United States Court of Appeals
For the Eighth Circuit

No. 16-3679
No. 16-3872

HIP, Inc., fka Unitherm Food Systems, Inc.

Plaintiff - Appellant/Cross-Appellee

v.

Hormel Foods Corporation, et al.

Defendants - Appellees/Cross-Appellants

Appeals from United States District Court
for the District of Minnesota - Minneapolis

Submitted: October 18, 2017
Filed: April 18, 2018

Before LOKEN, MURPHY, and COLLOTON, Circuit Judges.

LOKEN, Circuit Judge.

Hormel Foods Corporation is a Delaware corporation with its principal place of business in Minnesota that manufactures and markets meat products. In early 2007, Hormel sought an improved method of producing precooked bacon, which it was then producing in continuous commercial microwave ovens and selling into retail

and foodservice markets. On July 20, Hormel entered into a Mutual Confidential Disclosure Agreement (the "MCDA") with HIP, Inc. (formerly Unitherm Food Systems, Inc.) ("Unitherm"), an Oklahoma Corporation that develops cooking processes and sells equipment including commercial ovens. On September 25, they entered into a Joint Development Agreement (the "JDA") incorporating the MCDA. On April 1, 2010, Hormel terminated the JDA. In September 2014, Unitherm commenced this diversity action alleging, as relevant here, that Hormel wrongfully terminated the JDA and breached the MCDA. Hormel counterclaimed, alleging that Unitherm breached the JDA and seeking a declaratory judgment that Hormel owns the patented "Unitherm Process" for precooking bacon in a spiral oven. The district court[1] granted summary judgment, dismissing Unitherm's breach of contract claims and Hormel's breach of contract and declaratory judgment counterclaims. They cross appeal these rulings. We affirm.

I. Background.

By 2005, Hormel had identified superheated steam as a way to improve precooked bacon quality and began work to develop a superheated steam process for cooking bacon. In 2007, Hormel considered partnering with one of two commercial oven manufacturers that offered spiral ovens for cooking meat products with steam, Unitherm and JBT Corporation (formerly FMC FoodTech). Unitherm's owner, David Howard, had developed the "Unitherm Process" suitable for producing precooked bacon in a spiral oven. In a July 10 "generic" discussion of ovens and products, Howard urged Hormel to consider using superheated steam in a spiral oven to produce precooked bacon. The next day, Hormel met with JBT to test cook chicken in JBT's spiral oven. They test cooked a small amount of bacon.

[1] The Honorable Joan N. Ericksen, United States District Judge for the District of Minnesota.

On July 20, at Hormel's invitation, Howard gave a one-hour presentation of Unitherm's new process for cooking bacon in a spiral oven using superheated steam at Hormel's main offices in Austin, Minnesota. Before the meeting, the parties signed the MCDA, which Hormel prepared. On September 25, the parties entered into the JDA, with the stated purpose of developing "the Project." The meaning of that term is a key part of the issues on appeal. During the effective period of the JDA, Hormel and Unitherm conducted tests for cooking bacon in a mini test spiral oven owned by Unitherm, which Hormel leased in July 2008 to continue work on the Project.

On December 5, 2007, JBT issued a press release regarding the use of its spiral oven for producing precooked bacon. Concerned JBT might attempt to patent the concept, Unitherm filed a process patent application for the Unitherm Process in January 2008. Hormel terminated the JDA on April 1, 2010. Before termination, Hormel had experimented with microwave preheating of bacon before precooking in a superheated spiral oven. After termination, Hormel purchased the spiral test oven it had leased from Unitherm. In August 2011, Hormel filed an application for a "Hybrid Process" patent for cooking bacon by preheating it in a microwave oven and then running it through a spiral oven filled with superheated steam. The application identified the spiral test oven purchased from Unitherm as the oven used to develop that process. In January 2012, Hormel and JBT entered into a contract for "the development (design and build) of an oven by JBT for Hormel Foods' patent-pending technology of cooking bacon." For this purpose, JBT modified its GCO-II spiral oven by "reverse engineering" the Unitherm test oven. Hormel purchased the resulting commercial oven from JBT in 2013 and began marketing a new precooked bacon product called "Bacon1" in 2014, using the Hybrid Process.

Unitherm commenced this suit in September 2014, alleging breach of contract, misappropriation of trade secrets, and unjust enrichment and seeking an accounting and a declaratory judgment that it owns the Hybrid Process disclosed in Hormel's pending patent application. Unitherm claimed that Hormel wrongfully terminated the

JDA without notice, failed to share information, misappropriated the Unitherm Process for its own commercial purposes, and breached the MCDA by disclosing details of the Unitherm Process and test oven to JBT and reverse engineering the test oven. Hormel's counterclaim alleged that Unitherm breached the JDA by failing to assign the Unitherm Process to Hormel after Hormel purchased the test oven, and sought a declaratory judgment that Hormel owns the now-patented Unitherm Process.

The district court initially dismissed Unitherm's misappropriation of trade secrets and accounting claims because the alleged trade secrets were made public in Unitherm's patent application. After discovery, both parties moved for summary judgment on their respective breach of contract and declaratory judgment claims and on Unitherm's unjust enrichment, claim. The district court granted summary judgment, dismissing Unitherm's breach of contract and unjust enrichment claims and Hormel's breach of contract and declaratory judgment claims.[2] Both parties appeal.

II. Unitherm's Breach of Contract Claims.

Unitherm argues the District Court erred in granting summary judgment dismissing its claims that Hormel breached the JDA and the MCDA. We review the grant of summary judgment *de novo*, including the district court's interpretation of state law. Wayne v. Genesis Med. Ctr., 140 F.3d 1145, 1147 (8th Cir 1998).

[2]The parties subsequently moved to dismiss without prejudice remaining claims regarding ownership of the Hybrid Process. In response to our inquiry at oral argument, they explained these claims were not dismissed to evade the final order doctrine, but because Hormel's Hybrid Process patent application remains pending. They assured the court the dismissed claims will not be revived after this appeal. We are satisfied the cross appeals seek review of a final order within our jurisdiction under 28 U.S.C. § 1291.

Minnesota law governs these claims. "In order to state a claim for breach of contract, the plaintiff must show (1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." Park Nicollet Clinic v. Hamann, 808 N.W.2d 828, 833 (Minn. 2011). The Supreme Court of Minnesota has repeatedly held that "when a contractual provision is clear and unambiguous, courts should not re-write, modify, or limit its effect by a strained construction." Valspar Refinish, Inc. v. Gaylord's, Inc., 764 N.W.2d 359, 364-65 (Minn. 2009), citing cases. "Unambiguous contract language must be construed according to its plain and ordinary meaning." Mapes v. MTR Gaming Grp., Inc., 299 F.3d 706, 707 (8th Cir. 2002). We determine the plain and ordinary meaning of contract language by "reading it in the context of the instrument as a whole and viewing each part of the contract in light of the others." Olympus Ins. Co. v. AON Benfield, Inc., 711 F.3d 894, 898 (8th Cir. 2013) (applying Minnesota law). We consider extrinsic evidence only when the language of the contract is ambiguous. See id.; Dykes v. Sukup Mfg. Co., 781 N.W.2d 578, 582 (Minn. 2010); Mapes, 299 F.3d at 707.

A. Breach of the JDA. Unitherm alleges that Hormel wrongfully terminated the JDA on April 1, 2010. Our consideration of this issue must focus on a number of provisions in this three-page agreement. First, the introductory recital:

> HORMEL and UNITHERM would like to work together to develop an oven that uses very high (approaching 100%) steam levels for cooking. This oven process would initially be focused on producing bacon. Hormel has developed a prototype high steam level oven that produces such bacon and would like to work with Unitherm to develop commercial ovens using high steam levels which would be exclusive to Hormel ("The Project").

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