

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

SST BEARING CORPORATION,	:	APPEAL NO. C-060930
SST CASTINGS, INC.,	:	TRIAL NO. A-0400698
and	:	<i>JUDGMENT ENTRY.</i>
SST CHAIN, INC.,	:	
Plaintiffs-Appellees,	:	
vs.	:	
MTD CONSUMER GROUP, INC.,	:	
and	:	
MTD PRODUCTS, INC.,	:	
Defendants-Appellees,	:	
vs.	:	
GENERAL POWER PRODUCTS, LLC,	:	
Intevenor-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

SST Bearing Corporation, SST Castings, Inc., and SST Chain, Inc., (“SST”) filed a complaint against MTD Consumer Group, Inc., and MTD Products, Inc., (“MTD”)

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

asserting claims for breach of contract, tortious interference with contractual relations, breach of the implied covenant of good faith and fair dealing, promissory estoppel, unjust enrichment, fraud, misappropriation of trade secrets, and civil conspiracy. The claims primarily centered on MTD's unauthorized use and disclosure of SST's trade secrets.

The complaint alleged that SST imported bearings, metal castings and chain products. MTD manufactured and sold outdoor power equipment. For approximately 14 years, SST sold specially made parts to MTD. SST developed business relationships with Chinese suppliers. The identity of the Chinese suppliers was SST's trade secret. MTD asked SST to provide access to SST's Chinese suppliers so that MTD could confirm the quality of the Chinese goods. MTD promised in a letter agreement that it would not try to deal directly with the Chinese suppliers. MTD contacted the Chinese suppliers and told them to stop selling to SST and to sell directly to MTD.

The trial court entered a "Confidentiality and Protective Order" to preserve the trade secrets and proprietary information exchanged between SST and MTD during discovery. The discovery documents were sealed. Ultimately, SST and MTD settled the lawsuit. SST's complaint was dismissed with prejudice on November 16, 2005.

On August 25, 2006, General Power Products, LLC., ("GPP") filed a motion for permissive intervention under Civ.R. 24(B) for the sole purpose of modifying the protective order so that GPP could "examine documents, pleadings, and depositions filed" in the case between SST and MTD. SST and MTD opposed GPP's motion. In support of its motion, GPP stated that it was engaged in a lawsuit against MTD in federal district court and that the requested documents were critical to GPP's pending motion for a preliminary injunction.

GPP sold outdoor power equipment and engines. GPP alleged that the facts in its lawsuit against MTD were similar to the facts in the SST suit. GPP's suit against MTD

alleged that GPP had had an ongoing relationship with a Chinese distributor. GPP had improved the Chinese distributor's engines in exchange for a ten-year agreement giving GPP the exclusive rights to sell the Chinese engines in the United States. GPP had met with MTD to discuss the purchase of engines by MTD. GPP had specially modified the Chinese engines for MTD. MTD had wanted to tour the Chinese factories. MTD had told the Chinese distributor that it wanted to buy the engines directly from the distributor. MTD had threatened to discontinue doing business with the Chinese distributor if the distributor continued to sell to GPP. GPP had filed suit against MTD and the Chinese distributor for tortious interference with a business contract, trade-secret misappropriation, unfair competition, and unjust enrichment.

MTD produced to GPP the deposition of Curtis Moll, which, GPP alleged, proved MTD's pattern of engaging in intentional interference with business relationships with Chinese suppliers. Following a hearing, the trial court overruled GPP's motion to intervene, holding that the motion was "not well taken" pursuant to Civ.R. 24(B) and our decision in *Adams v. Metallica, Inc.*² GPP has appealed.

GPP's sole assignment of error alleges that the trial court erred in overruling its motion to intervene for the limited purpose of modifying the protective order.

GPP first argues that the trial court failed to set forth any "reasoning or analysis" in overruling the motion to intervene. This argument is not well taken. The record shows that the trial court thoroughly reviewed the motion, all memoranda, and the written and oral arguments. The court stated that it was basing its decision on Civ.R. 24(B) and *Metallica*, which was the proper test to apply. The questions that the court asked and the comments that the court made in the hearing demonstrate that the court correctly applied

² (2001), 143 Ohio App.3d 482, 758 N.E.2d 286.

the *Metallica* factors. It is clear from the transcript which factors the trial court deemed to carry the most weight in reaching its decision. The record sufficiently demonstrates the trial court's reasons for refusing to allow GPP to intervene.

GPP next argues that the trial court abused its discretion in overruling the motion to intervene. The *Metallica* factors consist of the following: avoidance of repetitious discovery; the nature of the protective order and the parties' reliance on it; the ability to gain the information in another way; the need for continued secrecy; the public interest involved; the degree of similarity between the suits; and the merits of the second suit when weighed against the privacy interests underlying the protective order. Under the *Metallica* balancing test, the weight to be given each factor is primarily the province of the trial court.³

GPP's primary justification for modifying the protective order was the desire to avoid repetitious discovery. GPP argues that the two lawsuits were similar in that MTD had engaged in a pattern of interfering with Chinese suppliers. GPP also argues that it would have agreed to keep the information confidential; that it was not interested in proprietary information, only in information about how MTD had behaved in relation to its American suppliers and the Chinese distributors and suppliers; and that it was only seeking a limited number of affidavits and depositions.

SST and MTD argue that they had relied on the protective order in disclosing confidential trade secrets during discovery; that GPP can pursue discovery in the second lawsuit; that there are clear differences in the cases, including the types of business relationships between the parties; and that the public interest is best served by settling

³ See *id.*

OHIO FIRST DISTRICT COURT OF APPEALS

lawsuits and resolving issues through protective orders. If the protective orders can be reopened, they argue, it will discourage settlements in the future.

The transcript shows that the trial court believed that GPP would have been able to obtain adequate discovery in the second suit. The court specifically noted that GPP could have obtained the discovery in the second suit, but that it would have been less expensive for GPP to reopen and modify the protective order in this case. The court was concerned about SST losing trade secrets and money. The court was also concerned that GPP was trying to save money at SST's expense. The trial court weighed and balanced the *Metallica* factors, ultimately refusing to grant the motion to intervene. The record demonstrates that the trial court did what it was supposed to do. We hold that the trial court did not abuse its discretion in denying the motion to intervene. The assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on November 7, 2007
per order of the Court _____.

Presiding Judge