

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Clear Touch Interactive, Inc. f/k/a
Clear Touch Interactive, LLC,

Plaintiff,

vs.

Encore Technology Group, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

ORDER DISMISSING CASE

Case No. 2017-CP-23-05862

RECEIVED

SEP 27 2018

SC Court of Appeals

This matter came before the Court on the parties' cross-motions to dismiss and for summary judgment. A hearing was held on July 30, 2018, at which counsel for all parties were present. The parties agreed at the outset of the hearing that the Court should determine all motions as cross-motions for summary judgment. For the reasons set forth below, the Court grants both parties' motions for summary judgment and dismisses this case.

A. Defendant Encore Technology Group, LLC's ("Encore") Motion for Summary Judgment against Plaintiff Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC ("Clear Touch")

Clear Touch's complaint asserts four causes of action against Encore: (1) breach of contract (Mutual Confidentiality Agreement); (2) breach of contract (Reseller Agreement); (3) violation of the SC Trade Secrets Act; and (4) conversion. The Court finds and concludes that Encore's Motion for Summary Judgment dismissing all causes of action in the complaint should be granted under the doctrine of *res judicata*/issue preclusion. See, e.g., *Roddy v. Wal-Mart Stores East, L.P.*, Op. No. 27783 (S.C. S. Ct. March 14, 2018); *Jaynes v. County of Fairfield*, 303 S.C. 434, 401 S.E.2d 183 (Ct. App. 1991).

The Court presided over a prior action between the parties, Encore Technology Group, LLC vs. Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC, et al., Case No. 2015-CP-23-05757 (the "Prior Action"), which was fully tried before a jury September 25-29, 2017. Clear Touch admits that the Reseller Agreement was and/or could have been litigated in the Prior Action and therefore that the claims for breach of contract under the Reseller Agreement should be dismissed under the doctrine of *res judicata*, stipulating that its claim for breach of the Reseller Agreement is barred.

Clear Touch argues that evidence of its other claims was not produced sufficiently before trial in the Prior Action to be similarly precluded. In the Prior Action, however, Clear Touch was provided sufficient discovery to enable it to assert claims based upon Encore's alleged misuse and disclosure of Clear Touch's confidential information by May 31, 2017. Clear Touch requested and was granted a four-week continuance of the trial, from August 28 to September 25, 2017, following receipt of the subject discovery so that it could have sought to amend its Answer to assert the present claims as counterclaims. Clear Touch, however, did not seek to amend its pleadings in the Prior Action or seek an additional continuance based upon allegedly newly discovered information. Instead, Clear Touch made the decision not to assert the present claims in the Prior Action, even though they were mandatory counterclaims under Rule 13, SCRPC.

There is no genuine issue of material fact that Clear Touch could have asserted its claims in this action in the Prior Action and that they were logically related to the claims in the Prior Action. For the foregoing reasons, Encore's Motion for Summary Judgment is granted, so that not only Clear Touch's claim for breach of the Reseller Agreement, but also its claims for breach

of the Mutual Confidentiality Agreement, violation of the SC Trade Secrets Act, and conversion are dismissed.

B. Clear Touch's Motion for Summary Judgment against Encore

Clear Touch seeks an order granting it summary judgment as to Encore's counterclaims, including (1) breach of contract (Reseller Agreement), (2) breach of contract accompanied by a fraudulent act, and (3) abuse of process by the filing of this action. For the same reasons as set forth above, the doctrine of *res judicata* bars the assertion of Encore's claims for breach of contract and breach of contract accompanied by a fraudulent act in this action, because those claims could have been litigated in the Prior Action. Moreover, Encore did not present any evidence that Clear Touch had an ulterior motive in the filing and continuation of the present action, so that the counterclaim for abuse of process should also be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that both Encore's and Clear Touch's motions for summary judgment are granted, and that this action, including all claims and counterclaims that were or could have been asserted herein, are dismissed with prejudice.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Clear Touch Interactive Inc , plaintiff, et al vs. Encore Technology Group LLC
Case Number: 2017CP2305862
Type: Order/Dismissal

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