

VIRGINIA Lawyers Weekly

No breach of loyalty in Army contract case

By: Peter Vieth October 11, 2021

Employees who took advantage of a shift in a U.S. Army contract to form their own company and compete with their former employer did not violate their duty of loyalty to that employer, an Alexandria federal magistrate judge has ruled.

The decision by U.S. Magistrate Judge Michael S. Nachmanoff reaffirms that employers may not have rights based on a mere hope of future government contract work, but employees do have the right to plan for their next position, one observer said.

The employees claim the former employer who sued them ignored evidence that undermined its case. The three employees are asking the court to sanction the employer with an award of more than \$190,000 in attorneys' fees.

Nachmanoff's Sept. 17 opinion granting summary judgment for the defendant employees is [Adnet Inc. v. Soni \(VLW 021-3-458\)](#).

Competition appears

The U.S. Army contracted with McLean-based federal contractor Adnet Inc. in 2016 to support a program related to medical products. The four-year contract was set to end Aug. 31, 2020, according to facts summarized by the judge.

To meet the contract requirements, Adnet hired the three defendants in 2016 and 2017. Aware of the end-date for the Adnet contract, two of the employees quietly formed their own company — RoLaJa — in the fall of 2018.

In early 2020, the Army decided to transition the medical products work to General Dynamics Information Technology Inc., or GDIT. The Army advised GDIT that Adnet was the incumbent performing the contract work.

Adnet seemed poised to continue its work, but in the role of subcontractor. In June, GDIT used a price estimate from Adnet to submit a proposal to the Army to perform the new contract with Adnet as a subcontractor.

But on June 23, one of the defendant Adnet employees asked GDIT to consider the possibility of RoLaJa performing the work instead of Adnet.

GDIT decided to open competition for the Army subcontract, requesting proposals from interested entities. The Adnet employees submitted a proposal on behalf of their company, RoLaJa. They did not tell Adnet they were seeking the work, but the work they sought would not begin until after the employees' obligations to Adnet were fulfilled.

On Aug. 13, 2020, GDIT selected RoLaJa over Adnet for the new contract.

Three-count complaint

Adnet sued the three former employees in January, alleging breach of fiduciary duty, tortious interference with a business relationship and business conspiracy. The complaint demanded \$6 million. After discovery, both sides moved for summary judgment.

Adnet argued there were three breaches of the fiduciary duty of loyalty to the employer. The first was when the defendants "caused GDIT" to open competition for the subcontract. The second was when one of the defendant employees contacted GDIT to express interest in the work. The third was when RoLaJa actually competed against Adnet in responding to GDIT's competitive request for proposals.

The magistrate judge rejected all three claims.

Prior relationship lacking

Nachmanoff cited the 2003 Virginia Supreme Court decision in *Williams v. Dominion Tech. Partners LLC* holding that an at-will employee has the right to make arrangements during his employment to compete with his employer after resigning his post.

But the Williams court cautioned that an employee must not have misappropriated trade secrets, misused confidential information or solicited clients or other employees prior to termination.

Nachmanoff found Williams on point, favoring the defendants.

"In the instant case, the defendants were ... preparing for work after their employment with Adnet was scheduled to end," the judge wrote.

Moreover, Adnet had no pre-existing relationship with GDIT, Nachmanoff observed. "Adnet was scheduled to lose its prime contract with the Army, and the company had not yet established a relationship with GDIT for a future subcontract."

Nachmanoff found the evidence "insufficient" to show that the defendant employees caused GDIT to put the subcontract up for competitive bidding.

"The potential subcontract between GDIT and Adnet ... was not a tangible expectancy, but rather just a hope," the judge wrote.

"The record clearly reflects that GDIT made no promises to Adnet and that concerns with Adnet's pricing prompted GDIT to compete the bid," Nachmanoff wrote.

Other claims falter

The interference claim failed for lack of evidence of a valid contractual relationship or business expectancy between Adnet and GDIT, Nachmanoff said. Further, the failure to establish breach of loyalty meant Adnet could not establish tortious interference, the judge added.

Similarly, Adnet could not meet its burden to show legal malice and a lack of lawful justification to support the business conspiracy claim, Nachmanoff reasoned.

Nachmanoff denied Adnet's motion for summary judgment and granted that of the defendants.

Fee motion filed

"Adnet is a good reminder that employers don't necessarily have rights with respect to the mere hope of future business and that employment at will is a two-way street in Virginia," commented Raighne C. Delaney of Arlington, who handles government contract cases but was not involved in this case.

"It is common sense that people have a right to prepare for work after their employment is to end. If the law were otherwise, people would be more like indentured servants rather than employees," Delaney said.

Jeff Golimowski of Tysons, who represented the defendant employees, contended in a sanctions motion that Adnet pursued the case to discourage similar competition from employees.

"Adnet took advantage of its many, many millions in revenue, paid its big firm lawyers, and abused the judicial process solely to make 'an example' of Defendants, without regard to the collateral damage it would cause to Defendants' lives," Golimowski wrote in a brief filed Oct. 1.

He said it would take the defendants many years to repay the more than \$190,000 in attorneys' fees incurred in defending the lawsuit. Golimowski was not available for further comment.

Lawyers for Adnet, including James Y. Boland and Nicholas M. DePalma of Tysons, also were not available for comment. They had not filed a response to the defendants' bid for a fee award as of Oct. 6.

Nachmanoff was scheduled to hear arguments on the sanctions motion on Oct. 29.