UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MONTEL AETNASTAK, INC. and MONTEL INC.,	)	
Plaintiffs,	)	
v.	)	**No. 13 C 3801**
KRISTINE MIESSEN a/k/a KRISTINE N. SCHNEIDER, BRADFORD SYSTEMS CORPORATION, and SPACESAVER CORPORATION,	)	**Chief Judge Ruben Castillo**
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Montel Aetnastak, Inc. ("MAI") and Montel Inc. ("Montel") (collectively "Plaintiffs") bring this action against Kristine Miessen a/k/a Kristine N. Schneider ("Miessen"), Bradford Systems Corporation ("Bradford"), and Spacesaver Corporation ("Spacesaver") (collectively "Defendants") alleging: (1) breach of the non-compete provision in Meissen's employment agreement with MAI; (2) tortious interference with a third-party contract; (3) interference with a prospective economic advantage; (4) misappropriation of Plaintiffs' confidential information and/or trade secrets in violation of both common law and the Illinois Trade Secrets Act ("ITSA"), 765 Ill. Comp. Stat. 1065/1 *et seq.*; (5) breach of fiduciary duties and the duty of loyalty; (6) civil conspiracy to misappropriate trade secrets and interfere with Plaintiffs' present and future economic relations. (R. 1, Compl.) Presently before the court are various motions to dismiss Montel as a party and to dismiss the Complaint. For the reasons stated below, the motions are denied.

RELEVANT FACTS

Montel is a Canadian company incorporated and based in Montmagny, Quebec. (R. 1, Compl. ¶ 2.) MAI is an American subsidiary of Montel that is incorporated and based in Florida. (*Id.* ¶ 3.) Both companies manufacture and sell "high density shelving systems, mobile shelving storage, powered mobile shelving storage, and sliding art racks." (*Id.* ¶ 2.) Kristine Miessen is a citizen and resident of Indiana. (*Id.* ¶ 4.) Bradford is a corporation incorporated and based in Illinois that specializes in "mobile storage systems, mobile filing systems, industrial shelving, smart lockers, rotary storage systems, modular casework, modular office furniture, modular wall solutions, file and asset tracking systems, software and supplies." (*Id.* ¶ 5.) Spacesaver is a corporation incorporated in Wisconsin that sells "mobile shelving, cantilever shelving, locker storage and secure storage." (*Id.* ¶ 6.) Bradford is a distributor of Spacesaver products in Illinois, Indiana, and central and eastern Missouri. (*Id.* ¶ 5.)

On November 23, 2010, Miessen entered into an employment agreement with MAI as a Regional Sales Manager for the Midwest and a portion of the southeast United States. (*Id.* ¶ 14.) While employed with MAI, Miessen was based in Indiana but often traveled throughout her sales territory, which included Illinois, to promote MAI and Montel products. (*Id.* ¶ 15.) Miessen's employment agreement contained a non-competition clause that prohibited her from engaging in any business substantially related to the business of MAI for two years after the termination of the agreement. (R. 1-1, Ex. C, Employment Agreement at 20.)

In July or August 2011, while Miessen was still employed with MAI, a department store chain[1] contacted Montel to discuss a new high-density storage project. (R. 1, Compl. ¶ 23.) Plaintiffs worked extensively with the department store chain to modify one of Montel's mobile

[1] Plaintiffs do not specify the name of the department store chain in their complaint.

shelving products to suit the department store chain's retail needs. (*Id.* ¶¶ 24-25.) The shelving product (the "Product") was adapted according to the department store chain's specific requirements, and the modifications were not standard with other manufacturers' products in the industry. (*Id.* ¶ 26.) Knowledge of the Product adaptations was limited to the MAI sales team, which Miessen was a part of, Montel's design and engineering team, and a group of department store chain employees. (*Id.*) Plaintiffs attempted to prevent their competitors from discovering the details of their modifications. (*Id.* ¶¶ 26-27, 29.) The customized Product was not advertised on the companies' websites or catalogs, nor was it promoted to other customers. (*Id.* ¶ 27.) In addition, Plaintiffs did not announce their business relationship with the department store chain. (*Id.* ¶ 29.) Plaintiffs entered into a financial transaction with the department store chain to provide the Product for demonstration and further evaluation in an active store in Minneapolis, Minnesota. (*Id.* ¶ 33.) Plaintiffs also arranged a transaction with the department store chain that involved 135 stores in Canada and fourteen stores in the United States. (*Id.* ¶ 34.) The department store chain submitted its first purchase order for the modified shelving units on February 9, 2012. (*Id.* ¶ 40.) It advised Plaintiffs that the Product would be installed in phases, 20-35 stores at a time. (*Id.* ¶ 35.)

As part of the sales team, Miessen possessed knowledge about the Product, including its pricing information. (*Id.* ¶¶ 28, 31.) Miessen also had direct contact with department store chain employees at trade shows in 2011. (*Id.* ¶ 32.) On or around December 21, 2011, Bradford attempted to recruit Miessen to work for it while she was still an employee of MAI. (*Id.* ¶ 47.) Bradford approached Miessen again on or around January 20, 2012, to schedule a meeting to discuss employment with Bradford. (*Id.*) On January 27, 2012, Miessen met with Bradford. (*Id.* ¶ 48.) Following the meeting, in early February 2012, she provided her "ideal" financial and

benefit employment package to a Bradford executive. (R. 1-1, Ex. D, Miessen's Statement at 21.) Miessen received an e-mail on February 27, 2012, from Bradford offering her employment. (*Id.*) The offer had "enhanced financial and benefit provisions" compared to what Miessen originally proposed in early February 2012. (*Id.*) Miessen alerted MAI on February 28, 2012, that she would be resigning from her position, and she resigned two weeks later. (R. 1, Compl. ¶ 53.) On February 29, 2012, Miessen accepted Bradford's offer of employment. (R. 1-1, Ex. D, Miessen's Statement at 21.)

In October or November 2012, Plaintiffs were invited to submit a proposal to install their Product in a store in Aventura, Florida. (R. 1, Compl. ¶ 35.) As of January or February 2013, MAI had not received any further instructions with regards to the Florida store. (*Id.* ¶ 41.) Plaintiffs allege that Bradford, on behalf of Spacesaver, produced its own high-density mobile carriage and performed a test case for the department store chain's Florida store. (*Id.* ¶ 35.) Plaintiffs further allege that Miessen traveled to Florida to oversee and participate in the test case. (*Id.* ¶ 36.) Eventually Plaintiffs learned through a third party that Spacesaver was outfitting the high-density mobile carriage for the department store chain's Florida store. (*Id.* ¶ 41.) Plaintiffs also allege that Miessen served as the project manager for the construction of the mobile carriages. (*Id.*)

Plaintiffs allege that Miessen serves as a liason for Bradford's contract with the department store chain to configure Spacesaver products for the Florida store. (*Id.* ¶ 43.) Plaintiffs further allege that Miessen was Bradford's direct point of contact with the department store chain, and through this role she communicated Montel's proprietary information, pricing and trade secrets to the department store chain's staff. (*Id.*)

PROCEDURAL HISTORY

On May 22, 2013, Plaintiffs filed their complaint. (R. 1, Compl.) In Count I, Plaintiffs allege that Miessen breached the non-compete provision of her employment agreement by accepting employment with Bradford. (*Id.* ¶¶ 65-73.) In Count II, Plaintiffs allege that Bradford and Spacesaver intentionally interfered with Miessen's employment agreement with MAI. (*Id.* ¶¶ 74-81.) In Count III, Plaintiffs allege that Defendants wrongfully interfered with their expectation of entering into a valid business relationship with the department store chain. (*Id.* ¶¶ 82-87.) In Count IV, Plaintiffs allege that Defendants misappropriated Plaintiffs' trade secrets or otherwise confidential information about the Product in violation of both common law and the ITSA. (*Id.* ¶¶ 88-98.) In Count V, Plaintiffs allege that Miessen breached her fiduciary duties and her duty of loyalty to MAI by misappropriating Plaintiffs' confidential information. (*Id.* ¶¶ 99-105.) In Count VI, Plaintiffs allege that Defendants conspired to interfere with Plaintiffs' relationship with the department store chain and utilized Plaintiffs' trade secret or otherwise confidential information to steal Plaintiffs' customer. (*Id.* ¶¶ 106-109.) Finally, in Count VII, Plaintiffs seek to preliminary and permanently enjoin Defendants from using Plaintiffs' trade secrets and proprietary information and to enforce the non-compete provision in Miessen's employment agreement. (*Id.* ¶¶ 110-12.) Plaintiffs seek compensatory and punitive damages. (*Id.* ¶¶ 72-73, 80-81, 86-87, 97-98, 104-05, 108-09.)

On July 16, 2013, Miessen and Bradford moved to dismiss Montel as a party to the case for lack of standing pursuant to Federal Rule of Civil Procedure 12(b)(1). (R. 22, Bradford's & Miessen's Mot. Dismiss Montel.) On the same day, Miessen moved to dismiss the complaint for lack of personal jurisdiction pursuant to Rule 12(b)(2). (R. 26, Miessen's Mot. Dismiss.) Miessen and Bradford also moved to dismiss the complaint for failure to state a claim pursuant to Rule 12(b)(6). (R. 29, Bradford's & Miessen's Mot. Dismiss Compl.) Finally, Spacesaver

moved to dismiss Montel as a party to the case for lack of standing pursuant to Rule 12(b)(1) and to dismiss the complaint for failure to state a claim pursuant to Rule 12(b)(6). (R. 21, Spacesaver's Mot.)

ANALYSIS

I. Choice of Law

Before evaluating the merits of Defendants' motions, the court must determine what substantive law applies. A federal court sitting in diversity applies the forum state's choice-of-law rules to determine which state's substantive law applies. *See Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941) ("The conflict of laws rules to be applied by the federal court in Delaware must conform to those prevailing in Delaware's state courts."); *Auto-Owners Ins. Co. v. Websoly Computing, Inc.*, 580 F.3d 543, 547 (7th Cir. 2009) (citing *Klaxon Co.*, 313 U.S. at 496). "Courts do not worry about conflict of laws unless the parties disagree on which state's law applies." *Auto-Owners Ins. Co.*, 580 F.3d at 547 (quoting *Wood v. Mid-Valley Inc.*, 942 F.2d 425, 427 (7th Cir. 1991)).

In the instant case, Plaintiffs have selected Illinois as the forum and allege violations of Illinois statutes and Illinois common law. (R. 1, Compl.) Defendants only raise choice-of-law issues in one of their four motions, (*see* R. 30, Bradford's & Miessen's Mem. Dismiss Compl. at 4), and do not disagree with Plaintiffs as to the application of Illinois law. (*Id.*) In all four of their motions, Defendants seek dismissal of Plaintiffs' complaint under Illinois law. (R. 22, Bradford's & Miessen's Mot. Dismiss Montel; R. 26, Miessen's Mot. Dismiss; R. 29, Bradford's & Miessen's Mot. Dismiss Compl.; R. 21, Spacesaver's Mot.) Because the parties agree that Illinois law applies, the Court will apply Illinois State law to Defendants' motions.

Having established that Illinois State substantive law applies, the Court now moves to resolving Defendants motions to dismiss. The Court first addresses Defendants' motions to dismiss pursuant to Rule 12(b)(1), and then turns to the motions to dismiss pursuant to Rules 12(b)(2) and 12(b)(6).

II. Defendants' Rule 12(b)(1) motions to dismiss

Defendants argue in two separate motions that Montel should be dismissed as a party pursuant to Federal Rule of Civil Procedure 12(b)(1). (R. 24, Bradford's & Miessen's Mem. Dismiss Montel at 3; R. 41, Spacesaver's Reply at 7.)

A. Legal Standard

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) asks the court to dismiss an action over which it allegedly lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "The burden of proof on a 12(b)(1) issue is on the party asserting jurisdiction." *United Phosphorus, Ltd. v. Angus Chem. Co.*, 322 F.3d 942, 946 (7th Cir. 2003), *overruled on other grounds by Minn–Chem, Inc. v. Agrium, Inc.*, 683 F.3d 845 (7th Cir. 2012). All reasonable inferences are drawn in favor of the plaintiff, and all well-pleaded allegations are accepted as true. *Long Shorebank Dev. Corp.*, 182 F.3d 548, 554 (7th Cir. 1999). Finally, when considering a Rule 12(b)(1) motion to dismiss, the court may look beyond the allegations of the complaint and may consider other submitted evidence. *See Johnson v. Apna Ghar, Inc.*, 330 F.3d 999, 1001 (7th Cir. 2001) (quoting *id.*)

B. Whether Montel has standing

Miessen and Bradford argue that Montel should be dismissed as a party because it lacks standing and cannot demonstrate an injury in fact or an invasion of any legally protected interest. (R. 24, Bradford's & Miessen's Mem. Dismiss Montel at 3.) Plaintiffs argue that Montel was

injured directly and indirectly as the undisclosed principal of its agent, MAI. (R. 37, Pls.' Opp'n Bradford's & Miessen's Mot. Dismiss Montel at 5, 9-11, 13.) The Court addresses each argument in turn.

i. Whether Montel has standing in this case as to Counts I, II, and V of the Complaint

Bradford and Miessen argue that Montel lacks standing with regards to Counts I, II, and V of the complaint because it is neither a party nor a third-party beneficiary of the employment agreement with Miessen, nor is it the undisclosed principal of its agent, MAI. (R. 24, Bradford's & Miessen's Mem. Dismiss Montel at 3.) Plaintiffs do not allege that Montel is a direct or a third-party beneficiary, but rather that Montel has standing as the undisclosed principal of its agent, MAI. (R. 37, Pls.' Opp'n Bradford's & Miessen's Mot. Dismiss Montel at 5-6.)

"The test of agency is whether the alleged principal has the right to control the manner and method in which work is carried out by the alleged agent and whether the alleged agent can affect the legal relationships of the principal." *Chemtool, Inc. v. Lubrication Techs., Inc.*, 148 F.3d 742, 745 (7th Cir. 1998) (citing *Anderson v. Boy Scouts of Am., Inc.*, 589 N.E.2d 892, 894 (Ill. Appt. Ct. 5th Dist. 1992)); *see also Caligiuri v. First Colony Life Ins. Co.*, 742 N.E.2d 750, 756 (Ill. App. Ct. 1st Dist. 2000). Under Illinois law, "a complaint relying on agency must plead facts which, if proved, could establish the existence of an agency relationship." *Connick v. Suzuki Motor Co., Ltd.*, 675 N.E.2d 584, 592 (Ill. 1996). Merely pleading the legal conclusions of agency is insufficient. *Id.*

Here, Plaintiffs improperly asserted that "MAI is an agent for Montel Products in the United States" based upon Plaintiffs' own legal conclusions rather than an application of Illinois law. (R. 1, Compl. ¶¶ 11.) Plaintiffs also state, however, that as part of Montel's efforts to develop business in the United States, MAI "transacts business via federal (General Services

Administration) and state government purchasing contracts" on behalf of Montel. (*Id.* ¶ 11-12.) Further, MAI operates "within the Montel family of companies." (*Id.* ¶ 11.) Drawing all inferences in the Plaintiff's favor, Montel controls the manner and method in which MAI accomplishes its goal of developing business in the United States. Additionally, by permitting MAI to enter into purchasing contracts on behalf of Montel, MAI has the ability to affect Montel's legal relationships. Therefore, the Court finds that Plaintiffs allege sufficient facts to demonstrate that MAI acted as Montel's agent.

Seeking to avoid this result, Spacesaver argues that Montel's dismissal as a party to the suit is proper because Montel is not a party to the employment agreement between MAI and Miessen. (R. 41, Spacesaver's Reply at 7; *See* Restatement (Second) of Agency § 302 (1958)). Spacesaver overlooks the fact that in order to exclude an undisclosed principal from a contract a party must explicitly do so, which neither Montel nor Miessen have done here. Restatement (Third) of Agency § 6.03 cmt. b (2006). Alternatively, Spacesaver argues that if Montel is a proper party to the employment agreement, MAI must be dismissed because once the principal brings suit the rights of the agent are extinguished. (R. 41, Spacesaver's Reply at 8.) Spacesaver supports this proposition by citing to *Warder v. White*, 14 Ill. App 50 (Ill. App. Ct. 1st Dist. 1883). In *Warder,* the court held that "the right of the principal to sue is paramount to that of the agent and in cases where either may bring the action, the former, by giving notice to the other contracting party, puts an end to the agent's right of action." 14 Ill. App at 54. The Seventh Circuit addressed this issue in *Rawoof v. Texor Petroleum Co.*, 521 F.3d 750 (7th Cir. 2008), citing with approval to the Restatement (Third) of Agency § 6.03. 521 F.3d at 758. The Restatement makes clear that, unless explicitly excluded by the contract, the principal is a party to the contract, along with the agent and third party. Restatement (Third) of Agency § 6.03. In

Rawoof, the Seventh Circuit found that the plaintiff failed to develop a factual basis for his claim that he was an agent of the principal, but nonetheless upheld the rule that both agent and principal may bring suit. 521 F.3d at 758. Here, the employment agreement does not explicitly limit enforceability to MAI. In addition, the Court has already determined, as discussed above, that Plaintiffs have successfully pled a valid principal-agent relationship. Thus, Montel and MAI may enforce the agreement without extinguishing each other's right to bring suit.

Therefore, the Court finds that Montel does have standing as to Counts I, II and V, and Defendants' motions to dismiss (R. 21, Spacesaver's Mot.; R. 22, Bradford's & Miessen's Mot. Dismiss Montel) are denied as to these counts.

ii. Whether Montel lacks standing as to Counts III, IV, VI, and VII of the Complaint

Defendants argue that Montel lacks standing with regards to Counts III, IV, VI, and VII because it suffered no injury in fact and cannot establish Article III standing. (R. 24, Bradford's & Miessen's Mem. Dismiss Montel at 7-8; R. 23, Spacesaver's Mem. at 4.) Plaintiffs contend that Montel suffered direct harm from Defendants' alleged tortious conduct and thus have standing as to Counts III, IV, VI, and VII. (R. 37, Pls.' Opp'n Bradford's & Miessen's Mot. Dismiss Montel at 9-11.) To satisfy Article III's standing requirement, a party must establish: (1) an injury in fact, which is an invasion of a legally protected interest that is concrete and particularized; (2) a causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision. *Lee v. City of Chi.*, 330 F.3d 456, 468 (7th Cir. 2003) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

Here, Plaintiffs allege that Montel worked with the department store chain to design a particularized mobile shelving unit, which Miessen was exposed to as part of MAI's sales team.