

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

MIDWEST MFG, LLC, doing business as
Circle R Truck Bed Extender,

Plaintiff,

vs.

CURT MANUFACTURING, LLC, doing
business as Curt Group,

Defendant.

4:21-CV-04216-RAL

FINAL
JURY INSTRUCTIONS

FINAL INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I will repeat some of those instructions and give you additional instructions now. These instructions are in writing and will be available to you in the jury room.

You must follow all instructions whenever given by the court and whether in writing or not. You must not single out some instructions and ignore others because all are important.

FINAL INSTRUCTION NO. 2

This is a civil case brought by the Plaintiff Midwest MFG, LLC, doing business as Circle R Truck Bed Extender, against Defendant Curt Manufacturing, doing business as Curt Group.

Midwest has three claims. First, Midwest alleges that Curt breached the Non-Disclosure Agreement (NDA) by using information that Midwest alleges was confidential to develop its own competing product and by failing to return information and the two sample units Midwest provided to Curt. Second, Midwest alleges that Curt misappropriated two of Midwest's trade secrets in violation of federal law: 1) technical information regarding the competitive benefits of the Circle R product's three-piece design; and 2) the estimated sales, profits, and revenue projections. Third, Midwest alleges that Curt is liable for conversion because Curt did not return the information and sample units Midwest provided to Curt. Midwest seeks damages for each of its claims.

Curt denies that it breached the NDA and claims that the information provided by Midwest was not confidential information under the NDA. Curt denies that it misappropriated Midwest's trade secrets and claims what Midwest asserts to be trade secrets do not qualify as actual trade secrets. Curt denies liability for the conversion claim, arguing that the information provided to Curt by Midwest was public information and that Midwest consented to Curt's possession of the two sample units.

It will be your duty to decide from the evidence whether Midwest is entitled to a verdict against Curt.

FINAL INSTRUCTION NO. 3

From the evidence you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in life. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

FINAL INSTRUCTION NO. 4

I have mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits, any facts that have been stipulated—that is, formally agreed to by the parties—and any facts that have been judicially noticed—that is, facts which I say you may, but are not required to, accept as true, even without evidence.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.
2. Exhibits that are identified by a party but not offered or received in evidence are not evidence.
3. Objections are not evidence. Lawyers have a right and sometimes an obligation to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question or the exhibit and must not try to guess what the answer or information might have been.
4. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.

If a particular item of evidence was received for a limited purpose only, you must follow that instruction.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

FINAL INSTRUCTION NO. 5

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the parties in the lawsuit in the same manner as you judge the testimony of the other witnesses.

FINAL INSTRUCTION NO. 6

The credibility of a witness may be attacked by introducing evidence that on some former occasion the witness made a statement or acted in a manner inconsistent with the witness's testimony in this case on a matter material to the issues. You may consider evidence of this kind in connection with all of the other facts and circumstances in evidence in deciding the weight to give the testimony of that witness.

FINAL INSTRUCTION NO. 7

In civil actions, the party who has the burden of proving an issue must prove that issue by greater convincing force of the evidence. Greater convincing force means that after weighing the evidence on both sides there is enough evidence to convince you that something is more likely true than not true. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue has the greater convincing force, then your finding upon the issue must be against the party who has the burden of proving it.

In determining whether or not an issue has been proved by greater convincing force of the evidence, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

FINAL INSTRUCTION NO. 8

For Midwest to establish Curt breached the NDA, Midwest must prove all of the following elements by a greater convincing force of the evidence:

- (1) An enforceable NDA existed between Midwest and Curt;
- (2) Curt breached this NDA, and;
- (3) Midwest suffered damages as a result of Curt's breach.

The parties agree that the NDA constitutes a valid, enforceable contract. A breach of contract is a violation of a contractual obligation by failing to perform one's own promise.

FINAL INSTRUCTION NO. 9

Midwest claims that Curt misappropriated two trade secrets belonging to Midwest: 1) technical information regarding the competitive benefits of the Circle R product's three-piece design that Midwest shared with Curt; and 2) the estimated sales, profits, and revenue projections Midwest shared with Curt.

For Midwest to succeed on its claim for trade secret misappropriation, Midwest must prove all of the following elements by a greater convincing force of the evidence:

- (1) The two items above are trade secrets;
- (2) Midwest is the owner or licensee of the alleged trade secrets;
- (3) The alleged trade secrets relate to a product or service used in, or intended for use in, interstate or foreign commerce; and
- (4) Curt misappropriated one or both of those trade secrets.

The parties agree that the Circle R Truck Bed Extender was used in, or intended for use in, interstate commerce.

FINAL INSTRUCTION NO. 10

A trade secret is defined as all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.

To prove that the information Midwest claims Curt misappropriated constitutes a valid trade secret, Midwest must prove all of the following elements by a greater convincing force of the evidence for each alleged trade secret:

- (1) Midwest has taken reasonable measures to maintain the secrecy of the alleged trade secret information; and
- (2) The alleged trade secret information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Reasonable efforts to maintain secrecy need not be overly extravagant, and absolute secrecy is not required.

FINAL INSTRUCTION NO. 11

For Midwest to prove that Curt misappropriated its trade secrets, Midwest must prove the following by a greater convincing force of the evidence:

- (1) Curt disclosed or used the trade secret without Midwest's express or implied consent;
and
- (2) Curt, at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret.

FINAL INSTRUCTION NO. 12

Conversion is the unauthorized exercise of control or dominion over personal property in a manner that is unwarranted and seriously interferes with an owner's right in the property or in a manner inconsistent with the owner's right. Intent or purpose to do wrong is not a necessary element of proof to establish conversion. Conversion is not excused by care, good faith, or lack of knowledge, but consent defeats a claim for conversion.

Midwest alleges that Curt converted the information, including the samples of the Circle R Truck Bed Extender and other information, it acquired from Midwest and that Midwest alleges was confidential under the NDA. To prevail on its claim for conversion, Midwest must prove, for each piece of property it asserts was converted, each of the following elements by a greater convincing force of the evidence:

- (1) Midwest owned or had a possessory interest in the property;
- (2) Midwest had an interest in the property that was greater than Curt's interest;
- (3) Curt exercised dominion or control over, or seriously interfered with Midwest's interest in the property;
- (4) Curt's conduct deprived Midwest of its interest in the property; and
- (5) Midwest suffered damages as a result.

FINAL INSTRUCTION NO. 13

The term “legal cause” means an immediate cause which, in the natural or probable sequence, produces the harm complained of.

The legal cause need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it causes the harm. However, for legal cause to exist, you must find that the conduct complained of was a substantial factor in bringing about the harm.

Liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to the harm. The defendant’s conduct must have such an effect in producing the harm as to lead reasonable people to regard it as a cause of the plaintiff’s harm.

FINAL INSTRUCTION NO. 14

If you find that Curt breached its NDA with Midwest, it becomes your duty to determine the amount of damages Midwest suffered as a result of the breach.

The measure of damages for a breach of contract is the amount which will compensate the aggrieved party for all detriment legally caused by the breach, or which, in the ordinary course of things, would be likely to result from the breach. Damages for a breach of contract which are not clearly ascertainable in both their nature and origin are unrecoverable.

FINAL INSTRUCTION NO. 15

If you find Curt is liable for misappropriating Midwest's trade secrets as set forth in Instructions 9 to 11, then you must decide the issue of damages. These damages may include:

(1) Damages for

- a. actual loss caused by the misappropriation of the trade secret; and
- b. any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss.

OR

(2) the amount of a reasonable royalty for Curt's unauthorized disclosure or use of Midwest's trade secrets.

If you choose to award Midwest damages, you must choose to award damages based on either (1) actual damages plus unjust enrichment; or (2) a reasonable royalty, but not both.

FINAL INSTRUCTION NO. 16

Actual losses can include both out-of-pocket expenses and lost profits. If you find, for example, that Midwest would have realized profits from using the claimed trade secrets referenced in Instruction 9 in its business that it has lost due to Curt's misappropriation, then you may measure damages by the amount of such lost profits.

FINAL INSTRUCTION NO. 17

Unjust enrichment allows for restitution in the amount the defendant was unjustly enriched—that is, the value to the defendant of the benefit received. Unjust enrichment may include the value of the defendant’s increased profits derived from its use of the trade secret. Unjust enrichment may also include “avoided costs,” such as a defendant’s savings from not endeavoring its own research and development to develop its own trade secret. This is not an exhaustive list. If you find for Midwest on its trade secret claim under Instructions 9 to 11, then it is your job to determine the value of any benefit conferred to Curt from Curt misappropriating Midwest’s trade secret.

FINAL INSTRUCTION NO. 18

If you find that Curt has engaged in willful and malicious misappropriation of Midwest's trade secrets, you may award "exemplary" damages, that is, damages meant to make an example of Curt. Exemplary damages may be awarded in an amount not more than two (2) times the amount awarded for compensatory damages (i.e. the amount awarded for either actual damages plus unjust enrichment or for a reasonable royalty).

To act "willfully" means to act with actual knowledge of the probable consequences. To act "maliciously" means to act with the intent to cause injury.

FINAL INSTRUCTION NO. 19

If you find that Midwest has proved its conversion claim, the damages caused by the wrongful conversion of Midwest's property is measured as the value of that property at the time of conversion. If you find a conversion occurred and award damages against Curt, you should fill in the date on which the conversion occurred within the verdict form.

FINAL INSTRUCTION NO. 20

The fact that I have instructed you as to the proper measure of damages should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the plaintiff from the greater convincing force of the evidence in accordance with the other instructions.

FINAL INSTRUCTION NO. 21

If you determine that a party should recover a verdict, you should not return what is known as a quotient verdict. A quotient verdict is one which is reached under a prior agreement made by all the jurors to add up the amount which each of the several jurors would award and divide such sum by the number of jurors and treat the quotient or result as the amount of the verdict to be returned by the jury.

If you find in favor of a party, the verdict you are to return must be for such an amount as you unanimously agree upon as the proper amount in this case. A verdict reached by adding the amounts suggested by the several jurors and then dividing in the manner I have indicated would not be the judgment of the individual jurors, and such a method is likely to produce a verdict at variance with the sound judgment of each member of the jury. It is for you to determine by the use of your best judgment the verdict which you should return in this case without resorting to chance or the method described above.

You should determine the amount of damages on each of the three claims separately, if you find for Midwest on its causes of action. This may result in you awarding money for the same injury or damages under multiple claims. Part 4 of the Verdict Form will allow you to determine a final damages amount that avoids duplication of recovery.

FINAL INSTRUCTION NO. 22

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges – judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the court services officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

The verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict,

your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.