

EXHIBIT A

Substituted Complaint

Triangle Sheet Metal Works v. Silver,
154 Conn. 116 (1965)

State of Connecticut
Supreme Court of Errors

HARTFORD COUNTY

OCTOBER TERM, 1965

5865

TRIANGLE SHEET METAL WORKS, INC. ET AL

vs.

JACOB M. SILVER ET AL

DEFENDANTS' APPEAL FROM SUPERIOR COURT

HON. JOSEPH W. BOGDANSKI, JUDGE

For Plaintiffs:

RIBICOFF & KOTKIN

For Defendants:

SOROKIN, SOROKIN &

HURWITZ

LEVINE & KATZ

DAY, BERRY & HOWARD

MR. RIBICOFF: With the sole additional fact, Your Honor, that neither party is waiving any —

THE COURT: Oh, yes. It is understood that the continuation of this hearing shall not be construed as a waiver of any of the rights of the parties against the other by virtue of what has already taken place or which may take place in the future.

MR. RIBICOFF: May take place in the future based on what is permitted factually, not legally under this understanding.

THE COURT: Then this matter is continued until April 14th, and I urge on counsel that every effort be made to close the pleadings as promptly as possible so that you may have one trial and a determination of all the issues between the parties.

* * * * *

In accordance with the order of the court made during trial Plaintiffs hereby substitute the following for their complaint, as amended:

SUBSTITUTED COMPLAINT

FIRST COUNT

1. Plaintiffs, Triangle Sheet Metal Works, Inc. and Modulaire Components Corporation, are corporations organized under the laws of the State of New York.

2. Plaintiff, Triangle Sheet Metal Works, Inc., hereinafter referred to as Triangle, has been since 1917 engaged in the fabrication and installation of ducts for warm air, heating, ventilating and air-conditioning systems and in other aspects of the sheet metal working

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business and, since some time prior to June 1960, has been engaged in the business of manufacturing and installing under window or perimeter enclosure structures for heating and air-conditioning systems.

3. On June 13, 1960, Triangle entered into an agreement with defendant, Leonard R. Phillips, hereinafter referred to as Phillips, whereby Phillips was employed as a heating, air-conditioning and ventilating engineer to be in charge of Triangle's Special Projects Division.

4. Phillips was employed by plaintiffs from June 13, 1960, until about June 19, 1963. In the course of his employment, Phillips invented or devised ideas for, and worked on the development of, certain improvements, advances and extensions on the type of under window or perimeter enclosures then generally in use. Said improvements, advances and extensions were unique, unknown to Plaintiffs' competitors and not used by other manufacturers or sellers of enclosure structures.

5. Said improvements, advances and extensions and the methods of designing, developing, manufacturing, installing, exploiting and marketing said improvements, advances and extensions are, under the terms of the agreements with Phillips, the property of Triangle and constitute carefully guarded secrets and confidential material of the Plaintiffs.

6. Said improvements, advances and extensions resulted in, and are based upon, an enclosure structure system manufactured and installed through the use of standard, interlocking, repetitive parts which provide a flexible enclosure structure, readily and simply installed, assembled and disassembled.

7. Triangle spent substantial time and money in the development and promotion of said enclosure system.

8. During the course of his employment Phillips had access to, was aware of, and familiar with all of Plaintiffs' carefully guarded business secrets, including their secrets of design, development, manufacture, production, costing, promotion, selling and installation of said enclosures and their parts.

9. On or about February 17, 1962, Modulaire Components Corporation, hereinafter referred to as Modulaire, was organized by Triangle to handle the sales and installation of the enclosure system and parts manufactured by Triangle.

10. Defendant Phillips was designated and served as vice-president of Modulaire from February 28, 1962, to June 18, 1963.

11. Phillips, on or about June 19, 1963, resigned his employment with Plaintiffs.

12. Phillips, upon leaving his employment with Plaintiffs, entered into an agreement with Plaintiffs, dated June 19, 1963, whereby he acknowledged and agreed that the improvements, advances and extensions on the enclosure structure and designs on which he had been working were the property of Triangle and agreed that he would not disclose any trade secrets of Plaintiffs but would hold the same confidential and secret.

13. Phillips, together with defendants, Jacob M. Silver, Emanuel M. Silver and Phillip Klein, on or about August 7, 1963, caused defendant Phillips Air Devices, Inc., hereinafter referred to as Air Devices, to be incorporated. Said Air Devices proposes to manufacture and market enclosure structures in competition with Plaintiffs.

14. Phillips has disclosed to defendants Air Devices, Emanuel Silver, Jacob Silver and Phillip M. Klein

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secret and confidential information respecting Plaintiffs' businesses in violation of his said agreement with Plaintiffs and in violation of his confidential and fiduciary relationship to Plaintiffs.

15. Said Defendants, Phillips, Jacob M. Silver, Emanuel M. Silver and Phillip Klein and Air Devices have appropriated to themselves said trade secrets and confidential information belonging to Plaintiffs, and, acting through Air Devices, propose to manufacture and market a modular enclosure structure using improvements, extensions and advances in enclosures belonging to Plaintiffs and trade secrets and confidential material of Plaintiffs related thereto.

16. Unless Phillips is restrained from making further disclosure of secret and confidential matters pertaining to Plaintiffs' products and business, and unless Defendants are restrained from using said information and appropriating to themselves Plaintiffs' devices and secret and confidential material for their benefit, Plaintiffs will be irreparably damaged.

17. Plaintiffs have no adequate remedy at law.

SECOND COUNT

18. Plaintiffs reiterate each and every allegation contained in paragraphs 1 through 17 inclusive.

19. Upon information and belief, Phillips conspired with Jacob M. Silver, Emanuel M. Silver and Phillip Klein, all of whom had full knowledge of Phillips' association and agreements with Plaintiffs, unlawfully to appropriate to themselves said improvements, advances and extensions on the enclosure, Plaintiffs' experience, their market, and their employees, sales representatives and sub-contractors, and to use the trade secrets and

confidential information of Plaintiffs obtained by Phillips, all of which said Defendants knew Phillips could not lawfully disclose to them.

THIRD COUNT

20. Plaintiffs reiterate each and every allegation contained in paragraphs 1 through 19 inclusive.

21. Defendant, R. L. Byus, hereinafter referred to as Byus, was employed as a salesman by Triangle from February 7, 1962 to December 5, 1962, and by Modulaire as a salesman in Texas from December 5, 1962 to March 13, 1963. On or about March 20, 1963, Modulaire employed Defendant R. L. Byus as its sales manager, bringing said Byus to New York from Texas and paying his expenses of moving.

22. The other Defendants at all times had notice and knowledge that Defendant Byus was employed by Plaintiffs as sales manager and had bid jobs for Modulaire.

23. Prior to and during October 1963, the other Defendants induced said Defendant Byus to leave the employ of Plaintiffs and enter the employ of Defendant Air Devices.

24. While said Byus was employed by Plaintiffs, he acquired confidential knowledge and information relating to Plaintiffs' manufacturing, costing and pricing and bid several jobs for Plaintiffs.

25. Said Byus, acting in concert with the other named Defendants, and acting through Air Devices and making use of confidential information, including Plaintiffs' bid figures, which had been obtained by said Byus and/or said Phillips, while they were employed by Plaintiffs, have bid on jobs on which Plaintiffs had, or were preparing to, bid to the knowledge of said Defendants.

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26. Plaintiffs have demanded that Defendants withdraw Air Devices' bids on those jobs bid and/or worked on by Byus or Phillips for Modulaire, but Defendants have refused to do so.

27. As a result of Defendants' refusal, Plaintiffs have been damaged.

FOURTH COUNT

28. Plaintiffs reiterate each and every allegation contained in paragraphs 1 through 27 of this complaint.

29. In soliciting business for the furnishing and installation of enclosures in competition with Plaintiffs, the Defendants have wilfully and fraudulently misrepresented to actual and potential customers and to Plaintiffs' sales representatives the product proposed to be manufactured by Defendant Air Devices, the nature and history of Defendant Air Devices and the ability with which, and circumstances under which, it was, and is, doing business.

30. Said fraudulent misrepresentations were improper attempts to interfere with the contracts and business expectancies of Plaintiffs.

31. As a result of said improper actions of Defendants, the Plaintiffs have been damaged.

32. If said actions of Defendant are continued, Plaintiffs will suffer irreparable injury for which they have no remedy at law.

PLAINTIFFS CLAIM :

1. A Temporary and permanent injunction restraining Phillips from using and/or disclosing any trade secrets or confidential material of Plaintiffs.

2. A temporary and permanent injunction enjoining and restraining Defendants, and each of them, their agents, servants and employees from manufacturing, selling or in any way dealing with enclosures embodying any of the features which constitute the modifications and extensions and advances belonging to Plaintiffs.

3. A temporary and permanent injunction restraining Defendants from using or disclosing in any manner, directly or indirectly, any secret and confidential information of Plaintiffs relating to the design, development, manufacture, improvement, advance or extensions of methods, processes, designs, plans, formulations, items, products, tools, devices, equipment or to costing, selling and installation.

4. A temporary and permanent injunction requiring Defendants to return to Plaintiffs all drawings, documents and other materials taken by any of Defendants from Plaintiffs, and any and all copies thereof.

5. A temporary and permanent injunction requiring Defendants to deliver to Plaintiffs all drawings, documents and other materials based on any aspect of the improvements, extensions and advances to the Plaintiffs' said enclosure structure worked on by Phillips during his employment by Plaintiffs.

6. \$500,000 damages.

7. Reasonable attorneys' fees.

8. Such other and further relief as the Court may deem just and equitable.

Plaintiffs,
By RIBICOFF AND KOTKIN,
Their Attorneys.

Filed May 11, 1964.