ADDITIONAL DEVELOPMENTS—TRADE SECRETS

CYPRESS SEMICONDUCTOR CORP. V. SUPERIOR COURT

77 Cal. Rptr. 3d 685 (6th Dist. 2008)

In *Cypress*, the Court of Appeal for the Sixth District of California unanimously held that the trial court erred in its reading and application of the California Uniform Trade Secrets Act (CUTSA). The court held that the statute of limitations for a trade secret misappropriation claim does not hinge on a third party having actual notice from the trade secret owner that the information is a trade secret. Rather, the statute of limitations begins to run when the trade secret owner has any reason to suspect that a third party knows, or reasonably should know, that the information is a trade secret.

In 1998, a former employee of Silvaco Data Systems joined Circuit Systems, Inc. (CSI), and incorporated trade secrets from Silvaco's SmartSpice electronic design automation software into CSI's DynaSpice software. In 2000, Silvaco sued both the employee and CSI for trade secret misappropriation. Silvaco did not notify or file claims against licensed DynaSpice users, but Silvaco's suit was publicized in relevant trade publications and on various web sites. Silvaco and CSI settled the suit in 2003, with a stipulated judgment that CSI incorporated Silvaco's trade secrets into the DynaSpice product. Cypress Semiconductor Corporation, a customer of CSI and licensee of DynaSpice software, learned of the settlement in August 2003. Silvaco directly contacted Cypress one month later, insisting that Cypress stop using the DynaSpice product. Allegedly, Cypress continued to use DynaSpice despite this notice. In May 2004, Silvaco sued Cypress for trade secret misappropriation.

At trial, Cypress attempted to employ a statute of limitations defense. Cypress argued that its use of the DynaSpice software was a continuation of CSI's unauthorized use of the trade secret. According to Cypress, section 3426.6 of the CUTSA required Silvaco to file a trade secret misappropriation claim within three years of when Silvaco first suspected unauthorized use by CSI, not Cypress. Therefore, because Silvaco did not file claims against Cypress in 2000, when it first suspected misappropriation by CSI, the three-year statute of limitations had expired by the time of the May 2004 complaint. Silvaco countered that the statute of limitations under the CUTSA did not begin to run until Cypress had

knowledge of the trade secret misappropriation, which occurred in 2003. The trial court concluded that, because Cypress could not have been charged with misappropriation until it knew of the wrongfulness of its conduct, the statute of limitations for the offense did not begin to run until Cypress acquired knowledge of CSI's misappropriation in August 2003. Therefore, Silvaco's 2004 complaint against Cypress fell within the CUTSA's three-year statute of limitations. Cypress filed a petition for writ of mandate, and the Sixth District Court of Appeal granted the petition.

The Sixth District rejected Cypress's argument that its trade secret misappropriation was merely a continuation of CSI's unauthorized use. In holding that Cypress's use constituted an independent misappropriation, the court observed that Cypress was not the original unauthorized user of the trade secret, did not have a direct relationship with Silvaco, and had allegedly committed a different form of misappropriation. To hold that Cypress's misappropriation fell within CSI's unauthorized use, the court reasoned, would allow third parties to simply wait out the three-year statute of limitations for the original misappropriation, and then use the trade secret without liability. To avoid such unjust results, the court held that "a plaintiff may have more than one *claim* for misappropriation, each with its own statute of limitations, when more than one defendant is involved."

The court also rejected the lower court's interpretation of the trigger for the statute of limitations under the CUTSA. The court observed that the statute of limitations for a cause of action does not wait for a plaintiff to have all the evidence required for a winning claim. Rather, suspicion of one or more elements of a claim, in conjunction with knowledge of any remaining elements, is sufficient to start the clock. Therefore, the trial court erred in focusing on whether Cypress knew of the misappropriation, rather than determining whether Silvaco had reason to suspect that unidentified users of CSI's product knew or should have known that the product contained misappropriated trade secrets.