

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICHARD K. NIEMI and MARK NIEMI, d/b/a  
RICHARD K. NIEMI DESIGN &  
ENGINEERING SERVICES, and RKN  
TECHNOLOGY, L.L.C.,

UNPUBLISHED  
January 4, 2007

Plaintiffs-Appellants,

v

AMERICAN AXLE MANUFACTURING &  
HOLDING, INC., f/k/a AMERICAN AXLE  
MANUFACTURING OF MICHIGAN, a/k/a  
AMERICAN AXLE MANUFACTURING, INC.,  
and SPRINGFIELD TOOL & DIE, INC., f/k/a  
NEWCO OF DUNCAN, INC.,

No. 269155  
Wayne Circuit Court  
LC No. 03-332390-CK

Defendants-Appellees.

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Before: Owens, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition for defendant American Axle Manufacturing & Holding, Inc. (AAM), and partial summary disposition for defendant Springfield Tool & Die, Inc. (Springfield), pursuant to MCR 2.116(C)(10). We affirm.

I

AAM, a manufacturer of automotive stabilizer bars, contracted with defendant Springfield to build stabilizer bar benders that combined the functions of forming, flattening, and piercing (referred to as "FFP") the bars. Springfield contracted with plaintiffs for the design of the benders. Plaintiffs prepared the designs and drawings for the machines in accordance with AAM's specifications, on AAM title block paper, and submitted them to Springfield pursuant to Springfield's purchase orders. Plaintiffs did not mark the documents as "confidential," or otherwise agree in writing that defendants were to keep the designs confidential. Springfield paid plaintiffs' invoices in full for the design work. It is undisputed that Springfield built the benders according to plaintiffs' designs, and AAM used the benders to manufacture stabilizer bars for General Motors Corporation GMT 800 and GMT 360 truck platforms.

Plaintiffs allege that AAM agreed to pay them a royalty based on an unspecified percentage of cost savings per stabilizer bar manufactured on the FFP benders. They also allege that AAM agreed to submit a patent application on plaintiffs' behalf. In support of their claims, plaintiffs rely on an unsigned memorandum dated October 14, 1998, and on AAM's Record of Invention form, which plaintiffs signed. The Record of Invention form includes the statement, "I HEREBY ASSIGN THIS INVENTION TO AMERICAN AXLE & MANUFACTURING, INC. AND AUTHORIZE AMERICAN AXLE & MANUFACTURING, INC. TO FILE AN APPLICATION FOR PATENT ON MY BEHALF." Plaintiffs also allege that there was an oral or implied agreement that the parties would keep the design confidential. AAM never filed a patent application.

Plaintiffs brought this action against AAM and Springfield asserting claims for misappropriation of trade secrets in violation of the Michigan Uniform Trade Secrets Act (MUTSA), MCL 445.1901 *et seq.*, and breach of contract. Plaintiffs do not allege that defendants disclosed the design to any other parties. Rather, their misappropriation claim is based on an allegation that defendants continued to use plaintiffs' designs in the manufacture of stabilizer bars without additional compensation. The trial court granted AAM's motion for summary disposition with respect to both claims, and granted Springfield's motion for summary disposition with respect to the misappropriation claim.

## II

We review *de novo* a trial court's decision on a motion for summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). The court granted summary disposition to both defendants under MCR 2.116(C)(10), which tests the factual sufficiency of a plaintiff's complaint. *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 539; 683 NW2d 200 (2004). In reviewing the motion, the court must consider the affidavits, pleadings, depositions, admissions, and any other evidence submitted by the parties in a light most favorable to the nonmoving party. *Id.* at 539-540. Summary disposition should be granted if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 540.

Plaintiffs argue that the trial court erred in dismissing their claim for misappropriation of a trade secret because there was a genuine issue of material fact whether they exercised reasonable efforts to maintain the confidentiality of their designs. We disagree.

The MUTSA, which provides a statutory basis for relief from the misappropriation of a trade secret, defines the term "trade secret" as follows:

- (d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that is both of the following:
  - (i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
  - (ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. [MCL 445.1902.]

Plaintiffs argue that the trial court erred in determining that they failed to demonstrate reasonable efforts to maintain the secrecy of their technological information. Plaintiffs maintain that the parties implicitly understood, based on a 30-year relationship, that the technological information was meant to remain confidential, and that confidentiality was in the interests of all of the parties. Plaintiffs aver that both Springfield and AAM required their employees to keep the information confidential, and that AAM emphasized the need for confidentiality in its internal memoranda. Plaintiffs contend that these efforts were reasonable under the circumstances, pursuant to MCL 445.1902(d)(ii).

Viewing the evidence in a light most favorable to plaintiffs, the only “effort” plaintiffs made to maintain confidentiality was their reliance on an implied agreement that Springfield and AAM would not release the information because they understood the proprietary value of it. *Id.* Plaintiffs acknowledge that they did not enter into written confidentiality agreements, or label the documents confidential. They do not identify any express oral agreement regarding confidentiality. Plaintiffs emphasize that there were internal confidentiality agreements within defendants’ companies, but these do not reflect any effort by plaintiffs to impose confidentiality. Under these circumstances, there is no genuine issue of material fact that plaintiffs failed to make reasonable efforts to safeguard the confidentiality of their designs. See *Sheets v Yamaha Motors Corp, USA*, 849 F2d 179, 183-184 (CA 5, 1988) (where, in applying the provisions of the Louisiana Uniform Trade Secrets Act, the court stated, “disclosure of a trade secret to others who have no obligation of confidentiality extinguishes the property right in the trade secret”); see also *Electro-Craft Corp v Controlled Motion, Inc*, 332 NW2d 890, 901-903 (Minn, 1983) (finding that the plaintiff’s failure to mark technical documents and drawings sent to customers and vendors “confidential” belied that the plaintiff made the reasonable efforts to maintain secrecy of the information contained in those documents required under the Minnesota Uniform Trade Secrets Act).<sup>1</sup> Consequently, the designs and technological information at issue were not “trade secrets” within the meaning of the MUTSA.

Furthermore, the nature of plaintiffs’ complaint is not that defendants disclosed the designs to outsiders, but that they failed to restrict their own use of the designs in accordance with plaintiffs’ expectations. Assuming, arguendo, that the parties had an implied agreement to keep plaintiffs’ designs concealed from outside parties, this is not sufficient to establish that the parties had an implied agreement to limit defendants’ use of plaintiffs’ designs.<sup>2</sup> Under these circumstances, the trial court correctly granted summary disposition of plaintiffs’ misappropriation of trade secrets claim in favor of defendants.

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<sup>1</sup> Section 9 of the Michigan Uniform Trade Secrets Act requires that the act “be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of th[e] act among states enacting it.” MCL 445.1909. Thus, it is appropriate to seek guidance from the decisions of other jurisdictions. See, e.g., *Power Press Sales Co v MSI Battle Creek Stamping*, 238 Mich App 173, 180; 604 NW2d 772 (1999).

<sup>2</sup> See MCL 445.1902(b)(ii)(B), which includes within the definition of “misappropriation” the use of a trade secret “acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use . . . .” (Emphasis added).

In reaching this conclusion, we reject plaintiffs' reliance on *Learning Curve Toys, Inc v PlayWood Toys, Inc*, 342 F3d 714 (CA 7, 2003), and *Rockwell Graphic Systems, Inc v DEV Industries, Inc*, 925 F2d 174 (CA 7, 1991), as support for their contention that their efforts to maintain secrecy were reasonable. In both of these cases, the party asserting the trade secret made efforts to preserve confidentiality that were reasonable for the surrounding circumstances. In *Learning Curve Toys, Inc, supra* at 716-717, representatives from the defendant toy manufacturer met with representatives from the plaintiff to discuss combining efforts to produce wooden train sets. The parties orally agreed that their discussion would be kept confidential, and each revealed potentially valuable information. *Id.* at 717-719. The court determined that the defendant's efforts to preserve confidentiality by an express oral agreement were reasonable under the circumstances. These circumstances included the fact that the defendant was a small, inexperienced firm hoping to take advantage of a potential opportunity. *Id.* at 725-726.

Here, plaintiffs did not produce evidence of an express oral confidentiality agreement. Rather, they suggest that there was an implied understanding of confidentiality. Plaintiffs contend that they are a small firm, like the defendant in *Learning Curve Toys, Inc*, but plaintiffs were neither inexperienced, nor were they a fledgling company hoping to take advantage of a new opportunity.

Similarly, *Rockwell, supra*, does not support plaintiffs' position. Although the court in *Rockwell* held that summary judgment is rarely appropriate with respect to the question of reasonable efforts to maintain confidentiality, that holding is not applicable here. The plaintiff in *Rockwell* tried to preserve the confidentiality of its "piece part drawings" by making them confidential, storing them in a locked vault, and monitoring who had access to them. Although the plaintiff did not always strictly enforce these measures, the court recognized that these lapses must be balanced against the plaintiff's interest in efficiency and cost-effectiveness. *Id.* at 175-176, 179-180. The court remarked that "only in an extreme case can what is a 'reasonable' precaution be determined on a motion for summary judgment, because the answer depends on a balancing of costs and benefits that will vary from case to case" depending on the particular circumstances. *Id.* at 179.

Although the court in *Rockwell* considered it the exception rather than the rule to decide the question of "reasonable efforts" at the summary disposition stage, summary disposition was proper in this case. Plaintiffs did not make any concrete efforts to preserve the confidentiality of the designs provided to defendants. They did not mark the documents as confidential, or require an express agreement of confidentiality from Springfield. Nor did they control what Springfield or AAM did with the documents while they had them in their possession. Even if plaintiffs made reasonable efforts to guard against disclosure to their competitors, their efforts were not reasonable to restrict defendants' use of the alleged trade secret. Accordingly, the trial court properly granted summary disposition with respect to plaintiffs' misappropriation of trade secrets claim.<sup>3</sup>

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<sup>3</sup> Because we have concluded that the design concept at issue here was not a "trade secret" within the meaning of MUTSA, we need not address the question whether proprietary rights in  
(continued...)

### III

Plaintiffs also argue that the trial court erred in dismissing their breach of contract claim against AAM. Again, we disagree.

“Before a contract can be completed, there must be an offer and acceptance.” *Eerdmans v Maki*, 226 Mich App 360, 364-365; 573 NW2d 329 (1997). “An offer is defined as the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” *Id.* (Citation and internal quotation marks omitted). “[A]n acceptance sufficient to create a contract arises where the individual to whom an offer is extended manifests intent to be bound by the offer, and all legal consequences flowing from the offer, through voluntarily undertaking some unequivocal act sufficient for th[at] purpose.” *Kraus v Gerrish Twp*, 205 Mich App 25, 45; 517 NW2d 756 (1994). The acceptance must be unambiguous and strictly conform to the essential terms of the offer. *Eerdmans, supra* at 364. Moreover, a valid contract requires mutual assent on all essential terms. *Kamalnath v Mercy Mem Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). Mere discussions and negotiation cannot be a substitute for the formal requirements of a contract. *Id.* at 549.

Plaintiffs assert the existence of a contract with AAM that required plaintiffs to incorporate their FFP design into the GMT 800 stabilizer bender, in exchange for AAM’s payment of \$50 an hour for their design work. Plaintiffs also contend that they agreed to terms of mutual exclusivity and confidentiality, in which plaintiffs agreed that they would not sell the design to any other party, AAM agreed that it would not hire any other entity to perform the work, and neither party would disclose the design to outside parties. Plaintiffs further maintain that AAM agreed to apply for a patent on plaintiffs’ behalf if the bender performed successfully, and to pay plaintiffs a royalty based on a portion of savings realized by utilizing the new technology.

Plaintiffs argue that there was sufficient evidence of an express oral contract encompassing these terms. Plaintiffs cite deposition testimony from plaintiffs Mark and Richard Niemi in support of their argument, but plaintiffs neither cited nor submitted this testimony below. This Court’s review is limited to the evidence presented to the trial court. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). Plaintiffs’ failure to present this evidence to the trial court precludes them from relying on it on appeal.

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(...continued)

the concept and related inventions were or were not validly transferred to defendants. See, e.g., *Sheets, supra* at 183-184 (“disclosure of a trade secret to others who have no obligation of confidentiality extinguishes the property right of the trade secret”); see also MCL 445.1902(b)(ii) (defining “misappropriation” as “use of a trade secret *of another* without express or implied consent”) (emphasis added). Consequently, we do not address the parties’ arguments regarding the validity of any claimed transfer of the propriety rights at issue; namely, whether the common law work-for-hire doctrine applies under the facts of this case and, if not, whether such a transfer is void for failure of consideration or to meet the requirements of the statute of frauds, MCL 440.1206.

Plaintiffs' reliance on the October 14, 1998 memorandum drafted by them and setting out the aforementioned terms, is misplaced. At most, the memorandum is only evidence of an offer; it is not a contract. As noted above, a fundamental tenet of all contracts is that there be mutual assent or a meeting of the minds on the essential terms of a contract. *Kamalnath, supra*. Here, however, there is no evidence that AAM accepted or otherwise agreed to the terms recited in the memorandum. As noted in 1 Restatement Contracts, 2d, § 50, p 128:

- (1) Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.
- (2) Acceptance by performance requires that at least part of what the offer requests be performed or tendered and includes acceptance by a performance which operates as a return promise.
- (3) Acceptance by a promise requires that the offeree complete every act essential to the making of the promise.

There is no evidence that AAM agreed to a mutual exclusivity arrangement or to payment of a "perpetual residual" in proportion to cost savings. Nor is there any evidence that AAM agreed to pay \$50 per hour for plaintiffs' work on the new concept. The Niemis' testimony that Ed Carter, an AAM engineer, seemed happy and agreeable to such terms does not establish that he manifested assent to these terms. Carter's expression of satisfaction does not establish an unequivocal, unambiguous act that expresses an intention to be bound by the offer. *Kraus, supra*.

Furthermore, AAM's Record of Invention form is not evidence that AAM promised to apply for a patent on plaintiffs' behalf. The form merely states that plaintiffs authorized AAM to apply for a patent; this language cannot be construed as a commitment that AAM would in fact do so.

Plaintiffs also argue there was sufficient evidence to establish a question of fact with respect to an implied contract or quasi-contractual theory. An implied contract may arise where the circumstances and the parties' conduct and language imply that the parties intended to contract, but did not explicitly put that intent into words. See *Erickson v Goodell Oil Co, Inc*, 384 Mich 207, 211-212; 180 NW2d 798 (1970). There is no elemental difference between an implied contract and an express contract other than "the character of the evidence necessary to establish the contract." *Borg-Warner Acceptance Corp v Dep't of State*, 169 Mich App 587, 590; 426 NW2d 717 (1988), rev'd on other grounds 433 Mich 16 (1989). Thus, there is no implied contract when the essential elements of mutuality of agreement and acceptance are not present. *Id.*; see also *Mallory v Detroit*, 181 Mich App 121, 127; 449 NW2d 115 (1989).

Plaintiffs' dealings with AAM with respect to the FFP stabilizer bender do not permit the inference of an implied contract. The fact that AAM purchased machines that Springfield made according to plaintiffs' designs does not suggest that AAM implicitly agreed to apply for a patent on plaintiffs' behalf or pay plaintiffs a royalty based on savings realized by using the machine. These circumstances merely indicate that AAM availed itself of the machines it purchased from Springfield, without suggesting that AAM reached any separate agreements with plaintiffs. Accordingly, plaintiffs cannot prevail on an implied contract theory.

Plaintiffs also argue that they are entitled to relief on an unjust enrichment/quantum meruit theory. To establish a claim of unjust enrichment, a plaintiff must show “(1) the receipt of a benefit by defendant from plaintiff, and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant.” *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). When these elements exist, “the law operates to imply a contract in order to prevent unjust enrichment.” *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). AAM received the benefit of plaintiffs’ design, but they did not receive it directly from plaintiffs, and their use of the design did not cause any inequity to plaintiffs. AAM paid Springfield for their work, and Springfield paid plaintiffs for their design work. Absent proof that defendants were contractually bound to limit their use of machines built from plaintiffs’ designs, plaintiffs cannot prove any unjust enrichment at their own expense.

In sum, plaintiffs failed to establish factual support for their claim that AAM breached an express or implied contract, or that plaintiffs are entitled to relief under a quasi-contract theory. Accordingly, summary disposition of plaintiffs’ claim for contractual breach was properly granted in favor of AAM.

Affirmed.

/s/ Donald S. Owens  
/s/ Helene N. White  
/s/ Joel P. Hoekstra