IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0469

September Term, 2014

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COMMAND TECHNOLOGY, INC.

v.

LOCKHEED MARTIN CORPORATION

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Hotten,
Nazarian,
Friedman,

JJ.

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Opinion by Friedman, J.

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Filed: October 27, 2015

This appeal arises from a business dispute between a small software company, Command Technology, Inc. ("Command") and one of the world's largest defense contractors, Lockheed Martin Corporation ("Lockheed"). The dispute relates to Command's unsuccessful attempt to obtain a contract with the United States Air Force ("Air Force") to supply a software system designed to assist with the maintenance of F-16 aircraft, which are manufactured by Lockheed. Command brought numerous claims against Lockheed, including tortious interference with business relations, unfair competition, misappropriation of trade secrets, and breach of contract claims. Only the tortious interference and unfair competition claims went to the jury. The jury found Lockheed liable on both counts and awarded damages in the amount of $24,863,000. Following the verdict, however, the trial court granted Lockheed's motion for judgment notwithstanding the verdict ("JNOV"), holding that no reasonable juror could have concluded that Lockheed had a duty to supply technical data formatted to certain specifications during an Air Force test of Command and other rival bidder's software.

We are asked to examine, first, the trial court's grant of JNOV on the tortious interference and unfair competition claims and, second, the trial court's grant of summary judgment on the misappropriation of trade secrets claims and the related breach of contract claims. The issues in this case give us chance to stress that competition amongst business rivals can be aggressive and harsh. Aggressive and harsh business tactics alone, however, will not make a business liable to a spurned competitor unless the intentionally-stringent

legal standards for establishing these business tort and contract claims are satisfied. With this principle in mind, we affirm the decisions of the trial court.

FACTUAL BACKGROUND

We have broken down the questions presented in this case into two primary issues: first, the grant of JNOV on the tortious interference and unfair competition claims; and, second, the grant of summary judgment on the misappropriation claims and the breach of contract claims that are based on the alleged misappropriations. The facts most pertinent to each issue are different and somewhat convoluted so, for the sake of clarity, we will provide the factual narratives underlying the two primary issues as part of their respective discussions. Before reaching the discussions, however, we will provide some general background that is relevant to all issues on Command's software system and its connection with Lockheed and the Air Force.

Command is a small business that develops computer software for military applications. Amongst its products is C2Web, a software program used to convert technical data concerning the maintenance, repair, and overhaul of military aircraft into a user-friendly, "point and click" display, much like an internet website.

Lockheed manufactures the F-16 "Fighting Falcon" aircraft for the United States Air Force and certain military allies. The F-16 aircraft is "arguably the finest combat airplane of the jet age. It's the principal frontline warplane of the U.S. Air Force and of the armed forces of 25 other nations." Bob Cox, *Lockheed Martin to Deliver 4,500th F-16 Fighter*, McClatchy DC (Apr. 2, 2012), http://perma.cc/2PPC-SC9W. Besides initial sales,

Lockheed also has an ongoing contractual obligation to the Air Force to provide services and supplies to maintain the F-16s. As part of Lockheed's obligation to maintain F-16s, Lockheed supplies technical specifications, parts catalogs, and maintenance instructions. This type of information is generally referred to (and will be referred to in this Opinion) as the aircraft's technical data.

From our review of the record, it seems clear that the Air Force's development of aircraft, including but not limited to the F-16, has far outstripped its development of computer systems to assist in parts ordering, maintenance protocols, and inventory management. The Air Force is now attempting to create modern computer support systems for its existing inventory of aircraft and weapons systems through the Enhanced Technical Information Management Systems (ETIMS) program.

As part of the ETIMS roll-out, Command won a contract to provide the Air Force with its C2Web software. The Air Force selected Lockheed's F-16 for a "pilot program" to test the use of the C2Web software. The understanding was that if Command's software could be successfully deployed for use with the F-16, it could potentially be purchased for use with other Air Force aircraft as well.

The Air Force's selection of Lockheed's F-16 for the pilot program of the C2Web software required Lockheed and Command to work closely together. At the direction of the Air Force, Lockheed entered into an "Integration Contract" with Command, to purchase the C2Web software and by which Command would provide customization and integration services to Lockheed. Under this arrangement, Lockheed would test all aspects of the

C2Web software on the F-16s, using technical data that Lockheed itself supplied. This arrangement required Lockheed to have access to Command's C2Web software proprietary information.

Command's C2Web software relies on the interplay between three components: (1) the aircraft's technical data, which is supplied by the aircraft's manufacturer; (2) document-type definitions (DTDs), which are obtained from the Technical Manual Specifications and Standards Office of Air Force Material Command (TMSS office); and (3) style sheets, which are created by Command. If all goes well, the technical data is inputted into Command's software, the DTDs interpret the technical data, and then the style sheets display the interpreted data in electronic format. The C2Web software will only display properly if all three components (the technical data, DTDs, and style sheets) are compatible and functioning together.

In an effort to ensure compatibility between these three components, the TMSS office sets uniform standards for the specifications for technical data and DTDs. Essentially, the TMSS office sets out the required specifications for technical data, then it provides DTDs with matching specifications for companies like Command to download and package with compatible style sheets. The TMSS office has the exclusive authority to set the technical specification standards and to adjudicate compliance with its standards. Only the TMSS office can grant a waiver from its requirements. As will become apparent, Lockheed's obligation (or lack thereof) to provide technical data authored to TMMS specifications is a major point of contention in this case.

As we noted, the claims at issue on this appeal relate to two separate instances (or patterns) of allegedly tortious conduct on the part of Lockheed.

First, Command programmed its software system to operate with TMSS-complaint DTDs and style sheets for when the Air Force conducted a functionality test of Command's (and other bidders') display software systems. When the Air Force administered the test, Lockheed, which was responsible for supplying the technical data, supplied technical data that was not TMSS-compliant. Because Command's software was programmed to TMSS-compliant specifications that did not match Lockheed's non-TMSS-compliant technical data, its software could not display. As a result, Command did not win the bid. This is the basis for Command's tortious interference and unfair competition claims.

Second, when the Air Force first chose Command's software system to be used in the ETIMS program, the Air Force required Lockheed to work with Command to integrate the software in the F-16 maintenance system. The Integration Contract between Lockheed and Command provided that Lockheed was prohibited from disclosing Command's proprietary information to third parties without Command's consent. Lockheed allegedly disclosed proprietary information to third parties without Command's approval on several occasions, despite the contractual prohibition. This is the basis for Command's

misappropriation of trade secrets claims and the breach of contract claims related to the

alleged misappropriations of trade secrets.

DISCUSSION

We are asked to determine (1) whether the trial court erred by granting Lockheed's

motion for JNOV on Command's claims for tortious interference and unfair competition[1]

and (2) whether the trial court erred in granting Lockheed's motion for summary judgment

on Command's claims for misappropriation of trade secrets and related breach of contract

claims. We address these claims in turn.

I.   JNOV on Command's Tortious Interference and Unfair Competition Claims

Command's main argument is that that the trial court erred by granting Lockheed's

motion for JNOV on the grounds that no reasonable juror could have found that Lockheed

had any obligation to supply TMSS-compliant technical data for the test. Command claims

that there was evidence adduced at trial that Lockheed was obligated to supply TMSS-

compliant technical data and that this evidence was sufficient to support the jury's verdict

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[1] Command stated at oral argument that it will waive the other issues if this Court reverses the grant of JNOV on the tortious interference and unfair competition claims and reinstates the jury's verdict. Because we affirm the trial court's grant of JNOV, we will address the other issues raised by Command, except for the punitive damages issue. Command claims that the trial court erred in granting Lockheed's motion for summary judgment on Command's claim for punitive damages. Because we will affirm the trial court's grant of JNOV, no compensatory damages can be awarded, and thus, punitive damages cannot be awarded. *Exxon Corp. v. Yarema*, 69 Md. App. 124, 138 (1986) ("The Maryland rule is that punitive damages may not be awarded absent compensatory damages.").

on both the tortious interference and unfair competition claims. Command further argues that even if Lockheed was not obligated to supply TMSS-compliant technical data, this fact would not prevent a favorable jury finding for it on the unfair competition claim because that tort has a less stringent wrongful conduct requirement than a tortious interference claim.

We review the grant of a motion for JNOV *de novo* and consider whether there was "any evidence adduced, however slight … from which reasonable jurors, applying the appropriate standard of proof, could find in favor of the plaintiff on the claims presented." *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 333 (2013). We consider "the evidence and the reasonable inferences to be drawn from it in the light most favorable to the nonmoving party." *Id.* For the reason that follow, we affirm the trial court's grant of JNOV as to both the tortious interference and unfair competition claims.

A. Background

When Lockheed began testing the C2Web software with the F-16s, problems arose because the F-16 technical data and DTDs were not TMSS-compliant and, thus, were not compatible with Command's software. John George, a Command employee who worked on the C2Web software, testified that he was aware that the C2Web software was incompatible with the F-16 technical data, and that he tried to work around the compatibility problems with limited success.

Shortly after Command's C2Web software was selected by the Air Force, Lockheed licensed a rival software it had been developing to InfoTrust, a competitor of Command.

Command alleges that Lockheed's direct financial interest in the sales of the rival software by InfoTrust resulted in Lockheed taking deliberate efforts to ensure that Command's C2Web software failed and was not deployed throughout the Air Force or to our foreign military allies. Command cites the existence of this rival software as Lockheed's motive for providing technical data that was not compatible with the C2Web software.

Whatever the reasons or motives, the compatibility problems between the F-16 and Command's C2Web software resulted in the software failing to perform its intended function during the time Lockheed was charged with testing and deploying it. Given C2Web's failure, the Air Force did not offer Command a contract to provide the software for systems throughout the Air Force. The Air Force did, however, offer Command one final opportunity to demonstrate that its software would work with the F-16 and earn the contract. This final opportunity came pursuant to the issuance of a new Request for Proposal (RFP) issued by the Air Force. Under the RFP terms, the Air Force would independently test the software of interested bidders, including Command. Applicants were required to use DTDs and style sheets conforming to TMSS requirements. The Air Force informed the applicants, via an official "Q&A" posted on its website, that TMSS-compliant DTDs must be used for the RFP evaluation. Command responded by calibrating its software with TMSS-compliant DTDs and corresponding style sheets. The Air Force requested that Lockheed supply the F-16 technical data for the RFP test.

Shortly before the RFP test took place, the Secretary of the Air Force issued an order on the methods and procedures to be used for technical manuals ("the Order"), which

required that all aircraft manufacturers use DTDs from the TMSS website to create technical data. It also required manufacturers that had previously used non-TMSS-compliant technical data to analyze the feasibility of bringing their technical data into compliance with TMSS standards. The F-16 technical data that Lockheed had provided for many years prior to the Order was not TMSS-complaint. Lockheed requested that the TMSS Office waive the Secretary's requirements for F-16 technical data, but the request was not officially granted or denied.

When the RFP test was held, Lockheed supplied technical data that was not TMSS-compliant. The DTDs and style sheets preloaded into Command's software did not match Lockheed's technical data, and the C2Web software failed to generate an interactive display to be evaluated. Command swapped their preloaded DTDs for DTDs provided by Lockheed in an attempt to complete the test, but Command's preloaded style sheets were authored to work with TMSS-compliant DTDs and Command's software was still unable to produce an electronic display. Command received a rejection letter from the Air Force days later. Because the other applicant in the RFP was also unable to meet the evaluation criteria, the Air Force cancelled the RFP and awarded no contract.

B.   *Tortious Interference*

Command contends that the trial court erred in granting JNOV on the tortious interference claim because it erroneously concluded that Lockheed's conduct was not "wrongful" as a matter of law, based on its view that Lockheed had no obligation to supply TMSS-compliant technical data. Command argues that the Order from the Secretary of the

Air Force requiring manufacturers to use TMSS-compliant technical data and the RFP's

requirement that bidders use TMSS-complaint DTDs and style sheets created an obligation

on Lockheed to provide TMSS-compliant technical data. Command concludes that

Lockheed's conduct was wrongful because Lockheed breached this obligation to supply

TMSS-compliant technical data for the purpose of interfering with Command's prospective

business relationship with the Air Force.

The Court of Appeals has distinguished between two types of tortious interference

claims:

> [T]he two general types of tort actions for interference with business relationships are [1] inducing the breach of an existing contract and, [2] more broadly, *maliciously or wrongfully* interfering with economic relationships in the absence of a breach of contract .... The two types of actions differ in the limits on the right to interfere …. [W]here a contract between two parties exists, the circumstances in which a third party has a right to interfere with the performance of that contract are more narrowly restricted. A broader right to interfere with economic relations exists where no contract or a contract terminable at will is involved.

Natural Design, Inc. v. Rouse Co., 302 Md. 47, 69-70 (1984) (emphasis added). Command

does not argue that Lockheed induced the breach of an existing contract between Command

and the Air Force, but rather claims that Lockheed maliciously and wrongfully interfered

with Command's *prospective* business relations. Therefore, given the allowance for

aggressive business tactics, Lockheed's right to interfere (without committing a tort) will

be construed more broadly than it would be if Command was claiming that Lockheed

induced the breach of an existing contract between Command and the Air Force. *See id.* at 70.

To recover for tortious interference with prospective business relations in Maryland, the plaintiff must present evidence of:

> "(1) [I]ntentional and wilful acts; (2) calculated to cause damage to the plaintiffs in their lawful business; (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendants (which constitutes malice); and (4) actual damage and loss resulting."

K & K Mgmt., Inc. v. Lee, 316 Md. 137, 155 (1989) (quoting *Natural Design*, 302 Md. at 71). In *K & K Mgmt., Inc.*, on which the trial court relied heavily, the Court of Appeals established that, in addition to a defendant's conduct being intentional, the conduct must also be *improper*. *Id.*; *Macklin v. Robert Logan Associates*, 334 Md. 287, 301 (1994) ("To establish tortious interference with prospective contractual relations, it is necessary to prove both a tortious intent and improper or wrongful conduct.").

Here, the trial court recognized that there was sufficient evidence for a jury to conclude that Lockheed's interference was intentional and that there was evidence to suggest that Lockheed's motive in supplying noncompliant technical data was to interfere with Command's software for the advantage of InfoTrust. The grant of JNOV, however, was based on the lack of evidence upon which the jury could conclude that Lockheed's interference was improper or wrongful. Therefore, we must determine whether there was any evidence that Lockheed's failure to supply TMSS-compliant technical data for the RFP test constituted improper conduct.

"[I]nterference with another's contract or business relations in the name of competition is improper only if the means used are, in themselves, improper." *Macklin*, 334 Md. at 302. Improper conduct is "incapable of precise definition" and is generally a question of fact. The Court of Appeals, however, has established that where the decision to enter, continue, or terminate a contract with the plaintiff "rests solely in the discretion of [a] third party, it is not improper or wrongful conduct for one in competition with the plaintiff to provide that third party with a reason for exercising his or her discretion." *Id.* at 304. "No matter with what motive or intention a defendant may have acted, it cannot be said in that situation, that he or she acted improperly or wrongfully so long as he or she was legitimately competing for the subject of the contract." *Id.* at 305. From this, we discern the general policy that interference with the prospective business relations of a competitor is largely permissible if the interference is done in the name of competition. *Id.* ("[L]awful competition must be sustained and encouraged by the law.") (quoting *Knickerbocker Ice Co. of Baltimore City v. Gardiner Dairy Co.*, 107 Md. 556 (1908)).

Thus, to satisfy its burden to demonstrate improper or wrongful conduct by Lockheed, Command was required to establish that Lockheed breached a legal or contractual obligation to supply TMSS-compliant technical data for the RFP test. Without a breach of an actual obligation, we cannot find that Lockheed engaged in any improper or wrongful conduct. Command cites to three facts that it claims establish the existence of such an obligation. *First*, Command contends that an obligation arose from the Order from the Secretary of the Air Force instructing all manufacturers to author and maintain technical

data and DTDs in compliance with TMSS standards. *Second*, Command claims that the Air Force's rejection of Lockheed's request to exempt F-16 technical data from TMSS requirements establishes that Lockheed was under an obligation to provide TMSS-compliant technical data for the RFP test. *Third*, Command claims that an obligation to supply compliant technical data emanated from the plain language of the RFP, which instructed applicants to load their software with TMSS-compliant DTDs and matching style sheets. We address these contentions in turn.

First, the trial court correctly found that the 2011 Order from the Secretary of the Air Force did not create an obligation on Lockheed. The Order is not specifically directed at Lockheed, but instead is directed at all existing and new manufacturers. Further, the Order does not necessarily require manufacturers who were previously authoring technical data to convert the data into TMSS-compliant format. The Order instead instructs those manufacturers that were already authoring technical data, but whose technical data was not TMSS-compliant, to analyze the costs and benefits of rewriting the data to comply with TMSS standards. Thus, before this obligation would have become operative, a cost-benefit analysis would have to be performed and the Air Force would have to decide whether to pay Lockheed to do the work. Also, as the trial court noted, the technical data that Lockheed had been providing for years, including at the time of the RFP, was not TMSS-compliant. This fact was not concealed from Command. We agree with the trial court that the general Order from the Secretary of the Air Force, sent to all manufacturers, did not create a contractual obligation for Lockheed to supply TMSS-compliant technical data for the RFP.

Second, we agree with the trial court that Lockheed's requested waiver from the TMSS requirement did not create an obligation on Lockheed to supply TMSS-compliant technical data for the RFP test. There was no clear evidence on the record that Lockheed's request for a waiver from TMSS-compliance was denied. Rather, there was testimony that there were unsuccessful efforts between Lockheed and the Air Force to formalize the existing informal arrangement, by which Lockheed would be permitted to continue to supply the same non-TMSS-compliant technical data. Moreover, even if there had been a denial of Lockheed's requested waiver, that does not amount to a contractual obligation requiring Lockheed to have TMSS-compliant technical data available in time for the RFP test. Neither the Order's language nor the surrounding circumstances convince us that the Order was intended to or did create an obligation on Lockheed to supply TMSS-compliant technical data in time for the RFP test.

Third, Command argues that because the RFP instructed bidders to format their software components to operate with TMSS-compliant technical data, Lockheed was obligated to provide TMSS-compliant technical data for the RFP test. We agree with the trial court that the RFP did not create such an obligation. The RFP was drafted by the Air Force, not Lockheed. The RFP provided instructions to the bidders as to how their software should be programmed but did not make any demands of Lockheed as to the specifications of the technical data that it would supply. There is no indication whatsoever that the RFP created a contractual obligation for Lockheed to rewrite the technical data to match the TMSS-compliant DTDs. In fact, there was testimony that suggested that the Air Force did

not expect Lockheed to provide TMSS-compliant technical data for the RFP. Further, when Command's C2Web software was unable to display the non-compliant technical data during the test, Command was given the opportunity to adjust its software to try to produce a display. In any event, even if Command inferred from the RFP's requirement that TMSS-compliant DTDs meant that TMSS-complaint technical data would be used for the test, the RFP does not constitute a contract between Lockheed and the Air Force.

Although Lockheed wasn't forthcoming about the compatibility problems Command was about to face, and didn't supply TMSS-compliant technical data for the test that might have saved Command from failure, its conduct simply does not rise to the level of improper or wrongful conduct required to establish the tort of interference with prospective economic relations. Lockheed never had a contractual obligation to supply TMSS-complaint technical data, and therefore there was no breach that a reasonable jury could have found to be independently improper conduct. As the trial court noted, at most, Lockheed failed to correct Command's mistaken assumption that Lockheed would provide TMSS-compliant technical data for the RFP test and that choice does not establish the improper conduct required to establish tortious interference with prospective business relations. We affirm the decision of the trial court.

C. *Unfair Competition*

Command next claims that the trial court erred by granting the motion for JNOV on the unfair competition claim. Command suggests that the same evidence that supported a finding of improper or wrongful conduct in the context of its tortious interference claim

also establishes that Lockheed engaged in unfair competition. It further contends that the standard for unfair competition is more lenient than the standard for improper conduct in tortious interference. Lockheed counters by emphasizing that unfair competition may not be used as a means to skirt the improper act requirement of tortious interference. It further contends that the same public policy encouraging competition for prospective business relations also applies to unfair competition claims. We agree with Lockheed that unfair competition is not a "fallback" tort that can save Command from its failure to establish tortious interference and, therefore, affirm the trial court's grant of JNOV. We explain.

"Unfair competition is generally defined in Maryland as, 'damaging or jeopardizing another's business by fraud, deceit, trickery or unfair methods.... What constitutes unfair competition in a given case is governed by its own particular facts and circumstances.'" *Cavalier Mobile Homes, Inc. v. Liberty Homes, Inc.*, 53 Md. App. 379, 389 (1983) (quoting *Baltimore Bedding Corp. v. Moses*, 182 Md. 229, 237 (1943)). In making a case-specific determination as to whether conduct constitutes unfair competition, courts must be careful to protect legitimate competition among business rivals. *Edmondson Vill. Theatre v. Einbinder*, 208 Md. 38, 48 (1955). "The courts must be careful to guard against extending the meaning of 'unfair competition' to cover acts which may be unethical yet not illegal." *Id.*

Despite the amorphous contours of unfair competition, we disagree with Command that Lockheed's conduct constituted deception, trickery, and unfair methods as those terms are defined in the context of the tort. Even if Lockheed's failure to supply TMSS-compliant

technical data for the RFP test was intended to cause the Air Force to form false impressions about the capabilities and functionality of Command's software, courts must not extend the meaning of unfair competition to cover conduct that may be unethical but not illegal. *Einbinder*, 208 Md. at 48. As we explained in the previous section, Lockheed never had a legal obligation to any party to supply TMSS-compliant technical data for the RFP test and, thus, did not unfairly take advantage of any party's reasonable expectations. We agree with the trial court that there is not a fact in this record that suggests that Lockheed's conduct was anything more than sharp business tactics.

Command's unfair competition argument essentially asks us to apply a less exacting standard to the same facts that failed to establish the wrongful conduct element of tortious interference. As we emphasized in our discussion of tortious interference, there is a general public policy of allowing and, in fact, encouraging competition among rival businesses. *See Macklin*, 334 Md. at 302 ("[L]awful competition must be sustained and encouraged by the law."). Business torts do not exist to allow courts to retroactively pick winners and losers in the marketplace but to enforce only minimum standards of conduct. We hold that Lockheed's failure to supply TMSS-compliant technical data, and its failure to correct Command's mistaken assumption that TMSS-compliant technical data would be supplied, does not constitute unfair competition.

II. Summary Judgment

Command also challenges the trial court's grant of two of Lockheed's motions for summary judgment. The trial court's first Order granted summary judgment on the grounds

that Command's misappropriation-based claims are barred by the statute of limitations.

The trial court's second Order granted summary judgment on the breach of contract claims

that were based on the alleged misappropriations of trade secrets. We review each grant of

summary judgment separately to determine whether the trial court was legally correct.

Goodwich v. Sinai Hosp. of Baltimore, Inc., 343 Md. 185, 204 (1996). The grant of

summary judgment is improper where there exists any genuine disputes of material fact,

"upon which the jury could reasonably find for the plaintiff." *Windesheim v. Larocca*, 443

Md. 312, 326 (2015). We conclude that the trial court correctly granted summary judgment

on both the misappropriation-based claims and the breach of contract claims. Before

addressing each grant of summary judgment separately, however, we will pause to provide

some additional factual background on the nature of Command's misappropriation-based

claims.

A.   *Background*

As described above, the Air Force selected Command's C2Web software for the

ETIMS program. To test C2Web, the Air Force chose Lockheed's F-16 for the pilot

program. Lockheed and Command entered into a contract with one another (the

"Integration Contract"), to work together in integrating and deploying the C2Web software,

with Lockheed as the prime contractor and Command as Lockheed's subcontractor.

To fulfill its part of the contract, Lockheed required access to Command's

proprietary information and trade secrets relating to the C2Web software. Command and

Lockheed executed confidential proprietary information agreements that set out

protections for proprietary information that Command disclosed to Lockheed, and prohibited Lockheed from sharing Command's proprietary information with any third party without Command's consent. Lockheed was permitted to share Command's proprietary information with "support Contractors" and Command agreed to "fully cooperate with any such support Contractors by engaging in technical discussion and permitting access to all information and data relating to technical matters concerning this contract." The disclosure of any proprietary information was also protected by applicable Federal Acquisition Regulations ("FARs"), which were incorporated by reference into the Integration Contract.

Lockheed gave Command specific work orders for which Command would be compensated on a rolling basis as Command completed the work orders. When Command completed a work order, it would execute a close-out package and a form acknowledging that it had been compensated for its work.

At trial, Command alleged that Lockheed disclosed Command's trade secrets to InfoTrust Group, to Parametric Technology, and to Aerosystems International. Command claimed that these improper disclosures constituted misappropriation of trade secrets, as well as breaches of the Integration Contract, which required permission to disclose any proprietary information. Neither party's brief makes clear the contents of the alleged disclosures. These details, however, are not material.

On March 26, 2009, Michael Kaufman, a Command employee, received an email from a consultant for Parametric, a competitor of Command. The email stated that

Parametric had installed a component of Command's C2Web software on a Parametric computer, and asked Kaufman to help with errors that had arisen with the software. Kaufman forwarded this email to Command's CEO, Igor Boris, and others associated with Command. Boris contacted Lockheed to find out why Parametric had been given access to components of Command's software. The trial court found that this email served to put Command on inquiry notice of the potential disclosure, and that the statute of limitations began running on the day Command received the Parametric email.

In May 2010, the Integration Contract was coming to a close and Lockheed sent Command a release of liability agreement ("the Release"), and informed it that federal regulations required that Command sign the Release before Command could be paid for work completed under the Integration Contract. On May 12, 2010, Command signed the Release, which stated that Command agreed to "remise, release, and discharge [Lockheed] … of and from all liabilities, obligations, claims, and demands whatsoever, under or arising from [the Integration Contract], whether known or unknown at this time."

When it came time to consider Lockheed's motions for summary judgment, these two facts loomed large. The Release was the primary ground for granting summary judgment on the breach of contract claims, although the trial court also held in the alternative that the breach of contract claims were time-barred. On the misappropriation-based claims, the trial court found that the email rendered Command's claims time-barred and granted summary judgment.

B.   *Misappropriation of Trade Secret Claims*

The trial court granted Lockheed's motion for summary judgment on the misappropriation-based claims on the grounds that the claims were filed after the three-year statute of limitations had expired. The trial court found that Command was put on inquiry notice of the alleged misappropriation of trade secrets no later than March 26, 2009, the day on which Kaufman received and forwarded the Parametric email. Command filed suit against Lockheed on May 21, 2012, more than three years after receiving the email. The trial court found that this email put Command on inquiry notice that a misappropriation had occurred because the proprietary information agreements in the Integration Contract prevented Lockheed from providing any third party with proprietary information without Command's prior consent.

On appeal, Command argues that the trial court's conclusion as to when Command was put on notice was erroneously based "on a single email, the meaning and import of which were disputed." Command claims that inquiry notice is generally a factual determination, and that the trial court erred by concluding that this email put Command on notice of the misappropriation as a matter of law. Additionally, Command argues that there was a factual dispute as to whether the email put it on notice because the Integration Contract required Command to cooperate with Lockheed's decision to involve third parties to assist in the integration efforts, so long as the third party signed a non-disclosure agreement. Thus, in Command's view, a jury could find that the Parametric email would

not have put a reasonable person on notice that Lockheed had disclosed proprietary information in violation of the Integration Contract.

The three-year statute of limitations for a misappropriation claim begins when a party discovers the misappropriation, or when "a diligent investigation would have revealed" the misappropriation. *Pennwalt Corp. v. Nasios*, 314 Md. 433, 440-41 (1988). The issue here is whether the Parametric email put Command on inquiry notice as a matter of law that should have prompted an investigation into whether a misappropriation had occurred. *See Georgia-Pac. Corp. v. Benjamin*, 394 Md. 59, 76 (2006) (stating that notice is defined as an "express cognition or awareness implied from knowledge of circumstances" that would lead a reasonable person to pursue an investigation that, if "properly pursued," would likely reveal that a cause of action exists) (citations omitted).

Ordinarily, when the determination of the specific date on which a cause of action accrued "rests on the resolution of disputed facts regarding discovery of the wrong … [it] is a question appropriate for the fact finder," rather than a determination to be made a matter of law by the court. *Rounds v. Maryland-Nat. Capital Park & Planning Comm'n*, 441 Md. 621, 658 (2015). Where there is no dispute of material fact regarding the existence of facts that put the plaintiff on inquiry notice, however, and no dispute as to the date the inquiry notice came about, the determination of accrual may be made as a matter of law. *See, e.g., Litz v. Maryland Dept. of Env't*, 434 Md. 623, 641 (2013) (noting that when it is necessary to make factual determinations, those determinations are made by the trier of fact but when

it is not necessary to make a factual determination, the court may decide the date of accrual as a matter of law).

Here, there is no factual dispute as to if and when the Parametric email put Command on inquiry notice and, thus, the trial court's determination as a matter of law that Command's misappropriation claims were time-barred was appropriate. The trial court noted that, upon seeing the email from the Parametric consultant on March 26, 2009, Command's CEO, Igor Boris, actually commenced an investigation as to why Parametric had obtained the C2Web software by contacting Lockheed to ask about the situation. As the trial court rhetorically asked, "how can [Command] say … a reasonable person would not [have] conducted an investigation" when it, in fact, began an investigation? Thus, the trial court concluded that there is no dispute that the Parametric email put Command on inquiry notice and there can be no question that March 26, 2009, is the date that the statute of limitations began to run. Therefore, the trial court's conclusion, as a matter of law, that Command's misappropriation claims were time-barred was appropriate in this case.

Command's second argument is that the Parametric email did not alert Command to the existence of a claim because of the Integration Contract specifically permitted Lockheed to involve third parties in the integration work. The trial court aptly noted:

> [A]lthough there were these provisions in the master agreement and the subcontract that [Command] would cooperate [with Lockheed's use of third parties in integrating the C2Web software] … a condition of [Lockheed] being able to give this information to third parties was [Command] had to have prior notice, and … had to approve it in writing.

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> And the subcontract doesn't relieve—I mean [Command's]
> obligation to cooperate doesn't [mean] that he still is not
> entitled to notice when they're going to disclose [proprietary
> information to third parties], and that [Command] has to sign
> the written consent prior to the disclosure.

We agree with the trial court that the contractual provisions of the Integration Contract requiring Command to cooperate with Lockheed's use of third parties to integrate the software does not create a factual dispute as to whether the Parametric email put Command on inquiry notice. The provision relating to cooperation with third parties did not eliminate the requirement that Lockheed obtain Command's written approval before disclosing proprietary information to third parties. Boris testified that the Parametric email seemed unusual so he contacted Lockheed to understand the situation. Regardless of whether Command was required to cooperate with Lockheed's decision to involve third parties, Lockheed was still required to obtain approval from Command before disclosing proprietary information to third parties.

Therefore, we agree with the trial court that there were no disputed facts upon which a jury could have reasonably found that the Parametric email failed to put Command on inquiry notice on March 26, 2009, and thus summary judgment was appropriate on the time-barred misappropriation-based claims.

C.   *Contract Claims Based on Alleged Misappropriations*

The trial court also granted Lockheed's motion for summary judgment on the breach of contract claims. The breach of contract claims were grounded in the provisions of the

Integration Contract that protected Command's proprietary information. The trial court granted summary judgment concluding: (1) that Command had signed an agreement releasing Lockheed from liability arising from the Integration Contract; and, alternatively, (2) that, like the misappropriation of trade secrets claims, the related breach of contract claims were time-barred.

1. The Release

Command offers four theories about why the trial court erred in finding as a matter of law that Command released all claims against Lockheed for conduct occurring prior to May 12, 2010: (1) the Release is invalid because Lockheed fraudulently induced Command's signature; (2) there was no consideration for a general release; (3) the Release was part of a form that was merely a receipt for payment; and (4) the Release does not insulate Lockheed from liability for its wrongful conduct as a matter of public policy. We address these in turn to determine whether the trial court's grant of summary judgment was legally correct.

a. Fraudulent Inducement

Command first claims that the Release is void because Lockheed fraudulently induced Command's signature on the Release by falsely representing that Command was required to sign a release of liability by the Federal Acquisition Regulations ("FAR"), which were incorporated by reference into the Integration Contract. In Command's view, the FAR required Lockheed, as the prime contractor, to execute a release in favor of the government, but did not require subcontractors to execute a release. Thus, Command

claims that Lockheed's representations that FAR required the Release prior to payment under the contract were erroneous and constituted fraudulent inducement. As a result, Command reasons that the alleged fraudulent inducement prevents the Release from barring claims based on conduct that occurred before May 12, 2010 (the day the Release was executed). We must determine whether there was a genuine dispute of material fact as to whether Command was fraudulently induced into signing the Release to render the trial court's grant of summary judgment erroneous.

The parties agree that New York law governs the contract. Under New York law, "[a] plaintiff seeking to invalidate a release due to fraudulent inducement must establish the basic elements of fraud, namely a representation of material fact, the falsity of that representation, knowledge by the party who made the representation that it was false when made, justifiable reliance by the plaintiff, and resulting injury." *Centro Empresarial Cempresa S.A. v. Am. Movil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (N.Y. 2011) (citations omitted). All elements must be satisfied to establish fraudulent inducement. *Global Minerals & Metals Corp. v. Holme*, 824 N.Y.S.2d 210 (N.Y. App. Div. 2006) ("Absent any of the elements, plaintiff does not have a *prima facie* case.").

Command argues that Lockheed's statement to Command that the Release was required by FAR 52.232-7 constituted a misrepresentation of a material fact, made by Lockheed with knowledge of the falsity, and that Command justifiably relied on that representation. FAR 52.232-7(g) provides:

> The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract….

Command argues that the language of this regulation required Lockheed to sign a release, as prime contractor to the government, but that Command was not required to sign a release as a subcontractor of Lockheed. Lockheed argues that there were a number of modifications made to the initial Integration Contract that contained "flow down"[2] provisions, pursuant to which Command owed Lockheed the same obligations that Lockheed owed the Air Force.

Our decision as to summary judgment on the fraudulent inducement issue does not require us to determine whether or not the flow down provisions required Command to sign the Release under FAR. In our view, the trial court correctly concluded that Command failed to establish the justifiable reliance element of fraudulent inducement. Even if Lockheed did falsely represent that FAR required Command to sign the Release prior to payment, Command's reliance on that representation was not justifiable as a matter of law.

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[2] "Flow down" is a term of art within FAR, meaning that responsibilities under certain provisions may "flow down" the chain of contracts and thus also apply to relationships between prime and subcontractors, despite the fact that FAR regulations only directly apply to prime contractors. Major Scott W. Singer, *Asserting Government Control over Subcontractors*, Army Law., Sept. 1994, at 11-12 ("The flow-down clause provides that the subcontractor agrees to assume, as to the prime contractor, the same obligations and responsibilities that the prime contractor assumes toward the government.").

Command was able to access the FAR provisions and it would have been wise for Command to look into what its obligations were under FAR and the contract before signing a Release of any claims to the benefit of Lockheed. In the context of a multimillion dollar contract, it was not reasonable for Command simply to take Lockheed at its word when signing a release of all claims against Lockheed. Thus, we agree with the trial court that there is no dispute of material fact and that Command's reliance was not justifiable as a matter of law. This is particularly true in light of the fact that Command already had some indication that Lockheed may have misappropriated Command's trade secrets based on the Parametric email. Therefore, we affirm the trial court's grant of summary judgment.

b.   Lack of Consideration

Command next asks us to find that the Release does not relieve Lockheed of liability for the alleged breaches of contract because the Release lacked consideration. Command claims that because it signed the Release for the purpose of receiving a payment from Lockheed that Command was already legally entitled to receive under the contract, there was no new consideration for a general release. By contrast, Lockheed argues that because the Integration Contract incorporated FAR 52.232-7 by reference, Command was required to execute a release as a condition of payment. Thus, according to Lockheed, no new consideration was needed for the Release because it was a valid precondition for payment, agreed upon by the parties. Therefore, we must decide if, as a matter of law, the Release

was a new contract requiring its own fresh consideration or if it was a precondition for

payment on the old contract, for which no additional consideration was necessary.[3]

We hold that the execution of the Release was a precondition of payment under the

contract, and, therefore, no new consideration was necessary, nor was a clear and

unequivocal intent to gratuitously release Lockheed necessary. The trial court concluded

that FAR 52.232-7 was incorporated into the Integration Contract and flowed down

requiring Command to execute a release as a condition of payment. We discern no legal

error in the trial court's conclusion that the Release was an enforceable precondition of

payment under the Integration Contract. Command's execution of the Release, therefore,

relieved Lockheed of any liability arising out of the Integration Contract and the trial court

correctly granted summary judgment on the breach of contract claims.

c. Release as Receipt for Payment

Command next argues that the Release was merely a receipt for payments made,

rather than a general release of liability, and therefore it cannot protect Lockheed from

Command's breach of contract claims. It claims that because Command was legally

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[3] Normally under New York law, a party must have "clearly and unequivocally" intended to "release a claim gratuitously" to establish a valid general release without consideration. *Buffalo Elec. Co. v. New York*, 194 N.Y.S.2d 72, 74 (N.Y. App. Div. 1959). Command asks us to hold that there was no such clear intent. If the release is a precondition of payment under the Integration Contract, however, that law wouldn't apply and a clear and unequivocal intent would not be necessary. That is because, in that circumstance, the Release would not constitute a new contract that must be supported by consideration.

entitled to payment for work done under the Integration Contract, the release was intended only to release Lockheed from future claims for compensation. Lockheed argues that because the FAR required a general release of liability as a condition precedent, Command was not legally entitled to any payment until it signed the Release. Lockheed aptly notes that Command's argument that the Release was a mere receipt of payment is essentially the same as its argument that the Release lacked consideration.

Command relies on an old New York case, which held that a release signed by a plaintiff, as consideration for a payment to which the plaintiff was already legally entitled, constituted a mere receipt for payment because there was no new consideration to support a general release of liability. *Meyers v. Frederick Hussey Realty Corp.*, 45 N.Y.S.2d 137, 138 (N.Y. App. Div. 1943). The plaintiff in *Meyers* signed a receipt for commissions then due under the contract. There was not, however, consideration to release future commissions that could become due.

Unlike *Meyers*, the Release signed by Command finished the contract between Command and Lockheed. There was no part of the Integration Contract for which Command could be owed payment at a later date. The Release was a precondition to payment, not a mere receipt, and relieved Lockheed of any liability arising out of the Integration Contract.

We agree with the trial court that the Release was, as a matter of law, a general release of liability, rather than a mere receipt that only released Lockheed from future claims for the payments made.

d. *Public Policy*

In its final argument as to the Release, Command asks us to find that it did not waive

its breach of contract claims related to the misappropriations of proprietary information

because, it argues, the Release is void as a matter of public policy. Command argues that

public policy dictates that a general release cannot shield a party from liability for willful,

intentional, or grossly negligent conduct, including wrongful breaches of contract. It claims

the Release should be held void because Lockheed acted with "reckless indifference" to

Command's contractual rights by disclosing Command's proprietary information to benefit

a competing software system in which Lockheed had a financial interest.

Command's argument misses a crucial point regarding general releases of willful

and intentional conduct. Under New York law, a party may not rely on a general release to

shield itself from *future* willful, intentional, or grossly negligent conduct. *Great N. Assocs.,*

Inc. v. Cont'l Cas. Co., 596 N.Y.S.2d 938, 940 (N.Y. App. Div. 1993); *Kalisch-Jarcho,*

Inc. v. City of N.Y., 58 N.Y.2d 377, 416 (N.Y. 1983).[4] Lockheed asserts the Release as a

defense only to claims that occurred prior to the execution of the Release. There is nothing

wrong with releasing claims arising out of past conduct. *Lago v. Krollage*, 78 N.Y.2d 95,

99 (N.Y. 1991). The Release does not insulate Lockheed from liability based on any

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[4] Maryland law would dictate a similar result. *See, e.g.*, *Kreter v. HealthSTAR Commc'ns, Inc.*, 172 Md. App. 243, 261 (2007) (noting the decreased public policy concerns in releases of past conduct, rather than future conduct).

conduct occurring after May 12, 2010. Thus, we hold that the Release is not void as a matter of public policy.

2.   The Statute of Limitations

The trial court also found that Command's breach of contract claims were time-barred by operation of § 11-1206(b) of the Commercial Law ("CL") Article of the Maryland Code, which provides that a claim for continuing misappropriation constitutes a single claim. The trial court concluded that the Parametric email, which indicated a possible disclosure of Command's trade secrets to Parametric, served as notice to Command that Lockheed could not be trusted to protect Command's trade secrets. Therefore, the trial court concluded that even if there were subsequent misappropriations, notice of Lockheed's first possible misappropriation constituted notice of any continued misappropriations.

Command does not appear to dispute the application of CL § 11-1206(b) to the misappropriation of trade secrets claims. Command does, however, argue that the trial court erred by extending its reliance on CL § 11-1206(b) to Command's breach of contract claims. Command challenges the applicability of CL § 11-1206(b) to the breach of contract claims, and argues that the trial court should have instead applied the continuing breach doctrine set out in *Singer Co., Link Simulation Sys. Div. v. Baltimore Gas & Elec. Co.*, 79 Md. App. 461 (1989).

We need not reach the question of whether CL §11-1206(b) applies to breach of contract claims based on misappropriations because our holding affirming the grant of

summary judgment based on the Release renders the statute of limitations question moot. Command does not point to any misappropriations that violated the contract with Lockheed that occurred after execution of the Release. Command waived all claims "whether known or unknown" at the time of the execution of the Release, so even alleged misappropriations that Command was not aware of were waived. The statute of limitations was an alternate grounds for granting summary judgment on the breach of contract claims. The primary grounds for summary judgment, the Release, is sufficient to sustain the grant of summary judgment on the breach of contract claims.

CONCLUSION

For the foregoing reasons, we affirm the judgments of the Circuit Court for Montgomery County.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.