

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

GT SOLAR INCORPORATED
243 Daniel Webster Highway
Merrimack, NH 03054,

Plaintiff

Case No.

v.

Jury Demanded

FABRIZIO GOI,

Defendant

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES;
DEMAND FOR JURY TRIAL

NOW COMES the Plaintiff, GT SOLAR INCORPORATED (“GT SOLAR”), by and through its attorney, R. Matthew Cairns, and alleges as follows:

NATURE OF THE ACTION

1. This is an action for injunctive relief and damages resulting from tortious conduct, breaches of contract, and unfair and deceptive business practices in the conduct of commerce within this state committed by Defendant FABRIZIO GOI (“GOI”) against Plaintiff GT SOLAR.

JURISDICTION

2. The parties to this action maintain completely diverse citizenships. More than \$75,000 is in controversy in this action. This Court has subject matter jurisdiction pursuant 28 U.S.C. § 1332.

THE PARTIES

3. Plaintiff GT SOLAR is a Delaware corporation with its principal place of business in Merrimack, New Hampshire. GT Solar is in the business of, among other

things, designing and supplying industrial equipment and processes used for the refining and processing of polysilicon, a semi-conducting material used in the manufacture of photovoltaic cells. GT SOLAR holds substantial assets and conducts substantial business in this state.

4. On information and belief, Defendant GOI is a citizen of Italy. GOI is a former employee of VRV S.p.A. (“VRV”), a company that, through GOI and others, provided fabrication services to GT SOLAR. As detailed below, GOI provided services to GT SOLAR in this district, visited GT SOLAR’s facilities in Merrimack, and worked side-by-side with GT SOLAR’s engineers and employees. In so doing, GOI gained the trust of GT SOLAR and obtained valuable proprietary information about its business, which, upon information and belief, he later misappropriated.

5. On information and belief, GOI is a current employee of the Poly Plant Project, Inc. and/or its affiliate Poly Plant Project Engineering (collectively, “PPP”), a Burbank, California-based company. PPP is a new market entrant that claims to compete with GT SOLAR. On information and belief, PPP represents that the equipment it sells—a “36 Rod Reactor”—is identical to equipment developed by GT SOLAR before or during the time GOI provided services to GT SOLAR. GT SOLAR has since developed improved, advanced, and more efficient 48 Rod Reactors, which GT SOLAR has commercialized. GT SOLAR enjoys wide success and acclaim in the 48 Rod Reactor market. Nevertheless, GT SOLAR also continues to sell its 36 Rod Reactors, which, as set forth below, contain proprietary technology that, upon information and belief, GOI misappropriated from GT SOLAR.

RELEVANT FACTS

6. The polysilicon formation process at issue takes precursors and, through the use of a chemical vapor decomposition furnace—a “Reactor”—ultimately forms them into rods of pure polysilicon, which are then extracted for commercial use.

7. Poly Engineering S.r.L (“PE”) is an Italian engineering firm. At some time prior to 2005, PE designed a 36 Rod Reactor (the “PE 36 Rod Reactor”).

8. In early 2006, GT SOLAR obtained from PE a 99-year exclusive license to the design of the PE 36 Rod Reactor.

9. After obtaining the exclusive license to the PE 36 Rod Reactor, GT SOLAR made several substantial improvements to the PE 36 Rod Reactor design. GT SOLAR currently sells its updated 36 rod reactor (the “GT SOLAR 36 Rod Reactor”).

10. Both the PE 36 Rod Reactor, the rights to which GT SOLAR owns through an exclusive license, and the GT SOLAR 36 Rod Reactor, contain information that derives actual independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. GT SOLAR has taken substantial efforts to maintain the secrecy to this information, including, but not limited to, requiring non-disclosure/confidentiality agreements with any customers and service provider with whom GT SOLAR does business.

11. On or about August 1, 2006, GOI attended a meeting with representatives of GT Solar at GT Solar’s headquarters in Merrimack. During this meeting, GT SOLAR and VRV, with the key participation of GOI, negotiated the material terms of an

anticipated GT SOLAR/VRV contract, whereby VRV would fabricate GT Solar Reactors for use in polysilicon plant that one of GT SOLAR's customers was building.

12. Effective September 13, 2006, GT SOLAR entered a contract (the "Fabrication Contract") with VRV S.p.A. ("VRV") to fabricate GT SOLAR Reactors. VRV was responsible for fabricating the GT SOLAR 36 Rod Reactor.

13. Prior to (as explained below) and through this relationship, VRV and its employees, including GOI, had access to GT SOLAR's drawings of the PE Reactor, the GT SOLAR Reactor, and other intellectual property, including protected trade secrets.

14. Prior to their entry into the Fabrication Contract, GT SOLAR and VRV entered a confidentiality agreement (the "Confidentiality Agreement") that protected each company's proprietary information against disclosure or misuse. The Confidentiality Agreement specifically required each company, *inter alia*, to inform any employee to whom confidential information is communicated: (1) that the information is confidential; (2) that the confidential information may not be used in a manner inconsistent with purposes for which it was disclosed; and (3) that the confidential information may not be disclosed or used for the employee's benefit outside of the GT SOLAR/VRV relationship.

15. The Fabrication Contract contains, *inter alia*, a covenant that each company must take such precautions to maintain and protect the confidentiality of the other party's confidential information as it would take for its own sensitive information. The Fabrication Contract also required, *inter alia*, VRV to obtain written confidentiality agreements with its own employees and subcontractors, so as to preserve the confidentiality of design information proprietary to GT Solar.

16. GT SOLAR's principal point of contact at VRV was Defendant GOI. On information and belief, from the inception of the GT SOLAR/VRV relationship until March 31, 2007, GOI was VRV's Sales Director.

17. In that capacity, GOI conducted substantial business with GT Solar in the State of New Hampshire. On information and belief, GOI was aware of GT SOLAR's residency in this state. He regularly directed correspondence to GT SOLAR in New Hampshire. Goi personally traveled to New Hampshire because of and in the course of his dealings with GT SOLAR.

18. As VRV's Sales Director, GOI obtained knowledge of and access to GT SOLAR's proprietary and confidential information, and trade secrets including GT SOLAR's technical drawings of the GT SOLAR 36 Rod Reactor and the PE 36 Rod Reactors.

19. On information and belief, GOI also had access to more detailed fabrication schematics that VRV drafted, based on GT SOLAR's drawings. These drawings, which incorporated proprietary and confidential information, and trade secrets belonging exclusively to GT SOLAR, are affixed with VRV's "name plate" in the bottom right-hand corner.

20. GOI was personally involved in negotiating and drafting both the Confidentiality Agreement and the Fabrication Contract.

21. On information and belief, GOI was also a party to a confidentiality agreement with VRV that, *inter alia*, served to protect the intellectual property of GT SOLAR.

22. On March 31, 2007, GOI abruptly left VRV's employ. He did so without giving VRV advanced notice to which VRV was entitled under Italian law, electing instead to pay the company three months' of his salary. On information and belief, GOI subsequently went to work for PPP.

23. On information and belief, GOI misappropriated drawings of the PE 36 Rod Reactor and/or the GT SOLAR 36 Rod Reactor, among other proprietary information of GT SOLAR.

24. On information and belief, GOI provided these drawings, along with other confidential and trade secret information of which he was aware, and which he was not permitted to disclose, to PPP. Within a few months of GOI's departure from VRV, PPP commenced marketing a 36 Rod Reactor that, according to customers, it claims to be the same as the GT SOLAR 36 Rod Reactor and/or the PE 36 Rod Reactor. Prior to GOI's employ, PPP did not sell, or offer to sell, any Reactors.

25. PPP has been confronted about GOI's activities. Without disclosing any specific details of its development efforts, it denies that either it or GOI did anything improper, claiming instead that its reactor was developed by PPP within a matter of months through the assistance of unidentified industry "experts." According to a statement dated November 11, 2007, by Mr. Terry Kunimune, Chairman and Chief Executive Officer of PPP, PPP's reactor was designed by PPP "over the course of the past year [2007.]" According to counsel for PPP, the company was created in February of 2007. On information and belief, it was not possible for PPP to have designed and engineered a fully functional 36 Rod Reactor capable of full integration within a polysilicon plant within a matter of months. Indeed, statements from PPP by Reactor end

users and other evidence indicate that the PPP 36 Rod Reactor design is based on proprietary information taken by GOI from GT SOLAR.

26. On information and belief, PPP has represented to Reactor end users that the Reactor it offers for sale is the same or substantially the same as the PE 36 Rod Reactor, and/or the GT SOLAR 36 Rod Reactor.

27. GT Solar is informed that Reactor end users have purportedly seen design drawings of PPP's putative Reactor design, which still bear VRV's nameplate. When one Reactor end user expressed concern about this fact, he was told by a representative of PPP that PPP was going to make some changes to make the drawings look different. Other Reactor end users, who have knowledge of the various Reactor designs available in the market, have similarly described the 36 Rod Reactor design offered by PPP as the PE 36 Rod Reactor and/or GT SOLAR 36 Rod Reactor.

28. On one occasion, GT SOLAR was engaged in negotiations with a Reactor end user. During the negotiations, its agent provided GT Solar with a draft contract, appending an annex of technical specifications. Some of the specifications were identical to particular features that are unique to the GT SOLAR 36 Rod Reactor, and proprietary to GT SOLAR. When asked from where he obtained the specifications, the agent stated that the specifications came from a draft contract that PPP, through GOI, had provided to his former employer.

29. PPP continues to exploit the design that GOI, upon information and belief, misappropriated from GT SOLAR and VRV. On information and belief, PPP has already sold several 36 Rod Reactors that are based on the misappropriated design.

30. Due to these fraudulent, unfair and deceptive acts on the part of GOI, GT SOLAR has suffered actual and potential harm, including lost sales and profits.

COUNT ONE: MISAPPROPRIATION OF TRADE SECRETS,

N.H. REV. STAT. ANN. § 350-B

31. Paragraphs one through thirty are hereby incorporated by reference.

32. The design to the PE 36 Rod Reactor contains trade secret information that, due to the exclusive licensing agreement, is owned by GT SOLAR.

33. The improvements incorporated in the GT SOLAR 36 Rod Reactor also constitute trade secret information that is owned by GT SOLAR.

34. By misappropriating the plans to the PE 36 Rod Reactor and/or the GT SOLAR 36 Rod Reactor from VRV, in violation of his contractual, legal, and moral duties and obligations to not disclose or improperly use confidential information, and without express or implied consent from GT SOLAR, GOI acquired GT SOLAR's trade secrets through improper means.

35. By giving the misappropriated plans for the PE 36 Rod Reactor and/or the GT SOLAR 36 Rod Reactor to PPP, GOI disclosed or used GT SOLAR's trade secrets without the express or implied consent of GT SOLAR and in further breach of his duties.

36. Without the express or implied consent of GT SOLAR, PPP received the misappropriated design to the PE 36 Rod Reactor and/or the GT SOLAR 36 Rod Reactor from GOI who had utilized improper means to acquire them.

37. Without the express or implied consent of GT SOLAR, PPP used the misappropriated design for the PE 36 Rod Reactor and/or the GT SOLAR 36 Rod Reactor, which design(s) it acquired from GOI.

38. By acting in the manner described above, GOI has intentionally misappropriated GT SOLAR's trade secrets.

39. GOI's misappropriation of GT SOLAR's trade secrets has proximately caused injury to GT SOLAR.

COUNT TWO: CONVERSION

40. Paragraphs one through thirty-nine are hereby incorporated by reference.

41. All plans and drawings depicting the PE 36 Rod Reactor and/or the GT SOLAR 36 Rod Reactor, including fabrication schematics derived from these plans but drawn by VRV, were the sole property of GT SOLAR.

42. GOI intentionally and without permission took plans and drawings depicting the PE 36 Rod Reactor and/or the GT SOLAR 36 Rod Reactor from VRV.

43. PPP received from GoI plans and drawings depicting the PE 36 Rod Reactor and/or the GT SOLAR 36 Rod Reactor.

44. As such, GOI has seriously interfered with GT SOLAR's right to control plans and drawings depicting the PE 36 Rod Reactor and/or the GT SOLAR 36 Rod Reactor.

45. GT SOLAR has suffered injury due to the GOI's interference with its ownership of the plans and drawings taken by GOI.

COUNT THREE: BREACH OF IMPLIED-IN-FACT CONTRACT

46. Paragraphs one through forty-five are hereby incorporated by reference.

47. There were confidentiality agreements between GT SOLAR and VRV, and between VRV and GOI.

48. Due to his personal involvement in negotiating the GT SOLAR/VRV Confidentiality Agreement and the Fabrication Contract, and his status as a VRV employee, GOI was personally aware that VRV's obligations to maintain the confidentiality of GT SOLAR's proprietary, confidential, and trade secret information were intended to bind, and did bind, VRV's employees to maintain the confidentiality of such information. GOI obtained a benefit from this contract by virtue of his continued employment with VRV.

49. As such, there was an express or implied-in-fact contract between GOI and GT SOLAR that required GOI to maintain the confidentiality of GT SOLAR's proprietary, confidential, and trade secret information.

50. By taking plans or drawings of the PE 36 Rod Reactor and/or GT SOLAR 36 Rod Reactor from VRV, GOI breached these contractual obligations. GOI further breached these obligations when he provided the plans or drawings to PPP.

51. Up to the time of GOI's breach, GT SOLAR had performed all of its material obligations under the Confidentiality Agreement and the Fabrication Agreement.

52. Due to GOI's breach, GT SOLAR suffered injury.

COUNT FOUR: BREACH OF CONTRACT

53. Paragraphs one through fifty-two are hereby incorporated by reference.

54. Both the Confidentiality Agreement and the Fabrication Contract required VRV to maintain the confidentiality of GT SOLAR's proprietary, confidential, and trade secret information.

55. These agreements were intended to bind, and did bind, VRV's employees to maintain the confidentiality of such information.

56. GOI is a party to a confidentiality agreement with VRV, which required him not to disclose any confidential information other than in the performance of duties related to his job.

57. VRV's customers, such as GT SOLAR, were foreseeable and intended beneficiaries of the confidentiality agreement between GOI and VRV.

58. GOI breached his confidentiality agreement with VRV when he took plans or drawings of the PE 36 Rod Reactor and/or GT SOLAR 36 Rod Reactor from VRV. GOI further breached the agreement when he provided the plans or drawings to PPP.

59. Upon information and belief, up to the time of GOI's breach, VRV had performed all of their material obligations owed to GOI under their confidentiality agreement with GOI.

60. As a result of GOI's breach of his confidentiality agreement with VRV, GT SOLAR suffered injury.

**COUNT FIVE: VIOLATION OF THE NEW HAMPSHIRE CONSUMER
PROTECTION ACT, N.H. REV. STAT. ANN § 358-A**

61. Paragraphs one through sixty are hereby incorporated by reference.

62. During the course of his employment with VRV, GOI transacted business with GT SOLAR in this state. Though his unfair and deceptive acts, GOI has caused injury to GT SOLAR, an entity with substantial assets and business interests in this state. As such, GOI has had substantial and direct impacts on the commerce of this state.

63. GOI has willfully and intentionally engaged in unfair and deceptive business practices, including:

- a. misappropriating the design of the PE 36 Rod Reactor and/or the GT 36 Rod SOLAR Reactor;
- b. otherwise wrongfully trafficking in confidential business information that has been wrongfully acquired;
- c. converting GT SOLAR's exclusive property—the plans and drawings of the PE 36 Rod Reactor and/or the GT SOLAR 36 Rod Reactor—to his own; and
- d. breaching his duty of confidentiality to VRV and GT SOLAR.

64. Through this pattern of unfair and deceptive conduct, GOI has acted with a level of rascality that would raise the eyebrow of someone inured to the rough and tumble world of commerce.

65. Due to GOI's unfair and deceptive conduct, GT SOLAR has suffered injury and is entitled to not less than two and not more than three times its damages, plus its reasonable costs and attorneys fees. N.H. Rev. Stat. Ann. § 358-A:10.

**COUNT SIX: TORTIOUS INTERFERENCE WITH ADVANTAGEOUS
BUSINESS RELATIONS**

66. Paragraphs one through sixty-five are hereby incorporated by reference.

67. GT SOLAR had advantageous business relations with its customers and prospective customers.

68. GOI, by reason of his employment at VRV and otherwise, was aware of those relationships.

69. Through his acts of conversion, misappropriating GT SOLAR's trade secrets, breaches of implied and express contractual obligations to maintain the confidentiality of

VRV and GT SOLAR's intellectual property, and his unfair and deceptive business conduct, GOI intentionally and improperly interfered with GT SOLAR's advantageous business relationships.

70. As a result of GOI's improper and intentional interference with GT SOLAR's advantageous business relations, GT SOLAR suffered injury.

RELIEF SOUGHT

WHEREFORE, GT SOLAR respectfully prays for the following relief from the Court:

1. Compensatory damages, according to proof;
2. Expectation damages, according to proof;
3. Consequential damages according to proof;
4. Enhanced compensatory damages, according to proof;
5. Double or Treble damages, under N.H. Rev. Stat. Ann. § 358-A:10;
6. Injunctive relief barring GOI from continuing to use GT SOLAR's proprietary information, *see* N.H. Rev. Stat. Ann. §§ 350-B:2, 358-A:10.
7. An order requiring return of any drawing or plans depicting the PE 36 Rod Reactor or the GT SOLAR 36 Rod Reactor; and any plans or designs derived the PE 36 Rod Reactor or the GT SOLAR 36 Rod Reactor;
8. Attorneys' fees and costs of suit; and
9. Any further relief deemed just, equitable, and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Respectfully Submitted,

GT SOLAR INCORPORATED,

By its Attorney:

Date: June 20, 2008

/s/ R. Matthew Cairns

R. Matthew Cairns

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