

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

RUSSEL S. BROWN, Plaintiff/Respondent,)	
)	No. ED91533
v.)	
)	Appeal from the Circuit Court
ROLLET BROS. TRUCKING COMPANY,)	of Cape Girardeau County
INC., R.B.T., INC., E & R LIME CO., and)	
ROLLET BROS. LOGISTICS, INC.,)	Date: June 16, 2009
Defendants/Appellants.)	

Defendants appeal from a declaratory judgment in favor of their former employee declaring that defendants were not entitled to enforce the parties' Non-Compete and Confidentiality Agreement (the Agreement) against plaintiff. On appeal, defendants contend that the trial court erred in concluding the Agreement was unenforceable because they had a protectable interest in their customer contacts and trade secrets.

AFFIRMED AS MODIFIED.

Division Four Holds:

1. Even if reasonable in scope and time, covenants not to compete are enforceable only to protect against the unfair competitive use of customer contacts or trade secrets.
2. The Agreement was not enforceable against plaintiff to protect defendants' customer contacts. Even though plaintiff had significant daily contact with defendants' customers, there was substantial evidence that those contacts did not enable plaintiff to influence those customers in the sense that he could entice a customer's business away from defendants.
3. The Agreement was not enforceable against plaintiff to protect against the unfair competitive use of defendants' trade secrets.
 - a. The trial court's finding that defendants' customer list was not a trade secret was supported by substantial evidence and did not misapply the law.
 - b. We do not need to reach the question whether defendants' pricing process was a trade secret, because there was substantial evidence that plaintiff was not given access to that process.
 - c. Defendants' rate sheet was not a trade secret because the rates and fuel surcharges contained therein were subject to frequent change, which gave the information a short useful life. The rate sheets to which

plaintiff was privy while employed would not have sufficient future value to give a competitor a competitive advantage.

4. We may modify a judgment by striking unnecessary and superfluous findings as surplusage.

Opinion by: Kathianne Knaup Crane, J.
Mary K. Hoff, J. and Kenneth M. Romines, J., concur.

Attorneys for Appellant: John J. Gazzoli, Jr. and Theresa A. Phelps

Attorney for Respondent: Thomas L. Hoeh

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.