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The Preemption Trap: An Examination of the Michigan Uniform Trade Secret Act

4.9.2021

A recent opinion of the U.S. District Court for the Eastern District of Michigan provided a reminder of the limits of preemption under the Michigan Uniform Trade Secret Act ("MUTSA"). This client alert offers practical guidance for attorneys seeking to assert or defeat traditional tort claims pled in conjunction with MUTSA claims.

BACKGROUND

The MUTSA^[1] provides a statutory prohibition of, and remedies for, the misappropriation or improper disclosure of trade secrets. As is relevant here, the MUTSA also expressly "displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret." ^[2] Commonly referred to as a "preemption provision," similar language is found in the trade secret acts of nearly every state in the U.S., as forty-eight states and the District of Columbia likewise base their trade secret statutes on the Uniform Trade Secrets Act created by the non-profit Uniform Law Commission.

It must be noted, however, that the MUTSA's preemption provision does not apply to every civil remedy, and the statute is clear that the Act does not preempt: (i) contractual remedies; or (ii) "other civil remedies that are not based upon misappropriation of a trade secret."^[3] As to the latter exception, Michigan courts have made clear that the standard is "whether the [competing] claim is based *solely* upon the misappropriation of a trade secret. If so, the claim must be dismissed." *Bliss Clearing Niagara, Inc. v. Midwest Brake Bond Co.*, 270 F. Supp. 2d 943, 946 (W.D. Mich. 2003) (citations omitted) (emphasis supplied).

In the recent case of *LinTech Global, Inc. v. CAN Softtech, Inc.*,^[4] the Eastern District of Michigan had the opportunity to examine MUTSA's preemption provision once again. Specifically, in a

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Partial Motion to Dismiss, Defendants in that matter claimed that “[Plaintiff’s] tortious interference claims are based on the allegation that Defendants acted in violation of MUTSA and, because MUTSA preempts other tort claims, the tortious interference claim must fail.”^[5] In other words, Defendants took the position that Plaintiff’s tortious interference claim was based *entirely* on trade secret misappropriation.

In denying Defendants’ Motion to Dismiss, however, the Eastern District of Michigan took a different view. Specifically, the court reasoned that Plaintiff had incorporated by reference all previous claims contained in their Amended Complaint.^[6] As such, the court found that Plaintiff’s tortious interference claim was also based upon its well-pled claims regarding “other wrongful conduct independent of the misappropriation of trade secrets.”^[7]

Based on the foregoing, the court denied Defendants’ Motion, and allowed the case to proceed to discovery.

TAKEAWAYS

This opinion offers valuable lessons for litigators on “both sides of the ‘v.’”

First, plaintiffs must remember to tread carefully when asserting multiple claims in a trade secret action. While litigants are often tempted to raise numerous claims in such disputes (e.g., breach of duty of loyalty, unjust enrichment, tortious interference, etc.), there is a significant risk that overlapping claims will be challenged as preempted by MUTSA. As such, practitioners must take care to distinguish between the factual allegations underlying each of their various claims or run the risk that they will be found to all relate to trade secret misappropriation.

Second, defendants must carefully assess whether any aspect of a claim could be found to have an independent basis beyond misappropriation. As a matter of best practice, practitioners should endeavor to support any defense of preemption with an explanation of why the claim at issue is factually indistinguishable from the misappropriation claim.

Butzel Long continues to track, analyze, and advise on a variety of issues regarding trade secret and non-compete litigation.

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[1] Mich. Comp. Laws § 445.1901 *et seq.*

[2] *Id.* at § 445.1908(1).

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[3] *Id.* at § 445.1908(2)(a-b). *See also, id.* at (c) (“[t]his act does not affect . . . criminal remedies, whether or not based upon misappropriation of a trade secret.”).

[4] 2021 WL 1026908, at *1 (E.D. Mich. Mar. 17, 2021).

[5] *Id.* at *5.

[6] *Id.* at **5-6.

[7] *Id.* at *6 (citation omitted).