STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0052

Sunlight Senior Living I LLC,
Appellant,

vs.

Sunlight Senior Living Inc., et al.,
Respondents,

Sunlight Services LLC,
Respondent,

Peaceful Lodge Inc., et al.,
Respondents,

Sue Lee,
Respondent.

Filed September 19, 2022
Affirmed
Jesson, Judge

Ramsey County District Court
File No. 62-CV-20-5187

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Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

In the year following the purchase of a senior-living facility and property for $17 million, buyer-appellant believed that competing senior-living facilities—which buyer understood as being limited by the restrictive covenants in the sale agreement with seller-respondents—began poaching residents and staff from its facility. Buyer-appellant sued seller-respondents and the competing senior-living facilities and their operators under the theory that sellers had a duty to tell the other parties that the sale agreement restricted them from contacting residents and staff of buyer's facility. Buyer asserted claims for breach of contract, tortious interference, and misappropriation of confidential information. Sellers filed motions to dismiss for judgment on the pleadings and moved for summary judgment. The district court granted summary judgment in favor of sellers on all claims. Buyer appealed. Because sellers did not have a duty to inform affiliates of restrictive covenants, respondent Bao Vang did not have constructive notice of certain provisions in the sale agreement, and the resident list is not a trade secret, we affirm.

FACTS

This appeal stems from an agreement between appellant-buyer and respondent-sellers to exchange an assisted-living facility for $17 million. In the year following the purchase, five residents and multiple staff members left for competing senior-living facilities operated by other respondents in the Twin Cities metro area. This matter centers on the district court's grant of summary judgment in favor of all respondents, rejecting buyer's claim that sellers and other respondents colluded to take residents and staff from buyer. Due to the number of parties involved in this case, we begin with the parties before explaining the purchase and sale agreement and the procedural history.

Sellers

Respondents Lee Vang and Cy Thao have been shareholders or owners of respondent entities Sunlight Senior Living Inc., and Sunlight Investments (entities collectively referred to as sellers), as well as Sunlight Services LLC. We describe each entity and the ownership of the relevant facility at the time of the sale agreement below.

- *Sunlight Services LLC*: Provides assisted living services from four group homes. It was organized in 2004 by Lee Vang and her parents. Her parents later gifted their membership interest to her.[1] She sold her membership interests in Sunlight Services to Ker Vue in 2013. Ker Vue has owned and operated Sunlight Services since purchasing it from Lee Vang. Residents transferred between Sunlight Senior Living and Sunlight Services for years before Sunlight Senior Living was sold to buyer in 2019.

- *Sunlight Senior Living Inc. and Sunlight Investments Inc.*: Owned and operated by Lee Vang starting in 2008. Sunlight Senior Living Inc., managed a senior-

[1] Lee's parents placed assets, including senior-living facilities, in a trust called the Vang Family Trust. The relevance of the trust is that, in a later claim by buyer, some respondents, for purposes of the sale agreement, are in actuality "controlled" by the trust. Despite this argument, it is undisputed that the Vang Family Trust is not party to this case.

living facility that has a 65-resident capacity and specializes in culturally-appropriate care for Hmong residents. Sunlight Investments owned the land on which Sunlight Senior Living operated.

In 2011, Lee Vang and Cy Thao moved to Florida where they continued to operate their Minnesota companies.[2]

Bao Vang / Peaceful Lodge

Respondent Bao Vang is a sister of Lee Vang. Bao Vang opened her first eldercare facility, Peaceful Living, in 2006. Peaceful Living is not part of this lawsuit.

In 2014, Bao Vang opened respondent Peaceful Lodge, which she currently owns and operates. In roughly 2021, Peaceful Lodge expanded from roughly 60 residents to now 85 residents and added a memory-care wing.

Buyer

Buyer is appellant Sunlight Senior Living I. Sunlight Senior Living I was created to buy Sunlight Senior Living, Inc. Sunlight Senior Living I is owned by Michael and Racquel Edery and a third partner. Michael is Racquel's father and owns senior-living facilities in New York.

The Purchase

Buyer and sellers entered into an agreement on July 16, 2019. Lee Vang signed the sale agreement as the President and CEO of Sunlight Senior Living and as President and

[2] In 2018, Lee Vang and Cy Thao owned membership interest in Magnolia Senior Living LLC, a company that owns and operates a senior-living facility in Florida. This company is not at issue in this case.

CEO of Sunlight Investments. Racquel Edery signed the sale agreement as Manager of Sunlight Senior Living I. No one signed in their individual capacities.

The closing took place on December 31, 2019. This included a real-estate agreement in which Sunlight Senior Living I purchased the land from Sunlight Investments for $16,950,000. Sunlight Senior Living I purchased the Sunlight Senior Living business for $50,000.[3]

The sale agreement included a noncompete clause, which stated that sellers and their affiliates cannot engage in the operation of senior-living facilities within 250 miles of Sunlight Senior Living I as well as prohibiting the hiring, soliciting, or retaining of any employee or customer of Sunlight Senior Living I. The "Non-Competition: Confidentiality" clause provides that for two years following the closing date *neither the "Seller Defendants" nor the "Seller Affiliates"* will:

> (i) *engage, anywhere within a two hundred fifty (250) mile radius* of [Sunlight Senior Living I], *in the ownership or operation* of any one or more personal home care, independent living, *assisted living or skilled nursing facilities* (the "Business");
>
> (ii) be or become a stockholder, partner, owner, officer, director, trustee, member of [sic] employee or agent of, of [sic] a consultant to or give financial or other assistance to, any natural person, company, corporation, partnership, trust, limited liability company, association or incorporated entity of any kind (each a "Person") other than Buyer (or an affiliate of Buyer) engaging or considering engaging in the Business;
>
> (iii) *seek*, in competition with Buyer *to induce past or present* referral sources, *residents, or other customers* of [Sunlight Senior Living I] *to do business with a competitor of Buyer* or any affiliate of Buyer;

[3] The purchase included the purchase of equipment, licenses, and confidential information related to the assisted-living facility.

> (iv) *hire, solicit or retain the services of*, or otherwise interfere with the relationship of Buyer with, *any Person who is or was employed* or engaged to perform services to or at [Sunlight Senior Living I] as of the Closing Date or within one (1) year prior to the Closing Date; and
>
> (v) seek to contract with or engage (in such a way as to adversely affect or interfere with Buyer) any Person who has been contracted with or engaged to supply goods and services to [Sunlight Senior Living I].

(Emphasis added.)

Crucial, from buyer's perspective, to this case is the definition of seller affiliate in the sale agreement, which included immediate family and anyone controlled by the selling parties. The definition in full includes:

> (i) any shareholder of either Seller Party (ii) any corporation, partnership or other entity controlled by one or more shareholders of either Seller Party or (iii) any member of the immediate family of any shareholder of either Seller Party and (iv) any other Person controlled by either Seller Party or any person deemed an affiliate under subparagraphs (i), (ii) and (iii) above. For the purposes of this definition, control; means the power, direct or indirectly, whether through the ownership of voting securities, by contract or otherwise, to influence or direct the affairs of any person.

Buyer alleges that Sunlight Services LLC and Peaceful Lodge Inc. are controlled by Bao Vang, Lee Vang's sister, and therefore qualify as "seller affiliates".[4]

After the closing date, four residents of Sunlight Senior Living I left for Sunlight Services. Two residents left in June 2020, one left in August 2020, and another in

[4] There is no allegation that respondent Sue Lee was an affiliate, but she worked for Sunlight Senior Living I after the sale.

September 2020. Multiple staff members left Sunlight Senior Living I to work for either Sunlight Services or Peaceful Lodge.

Where respondents saw business as usual, buyer saw collusion, and filed a lawsuit. After the lawsuit was filed, an additional resident left for Peaceful Lodge in February 2021.

Legal Proceedings

Buyer brought an action against sellers Sunlight Senior Living and Sunlight Investments, Lee Vang and Cy Thao in their individual capacities, Bao Vang, Sue Lee,[5] and Sunlight Services. Buyer asserted four claims: (1) a breach-of-contract claim against sellers for failing to inform seller affiliates of their status; (2) a breach-of-contract claim against Sue Lee, the operations manager at Sunlight Senior Living who left to work at Sunlight Services; (3) a tortious-interference claim against Sue Lee, Bao Vang, Peaceful Lodge, and Sunlight Services alleging that they knowingly violated the sale agreement; and (4) a misappropriation-of-confidential-information claim against all of the defendants for disclosing the names and addresses of Sunlight Senior Living residents.

On August 2, 2021—four days before the close of discovery—buyer served a subpoena on Ker Vue for a deposition to take place on August 6.[6] The subpoena did not include an interpreter. The following day, Sunlight Services told buyer that due to the late notice and lack of translator, Ker Vue would not attend the deposition on August 6. Despite negotiations, the parties did not come to a resolution. Sunlight Services notified buyer that

[5] Sue Lee did not file a brief in this matter. Sue Lee and other staff members left to work for Peaceful Lodge or Sunlight Services.

[6] Ker Vue has owned Sunlight Services since purchasing it from Lee Vang in 2014.

it would file a motion to quash the subpoena, which it did. On September 13, buyer filed an affidavit requesting additional time to complete discovery, specifically the deposition of Ker Vue.

Meanwhile, respondents filed several motions to contest buyer's claims. In two orders, the district court granted Sue Lee's motion for judgment on the pleadings on the breach-of-contract claim, Sunlight Services' motion for summary judgment on the tortious-interference claim, and Sue Lee, Bao Vang, and Sunlight Services' motion for judgment on the pleadings on the misappropriation claim. The district court denied the motion for judgment on the pleadings on the tortious-interference claim against Bao Vang, Sue Lee, and Peaceful Lodge. The district court also granted summary judgment in favor of Lee Vang, Cy Thao, and sellers on the breach-of-contract claim, Bao Vang and Peaceful Lodge on the tortious-interference claim, and all remaining defendants on the misappropriation claim. Sunlight Service's motion to quash was granted.

Buyer appeals.

DECISION

Buyer contends that the district court erred by concluding at the summary-judgment phase that: (1) sellers were not liable on the breach-of-contract claim because they did not have a duty to notify seller affiliates of their status; (2) Bao Vang was not liable for tortious interference because she did not have constructive knowledge of the restrictive covenants in the sale agreement; and (3) the trade-secrets claims failed because the resident list was not a trade secret.

To review these challenges, we begin with the summary-judgment standard. Summary judgment "is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law." *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 189-90 (Minn. 2019) (quotation omitted). A party opposing summary judgment must produce competent, admissible evidence that creates a genuine issue for trial. *Twin Cities Metro-Certified Dev. Co. v. Stewart Title Guar. Co.*, 868 N.W.2d 713, 720 (Minn. App. 2015). On appeal from an order granting summary judgment, a reviewing court questions "whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp.*, 790 N.W.2d 167, 170 (Minn. 2010). This court reviews both questions de novo, viewing "the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

I. Sellers did not have a duty to inform seller affiliates of their status.

Buyer argues that summary judgment on the breach-of-contract claim was improper because sellers had a duty to inform the seller affiliates of their status and are liable for any breach of restrictive covenants by the seller affiliates.

The interpretation of contract terms is a matter of law that we review de novo. *Hall v. City of Plainview*, 954 N.W.2d 254, 259 (Minn. 2021).

In order to state a claim for breach of contract, the plaintiff must show (1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant. *Park*

Nicollet Clinic v. Hamann, 808 N.W.2d 828, 833 (Minn. 2011). The interpretation of unambiguous contractual language is a question of law for the court. *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018). We interpret contract terms "consistent with their plain, ordinary, and popular sense, so as to give effect to the intention of the parties as it appears from the entire contract." *Quade v. Secura Ins.*, 814 N.W.2d 703, 705 (Minn. 2012) (quotation omitted). "Under long-standing contract-law principles, a nonparty to a contract generally will not be bound by that contract." *State ex rel. Hatch v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 569 (Minn. App. 2005).

Here, even assuming that every nonseller respondent was a seller affiliate, the sale agreement creates no duty for sellers to inform possible seller affiliates—also unsigned third parties to the sale agreement—that they may be bound to the sale agreement. This is reflected in the plain language of the sale agreement, which unambiguously does not mention any duty of sellers to inform possible seller affiliates of their status. And buyer points to no language in the sale agreement or any caselaw that would suggest that this duty exists. Nor do they point to any caselaw that suggests that third parties can be liable under an agreement such as the one here even if there were such a duty.

Because the sale agreement does not explicitly create a duty to inform seller affiliates, summary judgment as to the claim that sellers breached their contract when failing to follow a duty not imposed by the sale agreement was appropriate.[7]

[7] Buyer also alleges that the district court erred when it concluded that Lee Vang and Cy Thao were not liable under the sale agreement in their individual capacities. To review

II. Bao Vang did not have constructive knowledge of the restrictive covenants in the sale agreement.

Next, buyer argues that the district court erred in granting summary judgment in favor of Bao Vang for the tortious-interference claim.

A cause of action for tortious interference with a contractual relationship requires: "(1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract; (3) intentional procurement of its breach; (4) without justification; and (5) damages." *Furlev Sales and Assocs., Inc. v. North Am. Automotive Warehouse, Inc.*, 325 N.W.2d 20, 25 (Minn. 1982). A wrongful-interference claim can be disposed of if even one element is not met. *See id.* (concluding that insufficient evidence supported jury finding that defendant intentionally procured a breach and, alternatively, that defendant's actions were not without justification). And recall that a party may not avoid summary judgment merely by casting metaphysical doubt on a factual issue. *Zander v. State*, 703 N.W.2d 845, 857 (Minn. App. 2005).

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this argument, we need to look at the law surrounding the liability for principals and shareholders of corporations. A corporation is a separate legal entity from its shareholders. *W. Bend Mut. Ins. Co. v. Allstate Ins. Co.*, 776 N.W.2d 693, 706 (Minn. 2009). Officers of a corporation are generally not personally liable for the contractual obligations of the corporation. *Universal Lending Corp. v. Wirth Cos.*, 392 N.W.2d 322, 326 (Minn. App. 1986). And we have held that a noncompete clause in a contract between two corporations is not personally binding on the individual signing the contract on behalf of a corporation. *Otto v. Weber*, 379 N.W.2d 692, 696 (Minn. App. 1986). Buyer's argument that Lee Vang and Cy Thao are individually liable for breach of a contract which neither signed in their individual capacity is unpersuasive.

While all elements for wrongful interference are required, we focus narrowly on whether Bao Vang had constructive knowledge of the contract provision that she was a seller affiliate of the sale agreement.[8]

A party has constructive knowledge if they possess "knowledge of facts which, if followed by reasonable inquiry, would have led to a complete disclosure of the contractual relations and rights of the parties." *Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 362 (Minn. 1998) (citing *Swaney v. Crawley*, 191 N.W. 583, 584 (1923)).

Here, buyer alleged five pieces of evidence that Bao Vang had constructive knowledge of the contract because she knew: (1) her sister was selling her business; (2) the new owner was from New York state; (3) the new owners traveled to Minnesota to close the transaction; (4) the purchase price was around $17 million; and (5) she had previous experience selling a business, which involved noncompete agreements.[9]

The five pieces of evidence presented by buyer, taken as true, do not rise to the level of evidence sufficient to prove that Vang had constructive knowledge of the terms of the

[8] Buyer also argues that because Bao Vang was served the complaint in this matter, she had actual knowledge that she was a seller affiliate. This means, they assert, that she was on notice and bound by the noncompete agreement when, after the lawsuit commenced, one resident moved to her facility from Sunlight Senior Living seeking the memory care unit at Peaceful Lodge. But Bao Vang testified that she did not reach out to the sole resident that moved from Sunlight Senior Living—it was the resident's family members who were looking for a place with a memory care unit. Buyer did not establish that there was any solicitation by Bao Vang or Peaceful Lodge in regard to this resident.

[9] Bao Vang testified that she knew that Lee Vang was selling Sunlight Services, LLC for around $17 million, but that they did not discuss the terms—including the restrictive covenants—in the sale agreement. Nor was she aware of the seller-affiliate provision. She also stated that she and Lee Vang had no involvement in the operation of each other's facilities and rarely discussed their businesses.

seller-affiliate provision of the sale agreement. Although Bao Vang knew of the sale agreement between buyer and sellers, it would not be reasonable for her to inquire if she, a nonparty to the contract, would be liable as a result of the sale agreement. And while Vang acknowledged that restrictive covenants can be part of business sale agreements, that general acknowledgement did not extend to covenants which purports to bind nonparty "seller affiliates."

These five pieces of evidence are not close to the scenarios in cases where constructive knowledge has been found. For example, because there was no explicit suggestion to Bao Vang that she could have been bound by her sister's sale agreement, nor had she been subject to a similar clause, this is not close to *Kallok*. 573 N.W.2d at 362. In *Kallok*, the plaintiff established the defendant's constructive knowledge of a third party's noncompetition agreement with the plaintiff because (1) the third party *specifically told* the defendant's representative "that he might be subject to noncompete agreements; and (2) that representative had formerly been subject to the exact same noncompete agreement when he worked for the plaintiff. 573 N.W.2d at 362. Neither of those events occurred here.

To convince us otherwise, buyer cites to *Kjesbo v. Ricks*, 517 N.W.2d 585 (Minn. 1994). But in that case, the defendant knew about the specific provision he was accused of interfering with. *Kjesbo*, 517 N.W.2d at 588 n. 3. Here, unlike in *Kjesbo*, buyers fail to

provide evidence that Bao Vang had knowledge of the specific language of the seller affiliate noncompete clause in the sale agreement.[10]

Because buyer failed to present sufficient evidence that Bao Vang knew of the contract provision she is alleged to have interfered with, the district court did not err when granting summary judgment in favor of Bao Vang on the tortious-interference claim.

III. Buyer did not meet its burden of demonstrating misappropriation of a trade secret.

Buyer's final claim is that the district court erred when saying that the resident list was not covered by the Minnesota Uniform Trade Secret Act (MUTSA), Minn. Stat. §§ 325C.01-.08 (2020), when granting judgment on the pleadings and granting summary judgment in favor of respondents.

To evaluate the district court's ruling, we turn to the law governing misappropriation. To prevail on a misappropriation claim under MUTSA, a plaintiff must show: (1) the existence of a trade secret and (2) "improper acquisition, disclosure, or use" of the trade secret. *Electro-Craft Corp. v. Controlled Motion, Inc.*, 332 N.W.2d 890, 897 (Minn. 1983). To qualify as a trade secret under MUTSA, the information must (1) not be generally known or readily ascertainable by proper means by others, (2) be subject to reasonable efforts to maintain its secrecy, and (3) derive an economic value from its

[10] We further observe that most of the cases that follow *Kallok* and *Swaney* involve new employers hiring employees they should have known had noncompete clauses *in the employees' employment agreements* with former employers—not a sales agreement that could implicate an unsigned party. *See, e.g.*, *Sysdyne Corp. v. Rousslang*, 860 N.W.2d 347, 349-50 (Minn. 2015); *Salon 2000, Inc. v. Dauwalter*, No. A06-1227, 2007 WL 1599223, at *5 (Minn. App. June 5, 2007); *Kallok*, 573 N.W.2d at 362.

secrecy. Minn. Stat. § 325C.01, subd. 5 (2020); *Electro-Craft Corp.*, 332 N.W.2d at 899. When a customer list "could be easily duplicated from public sources," it is not a trade secret. *Blackburn, Nickels & Smith, Inc. v. Erickson*, 366 N.W.2d 640, 645 (Minn. App. 1985).

Here, buyer alleges that the misappropriated information was the names and contact information of residents. Despite its burden to demonstrate that this information is not readily ascertainable, buyer made no showing that this information was not generally known. And the names and contract information are readily available from public sources, as evidenced by the residents' ability to receive mail and phone calls. Residents are also allowed to leave the premises at will and tell visitors where they live, further showing that their addresses may be readily ascertainable. Buyer did not meet its burden here.

Still, buyer makes two arguments contending that the customer list should be considered a trade secret.[11] The first is that, based on *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, this customer list could be considered a trade secret. 278 N.W.2d 81, 89-91 (Minn. 1979). But *Cherne* is distinguishable. There, the Minnesota Supreme Court concluded that a customer list of consulting engineers for municipalities was a trade secret, even if the engineers' names could be discovered by calling city clerks. *Id.* at 90. But the customer list in *Cherne* involved a curated list of 10,000 potential customers which was

[11] Buyer also alleges that, because resident information could include medical information protected by the Health Insurance Portability and Accountability Act (HIPAA), any disclosure of resident information is a violation. But we need not delve into the intricacies of HIPAA. The complaint only alleged that names and contact information were taken—not medical information otherwise protected by HIPAA.

time-consuming to create and was supplemented by confidential customer information of other misappropriated documents. *Id.* at 91. At the time of the lawsuit here, there were only 60-some residents, which comprises significantly fewer people than in *Cherne*. Additionally, there is a lack of evidence of curation or other time-consuming effort.

Buyer's second argument is that, because one must be able to log into Sunlight Senior Living's internal database to see the resident list, there is obvious collusion between former staff members and respondents. But this requires us to believe that the contact information of the residents was only available in the internal database, and buyer has presented no evidence to show that was the case.

In sum, the district court did not err when granting summary judgment on the claims of breach of contract, tortious interference, and misappropriation of confidential information.[12]

Affirmed.

[12] Buyer also alleges that the district court abused its discretion when it did not explicitly rule on its motion under Minnesota Rule of Civil Procedure 56.04 for a continuance to subpoena Ker Vue. When addressing Ker Vue's motion to quash, the district court highlighted that there were only four days' notice of buyer's deposition of Ker Vue and that the subpoena did not provide for a Hmong interpreter. The district court had already noted in the September order that it was skeptical of Ker Vue's involvement in the lawsuit at all. It was not an abuse of discretion for the district court to not explicitly discuss the continuance motion when it instead quashed the subpoena.