

Noted Case

Liebert Corporation v. John Mazur

Illinois 1st Appellate Court Case No. 1-04-2794: LIEBERT CORPORATION, an Ohio corporation, and ZONATHERM PRODUCTS, INC., an Illinois corp. v. JOHN MAZUR, et al.

Digest of April 5, 2005 Opinion Delivered by Justice Warren D. Wolfson

Plaintiffs Liebert Corp. and Zonatherm Products, Inc. sought to enjoin several of Zonatherm's former employees from using alleged trade secrets in their new competing business, Aerico Inc. Plaintiffs alleged defendants misappropriated confidential customer lists, historical bids, quotations, sales history, and price books. The trial court denied plaintiffs' Motion for a Preliminary Injunction. Plaintiffs appealed. Forensicon was retained by plaintiffs and the court qualified Forensicon President, Lee Neubecker, to testify as an expert in computer forensics. Plaintiffs' allegations of trade secret misappropriation were hinged on defendant Mazur's computer activities before and after he resigned his position at Zonatherm. Most of the evidence regarding his activities was presented through the testimony of Mazur and plaintiffs' expert witness, Lee Neubecker (President, Forensicon).

Mazur testified that he downloaded price books and quotations from Zonatherm's server onto his laptop computer then saved them in a "zip" file. Mazur said he attempted to save the "zip" file on a CD which he intended to give it to his former boss. He claimed to believe he had not successfully burned the files, because when he put the CD back into the computer, he could not access any information from it.

Neubecker testified that Mazur downloaded the files and put them into a "zip" file. Three minutes later the zip file was copied to the "CD burning" folder. Neubecker said the fact that the "zip" file was in the CD burning folder made it more likely than not that Mazur successfully burned the CD. On February 6, 2004, the day after the "zip" file was copied to the CD burning file, a "mass wave of deletion" began. Over the next few days, Mazur deleted approximately 12,000 files from his computer. On 2/8/2004, Mazur deleted 4,000 files, including the "zip" file which contained price books. Neubecker discovered Mazur also purged his computer's application log some time on 2/9/2004. The application log tracks the date and time that different programs are used. The log records would indicate how many CDs were successfully burned. Because Mazur deleted the application log, Neubecker could not determine with certainty whether Mazur successfully created a CD.

Decision

In this case, we believe plaintiffs proved Mazur acquired their trade secrets by improper means. Mazur admitted downloading several price books onto his laptop computer on 1/20/2004, just hours before resigning and after agreeing to work for a competitor. The fact that Mazur attempted to destroy any indication of his downloading activities when plaintiffs filed suit also suggests improper acquisition. Even more telling is the fact that Mazur never actually handed the information over to his teammates before or after he left Zonatherm, and we believe his subsequent deletion efforts contradict any alleged intention to do so. He compressed the files he downloaded, including the price books, and attempted to copy them onto a CD. He contends his CD burning efforts were unsuccessful. Apparently, Mazur's ability to copy material is surpassed by his ability to delete it. Although Mazur attempted to explain many things, he never explained why he deleted an application log that would have conclusively shown whether he burned the price books onto a CD. If Mazur believed he had a valid reason to copy the information for his former teammates, why would he attempt to hide his efforts to do so? His explanation that he deleted thousands of files because they were no longer needed rings hollow. By his own testimony, Mazur was not able to make a copy of the information for his former teammates--information Mazur claimed they would need after he left. Apparently their need, and his reason for downloading the books in the first place, evaporated with the filing of plaintiffs' complaint. Accepting Mazur's testimony at face value requires more gullibility than we are willing to provide.

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