

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
KENTUCKY, NORTHERN DIVISION AT COVINGTON

CellMark, Inc. v. Robert Webster, et al.

CellMark v. Webster · No. 2:24-cv-00181-SCM-CJS · Decided May 20, 2026

SUMMARY

The opinion addresses cross-motions for summary judgment in CellMark, Inc.'s action against Robert Webster, Fortex Americas, LLC, Dinah Bowman, and Göran Sohl involving restrictive covenants, fiduciary duties, tortious interference, trade secrets, fraud, and civil conspiracy. The court denies the parties' offensive summary-judgment motions and allows CellMark's claims against the defendants, other than specified claims dismissed on summary judgment, to proceed to trial. The court also allows Webster's tortious-interference counterclaim to proceed but grants CellMark summary judgment on Webster's breach-of-contract, wage-and-hour, and defamation-per-se counterclaims.

CASE DETAILS

COURT	United States District Court for the Eastern District of Kentucky, Northern Division at Covington
JURISDICTION	United States District Court for the Eastern District of Kentucky, Northern Division at Covington
DECIDED	May 20, 2026
DOCKET	2:24-cv-00181-SCM-CJS
DISPOSITION	other
PROCEDURAL POSTURE	Cross-motions for summary judgment in a federal trade-secrets and commercial dispute, including claims, counterclaims, and evidentiary motions.
STANDARD OF REVIEW	Summary judgment is appropriate when the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. On cross-motions, each motion is evaluated independently, with facts and reasonable inferences viewed in favor of the nonmoving party.
PRECEDENTIAL VALUE	persuasive
PARTIES	CellMark, Inc., Fortex Americas, LLC, Göran Sohl, Dinah Bowman, Robert Webster v. CellMark, Inc., Fortex Americas, LLC, Göran Sohl, Dinah Bowman, Robert Webster

TOPICS

summary judgment

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether summary judgment was appropriate on CellMark's breach-of-fiduciary-duty and restrictive-covenant claims against Webster.
2. Whether the Fortex defendants were entitled to summary judgment on aiding and abetting breach of fiduciary duty, tortious interference with contractual relations, and fraud claims.
3. Whether CellMark's Kentucky and federal trade-secrets claims and civil-conspiracy claim presented genuine disputes for trial.
4. Whether CellMark was entitled to summary judgment on Webster's breach-of-contract, wage-and-hour, and defamation-per-se counterclaims.
5. Whether either party was entitled to summary judgment on Webster's tortious-interference-with-prospective-business-advantage counterclaim.
6. Whether the challenged declarations and exhibits could be considered at summary judgment.

HOLDINGS

1. A salesman may owe fiduciary duties when the specific circumstances of employment establish trust, confidence, access to confidential information, and authority to act for the employer. The undisputed facts established as a matter of law that Webster was a fiduciary of CellMark.
2. Neither CellMark nor Webster was entitled to summary judgment on CellMark's breach-of-fiduciary-duty and restrictive-covenant claims because genuine disputes existed concerning whether Webster's conduct breached his duties and agreements.
3. Fortex, Sohl, and Bowman were entitled to summary judgment on the aiding-and-abetting-breach-of-fiduciary-duty claim because CellMark presented no evidence that they had actual knowledge that Webster was breaching fiduciary duties.
4. Summary judgment was denied on CellMark's tortious-interference claims against Fortex, Sohl, and Bowman because genuine disputes existed regarding their knowledge of Webster's restrictive covenants, intent, breach, and justification.
5. Fortex and Bowman were entitled to summary judgment on CellMark's fraud claim because CellMark offered no evidence that Bowman knowingly or recklessly made a false statement intending to induce reliance, and the alleged injury was speculative.
6. CellMark's Kentucky and federal trade-secrets claims could proceed to trial based on alleged misappropriation of margins, proprietary pricing information, and other qualifying confidential

information, but not based on supplier identities, customer contact information, simple pricing information, or inventory levels.

7. CellMark's civil-conspiracy claim survived summary judgment because at least one substantive claim against each defendant also survived.
8. CellMark was entitled to summary judgment on Webster's breach-of-contract counterclaim because the Employment Agreement made Webster eligible, but not entitled, to performance bonuses and left allocation and distribution to CellMark's discretion.
9. CellMark was entitled to summary judgment on Webster's wage-and-hour counterclaim because the discretionary bonuses were not wages due under the agreement.
10. CellMark was entitled to summary judgment on Webster's defamation-per-se counterclaim because the statement that CellMark was uncomfortable with the margins its former employee was receiving did not, as a matter of law, impugn Webster's professional competence or expose him to hatred, ridicule, contempt, or disgrace.
11. Neither party was entitled to summary judgment on Webster's tortious-interference counterclaim because genuine disputes existed concerning CellMark's intent and motive in sending DRC the letter objecting to Webster's employment.

KEY QUOTATIONS

“Summary judgment is appropriate if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.””

“At bottom, the parties’ argument over the existence of a breach require weighing the evidence, making credibility determinations, and ultimately figuring out whether Webster was acting for or against CellMark’s interests. These are classic fact questions for a jury.”

“To be “eligible” means that one is fit or qualified to receive a benefit. But merely being qualified to receive something does not mean that one has a right to receive that thing.”

FACTUAL BACKGROUND

Webster worked as a highly compensated salesman for CellMark after CellMark acquired Semper/Exeter, and he was bound by employment, asset-purchase, and shareholder agreements containing restrictive covenants. Before and after resigning in June 2024, Webster facilitated relationships between CellMark customers or suppliers and competing or potentially competing companies, including Fortex and DRC, while discussing possible employment with those companies. CellMark alleged that Webster and the Fortex defendants diverted customers and confidential information, breached fiduciary and contractual duties, and misappropriated trade secrets; Webster alleged that CellMark withheld bonuses, defamed him, and interfered with his prospective employment at DRC.

PROCEDURAL HISTORY

CellMark sued Webster, Bowman, Sohl, Fortex, and DRC alleging breach of fiduciary duty, breach of restrictive covenants, aiding and abetting breach of fiduciary duty, tortious interference, trade-secret violations, fraud, and

civil conspiracy. DRC later settled and was dismissed. The remaining parties moved for summary judgment; Webster also asserted counterclaims for breach of contract, wage-and-hour violations, defamation per se, and tortious interference with prospective business advantage. The court denied or partially granted the motions as described in the disposition and left most claims for trial.

DISPOSITION

other

CASES CITED

- *Peffer v. Stephens*, 880 F.3d 256, 262 (6th Cir. 2018)
- *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)
- *Wiley v. United States*, 20 F.3d 222, 224 (6th Cir. 1994)
- *Baptist Physicians Lexington, Inc. v. New Lexington Clinic, P.S.C.*, 436 S.W.3d 189, 193 (Ky. 2013)
- *Scott v. Forcht Bank, NA*, 521 S.W.3d 591, 597 (Ky. Ct. App. 2017)
- *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 248 (Ky. 1992)
- *Insight Ky. Partners II, L.P. v. Preferred Auto. Servs., Inc.*, 514 S.W.3d 537, 546–49, 551, 555 (Ky. Ct. App. 2016)
- *CSX Transp., Inc. v. First Nat’l Bank of Grayson*, 14 S.W.3d 563, 566 (Ky. Ct. App. 1999)
- *New World Flooring, Inc. v. Stock Yards Bank & Tr. Co.*, No. 2020-CA-0884-MR, 2022 WL 127967, at *7 (Ky. Ct. App. Jan. 14, 2022)
- *Taylor v. First Sec. Tr. Bank, Inc.*, No. 2006-CA-001508-MR, 2008 WL 4267847, at *2 (Ky. Ct. App. Sept. 19, 2008)
- *ATC Distrib. Grp., Inc. v. Whatever It Takes Transmissions & Parts, Inc.*, 402 F.3d 700, 714–15 (6th Cir. 2005)
- *In re Sallee*, 286 F.3d 878, 893 (6th Cir. 2002)
- *Griffin v. Jones*, 170 F. Supp. 3d 956, 964 (W.D. Ky. 2016)
- *Cmty. Ties of Am., Inc. v. NDT Care Servs., LLC*, No. 3:12-CV-00429-CRS, 2015 WL 520960, at *6–7 (W.D. Ky. Feb. 9, 2015)
- *Siemens Energy, Inc. v. CSX Transp., Inc.*, 446 F. Supp. 3d 184, 193 (E.D. Ky. 2020)
- *Regions Bank v. Lenox*, No. 5:18-014-DCR, 2019 WL 320566, at *2 (E.D. Ky. Jan. 24, 2019)
- *Craig v. Bridges Bros. Trucking LLC*, 823 F.3d 382 (6th Cir. 2016)
- *Arnold v. Liberty Mut. Ins. Co.*, 392 F. Supp. 3d 747, 774 (E.D. Ky. 2019)
- *U.S. Fire Ins. Co. v. City of Warren*, 87 F. App’x 485, 491 (6th Cir. 2003)
- *Greathouse v. Shreve*, 891 S.W.2d 387, 390 (Ky. 1995)
- *Miles Farm Supply, LLC v. Helena Chem. Co.*, 595 F.3d 663, 666 (6th Cir. 2010)
- *Brunswick TKTKconnect, LLC v. Kavanaugh*, 661 F. Supp. 3d 698, 711 (W.D. Ky. 2023)
- *Aetna Cas. & Sur. Co. v. Leahey Constr. Co.*, 219 F.3d 519, 535 (6th Cir. 2000)
- *Davenport Extreme Pools & Spas, Inc. v. Mulflur*, 698 S.W.3d 140, 155 (Ky. Ct. App. 2024)

- Seeger Enters., Inc. v. Town & Country Bank & Tr. Co., 518 S.W.3d 791, 795 (Ky. Ct. App. 2017)
- Intel Corp. Inv. Policy Comm. v. Sulyma, 589 U.S. 178, 189 (2020)
- McNeal v. City of Blue Ash, 117 F.4th 887, 895 (6th Cir. 2024)
- Pelcha v. MW Bancorp, Inc., 988 F.3d 318, 324 (6th Cir. 2021)
- United Parcel Serv. Co. v. Rickert, 996 S.W.2d 464, 468 (Ky. 1999)
- Jennings v. County of Monroe, 630 F. App'x 547, 555 (6th Cir. 2015)
- Ky. Laborers Dist. Council Health & Welfare Tr. Fund v. Hill & Knowlton, Inc., 24 F. Supp. 2d 755, 762 n.1 (W.D. Ky. 1998)
- Vest v. Goode, 209 S.W.2d 833, 836 (Ky. 1948)
- N. Harris Comput. Corp. v. DSI Invs., LLC, 608 F. Supp. 3d 511, 523–24 (W.D. Ky. 2022)
- C-Ville Fabricating, Inc. v. Tarter, No. 5:18-CV-379-KKC, 2019 WL 1368621, at *14 (E.D. Ky. Mar. 26, 2019)
- United States v. Shanshan Du, 570 F. App'x 490, 500 (6th Cir. 2014)
- Freedom Med. Inc. v. Whitman, 343 F. Supp. 3d 509, 519 (E.D. Pa. 2018)
- Presidio, Inc. v. People Driven Tech., Inc., 686 F. Supp. 3d 652, 684 (S.D. Ohio 2023)
- Niemi v. NHK Spring Co., Ltd., 543 F.3d 294, 301, 303 (6th Cir. 2008)
- Learning Curve Toys, Inc. v. PlayWood Toys, Inc., 342 F.3d 714, 724–25 (7th Cir. 2003)
- Mullins v. Carver, No. 2015-CA-000655-MR, 2016 WL 4934593, at *23 (Ky. Ct. App. Sept. 16, 2016)
- Georgetown Chicken Coop, LLC v. Grange Ins. Co., 723 S.W.3d 793, 797 (Ky. 2025)
- Handmaker v. CertusBank, N.A., 189 F. Supp. 3d 663, 669–70 (W.D. Ky. 2016)
- Toler v. Süd-Chemie, Inc., 458 S.W.3d 276, 281–82 (Ky. 2014)
- Gilliam v. Pikeville United Methodist Hosp. of Ky., Inc., 215 S.W.3d 56, 61 (Ky. Ct. App. 2006)
- Snow Pallett, Inc. v. Monticello Banking Co., 367 S.W.3d 1, 6 (Ky. Ct. App. 2012)
- Nat'l Collegiate Athletic Ass'n v. Hornung, 754 S.W.2d 855, 858 (Ky. 1988)

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