UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19-cv-643-RJC-DCK

SENSORRX, INC., Plaintiff, v. ELI LILLY AND COMPANY, Defendant.	)	ORDER

THIS MATTER comes before the Court on Eli Lilly and Company's ("Eli Lilly") Motion for Summary Judgment, (Doc. No. 96); SensorRx Inc.'s ("SensorRx") Response, (Doc. Nos. 111, 130); Eli Lilly's Reply, (Doc. No. 135); and related pleadings and exhibits. For the reasons stated below, the Court will grant the Motion for Summary Judgment.

I. BACKGROUND

According to the Amended Complaint, SensorRx, a corporation based in Charlotte, North Carolina, began developing a mobile phone application called MigrnX in 2015 to assist patients with tracking and treating migraines. (Doc. No. 36 at ¶¶ 1, 11). Eli Lilly, a corporation based in Indianapolis, Indiana, was also developing a migraine application called Vega Migraine and expressed interest in entering a potential partnership and investment in SensorRx in 2018. (Id. at ¶¶ 2, 12, 38).

After preliminary conference calls, email exchanges, and a meeting at an

industry conference, Eli Lilly and SensorRx agreed to meet in Indianapolis on January 31, 2019, to explore partnership opportunities and demonstrate MigrnX. (Id. at ¶ 51). The parties executed a Mutual Confidentiality Agreement before the meeting began. (Id. at ¶ 52; Doc. No. 96-27: Ex. Z). During the meeting, Eli Lilly informed SensorRx about Vega Migraine and SensorRx provided materials about MigrnX. (Id. at ¶¶ 52, 53).

The parties exchanged a term sheet on March 21, 2019, and entered a due diligence period. (Id. at ¶ 68). As part of that process, SensorRx provided confidential information acquired through the development and implementation of MigrnX. (Id. at ¶¶ 70-72). On May 22, 2019, Eli Lilly presented a demonstration of Vega Migraine to SensorRx's technology chief who "was stunned at how similar Vega Migraine had become to MigrnX." (Id. at ¶ 87). On May 28, 2019, Eli Lilly informed SensorRx that it was terminating due diligence and would not pursue partnership, but instead would continue developing Vega Migraine. (Id. at ¶ 95). Eli Lilly launched its application in the Apple App Store on November 5, 2019. (Id. at ¶ 96).

On November 13, 2019, Eli Lilly filed a Complaint against SensorRx in the United States District Court for the Southern District of Indiana, seeking declaratory judgments related to alleged trade secret misappropriation and breach of contract. (S.D. Ind. Case No. 1:19-cv-4550, Doc. No. 1). The Indiana case was transferred to this District on June 19, 2020, upon a finding that it was an improper anticipatory filing. (W.D.N.C. Case No. 3:20-cv-351, Doc. No. 65). This Court then dismissed it for the same reason. (Id., Doc. No. 94: Order at 4).

Meanwhile, SensorRx initiated this action with the filing of a Complaint in this District on November 22, 2019. (Doc. No. 1). On July 20, 2020, SensorRx filed an Amended Complaint asserting causes of action for: (1) Unfair and Deceptive Practices in Violation of N.C. Gen. Stat. § 75-1.1, et seq.; (2) Fraud/Fraudulent Concealment; (3) Fraudulent Inducement; and (4) Unjust Enrichment. (Doc. No. 36 at 27-32). SensorRx seeks damages and injunctive relief to prohibit Eli Lilly from "further using SensorRx's confidential information," including removing Vega Migraine from the Apple App Store. (Id. at 32-33). In its Answer, Eli Lilly asserted a counterclaim seeking a declaratory judgment that it did not breach the Mutual Confidentiality Agreement. (Doc. No. 76 at 56-57).

Eli Lilly moved to dismiss the Amended Complaint, arguing, in part, that North Carolina choice-of-law jurisprudence requires the application of Indiana law, which preempts SensorRx's claims. (Doc. No. 45: Motion at 1). That motion was denied without prejudice pending the completion of discovery. (Doc. No. 72: Memorandum and Recommendation; Doc. No. 73: Order). At the completion of discovery, Eli Lilly filed the instant Motion for Summary Judgment, (Doc. No. 94), which has been fully briefed and argued before the Court.

II. STANDARD OF REVIEW

Summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is material only if it might affect the outcome of the suit under governing law. Id. The movant has the "initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (internal citations omitted). "The burden on the moving party may be discharged by 'showing' . . . an absence of evidence to support the nonmoving party's case." Id. at 325.

Once this initial burden is met, the burden shifts to the nonmoving party. The nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." Id. at 322 n.3. The nonmoving party may not rely upon mere allegations or denials of allegations in his pleadings to defeat a motion for summary judgment. Id. at 324. The nonmoving party must present sufficient evidence from which "a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248; accord Sylvia Dev. Corp. v. Calvert Cty., Md., 48 F.3d 810, 818 (4th Cir. 1995).

When ruling on a summary judgment motion, a court must view the evidence and any inferences from the evidence in the light most favorable to the nonmoving party. Anderson, 477 U.S. at 255. "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." Ricci v. DeStefano, 557 U.S. 557, 586 (2009) (internal citations omitted). The mere argued existence of a factual dispute does not defeat an otherwise properly

supported motion. Anderson, 477 U.S. at 248. If the evidence is merely colorable, or is not significantly probative, summary judgment is appropriate. Id. at 249-50.

III. DISCUSSION

A. Subject Matter Jurisdiction

SensorRx, a Delaware corporation with its principal place of business in Charlotte, North Carolina, alleges that Eli Lilly, an Indiana corporation with its principal place of business in Indianapolis, Indiana, misappropriated SensorRx's confidential business information to develop its own competing mobile phone application. (Doc. No. 36: Amended Complaint at 4). Accordingly, the parties agree that this Court has jurisdiction under the general diversity statute, 28 U.S.C. § 1332(a). (Id.; Doc. No. 76: Answer at ¶ 14).

B. North Carolina Choice of Law

"A federal court exercising diversity jurisdiction must apply the choice of law rules of the state in which it sits." Perini/Tompkins Joint Venture v. Ace Am. Ins. Co., 738 F.3d 95, 100 (4th Cir. 2013). This Court sits in North Carolina, and, therefore, must apply this state's choice-of-law doctrine.

The North Carolina Supreme Court has held that its jurisprudence favors the lex loci delecti commissi (lex loci) test in cases involving tort or tort-like claims. SciGrip v. Osae, 838 S.E.2d 334, 343 (N.C. 2020) (citing Boudreau v. Baughman, 368 S.E.2d 849, 853-54 (N.C. 1988)). "According to the lex loci test, the substantive law of the state 'where the injury or harm was sustained or suffered,' which is, ordinarily, 'the state where the last event necessary to make the actor liable or the last event

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