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Zillow Can't Dodge Real Estate Rival's Trade Secret Claim

By **Y. Peter Kang**

Law360, Los Angeles (August 7, 2015, 5:48 PM ET) -- A California federal judge on Thursday trimmed two claims brought by Top Agent Network Inc. in a suit accusing rival real estate service Zillow Inc. of stealing trade secrets related to a proprietary "upcoming listings" feature but said TAN could proceed with the main trade secrets claim.

U.S. District Judge Richard Seeborg dismissed two claims of unfair competition and fraud but allowed the primary misappropriation of trade secrets claim and a claim of breach of oral contract to move forward, saying TAN showed specific details regarding its information protected under the California Uniform Trade Secrets Act.

"This data was available only to 'select TAN employees, all of whom executed employment agreements with confidentiality provisions,' TAN avers, and bears economic value in that it helps TAN 'secure its clients' business, retain their membership, refine its private members-only portal, and adapt its approach to new chapters,'" the judge wrote in a 10-page order.

Judge Seeborg said that although TAN fell somewhat short of demonstrating exactly how Zillow used the data to create its competing product, "to impose such a steep hurdle prior to discovery would be inappropriate."

He dismissed the unfair competition and fraud claims without leave to amend, saying they are superseded by CUTSA, but sustained the breach of oral contract claim, saying it was adequately pled at this stage of the case.

Thursday's ruling is the latest in a suit first filed in October 2014, alleging more than a dozen statutory and common-law claims that Judge Seeborg largely **dismissed with leave to amend** in April. The following month, TAN filed a first amended complaint, court records show.

TAN alleges that its CEO, David Faudman, contacted Zillow Chief Revenue Officer Greg Schwartz in February of 2014 to discuss a potential investment in TAN. Schwartz reportedly said that any information TAN shared would be kept confidential and that he planned to execute a nondisclosure agreement, which didn't happen. Faudman set up an account on TAN for Schwartz, which gave him access to members-only content, including the "upcoming listings" feature, according to the complaint.

The teams met in March 2014, but in May, Schwartz told Faudman that Zillow wasn't going to make an investment in TAN. Meanwhile, between February and May, Schwartz and his team explored TAN's site extensively, and in June, Zillow launched its own "upcoming listings" product, offering potential real-estate buyers the chance to see listings for properties that weren't yet on the market, court documents said.

A Zillow spokeswoman told Law360 on Friday that the company is pleased that two of the claims were dismissed and added that the remaining claims are entirely without merit.

An attorney for TAN said the company is satisfied with the order.

"We are very pleased with the court's ruling, especially as it concerns our trade secrets allegations," Paul T. Llewellyn of Lewis & Llewellyn LLP said. "We are looking forward to proceeding with the case."

TAN is represented by Paul T. Llewellyn, Marc R. Lewis and Evangeline A.Z. Burbidge and of Lewis & Llewellyn LLP.

Zillow is represented by Brooke A.M. Taylor, Oleg Elkhunovich and Jenna Golda Farleigh of Susman Godfrey LLP.

The case is Top Agent Network, Inc. v. Zillow, Inc., case number 3:14-cv-04769, in the U.S. District Court for the Northern District of California.

--Additional reporting by Beth Winegarner. Editing by Christine Chun.

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