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Two Claims You May Not Want To Make In North Carolina

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I said yesterday that there was too much in ***DSM Dyneema, LLC v. Thagard***, 2015 NCBC 47 for just one post, so here are the rest of the key points from the case. They involve two claims you might not want to bother to make in North Carolina -- the first one suing a former employee for violation of fiduciary duty -- and the second a claim resting on the "inevitable disclosure doctrine."

Uncertainty About The Availability Of The Inevitable Disclosure Doctrine

Beware of relying on the "inevitable disclosure doctrine." Judge Bledsoe points out that the doctrine "has not yet been firmly adopted by the North Carolina courts." Op. ¶20 & n.4. I think of the inevitable disclosure argument as an end run for a client which didn't get a non-compete agreement from a departing employee but wished that it had.

The NC Court of Appeals, although it has yet to accept the doctrine, has described it as applying:

> when an employee who knows trade secrets of his employer leaves that employer for a competitor and, because of the similarity of the employee's work for the two companies, it is "inevitable" that he will use or disclose trade secrets of the first employer. See K. Roberson, South Carolina's Inevitable Adoption of the Inevitable Disclosure Doctrine: Balancing Protection of Trade Secrets with Freedom of Employment, 52 S.C.L. Rev. 895 (2001).

Op. ¶20 & n.4 (*quoting Analog Devices, Inc. v. Michalski*, 157 N.C. App. 462, 470, 579 S.E.2d 449, 454 (N.C. Ct. App. 2003).

Judge Bledsoe was able to avoid deciding whether the doctrine applies in NC, even though the Defendants argued on their Motion for Judgment on the Pleadings that the Plaintiff had pled little more than that its former employee had left its employment and would inevitably disclose its trade secrets to his new employer, a competitor.

The Judge found that there was more than just the "inevitability" of disclosure since the Defendants after hiring away Thagard (Plaintiff's former chief scientist and "technical leader"), were suddenly able to pass a ballistics test for combat helmets used by the Department of Defense. Before that hiring,

the Defendants and all of the Plaintiff's other competitors, had failed that test. Plaintiff had the only process in its industry which yielded an acceptable helmet. There were also allegations in the Complaint that Thagard had downloaded trade secret information from his company computer before leaving the Plaintiff, and that he had disclosed that information to the Honeywell Defendants.

So, before making a claim based solely on the inevitable disclosure doctrine, take into account that North Caroline may not recognize the doctrine.

Fiduciary Duty

This second DSM Dyneema decision also contains a completely unsurprising ruling that Defendant Thagard did not owe a fiduciary duty to his former employer.

The NC Supreme Court pretty much ruled that an employee has no fiduciary duty to its employer almost fifteen years ago, in *Dalton v. Camp*, 353 N.C. 647, 652, 548 S.E.2d 704, 708 (2001).

Judge Bledsoe rejected the Plaintiff's argument that Thagard owed it a fiduciary duty because "he held a position of trust and confidence at DSM as Application Manager -- Life Protection in which he. . . was the lead scientist and technical leader for DSM's helmet and body armor development and new grade development." Op. ¶28.

It is hard to conceive of situation where any employee -- other than one who is an officer or a director of her employer -- would owe a fiduciary duty to her employer.

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