

June 26, 2025



JUDGMENT

The Fourteenth Court of Appeals

JUSTIN COE, MICHAEL COMRIE, RUSSELL DAUPHIN, KALE
GARRETSON, RYAN HIBBETTS, MICHAEL KASPAR, JACOB LEWALLEN,
BRIAN MADISON, BRUCE WAYNE STEUBING, MICHAEL WHEELER,
RYAN WHEELER, BO YOUNG, AND TOBY EOFF, Appellants

NO. 14-23-00410-CV

V.

DNOW LP D/B/A DISTRIBUTIONNOW, Appellee

This cause, an appeal from the judgment signed March 24, 2023, in favor of appellee DNOW LP d/b/a DistributionNOW, was heard on the appellate record. We have inspected the record and hold as follows:

1. The Texas Uniform Trade Secrets Act preempts DNOW's other claims or theories of liability to the extent that they rely on proof of "misappropriation" of "trade secrets," as those terms are statutorily defined. Thus, conspiracy to misappropriate trade secrets is preempted by the Texas Uniform Trade Secrets Act, and the trial court erred in
 - (a) holding appellants Justin Coe, Russell Dauphin, Toby Eoff, Jacob Lewallen, Brian Madison, Michael Wheeler, and Bo Young jointly and severally liable to appellee DNOW for damages in the amount of \$1,010,097.00;

- (b) holding appellants Justin Coe, Kale Garretson, Ryan Hibbetts, Michael Kaspar, Jacob Lewallen, Brian Madison, and Michael Wheeler liable to DNOW for exemplary damages; and
 - (c) holding appellants Justin Coe, Michael Comrie, Russell Dauphin, Toby Eoff, Kale Garretson, Ryan Hibbetts, Michael Kaspar, Jacob Lewallen, Brian Madison, Bruce Wayne Steubing, Michael Wheeler, Ryan Wheeler, and Bo Young jointly and severally liable for DNOW's attorneys' fees.
- 2. Because no evidence supports the jury's findings of lost profits or of the actual cost of retraining and productivity, the trial court erred in including those amounts in the damage award.
- 3. The trial court erred in submitting, over the appellants' objections, an erroneous charge on liability under the Texas Theft Liability Act, and no evidence supports the jury's liability finding under a correct charge; as a result, the appellants are the prevailing parties as to this claim, and the trial court erred in failing to award them their attorneys' fees in the amounts found by the jury, as well as their costs in connection with this claim.
- 4. Although there is legally sufficient evidence that appellants Russell Dauphin, Toby Eoff, Brian Madison, and Michael Wheeler breached fiduciary duties to DNOW, the trial court erred in refusing their proposed instruction and in submitting a charge that allowed the jury to find liability based on preempted misappropriation claims and breaches of duties that were not owed.
- 5. Legally sufficient evidence supports the jury's findings that DNOW sustained \$225,000.00 in damages for misappropriation of trade secrets and that appellant Bo Young bears proportionate responsibility for 5% of those damages.
- 6. The exemplary-damages award against appellant Bo Young exceeds the damage cap under the Texas Uniform Trade Secrets Act.
- 7. The trial court erred in calculating pre-judgment interest on the judgment against Bo Young from the date the lawsuit was filed rather than the date that DNOW amended its petition to add Young to the lawsuit.

We therefore affirm the judgment as modified in part, reverse and render in part, and reverse and remand in part, as follows:

1. We **MODIFY**
 - (a) paragraph 1 of the judgment to instead hold only appellant Bo Young liable to DNOW for actual damages, and only in the amount of \$11,250.00;
 - (b) paragraph 2 of the judgment to state that prejudgment interest on this amount began accruing on October 6, 2022, when Young was added to this suit;
 - (c) paragraph 4(h) of the judgment to apply the statutory damage cap, which reduces the amount of appellant Bo Young's exemplary damage award to \$22,500.00;
2. we **AFFIRM** the modified portions of paragraphs 1, 2, and 4(h) of the judgment;
3. we **REVERSE**
 - (a) the remainder of paragraph 2 (calculating the total pre-judgment and the daily amount accruing before the judgment was signed);
 - (b) all of paragraph 3 (ordering payment of DNOW's attorneys' fees);
 - (c) paragraph 4(a)–4(g) (ordering appellants other than Bo Young to pay DNOW exemplary damages);
 - (d) all of paragraph 5 (awarding DNOW equitable relief from appellants Toby Eoff, Brian Madison, Michael Wheeler, and Russell Dauphin for breach of fiduciary duty);
 - (e) all of paragraph 7 (declaring DNOW the prevailing party under the Texas Theft Liability Act and disregarding the jury's findings as to the appellants' attorneys' fees); and

- (f) all of paragraph 9 (declaring DNOW the prevailing party in this matter and awarding it costs);
4. we **RENDER** judgment, in part, that
- (a) DNOW take nothing by its claims against Justin Coe, Michael Comrie, Russell Dauphin, Toby Eoff, Kale Garretson, Ryan Hibbetts, Michael Kaspar, Jacob Lewallen, Brian Madison, Bruce Wayne Steubing, Michael Wheeler, and Ryan Wheeler under the Texas Uniform Trade Secrets Act;
 - (b) DNOW take nothing by its claims under the Texas Theft Liability Act;
 - (c) as the prevailing parties in DNOW's suit under the Texas Theft Liability Act, the appellants shall recover their attorneys' fees from DNOW as follows:
 - (i) \$1,652,316.21 for representation in the trial court;
 - (ii) \$250,000.00 for representation in the court of appeals;
 - (iii) \$100,000.00 for representation if DNOW should petition the Supreme Court of Texas for review of the judgment concerning claims under the Texas Theft Liability Act;
 - (iv) \$250,000.00 for representation through the merits-briefing stage; and
 - (v) \$100,000.00 for representation through oral argument and all proceedings in the Supreme Court of Texas; and
5. we **REMAND**
- (a) for a new trial of DNOW's breach-of-fiduciary-duty claims against appellants Toby Eoff, Brian Madison, Michael Wheeler, and Russell Dauphin;

- (b) for a determination of the amount of DNOW's reasonable attorneys' fees for litigating its trade-secret-misappropriation claim against Bo Young;
- (c) for the trial court to exercise its discretion in determining the extent, if any, of such attorneys' fees to award to DNOW; and
- (d) for rendition of judgment after applying settlement credits, recalculating interest, and reapportioning costs.

We order appellee DNOW LP d/b/a DistributionNOW to pay all costs incurred in this appeal.

We further order this decision certified below for observance.

Judgment rendered June 26, 2025.

Panel consists of Chief Justice Christopher and Justice Wise. Opinion delivered by Chief Justice Christopher.¹

¹ This case was submitted for oral argument on November 21, 2024, to a panel originally consisting of Chief Justice Christopher and Justices Wise and Hassan. Justice Hassan's term of office ended on December 31, 2024. If a case has been argued but a panel member cannot participate in deciding the case, then the panel's two remaining justices may decide the case where, as here, they agree on the judgment. *See* TEX. R. APP. P. 41.1(b).