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Trade Secret Complaint Fails Basic Requirements

Proskauer on Trade Secrets on **July 9, 2024**

On May 23, 2024, the U.S. District Court for the Western District of Pennsylvania dismissed a trade secret misappropriation claim for failure to identify a trade secret. The case is titled *Vertical Bridge REIT, LLC v. Everest Infrastructure Partners, Inc.*, Case No. 23-1017 (W.D. Pa. 2024).

Allegations. PlaintiffVertical Bridge ("VB") and its related entities own and operate towers that are rented to telecommunications tenants like cell phone companies and TV stations. The towers are located on land that VB has leased, or obtained an easement on, from landowners. In 2023, VB sued Everest Infrastructure Partners and a related entity (collectively, "Everest"). Everest competes with VB in the telecommunications tower industry, entering into similar agreements as VB with both landlords and telecom subtenants. VB alleged Everest was violating the Defend Trade Secrets Act ("DTSA") and the Pennsylvania Uniform Trade Secrets Act ("PUTSA") by using confidential information about the price of VB's land leases to purchase VB's landlords' rights in their property by promising them future profits, and then substantially increasing VB's rent payments. This, VB argued, would eventually require VB to decommission its towers and abandon the sites, allowing Everest to take over the towers. VB alleged that the pricing information in its leases with its landlords were a protected trade secret that Everest was misappropriating in order to enter into its own contracts that were more beneficial to the landlords. (VB also brought claims for violations of the Lanham Act and torts claims.)

Ruling. The court found nothing in the pleadings to indicate Everest had engaged in wrongdoing. The Court dismissed the complaint in its entirety, albeit without prejudice, but expressing heavy skepticism of VB's claims.

More specifically, the Court found that VB had not adequately pled the existence of any trade secret. It noted that "it is unclear: whether the [trade secret] information in question is solely the price of rent; whether the same price-term and price-structure information the VB Plaintiffs seek to protect now was disclosed in predecessor-in-interest contracts that lacked any confidentiality provision (even if the contract was later amended to include a confidentiality clause), or whether the information in question was disclosed in offer letters to landlords without any non-disclosure agreement in place." Opinion at 19-20. Without more information, the Court was "unable to determine—with sufficient precision—what information the VB Plaintiffs have sought to protect." *Id.* at 20.

For example, as to some of its contracts, VB had argued that its purportedly secret price terms were protected by implied confidentiality agreements between VB and its landlords during their prior negotiations. The court rejected this argument. The court noted that while confidentiality agreements do not necessarily need to be explicit to be effective, VB's alleged extra-contractual requests that landlords keep pricing terms confidential were not sufficient for the court to draw an inference that the landlords had confidentiality obligations to VB.

For other contracts at issue, the court found that VB did not provide sufficient information for the court to understand whether the information at issue had ever been disclosed to a third party, such as additional parties to landlords' and VB's contract negotiations or predecessors-in-interest to VB's contracts. The court noted that a disclosure would not necessarily be fatal to VB's claims, but that "greater particularity in pleadings is necessary for the Court to evaluate what exactly the various VB Plaintiffs have sought to protect and whether they can plead adequate secrecy to plausibly allege the existence of a trade secret." *Id*. at 22.

Implications. The court's rulings regarding deficiencies in VB's complaint show the need for a plaintiff to identify the nature of the trade secret, how it has been protected from disclosure, and how it has been misappropriated.

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