Missouri Uniform Trade Secrets Act Does Not Protect Customer Information Insufficiently Guarded or Which is not Truly "Trade Secret" in Character

***Central Trust and Investment Company v. Kennedy*, --- *S.W.3d* ---, 2013 WL 268687 (Mo.App.S.D.)**

In this case, a corporate successor, Central Trust Investment Company (hereafter also "Central Trust") sued the former employee (Kennedy) of its acquired company, Springfield Trust & Investment Company (hereafter also "STC"), after the employee started a business which directly competed with his former employer and Central Trust.

Within several months of Kennedy starting his competing business, Central Trust brought suit, alleging many theories, including attempting to enforce a covenant not to compete between STC and Kennedy and that the Missouri Uniform Trade Secrets Act (hereafter also "MUTSA") protected certain customer information. Discovery ensued; some highlights follow. Kennedy began with STC in 1992. His duties included acting as a vice-president and handling new business development and in managing existing clients. In 2008, Kennedy signed a six-year employment contract with STC, with an expiration date of December 31, 2013. Attached to the contract was a list of customers, apparently referred in the contract's covenant not to compete. That contract also contained a provision which stated that its covenant not to compete became void and unenforceable if STC was sold. In July 2009, STC had Kennedy sign an "Oath of Director", because it was in negotiations for Central Trust to purchase it and wanted to keep confidential certain business information.

Before leaving STC on the day of its November 20, 2009, sale to Central Trust, Kennedy had begun preparations to compete with STC. For example, in August 2009, he removed customer contact information (on a cell phone and in 40 pages) from the STC office and kept it for his own use. He also communicated with customers, telling them of his possible departure from STC and soliciting their potential business. On the day Kennedy left STC, he formed a company, ITI Financial Management (hereafter also "ITI"), which would directly compete with Central Trust. Kennedy also admitted that he had solicited Central Trust customers. By May 2010, 85 of ITT's 90 clients were former STC or Central Trust customers.

Eventually, all parties filed Summary Judgment Motions and after some procedural steps, Central Trust and Kennedy informed the court that the pivotal legal issue was whether the identity of, and information about, STC's customers/clients, "under the circumstances of this particular case" were, in fact, "trade secrets". The trial court held, *inter alia*:1) the covenant not to compete, based on its own terms, expired as of the sale of STC; and, 2) the Missouri Uniform Trade Secrets Act did not protect the confidentiality of STC's customers/clients and that Central Trust had no more persuasive a claim on this than would STC, if it were a party. Central Trust appealed.

The appellate court affirmed the trial court's order. It found, among other pertinent facts, that: 1) the terms of STC's covenant not to compete voided it once the sale to Central Trust occurred; 2) the Missouri Uniform Trade Secrets Act does not specifically include customer contact information, but that Central Trust could prove it treated the information as a trade secret and confidential; 3) evidence as to how Central Trust and its predecessor STC routinely handled customer identity and other information showed it did not treat them as sufficiently confidential to qualify as trade secrets under the MUTSA; and, 4) other STC employees also left and took customer information with them or actively solicited STC clients, but none were pursued legally.

Not surprisingly, the court relied on the recent Missouri Supreme Court decision of *Western Blue Print Co., LLC v. Roberts*, 367 S.W.3d 7 (Mo. banc 2012). In *Western Blueprint*, the court relied on long-standing precedent to state: "in the sales industry the goodwill of a customer frequently attaches to the employer's sales representative personally; the employer's product becomes associated in the customer's mind with that representative…While these 'customer contacts' are protectable, they are not protectable under a theory of confidential relationship or trade secret…[T]he proper means of protection is a non-competition agreement". *Id.*, at 18. Although there are certain aspects of the fact pattern in the *Central Trust* decision that appear to be more liberal as to the employee's conduct before departing his employer, the appellate court found *Western Blueprint* fairly dispositive.

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The *Central Trust* decision is not inconsistent with Missouri precedent, with its holdings that: 1) in general, customer/client information as to accounts the employee-salesperson dealt with is not protectable under a theory of confidential relationship; and, 2) the more effective way to neutralize customer information being used is a covenant not to compete, which would prevent the ex-employee from using those contacts unfairly against the employer. Ideally, a covenant not to compete can remove the uncertainty of an employer proving it kept the customer information sufficiently confidential to meet the multi-factored test under section 417.453(4) of Missouri Uniform Trade Secrets Act and case law. As a consequence, *Central Trust* simply underscores the wisdom of not solely relying on MUTSA or common law for protection.

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