Frustrated Over The Lawsuit? Business Court Examines Whether Claims Are “Utterly Baseless”

Article By
Philip J. Mohr
Womble Bond Dickinson (US) LLP
North Carolina Business Court

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Where a lawsuit asserts at least one claim that is not “utterly baseless,” a plaintiff is immune from liability based solely on the pursuit of its lawsuit. Lowder v. Phillips, et al., 2020 NCBC 1 (J.McGuire). Because Plaintiff stated a claim for misappropriation of trade secrets (“MTS”), Defendant’s unfair and deceptive trade practice (“UDTP”) counterclaim based solely on the existence of Plaintiff’s lawsuit would be dismissed.

Plaintiff Lowder Construction, Inc. (“LCI”) is a commercial construction company. Defendant Ronald Phillips (“Phillips”) provided construction consulting services to LCI from 2014 until December 2017, when he then left to provide similar services for LCI’s competitor, Atlantic Wood & Timber, LLC (“Atlantic”). LCI filed suit against Phillips alleging several claims, including an MTS claim. Phillips filed a counterclaim that included a UDTP claim based upon the existence of LCI’s lawsuit; specifically, Phillips contended LCI’s lawsuit was a “sham” meant to impede his ability to compete and assist Atlantic from competing against LCI. Plaintiff filed a motion to dismiss the UDTP counterclaim, contending it was immune from liability pursuant to the Noerr-Pennington doctrine.
The Business Court agreed. Recognizing that the U.S. Supreme Court's *Noerr-Pennington* doctrine protects a party from liability simply because it filed a lawsuit, the Business Court nonetheless acknowledged that an exception can apply—and a UDTP claim is available—where the claims are both “objectively meritless” and the motive for the lawsuit was to interfere with a competitor’s business; in other words, where the lawsuit is a mere sham. (Opinion, ¶18). The exception, the Business Court explained, requires satisfaction of an extremely high burden—proving both of the foregoing elements and further convincing the Court that the *entire* lawsuit is “utterly baseless.” *Id.* Because it had previously held that LCI stated an MTS claim against Phillips, the Business Court found that the survival of this claim alone upended Phillips’ claim that the lawsuit was “utterly baseless.” As a result, the Business Court dismissed Phillips' UDTP claim.

Based upon this decision, to the extent a business can satisfy the high burden of proving that its competitor’s lawsuit is both a sham and “utterly baseless,” a claim will lie; otherwise, the business will likely be forced to endure the lawsuit without recompense.

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