

Labor and Employment Client Service Group

To: Our Clients and Friends

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Missouri Supreme Court Deals With Trade Secret Issues

On February 25, 2014, the Missouri Supreme Court decided Central Trust and Inv. Co. v. SignalPoint Asset Management, LLC, 422 S.W.3d 312 (Mo. 2014). In Central Trust, the Plaintiff, Central Trust and Investment Company, sued one of its competitors, SignalPoint Asset Management, asserting claims for misappropriation of trade secrets under the Missouri Uniform Trade Secrets Act, R.S.Mo. §§ 417.450 *et seq.* (“MUTSA”), tortious interference with business relations, and civil conspiracy. The trial court issued summary judgment in SignalPoint’s favor on each of Central Trust’s claims, and the Supreme Court affirmed.

The relevant facts are as follows: In 2009, Central Trust purchased Springfield Trust and Investment Company (“STC”). On the day of the purchase, Troy Kennedy, an employee and executive officer of STC, terminated his employment with STC, and took a list and other information regarding STC’s clients (the “Client List”). The following day, Kennedy founded a new company, ITI Financial Management, LLC, and shortly thereafter signed an “Independent Advisor Representative Agreement” with SignalPoint. The agreement stated that Kennedy was “an independent contractor of SignalPoint, not an employee, and that Kennedy ha[d] no right to bind SignalPoint by his actions.” Central Trust, 422 S.W.3d at 318.

In affirming the trial court’s grant of summary judgment in favor of SignalPoint, the Southern District Court of Appeals found that, “[b]ased on the record before [it], the [Client List] is not . . . a trade secret under Missouri law,” and “[e]ven if it were, it is clear that customer contacts are only protectable by a non-compete agreement.” Central Trust and Inv. Co. v. Kennedy, 2013 WL 268687, *7 (Mo. App. Jan. 24, 2013). The Missouri Supreme Court did not, however, adopt the Southern District’s reasoning, but found that Central Trust had “failed to present any support for the allegation that SignalPoint had access to the client list.” Central Trust, 422 S.W.3d at 320. The Supreme Court explained that SignalPoint had “asserted, in its statement of unconverted material facts, that ‘Kennedy never provided SignalPoint with any client or customer list or other document from [STC] or Central Trust,’” and “supported this statement of fact by an affidavit of an officer of SignalPoint.” *Id.* at 322. It further explained that, although Central Trust had denied SignalPoint’s statement of fact, it had

cited no record evidence supporting its denial. The Supreme Court therefore deemed the fact admitted and held that, because “SignalPoint had not been provided the client list,” it “could not have acquired, used or disclosed it,” as required under MUTSA. *Id.* Thus, the intermediate appellate court’s decision questioning the protectability of a customer list absent a non-compete agreement has no precedential value.

The Missouri Supreme Court also found that SignalPoint could not be deemed vicariously liable for Kennedy’s misappropriation because Central Trust had not “pleaded the existence of a principal-agent or employer-employee relationship between Kennedy and SignalPoint.” *Id.* at 323. The Court noted that “[g]enerally, the wrongful acts of an agent can be imputed to the principal where an agency relationship exists,” and the acts of an employee can likewise be imputed to the employer under the doctrine of *respondeat superior*. *Id.* The Court explained, however, that “[a]n employer generally is not held vicariously liable for the acts of its independent contractors, who are not considered employees for purposes of *respondeat superior*,” and “[f]or a principal-agent or employer-employee relationship to exist, the principal or employer must have the ‘right to control’ the agent or employee.” *Id.* Because there was no allegation in Central Trust’s petition that “Kennedy or ITI was SignalPoint’s agent or employee or that SignalPoint had the right to control Kennedy or ITI,” the Court held that “Kennedy’s actions in acquiring the client list cannot be imputed to SignalPoint.” *Id.* This holding serves as a caution for employers that, under certain circumstances, a competitor may be able to shield itself from liability for a MUTSA violation by engaging the ex-employee offender as an independent contractor. However, even if the competitor classifies the former employee as an independent contractor, the former employer could still challenge the former employee’s independent contractor status and plead principal-agent *respondeat superior* liability against the competitor.

Finally, the Court found that Central Trust’s tortious interference claim failed for the same reason its misappropriation claim failed. The Court explained that Central Trust could not “prove ‘improper means,’ which is an essential element of its claim,” because “[t]he only ‘improper means’ alleged by Central Trust is that SignalPoint misappropriated a trade secret.” *Id.* The Court also found that Central Trust’s conspiracy claim failed because a claim for civil conspiracy “is not a separate and distinct action,” but a claim “to hold the conspirators jointly and severally liable for the underlying act.” *Id.* at 324. Since Central Trust had dismissed its claims against Kennedy and ITI while the appeal was pending, there were no longer any co-conspirators to hold jointly and severally liable, and the civil conspiracy claim was therefore moot.

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