

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

E.I. DU PONT DE NEMOURS AND)
COMPANY,)
)
Plaintiff,)
)
v.) Civil Action No. 00-359-SLR
)
MONSANTO COMPANY and ASGROW)
SEED COMPANY LLC,)
)
Defendants.)

O R D E R

At Wilmington, this 14th day of February, 2001,

IT IS ORDERED that defendants' motion to dismiss (D.I. 11) is granted in part and denied in part, for the reasons that follow:

1. The statute of limitations for a theft of trade secrets claim is three years from the date the misappropriation was discovered, or by the exercise of reasonable diligence should have been discovered. See 6 Del. C. § 2006. Similarly, the statute of limitations for breach of contract, breach of implied covenant of good faith and fair dealing, breach of fiduciary duty, tortious interference with contract, and interference with prospective business opportunity is three years from the date of breach/injury or its discovery. See 10 Del. C. § 8106; Merck & Co. v. Smithkline Beecham Pharm. Co., No. 15443-NC, 1999 WL 669354, at *42 (Del. Ch. Aug. 5, 1999), aff'd, 764 A.2d 277 (Del. 2000) (holding that claims for tortious interference with

contract or prospective business relations are subject to three year statute of limitations of 10 Del. C. § 8106).

2. Plaintiff filed a complaint on March 30, 2000 (D.I. 1), which requires the above claims to have accrued after March 30, 1997. Plaintiff first became aware of at least some of the claims at issue on April 19, 1996.

3. Plaintiff has presented insufficient evidence of equitable estoppel to support tolling of the statute of limitations. See Burge v. Fidelity Bond & Mortgage Co, 648 A.2d 414, 420 (Del. 1994) (holding that for estoppel claim to prevail, it must be shown that party claiming estoppel lacked knowledge or means of obtaining knowledge of truth of facts in question, relied on party against whom estoppel is claimed, and suffered prejudicial change in position as result of that reliance).

4. Defendants argue that one single misappropriation of trade secrets occurred, upon which the contract claims are based, and that misappropriation accrued prior to March 30, 1997. However, "[w]hen considering a motion to dismiss, the court should read the complaint generously, accept all of the allegations contained therein as true, and construe them in a light most favorable to the plaintiff." Johnson v. Gullen, 925 F. Supp. 244, 247 (D. Del. 1996). The plaintiff should be given the benefit of all reasonable inferences that can be fairly drawn from the complaint. See Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). Thus, for the

purposes of the motion to dismiss, the court accepts plaintiff's representation that multiple appropriations, breaches of contract and injuries occurred, some of which accrued after March 30, 1997.

5. Therefore, any claims that accrued prior to March 30, 1997 are dismissed as time-barred. Defendants' motion to dismiss is denied as to claims that accrued after March 30, 1997.

United States District Judge