

Summary of SC93182, *Central Trust and Investment Company v. SignalPoint Asset Management LLC*

Appeal from the Greene County circuit court, Judge Michael Cordonnier
Argued and submitted November 13, 2013; opinion issued February 25, 2014

Attorneys: Central Trust was represented by Eric M. Trelz of Polsinelli PC in Clayton, (314) 889-8000, and Jay M. Dade and Jennifer R. Growcock of Polsinelli PC in Springfield, (417) 869-3353. SignalPoint was represented by Warren E. Harris and Lance A. Roskens of Taylor, Stafford, Clithero, Fitzgerald & Harris LLP in Springfield, (417) 887-2020. Troy Kennedy and ITI Financial were represented by C. Ronald Baird and Brett W. Roubal of Baird Lightner Millsap & Harpool PC in Springfield, (417) 887-0133.

Two organizations filed briefs as friends of the Court. The Missouri Bankers Association Inc. was represented by Dale C. Doerhoff, John D. Landwehr and Blake Shier of Cook, Vetter, Doerhoff & Landwehr in Jefferson City, (573) 635-7977; and the association's general counsel and vice president, Keith A. Thornburg, of Jefferson City, (573) 636-8151. The Missouri Chamber of Commerce was represented by Thomas B. Weaver and William M. Corrigan Jr. of Armstrong Teasdale LLP in St. Louis, (314) 621-5070.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: In a case alleging a violation of the state's uniform trade secrets act, a company appeals the grant of summary judgment (judgment on the court filings, without a trial) against it as well as the circuit court's denial of reconsideration or a new trial in light of allegedly newly discovered evidence. In a 7-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the judgment. There is no genuine issue of material fact as to the plaintiff company's claim that the defendant company misappropriated its client list. Because that claim fails, there also is no genuine issue of material fact as to the claim of tortious interference with business relations. Further, the plaintiff company's dismissal of all but one defendant renders its civil conspiracy claim moot.

Judge James R. Bickel, presiding judge of the 28th circuit (Barton, Cedar, Dade and Vernon counties), sat in the case by special designation in place of Chief Justice Mary R. Russell.

Facts: Troy Kennedy left his job as a director and executive officer of Springfield Trust & Investment Company on the day in November 2009 that the company was sold to Central Trust and Investment Company. Kennedy had been aware of the merger negotiations, and he had made certain preparations for his departure, including placing in a safe deposit box a cell phone containing the contact information of about 200 Springfield Trust clients as well as 39 pages of documents containing information about Springfield Trust clients. The next day, Kennedy founded ITI Financial Management LLC, which provides financial advice and investment management services in competition with Central Trust. He then began soliciting Central Trust's clients. Instead of registering himself or ITI with the Securities and Exchange Commission as an investment adviser, he signed an agreement in February 2010 with SignalPoint Asset

Management LLC, which already is a registered investment adviser. The agreement names him as an independent advisor representative of SignalPoint; specifies he is an independent contractor, not an employee of SignalPoint; and states that he has no right to bind SignalPoint by his actions. Central Trust sued Kennedy, ITI and SignalPoint, alleging misappropriation of trade secrets, tortious interference with business relations and civil conspiracy. Kennedy and ITI filed a joint motion for summary judgment, and SignalPoint filed a separate motion for summary judgment. The circuit court overruled Kennedy and ITI's motion but entered summary judgment in favor of SignalPoint. Central Trust subsequently gained access to the contents of Kennedy's safe deposit box and moved for reconsideration of the summary judgment and for a new trial in light of the allegedly newly discovered documents and cell phone. The circuit court overruled the motions. Central Trust has dismissed its claims voluntarily against Kennedy and ITI in the circuit court but appeals its claims against SignalPoint.

AFFIRMED.

Court en banc holds: (1) Central Trust has not demonstrated that a genuine issue of material fact exists as to whether SignalPoint "misappropriated" its client list as that term is defined by the state's uniform trade secrets act, sections 417.450 to 417.467, RSMo 2000. Under the plain language of section 417.453(2), a "misappropriation" of a trade secret occurs in only three scenarios: when a person acquires the trade secret while knowing or having reason to know he is doing so by improper means or when a person who has acquired or derived knowledge of the trade secret either discloses it without the owner's consent or uses it without the owner's consent. In its motion for summary judgment, SignalPoint asserted that Kennedy never provided it with any client or customer list or other document from Springfield Trust or Central Trust, supporting its assertion with an affidavit from one of its officers. Central Trust denied this statement of fact with a citation only to Kennedy's affidavit, which states nothing about whether SignalPoint ever had been given the client list that Central Trust characterizes as a "trade secret." Because Central Trust failed to support its allegation properly, it is deemed admitted under Rule 74.04(c)(2) and (c)(4) that SignalPoint had not been provided the client list. Because Central Trust failed to demonstrate that SignalPoint ever had access to the client list, SignalPoint could not have acquired, disclosed or used it. As such, there is no genuine issue of material fact that SignalPoint "misappropriated" any trade secret of Central Trust. Further, because Central Trust never pleaded the existence of a principal-agent or employer-employee relationship between Kennedy and SignalPoint or otherwise alleged that SignalPoint had the right to control Kennedy or ITI, it cannot establish that SignalPoint is vicariously liable for Kennedy's actions. The agreement Kennedy signed with SignalPoint states he is an independent contractor, disclaims the existence of an employer-employee relationship and states that Kennedy's actions cannot bind SignalPoint. As such, Kennedy's actions in acquiring the client list cannot be imputed to SignalPoint.

(2) Central Trust's failure to demonstrate a genuine issue of material fact as to whether SignalPoint "misappropriated" its client list also justifies the circuit court's grant of summary judgment against Central Trust on its claim of tortious interference with business relations. Central Trust concedes that SignalPoint has a legitimate economic interest in Central Trust's expectation of continuing to do business with its former clients because the two companies are direct competitors. But the only "improper means" Central Trust alleges that SignalPoint used – which it must do to prove tortious interference with a business expectancy – is that SignalPoint

misappropriated a trade secret. As noted in Paragraph 1, however, there is no genuine issue of material fact as to the misappropriation claim.

(3) Central Trust's civil conspiracy claim is moot because Kennedy and ITI have been dismissed from the case. The only effect of a civil conspiracy claim is to hold multiple defendants jointly and severally liable, but here, SignalPoint is the only remaining defendant in the case.

(4) The circuit court did not abuse its discretion in overruling Central Trust's motions for reconsideration of summary judgment and for a new trial alleging newly discovered evidence because the newly discovered evidence could not produce a different outcome. The only new evidence Central Trust proffers is the contents of the safe deposit box, but it has not supported the allegation that SignalPoint had access to the safe deposit box or its contents, nor has it linked this more detailed evidence to SignalPoint in any way. Even considering the new evidence, there still would be no genuine issue of material fact as to the misappropriation claim or Central Trust's other claims against SignalPoint.