

COA Opinion: Summary disposition under MCR 2.117(C)(7) is immature where there is no record evidence to suggest that plaintiff was aware of the tortious conduct before signing the release.

17. November 2010 By Madelaine Lane

On Tuesday, November 16, 2010, the Michigan Court of Appeals issued its opinion in *Spartan Graphics, Inc. v. Entermarket Corp.*, [Case No. 292235](#). This trade secret misappropriation case involved the scope of a release agreement that plaintiff and defendant signed to resolve previous, unrelated federal litigation. The trial court assumed that the misappropriation took place prior to the execution of the release and therefore held that the release barred plaintiff's claims. The Court of Appeals reversed, in part, and held that further discovery was necessary to determine whether the misappropriation occurred before the release was signed.

Plaintiff filed a complaint against the defendants, Entermarket and plaintiff's former employee, Schmutz, alleging claims for trade secret misappropriation and tortious interference. Entermarket moved for summary disposition under MCR 2.116(C)(7), arguing that the May 2008 release barred all of plaintiff's claims, even those claims based on conduct that took place after the release's execution. The trial court agreed, and based its decision on the assumption that, as of the release date, Spartan not only knew Schmutz was working for Entermarket, but also had "a belief that there was violations of trade secrets going on."

The majority of the Court of Appeals panel disagreed. Regarding Counts II and IV, the court concluded that because there was no evidence to support a finding that Entermarket was misappropriating Spartan's trade secrets prior to the signing of the release, the trial court prematurely granted summary disposition. In reaching this conclusion, the court looked to the language of the release and held that the release only bars "whatever claims, known or unknown, that could have been brought in the Lawsuit or in any other forum were required to arise from or relate to something that 'could have been alleged in the Lawsuit' under subsection (a)." The court recognized that the "or in any forum" language was "not made nugatory, as it is necessary for subsection (b) which includes no limitations on being brought in the Lawsuit." Because discovery is still necessary to determine when the misappropriation occurred, the court concluded that summary disposition was premature.

Judge O'Connell concurred in the majority's decision to affirm the dismissal of Count III, but wrote separately to dissent from the majority's decision to reverse the trial court's grant of summary disposition on Counts II and IV. In reaching this conclusion, Judge O'Connell noted that the parties freely entered into a settlement agreement in which Spartan agreed to release Entermarket from any and all claims "known or unknown, accrued or unaccrued" and that the court should not inset a date limitation into the release. A copy of Judge O'Connell's opinion is [here](#).

Disclaimer: WNJ represented the prevailing plaintiff in this case.