

Texas Appellate Court Holds That “Trade Secret” Exhibits Displayed Openly at Trial Are Not Subject To Confidentiality Seal

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Last week, the Fourth Court of Appeals in Texas ruled in a trade secret litigation case between Title Source, Inc. (Title Source) and HouseCanary, Inc. (HouseCanary), that the lower court erred by granting HouseCanary’s motion to seal exhibits that allegedly contained trade secret information after the jury trial concluded.

Title Source and HouseCanary both develop algorithms and software. During litigation between the parties involving, among other things, a claim of misappropriation of trade secrets under the Texas Uniform Trade Secrets Act (TUTSA), Title Source and HouseCanary entered into a stipulated protective order that outlined the procedures for designating documents and information as confidential. The protective order also set forth the procedures for sealing materials in court. The protective order was silent about filing or keeping trade secrets under seal at trial. *After* a seven-week jury trial, HouseCanary moved the court to seal fourteen trial exhibits because they purportedly revealed HouseCanary’s trade secrets, although the parties discussed and displayed these fourteen exhibits in open court at trial—they asked witnesses questions about the exhibits, displayed portions of the exhibits in the courtroom, and read portions of the exhibits to the jury. The trial court ultimately ruled to seal the exhibits.

On appeal, the Fourth Court of Appeals reversed that decision, finding, among other things that the TUTSA does not require courts to set aside valid protective orders and the statute does not mandate the sealing of records to protect trade secrets. In her concurring opinion, Chief Justice Sandee Bryan Marion wrote that the trial court erred by sealing exhibits that had been publicly disclosed in open court. Chief Justice Marion reasoned that when HouseCanary used the exhibits at trial, it was required under the TUTSA to take reasonable measures to keep information secret and it failed to do so by obtaining a separate order or agreement, as mandated by the stipulated protective order.

TIP: To successfully pursue misappropriation claims, litigants are often required to disclose in court their confidential information and trade secrets. This case demonstrates that it is important for companies to take precautions to protect their trade secrets during the pendency of legal proceedings by timely seeking and obtaining appropriate court orders to limit the dissemination of the disclosed information because the failure to do so could result in the loss of trade secret protection.

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