Circuit Court for Howard County
Case No.: 13-C-16-108554

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1423

October Term, 2017

A.C.L. COMPUTERS AND
SOFTWARE, INC.

v.

BRAXTON-GRANT
TECHNOLOGIES, INC., *et al.*

Nazarian,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: November 30, 2018

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal turns as much on the law of summary judgment—or, more to the point, a party's burden when opposing summary judgment—as the law of employment agreements. A.C.L. Computers and Software, Inc. ("ACL") sued two of its former employees, Kenneth Ververs and Paula Greenway, and their new employers, ANACAPA Micro Products, Inc. ("ANACAPA") and Braxton-Grant Technologies, Inc. ("Braxton-Grant"). ACL alleged that the individual defendants had breached their employment agreements with ACL, and asserted various tort and statutory claims against all of the defendants. After discovery, the Circuit Court for Howard County denied ACL's summary judgment motion on liability and granted summary judgment for the defendants. The court also denied ACL's motion for reconsideration, which attached a substantial amount of evidence and deposition testimony ACL had collected but not offered in opposition to the defendants' original motions.

We affirm. We agree that the defendants were entitled to judgment on the record before the circuit court at the time of summary judgment, and we cannot fault the court for deciding not to give ACL a second chance to oppose it.

I. BACKGROUND

Mr. Ververs and Ms. Greenway are former employees of ACL, a Maryland corporation that supplies computer equipment and software to federal agencies through a government-sanctioned bidding process. Mr. Ververs began working for ACL as a salesperson in July 2004, Ms. Greenway in December 1999. Both signed identical

employment agreements that contained non-competition, non-solicitation, and confidentiality restrictions.

The non-compete clause, paragraph 7.1.1, stated that for one year after leaving ACL, a former employee could not:

> [r]ender or attempt to render . . . any services in connection with any sale . . . [of] personal computer hardware or software to any client, customers or accounts of [ACL] with whom the [e]mployee had direct contact and/or to whom the [e]mployee rendered any [s]ervices at any time during the two-year period immediately preceding [] cessation of . . . employment.

In paragraph 7.1.2, the non-solicitation clause stated that for a period of one year after leaving, a former employee could not:

> [s]olicit for employment . . . any employee of [ACL], nor shall the [e]mployee urge, directly or indirectly, any customer, referrer of customers, contractor, subcontractor or supplier of [ACL] to discontinue . . . business with [ACL] . . . .

The confidentiality clause, paragraph 5.1, stated that for a period of three years after leaving, a former employee could not:

> directly or indirectly, divulge or disclose to any person or entity any of such confidential information which was obtained by the [e]mployee as a result of the [e]mployee's employment with [ACL], or any information or knowledge respecting the affairs of [ACL] or any of its officers, directors, employees, stockholders, customers or referrers of customers learned or conceived by the [e]mployee while in the employ of [ACL], but shall hold all of the same inviolate.

The agreement also contained two enforceability clauses. One clause applied specifically to the enforceability of the non-solicitation and non-compete clauses, the other more generally. But both essentially said the same thing: in the event that any part of the

agreement is determined by a competent court of law to be unenforceable, the remainder of the agreement shall remain fully enforceable.

In their company roles, Mr. Ververs and Ms. Greenway were responsible for providing ACL's product pricing to government contractors. They responded to requests for equipment or services in the form of bids, typically in competition with three to ten other bidders. Before submitting a bid, Mr. Ververs and Ms. Greenway worked with ACL's suppliers to determine the lowest price it could offer. Once all bids were submitted, the customer awarded the contract to the bidder that demonstrated the ability to deliver the product at the lowest price, pursuant to the Federal Acquisition Regulations (the "FAR"). *See* 48 C.F.R. § 1 *et seq*.

For twenty-five years, ACL was owned by Julie Lisle. Under her ownership, ACL had multiple lines of credit that allowed it to pay its suppliers promptly and deliver products to its customers in a timely manner. Ms. Lisle sold the company in 2014 to Adam Radly and Velocity Data, Inc. Under its new ownership, ACL began using a factoring company to receive advance payments for awarded contracts rather than waiting thirty to ninety days for the customer's direct payment. The use of a factoring company drastically reduced ACL's profit margins, sometimes by more than half. And because ACL had the factoring company make the advance payments for ACL's orders directly to Velocity Data, this approach created a new cash flow obstacle for ACL.

In the weeks and months that followed, ACL's business became more and more strained. One of ACL's main suppliers, Ingram Micro, pulled the line of credit it had

extended to ACL for over twenty years. ACL also fell victim to a fraudulent order worth approximately $345,000. By September 2015, Velocity Data, ACL's parent company, owed ACL $1,470,966. And at the end of October 2015, ACL was in over $5 million of debt with limited equity, and the company announced that it would be laying off employees.

Less than a month later, Mr. Ververs and Ms. Greenway asked to be included in a new round of layoffs of sales assistants and administrative employees. ACL agreed. At the same time, customers like Lockheed Martin refused to continue doing any business with the company due to its inability to supply products and make payments on outstanding orders. In a formal letter dated December 11, 2015, ACL notified its creditors that it was "unable . . . to continue in business, without forbearance and assistance" and without the cooperation of its creditors it was otherwise facing "immediate bankruptcy."

Braxton-Grant, a supplier to ACL, hired Ms. Greenway on December 15, 2015, on the recommendation of ACL's controller, Faith Anderson. Mr. Ververs started working for ANACAPA on January 4, 2016.

On June 2, 2016, ACL filed a complaint in the Circuit Court for Howard County against Mr. Ververs, ANACAPA, Ms. Greenway, Dee Kwon, Rebecca Ferguson, and TRIVAD, Inc.[1] ACL alleged breach of contract claims against Mr. Ververs, Ms. Greenway, Ms. Kwon, and Ms. Ferguson. Against TRIVAD and ANACAPA, ACL claimed tortious

[1] ACL later withdrew its claims against Ms. Kwon, Ms. Ferguson, and TRIVAD, Inc., and all were dismissed.

interference with contractual relations. The complaint also included counts for civil conspiracy, tortious interference with prospective advantage, and violation of the Maryland Uniform Trade Secrets Act (the "MUTSA") against all defendants. ACL alleged that Mr. Ververs and Ms. Greenway took ACL client contact information with them to their new employers, that both solicited business from ACL's customers, that both competed with ACL on behalf of their new employers, and that ACL was damaged as a result.

In August 2016, Braxton-Grant filed suit against ACL, also in the Circuit Court for Howard County, to recover $719,713.73 (plus interest) for breach of contract. On August 11, 2016, the court notified the parties that the case had been assigned to the expedited track. In its scheduling order, the court set the deadline for the identification of plaintiff's experts for December 10, 2016, the deadline for the identification of defendant's experts for January 9, 2016, the deadline for the identification of rebuttal expert witnesses for January 23, 2017, and the discovery deadline for February 8, 2017. The circuit court consolidated that case (*Braxton-Grant v. ACL*) with this case on November 22, 2016, after ACL filed a counterclaim against Braxton-Grant for tortious interference with contractual relations, tortious interference with prospective advantage, violation of the MUTSA, and aiding and abetting, all in connection with Braxton-Grant's employment of Ms. Greenway.

After consolidation, on November 23, 2016, all parties filed a motion to amend the scheduling order and continue the pre-trial conference. The court granted the motion and extended the discovery deadline to March 10, 2015 and the deadline for pre-trial motions

to March 21, 2017. Over the course of four months, the parties exchanged thousands of documents and took and defended six depositions.

On the date of the motions deadline, ACL filed an affirmative motion for summary judgment as to liability. The motion attached a six-page memorandum with three exhibits. All defendants opposed that motion and moved for summary judgment in early April. Mr. Ververs and ANACAPA filed a memorandum in support of their motion and attached twenty-six exhibits, including excerpts from the six deposition transcripts. Ms. Greenway and Braxton-Grant supported their filing with sixteen exhibits.

ACL opposed the defendants' motions with a thirty-page memorandum that attached nine exhibits. ACL argued first that because the defendants' cross-motions for summary judgment were filed after the March 21 motions deadline, they should be denied. In response to the substance of defendants' motions, ACL asserted generally that its "management practices and financial problems [were] not material to [its] claims and defenses." Rather than pointing to evidence that would put those facts in dispute, ACL took the position that they simply didn't matter.

The court held a summary judgment hearing on May 30, 2017. After hearing arguments from both sides, the court granted summary judgment for Mr. Ververs, Ms. Greenway, ANACAPA, and Braxton-Grant on all counts, and denied ACL's motion for summary judgment. The court found that the material facts were undisputed and that the non-compete and non-solicitation clauses in the employment agreement were overbroad and unenforceable, and that neither Mr. Ververs nor Ms. Greenway possessed the unique

or specialized skills necessary for non-solicitation agreements to be enforceable. The court reasoned that success in ACL's sales positions did not depend on personal relationships, but depended on ACL's ability to bid successfully, which in turn was strictly "based on price and ability to fill the order." The court found that enforcing the non-compete would violate the public interest and would impose an "undue hardship" on ACL's former employees by denying them alternative employment.

With respect to ACL's confidential information, the court ruled that the claims for breach of contract and violation of the MUTSA failed because ACL's client contact information was not actually "confidential information." The court found that although Mr. Ververs and Ms. Greenway had taken material from ACL that contained general information about how to respond to bid requests from potential customers, they had not taken contact information for actual customers in the "traditional sense," and that the information needed to submit bids to government contractors was readily available to all ACL employees and its competitors alike. As such, the information was non-private, non-proprietary, not confidential, and did not qualify as a trade secret. Moreover, the court found that ACL had made no effort to protect the alleged trade secrets and that any employee of ACL, current and former, had access to the systems that contained the information.

The court also found that the aiding and abetting claim against Braxton-Grant was "purely contract based" and lacked grounding in a tortious act. And finally, with respect to damages, the court ruled that because the competitive bidding process concealed the

identity of competing bidders, who won, and why, ACL could not prove that it had suffered damages as a result of the defendants' actions.

A week after the hearing, ACL moved for reconsideration and to alter or amend the judgment. The motion was supported by a memorandum over thirty pages in length and a five-inch-thick binder of new exhibits. In its memo, ACL argued that despite the circuit court's recent findings to the contrary, there were material disputes of fact about what caused ACL to lose business with companies like Lockheed Martin. To support that contention, ACL attached a new affidavit from Robert Bates, ACL's Chief Financial Officer, and many other documents from discovery attempting to refute defendants' portrayal of ACL as a company that was not financially viable after it laid off more than half of its employees in November 2015. The court declined to consider the new materials and denied the motion. ACL filed a timely notice of appeal.

II. DISCUSSION

On appeal,[2] ACL challenges the circuit court's decisions to grant the appellees' motion for summary judgment and to deny ACL's motion for reconsideration.[3] This is not

[2] ACL listed the Questions Presented in its brief as follows:

1. Did the Circuit Court err in granting Appellees' untimely Cross-Motions for Summary Judgment against Appellant's claims in the First Amended Complaint and in Appellant's Counterclaim to Braxton-Grant's Complaint? []
2. Did the Circuit Court err in denying Appellant's Motion for Reconsideration and to Alter or Amend Order of Summary Judgment? []

[3] In addition to making their substantive arguments, the appellees filed a motion to dismiss the appeal grounded in multiple failures by ACL to comply in this Court with the Maryland Rules. ACL corrected some of the problems, most notably its failure in its initial brief to

an uncommon pair of requests in summary judgment cases, but this case features a stark contrast between the volume and quality of the evidence ACL submitted to the circuit court in opposition to the appellees' motion for summary judgment and the evidence it submitted in support of its motion for reconsideration. ACL attempts to blur this distinction—everybody had the same information from discovery, it argues, and both the circuit court

cite to the record, by filing an amended brief. ACL never corrected the myriad problems with its Record Extract, though, and two of the problems merit specific mention.

First, although the Extract filled three bound volumes (thankfully, not Velobound, so at least they lie flat), ACL failed to include any table of contents, index, or other guidance as to what was included and where to find it, a direct violation of Rule 8-501(h). *Second*, and compounding the first problem, the Extract omits *all* of the summary judgment briefing: ACL's affirmative motion, the briefs relating to the appellees' opposition and cross-motion, and ACL's motion for reconsideration. This is a more abstract violation, *see* Md. Rule 8-504(b)(1), and in some cases, it might not matter. But in this case—which, as we will see, is all about what was and wasn't before the circuit court at different points in the summary judgment process—these omissions lie at the heart of the questions presented, and made our review of this case dramatically more difficult, for no discernible strategic purpose. ACL did include all of the exhibits it attached to both motions, but they're incomprehensible without the memoranda they support.

We could, as we often say, dismiss this appeal for these failures alone. *See* Md. Rule 8-504(c). We generally don't, and we won't here either, since we were able to overcome the omissions and reach the merits. And perhaps it seems petty and self-important for us to complain about these things—it is our job to review briefs and records, we have intelligent law clerks and administrative staff to help us, and we best serve our role by deciding cases on the merits. But think about it this way: appellants, the parties seeking relief from this Court, should want all three members of the panel to be able to find easily the materials we need to review and understand to decide the case their way. The Court receives only one original circuit court record, which goes to the assigned author of the opinion—the other two members of the panel have only the briefs and the Extract. We can, and do, pull and share materials from the record as we need to, but a case that depends on documents gets a lot harder to win when the documents are hard to find.

The motion to dismiss is denied.

and we should look at the full picture. That's misleading.[4] We review the decisions the circuit court actually made on the record it had at the time. And although ACL was entitled to move for reconsideration after summary judgment was entered, we review the court's decision not to do so against a different and much more deferential standard.

A. The Circuit Court Did Not Err In Finding The Non-Solicitation And Non-Competition Clauses Unenforceable.

The circuit court began its summary judgment ruling by finding, in light of the undisputed facts in the record at the time, that the non-solicitation and non-competition clauses of the employment agreement were unenforceable. The court found *first* that the non-solicitation clause lacked any limitation in geographical scope or as to the services it encompassed. *Second*, the court found that ACL lacked a protectable interest in enforcing these clauses because ACL was not capable of fulfilling orders and had been blacklisted

[4] The Statement of Facts contained in ACL's Amended Brief in this Court is highly misleading as well. When ACL recounts the underlying story and characterizes the undisputed material facts, it cites almost exclusively to documents and deposition excerpts that it submitted *only* in support of its motion for reconsideration, and uses those facts to argue that the circuit court erred in not crediting numerous facts as disputed. That's not remotely fair to the circuit court, to the appellees, or to us. Trial judges have a lot of skills, but clairvoyance isn't (necessarily) among them, and they cannot be expected to know about or anticipate evidence, even evidence gathered in discovery, that isn't filed in the case.

What's more, the Amended Brief represented an improvement: the Statement of Facts in ACL's initial brief didn't cite to the record or the Extract *at all*. The omission cannot have been inadvertent—Rule 8-504(a)(4) says, in so many words, that parties must reference the pages of the record or the relevant transcripts to support the statement of material facts in their briefs. We obviously don't know if ACL in fact tried to mislead us, but we also can't imagine a legitimate purpose for flouting this Rule so blatantly. Or, to paraphrase a recent political quip, we don't know what was in ACL's heart, but we do know what wasn't in its Statement of Facts.

by Lockheed Martin before Mr. Ververs started with ANACAPA. The court found as well that even when ACL was capable of serving customers, sales were won or lost based on price and reliability, not relationships. *Third*, the court found that ACL didn't lose any business from Lockheed Martin because Mr. Ververs left, but because orders weren't being filled. *Fourth*, the court found that Mr. Ververs did not have unique or specialized skills, that salespeople at ACL filled orders. And from those findings, the court concluded that ACL did not have a protectable interest in its relationship with Mr. Ververs, and that he had not solicited business in his new position. ACL disputes the court's findings, although it fights them almost entirely with documents and deposition excerpts that it submitted in support of its motion for reconsideration. Viewing the summary judgment record as filed, we agree with the circuit court that the material facts were not in dispute.

Under Maryland Rule 2-501(f), "[t]he [circuit] court shall enter judgment in favor of or against the moving party if the motion [for summary judgment] and response show that there is no genuine dispute as to any material fact . . . ." When reviewing an order granting summary judgment, we determine first whether the court concluded correctly that there was no genuine dispute of material fact in this case. *Koste v. Town of Oxford*, 431 Md. 14, 24–25 (2013). A material fact is one that affects the outcome of a case. *Debbas v. Nelson*, 389 Md. 364, 373 (2005). "If no genuine dispute of material fact exists, this Court determines whether the Circuit Court correctly entered summary judgment as a matter of law." *Koste*, 431 Md. at 25 (cleaned up). We look to "only the grounds upon which the trial court relied in granting summary judgment." *Catalyst Health Sols., Inc. v. Magill*, 414 Md.

457, 471 (2010) (cleaned up). And importantly, summary judgment cannot be defeated with "bare allegations or a mere scintilla of evidence." *Ecology Services, Inc. v. Clym Envtl. Servs.*, LLC, 181 Md. App. 1, 12 (2008) (cleaned up).

When the underlying material facts are not in dispute, the enforceability of a restrictive covenant is a question of law. *Ecology Services*, 181 Md. App. at 16. We look first at whether the employment contract was supported by adequate consideration. *Id.* at 14. Next, we look at whether the restrictive covenant is reasonable in scope, both in terms of geography and duration, in the context of the employer's business. *Id.* (*citing Becker v. Bailey*, 268 Md. 93, 96–97 (1973)). If the covenant satisfies those two prongs, then we consider four more factors:

> [1] whether the person sought to be enjoined is an unskilled worker whose services are not unique; [2] whether the covenant is necessary to prevent the solicitation of customers or the use of trade secrets, assigned routes, or private customer lists; [3] whether there is any exploitation of personal contacts between the employee and customer; and, [4] whether enforcement of the clause would impose an undue hardship on the employee or disregard the interests of the public.

Id. at 15 (*quoting Budget Rent A Car of Wash., Inc. v. Raab*, 268 Md. 478, 482 (1973)).

In this case, the circuit court found that only one of these factors weighed in ACL's favor, and only then because that factor—the adequacy of consideration to support the agreement—was not in dispute. So we move on to determine whether the post-employment restriction in the employment agreement was "reasonable on its face as to both time and space." *Id*. at 15. We agree with the circuit court that it wasn't.

The non-competition clause encompassed all ACL clients, customers, and accounts with whom the employee had direct contact or provided any services during the preceding two years. The clause states that the employee shall not:

> Render or attempt to render to or for the benefit or account of the Employee or to or for the benefit or account of any other person or entity any services in connection with any sale or effort to sell any personal computer hardware or software to any client, customers or accounts of [ACL] with whom the Employee had direct contact and/or to whom the Employee rendered any Services at any time during the two-year period immediately preceding such cessation of the Employee's employment with [ACL].

The non-solicitation clause applied broadly, to nearly any person or entity who had any sort of connection to ACL's business, for a period of one year. Under this clause the employee shall not:

> Solicit for employment or employ to or for the benefit or account of the Employee to or for the benefit or account of any other person or entity of any employee of [ACL], nor shall the Employee urge, directly or indirectly, any customer, referrer of customers, contractor, subcontractor or supplier of [ACL] to discontinue, in whole or in part, business with [ACL] or not to do business for [ACL]. For purposes of this Section of this Agreement, the term "referrer of customers" shall mean any person or entity who or which referred a client, customer or account to [ACL] at any time prior to such cessation of the Employee's employment with [ACL].

At the time of summary judgment, it was undisputed that *before* Mr. Ververs or Ms. Greenway found employment elsewhere, ACL was failing to supply products and failing to pay its creditors. ACL Chief Operating Officer, Tom Bethel notified Lockheed Martin of its financial crisis on December 1, 2015. Ten days later, ACL sent a proposal to its unsecured creditors offering to pay pennies on the dollar of what ACL owed. The letter

describes ACL's inability "to continue in business" and its impending "bankruptcy and loss of any chance of securing [an upcoming government contract bid]" without cooperation from its creditors. These documents supported the circuit court's conclusion that ACL didn't lose business as a result of Mr. Ververs or Ms. Greenway leaving and working for competitors. The summary judgment record also supported the court's conclusion that sales were won or lost on competitive bids, not sales relationships. In this way, the case tracks *Ecology Services*, in which we held that a business seeking to enforce a restrictive covenant must establish that the success of its competitors is directly attributable to its former employees exploiting their previously acquired personal contacts. 181 Md. App. at 18. ACL produced no such evidence—to the contrary, the evidence demonstrated that ACL lost business due to the combination of its financial problems and the ability of its competitors to win the bids ACL couldn't. The circuit court did not err by declining to assume, as ACL did, that business followed Mr. Ververs to his new employer.

Becker, draws an apt analogy. 268 Md. at 94–95. The employee there was a car "tag and title courier" who allegedly breached the non-compete clause in his employment contract when he started his own title service company. *Id.* at 95. The Court of Appeals held unenforceable a clause seeking to prevent him for two years from engaging in business similar to his employer's in the District of Columbia, Prince George's County, Anne Arundel County, and Montgomery County. *First*, the Court found the employee did not provide a unique service, and the employer's customer lists were public information available in the yellow pages of a telephone book. *Id.* at 99. *Second*, the Court found that

in his role as courier, the employee never solicited customers. *Third*, the Court found the restriction was overbroad because it "would prohibit contacting many dealers that [the employee] never serviced," most of his customers never used his previous employer's services, "and the very small number that had . . . left because they were ***dissatisfied*** with [the employer's] service. *Id.* at 101 (emphasis added). And *finally*, the Court viewed the restriction as an undue hardship as it prevented the employee "from engaging in the business for which [he was] specially fitted by long training and experience." *Id.*

Like the employee in *Becker*, ACL Chief Financial Officer Robert Bates conceded in his deposition that, in the world of government bidding, the sales role is essentially equivalent to working in customer service, and it requires no outside training or unique skill. But although, ACL argues here that the increases in ANACAPA's and Braxton-Grant's sales profits after hiring Mr. Ververs and Ms. Greenway are attributable to their personal relationships with clients, it submitted nothing in opposition to the appellees' summary judgment motion putting that point in dispute. And given the undisputed summary judgment record of ACL's inability to service potential customers, the court didn't err in finding that enforcing the restrictive provisions of the employment agreement would lead to an unnecessary and unduly harsh result.

Second, ACL argues that the circuit court improperly granted summary judgment on Count VI of the First Amended Complaint, ACL's claim for tortious interference with contract against defendant ANACAPA, and on Count I of ACL's Counterclaim against counter-defendant Braxton-Grant for tortious interference with contract. ACL goes on,

however, to conflate that argument with the elements for *tortious interference with prospective advantage.* Unclear as to which tort claim it is referring, ACL argues that the claim was sufficiently supported because ANACAPA and Braxton-Grant "knowingly permit[ed] restrictive covenants to be breached" and both obtained a benefit from Mr. Ververs's and Ms. Greenway's respective breaches. We do not find that argument persuasive, and we agree with the circuit court that summary judgment was appropriate on both counts.

To state a claim for intentional interference with contract, the plaintiff must provide evidence to satisfy the following elements:

> (1) The existence of a contract or a legally protected interest between the plaintiff and a third party; (2) the defendant's knowledge of the contract; (3) the defendant's intentional inducement of the third party to breach or otherwise render impossible the performance of the contract; (4) without justification on the part of the defendant; (5) the subsequent breach by the third party; and (6) damages to the plaintiff resulting therefrom.

Brass Metal Prod., Inc. v. E-J Enterprises, Inc., 189 Md. App. 310, 348 (2009) (cleaned up).

Because, as discussed above, the employment agreement isn't enforceable against these employees, the tortious interference claims fail at the threshold. ACL cites *Volcjak v. Washington Cnty. Hosp. Ass'n*, 124 Md. App. 481, 512 (1999), and contends that ANACAPA and Braxton-Grant hired Mr. Ververs and Ms. Greenway to exploit the relationships they developed with government contractors during their tenure at ACL. The problem, as above, is that no admissible evidence in the record at summary judgment

supported this theory. And as a result, we need not reach the question of whether ACL waived its ability to enforce the employment agreement against Ms. Greenway and Braxton-Grant when its controller, Ms. Anderson, affirmatively recommended that Braxton-Grant hire her.

Third, ACL contends that the trial court erred in entering summary judgment for ANACAPA, Mr. Ververs, Braxton-Grant, and Ms. Greenway on ACL's Maryland Uniform Trade Secrets Act claim, which alleged that the individual defendants took client contact information with them to their new jobs. ACL argues that Mr. Ververs and Ms. Greenway took "a wealth of [] information about customer preferences and history that enabled ACL to provide better and more efficient service to the customer." But again, the trial court found that, as a matter of undisputed fact, the customer and client lists the employees allegedly took did not qualify as trade secrets, and no admissible evidence in ACL's opposition created a dispute on that point.

As its name suggests, the MUTSA applies only to trade secrets. Maryland Code § 11–1201(e) of the Commercial Law Article defines the term:

> [I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that:
>
> (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

In other words, a trade secret must (1) be secret, (2) have value because of its secrecy, and (3) be reasonably safeguarded to preserve confidentiality. And a MUTSA claim can fail

purely for the owner's failure to protect it. *See Motor City Bagels, LLC v. Am. Bagel Co.*, 50 F. Supp. 2d 460, 478 (D. Md. 1999) (even though a business plan contained personal insight of independent economic value, the company "did not act reasonably in seeking to ensure the secrecy of [its] plan." *Id*. at 480).

Customer lists may be, but aren't necessarily, trade secrets. *EndoSurg Med., Inc. v. EndoMaster Med., Inc.*, 71 F. Supp. 3d 525, 545 (D. Md. 2014). Sometimes it depends on the resolution of disputed facts about the secret's value, *see Padco Advisors, Inc. v. Omdahl*, 179 F. Supp. 2d 600, 610 (D. Md. 2002) (whether a database containing customer investment history was a trade secret was a disputed question of fact because some of the information in the database was not "generally known or readily ascertainable to its competitors . . . .") or whether it's secret at all. *See LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 309 (2004) (company's list of distributors had no economic value because its content could be obtained in the marketplace with minimal effort).

Here, there was no secret. The undisputed material evidence at summary judgment supported the circuit court's finding that the information on ACL's customer list was available on the internet, that ACL's compilation of it was accessible to current and former employees, and that ACL had taken no steps to protect it. We'll deal next with ACL's effort to supplement the record at reconsideration, but on the record before the circuit court at the time, we see no error in its decision to grant summary judgment on ACL's Trade Secrets Act Claim.

B. The Circuit Court Did Not Abuse Its Discretion In Denying ACL's Motion For Reconsideration And To Alter Or Amend The Judgment.

Finally, ACL seeks here the same do-over it sought in the circuit court. After the court entered summary judgment in favor of the appellees, ACL filed a motion for reconsideration and to alter or amend, and attached a five-inch stack of documents and deposition testimony it had not attached to its motion for summary judgment. On August 9, 2017, the circuit court denied ACL's motion, and ACL argues here that the circuit court failed to "consider the evidence provided . . . or make any finding of fact or law in response to the filing," asserting that such a failure is "a declination of a responsibility for fairness and impartiality towards the parties."

It's true that the circuit court declined to consider the new evidence, but we disagree that the court was obliged to give ACL a second opportunity to beat summary judgment. Under Maryland Rule 2-534, the circuit court has broad discretion in deciding motions to alter or amend:

> With respect to the denial of a Motion to Alter or Amend, if that should be what is before us, the discretion of the trial judge is more than broad; it is virtually without limit. What is, in effect, a post-trial motion to reconsider is not a time machine in which to travel back to a recently concluded trial in order to try the case better with hindsight. The trial judge has boundless discretion not to indulge this all-too-natural desire to raise issues after the fact that could have been raised earlier but were not or to make objections after the fact that could have been earlier but were not. Losers do not enjoy *carte blanche*, through post-trial motions, to replay the game as a matter of right.

Steinhoff v. Sommerfelt, 144 Md. App. 463, 484 (2002).

We reverse a post-judgment ruling like this only when "there is both an error and a compelling reason to reconsider the underlying rule." *Schlotzhauer v. Morton*, 224 Md. App. 72, 85 (2015). Neither is the case here.

This case went through a full process of discovery and motions briefing before the initial judgment was entered. ACL filed its own affirmative motion for summary judgment on liability, and the appellees didn't file their summary judgment motions until after the deadline (and not unreasonably, ACL complained about this). ACL had in hand everything it needed to oppose summary judgment with all of the evidentiary force it was able to muster in its motion for reconsideration, but for whatever reason, it kept its documentary and testamentary powder dry.

"[O]n the face of Rule 2-501(b), a party opposing summary judgment must identify disputed material facts with particularity and offer evidence or testimony demonstrating the dispute," *Piney Orchard Cmty. Ass'n v. Piney Pad A, LLC*, 221 Md. App. 196, 219 (2015), and the circuit court was entitled to rely on the materials the parties presented at summary judgment in making its decision. The court reviewed the filings and held a full hearing that consumed eighty-seven pages of transcript, and made findings on the record as to each issue and count. To allow ACL to take a clean shot at defeating summary judgment, have the court find and reveal the holes in its case, and then try again with evidence it held back would allow ACL to sandbag the circuit court and its opponents. And although the court certainly could have entertained ACL's motion to reconsider, it did not

remotely abuse its discretion by holding ACL to the opposition it filed the first time.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. APPELLANT TO PAY COSTS.