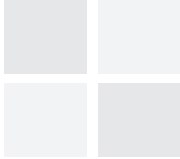


# Why the Law is Not a Vehicle for Vengeance



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Virginia's business-friendly laws and precedents provide employers with powerful remedies and employees with effective deterrents against wrongful conduct in business affairs. As a Fairfax Circuit judge has recently demonstrated, good faith standards still apply and those who casually ignore such standards will soon learn that the law is not a vehicle to express animus or to exact personal vengeance. The case of *Applied Training Solutions, LLC v. Pillsbury* also reinforces the importance of ascertaining the precise terms of the deal before completing the acquisition of a business or its assets.

Douglas Pillsbury was one of two individuals who invented a geo-spatial software program called RDCA. Pillsbury and his co-inventor licensed RDAC to an entity owned by the two co-inventors. In 2010, as a result of a series of transactions, Applied Training Solutions, LLC ("ATS") acquired the assets of Pillsbury's company and Pillsbury went to work for ATS pursuant to an October 2010 employment contract that required him to "devote all of [his] professional time, attention and energy to the performance of Employee's duties."

In the spring of 2011, Pillsbury actively asserted his personal ownership to RDAC, contending that his interests had not been included in the assets acquired by ATS. Tensions increased until August 2011, when Pillsbury resigned. ATS then learned that Pillsbury had formed Pulzar Tech LLC in January 2011, and some of Pulzar's employees had worked with Pillsbury, prior to his the resignation from ATS, to develop a medical efficiency software program called Landskape.

Looking into the facts, ATS concluded that Landskape might have some of the same functionality as RDAC and that Pillsbury was personally claiming the licensing rights to ESRI, a software program used by ATS. ATS sued Pillsbury and Pulzar for breach of contract, violation of the Trade Secrets Act and conversion. In his defense, Pillsbury contended that he worked on Landskape exclusively during off-hours, as did the ATS employees who helped him. He claimed that he did not use RDAC at all after leaving ATS, and he was the licensee of the ESRI software, which was not included in the assets sale to ATS.

After the defendants deposed William Bewley and Christopher Byrne – ATS's principal and in house counsel – Pillsbury filed a motion for sanctions, alleging that the claim was brought in bad faith in violation of Code of Virginia §8.01-271.1. ATS non-suited their claim, but the Honorable Jane M. Roush of the Circuit Court of Fairfax retained jurisdiction to hear the defendant's sanctions motion.

## Why the Law is Not a Vehicle for Vengeance (Cont.)

Based upon a bare recitation of the allegations, several of ATS's claims seemed to have merit. There was reason to believe Pillsbury had breached his fiduciary duty and the terms of his employment contract that required him to devote "all of his professional time, attention and energy" to ATS. There also appeared to be a good faith dispute over the assets acquired by ATS in the initial transaction. However, when put to the test in deposition, ATS failed to supply object support for these and other claims. The testimony provided by Byrne and Bewley proved to be riddled with assumptions and unsubstantiated allegations. Bewley "assumed" there had been an inappropriate use of RDAC; "could not recall" the factual basis of the claim that Pillsbury used ATS's confidential information; and relied on a "pattern" of behavior to reach his conclusions. He admitted that he didn't know "specifically anything" that Pillsbury had done in violation of ATS substantive rights and could come up with no basis to support the \$1,000,000 he sought in compensatory damages, but that he "figured we could find out later" through discovery.

Bewley's testimony was particularly harmful because it seemed to provide an inappropriate motive for the lawsuit. Bewley testified that he was angered by what he regarded as Pillsbury's betrayal and "outraged" when he learned that Pillsbury had formed another company. Byrne testified that they felt "violated," that Pillsbury "made us look like idiots," and it was like "someone's spouse cheating on him."

Had ATS spent the time to develop facts supporting the claim before filing suit, the result might have been different. While it is probably true that in most business lawsuits, bruised feelings and heated personal relationships lie just below the surface, it's a losing strategy to present them as the basis for a claim.