

Unimin Corp. v. Gallo, 2014 NCBC Order 1.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

MITCHELL COUNTY

14 CVS 141

UNIMIN CORPORATION, a Delaware corporation,

Plaintiff,

v.

THOMAS GALLO, an individual, and I-MINERALS USA, INC., an Idaho corporation,

Defendants.

**ORDER ON MOTIONS FOR
TEMPORARY RESTRAINING
ORDER AND FOR EXPEDITED
DISCOVERY**

THIS MATTER is before the Court upon Plaintiff Unimin Corporation's ("Plaintiff") Motion for Temporary Restraining Order ("TRO") (the "Motion for TRO")¹ and Motion for Leave to Conduct Expedited Discovery (the "Motion for Expedited Discovery") in the above-captioned case.

The Court, having considered the Motions, Verified Complaint, briefs in support of and in opposition to the Motions, affidavits and argument of counsel, **FINDS** and **CONCLUDES**, only for the narrow purposes of these Motions, as follows:

1. The submissions of the parties raise substantial issues in need of judicial determination regarding Plaintiff's claims.
2. Plaintiff is a Delaware corporation with its principal place of business in Connecticut.

Plaintiff mines and processes high purity quartz under the trade names Quintus, Quartzil, and Iota and sells its high purity quartz worldwide for use in the semiconductor manufacturing, quartz lighting, fiber optic cable, and other industries.

¹ The Motion for TRO seeks relief from the Court in the form of a temporary restraining order. Plaintiff also filed a Motion for Preliminary Injunction contemporaneously with the Motion for TRO. At this time, the Court will only consider the Motion for TRO.

3. Defendant Dr. Thomas Gallo (“Gallo”) was employed by Plaintiff until February 2009. He began working for Plaintiff in 1997 as the Senior Research Engineer and ended his employment with Plaintiff in 2009 as the General Manager, Research and Development.
4. While in Plaintiff’s employ, Defendant Gallo executed three agreements: (1) a Confidentiality and Employment-at-Will Agreement on December 4, 1996 (the “1996 Confidentiality Agreement”); a Confidentiality Agreement on January 2, 1997 (the “1997 Confidentiality Agreement”); and a Settlement, Confidentiality, and Non-Compete Agreement on March 5, 2009 (the “2009 Confidentiality Agreement”) (collectively, the “Confidentiality Agreements”).
5. Each Confidentiality Agreement contained non-disclosure provisions restricting Defendant Gallo’s ability to disclose Plaintiff’s confidential, proprietary, and/or trade secret information and materials. In addition, in the 2009 Confidentiality Agreement, Defendant Gallo “fully and freely acknowledge[d] and agree[d] that [for purposes of his non-disclosure obligations], all of the specialized knowledge and information relating to High Purity Quartz in [his] possession and/or within his knowledge is confidential information belonging to [Plaintiff].”
6. On July 10, 2014, Defendant I-Minerals USA, Inc. (“I-Minerals”) issued a press release announcing its engagement of Defendant Gallo as a consultant “to oversee ceramic test work and market development” and declaring that “[w]ith the addition of Thomas Gallo to our team we are better positioned to compete in the highly competitive quartz markets.”
7. Plaintiff filed a Verified Complaint in Mitchell County, North Carolina Superior Court on July 28, 2014, contending that Defendant I-Minerals purposely hired Defendant Gallo to

compete with Plaintiff in the high purity quartz market and alleging that Defendants Gallo and I-Minerals have misappropriated, or, unless enjoined, will misappropriate, Plaintiff's confidential, proprietary, and/or trade secret information and materials in violation of the North Carolina Trade Secrets Protection Act and the North Carolina Unfair Trade Practices Act and in breach of the 1996 and 1997 Confidentiality Agreements. In addition to its statutory and contract claims, Plaintiff has asserted common law claims against one or both Defendants for conversion, unjust enrichment, breach of implied duties of good faith and fair dealing and tortious interference with contract.

8. Contemporaneously with the filing of its Verified Complaint, Plaintiff filed the Motion for TRO, by which it seeks (i) "to restrain and enjoin Defendants from directly or indirectly, disclosing, using or relying upon [Plaintiff's] confidential, proprietary and/or trade secret information," (ii) "to compel Defendants to return all documents, files and other materials containing and/or comprising [Plaintiff's] confidential, proprietary and/or trade secret information;" and (iii) "to restrain and enjoin [Defendant] Gallo from owning, managing, operating, financing, controlling, becoming employed by, or being associated with, any business venture or activity that is in direct competition with [Plaintiff] relating to high purity quartz."
9. Plaintiff also filed the Motion for Expedited Discovery in connection with its Motion for Preliminary Injunction. In the Motion for Expedited Discovery, Plaintiff seeks limited discovery in order to determine whether Defendant Gallo has or will necessarily disclose Plaintiff's confidential, proprietary, and/or trade secret information and materials in the course of his employment at Defendant I-Minerals. Specifically, Plaintiff requests to

serve four interrogatories and six requests for production to Defendant Gallo, six interrogatories and five requests for production to Defendant I-Minerals, and to take the depositions of Defendants Gallo and I-Minerals within fourteen days from the entry of an order granting its Motion for Expedited Discovery.

10. The Court held a hearing on the Motions for TRO and for Expedited Discovery on August 12, 2014. Defendants were served prior to the hearing with the Summons, Verified Complaint, Plaintiff's Motion for Temporary Restraining Order, Plaintiff's Motion for Preliminary Injunction, Plaintiff's Motion for Expedited Discovery and a Notice of Hearing. All parties were represented by counsel at the hearing.
11. Prior to the hearing, Defendant Gallo submitted an affidavit and Memoranda in opposition to the Motions for TRO and for Expedited Discovery. In his Memorandum in opposition to the Motion for TRO, Defendant Gallo indicates that he "has been retained by I-Minerals to aid in the development of a "float" process for ore extracted from I-Minerals' Helmer Bovill property (p. 2), which he states in his affidavit leads to a "resulting product, a [high purity quartz], [which] is to be marketed toward low iron applications and solar applications." (Gallo Aff., para. 9). Defendant Gallo contends that "[t]he float process results in a lower purity quartz than the higher purity quartz marketed by Unimin." (Memorandum, p. 2).
12. The purpose of a temporary restraining order ("TRO") is to preserve the status quo between the parties until such time as a motion for preliminary injunction can be properly heard. *See Lambe v. Smith*, 11 N.C. App. 580, 582 (1971) (stating that a TRO is utilized "to preserve the status quo until the motion for preliminary injunction can . . . be brought for hearing and decision.");

13. It appears to the Court from the Verified Complaint, Plaintiff's Motion for TRO, brief and supporting affidavit, and the affidavit of Defendant Gallo, as well as from the other submissions of record, that a TRO is necessary for the protection of Plaintiff's rights, to prevent irreparable harm to Plaintiff from any unauthorized disclosure or use of Plaintiff's confidential, proprietary or trade secret information and materials relating to high purity quartz, and to maintain as nearly as possible the status quo until Plaintiff's Motion for Preliminary Injunction may be heard by the Court. The balance of the equities and the ends of justice support granting such relief, and a TRO in this case is not adverse to the public interest.

14. The Court therefore concludes that a TRO should issue and that, accordingly, the Motion for TRO should be granted, in part.

15. It also appears to the Court that, in light of its grant of the Motion for TRO, Plaintiff should be allowed to propound limited expedited discovery that is narrowly focused on the issues relevant to Plaintiff's Motion for Preliminary Injunction, and in particular, to whether Defendant Gallo has or will necessarily disclose Plaintiff's confidential, proprietary, and/or trade secret information and materials in the course of his employment at Defendant I-Minerals.

16. Therefore, the Court concludes that the Motion for Expedited Discovery should be granted.

NOW THEREFORE, based upon the foregoing **FINDINGS** and **CONCLUSIONS**, it is **ORDERED** that:

1. Plaintiff's Motion for Temporary Restraining Order is granted as provided herein.

2. During the Term of this Order, Defendant Gallo is restrained and enjoined from disclosing the following information regarding the various specifications of Plaintiff's processes employed in producing high purity quartz, including:
 - a. the types of processes used;
 - b. the sequence of these processes;
 - c. the temperature applied in these processes;
 - d. the composition and quantities of chemical agents applied in these processes;
 - e. the specialized materials used in these processes;
 - f. the design of the equipment used in these processes;
 - g. the duration of these various processes;
 - h. the speed of these various processes; and
 - i. the feed rate of these various processes.
3. Within three days after the entry of this Order, Defendant Gallo shall return to Plaintiff any and all documents, files, and other materials containing and/or comprising any of the information in the immediately preceding paragraph 2 above (whether stored electronically or in hard copy) to the extent he has any such information in his possession or under his control, without retaining any copies thereof.
4. That portion of Plaintiff's Motion for Temporary Restraining Order seeking to enjoin and restrain Defendant Gallo from "owning, managing, operating, financing, controlling, becoming employed by, or being associated with" Defendant I-Minerals is denied.

5. That portion of Plaintiff's Motion for Temporary Restraining Order seeking to enjoin and restrain Defendant I-Minerals is denied.
6. Pursuant to the provisions of Rule 65(c), and as a condition of this Order, Plaintiff shall post security in the amount of \$500.00 in the form of cash, check, surety bond or other undertaking satisfactory to the Mitchell County Clerk of Superior Court on or before August 15, 2014.
7. The terms and conditions of this Order shall be in force and effect immediately, and unless extended pursuant to the provisions of Rule 65, the TRO will expire on Monday, August 25, 2014.
8. Plaintiff's Motion for Expedited Discovery is granted as provided herein.
9. The parties shall abide by the following schedule for expedited discovery and briefing in connection with the Court's consideration of Plaintiff's Motion for Preliminary Injunction:
 - a. The parties shall be permitted to serve written discovery on or before August 14, 2014. The written discovery shall be narrowly focused on the issues relevant to Plaintiff's Motion for Preliminary Injunction.
 - b. The parties shall respond to all written discovery on or before August 18, 2014.
 - c. The parties shall appear before this Court at 10:00 A.M. on Tuesday, August 19, 2014 in Courtroom 6370 of the Mecklenburg County Courthouse, 832 East Fourth Street, Charlotte, North Carolina 28202, to be heard on any objections to the written discovery requests or responses.

- d. Plaintiff shall be permitted to take the 30(b)(6) deposition of Defendant I-Minerals and the deposition of Defendant Gallo. Defendants shall be permitted to take the 30(b)(6) deposition of Plaintiff. The depositions shall be narrowly focused on the issues relevant to Plaintiff's Motion for Preliminary Injunction and shall be completed on or before August 21, 2014.
 - e. Defendants' responsive briefs and any other submissions in opposition to Plaintiff's Motion for Preliminary Injunction as well as any supplementation Plaintiff may wish to make to Plaintiff's Motion for Preliminary Injunction shall be served on or before August 22, 2014. The parties shall serve any replies to these submissions on or before 12:00 P.M. on August 25, 2014.
10. The parties shall appear before this Court at 2:00 P.M. on Monday, August 25, 2014 in Courtroom 6370 of the Mecklenburg County Courthouse, 832 East Fourth Street, Charlotte, North Carolina 28202, to be heard on Plaintiff's Motion for Preliminary Injunction.
11. Except as expressly granted in this Order, the Motion for TRO and the Motion for Expedited Discovery are DENIED.

SO ORDERED, this the 13th day of August, 2014.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Special Superior Court Judge
for Complex Business Cases