

\$7.5 Million Jury Verdict for Employer in Unfair Competition and Restrictive Covenant Case

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At the end of a complicated case, an employer obtained a nearly \$7.5 million jury verdict in enforcement of restrictive covenant agreements and as a result of the unfair competition and breaches of the duty of loyalty of a former partner, sales manager, four former sales employees, and their new competing businesses. *Modern Remodeling, Inc. v. Tripod Holdings, LLC, et al.*, No. CCB-19-1397 (D. Md. Nov. 30, 2021).

Modern Remodeling, Inc. (MRI) sued its former partner, sales manager, four former sales employees, and their new competing businesses (High Mark Construction, LLC, Strong Wall Construction, LLC, and Tripod Holdings, LLC) alleging unfair competition, breach of the duty of loyalty, tortious interference with contract and prospective business relations, breach of contract, civil conspiracy, unjust enrichment, conversion, and violations of the federal Computer Fraud and Abuse Act. MRI prevailed on all counts.

MRI was represented by Donny English, Liane Kozik, and Cliff Glover of Jackson Lewis in the four-week jury trial in the U.S. District Court for the District of Maryland.

The Case

MRI is a general contractor specializing in insurance restoration in the Mid-Atlantic Region. MRI General Manager Steven Trancucci started the Maryland office of MRI in 2008 and brought his childhood friend, Patrick Boyle, into the business as a partner in 2015 to help grow the business. Throughout the case, Boyle disputed the fact that he was a partner, despite holding himself out as a partner on contracts and financial documents and splitting profits from the Maryland office equally with Trancucci and a third partner.

In 2018, Boyle and his brother-in-law, Mike Kimball, who was also the MRI sales manager, began planning to start a new business that would compete with MRI, while continuing their employment with MRI. MRI alleged and presented evidence that, during that time, Boyle and Kimball stole MRI documents and information, gave a third-party computer consulting company access to MRI's computer system, solicited MRI's employees to work for their new company, and did work off of MRI's books.

Most of the defendants then left MRI in a mass exodus in early 2019 that crippled MRI's revenue stream and profits. Boyle, however, concealed his involvement with the competing companies and continued working for MRI for several more months. MRI alleged and presented evidence at trial that, during that time, Boyle diverted MRI customers, information, and job candidates to High Mark and Strong Wall, deleted information from the MRI computer system, and tried to convince Trancucci to shrink the size of MRI.

A unique and complicating factor in this case was that just before all of the defendants left MRI, all but one of their restrictive covenant agreements went missing from their personnel files. Without the agreements, MRI had to prove the agreements existed at trial by

introducing evidence about the pattern and practice of all new employees signing restrictive covenants, eyewitness accounts of the defendants signing the agreements, signed agreements from former employees who started at the same time as the defendants, and testimony from other employees whose agreements were missing but who acknowledged signing the agreements. The circumstantial evidence was ultimately convincing, as the jury found in favor of MRI on the breach of contract claim against all but one defendant.

Sanctioned for Destruction of Evidence

Prior to trial, the court granted MRI's request for sanctions under FRCP 37(e) against the defendants based on their destruction of evidence, such as emails and text messages, throughout discovery. Based on these sanctions, MRI was able to present evidence of the defendants' destruction of evidence to the jury, and the court instructed the jury that it should presume the evidence destroyed was unfavorable to the defendants.

Jury Verdict

After a day of deliberations, the jury awarded MRI \$6.1 million in lost profits, about \$700,000 in other compensatory damages, and \$665,000 in punitive damages. Tripod, High Mark, and Strong Wall did not appeal the verdict. The individual defendants have asked the court to reconsider entering judgment against them on a limited number of claims and issues. The court has not responded as of this writing.

Please contact a Jackson Lewis attorney in the Restrictive Covenants, Trade Secrets and Unfair Competition Practice Group with any questions about drafting and enforcing restrictive covenant agreements or about former employees who may be unfairly competing.

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