# United States Court of Appeals
## For the Eighth Circuit

No. 22-1399

Ahern Rentals, Inc.

*Plaintiff - Appellant*

v.

EquipmentShare.com, Inc.; EZ Equipment Zone, LLC

*Defendants - Appellees*

Appeal from United States District Court
for the Western District of Missouri - Jefferson City

Submitted: November 16, 2022
Filed: February 7, 2023

Before COLLOTON, SHEPHERD, and GRASZ, Circuit Judges.

SHEPHERD, Circuit Judge.

Ahern Rentals, Inc. (Ahern), alleges that two competitors—EquipmentShare.com, Inc. (EquipmentShare) and EZ Equipment Zone, LLC (EZ)—misappropriated its trade secrets to gain an unfair advantage in the construction equipment rental industry. The district court first dismissed EZ from the lawsuit, ruling that Ahern failed to state a plausible claim for relief against it. Later, the district court dismissed the case altogether, ruling that Ahern's remaining claims

against EquipmentShare were duplicative of claims against EquipmentShare in several other ongoing lawsuits brought by Ahern. Ahern appeals both rulings, arguing that the district court erred in dismissing its claims. Having jurisdiction under 28 U.S.C. § 1291, we agree and reverse.

I.

Ahern is one of the largest independently owned equipment rental companies in the United States. Ahern provides heavy equipment rental and repair services and sells new and used equipment. Ahern has locations across the United States and 60 years of experience in the equipment rental industry. To protect its sensitive data, Ahern requires its employees to sign non-disclosure, non-solicitation, and non-competition agreements. Ahern's employee handbook also explicitly requires employees to safeguard the company's confidential information, which includes customer and vendor lists, pricing and marketing data, sales systems, training materials, and personnel data.

EquipmentShare is a relative newcomer in the equipment rental industry. Formed in 2014, EquipmentShare has quickly grown to become one of Ahern's top competitors. Its business model is similar to Ahern's, with a focus on brick-and-mortar rental locations. EquipmentShare has also developed custom telematics systems to track rental equipment in real time. Like its competitor Ahern, EquipmentShare now has dozens of locations across the country. As it has grown, EquipmentShare has hired many former Ahern employees.

In 2019, Ahern sued EquipmentShare and several of Ahern's former employees in both federal and state courts. Several of the federal lawsuits have been consolidated as a multidistrict litigation (MDL) proceeding in the Western District of Missouri. They include a Racketeer Influenced and Corrupt Organizations Act (RICO) suit against EquipmentShare as well as various contract- and tort-based employment actions against former Ahern employees, which include related claims against EquipmentShare. These lawsuits are all premised on the same general

allegation: EquipmentShare has engaged in a wide-ranging and unlawful conspiracy to increase its market share at Ahern's expense. Specifically, Ahern alleges that, in early- to mid-2017, EquipmentShare began recruiting Ahern's employees to steal Ahern's trade secrets before leaving Ahern to work for EquipmentShare. EquipmentShare then used Ahern's trade secrets to develop its telematics systems and capture significant portions of Ahern's business.

In November 2020, Ahern brought this lawsuit against EquipmentShare and included EZ as a named defendant. Like EquipmentShare, EZ is a newcomer in the equipment rental industry, but its business model is different. Formed in 2018, EZ is a managed cooperative platform that assists owners of rental equipment to rent out their equipment. Importantly, it is undisputed that EZ and EquipmentShare have a business relationship. Much of this business relationship is summarized in the Asset Management Agreement provided by EZ to its users, which mentions EZ's "rental agreements with a national equipment rental company." As part of this Agreement, EZ requires its users to participate in an "Asset Management Marketplace" which enables them "to acquire equipment assets [and] monetize [their] equipment through [EZ's] rental agreements with a national equipment rental company with numerous rental locations" but also binds users under EZ's contracts with EquipmentShare. Further, EZ serves its users through software that is owned, operated, and managed by EquipmentShare. For example, EZ requires its users to utilize EquipmentShare's "ES Track" and "ES Service" programs to monitor and maintain their rental equipment, respectively.

Ahern contends that the coordination between EZ and EquipmentShare is more than an innocent business relationship. In its November 2020 complaint—Ahern's only involving EZ—Ahern alleges that after its original lawsuits, EquipmentShare conspired with EZ to continue its scheme of using Ahern's trade secrets to gain a competitive advantage in the rental equipment industry. Ahern's complaint details the close business relationship between EquipmentShare and EZ described above and asserts that EquipmentShare and EZ are, in fact, one and the same. Ahern alleges, based on "information and belief," that EZ is using the

"customer lists, rental information, pricing information, and marketing strategies" that EquipmentShare illegally obtained from Ahern to monitor, service, and place its users' equipment. Further, Ahern alleges that EZ has "knowledge" that this information "was illegally obtained by EquipmentShare from Ahern." All told, this lawsuit is different from the others in the MDL in that it alleges a conspiracy between EquipmentShare and EZ to misappropriate Ahern's stolen trade secrets to gain an unfair advantage.

Ahern filed its November 2020 complaint in the Eastern District of Missouri, alleging six claims against EquipmentShare and EZ: (1) conspiracy under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030; (2) misappropriation of trade secrets in violation of the Defend Trade Secrets Act, 18 U.S.C. § 1836; (3) misappropriation of trade secrets in violation of the Missouri Uniform Trade Secrets Act, Mo. Rev. Stat. § 417.450 et seq.; (4) tampering with computer data in violation of Mo. Rev. Stat. § 569.095; (5) civil conspiracy; and (6) unjust enrichment. In January 2021, EquipmentShare and EZ filed separate motions to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Soon thereafter, but before a ruling on the motion to dismiss, the case was transferred to the Western District of Missouri, where it was consolidated with Ahern's other lawsuits in the ongoing MDL.

After transfer to the Western District of Missouri, the district court dismissed EZ from the lawsuit. The district court found that Ahern's complaint did not allege facts plausibly demonstrating EZ's involvement in EquipmentShare's alleged misappropriation of trade secrets and tampering of computer data, much less that there was a meeting of the minds sufficient for a conspiracy to exist. In particular, the district court took issue with several paragraphs in Ahern's complaint alleging EZ's involvement and knowledge, which are all pled "upon information and belief." The district court concluded that Ahern's complaint failed to state a plausible claim against EZ and, accordingly, granted EZ's motion to dismiss.

With EZ dismissed from the lawsuit, EquipmentShare objected to Ahern's discovery requests relating to EZ. The district court sustained those objections. In November 2021, EquipmentShare filed a motion for judgment on the pleadings, arguing that Ahern's claims were duplicative of the other actions in the MDL and should be dismissed for improper claim-splitting. In February 2022, the district court dismissed all remaining claims, holding that, with EZ gone, the remaining claims against EquipmentShare were no different from the other claims in the MDL proceeding. Ahern now appeals.

II.

Ahern first argues that the district court improperly dismissed its claims against EZ for failing to state a claim. "We review de novo a grant of a motion to dismiss for failure to state a claim under Rule 12(b)(6), accepting as true all factual allegations in the light most favorable to the nonmoving party." Glick v. W. Power Sports, Inc., 944 F.3d 714, 717 (8th Cir. 2019). Nevertheless, "we need not accept as true a plaintiff's conclusory allegations or legal conclusions drawn from the facts." Id.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible if the plaintiff pleads facts "that allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. If, on the other hand, the plaintiff pleads facts that are "'merely consistent with' a defendant's liability," the complaint "stops short of the line between possibility and plausibility of 'entitlement to relief.'" Id. (quoting Twombly, 550 U.S. at 557).

The district court dismissed Ahern's claims against EZ primarily because Ahern's complaint alleged EZ's involvement in EquipmentShare's scheme only "upon information and belief." For example, Ahern alleges, based on "information

and belief," that "EquipmentShare has contracted with EZ to use Ahern's confidential, proprietary, and/or trade secret information to continue the illegal attack upon Ahern's business." Similarly, Ahern alleges "[u]pon information and belief" that EquipmentShare "sought out and conspired with EZ to use Ahern's confidential, proprietary, and/or trade secret information to continue the illegal attack upon Ahern." The district court concluded that allegations pled only on information and belief do not "'nudge the claim[s] across the line from conceivable to plausible' as required by Iqbal and Twombly." R. Doc. 343, at 8-9 (alteration in original) (quoting McDonough v. Anoka Cnty., 799 F.3d 931, 945 (8th Cir. 2015)). According to the district court, "Adding 'upon information and belief' does not make the facts Ahern advances likely." Ahern contends that the district court erred as a matter of law in dismissing its claims against EZ for this reason. We agree.

Pleading on information and belief is expressly contemplated by the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 11(b)(3) ("[A]n attorney or unrepresented party certifies that to the best of the person's knowledge, *information, and belief*, formed after an inquiry reasonable under the circumstances: . . . the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery . . . ." (emphasis added)). However, we have never fully articulated when plaintiffs may use upon-information-and-belief pleadings in a complaint to satisfy Twombly's plausibility requirement. Though "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice," Iqbal, 556 U.S. at 678, we cannot always expect plaintiffs to provide robust evidentiary support for their allegations at the pleading stage because, in some contexts, that information may not be available to them before discovery. In the ERISA context, for example, we have reasoned that while plaintiffs "must offer sufficient factual allegations to show that [they are] not merely engaged in a fishing expedition or strike suit, we must also take account of their limited access to crucial information." Braden v. Wal-Mart Stores, Inc., 588 F.3d 585, 598 (8th Cir. 2009) ("If plaintiffs cannot state a claim without pleading facts which tend systemically to be in the sole possession of defendants, the remedial

scheme of the statute will fail, and the crucial rights secured by ERISA will suffer."). Thus, based on the Federal Rules of Civil Procedure and our own precedent, pleading on information and belief must be permitted in at least some circumstances.

Our sister circuits have largely agreed that factual allegations pled on information and belief should not be summarily rejected under Twombly where "the facts are peculiarly within the possession and control of the defendant, or where the belief is based on factual information that makes the inference of culpability plausible." Arista Recs. LLC v. Doe 3, 604 F.3d 110, 120 (2d Cir. 2010) (citation omitted); see also Menard v. CSX Transp., Inc., 698 F.3d 40, 45 (1st Cir. 2012); McDermott v. Clondalkin Grp., Inc., 649 F. App'x 263, 267-68 (3d Cir. 2016); Innova Hosp. San Antonio, Ltd. P'ship v. Blue Cross & Blue Shield of Georgia, Inc., 892 F.3d 719, 730 (5th Cir. 2018); Pirelli Armstrong Tire Corp. Retiree Med. Benefits Tr. v. Walgreen Co., 631 F.3d 436, 442-43 (7th Cir. 2011); Soo Park v. Thompson, 851 F.3d 910, 928 (9th Cir. 2017); Kareem v. Haspel, 986 F.3d 859, 866 (D.C. Cir.), cert. denied sub nom. Kareem v. Burns, 142 S. Ct. 486 (2021). We adopt this prevailing standard today and hold that allegations pled on information and belief are not categorically insufficient to state a claim for relief where the proof supporting the allegation is within the sole possession and control of the defendant or where the belief is based on sufficient factual material that makes the inference of culpability plausible.

This conclusion is not at odds with our previous decisions rejecting upon-information-and-belief pleadings in the narrow context of quiet title actions. In a series of cases, we rejected plaintiffs' claims based on the alleged existence of an unrecorded mortgage assignment—pled only on information and belief—because the plaintiffs provided "mere conclusory allegation[s]," not hard facts, supporting the existence of the unrecorded assignment and, therefore, the invalidity of defendants' title. Welk v. Fed. Nat'l Mortg. Ass'n, 561 F. App'x 577, 580 (8th Cir. 2014) (per curiam); see also Lee v. Fed. Nat'l Mortg. Ass'n, 553 F. App'x 652, 654 (8th Cir. 2014) (per curiam); Richter v. Fed. Nat'l Mortg. Ass'n, 553 F. App'x 655, 657 (8th Cir. 2014) (per curiam); Karnatcheva v. JPMorgan Chase Bank, N.A., 704

F.3d 545, 548 (8th Cir. 2013). All but one of these opinions are unpublished and thus nonprecedential. See 8th Cir. R. 32.1A. Even so, they are consistent with the approach we adopt today. In the context of quiet title actions, information regarding an unrecorded mortgage assignment is not necessarily in the sole possession and control of the defendant. Rather, the plaintiff likely has just as much opportunity as the defendant to locate an unrecorded assignment. Moreover, the allegations in these cases, which depended entirely on the existence of unrecorded assignments, amounted to pure speculation. See Welk, 561 F. App'x at 580 ("While such language suggests that an unrecorded assignment might conceivably exist, Welk provides no additional facts that would lead to the plausible inference that an unrecorded assignment does exist. As such, Welk's claim amounts to a mere conclusory allegation based solely on speculation."). Without some factual basis for the inference of liability or the reasonable belief that the information supporting such liability is in the sole possession of the defendant, pleadings made on information and belief cannot cure an otherwise threadbare complaint.

In light of the foregoing, the district court erred by summarily rejecting Ahern's allegations pled on information and belief. If such allegations are based on information that is within the possession and control of the defendant or are supported by sufficient factual material that makes the inference of culpability plausible, they are permissible under Twombly and Iqbal. Applying this standard to Ahern's complaint, Ahern pleads sufficient facts to state a plausible claim against EZ. We address each of Ahern's claims in turn.

A.

First, Ahern alleges misappropriation of trade secrets under the federal Defend Trade Secrets Act (DTSA) and the Missouri Uniform Trade Secrets Act (MUTSA).[1]

[1]Ahern's complaint also included a claim for conspiracy under the Computer Fraud and Abuse Act, which the district court dismissed for the same reasons as the other claims. In its briefing, Ahern dropped its appeal as to this claim. See Appellant Reply Br. 20. We thus do not address this claim.

Because these statutes are essentially identical, we can analyze the claims together. See MPAY Inc. v. Erie Custom Comput. Applications, Inc., 970 F.3d 1010, 1017 n.1 (8th Cir. 2020) (analyzing Minnesota Uniform Trade Secrets Act and DTSA together because parties did not identify any differences).

"To demonstrate misappropriation of trade secrets, [Ahern] must show, among other things, the existence of a protectable trade secret and misappropriation of that trade secret." Id. at 1016. A "trade secret" is information that "the owner thereof has taken reasonable measures to keep . . . secret" and that "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information." 18 U.S.C. § 1839(3); see Mo. Rev. Stat. § 417.453(4).

Ahern adequately alleges that the information that was purportedly misappropriated—Ahern's customer lists, rental information, pricing information, and marketing strategies—qualifies as trade secrets. This non-public information has economic value because Ahern "derives economic benefit" from its not being readily known or ascertainable. Conseco Fin. Servicing Corp. v. N. Am. Mortg. Co., 381 F.3d 811, 819 (8th Cir. 2004). And Ahern identifies several steps that it takes to keep this information secret. For example, it requires its employees to sign detailed non-disclosure, non-solicitation, and non-competition agreements. Ahern employees also must comply with strict social media, internet, and email policies that prohibit employees from "disclos[ing] or otherwise publish[ing] trade secrets, proprietary information, or confidential material." Thus, Ahern adequately alleges the existence of protectable trade secrets.

The closer question is whether Ahern plausibly alleges that EZ has "misappropriated" those trade secrets. As relevant here, "misappropriation" is defined as the "disclosure or use of a trade secret of another without express or implied consent" by someone who "at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was . . . derived from or

through a person who had used improper means to acquire the trade secret." 18 U.S.C. § 1839(5)(B)(ii)(I); see Mo. Rev. Stat. § 417.453(2).

With this statutory language in mind, Ahern's complaint provides sufficient factual material to allow us "to draw the reasonable inference" that misappropriation occurred. Iqbal, 556 U.S. at 678. The complaint details, with specific factual allegations, that EZ and EquipmentShare have a close business relationship. For example, the complaint describes how EZ requires its users to use EquipmentShare's programs, including ES Track and ES Service, to service their equipment and maximize rental rates. Further, Ahern alleges that would-be rental owners seeking to participate in EZ's rental cooperative must purchase their equipment through the "strategic partnership" between EZ and EquipmentShare. According to Ahern, EquipmentShare developed these programs by exploiting Ahern's trade secrets. Ahern also alleges that the market information used by EZ to develop profitable utilization and rental rates is based on Ahern's trade secrets illegally obtained by EquipmentShare. Taking all factual allegations as true, Ahern pleads enough facts to make it entirely plausible that EZ is at least *using* systems developed by EquipmentShare through the exploitation of Ahern's trade secrets.

But to state a claim for misappropriation, Ahern must plausibly allege that EZ "*knew or had reason to know*" that these trade secrets were improperly acquired by EquipmentShare. 18 U.S.C. § 1839 (5)(B)(ii)(I) (emphasis added). On this point, Ahern's allegations are pled only on "information and belief." However, such pleadings are appropriate here. The rest of Ahern's detailed allegations, taken as true, make clear that EquipmentShare's programs were at the core of EZ's operations. Based on these detailed allegations, it is entirely plausible to infer that EZ *knew* it was using programs developed through the exploitation of trade secrets. Further, any hard evidence of EZ's knowledge is within the sole control of EZ or EquipmentShare. In other words, Ahern has provided enough factual material to make the inference of culpability plausible. But Ahern can prove EZ's culpability only through discovery. Thus, Ahern's allegations pled on information and belief are sufficient to nudge its complaint across "the line between possibility and

plausibility." Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557). Accordingly, the district court erred in dismissing Ahern's trade-secrets-misappropriation claim against EZ.

B.

Next, Ahern alleges that EZ knowingly used data obtained without authorization in violation of Missouri law. As relevant here, Missouri law imposes civil liability on anyone who "knowingly and without authorization . . . [r]eceives, retains, uses, or discloses any data he knows or believes was obtained in violation of this subsection," including data taken without authorization. Mo. Rev. Stat. § 569.095.1(6); id. § 537.525 (imposing civil liability for violation of § 569.095). As discussed above, Ahern has plausibly alleged that EZ was at least using systems developed by EquipmentShare through the unauthorized use of Ahern's trade secrets. The question again comes down to whether Ahern plausibly alleges that EZ *knew* that this data was obtained without authorization. As above, we think Ahern's upon-information-and-belief pleadings are sufficient to plausibly allege EZ's knowledge because any actual proof of such knowledge is solely within the possession and control of the defendants. Thus, the district court erred in dismissing Ahern's data tampering claim against EZ.

C.

Ahern also asserts two common law claims: civil conspiracy and unjust enrichment. Under Missouri law, civil conspiracy requires "(1) two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful overt acts, and (5) resulting damages." Aguilar v. PNC Bank, N.A., 853 F.3d 390, 402 (8th Cir. 2017) (quoting Mackey v. Mackey, 914 S.W.2d 48, 50 (Mo. Ct. App. 1996)). As to the first two elements, Ahern alleges that EquipmentShare and EZ conspired to misappropriate Ahern's trade secrets in an effort to capture market share. As to the last two elements, Ahern adequately alleges violations of the law including misappropriation of trade secrets and

tampering with computer data, as addressed above. The question then becomes whether Ahern plausibly alleges a meeting of the minds between EquipmentShare and EZ. On this element, Ahern's upon-information-and-belief allegations of the coordination between EquipmentShare and EZ are sufficient to state a claim for relief. As with the evidence of EZ's actual knowledge, any hard proof of a meeting of the minds is in the sole possession and control of the defendants. Moreover, Ahern's allegations are based on more than mere speculation. Rather, Ahern's detailed factual allegations regarding the close business relationship between EquipmentShare and EZ make the inference of a meeting of the minds entirely plausible.

Finally, we address Ahern's unjust enrichment claim. Under Missouri law, Ahern must show, "(1) the plaintiff conferred a benefit on the defendant; (2) the defendant appreciated the benefit; and (3) the defendant accepted and retained the benefit under inequitable and/or unjust circumstances." Binkley v. Am. Equity Mortg., Inc., 447 S.W.3d 194, 199 (Mo. 2014) (en banc) (citation omitted). Given our foregoing analysis, Ahern has pled sufficient facts to state a claim against EZ for unjust enrichment. It is not disputed that Ahern's trade secrets are a benefit with real economic value. And, as alleged in the complaint, EquipmentShare and EZ have used the benefit to their advantage. Finally, Ahern plausibly alleges malfeasance in the acquisition of these confidential trade secrets. Thus, the district court erred in dismissing Ahern's claims against EZ for civil conspiracy and unjust enrichment.

## III.

In addition to the dismissal of EZ, Ahern also appeals the district court's dismissal of its claims against EquipmentShare on the ground that these claims were duplicative of Ahern's other claims against EquipmentShare in the on-going MDL. The district court reasoned that the true distinguishing factor in this case was the involvement of EZ. With EZ dismissed pursuant to its prior ruling, the district court concluded that the remaining claims against EquipmentShare were merely

duplicative of the others in the MDL. Ahern argues that the district court ignored the specifics of this case that differentiate it from Ahern's other lawsuits against EquipmentShare, namely the alleged partnership with EZ. Because the facts in this complaint arise out of a different transaction or occurrence than is addressed in the rest of the MDL, Ahern argues that the district court was wrong to find impermissible claim-splitting and dismiss its claims against EquipmentShare.

However, we need not decide this issue. In its claim-splitting analysis, the district court relied in part on its prior dismissal of the claims involving EZ. But because we reverse that ruling, the district court's claim-splitting analysis may now be different. For that reason, we vacate the district court's order dismissing EquipmentShare on claim-splitting grounds and remand for reconsideration in light of today's decision. See Kelley as Tr. of PCI Liquidating Tr. v. Safe Harbor Managed Acct. 101, Ltd., 31 F.4th 1058, 1068 (8th Cir. 2022) (remanding for district court to decide issue in the first instance when it would involve fact-intensive analysis).

IV.

For the foregoing reasons, we reverse the district court's dismissal of EZ, vacate the district court's dismissal of EquipmentShare, and remand for reconsideration consistent with this opinion.

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