

VC Company to pay over £2 million in damages for breach of Confidentiality Agreement

The English High Court recently ordered a venture capital company to pay more than £2 million in damages for exploiting a business opportunity identified and disclosed to it in confidence by the Claimants, in breach of Confidentiality Agreements.

The facts of *Vercoe, Pratt and Anr v Rutland Fund Management Ltd and Others* are complex; stated simply the case concerned the exploitation of a business opportunity identified by two young businessmen, Mr Vercoe and Mr Pratt (the 'Claimants'), disclosed in confidence to the venture capital company, Rutland Fund Management Ltd (RFML), with a view to raising finance for a management buy in of a target business. During the course of negotiations which began in September 2003 with the execution of a confidentiality agreement and continued for the best part of a year, the Claimants disclosed in detail the business opportunity they had identified and provided RFML with copies of the business plan that they had developed for the acquisition and their financial model for developing the target business to increasing its efficiency and profitability. The management team proposed by the Claimants, although not identified by name in the Confidentiality Agreement, included themselves as CEO and Commercial Director and a named Chairman who they had already approached and briefed for the position.

Despite having decided at an early stage that neither of the Claimants were suitable for the positions they were seeking as they lacked commercial experience, RFML encouraged the Claimants to continue to work to promote and develop the acquisition and strengthen their business plan. In March 2004 Mr Pratt was dropped from the negotiations following RFML's disclosure that it regarded him as lacking commercial experience to be part of the management team post acquisition. In July 2004 Mr Vercoe fell out with RFML because the latter refused to appointment the former as CEO of the target company following the acquisition preferring instead to leave the existing CEO in post.

In spite of correspondence from the lawyers for the Claimants in August 2004 warning that the acquisitions would be in breach of Confidentiality Agreements RFML had entered into with the Claimants, RFML proceeded with the acquisitions in September 2004 without involving either of the Claimants. Although RFML did not adhere to the business plan prepared by the Claimants, it did appoint the Chairman they had proposed. Following completion of the acquisition, RFML paid an introductory fee of £490,000 (representing 1% of the purchase price) to the accountants who had originally introduced RFML to the Claimants and sent a cheque for £25,000 to Mr Pratt, but this was returned.

Despite the actions of RFML, the Claimants chose not to issue legal proceedings immediately but instead waited until 2008 before starting proceedings. Their decision to initiate proceedings was ultimately triggered

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