STATE OF MICHIGAN

COURT OF APPEALS

CONTROL ROOM TECHNOLOGIES, L.L.C., and LANSING FIBER COMMUNICATIONS, L.L.C., Plaintiffs/Counter Defendants-Appellants,	UNPUBLISHED June 11, 2013
v	No. 308932 Ingham Circuit Court LC No. 10-000274-CK
WAYPOINT FIBER NETWORKS, L.L.C., and WAYPOINT TELECOMMUNICATIONS, L.L.C., Defendants, and KEPS TECHNOLOGIES, L.L.C., Defendant/Counter Plaintiff-Appellee.	

Before: BECKERING, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted the trial court's order granting defendant's motion to compel discovery. We reverse and remand for the reasons stated in this opinion.

In 2008, plaintiffs purchased business assets generally known as the Lansing Fiber Ring. After the sale, defendant KEPS Technologies, L.L.C., a/k/a ACD.NET (ACD), asserted that, pursuant to an agreement it had with the sellers, plaintiffs were obligated to provide access to parts of the Lansing Fiber Ring. Plaintiffs brought suit, seeking a declaratory judgment against ACD. Thereafter, ACD counterclaimed, alleging breach of contract, tortious interference with a business and trade libel.

This interlocutory appeal arises because the trial court granted defendant's motion to compel discovery. The trial court's decision whether to grant a motion for discovery is reviewed for an abuse of discretion. *Szpak v Inyang*, 290 Mich App 711, 713; 803 NW2d 904 (2010). An

abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. *Augustine v Allstate Ins Co*, 292 Mich App 408, 419; 807 NW2d 77 (2011).

A trial court may circumscribe discovery to prevent excessive, abusive, irrelevant, or unduly burdensome requests. *Hamed v Wayne Co*, 271 Mich App 106, 110; 719 NW2d 612 (2006). The Michigan court rules provide for liberal discovery, but the commitment to open and far-reaching discovery does not encompass fishing expeditions and does not encompass discovery based on conjecture. *Van Vorous v Burmeister*, 262 Mich App 467, 477; 687 NW2d 132 (2004). As this Court has explained: "Discovery is permitted for any relevant matter, unless privileged. However, 'a trial court should also protect the interests of the party opposing discovery so as not to subject that party to excessive, abusive, or irrelevant discovery requests.'" *Bronson Methodist Hosp v Auto-Owners Ins Co*, 295 Mich App 431, 443; 814 NW2d 670 (2012) (citing and quoting *Cabrera v Ekema*, 265 Mich App 402, 407; 814 NW2d 670 (2005)).

In this case, the trial court erred by subjecting plaintiffs to three excessive and irrelevant discovery requests. First, Interrogatory 14 requested a "[l]ist of all entities using the network provided by [plaintiffs, including] a description of all users, including all the dates used." Essentially, this interrogatory demanded plaintiffs' entire customer list. ACD claimed the information was relevant to its calculation of damages on its counterclaim for tortious interference with a business relationship or expectancy. We disagree. To establish a cause of action for tortious interference with a business relationship or expectancy, ACD is required to first establish the existence of a valid business relationship or expectancy with customers. See *Cedroni Ass'n, Inc v Tomblinson, Harburn Assoc, Architects & Planners, Inc*, 492 Mich 40, 45; 821 NW2d 1 (2012). The expectancy must be reasonable, not mere "wishful thinking." *Id.* Accordingly, discovery in this case is relevant only as to customers with whom ACD had a valid business relationship or expectancy. The identities of these customers is presumably within the knowledge of ACD's employees, and the discovery rules do not allow ACD to scrutinize plaintiffs' entire customer list for the purpose of identifying entities with whom ACD may have had a business relationship or expectancy. The trial court in this case can develop a method for the parties to identify the customers about whom further discovery may be warranted. For example, the court could conduct an *in camera* review of each party's customer list, identify the entities that appear on both lists, and allow discovery with regard to those entities. On remand, the trial court must fashion a discovery method that will enable ACD to pursue its claim while protecting plaintiffs from excessive or irrelevant requests.

Next, plaintiffs objected to Request for Production 5, which provided:

> Produce any and all of Plaintiffs' company organizational and policy information in its entirety, including but not limited to organizational charts, corporate policy and procedure manuals, policy memoranda, e-mail retention policies, and other related items.

Plaintiffs argue that the request is overbroad and that it seeks irrelevant information that is both proprietary and confidential. ACD argues that there is no privilege for confidential business information, but fails to explain how the requested information is even marginally relevant to this case. Indeed, besides the e-mail retention policy, which could be relevant to defining the

scope of other discovery requests, the information does not appear relevant. Because MCR 2.302(B)(1) clearly requires that the information must be "relevant to the subject matter involved in the pending action," and because there is no indication that the requested information is relevant, we find that the trial court abused its discretion to the extent that it granted, without limitation, ACD's motion to compel this information.

Finally, plaintiffs objected to Request for Production 4, which provided:

> Please produce a copy of all correspondence (including, but not limited to, emails [sic], letters, facsimiles) between Jason Schreiber and all employees, agents, representatives and/or affiliates of Control Room Technologies, LLC, Lansing Fiber Communications, LLC, Waypoint Fiber Networks, LLC, 123.net, Inc., Local Exchange Carriers of Michigan, Inc. (including any entities operating under an assumed name assigned to said entities), and their predecessors.

Two features of this request mark it as overbroad. First, there are no limitations as to time. Second, there are no limitations as to subject matter. Instead, it requests *all* correspondence between plaintiffs' principal and its employees and *all* correspondence between plaintiffs' principal and several other entities. The breadth of this request is simply staggering. It requires all correspondence—from the very first to the most recent—between multiple individuals and entities. ACD readily acknowledges that some of the information will be irrelevant, but insists that most of it will be relevant. ACD argues that this request is not broad because it limited the individuals and entities to individuals and entities that may have relevant communications. It argues that it cannot limit the subject matter because it does not know the context that relevant information may appear within. It argues that it cannot limit the timeframe because it does not know when relevant communications occurred. Essentially, ACD argues that it must cast a wide net and sift through countless irrelevant documents because if it casts a narrow net it may miss pertinent information. It is clear to this Court that ACD is on a fishing expedition. If the trial court had granted the request as written, it would have abused its discretion.

The trial court in this case, however, granted even broader discovery. It ordered that the hard drives for plaintiffs' principal's computer and any officer computers or laptops that he used be produced to ACD within thirty days of the court order. The court noted that once the hard drives were turned over, ACD could "go through and figure out . . . the information that you want." Discovery in Michigan is far-reaching, but it is limited at the outset in three very important ways. First, the information must not be privileged. Second, the information must be relevant. Third, the information must be reasonably calculated to lead to the admission of legally admissible evidence. Here, plaintiffs were permitted to make a log of privileged information and, no doubt, somewhere on the computer hard drives, there is legally admissible evidence. But there are almost certainly countless documents that are completely irrelevant to this case. Further, the burden on plaintiffs is unreasonable. Plaintiffs estimated that the request might require sorting through hundreds of thousands to millions of documents. Further, plaintiffs represent to this Court that plaintiffs' principal also owns or operates entities that are completely unassociated with this case. Ostensibly the hard drives to those computers must also be turned over. In the end, the trial court's order is an abuse of discretion. It is overbroad and unduly burdensome and allows ACD to embark on the ultimate fishing expedition into its close competitor's electronically stored documents.

Reversed and remanded for issuance of a discovery order consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Henry William Saad
/s/ Peter D. O'Connell