



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**TASER INTERNATIONAL, INC. v. STEVE WARD
CV-10-0177-PR**

PARTIES:

Petitioner: Taser International, Inc.

Respondent: Steve Ward

FACTS:

Taser develops and manufactures stun guns and accessories, including a personal video and audio recording device called TASER CAM. Ward was a full time, at-will employee with Taser from January 2004 to July 2007, serving as vice-president of marketing and international sales. Ward did not sign an employment contract or a covenant not to compete. During his employment, he was privy to some of Taser's confidential information and trade secrets. He and other Taser executives conducted research and development and considered new product ideas and concepts.

In December 2006, Ward began exploring whether he could personally develop an eyeglass-mounted security camera, but he abandoned the project after learning that concept was patent-protected. Between April 2007 and when he resigned approximately four months later, he explored the concept of a clip-on camera device, had patent counsel conduct a patent search on that idea, and communicated with JAM-Proactive, a product development company, about the design and development of such a device.

Ten months after Ward resigned, Taser announced the AXON, a product that provides an audio-video record of an incident from the visual perspective of the person involved. It sued Ward for, among other things, breach of the duty of loyalty and breach of fiduciary duty. Taser alleged that before Ward resigned from Taser, he engaged in design and development efforts using Taser's facilities or resources to develop a product for a company, VieVu, that he later formed to compete directly with a Taser product. Ward answered and counterclaimed on issues unrelated to the appeal.

Taser moved for partial summary judgment as to liability on the duty of loyalty and fiduciary duty claims. Ward filed a cross-motion for summary judgment on those claims. The trial court found Ward breached both duties owed to Taser, granted Taser's motion, and denied Ward's cross-motion.

Ward appealed. The court of appeals noted summary judgment is not intended to resolve factual disputes and is inappropriate if a court must determine witnesses' credibility, weigh evidence, or choose among competing inferences. *Orme School v. Reeves*, 802 P.2d 1000, 1007-08 (1990). Taser's motion alleged the theories that Ward: (1) directly competed with Taser before resigning; (2) improperly used Taser's materials and confidential information; (3) usurped Taser's corporate

opportunity with regard to a “second generation on-officer audio and video recording device building from the TASER CAM;” and (4) did not tell Taser that he planned to form a competing business.

Addressing the first theory (direct competition), the court noted that an employee’s fiduciary duty to his employer precludes active competition with the employer during employment. *Restatement (Third) of Agency (“Restatement”) §8.04* (2006). Following termination of employment, however, in the absence of an enforceable non-compete agreement, a former employee is free to compete. *Restatement §8.04 cmts. b, c*. Although an employee may not compete before employment ends, “[the employee] may take action [during employment], not otherwise wrongful, to prepare for competition following termination of the agency relationship.” *Restatement §8.04*.

Ward argued that his pre-termination activities were lawful preparations for a future business venture. Taser, on the other hand, asserted Ward’s activities, including developing a rival design during employment, knowing that Taser had sold such a device and continued to develop a second generation product, went beyond permitted “preparation.” Reviewing Ward’s actions, the appellate court concluded that certain of Ward’s pre-termination activities were qualitatively different than “direct competition” and could not form a basis for liability (*e.g.*, his partial development of a business plan; that he sought legal advice and researched existing patents; his activities pertaining to the eyeglass-mounted camera concept, which he abandoned; and any preliminary investigation with regard to developing a clip-on camera device, including seeking a product design proposal).

On the other hand, the court found there was a genuine issue of material fact as to the extent of Ward’s pre-termination design and development efforts. Taser submitted evidence indicating that Ward engaged in pre-termination communications with staff at JAM-Proactive and received its design proposal before his resignation. Based on this and other evidence, a reasonable jury could infer that substantial design and development efforts occurred during Ward’s employment, or it could conclude that Ward’s statements were mere puffery, and that he had only explored options with JAM-Proactive. Therefore, summary judgment on this theory was improper.

Regarding the second theory (improper use of resources and confidential information), the court held that although it was undisputed Ward was exposed to trade secrets and other confidential information and he retained his notes from Taser strategy sessions, a genuine issue of material fact existed as to whether he used the information in developing his product or operating his business. Ward’s declaration stated “[he was] unaware of any information or technology exclusive to TASER that can be found in VIEVU products.” He also testified “VIEVU’s product is comprised of readily available off-the-shelf internal components . . . as well as custom-designed software and casing, all of which are unassociated with and wholly dissimilar to TASER’s products.”

The court declined Taser’s invitation to infer Ward must have used its proprietary information in his business and design efforts. Taser provided no evidence of the specific confidential information it contended Ward used, as opposed to information to which he was simply exposed. There was also no evidence that Ward kept his notes secretly or acted to harm Taser. The mere fact that he retained certain documents, without more, was insufficient to merit summary judgment. Because genuine issues of material fact existed, summary judgment was not warranted.

Addressing Taser’s third theory (usurpation of corporate opportunity), the court found no support in the record for Taser’s charge that Ward wrongfully deprived it of any business opportunities. Taser argued only that Ward took its opportunity to develop a second-generation recording device. Rejecting that argument, the court held that Taser’s success in developing, marketing, and selling its newly-released TASER AXON, the product it contends resulted from its early interest in developing a second-generation recording device, “belies its argument.”

The court reasoned that if the corporate opportunity doctrine were extended to all possible business ideas discussed or learned about during employment, it would unnecessarily restrain competition. It would preclude former employees from ever developing competing products in any line of business remotely connected to concepts discussed by the employer, effectively transforming at-will employment to one bound by a *de facto* non-compete agreement. The court declined to extend the corporate opportunity doctrine that far. Even if Ward directly competed with Taser during his employment and misappropriated trade secrets or confidential information, his actions did not deprive Taser of or adversely affect its opportunity to develop a second-generation recording device. Therefore, summary judgment on this theory in favor of Taser was inappropriately granted. Because there were no genuine issues of material fact relevant to this theory, and because Ward was entitled to judgment as a matter of law based on the record, the court directed entry of summary judgment on this theory in his favor.

Finally, with respect to Taser’s fourth theory (disclosure of intent to compete), the court agreed with Ward that he had no duty to disclose his plans to leave and form VieVu, but to the extent his pre-termination development efforts constituted competition rather than preparation, or involved the use of proprietary information, he had a duty to disclose his activities to Taser. Because there were genuine issues of material fact as to whether Ward used proprietary information or competed with Taser during his employment, summary judgment on this theory was inappropriate.

ISSUES:

1. Should Arizona common law on usurpation of corporate opportunity by high-ranking executives be revisited and modernized consistent with other jurisdictions so that high-ranking executives owe the duty to present corporate opportunities to their employer where such opportunities are reasonably incident to the employer’s offerings before the executive pursues them for personal benefit?
2. Did the court of appeals err in reversing the trial court on Taser’s corporate opportunity claim, where the trial court determined that [Ward] breached his fiduciary duty to Taser by focusing on post-employment considerations rather than on an executive’s obligations during employment?

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