United States Court of Appeals
For the Eighth Circuit

No. 18-2900

Farmers Edge Inc.; Farmers Edge (US) Inc.; Farmers Edge (US) LLC

Plaintiffs - Appellants

v.

Farmobile, LLC; Jason G. Tatge; Heath Garrett Gerlock; Randall Thomas Nuss

Defendants - Appellees

Appeal from United States District Court
for the District of Nebraska - Omaha

Submitted: February 11, 2020
Filed: August 17, 2020

Before LOKEN, BENTON, and KELLY, Circuit Judges.

KELLY, Circuit Judge.

This case arose after Jason Tatge, Heath Gerlock, and Randy Nuss (the individual defendants) left a company called Crop Ventures to co-found Farmobile (the corporate defendant). Farmers Edge (FEI) is Crop Ventures's successor-in-interest. Both FEI and Farmobile are agriculture technology companies that work on "precision agriculture" and the use of specialized data in farming. Believing the

individual defendants took proprietary information they developed at Crop Ventures, FEI sued. As relevant here, FEI alleges the individual defendants's behavior constituted a breach of explicit or implicit contracts with the company; that the defendants were obligated to assign to their employer the ownership rights of products they worked to develop; that the individual defendants breached their duty of loyalty to their employer; and that the individual defendants misappropriated trade secrets. The individual defendants filed counterclaims. On cross-motions for summary judgment, the district court[1] denied in full FEI's motion, and granted in part and denied in part Farmobile's motion. Only FEI appeals, and we affirm.

I.

We review the district court's grant of summary judgment de novo. See Torgerson v. City of Rochester, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc). We view all facts in the light most favorable to the non-moving party. Id. We affirm 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).

Each of the individual defendants previously worked for Crop Ventures. Tatge was president of Crop Ventures from April to July 2013. He is a co-founder and CEO of Farmobile. Gerlock was an executive vice president of Crop Ventures, and also worked for Crop Ventures as an independent contractor. Gerlock is Farmobile's Director of Products. Nuss worked for Crop Ventures as an independent contractor from April 2012 to August 2012. Later, he was a full-time employee of Crop Ventures from October 2012 to July 2013. Nuss is also a co-founder of Farmobile and its Director of Engineering.

[1]The Honorable Joseph F. Battalion, United States District Judge for the District of Nebraska.

All three individual defendants left Crop Ventures in July 2013. By September 2013, they had founded Farmobile. They also filed two U.S. Provisional Patent Applications that month. In April 2015, they filed a Canadian Patent Application. In June 2016, FEI filed the operative First Amended Complaint in federal district court. As relevant here, the court denied FEI's motion for summary judgment, and in this appeal, FEI alleges a series of errors by the district court. We address each in turn.

A. Contract Claims

We first address FEI's argument that the district court erred by concluding that none of the individual defendants breached an express or implied contract. FEI asserts that Nuss had an express contract with Crop Ventures. In the alternative, FEI contends that Nuss, Gerlock and Tatge had implied contracts with Crop Ventures. FEI alleges that each defendant breached his contract by failing to keep confidential Crop Ventures's allegedly proprietary information. The individual defendants counter that their relationships with Crop Ventures were not governed by any contract, express or implied.

1. Express Contract

Before Nuss joined Crop Ventures as an independent contractor in April 2012, he signed an agreement with the company (the April 2012 Agreement). The April 2012 Agreement is titled, "Confidentiality and Non-Competition Agreement," and the introductory clause states, "THE AGREEMENT is made as of Monday, April 30, 2012 between Crop Ventures, Inc. ('Company') and Randy Nuss ('Contractor.')." Nuss did not sign another agreement when he rejoined Crop Ventures as a full-time employee in October 2012. The April 2012 Agreement has clauses concerning

intellectual property, nonsolicitation, and nondisclosure of confidential information. Another clause states the agreement is not intended to operate as an employment contract.

FEI argues the April 2012 Agreement continued to bind Nuss after his time as an independent contractor ended in August 2012, and that Nuss breached it by using at Farmobile certain information that FEI says is their confidential, proprietary information. But FEI presented no evidence indicating the April 2012 Agreement continued to apply after Nuss left the company for the first time in August 2012. The April 2012 Agreement specifically refers to Nuss as a "contractor," and FEI concedes that Nuss had no role at the company after his term as an independent contractor and before he returned two months later as a full-time employee. There is nothing in the April 2012 Agreement stating it would come back into effect if Nuss rejoined the company. Nor is there evidence the parties intended for the April 2012 Agreement to govern Nuss's later employment. Without any textual support in the April 2012 Agreement, or evidence that the parties intended for the April 2012 Agreement to apply when Nuss returned to Crop Ventures as an employee in October 2012, FEI's argument fails. Because no contract bound the parties during Nuss's term of employment, Nuss was not in breach of an explicit contract.

2. Implied Contract

In the alternative, FEI argues that Gerlock and Tatge worked under an implied contract while at Crop Ventures, and that an implied contract also governed Nuss's employment at Crop Ventures after October 2012. FEI alleges all three individual defendants breached their implied contracts by failing to assign to FEI the ownership rights of the products they later sought to patent at Farmobile.

An implied contract is "an agreement 'implied in fact,' founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact,

from conduct of the parties showing, in light of the surrounding circumstances, their tacit understanding." Baltimore & O.R. Co. v. United States, 261 U.S. 592, 597 (1923). We apply state-law principles of contract formation to determine whether an implied contract existed. See Teets v. Chromalloy Gas Turbine Corp., 83 F.3d 403, 407 (Fed. Cir. 1996) (citing Erie R.R. v. Tompkins, 304 U.S. 64 (1938)). In Nebraska, an implied contract arises "where the intention of the parties is not expressed in writing but where the circumstances are such as to show a mutual intent to contract." Armstrong v. Clarkson Coll., 901 N.W.2d 1, 17 (Neb. 2017).

Generally, "an individual owns the patent rights to the subject matter of which he is an inventor, even though he conceived it or reduced it to practice in the course of his employment." Banks v. Unisys Corp., 228 F.3d 1357, 1359 (Fed. Cir. 2000). However, there are two exceptions that might assign ownership to the employer instead. First, "an employer owns an employee's invention if the employee is a party to an express contract to that effect." Id. However, as discussed, Nuss was not working under an express contract, and FEI does not appeal the district court's determination that Gerlock and Tatge also did not have express employment contracts.

The second exception is that when an employee is "hired to invent something or solve a particular problem, the property of the invention related to this effort may belong to the employer." Id. FEI argues each individual defendant was hired to invent the products they worked on, which created an implied contract to assign ownership of the products to the employer. In the hired-to-invent context, courts "must examine the employment relationship at the time of the inventive work to determine if the parties entered an implied-in-fact contract to assign patent rights." Teets, 83 F.3d at 407. The specific question is "whether the employee received an assignment on this occasion to invent." Id. at 409.

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