STATE OF MICHIGAN

COURT OF APPEALS

DO-IT CORPORATION,

Plaintiff-Appellee,

v

THOMAS MILLER, BRIAN BRESSER, and JERRY GOODRICH,

Defendants-Appellees,

and

AMERI-TAB CORPORATION,

Defendant-Appellant.

UNPUBLISHED
December 17, 1996

No. 180201
LC No. 93-038353-CZ

DO-IT CORPORATION,

Plaintiff-Appellee,

v

THOMAS MILLER, BRIAN BRESSER, and JERRY GOODRICH,

Defendants-Appellants,

and

AMERI-TAB CORPORATION,

Defendant-Appellee.

No. 180434
LC No. 93-038353-CZ

Before: Neff, P.J., and Hoekstra and G. D. Lostracco,* JJ.

PER CURIAM.

In Docket No. 180201, defendant Ameri-Tab Corporation ["Ameri-Tab"] appeals as of right from an October 24, 1994, judgment awarding plaintiff $1,000,000 in damages and granting equitable relief against Ameri-Tab, "its shareholders, officers, employees, agents, and assigns . . . until June 30, 1997." In Docket No. 180434, defendants Thomas Miller, Brian Bresser and Jerry Goodrich appeal as of right from the same judgment, which ended plaintiff's suit for alleged misappropriation of trade secrets, tortious interference with an ongoing business relationship, unjust enrichment, and unfair competition. We affirm the award of damages and injunctive relief, but remand to the trial court for further findings of fact and modification of the injunctive language.

I

Robert McClendon, plaintiff's president, testified that in the early 1980s plaintiff was producing "hang tabs" and "coupon clips" in roll form. By 1993, up to ten other manufacturers were producing hang tabs in roll form, but he could not identify any others making coupon clips in roll form similar or identical to plaintiff's. He claimed never to have shared the processes for manufacturing these products with anyone outside of plaintiff.

Plaintiff hired defendant Miller in the 1980s, and he resigned in early 1993 after plaintiff questioned him regarding his refusal to sign a nondisclosure agreement and about rumors that he was forming Ameri-Tab, a competing company making a coupon clip very similar to plaintiff's. Bresser joined Ameri-Tab after plaintiff fired him, and Miller solicited Goodrich to leave plaintiff and join Ameri-Tab.

Trial testimony centered upon whether plaintiff utilized trade secrets in its manufacturing operations and, if so, whether defendants had wrongly appropriated them or other confidential data such as price and customer lists. The jury found for plaintiff on all of its theories and assessed damages of $1,000,000 against Ameri-Tab. The individual defendants accepted judgment against them pursuant to mediation, and the trial court awarded plaintiff equitable relief against Ameri-Tab and, through it, the individual defendants.

II

Ameri-Tab first contends that the trial court erred by denying its motion for a partial directed verdict, which was made on the ground that plaintiff had failed to produce evidence supporting its theories of tortious interference with a business relationship and unjust enrichment. We disagree. Plaintiff's proofs established a prima facie case of tortious interference with a business relationship. The trial court did not abuse its discretion in denying Ameri-Tab's motion challenging that claim. *Lakeshore Community Hosp, Inc v Perry*, 212 Mich App 396, 401; 538 NW2d 24 (1995); *Howard v Canteen Corp*, 192 Mich App 427, 431; 481 NW2d 718 (1992). Furthermore, plaintiff's proofs established a jury question regarding whether defendants had received a benefit in the form of trade

secrets and confidential customer information, which benefit it was inequitable for them to retain. The trial court properly denied Ameri-Tab's motion for a directed verdict on this claim. *Hayes-Albion Corp v Kuberski*, 421 Mich 170, 186; 364 NW2d 609 (1984); *Hollowell v Career Decisions, Inc*, 100 Mich App 561, 570; 298 NW2d 915 (1980).

III

Next, the trial court did not err by denying Ameri-Tab's request to instruct the jury that it is not improper for an employee, while still employed, to plan or prepare to go into competition with his or her employer. *Bordeaux v Celotex Corp*, 203 Mich App 158, 168-169; 511 NW2d 899 (1993); *Niemi v Upper Peninsula Orthopedic Associates, Ltd*, 173 Mich App 326, 328-329; 433 NW2d 363 (1988). During trial, the court stated, that whether the former employees could start a competitive business was not an issue in the case. The jury was therefore aware that plaintiff was not claiming that the individual defendants could not form a competing business. Because the requested charge would not have enhanced the ability of the jury to decide this case intelligently, fairly and impartially, its omission was not error. *Mull v Equitable Life Assurance Society*, 196 Mich App 411, 422-423; 493 NW2d 447 (1992), aff'd 444 Mich 508; 510 NW2d 184 (1994).

IV

We next consider several of Ameri-Tab's challenges to the injunctive relief awarded plaintiff via the October 24, 1994, judgment. We hold that the injunction in favor of plaintiff does not violate the mandate of MCR 3.310(C)(1) that it "set forth the reasons for its issuance." Furthermore, we are unpersuaded by Ameri-Tab's argument that the injunction must fail because the undifferentiated jury award does not permit us to discount the possibility of some overlap between the injunctive relief and the jury's award of damages. We decline to speculate adversely to plaintiff's position and elect to leave the parties in the position in which they have placed themselves by their failure to elicit a sufficiently specific jury verdict at trial.

Also, the evidence was disputed regarding whether and to what degree plaintiff's manufacturing processes differed in a proprietary way from the technology used by its competitors. Unfortunately, the trial court made no factual determination resolving this dispute and supporting its award in paragraph A of the judgment. We therefore remand this case to allow the trial court to make the appropriate findings of fact. See *Hayes-Albion Corp*, *supra*, at 188-190.

On remand, we also direct the trial court to modify the language of paragraph B to allow defendants to purchase from plaintiffs' suppliers and vendors. *Id.* at 184-185.

V

Finally, the individual defendants claim that the October 24, 1994, judgment awarding plaintiff injunctive relief against Ameri-Tab's "shareholders, officers, employees, agents, and assigns" is invalid as to them because they, along with plaintiff, accepted the mediation award and thus, no further legal action could be taken against them under MCR 2.403(M). We disagree.

A corporation can act only through those individuals associated with it. Therefore, the injunctive language at issue here comprises a logical and indispensable part of the October 24, 1994, judgment against Ameri-Tab, and the fact that the individual defendants are included within the ambit of that judgment does not indicate a violation of MCR 2.403(M)(1). Defendant's allegation of error is without merit.

In view of our disposition of this case, we need not address the individual defendants' remaining issue.

We affirm the October 24, 1994, judgment's award of damages to plaintiff. We also affirm that judgment's award of injunctive relief, but remand for further findings of fact and modification of the injunctive language consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Gerald D. Lostracco