

Richard H. Fimoff

Shareholder | Chicago
(312) 456-0185 | RFimoff@rsplaw.com

Can You Keep A Secret?

A business can no longer be assured that its secrets will remain secret by merely having a signed confidentiality agreement.

A decision by the U.S. Court of Appeals in Chicago provides examples of the efforts owners must undertake to protect their trade secrets and confidential information to be able to enforce their confidentiality agreements.

In the case of *nClosures, Inc. v. Block & Co.*, 770 F.3d 598, defendant Block manufactured covers for tablet computers for plaintiff nClosures. The parties signed a fairly typical confidentiality agreement containing the following provision:

“The Parties agree that the Confidential Information shall be used solely for the purpose of engaging in discussions and evaluating the objective [to manufacture the tablet covers]. Except for such this permitted purpose, such information shall not be used for any purpose.”

Block manufactured covers for nClosures for several years when Block terminated its relationship with nClosures and began manufacturing its own tablet covers. nClosures then sued claiming that Block misappropriated nClosures’ trade secrets and breached the confidentiality agreement. The trial court refused

to enforce nClosures' confidentiality agreement, and the Court of Appeals affirmed.

nClosures had a signed confidentiality agreement with Block. So why did it lose? The confidentiality agreement seems pretty clear. Wasn't that enough? The Court of Appeals answered that question with a resounding no.

The court held that even with a signed confidentiality agreement, confidential information will only be protected if the party seeking protection has taken reasonable efforts to maintain the confidential nature of the information. After reviewing nClosures' lack of efforts, (only the confidentiality agreement signed by Block), the court held that nClosures had not taken reasonable steps to maintain the confidentiality of its information and therefore its confidentiality agreement was not enforceable.

The court noted that nClosures did not require the original designer of the tablet cover to sign a confidentiality agreement; did not mark the information "confidential"; did not restrict access to the information to people that had a need to know and that had signed a confidentiality agreement; and did not keep the information under "lock & key" or password protected for information electronically maintained. The court concluded that since nClosures did not take reasonable efforts to protect the confidentiality of its proprietary information, its confidentiality agreement with Block was unenforceable.

As a result of nClosures' failure to take reasonable steps to protect its confidential information, it lost an extremely valuable asset. The court's decision makes clear that just having a signed confidentiality agreement is not enough. You will not be able to enforce that agreement if you do not demonstrate that you value your confidential information by actively working to protect it from disclosure.