contain a non-competition provision, it does include a provision prohibiting Mr. Miller, both during and after his employment with CasterDepot, from using or disclosing to others CasterDepot confidential and propriety information, including customer information that includes “names, needs and contacts.” And, as previously discussed in the Court’s companion Opinion, while still a CasterDepot employee, Mr. Miller did the following: he took pictures on his telephone of CasterDepot’s Maven system;² he emailed to Durable information regarding a “potential monster” customer; he represented to Durable that he would “migrate sales over with” him to Durable; he used his personal email to send Durable “tribal knowledge;” and he blind copied to his personal Gmail address CasterDepot-related communications. Further, Mr. Miller formed his own limited liability company, MTM01, LLC, in January 2023 after Durable discontinued its hiring process with him.³ As Mr. Miller described, the sole purpose of this new LLC was to “try to sell casters to people in the industry.”⁴ Mr. Miller acknowledged generating \$181,000 in revenue for the LLC in 2023, with 70-75% of those sales made to customers of CasterDepot.⁵ And despite Mr. Miller’s actions listed above, Mr. Miller did not believe he was bound by the Confidential Agreement in connection with his use of “names, needs or contacts” of CasterDepot’s customers that resulted in actual business for MTM01, LLC.⁶

Based on the above, when viewed in the light most favorable to CasterDepot, the non-moving party, Court finds that there are questions of fact as to whether Mr. Miller’s undisputed

² Maven is CasterDepot’s own specialized information management system to which it owns the rights, for the specific purpose of preventing the unauthorized export of its confidential information. Plaintiff’s MSD Ex B: J. Popma Dep, pp 35, 71-72.

³ Defendant’s MSD Ex H: Miller Dep, pp 120-121.

⁴ Defendant’s MSD Ex H: Miller Dep, pp 120-121.

⁵ Defendant’s MSD Ex H: Miller Dep, pp 126, 143-144.

⁶ Defendant’s MSD Ex H: Miller Dep, pp 138-141, 143.

actions involved the use of confidential information,⁷ whether such actions constituted a breach of contract, and the amount of damages, if any, to which CasterDepot would be entitled if there was such a breach of contract. Based on the above, Mr. Millers motion is DENIED as to the Breach of Contract claim.

B. Fiduciary Duty

Whether to recognize a cause of action for breach of fiduciary duty is a question of law. *In re E. Earl Lyden Trust*, __Mich App__ (rel'd 4/4/2024); 2024 WL 1469932 at * 3. To establish a claim for breach of fiduciary duty, a person must show: “(1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages caused by the breach of duty.” *Abdelmaguid v Dimensions*, __Mich App__; (rel'd 2/8/2024); 2024 WL 500679 * 5, quoting *Highfield Beach at Lake Mich v Sanderson*, 331 Mich App 636, 666 (2020). A plaintiff is entitled to relief when a fiduciary relationship arises and the fiduciary's influence has been acquired and abused, or when confidence has been reposed and betrayed. *Vicencio v. Jaime Ramirez, MD, PC*, 211 Mich App 501, 508 (1995). A fiduciary owes a duty to his principal to act in good faith and is not permitted to act for himself at the principal's expense. *Central Cartage Co. v. Fewless*, 232 Mich App 517, 524–525 (1998).

As explained:

A fiduciary relationship arises from the reposing of faith, confidence, and trust and the reliance of one on the judgment and advice of another. A breach of fiduciary duty arises when a person holding a position of influence and confidence abuses the influence and betrays the confidence. A person in a fiduciary relation to another is under a duty to

⁷ The Court notes that its Opinion relative to the tortious interference Counterclaim did not determine that Mr. Miler used *confidential information* contrary to the terms of the Contract. Rather it was premised on CasterDepot's efforts to protect its legitimate business information. It found that the letter at issue expressed CasterDepot's legitimate concern about Mr. Miller's undisputed actions and his potential to misuse information relating to customer information, including names, need and contact, which would be undisputedly prohibited under the Confidentiality Agreement if such information was confidential.

act for the benefit of the other with regard to matters within the scope of the relation.

Highfield Beach, 331 Mich App at 666 n 13. (quotation marks and citations omitted).]

In *Calhoun Co v Blue Cross Blue Shield of Mich*, 297 Mich App 1, 20 (2012) (citation omitted), the Court of Appeals explained that a fiduciary relationship arises when one person has a duty to act for the benefit of the other regarding matters within the scope of the relationship, and that such relationships, which include trustee-beneficiary, guardian-ward, agent-principal, and attorney-client, impose the “highest duty of care.” A fiduciary relationship typically will arise in the following circumstances:

“(1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.”

Calhoun Co, 297 Mich App at 20, quoting *In re Karmey Estate*, 468 Mich 68, 74 n 2; 658 NW2d 796 (2003), in turn quoting Black's Law Dictionary (7th ed.).

“In Michigan, it is generally held that an employer-employee relationship will not “give rise to a fiduciary relationship unless the employee is a high-level employee,” or a specific agency relationship exists.” *Brooks Williamsson & Assoc v Braun*, 2022 WL 1508992 *6, citing *Delphi Auto PLC v Absmeier*, 167 F Supp 3d 868, 884 (ED Mich, 2016). Such high-level employees include corporate officers and members of corporate boards of directors. *Id.*; see also *Bradley v Gleason Works*, 175 Mich App 459, 463 (1989) (stating that the plaintiff employee did not cite Michigan authority for the principle “that an employer-employee relationship is fiduciary in nature”). In *Edwards Publications, Inc v Kasdorf*, 2009 WL 131636 the Michigan Court of Appeals declined to recognize a fiduciary relationship between plaintiff employer and its former sales representative. The Court of Appeals opined that it “fail[ed] to see

how an ordinary employee-employer relationship such that exists here rises to the level of a fiduciary relationship deserving of special protection by the law.” *Edwards Publications*, supra at * 7.

In the instant case, Mr. Miller was undisputedly an employee--not an officer, director or shareholder of Plaintiff. Plaintiff’s Complaint characterizes Mr. Miller as “Business Development Manager, and its Brief characterizes him as “Salesman.” As a Business Development Manager, he performed sales on behalf of CasterDepot, which involved engaging in direct face-to-face interaction with the customers and dealing directly with suppliers.⁸ CasterDepot does not allege that Miller was a high-level employee, or that there was any sort of specific agency relationship between the two to suggest the creation of a fiduciary duty. As a result, CasterDepot failed to establish a genuine issue of material fact regarding whether Miller owed fiduciary duties to it. Miller’s motion for summary disposition relating to the breach of fiduciary duty claim is GRANTED.

C. Misappropriation of Trade Secrets

Plaintiff’s Count Misappropriation of Trade Secret (“MUTSA”) is bought under the Uniform Trade Secrets Act, MCL 445.1902 et seq.

To successfully prove a claim for misappropriation of a trade secret under Michigan law, a plaintiff must prove: “1) the existence of a trade secret; 2) its acquisition in confidence; and 3) the defendant’s unauthorized use of it.” *Nedschroef Detroit Corp v Bemis Enterprises, LLC*, 106 F Supp 3d 874, 884 (ED Mich, 2015), aff’d 646 F Appx 418 (CA 2016). See also *Theisen v Inventive Consulting, LLC*, 2021 WL 3575323 at * p 3.

Under the MUTSA, a “[t]rade secret’ means information, including a formula, pattern,

⁸Defendant’s MSD Ex H: Miller Dep, 21-23.

compilation, program, device, method, technique, or process, that is both of the following: (i) [d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; [and] (ii) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” MCL 445.1902(d).

Whether something constitutes a trade secret requires an analysis of several factors regarding the method and means of protection used to safeguard the information. *Dura Global Tech, Inc v Magna Donnelly Corp*, 662 F Supp 2d 855 (ED Mich, 2009), citing *Wysong Corp v MI Ind*, 412 F Supp 2d 612, 626 (ED Mich, 2005).⁹ Such factors are:

- (1) extent to which information is known outside of owner's business, (2) extent to which information is known by employees and others involved in business, (3) extent of measures taken to guard secrecy of information, (4) value of information to owners and competitors, (5) amount of effort and money expended in developing information, and (6) ease or difficulty with which information could be properly acquired or duplicated by other.

Dura Glob. Techs., Inc. v. Magna Donnelly Corp., 662 F Supp 2d at 859 (ED Mich. 2009).

However,

To obtain protection as a trade secret, information must “‘be a secret.’” *Dura Global Techs., Inc. v. Magna Donnelly Corp.*, 662 F. Supp. 2d 855, 859 (E.D. Mich. 2009) (quoting *Kubik, Inc. v. Hull*, 56 Mich. App. 335, 347 (Mich. Ct. App. 1974)). “Trade secrets do not ‘encompass information which is readily ascertainable, i.e., capable of being acquired by competitors or the general public without undue difficulty of hardship.’” *Id.* (quoting *Kubik*, 56 Mich. App. at 348). The owner of a trade secret must take “‘sufficient measures...to guard the secrecy of the information and preserve its confidentiality.’” *Kubik*, 56 Mich. App. at 347-48

Konica Minolta Business Solutions, USA, Inc v Lowery Corp, 2020 WL 379160 at *18 (2020).

⁹ Decisions from other states or the federal courts are not binding, but we may find them persuasive. *Barshaw v Allegheny Performance Plastics LLC*, 334 Mich App 741, 756 n 7 (2020).

“It is important to distinguish trade secret information from confidential information. While the latter may be protected from disclosure by contract or between fiduciaries, confidential information does not necessarily rise to the level of a trade secret under MUTSA. *See Raymond James & Assocs v Leonard & Co*, 411 F Supp 2d 689, 696 (ED Mich 2006) (confidentiality agreement does not by itself turn information into trade secret).” *See* Pappas, McNeil, and Quick, Michigan Business Torts (October 2024 Update), § 4.4. The terms are not synonymous. *Id.* Trade secret is defined by statute, see MCL 445.1902(d). Confidential information is defined by contract, see, paragraph 1 of the Employee Confidentiality and Technology Agreement in the case at bar.

It has further been explained that:

While confidential information may not warrant trade secret protection, confidential information may still be protected by contract. Stevens; Unikel; *see also Johns-Manville Corp v Guardian Indus Corp*, 586 F Supp 1034, 1074 (ED Mich 1983) (“The Court has found that all individual defendants signed employment agreements that expressly prohibited the disclosure of *any* developments, even if not patented or trade secrets, either during or after employment ...; this type of contract is enforceable.”); *Structural Dynamics Research Corp v Engineering Mechs Research Corp*, 401 F Supp 1102, 1114 (ED Mich 1975) (“Defendants are liable for breach of their contracts and are answerable in damages if they used or disclosed confidential information, knowledge or technology gained while employed at SDRC ... even though such information, knowledge or technology is not itself a trade secret.”).

See Pappas, McNeil, and Quick, Michigan Business Torts (October 2024 Update), § 4.4.

“Distinguishing trade secrets from confidential information can be an elusive task, due in part to cases that tend to either confuse these terms or use them interchangeably.” *Id.*

As to customer information:

The Michigan Supreme Court has held that “there is nothing improper in an employee establishing his own business and communicating with customers for whom he had formerly done work in his previous employment.” *Hayes–Albion v. Kuberski*, 421 Mich. 170 (1984). “Thus, customer lists developed by a former employee and information relating to a customer's needs are not ‘trade secrets’ under the MUTSA, *McKesson Medical–Surgical Inc. v. Bio–*

Medics, Inc., 266 F.Supp.2d 590, 597–98 (E.D.Mich.2003), unless the employee is bound by a confidentiality agreement. *Hayes–Albion*, 421 Mich. at 184, 364 N.W.2d at 615...Nonetheless, the language in *Hayes–Albion* suggest that for customer contact information a confidentiality agreement is a necessary but not a sufficient condition for establishing a trade secret”

Wysong Corp. v. M.I. Indus., 412 F Supp 2d at 629.

Here, Mr. Miller argues that there is no genuine issue of mater fact that CasterDepot has no trade secrets--CasterDepot fails to identify a single “formula, pattern, compilation, program, device, method, technique or process.” Mr. Miller also argues that customer information does not constitute confidential information, and thus does not constitute trade secrets. Therefore, Mr. Miller argues that CasterDepot lacks any evidence of a trade secret, misappropriation of that trade secret, or damages.

CasterDepot’s Verified Complaint alleges that Mr. Miller “enjoyed broad access to the company's most sensitive business information and trade secrets, including business plans, customer information, strategic planning, bid information, financials, competitive analyses, and similar highly confidential information (the "Confidential Information").”¹⁰ CasterDepot argues that it took significant steps to maintain the confidentiality of its business information—it required the execution of a confidentiality agreement from its employees, including Mr. Miller. In addition, it developed Maven, its own specialized information management system to which it owns the rights, for the specific purpose of preventing the unauthorized export of its confidential information.¹¹ CasterDepot contracted a private coder to develop this system,¹² and built every line of its code, which is exclusively utilized by CasterDepot’s companies.¹³

The Court agrees with Mr. Miller that CasterDepot fails to specifically identify what it

¹⁰ Complaint, ¶16.

¹¹ Plaintiff’s MSD Ex B: J. Popma Dep, pp 35, 71-72.

¹² Plaintiff’s MSD Ex B: J. Popma Dep pp 70-71.

¹³ Plaintiff’s MSD Ex B: J. Popma Dep pp 70-71.

believes is the trade secret as defined under the statute and under case law. While the information CasterDepot seeks to protect may be subject to the Confidentiality Agreement, such information based on the record before the Court does not rise to the level of a trade secret under MUTSA. Miller's motion for summary disposition relating to the Misappropriation of Trade Secrets claim is GRANTED.

ORDER

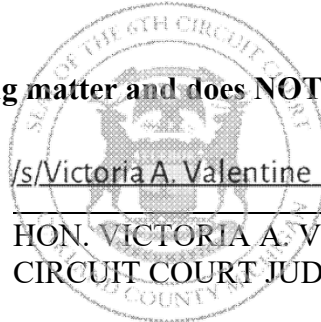
Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that the Miller's Motion for Summary Disposition as to Count I (Breach of Contract) is DENIED.

IT IS FURTHER HEREBY ORDERED that the Miller's Motion for Summary Disposition as to Count II (Breach of Fiduciary Duty) is GRANTED.

IT IS HEREBY ORDERED that the Miller's Motion for Summary Disposition as to Count III (Violation of MUTSA) is GRANTED.

This Order does NOT resolve the last pending matter and does NOT close the case.

The seal of the 6th Circuit Court of Montgomery County, Virginia, is circular and features a central figure holding a scale and a sword, surrounded by the text "SEAL OF THE 6TH CIRCUIT COURT" and "MONTGOMERY COUNTY VIRGINIA".

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 10/23/24