ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

ORCA COMMUNICATIONS UNLIMITED, LLC v. NODER
CV-13-0351-PR

PARTIES:

Petitioners/Defendants: Ann J. Noder and Christopher Noder; Pitch Public Relations, LLC (collectively, "Noder")

Respondent/Plaintiff: Orca Communications Unlimited, LLC ("Orca")

FACTS:

Overview. This appeal arises out of the Court of Appeals' partial reversal of the superior court's dismissal of a complaint against Noder alleging, among other things, a common law claim for unfair competition based on misappropriation of "confidential and trade secret information."

The Statute at Issue. At issue is the proper interpretation of A.R.S. § 44-407, a provision the Arizona Uniform Trade Secrets Act ("AUTSA") that is the same as Section 7 of the Uniform Trade Secrets Act ("UTSA"):

> A. Except as provided in subsection B, this chapter displaces conflicting tort, restitutionary and other laws of this state providing civil remedies for misappropriation of a trade secret.
>
> B. This chapter does not affect:
>
> 1. Contractual remedies, whether or not based on misappropriation of a trade secret.
>
> 2. Other civil remedies that are not based on misappropriation of a trade secret.
>
> 3. Criminal remedies, whether or not based on misappropriation of a trade secret.

A.R.S. § 44-407 (West 2013).

Factual Background. From 2002 to 2009, Ann Noder served as president of Orca, which provides public relations services to U.S. and foreign businesses. After a failed attempt to buy the company, Noder allegedly contacted Orca's customers to let them know that she planned to form a competing company. In early May 2009, Noder resigned from Orca and formed Pitch Public Relations, LLC, offering services similar to Orca's.

About a year later, Orca filed suit against Ann Noder, her husband and her company. Among other things, Orca claimed that Noder engaged in unfair competition by establishing Pitch Public Relations using Orca "confidential and trade secret information," including "information about Orca's business model, operating procedures, techniques, and strengths and weaknesses."

In early 2011, the superior court dismissed the complaint. Among other things, it ruled that Orca's unfair competition claim was preempted under the AUTSA, A.R.S. § 44-407. Orca then appealed the dismissal to the Court of Appeals.

The Court of Appeals' Ruling. The Court of Appeals affirmed in part and reversed in part. Among other rulings, it partly reversed the dismissal of Orca's claim for unfair competition. It ruled that "[t]o the extent Orca's claim alleges the taking of trade secret information, the AUTSA preempts it." But to the extent the claim was based on the taking of "confidential information" that did not qualify for trade secret protection, it ruled that the AUTSA did not preempt the claim and, accordingly, it held that the trial court erred in dismissing the claim.

The court acknowledged that a "majority of courts that have considered this issue interpret the UTSA to preempt all common law tort claims based on misappropriation of information regardless whether it reaches the level of a trade secret." It noted that these cases emphasize that this interpretation is consistent with the UTSA's purpose in creating "a uniform business environment with more certain standards for [the] protection of commercially valuable information." But the court also noted that based on a "plain reading" of the statute, a "strong minority of courts . . . interpret the statute to preempt only trade secret information."

The court said that it agreed with the minority. It reasoned that the statute's language limits the statute's preemptive reach to trade secret claims, noting that the preemption provision says that it does not affect "other civil remedies that are not based on misappropriation of a *trade secret*." A.R.S. § 44-407(B)(2) (emphasis added). It also noted that the AUTSA provides a "specific meaning" for that term, and "not all information will rise to this level." From that, it concluded that the legislature did not intend the AUTSA to "preempt a claim based on the misappropriation of confidential information that does not rise to the level of trade secretion [sic] information."

It also said that a contrary ruling was not necessary to promote national uniformity in interpreting the UTSA. It noted that Arizona did not adopt the Section 8 of the UTSA, which provides that "[t]his [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it." Thus, the court reasoned, it was free to disregard other states' interpretations of the UTSA.

ISSUE:

In determining whether the preemption provision of the Arizona Uniform Trade Secret Act (AUTSA) bars common law claims based on the alleged misappropriation of confidential information, did the Court of Appeals err by following the minority view and limiting the scope of preemption to claims asserting misappropriation of trade secrets?