

Superior Court of California
Mendocino County
Ukiah Branch

FILED

JAN 17 2003

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, et al.,

Plaintiffs,

Case No. 82819

vs

JOHN W. WIER and RICHARD L.
PYORRE,

Defendants.

Order Granting Motion of Plaintiff/Cross-defendant for New Trial

The first, second and third causes of action of the Complaint (misappropriation of trade secrets, breach of contract and conversion, respectively, and the third cause of action of the First Amended Cross-complaint (interference with contractual rights) were submitted to the jury on July 30. The request for punitive damages was submitted on August 12. The jury returned special verdicts in favor of defendants and cross-complainants and judgment was entered on those verdicts on December 27, 2002. On December 3, 2002, plaintiff/cross-defendant State Farm filed its Notice of Intention to Move for a New Trial.¹ Although the filed notice stated that the motion would be based on all of the grounds allowed in CCP 657, the legal arguments set forth in the supporting memorandum of points and authorities are based on the grounds set forth in CCP 657 (5) [excessive damages] and (6) [evidence insufficient to justify the verdict].

Discussion

Trial Court Standard of Review: In the consideration of a motion for new trial on the ground that the verdict is not supported by the evidence, the court must act as an independent trier of fact and reweigh the evidence. (*Wallace v Farmers Group* (1990) 220 CA3d 718, 739) It must independently assess the credibility of the witnesses and

¹ Defendants/cross-complainants had previously filed on November 19 2002 their Notice on Intention to Move for a New Trial on the First and Second Causes of Action of the FAC and on a Corresponding Affirmative Defense.

determine the probative value of the evidence (*Kelly-Zurin v Wohl Shoe Co.* (1994) 22 CA4th 397, 413). The court is not bound by the conclusions reached and inferences drawn by the jury. (*Jones v Citrus Motors Ontario, Inc.* (1973) 706, 710-711) In the exercise of these broad powers of review, it is clear that the court may not supplant the jury's decision merely because the court may have reached a different decision on the basis of the same evidence. (*Ashcroft v King* (1991) 228 CA3d 604, 616-617) The court must determine whether there is sufficient credible evidence to support the verdict and may grant a new trial only where there is an absence of evidence on a particular issue or where the existing evidence does not have sufficient probative force to establish the proposition of fact to which it is addressed. (*Dominguez v Patalone* (1989) 212 CA3d 201, 215) Ultimately, the court must determine whether there is sufficient credible evidence to support the verdict reached by the jury. (*People v Robarge* (1953) 41 C2d 628, 623)

Complaint - Misappropriation of Trade Secrets and Conversion

In its first cause of action, State Farm contends that certain compiled policyholder information constituted a trade secret within the meaning of the Uniform Trade Secret Act (Civil Code Sec. 3426, *et seq.*) and that defendants Wier and Pyorre misappropriated and misused that information. The second cause of action for conversion is a more general restatement of the same claim. The jury initially determined that the compilation of policyholder information *did* constitute a trade secret.² The jury then answered Question 3 of Section I ("Did the trade secret information belong to State Farm?") with a "no," followed the verdict instructions to then ignore the remaining questions in Section I and moved on to Section II ("Breach of Contract.")

The jury's determination that "trade secret information" did not belong to State Farm is not only contrary to the evidence presented at trial but is unsupported by any evidence. The separate Agency Agreements signed by Wier and Pyorre with State Farm³ contain identical provisions (Agency Agreements, Sec. I (D)) providing that specifically described information (which the parties have generally referred to as "policyholder information") "are trade secrets wholly owned by [State Farm]." Neither Wier nor Pyorre contended that the meaning of the provision was uncertain or that extrinsic evidence was required to determine its meaning. It is the duty of the court, not the jury, to determine the meaning of contract language. (*Parsons v Bristol Dev. Co* (1965) 62 C2d 861, 865) Both Wier and Pyorre testified that they read their respective agency agreements prior to or at the time of signing. Neither testified that he misunderstood or failed to understand the contract provision that the elements comprising the policyholder information "are trade secrets wholly owned by the Companies." Wier and Pyorre did not contend or offer evidence that the ownership provision was in any way ambiguous or uncertain. They likewise did not contend or argue that the policyholder information each took from State Farm was different from that described in Sec. I (D) of the agency agreements. In summary, no evidence was offered by Wier and Pyorre to contradict the

² See the August 8, 2002 Special Verdict, affirmative answers to questions 1 and 2 in Section I.

³ Wier/ State Farm agreement: Trial Exhibit 4; Pyorre/State Farm agreement: Trial Exhibit 2.

clear statement in the agreement that the trade secret (policyholder) information belonged to State Farm.

There is nothing in the nature of policyholder information or, for that matter, trade secret information that precludes the allocation of ownership between contracting parties as found in Section I (D) of the agency agreements. The expert witnesses for both parties testified that the custom and usage in the industry provided for two general types of carrier/agent arrangements: independent and captive agencies. The independent agency agreements typically provide that the agent is the owner of the policyholder information, while the captive agency agreements (such as State Farm's) typically provide that the carrier is the owner. In at least three reported instances (*State Farm Mut. Auto Ins. Co. v Demster* (1959) 174 CA2d 418; *Painton and Co. Ltd. v Bourns, Inc.* (1971) 442 F2d 216, 225; *Baker v Com. Of Int. Rev.* (US Tax Court, 2002) 188 TC No. 28), appellate or federal courts have reviewed issues arising out of contractual relationships wherein the agreement of the parties had included an assignment, conveyance or allocation of ownership of trade secrets and/or policyholder information. In no instance did any of the courts determine or suggest that such as assignment, conveyance or allocation of ownership among contracting parties was not valid or somehow violated public policy. Regardless of whether the trade secret or policyholder information was individually owned by either the contracting agent or State Farm or jointly by both, the contracting parties had the right to and did allocate ownership of that information to State Farm.

The agency agreements may well be contracts of adhesion (*Neal v State Farm Ins. Co.* (1961) 188 AC2d 690, 694); however, that characterization alone does not render the agreement or its provisions unenforceable. (*Armmendariz v Found. Health Psychcare Ser., Inc.* (2000) 24 C4th 83, 113) Enforcement of a provision within a contract of adhesion will be denied only if that provision is so unreasonable as to shock the conscience. (*Marin Storage and Trucking v Benco Contracton and Engineering* (2001) 89 CA4th 1042, 1052-1055) Whether a contract is one of adhesion must be determined at the time the contract was made. (*Chow v Levi Strauss and Co.* (1975) 49 CA3d 315) Defendants did not offer any evidence that the contractual provision confirming ownership of the policyholder information by State Farm was so unreasonable as to shock the conscience at the time the defendants entered into the agreements. Defendants also did not produce any evidence that either of them misunderstood or did not understand the effect of Sec. I (D) at the time each signed an agency agreement.

Following an independent assessment of the probative value of the evidence presented on this issue, the court finds that there was not sufficient credible evidence to support the jury determination that the trade secret information did not belong to State Farm.

Complaint - Breach of Contract

In its third cause of action, State Farm alleges that Wier and Pyorre had breached Sec. III (D) of the agency agreements which precluded them, for a period of one year following the termination of the agreement, from inducing or advising a policyholder to lapse, surrender or cancel any State Farm policy or from soliciting any such policyholder

to purchase insurance coverage competitive with that offered by State Farm. The jury determined that Wier and Pyorre had breached the identified provisions of the agreement and that the breaches were unexcused. The jury then determined that State Farm had, prior to the breach by Wier and Pyorre, itself breached the implied covenant of good faith and fair dealing.⁴

Plaintiff argues that there is not sufficient evidence in the record to support the jury's determination that State Farm breached the implied covenant of good faith and fair dealing. The application of the covenant in the context of a terminable at will contract has been the topic of much discussion among the appellate courts and is sometimes difficult and confusing. The subject agency agreements are very similar to employment agreements and are best reviewed in the context of the principles developed for those agreements. The predominant, guiding principle in the application of the covenant of good faith and fair dealing is that it "exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the *benefits of the agreement actually made.*" (*Guz v Bechtel National, Inc.* (2000) 24 4th 317, 349; original emphasis) The covenant must be based upon some obligation or provision of the underlying contract. (*Ibid.* 349) Because the agreement is terminable at will, the obligation or expectation under the contract must be something *other than* the expectation of continued employment or the expectation of a *continuing* contractual relationship. (*Foley v Interactive Data Corp.* (1988) 47 C3d 654) By way of corollary, it is well established that under an at-will contract, the decision to terminate need not be based on good cause or any cause; it may be arbitrary and capricious or totally without cause. (*Guz v Bechtel Nat., Inc.*, *supra*, 24 C4th 317, 351; *Consolidated Theaters, Inc. v Theatrical Stage Emp. Union* 69C2d 713, 727; *Hejmadi v AMFAC Inc.* (1988) 202 CA3d 525, 547)

Pyorre argues that State Farm breached a contractual provision providing essentially that, as an agent, he would remain an independent contractor. Wier argues State Farm breached a provision that the agency agreement would not be amended without mutual agreement. Both of these contractual rights or benefits are dependent upon a continuing contractual relationship. The benefits have no value and are meaningless outside of the context of the agency agreements. Since that contractual relationship can be terminated at-will, any expectation by the agents that the contractual relationship would continue is, of necessity, not reasonable. Similarly, any expectation in the continued enjoyment of those contractual benefits is likewise unreasonable. Because Wier and Pyorre could not have held a *reasonable* expectation in the continued enjoyment of these benefits, the breach of these provisions (if it occurred) could not serve as the basis for a claim of breach of the covenant of good faith and fair dealing. (*Hejmadi v AMFAC Inc.*, *supra*, 202 CA3d 547)

Pyorre and Wier also argue State Farm violated the agency agreement by compelling Pyorre to attend a training session in breach of the independent contractor provision and compelled Wier to accept a modification to the agency agreement without his consent. These contentions are not supported by the evidence. Pyorre was *not* compelled to and did not attend a training session. Similarly, Wier did *not* execute the agreement that he argues would have resulted in the modification of the agency agreement without his consent. In addition, Wier did not offer any proof that the

⁴ See August 8, 2002 Special Verdict, Sec. II, questions/answers 1, 2 and 3.

execution of the computer agreement (without his proposed provision) would have resulted in the modification of any material terms of the agency agreement.

Cross-complaint - Intentional Interference With Contractual Rights

After the termination of their respective agency agreements with State Farm, Wier and Pyorre each entered into separate agreements with a difference insurance carrier: Mercury Insurance. Each solicited, directly and/or indirectly through Mercury, State Farm policyholders which had been credited to their respective accounts while each was a State Farm agent. Each also used and/or furnished to Mercury for the purpose of soliciting insurance business written policyholder information (declaration pages) which each had downloaded at the time of the terminations of the separate relationships with State Farm. State Farm sent four complaining letters to Mercury.⁵ Based on the statements made in those letters, Mercury agreed to and did substantially restrict the type of insurance business it would accept from Wier and Pyorre.⁶ Wier and Pyorre contend State Farm wrongfully interfered with their contractual relation with Mercury in sending the demand letters.

The letters set forth three separate charges and related demands:

(1) Solicitation of State Farm customers: Sec. III (E) of the agreement prohibited the agents for a period of one year from soliciting business from any State Farm policyholder that had been credited to his/her account. State Farm charged that both Wier and Pyorre were violating this provision with the assistance of Mercury, primarily through the "roll over" program. The jury found these charges to be true.⁷

(2) Retention/use of Declaration Pages: Sec. I (D) provides that "all forms and other materials ... upon which [trade secret information] is recorded shall be the sole and exclusive property of [State Farm]." It is undisputed that Wier and Pyorre each downloaded and delivered the declaration pages to Mercury. Those pages were the forms on which the information was recorded and belonged to State Farm. The retention and delivery of those declaration pages to Mercury was prohibited by the agreement.

(3) Trade Secret Information: Sec. I (D) provided that the policyholder information, with the exception of governmental or industry plan participants, was the trade secret information of State Farm. The jury confirmed the data was a trade secret. As discussed above, the agreement determined State Farm's ownership of the trade secret information. The letters demanded the cessation of use and return of the trade secret information.

All of the statements and demands set forth in the State Farm letters, as summarized above, were correct and justified. Wier and Pyorre argue the demand to stop soliciting *all* State Farm insureds was overbroad because it included some insureds who were participants in the exempted governmental or industry plans. That exemption is found in Sec. I (D) and applies to the definition of trade secret. The non-solicitation provision is found in Sec. III (E) and applies to *all* policyholders. State Farm's accurate statement and justified demands regarding prohibited solicitation, the retention and use of

⁵ Trial Exhibits 540, 542 and 544.

⁶ A review of Trial Exhibits 542 and 544 indicates that Mercury may have imposed the restriction at some point between the letters of 9/24/99 and 1/11/00.

⁷ See, August 8, 2002 Special Verdict, Sec. II, questions/answers 1, 2, 6 and 7.

its declaration forms and the use of its trade secret information cannot serve as the basis for tortious interference with contractual relations. (*Arntz Contracting Co. v St. Paul Fire and Marine Ins. Co.* (1996) 47 CA4th 464, 480) There was no evidence presented to the jury of any conduct of State Farm *other than* its letters to Mercury to support a claim of interference with the contractual rights. Based upon the jury's determination that the policyholder information constituted a trade secret, the contract determination that the trade secret information was the property of State Farm and the jury finding that Wier and Pyorre were then soliciting State Farm insureds in violation of the agreement, the court must conclude that the statements and demands made in the letters were accurate and reasonable and did not interfere with either of the contracts between Mercury and Wier or Pyorre. There was no sufficient, substantial, credible evidence to support the jury conclusion that State Farm interfered with the contracts with Mercury in sending the letters.

Affirmative Defenses: There is no credible evidence to support the jury's rejection of State Farm's competition privilege affirmative defense.⁶ The "wrongful conduct" required as a prerequisite in BAJI 7.86.1 must be independently actionable. (*S.F. Design Center v Portman Companies* (41 CA4th 29, 42-43) No such evidence was submitted to the jury. There was some dispute in the evidence as to whether Blitzer personally had the authority to authorize the Mercury litigation and, if not, who authorized it. The court cannot find that the evidence that State Farm did not actually intend to commence legal action was without sufficient probative force.

Damages for Intentional Interference with Contract Rights:

Emotional Distress: A plaintiff is generally not permitted to recover damages for emotional distress in an action for interference with contractual rights, such as that set forth in Wier and Pyorre's third cause of action. In order to recover such damages, the plaintiff must prove that the conduct, on which the claim of interference is based, is "extreme and outrageous." (*DiLoreto v Shumake* (1995) 38 CA4th 35, 38-42) The tortious conduct in this case consisted of sending several letters to Mercury *correctly stating* (1) that the policyholder/trade secret information used in soliciting State Farm customers was trade secret information belonging to State Farm and (2) that Wier and Pyorre were soliciting State Farm policyholders formerly credited to their accounts in violation of their agreements with State Farm and requesting Wier and Pyorre to comply with these provisions. There was no evidence that any statements made in the letter were otherwise defamatory or were made to third parties. This evidence is not sufficient and does not have sufficient probative value to support a finding that State Farm's representation made in the letters to Mercury was "extreme and outrageous." Wier and Pyorre have not established a sufficient entitlement to a claim for damages for emotional distress.

Excessive Damages: The court has the discretion to grant a new trial upon the ground of excessive damages only if, after weighing all of the evidence and considering the reasonable inferences, it concludes that the jury clearly should have reached a

⁶ See August 8, 2002 Special Verdict, Section II, question/answer 6.

different verdict. (CCP 657(7)) The court sits as an independent trier of fact. (*West v Johnson and Johnson Products Inc.* (1985) 174 CA3d 831, 876)

Economic Damages: Wier and Pyorre claimed lost commissions on that segment of their potential business declined by Mercury in amounts calculated by their expert at \$49,460 for Wier and \$83,289 for Pyorre. The jury awarded Wier \$250,000 (an increase by a factor of 5.05) and Pyorre \$350,000 (an increase by a factor of 4.2). No credible evidence was submitted to justify such significant increases over the amounts specifically calculated by the expert. Although Wier and Pyorre may have made reference to potential damages from the loss of referral business from the declined customers and from the inability to borrow additional funds for business development, no evidence whatsoever was offered as to the amount of damages attributable to these additional factors. The award of damages in excess of the evidence must have been based on speculation and is clearly not supported by the evidence.

Emotional Distress Damages: As a result of the termination of the agency agreements and the curtailment of Mercury business, both Wier and Pyorre sustained relatively devastating losses of income. By far the greatest portion of that loss in both cases was attributable to the termination of the State Farm agency agreements. Because the two events (the contract termination and the business curtailment) occurred in relatively close proximity, it was understandably difficult for them to allocate between the two events whatever emotional distress each suffered as a result of both events. The emotional distress reported by the witnesses appeared to be very real; however, it did not appear to be overly substantial in nature or duration. Although Pyorre "shrugged off" the distress, his wife reported that he lost sleep and was anxious about paying bills and his ability to keep his business moving forward. She also said he was losing the "inner strength" that had sustained him throughout his life. Wier also reported anxiety, stress and loss of sleep. Wier and Pyorre should not be penalized for tending to downplay and refusing to sensationalize their inner feelings of distress. However, in neither case does the severity of the effects described justify emotional distress damages awards of \$3,000,000. After considering all of the evidence presented on the issue of emotional distress, and the inferences that could be reasonably drawn from that evidence, the court concludes that the damages awards are excessive and are not supported by evidence with sufficient probative value.

Punitive Damages: The evidence does not support the conclusion that State Farm was guilty of oppression and/or malice against Wier and/or Pyorre in its correspondence with Mercury. State Farm's ownership of the policyholder information was clearly set forth in its agency agreements and had been so for years. The allocation of ownership was supported by the custom and practice within the industry and had been at least implicitly supported by court decisions over the years. As recently as two years prior, during the events leading up to the eventual terminations, State Farm had gone to some lengths to provide both Wier and Pyorre with ample opportunity to reconsider their initial positions and to conform to the requests of the company, giving support to the inference that State Farm did not bear personal malice against either Wier or Pyorre. The demands in the letters were based upon the correct assessment of contract rights set forth in the agency agreements. The jury's conclusion that State Farm was guilty of oppression

and/or malice in its correspondence with Mercury is not supported by credible evidence of sufficient probative force. As an independent trier of fact, the court determines that there is not a sufficient evidentiary basis for an assessment of punitive damages based on the correspondence to Mercury.


Disposition

The court is extremely reluctant to set aside the determinations reached by the jurors, especially after six weeks of patiently listening to testimony of numerous witnesses, reviewing hundreds of documents, suffering wordlessly through hours of legal instruction and arguments and, finally, conscientiously assessing the evidence and making the requested verdict determinations. In retrospect, the jurors may have been confused by the submission to them of the verdict question of trade secret ownership when the agency agreements clearly stated that trade secret information was the property of State Farm. It is also possible that some jurors were confused or, perhaps, wrongly influenced by the substantial amount of testimony that was presented on the issue of whether agency terminations by State Farm were properly made before the court itself determined that the terminations were proper. The court is extremely grateful for the energy and sense of purpose which the jurors brought to their task.

The court is nevertheless required to review the trial evidence and the jury determinations against certain established standards. Some of the determinations the jury made in answering the specific questions in the special verdict forms were not supported by evidence with sufficient probative force. State Farm is entitled to a new trial on certain issues as follows:

1. Complaint – Misappropriation of Trade Secret Claim: Plaintiff's motion for new trial is granted.
2. Complaint – Breach of Contract: Plaintiff's motion for new trial is granted.
3. Cross-complaint – Tortious Interference with Contract Rights: Cross-defendant is granted a new trial on the issue of liability and on the entitlement to damages for emotional distress and punitive damages.

Dated: January 17, 2003


RICHARD J. HENDERSON
Judge of the Superior Court

Copies to Counsel:

**George A Yuhas
Thomas S. Brigham
William P. Tedards
Ryan F. Perkins**