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By **Rosie Manins**

Law360 (May 10, 2022, 3:27 PM EDT) — A federal judge on Tuesday dismissed trade secret theft claims brought in a countersuit against a Georgia software company pursuing a \$47 million antitrust case against a market leader, but left the door open for the allegations to be replied with more detail.

U.S. District Judge Amy Totenberg said in her **order** that the counterclaims failed to allege how Lucasys Inc. had unlawfully used the purported trade secrets of PowerPlan Inc. for developing tax software services to rate-regulated utilities. PowerPlan also did not identify which particular trade secrets are at issue in the case, the judge pointed out.

Lucasys, which **sued PowerPlan in July 2020**, was founded in 2018 by three former PowerPlan employees – Vadim Lantukh, Daniel Chang and Stephen Strang. Judge Totenberg said PowerPlan's **countersuit** did not allege that those individuals improperly acquired any of its trade secrets, or how they specifically used or threatened to use the information.

"Georgia courts evaluating trade secrets claims have found that, at bottom, the mere possession of a trade secret is not enough to state a claim of threatened misappropriation," Judge Totenberg said.

She gave PowerPlan 30 days to file amended counterclaims.

Counsel for Lucasys told Law360 the judge's order confirms what the company has known all along, that it did not misappropriate trade secrets, and that PowerPlan doesn't have a sufficient basis to allege so.

"Lucasys is pleased with the court order," Jason S. Alloy of Robbins Alloy Belinfante Littlefield LLC, an attorney for the company, said Tuesday.

And later Tuesday, Lucasys asked the court for permission to amend its complaint in light of new evidence showing PowerPlan's trade secret allegations are a sham. The company said in the motion that PowerPlan makes all its so-called trade secrets publicly available on its website and smartphone application.

Lucasys also wants to add two antitrust claims to its case, alleging PowerPlan has begun proposing authorized vendor agreements to Lucasys and other consulting companies that would unlawfully restrict the right of "counterparties" to develop competing software using PowerPlan's undefined confidential information. It said PowerPlan had refused its request in April to limit the restriction to source code and trade secrets.

"PowerPlan's intent is clear – it will use the agreements as yet another vehicle for preventing competition to its software business from the most likely entrants, competitors in the services market," Lucasys said. "This, too, violates the antitrust laws."

Counsel for PowerPlan, an Atlanta-based subsidiary of Roper Technologies Inc., did not immediately respond to questions about the case.

Lucasys alleged it was being unfairly squeezed out of the lucrative utility management software market, in which PowerPlan has a 99% stake. The startup said PowerPlan had threatened customers about doing business with it, citing the trade secret misappropriation issue.

In its countersuit, PowerPlan alleged it had spent more than 25 years developing its software and related data systems, which include its trade secrets. It described the coveted information as that embodied in its "proprietary software architecture, databases and database models, unique functions and features, processes, methods, algorithms, and (potentially) source code."

Judge Totenberg said PowerPlan did not further specify the trade secrets in its claims of unfair competition, violations of the Defend Trade Secrets Act and Georgia Trade Secrets Act, and litigation costs.

She said Lantukh worked for PowerPlan from 2007 through 2013 as a manager of software implementation and director of professional services. Chang worked for PowerPlan from 2009 to 2014 as a consultant and manager, and Strang worked there between 2011 and 2015 as a senior consultant and manager.

PowerPlan also alleged in its countersuit that another former employee, Vu Nguyen, had worked with Lucasys as an implementation partner. Nguyen worked for PowerPlan from 2007 to 2015 and, like the other staff at issue, was subject to nondisclosure and confidentiality obligations, case records show.

Judge Totenberg said by arguing that Lucasys must have misappropriated PowerPlan's trade secrets solely because Lantukh, Chang and Strang formed Lucasys after working at PowerPlan, the defendant company is effectively asking the court to adopt what is known as the "inevitable disclosure doctrine."

The doctrine allows a plaintiff to prove misappropriation of trade secrets by showing that a defendant's new employment will inevitably lead them to rely on the plaintiff's trade secrets, Judge Totenberg said. But she pointed out that the Georgia Supreme Court had labeled the theory "the subject of considerable disagreement."

The state's justices held in 2013 that the doctrine is not an independent claim under which a trial court may enjoin an employee from working for an employer or disclosing trade secrets, Judge Totenberg said. But she said the justices declined at that time to address whether the doctrine may be applied to support a claim for the threatened misappropriation of trade secrets, and since then had not shed further light on the issue.

Another Georgia federal judge, Steven D. Grimberg, declined to adopt the doctrine in a similar case, Judge Totenberg said. Judge Grimberg noted that allowing a company to state a trade secrets misappropriation claim, based solely on individuals' alleged possession of trade secrets and the company's speculation that the information would ultimately be used against it, would drastically expand the scope of the state and federal trade secrets acts.

"The court finds that the same cautionary logic applies here," Judge Totenberg said. "To allow PowerPlan to state a claim based exclusively upon the facts that Lantukh, Chang, and Strang had access to PowerPlan's vaguely-described trade secrets and, some years later, formed a competitor entity would effectively be to enforce permanent non-compete agreements where no such agreements existed."

Lucasys is represented by Aaron R. Gott, Jarod M. Bona, Jon Cieslak and Luis Blaquez of Bona Law PC and Jason Alloy, Richard L. Robbins, Evan C. Dunn and Joshua A. Mayes of Robbins Alloy Belinfante Littlefield LLC.

PowerPlan is represented by Damond R. Mace, Stephen M. Fazio, Steven A. Friedman and Petrina Hall McDaniel of Squire Patton Boggs (US) LLP.

The case is Lucasys Inc. v. PowerPlan Inc., case number 1:20-cv-02987, in the U.S. District Court for the Northern District of Georgia.

-Editing by Patrick Reagan.