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Former Construction Co. Employees Blast Trade Secrets Suit

By **Lauren Berg**

Law360 (October 26, 2018, 7:06 PM EDT) -- Three construction company ex-employees accused of conspiring to set up a rival firm during their work time and stealing trade secrets asked an Illinois federal judge Thursday to dismiss the suit, arguing their former employer did not require them to sign a noncompete agreement.

LSC Development LLC, a company that specializes in building storage facilities for construction projects, and its project manager, Cobalt Commercial Construction LLC, accused three of their former employees — Stephen R. Osborne, Michael C. Calka and Scott L. DiParvine — of setting up a competing company during business hours, but the former employees said they never signed an agreement restricting their post-employment activities.

The employees argue that LSC and Cobalt fail to sufficiently show how they violated the Defend Trade Secrets Act and the Illinois Trade Secrets Act, what trade secrets they stole and how the information is unique.

"A party seeking trade-secret protection must do more than what [LSC and Cobalt] do in the complaint, namely: 'Point to broad areas of [information] ... and assert that something there must have been secret and misappropriated,'" according to the motion.

In their complaint, **LSC and Cobalt allege** that Osborne, Calka and DiParvine met with a company for an appraisal on land to be used as a storage site and sought estimates for various services at the facility while concealing their actions from LSC and Cobalt.

The companies allege that the employees violated both trade secrets acts by covertly scheduling an appraisal with Colliers International and by seeking estimates from AASCEO Engineering Structural Services for architectural services and from Neville Engineering Service for HVAC services for the storage location for the new company, CDK.

LSC and Cobalt claim that the employees took financial models and analyses, pricing strategies, profit and loss information, proprietary market studies, internal cost and overhead analyses, development and construction methods, plans and techniques, and operational cost analyses.

Along with identifying their trade secrets, Osborne, Calka and DiParvine argue that the companies fail to show that they misappropriated trade secrets. The companies also failed to show that the trio used trade secrets while working at their new company, CDK, according to the complaint.

"[LSC and Cobalt] merely contend that the [employees] set up and now operate CDK and therefore must be using [LSC and Cobalt's] unidentified trade secrets to do so," the employees said.

Without these federal claims under the Defend Trade Secrets Act, the employees asked that the case be dismissed and the court should decline to exercise jurisdiction over the remaining state claims under the Illinois Trade Secrets Act.

But the court should also dismiss the state claims, the employees argue, because the companies failed to show a breach of fiduciary duty claim, "namely that a fiduciary duty exists and that the duty

was breached."

The employees argue that because they were not managers or members of the LLC companies, they did not have fiduciary duties.

"To the extent that [LSC and Cobalt] allege ongoing fiduciary duties, such as 'maintain[ing] the secrecy of' plaintiffs' trade secrets post-termination, actions committed after the relationship with the employer terminated cannot serve as the basis of a breach of fiduciary duty claim," the employees said.

Representatives for the parties did not immediately respond to requests for comment Friday.

LSC Development and Cobalt are represented by Andrew S. Rosenman of Mayer Brown LLP.

The defendants are represented by Charles B. Leuin of Benesch Friedlander Coplan & Aronoff LLP.

The case is LSC Development LLC et al. v. Osborne et al., case number 1:18-cv-05909, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Darcy Reddan. Editing by Jay Jackson Jr.

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