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Idaho Supreme Court
Karel Lehrman, Clerk of the Court
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Docket No. 46133-2018

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRIAN D. TRUMBLE,
Plaintiff/Appellant,

vs.

FARM BUREAU INSURANCE SERVICE COMPANY OF IDAHO,
WESTERN COMMUNITY INSURANCE CO., AND
FARM INSURANCE BROKERAGE CO. INC.,
Defendants/Respondents/Cross-Appellants.

RESPONDENTS'/CROSS-APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Fourth Judicial District Court
for Ada County, State of Idaho
The Honorable Nancy A. Baskin, District Judge, Presiding

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In reply to the response arguments made to Respondents' Cross Appeal, Farm Bureau offers the following Reply Argument.

INTRODUCTION

Appellant argues several facts that are not supported by the record in an effort to convince this Court to deny Farm Bureau's cross appeal. Additionally, Appellant attempts to persuade this Court that the actions he did take which are evidenced on the record do not constitute a violation of the Idaho Trade Secrets Act (hereafter ITSA). However, the ITSA specifically protects businesses like Farm Bureau so that individuals like the Appellant cannot take protected information and then use it to compete and cause damage. More particularly, applicable law protects Farm Bureau from having Appellant intentionally interfere with a prospective economic advantage by interfering with existing contractual relationships.

In responding to Appellant's brief, the arguments below set forth the applicable law, the admissions of the Appellant and the evidence on the record. All of these evidence that Appellant not only violated the ITSA by using protected information, but also that he intentionally interfered with existing contracts Farm Bureau had with clients by his wrongful use of the protected information. As a result, this Court should grant Farm Bureau's cross appeal.

CROSS APPEAL ARGUMENT

I. APPELLANT'S VIOLATIONS OF THE IDAHO TRADE SECRETS ACT

The record before this Court together with Appellant's admissions evidence that he violated the Idaho Trade Secrets Act for which Farm Bureau should receive a judgment for damages. Farm Bureau incorporates by reference the law cited in its Respondents'/Cross-Appellants' Brief, pages 37-38. To this Farm Bureau adds the following citations of law:

To prevail in a claim brought under the ITSA, "[a] plaintiff must show that a trade secret actually existed." *Basic American, Inc. v. Shatila,* 133 Idaho 726, 734, 992 P.2d 175, 183 (1999); Idaho Code § 48–801. Pursuant to the ITSA:

> "Trade secret" means information, including a formula, pattern, compilation, program, computer program, device, method, technique, or process, that:
>
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Idaho Code § 48–801(5). To help determine whether information qualifies as a trade secret, the *Basic American* Court relied on the Restatement and looked at the six factors quoted by Appellant, which are incorporated herein by reference as if set forth fully. "All of these factors address the issue of whether the information in question is generally known or readily ascertainable." *La Bella Vita, LLC v. Shuler*, 158 Idaho 799, 807, 353 P.3d 420, 428 (2015), *citing*, *Wesco Autobody Supply, Inc. v. Ernest,* 149 Idaho 881, 898, 243 P.3d 1069, 1086 (2010).

A. APPELLANT'S MISAPPROPRIATION OF TRADE SECRETS

Appellant argues in his Response to Cross Appeal that "550 names on the Subject List cannot be considered a trade secret because they were generated from [Appellant]'s personal knowledge and *contacts on [Appellant]'s phone*."[1] Appellant fails to understand that placing client names or phone numbers or other contact information into his phone while working for Farm Bureau, and then using that information against Farm Bureau *after* his contract is terminated, is a specific act of misappropriation based on the language in the ITSA. This admission alone by Appellant in his Response to Cross-Appeal is enough for this Court to find as a violation of the ITSA. However, this is not the only evidence that exists.

While Appellant originally asserted that he did not "use any Farm Bureau records or data to create the Subject List".[2] He now acknowledges in his Response to Cross-Appeal his admission that "a few names on the Subject List (approximately 20 or so) came from my old commission statements and calendars."[3] Further, Appellant also now acknowledges his admission that 20-30 names on what he claims to be his self-created "Subject List" came from these calendars and commission statements that he had obtained while working as an agent for Farm Bureau.[4]

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[1] See Appellant's Response to Cross-Appeal page 19.
[2] R. at 642 paragraph 7.
[3] See Appellant's Response to Cross-Appeal page 19.
[4] Id.

Appellant erroneously asserts in his argument that Farm Bureau's cross-appeal concerning the ITSA only involves these 20-30 names.[5] While these 20-30 names that Appellant admitted he took from commission statements are a part of Farm Bureau's cross-appeal, they are not the only client information Appellant misappropriated. As is set forth in his Response Brief, the undisputed evidence shows that Appellant admitted that his client list was created from names and contact information he had on his phone from while he was working as an agent.[6]

Appellant attempts to argue that the list of names he compiled while working for Farm Bureau was not used to create the client list he utilized when competing against Farm Bureau. However, his admissions cited to herein refute this argument. Even if it didn't, none of the case law cited to above requires Farm Bureau to reach some "magic number" of misappropriated client names or information before the ITSA is violated. All that is required by the ITSA is that the information that was used by Appellant has value to Farm Bureau by not being generally known and that Farm Bureau took efforts that are reasonable under the circumstances to maintain its secrecy.

Appellant attempts to argue that the list created by Appellant that he used to compete against Farm Bureau "only contained names and addresses; no buying preferences or past policies or numbers were included on the Subject List."[7] In making this argument, Appellant misses the point. Pursuant to the ITSA it's not the list Appellant *created* but rather the *source of the*

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[5] See Appellant's Response to Cross-Appeal page 19.
[6] Aug. at 67, pages 155 -157.
[7] See Appellant's Response to Cross-Appeal page 19.

information that Appellant used to create the list that was the misappropriation of protected information. This Court has specifically held that "customer lists, lists showing customer buying preferences, [and] the history of customer purchases, . . . are trade secrets." *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 898, 243 P.3d 1069, 1086 (2010). In the present case Appellant admitted to using commission statements which have this protected information on them, as a source for the list he then used to compete with Farm Bureau's current customers who has existing contracts.[8] This admission alone is enough evidence of a violation of the ITSA.

Appellant never testified that he already knew the 20-30 people whose names were on the commission statements. Appellant never testified that he could have generated the names of these 20-30 people without using the commission statements. Rather, Appellant admitted that he used commission statements to include 20-30 names on the list he then used to compete with Farm Bureau. The evidence on the record is that the commission statements contain the specific trade secret information that is protected by the ITSA such as policy numbers, buying preferences and the history of customer purchases. Appellant's use of this information, that he never testified that he obtained in some other way, and which Farm Bureau specifically warned Appellant about in the letter it gave him on the day he was terminated, all evidence a violation of the ITSA.

Though Appellant focusses the bulk of his argument on the "20-30" names from the commission statement as the only thing this Court should consider, the reality is that there were far more names misappropriated by Appellant.

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[8] R. at 642, paragraph 7.

In response to discovery requests, Appellant produced his "Subject List" so that Farm Bureau could compare it to the commission statement that Appellant also produced. It is undisputed that when this comparison was completed, there were actually 107 names that matched on both lists.[9] This fact has never been disputed on the record by Appellant. Appellant's own admissions and the record both evidence that he misappropriated and then used trade secrets from Farm Bureau causing it damage. This Court should disregard Appellant's arguments which are not supported by the evidence on the record and find that a ITSA misappropriation occurred.

B. FARM BUREAU'S EFFORTS TO PROTECT ITS TRADE SECRETS

In addition to finding that a misappropriation occurred, this Court should also enter a decision that Farm Bureau made reasonable efforts to protect its trade secrets. Appellant argues at length that Farm Bureau didn't do anything to protect or keep its information secret in an attempt to persuade this Court that Farm Bureau cannot seek protection through the ITSA. Appellant even asserts that by giving him the commission statements with the information they contained without some kind of redaction, Farm Bureau somehow lost the ability to seek to protect the information on the commission statements under the ITSA. Appellant's arguments misstate both the applicable facts and the law.

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[9] Aug. at 5, paragraphs 25 and 26.

The evidence before this Court contains undisputed facts about what Farm Bureau did to maintain the secrecy of its client information. First, Appellant's Career Agent's Contract with Appellant contains several provisions that specifically protects Farm Bureau's client lists, as well as other files and records.[10] Additionally, Appellant admits that Farm Bureau provided him with a written letter on the day his contract was terminated.[11] This letter specifically stated that any data that included client lists was proprietary and was protected by the ITSA.[12] Further, throughout these proceedings, Farm Bureau took every step it could to keep all client lists, commission statements and the like protected.[13]

Appellant admitted that he didn't read the letter he received from Farm Bureau[14] and that he used trade secret information to create, the client list he used when he competed against Farm Bureau.[15] The only mistake in Appellant's admissions, as argued above, is that the number of clients he misappropriated from the commission statements was far too low.

Appellant also asserts that the commission statements can't be a trade secret because they were given to Appellant by Farm Bureau each month and they weren't redacted. These are ridiculous arguments. Farm Bureau was under contract to pay a commission to Appellant as an insurance agent.[16] In paying this commission, Farm Bureau would have to provide Appellant with

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[10] R. at 116, paragraph 5.
[11] R. at 641, paragraph 2, and 646-647.
[12] Id.
[13] Aug. at 5, paragraphs 25-26.
[14] Aug. at 69, pages162-165.
[15] R. at 642, paragraph 8.
[16] R. at 116-117.

a commission report showing all premiums that were paid for a given month so that Appellant's commission could be calculated.

More importantly, the written letter Farm Bureau gave to Appellant when it terminated his Career Agent's Contract put Appellant on specific notice about misusing this type of protected information. In identifying trade secrets, this letter specifically states: "We believe it to be quite clear that customers' private information, including the coverages they currently have (or have had in the past), is not readily ascertainable."[17] Further, the letter specifically cites applicable Idaho law and states that any "customer lists, lists showing customer buying preferences [and] the history of customer purchases . . . are trade secrets."[18] Finally, the letter also states "there are provisions in your contract that may also apply to your removal of Farm Bureau property."[19] All of these statements would include commission statements and the information contained therein because this information was only provided to insurance agents under contract with Farm Bureau. It could not be obtained in any other way.

The record evidences that Farm Bureau took every reasonable step it could to not only protect its trade secrets, but also to put Appellant on notice about what its trade secrets were and that Appellant should not use Farm Bureau's trade secrets in violation of applicable law. Despite this notice, and despite his admission that he only took 20-30 names, the evidence establishes that Appellant actually misappropriated at least 107 names from the commission statements, as well as

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[17] R. at 646.
[18] R. at 647.
[19] Id.

additional names from his phone all of which qualify as trade secrets under the ITSA. Finally, Farm Bureau had actual customers and clients leave as a result of Appellant's misappropriation and use of these protected trade secrets.[20] Farm Bureau was damaged by Appellant's violation of the ITSA in the amount of $230,000.00.[21]

The evidence establishes both a violation of the ITSA by Appellant when he misappropriated and wrongfully used Farm Bureau's trade secrets and actual damages to Farm Bureau. Based upon the evidence on the record, the decision of the District Court in dismissing Farm Bureau's ITSA claims against the Appellant, should be reversed. Farm Bureau respectfully requests that this Court enter a judgment in its favor.

II. APPELLANT INTERFERED WITH FARM BUREAU'S PROSPECTIVE ECONOMIC ADVANTAGE

Farm Bureau relies upon the statements of law set forth in its Respondents'/Cross-Appellants' Brief concerning intentional interference with economic advantage. Further, Farm Bureau acknowledges that its cause of action for intentional interference with economic advantage is directly tied to Appellant's violation of the ITSA. Farm Bureau relies upon its arguments concerning this cause of action as set forth fully in its Respondents'/Cross-Appellants' Brief.

Based upon the undisputed evidence before this Court, the decision of the District Court in dismissing Farm Bureau's claims that Appellant intentionally interfered and economically

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[20] R. at 693-699.
[21] Id.

damaged Farm Bureau, should be reversed. Farm Bureau's damages are set forth in the record and judgment should be entered in favor of Farm Bureau on this issue. Farm Bureau respectfully requests that this Court reverse the judgment of the District Court and enter a decision in its favor.

III. FARM BUREAU SHOULD BE GRANTED ITS ATTORNEY FEES

Farm Bureau is entitled to an award of attorney fees and costs on its cross-appeal as a matter of law pursuant to I.C. § 12-120(3), and I.R.C.P. 54(e)(1). Idaho Code § 12-120(3) specifically gives the Court the authority to award Farm Bureau its attorney fees and costs. Specifically, § 12-120(3) states:

> In any civil action to recover on an open account [or] account stated . . . relating to the purchase or sale of goods, wares, merchandise, or services *and in any commercial transaction* unless otherwise provided by law, the prevailing party *shall* be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs. The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

Idaho Code § 12-120(3)(italics added).

The Idaho Supreme Court reaffirmed its previous decision that "[w]here a party alleges the existence of a contractual relationship of a type embraced by section 12-120(3) . . . that claim triggers the application of [I.C. § 12-120(3)] and a prevailing party may recover fees even though no liability under a contract was established." *Garner v. Povey*, 151 Idaho 462, 469, 259 P.3d 608, 615 (2011), *citing*, *Farmers Nat. Bank v. Shirey*, 126 Idaho 63, 73, 878 P.2d 762, 772 (1994).

There is no dispute that Farm Bureau entered into contracts with Appellant who was an independent contractor to act as an insurance agent for Farm Bureau. Appellant alleges this contractual relationship in his Third Amended Complaint.[22] As a result, this type of a transaction specifically qualifies as a commercial transaction as defined by the Idaho Code and Farm Bureau should be awarded its reasonable attorney fees and costs as a matter of law. For these reasons, Farm Bureau respectfully requests that it be awarded its reasonable attorney fees and costs associated with its cross-appeal.

CONCLUSION

Based upon the foregoing, it is respectfully requested that the District Court's decisions granting summary judgment in favor of Farm Bureau be upheld, and the District Court's decisions granting summary judgment against Farm Bureau on the issues of Appellant's violations of the ITSA and interference with Farm Bureau's economic advantage be reversed. Additionally, it is respectfully requested that Farm Bureau be awarded their attorney fees and costs on appeal.

DATED this 28th day of February, 2019.

RACINE OLSON PLLP

By: /s/Lane V. Erickson
LANE V. ERICKSON, of the firm
Attorneys for Respondents

[22] R. at 732.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February, 2019, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

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By:___/s/Lane V. Erickson_____
LANE V. ERICKSON,