

FILED

NOV 23 2020

HARTFORD J.D.

DOCKET NO.: X07-HHD-CV-14-6049281-S : SUPERIOR COURT
: :
: :
DUR-A-FLEX, INC. : :
: :
v. : JUDICIAL DISTRICT OF
: HARTFORD
: :
SAMET DY : NOVEMBER 23, 2020

Memorandum of Decision on Misappropriation

1. Summary. Did Samet Dy and others steal Dur-A-Flex trade secrets?

Yes. Samet Dy, working with his nephew and a friend, stole his former employer's trade secrets and used them to make competing floor coatings.

It is true that not every one of Dy's products is a product of theft. And not every one of his alleged confederates did anything wrong. But Dy in particular— with respect to Poly-Crete floor coating in particular— used the Dur-A-Flex trade secret formula and research to create the competing product that ultimately became known as ProKrete. Complicit with him—and also formerly affiliated with Dur-A-Flex—were Dy's nephew Autodomn "Josh" Dy and Dy's close friend and confidant, Steven Lipman.

Not liable are some of the people who offered Dy help along the way: Merrifield Paint Co, Inc., Christopher Krone, and Engineered Coatings, Inc. Equally free from blame is Indue Sales and Services, Inc., a company that hired Dy to make for it a product very different from Poly-Crete. The court's judgment favors them because none of them knew or had reason to know that Dy was using trade secret information in his

dealings with them, and none of them used any trade secrets themselves with reason to know they were trade secrets.

2. How do you know you've been robbed? The complications with chemistry.

When someone grabs the money bags from your arms and runs off down the street you can see who robbed you, how you've been robbed, and what you have been robbed of.

Things are bit more complex with chemistry. An earlier phase of this case defined the money bags in contention here—the valuable floor-coating secrets of Dur-A-Flex, Inc. One of those money bags was the research and secret formula for its Poly-Crete cementitious urethane floor coating.

But the trouble is trying to spot a theft given the camouflaging-character of chemistry. You can patch the elements in a given formula together differently, and the objects obtain different chemical characteristics and names. You might end up with a different piece of chemistry altogether. You might also find yourself with substantially the same thing made up of different parts and called by a different name. The trick is knowing which situation you face. If it's the latter case, the camouflage is no protection for the trade secret thief.

This difficulty is one of the keys to this case because the main party accused— Samet Dy —is a good chemist. He created for Dur-A-Flex, the Poly-Crete formula at issue here, and the evidence shows that after he left Dur-A-Flex he created a new product like Poly-Crete for a company he founded. The two products are indeed very much alike. They have some common ingredients and most of the ingredients have common origins with

Poly-Crete. Still, the ingredients in ProKrete aren't identical to the ingredients in Poly-Crete. This may make theft harder to trace, but legally it doesn't make it impossible to stop.

It can be stopped under the Uniform Trade Secrets Act, General Statutes §35-51. The act defines "misappropriation" flexibly and includes the "use of a trade secret of another without express or implied consent by a person who...knew...the trade secret was...acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use".

"Use" is not defined in the Act. It has to be determined from the totality of the circumstances. Under the facts of this case, the use of a couple of ingredients over an ordinary research interval in an otherwise different formula, developed in a different way, for a different purpose doesn't sound much like "use". But if you find a product with several common ingredients in a rapidly developed formula that was made in the same way for the same purpose, the circumstances point more likely to "use" of the trade secret as the basis for the product.

In addition, as a federal judge for the District of Connecticut explained in 2003 in *On-line Techs., Inc. v. Perkin-Elmer, Corp.* "use" under the statute isn't limited to creating a substantially identical formula, it can even be enough that a defendant was "relying on the trade secret to assist or accelerate research or development."¹

While it's not everything we can find here, acceleration is likely the easiest thing to detect. Regardless how close the final formulas are, Dur-A-Flex claims that Samet Dy

¹ 253 F. Supp. 2d 313, 323-24.

and his confederates created products—particularly ProKrete—using Dur-a-Flex trade secrets to speed up the process.

From here we must examine some science, some testimony, and make some significant credibility judgments. The difficulty of the science makes the civil burden of proof particularly important. That means, as our Supreme Court reminded us in 2012 in *Curran v. Kroll*, the court’s job is to decide what *most likely* happened.² For the scientific judgments, that may be the best the court can do.

3. Most likely, Samet and Josh Dy developed ProKrete using Dur-A-Flex Trade Secrets.

Samet Dy developed the extremely lucrative Poly-Crete floor coating for Dur-A-Flex. Despite his attempts to make it appear that his college-student nephew invented its would-be rival, ProKrete, the evidence shows that Samet Dy was also the driving force behind that work too. At best, Josh assisted with it, and at worst he simply pantomimed development at his uncle’s behest.

Most likely Samet Dy created ProKrete using Josh for cover and using the Poly-Crete formula and research trade secrets as his guide. Dy knew the Poly-Crete formula better than anyone. For ProKrete he used sometimes the same, most times similar ingredients to Poly-Crete. ProKrete turned out to be substantially the same product, made by substantially the same method, for substantially the same purpose. And it was created in far less time. What provided that substance and saved that time was the Dur-A-Flex trade secrets.

² 303 Conn. 845, 856.

a. Despite an elaborate facade, Samet Dy—creator of Dur-A-Flex Poly-Crete—was always the man behind the ProKrete chemistry.

Beginning in 2004, Samet Dy worked at Dur-a-Flex developing the money-making Poly-Crete formula. It took eight years before it became the stable formula that it is today. For a small part of that time Josh Dy worked by his side as a Dur-a-Flex intern.

Mostly though, Josh Dy spent his time laboring through a nine-year journey to earn a chemical engineering degree from the University of Connecticut. He was a C student and gained no recognition as a formulator during his years in school. While he told a different story at trial, Josh admitted at deposition that his work as a Dur-A-Flex intern was limited to getting the chemicals he was told to get and performing on them experiments he was told to perform.

Still, Samet and Josh want us to believe that without any reference to the product his uncle created at Dur-A-Flex, Josh wizarded his way into creating a competing product a short time after he finally graduated from school.

Indeed, Samet—even while still working at Dur-A-Flex—set Josh up with all the trappings of a formulator. Josh had a lab—in Samet’s garage. He had chemicals—picked by his uncle. He had product patents and brochures—selected by Samet. He had duplicate lab books—one courtroom-ready and one far-less polished.

Samet Dy left Dur-A-Flex in February 2013. But before he left, he had conferred extensively with the defendant Steven Lipman about going into business and using Josh in the mix.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.