

NEWS RELEASES

PUBLISHED: JUNE 26, 2017

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Husch Blackwell Prevails for Huttig in Trade Secret Litigation

Husch Blackwell secured an important victory for Huttig, Inc. in litigation against PrimeSource Building Products, Inc., when a Colorado District Court judge denied PrimeSource’s motion for a preliminary injunction on June 20 that would have prevented a former employee from continuing to work as Vice President of the Huttig-Grip division of Huttig, Inc., where he had worked for over the last seven months.

Huttig Building Products hired Brad Strosahl from PrimeSource in November 2016 as part of Huttig’s growth strategy to expand its U.S. fastener business. Soon thereafter, PrimeSource filed lawsuits against Mr. Strosahl, Huttig and others claiming they “stole” confidential and trade secret information of PrimeSource and/or should be prevented from working for Huttig under a theory of “inevitable disclosure,” regardless whether they were bound by any restrictive covenants.

In its lawsuit against Mr. Strosahl filed in December 2016, PrimeSource claimed that Mr. Strosahl “stole” PrimeSource’s confidential and trade secret information when he resigned from PrimeSource to assume a similar position with Huttig. Just days prior to Christmas – and without any notice to Mr. Strosahl or Huttig – PrimeSource sought a temporary restraining order from the Court preventing Mr. Strosahl from working for Huttig, claiming that Mr. Strosahl was subject to a non-competition agreement and that he had stolen and used confidential and trade secret information of PrimeSource in his position at Huttig. Judge Eric Elliff of the District Court for the City and County of Denver immediately denied that motion in its entirety.

Earlier this month, the Court held a two-day full evidentiary hearing as to PrimeSource’s claims against Mr. Strosahl, with PrimeSource’s Chief Executive Officer George Judd and Senior Vice Presidents Scott Smith and Eric Royse

testifying on behalf of PrimeSource. Once again, Judge Elliff rejected PrimeSource's claims.

Initially, Judge Elliff rejected PrimeSource's claim that Mr. Strosahl was subject to a non-competition agreement when he resigned from PrimeSource. Judge Elliff likewise rejected PrimeSource's claim of theft or use of confidential or trade secret information, noting that the company "ha[d] failed to show that there is a reasonable probability of success on the merits of their claim of actual misappropriation of trade secret or confidential business information....Based on the evidence presented at the hearing, the Court is not convinced that [Mr. Strosahl] has actually misappropriated [PrimeSource's] trade secrets."

PrimeSource argued that Mr. Strosahl was planning to join Huttig for some time prior to his resignation and was accessing confidential information for improper purposes. The Court, however, rejected that argument, first noting, "...[Mr. Strosahl's] activities are equally consistent with his ongoing job duties at PrimeSource" and that he had promptly returned all PrimeSource information and property in his home office after tendering his resignation.

Importantly, the Court found that PrimeSource improperly tried to create and obtain a non-competition obligation where none existed. PrimeSource had argued that the company's entire business model was in effect a trade secret. The Court rejected this line of reasoning, stating that "By claiming that everything PrimeSource does is a trade secret, PrimeSource is attempting to subject [Mr. Strosahl] to a de facto non-compete provision contrary to Colorado law, or at the very least failing to account for the skill and knowledge [Mr. Strosahl] acquired before joining PrimeSource." The Court consequently concluded that "an injunction in this circumstance would violate public policy and hence the public interest."

Perhaps most revealing, PrimeSource SVP Eric Royse, who personally had verified PrimeSource's allegations of theft against Mr. Strosahl alleged in the lawsuit complaint, admitted under sworn testimony at the evidentiary hearing that Mr. Strosahl did not download and take confidential information of PrimeSource on the day he resigned, as specifically alleged in the lawsuit complaint and previously verified by him, and admitted that such allegations were false.