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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Lack Of Evidence Lets Vertiv Escape \$100M Trade Secrets Suit

By **Andrew Karpan**

Law360 (October 27, 2021, 10:36 PM EDT) -- A federal judge in Chicago has thrown out an energy solutions company's \$100 million trade secret lawsuit against partner-turned-rival Vertiv after finding there wasn't enough evidence supporting its misappropriation claims, but kept alive Vertiv's allegations that the energy company had breached the terms of their failed business deal.

The ruling came down on Tuesday from U.S. District Judge Mary M. Rowland, who took over in 2019 from now-Senior U.S. District Judge Ronald Guzman. She had described the East Dundee, Illinois-based LiiON LLC's **allegations of trade secret theft** against the Platinum Equity LLC-backed Vertiv Group as "years of contentious litigation" that had ultimately surrounded "a failed business relationship."

As far as Judge Rowland could see, those claims were now over.

"No reasonable jury could find misappropriation on this record," Judge Rowland wrote.

After a little more than two years of discovery, LiiON had failed to drum up evidence that Vertiv improperly shared its trade secrets in a scheme that allegedly involved selling them to Samsung, which was not named in the suit. In its 2018 lawsuit, LiiON claimed to have suffered more than \$100 million in damages as a result.

Discovery in the case had been contentious too. Both companies filed **back-to-back sanctions** in 2019, accusing the other of stonewalling discovery. Vertiv eventually **came out on top**, though Judge Rowland had declined its bid to end the lawsuit right then and there.

The companies were fighting over the marketing of uninterruptible power solutions, which LiiON sells to computer centers to keep them online with uninterrupted power. The company claimed to have developed a lithium-ion-powered system that didn't need regular battery replacements.

LiiON had suggested that the court could "infer disclosure from the fact" that Samsung started making lithium-ion battery cabinets similar to LiiON's after it started working with Vertiv, but even that claim was contradicted by the evidence, said Judge Rowland.

"The record, however, undermines LiiON's claims of similarity. In fact, LiiON concedes that its battery cabinets are different to Samsung's in material respects," she wrote.

The legal fight between the companies, however, did not end with Judge Rowland's decision on Tuesday. In 2019, Vertiv had lobbed counterclaims that alleged LiiON had "breached multiple contracts" that caused Vertiv to lose a \$20 million deal with its biggest customer: the data center giant Quality Technology Services.

"A reasonable jury could find that LiiON materially breached the [purchase orders] by anticipatory repudiation," she wrote. Emails between representatives for the companies could be read as reflecting LiiON's disinterest in abiding by the orders it signed without getting paid more.

LiiON had argued that Vertiv's stance in those negotiations were part of its "larger scheme ... to create its own lithium-ion battery solution," but the judge said that, even if true, it didn't matter very much.

"Bad faith — or any evidence of intent, for that matter — is irrelevant to the issue of whether either party breached the POs," she wrote.

An attorney for Vertiv declined to comment on the ruling. Representatives for LiiON could not be reached for comment.

LiiON is represented by James A. Karamanis, Kenneth A. Nazarian and Trevor R. Jenkins of Barney & Karamanis LLP.

Vertiv is represented by J. Erik Connolly, Nicole E. Wrigley and Christopher J. Letkewicz of Benesch Friedlander Coplan & Aronoff LLP.

The case is LiiON LLC v. Vertiv Group Corp. et al., case number 1:18-cv-06133, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Dorothy Atkins. Editing by Adam LoBelia.

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