

SUPREME COURT OF NEBRASKA

Home Pride Foods, Inc. v. Johnson, 262 Neb. 701

634 N.W.2d 774 (2001) · No. No. S-00-514 · Decided October 19, 2001

SUMMARY

The Supreme Court of Nebraska held that a customer list may qualify as a trade secret under Nebraska's Trade Secrets Act and that the evidence supported findings that Home Pride's list was a trade secret and had been used by the appellants. The court reversed the damages award because it was based on unsupported net-profit assumptions and improperly included damages for future use despite a permanent injunction. The case was remanded for recalculation of damages based on unjust enrichment.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Connolly, J.; Hendry, C.J.; Wright, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	October 19, 2001
DOCKET	No. S-00-514
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a bench-trial judgment awarding damages and a permanent injunction under Nebraska's Trade Secrets Act.
STANDARD OF REVIEW	The definition of a trade secret is reviewed as a question of law independently. Whether information qualifies as a trade secret under the statute is a question of fact reviewed for clear error. In a bench trial of a law action, factual findings have the effect of a jury verdict and will not be set aside unless clearly erroneous. The amount of damages is also reviewed for evidentiary support and a reasonable relationship to the proven elements of damages.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Nebraska.
PARTIES	Christopher S. Johnson, Jason J. Johnson, Consumer's Choice Foods, Inc. v. Home Pride Foods, Inc.

TOPICS

misappropriation of trade secrets

trade secrets

damages

equitable relief

appellate procedure

PRACTICE AREAS

intellectual property

trade secrets

commercial litigation

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether a customer list can constitute a trade secret under Nebraska's Trade Secrets Act.
2. Whether the customer list qualified as a trade secret on the facts of the case.
3. Whether the appellants used the customer list.
4. Whether the district court's lost-profit award was supported by competent evidence.
5. Whether damages for future use of the customer list could be awarded when a permanent injunction prohibited further use.
6. Whether the appellants waived their challenge to denial of the motion for directed verdict or dismissal.

HOLDINGS

1. A customer list can be included within the definition of a trade secret under Neb. Rev. Stat. § 87-502.
2. The district court was not clearly erroneous in finding that Home Pride's customer list was a trade secret.
3. The district court was not clearly erroneous in finding that Consumer's Choice used the customer list.
4. A lost-profit award is clearly erroneous when the plaintiff presents only gross-profit evidence and no financial data establishing net profits, expenses, or overhead costs.
5. An award for the value of future sales resulting from misappropriation is an impermissible double recovery when the court also enters a permanent injunction prohibiting future use of the trade secret.
6. The appellants waived any error concerning denial of their motion for dismissal by presenting evidence and failing to renew the motion at the close of their case.

KEY QUOTATIONS

"We hold that the definition of a trade secret is a question of law." (634 N.W.2d at 781)

"We agree and hold that a customer list can be included in the definition of a trade secret under & § 87-502." (634 N.W.2d at 781-82)

"We determine, however, that the court erred in awarding damages for lost profits when no evidence of Home Pride's net profits was provided." (634 N.W.2d at 784)

"We further determine that the court erred in awarding \$10,000 in damages for future use of the customer list when a permanent injunction had also been issued." (634 N.W.2d at 784)

FACTUAL BACKGROUND

Home Pride and Consumer's Choice competed in the home food-service business. The appellants stipulated that they purchased for \$800 a stolen Home Pride customer list, knew it was stolen, and possessed copies of it; the list contained customer identities, contact information, order amounts, and reorder information. Home Pride maintained the list through restricted computer access and confidentiality provisions, and evidence showed that Consumer's Choice contacted or acquired customers appearing on the list. The district court found that the list was used and awarded damages based on lost profits and the value of future sales, while also issuing a permanent injunction.

PROCEDURAL HISTORY

Home Pride sued the appellants for misappropriation of a customer list, seeking a permanent injunction and damages. After a bench trial, the district court found that the list was a trade secret, that the appellants had used it, and awarded \$23,000 in damages while entering a permanent injunction. The Nebraska Supreme Court affirmed the findings concerning trade-secret status and use, but reversed the damages award and remanded for recalculation based on unjust enrichment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Recalculate damages based on the unjust enrichment realized by Consumer's Choice, including evidence of its net profit, while eliminating the unsupported lost-profit award and the \$10,000 award for future sales inconsistent with the permanent injunction.

CASES CITED

- Henkle & Joyce Hardware Co. v. Maco, Inc., 195 Neb. 565, 239 N.W.2d 772 (1976)
- Garner Tool & Die v. Laux, 204 Neb. 717, 285 N.W.2d 219 (1979)
- Selection Research, Inc. v. Murman, 230 Neb. 786, 433 N.W.2d 526 (1989)
- Elm City Cheese Co. v. Federico, 251 Conn. 59, 752 A.2d 1037 (2000)
- Basic American, Inc. v. Shatila, 133 Idaho 726, 992 P.2d 175 (1999)
- Weins v. Sporleder, 569 N.W.2d 16 (S.D. 1997)
- Bernier v. Merrill Air Engineers, 770 A.2d 97 (Me. 2001)
- In re Guardianship & Conservatorship of Donley, 631 N.W.2d 839 (Neb. 2001)
- O'Connor v. Kaufman, 260 Neb. 219, 616 N.W.2d 301 (2000)
- Blue Creek Farm v. Aurora Co-op. Elev. Co., 259 Neb. 1032, 614 N.W.2d 310 (2000)
- Brown v. Ruallam Enterprises, Inc., 73 Ark. App. 296, 44 S.W.3d 740 (2001)
- Ed Nowogroski Insurance, Inc. v. Rucker, 137 Wash. 2d 427, 971 P.2d 936 (1999)
- Fred's Stores of Miss. v. M & H Drugs, 725 So. 2d 902 (Miss. 1998)
- Morlife, Inc. v. Perry, 56 Cal. App. 4th 1514, 66 Cal. Rptr. 2d 731 (1997)

- Synacek v. Omaha Cold Storage, 247 Neb. 244, 526 N.W.2d 91 (1995)
- Billingsley v. BFM Liquor Mgmt., 259 Neb. 992, 613 N.W.2d 478 (2000)
- Saforo & Associates, Inc. v. Porocel, 337 Ark. 553, 991 S.W.2d 117 (1999)
- Sack Bros. v. Tri-Valley Co-op., 260 Neb. 312, 616 N.W.2d 786 (2000)
- World Radio Labs. v. Coopers & Lybrand, 251 Neb. 261, 557 N.W.2d 1 (1996)
- Hawkins v. City of Omaha, 261 Neb. 943, 627 N.W.2d 118 (2001)
- Nebraska Nutrients v. Shepherd, 261 Neb. 723, 626 N.W.2d 472 (2001)
- Sonoco Products Co. v. Johnson, 23 P.3d 1287 (Colo. App. 2001)
- Robert L. Cloud & Associates v. Mikesell, 69 Cal. App. 4th 1141, 82 Cal. Rptr. 2d 143 (1999)