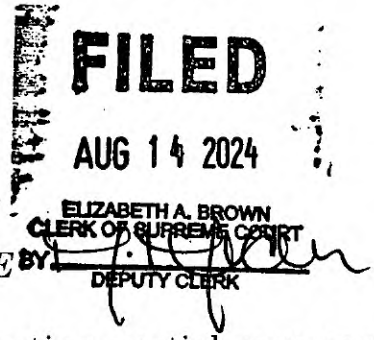
IN THE SUPREME COURT OF THE STATE OF NEVADA

FORTUNET, INC., A NEVADA CORPORATION,
Appellant,
vs.
JACK CORONEL, AN INDIVIDUAL,
Respondent.

No. 86542



ORDER OF AFFIRMANCE

This is an appeal from an order granting partial summary judgment and an order granting judgment as a matter of law. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Appellant Fortunet, Inc., a corporation that manufactures bingo equipment for casinos, sued one of its former employees, respondent Jack Coronel, in 2011.[1] Fortunet generally alleged, in relevant part, that Coronel used Fortunet's intellectual property and personnel to develop his own game strategy[2] products and then marketed his game strategies to Fortunet's customers for his own personal gain. By 2019, after two trials and an appeal to this court, most of Fortunet's claims had failed. However, four claims against Coronel remained unresolved: (1) civil conspiracy; (2)

[1]As the parties are familiar with the complicated facts and procedural history of this dispute, we will only recount them as necessary to our disposition.

[2]Coronel described game strategies as "promotional means for casino operators to take their existing, proven game offerings and provide their players with alternative options and incentives of playing the game (*e.g.*, different wager options, higher payouts), which expands a game's appeal."

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conversion; (3) violation of Nevada's Uniform Trade Secrets Act (UTSA), NRS 600A.010-.100 (a.k.a. misappropriation of trade secrets); and (4) deceptive trade practices. Fortunet proceeded to trial on those four claims in 2022. Just before the trial, however, the district court granted partial summary judgment to Coronel with respect to its civil conspiracy and conversion claims, and granted full summary judgment to Coronel with respect to deceptive trade practices claim. Following trial, the district court granted judgment as a matter of law to Coronel with respect to the misappropriation of trade secrets claim, as well as the remaining portions of Fortunet's civil conspiracy and conversion claims.

Fortunet now appeals both the district court's summary judgment order and its order granting judgment as a matter of law. We affirm, as the record on appeal does not suggest that the district court erred in entering either order.

The district court did not err in granting partial summary judgment to Coronel

Prior to trial, Coronel moved for summary judgment on Fortunet's civil conspiracy, conversion, and deceptive trade practices claims on the basis that these claims were precluded by Fortunet's UTSA claim pursuant to NRS 600A.090. NRS 600A.090 is a component of Nevada's UTSA that "precludes a plaintiff from bringing a tort or restitutionary action 'based upon' misappropriation of a trade secret beyond that provided by the UTSA." *Frantz v. Johnson*, 116 Nev. 455, 464-65, 999 P.2d 351, 357 (2000) (quoting NRS 600A.090(2)). The district court agreed in part with Coronel, concluding that the UTSA claim and the three remaining claims arose almost entirely out of the same factual allegations. Thus, the district court ordered that Fortunet's civil conspiracy and conversion claims could

proceed only with respect to allegations that Coronel misused Fortunet's employee labor, and that Fortunet's deceptive trade practices claim was barred as a matter of law.

Summary judgment is an appropriate remedy where the pleadings and evidence demonstrate no genuine issue of material fact exists and that, as a matter of law, the moving party is entitled to judgment. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Applying de novo review, we affirm the district court's order granting partial summary judgment to Coronel. *See id.*

Fortunet alleged in its conversion and civil conspiracy claims that Coronel, working in concert with previous defendants in this litigation, converted or conspired to convert Fortunet's physical and intellectual "property" for his own benefit. *Cf. M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 910, 193 P.3d 536, 542 (2008) (discussing the elements of conversion); *Guilfoyle v. Olde Monmouth Stock Transfer Co., Inc.*, 130 Nev. 801, 813, 335 P.3d 190, 198 (2014) (discussing the elements of civil conspiracy). The "property" that Coronel and others allegedly converted or conspired to convert appears to have been Fortunet's "provisional patent applications," "customer relationships," "employee labor," and "software"—the latter of which included Fortunet's popular "BingoStar System" interface and its "source code." The district court correctly noted that all of these "property" items, excluding employee labor, fell within the express ambit of material that Fortunet had claimed to be protectable trade secrets at that point in the litigation. Fortunet's appellate briefing does little to convince us otherwise, as it recites essentially the same facts in support of its conversion and civil conspiracy claims that it cited with respect to its UTSA claim. Since nearly all of Fortunet's

conversion and civil conspiracy claims, except for its allegations of misuse of employee labor, were "based upon" the same allegations as its UTSA claim, the district court did not err in concluding that Fortunet's conversion and civil conspiracy claims were partially precluded by NRS 600A.090. *Frantz*, 116 Nev. at 464-65, 999 P.2d at 357.[3]

Fortunet's deceptive trade practices claim alleged that Coronel falsely represented to Fortunet customers (1) that Coronel, and not Fortunet, owned the game strategies and (2) that Coronel was licensed by the Nevada Gaming Control Board (NGCB). *Cf. R.J. Reynolds Tobacco Co. v. Eighth Jud. Dist. Ct.*, 138 Nev., Adv. Op. 55, 514 P.3d 425, 429 (2022) (discussing deceptive trade practices under the Nevada Deceptive Trade Practices Act (NDTPA) NRS 598.0915-.0925). While the district court determined that the allegations regarding ownership of the game strategies

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[3]We further reject Fortunet's argument that the law-of-the-case doctrine required the district court to find Coronel liable for civil conspiracy because a jury found Coronel's alter ego companies, Playbook Publishing LLC and Playbook Management, Inc. (Playbook entities), liable for civil conspiracy following the first trial in this litigation in 2013 (Trial 1). *Cf. Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44-45, 223 P.3d 332, 334 (2010) (discussing the law-of-the-case doctrine). If Coronel was liable for civil conspiracy vis-à-vis the Playbook entities, presumably the district court would have said so when Coronel moved for summary judgment following Trial 1 with respect to Fortunet's claims against him *individually*. But instead, the district court *denied* Coronel summary judgment with respect to the civil conspiracy claim, concluding that not all evidence pertaining to this cause of action was presented at Trial 1, and the jury did not necessarily adjudicate Coronel's liability. And because this court affirmed that finding, *Fortunet, Inc. v. Playbook Publ'g, LLC (Fortunet I)*, No. 72930, 2019 WL 2725664, at *2 (Nev. June 25, 2019) (Order Affirming in Part, Reversing in Part and Remanding), the law-of-the-case dictates that this court cannot find Coronel liable for civil conspiracy vis-à-vis the Playbook entities. *Dictor*, 126 Nev. at 44, 223 P.3d at 334.

were precluded by NRS 600A.090, we also note that in prior orders in this litigation, from 2013 and 2014, the district court concluded that Coronel, not Fortunet, owned the game strategies. This court then affirmed those conclusions on appeal. *See Fortunet, Inc. v. Playbook Publ'g, LLC (Fortunet I)*, No. 72930, 2019 WL 2725664, at *2 (Nev. June 25, 2019) (Order Affirming in Part, Reversing in Part and Remanding). Thus, pursuant to the law-of-the-case doctrine, we affirm summary judgment with respect to this portion of Fortunet's deceptive trade practices claim without having to reach the issue of NRS 600A.090. *Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44-45, 223 P.3d 332, 334 (2010) (discussing the law-of-the-case doctrine).

With respect to the allegations surrounding Coronel's NGCB licensure representations, the district court concluded, in part, that Fortunet had no standing to pursue claims based on misrepresentations made to third parties. This was not entirely correct. As this court recently explained: "nothing in the NDTPA limits consumer fraud victims to only those who used a manufacturer's product," and the relevant test for standing under the NDTPA is whether the allegedly fraudulent business practices "directly harmed" the plaintiff. *R.J. Reynolds*, 138 Nev., Adv. Op. 55, 514 P.3d at 427, 430 (quoting *S. Serv. Corp. v. Excel Bldg., Servs., Inc.*, 616 F.Supp.2d 1097, 1100 (D. Nev. 2007)).

Here, Fortunet argues that Coronel's alleged misrepresentations to customers regarding NGCB licensure harmed Fortunet because Coronel modified software on the BingoStar system in order to install his game strategies without disclosing the modifications to the NGCB, and the NGCB later required Fortunet to reprogram its software in order to bring it into compliance. Fortunet, however, provides no clear

evidence of sanctions or fines imposed by the NGCB, nor of any costs incurred by Fortunet as a result of the alleged reprogramming. Meanwhile, some witness testimony gives the impression that NGCB merely requested a routine software upgrade of Fortunet without drawing a clear connection to Coronel's conduct.[4] Thus, while the district court misstated the law with respect to standing under the NDTPA, we see insufficient evidence that Fortunet was directly harmed by Coronel's alleged misrepresentations regarding NGCB licensure. *R.J. Reynolds*, 138 Nev., Adv. Op. 55, 514 P.3d at 430. Accordingly, we affirm the district court's finding that Coronel was entitled to summary judgment with respect to Fortunet's deceptive trade practices claim. *Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) ("[T]his court will affirm the order of the district court if it reached the correct result, albeit for different reasons.").

The district court did not err in granting Coronel judgment as a matter of law

The district court held a bench trial to decide Fortunet's UTSA claim and the portions of Fortunet's conversion and civil conspiracy claims pertaining to allegations of misuse of employee labor. The district court then granted judgment as a matter of law to Coronel with respect to these remaining claims.

"NRCP 52(c) allows the district court in a bench trial to enter judgment on partial findings against a party when the party has been fully heard on an issue and judgment cannot be maintained without a favorable

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[4]Specifically, a software installer at Fortunet testified that the company had to get software version 10.0.4 "reapproved to keep it in the field because we'd been told we couldn't run it any longer because it hadn't been approved in quite a while."

finding on that issue."[5] *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 377, 283 P.3d 250, 254 (2012). "[I]n entering a Rule 52(c) judgment, the trial judge is not to draw any special inferences in the nonmovant's favor . . . [and] since it is a nonjury trial, the court's task is to weigh the evidence." *Id.* (internal quotation marks omitted). "Where a question of fact has been determined by the trial court, this court will not reverse unless the judgment is clearly erroneous and not based on substantial evidence." *Id.* (quoting *Kockos v. Bank of Nev.*, 90 Nev. 140, 143, 520 P.2d 1359, 1361 (1974)).

Initially, we conclude that Coronel was entitled to judgment as a matter of law with respect to Fortunet's remaining conversion and civil conspiracy claims. These claims alleged, in relevant part, that Coronel converted or conspired to convert Fortunet's employee labor. The district court concluded that "employees of a private corporation are not 'property' and, thus, as a matter of law, not actionable via a conversion claim." *Cf. M.C. Multi-Fam. Dev.*, 124 Nev. at 910, 193 P.3d at 542 (defining "conversion" as "a distinct act of dominion wrongfully exerted over another's *personal property*" (emphasis added) (internal quotation marks omitted)). This conclusion was not erroneous. We thus affirm this portion of the order and turn our attention to Fortunet's UTSA claim.

This court has explained that a claim for misappropriation of trade secrets under Nevada's UTSA requires a party to demonstrate: (1) "a valuable trade secret" pursuant to NRS 600A.030(5); (2) "misappropriation

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[5]We note that the district court erroneously granted judgment as a matter of law pursuant to NRCP 50(a), a rule which expressly applies only to jury trials. We review the erroneous NRCP 50(a) judgment as if it had been issued under NRCP 52(c).

of the trade secret through use, disclosure, or nondisclosure of use of the trade secret" pursuant to NRS 600A.030(2); and (3) "that the misappropriation [was] wrongful because it was made in breach of an express or implied contract or by a party with a duty not to disclose." *Frantz*, 116 Nev. at 466, 999 P.2d at 358 (footnotes omitted). Here, the district court determined that Fortunet failed to meet the first and second elements. Under the first element, Fortunet failed to adequately specify the trade secret in question or demonstrate that any claimed trade secret had independent economic value pursuant to NRS 600A.030(5)(a)(1). Under the second element, Fortunet failed to show any causal connection linking the supposed trade secret and alleged misappropriation by Coronel.

At trial, Fortunet appears to have asserted that its "software (its 'source code' and/or 'BingoStar System')" was the sole putative trade secret at issue. Nevada's UTSA explicitly recognizes "computer programming instruction or code" as putative trade secret material. NRS 600A.030(5)(a); *see also Altavion, Inc. v. Konica Minolta Sys. Lab'y, Inc.*, 171 Cal. Rptr. 3d 714, 740 (Ct. App. 2014) ("[I]t is well-established that source code can constitute a protectable trade secret . . . ."). However, to prove ownership of a trade secret, a plaintiff "should describe the subject matter of the trade secret with *sufficient particularity* to separate it from matters of general knowledge in the trade or of special knowledge of those persons . . . skilled in the trade." *InteliClear, LLC v. ETC Glob. Holdings, Inc.*, 978 F.3d 653, 658 (9th Cir. 2020) (quoting *Imax Corp. v. Cinema Tech., Inc.*, 152 F.3d 1161, 1164-65 (9th. Cir. 1998)). Particularized identification is especially important when source code is claimed as a trade secret because an individual's source code may be largely derived from open-source

code, which is generally known and available to the public. *See, e.g., WeRide Corp. v. Kun Huang*, 379 F. Supp. 3d 834, 847 (N.D. Cal. 2019).

Here, the district court correctly concluded that Fortunet failed to identify a trade secret with sufficient particularity. Instead, Fortunet only made vague and non-specific references to its software or source code. For example, at a hearing, the district court pressed Fortunet to identify evidence in the record as to the "specific code" and its uniqueness to show that the code was "not in the public realm" and thus "would be considered a trade secret." Fortunet responded that "the compilation itself"—i.e. the manner in which Fortunet put the source code and other parts together—is "unique" and "what makes it a trade secret." But Fortunet provided no further information and did not point to any unique characteristics of Fortunet's software or source code, other than the fact that it is a "compilation."[6] Fortunet's appellate briefing merely reiterates this argument. We acknowledge that courts do not appear to have resolved the level of specificity with which a plaintiff must identify its source code in order to claim it as a trade secret, *see WeRide*, 379 F. Supp. 3d at 846-47, but we conclude that Fortunet's identification falls well short of any reasonable standard of sufficient particularity.

We also agree that Fortunet failed to demonstrate that its putative trade secret had independent economic value pursuant to NRS

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[6]Notably, Roger Ng, a Fortunet software engineer, testified that he did not know the extent to which Fortunet's source code is derived from open source. This is the kind of information that would clarify the source code's uniqueness and whether it is "readily ascertainable by proper means by the public." NRS 600A.030(5)(a)(1).

600A.030(5)(a)(1). We have no doubt that the BingoStar System is a highly valuable *product* for the company. But Fortunet does not explain the extent to which BingoStar's value is independently attributable to its *software* or *source code*. Nor is it clear that any of the software or source code's putative economic value is "[d]erive[d] . . . from not being generally known to, and not being readily ascertainable by proper means by the public." NRS 600A.030(5)(a)(1). Thus, the district court did not err in finding that Fortunet did not identify a trade secret pursuant to NRS 600A.030(5)(a).

Finally, the district court correctly determined that Fortunet failed to show a misappropriation pursuant to NRS 600A.030(2). Fortunet alleges that Coronel misappropriated its software by modifying Fortunet's source code to accommodate his game strategies without disclosing the modifications to Fortunet or the NGCB as required by law. But we see no evidence that Coronel "[a]cqui[red]" the software or source code. NRS 600A.030(2)(a)-(b). Instead, Fortunet software engineers modified the software and/or source code to allow Coronel's game strategies to be played on the BingoStar systems. And while this course of action likely constitutes "use" of the software or source code, NRS 600A.030(2)(c), we see no evidence that Coronel "acquire[d] knowledge" of the software or source code. NRS 600A.030(2)(c)(1). Rather, Coronel appears to have had *other individuals* modify the source code for *his benefit*; it is not even clear that Coronel had *any* contact of his own with the alleged trade secret. Thus, the district court did not err in finding that Fortunet failed to show that there was misappropriation of a trade secret pursuant to NRS 600A.030(2).

In sum, the district court did not err in concluding that Coronel

was entitled to judgment as a matter of law with respect to its UTSA claim, as well as the portions of its conversion and civil conspiracy claims that survived summary judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Timothy C. Williams, District Judge
Stephen E. Haberfeld, Settlement Judge
Hartwell Thalacker, Ltd.
Lex Domus Law
Eighth District Court Clerk