

DAILY BUSINESS REVIEW

VERDICTS & SETTLEMENTS

The \$5 Million Case of Copied Military ID Software

Case: XTec v. Hembree Consulting Services

Case no.: 14-cv-21029

Description: Trade secrets

Filing date: March 20, 2014

Verdict date: Nov. 17, 2015

Judge: U.S. District Judge Cecilia M. Altonaga

Plaintiffs attorneys: Eduardo Rasco and Steve Bimston, Rosenthal Rosenthal Rasco Kaplan, Aventura

Defense attorneys: Charles Throckmorton V, Thomas Meeks, David Luck and Gregory Cesarano, Carlton Fields Jordan Burt, Miami

Verdict amount: \$5.25 million

by Celia Ampel

campel@alm.com

When a Miami company developing security software for the U.S. Navy noticed lines of code for the program were being altered, it had no idea who was to blame.

But piece by piece, XTec Inc. claims it unraveled a scheme allegedly masterminded by former employee Larry Hembree to copy its software and sell a competing product to the Navy.

Losing the military contract was devastating, said XTec attorney Eduardo Rasco of Rosenthal Rosenthal Rasco Kaplan in Aventura. But the company got some retribution last month when a federal judge ordered Hembree and his consulting firm to pay \$5.25 million for misappropriating trade secrets.

"They defended this in the most vigorous way," Rasco said. "They alleged that we did not own the software, that we gave up our rights to it. They had 10 million defenses. And we persevered."

XTec's relationship with the Navy began after the Sept. 11 terrorist attacks, when the federal government required employees and contractors to switch to a personal identity verification, or PIV, card system.

Hembree began working as a contractor for the Navy as a subject-matter expert in moving to the new PIV card standard, Rasco said. He went to his former employer, XTec, and asked the company to bid on the contract to create a new card-recognition system for all the doors on naval bases.

XTec won the contract in 2004 and developed the Enabler credential management software based on its AuthentX operating system. Five years later, the other branches of the military agreed they wanted to use the same technology.



JILL KAHN

Attorneys Steve Bimston and Eduardo Rasco of Rosenthal Rosenthal Rasco Kaplan in Aventura represented XTec Inc.

Hembree decided to compete with XTec and hired a subcontractor called CardSmart to develop his product, Rasco said. He asked the Navy to grant him access to an unused server in Pensacola, and as soon as he got the XTec software he sent it to CardSmart.

"They got access to all our software, and they began to copy it," Rasco said.

XTec got an alert from its intrusion detection system that its program's code was being modified. But the company was told the changes were made by David Fisher from CardSmart, an XTec subcontractor. Based on that relationship, XTec ignored the intrusion alert.

"They all said, 'Well, it's OK, it's CardSmart, and we're protected by an NDA,'" Rasco said. "They didn't even suspect. ... There was no fear, no problem, because it was a trusted subcontractor."

Then intrusion alerts started popping up with other IP addresses, and XTec's chief engineer noticed core software was being modified, Rasco said. The company sent a cease-and-desist letter to CardSmart and sued after getting no response.

XTec had no idea Hembree might be involved at that point, but during the course of discovery, evidence came out that he might in fact be the puppeteer, Rasco said.

Just before the December 2014 trial in Miami federal court, CardSmart agreed to a permanent injunction and confidential damages.

A separate case against Hembree and Hembree Consulting Services Inc. went to a four-week trial last month.

The jury deliberated for less than two hours, finding Hembree and his company willfully and maliciously misappropriated trade secrets related to AuthentX. He also deceived XTec into helping him develop a competing product, the jury found.

Hembree was also found liable for trade libel because he made false statements to the Navy about XTec's alleged inability to deliver card readers, injuring its reputation, the jury found.

U.S. District Judge Cecilia Altonaga ordered the defendants in a Nov. 18 final judgment to pay \$4 million for unjust enrichment, \$1 million for actual damages and \$250,000 as nominal damages for XTec's defamation claim.

Hembree filed post-trial motions Dec. 16, asking the court to enter judgment in his favor as a matter of law or, in the alternative, grant a new trial or a reduction of damages. As another alternative, the defense asked the court to offset the CardSmart settlement amount against the award in the Hembree case.

The attorneys argued the Navy owned the Enabler system and XTec failed to take reasonable steps to maintain secrecy, according to the defense filings. Hembree's lawyers declined to comment.

Rasco said it was more important for XTec to win the case and prove its software was copied than to collect on the award.

"There can be no greater justice in a case like this," he said. "This is the sweat of the engineers for years."

Celia Ampel can be reached at 305-347-6672.