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Ex-ClearOne Workers Get No Relief On $9.7M Award

By **Hilary Russ**

Law360, New York (July 22, 2009) -- Former ClearOne Communications Inc. employees accused of stealing trade secrets have lost a bid for relief from a $9.7 million jury judgment against them.

Judge Tena Campbell on Monday denied the employees' motions for relief from judgment and a stay of enforcement in the U.S. District Court for the District of Utah.

The motions are sealed, and the jury's verdict did not indicate what action the defendants were seeking to stay. Judge Campbell's ruling considered the two issues as one because they contained significant overlap, according to the ruling.

After a two-week trial that ended in November 2008, the jury found the defendants — BiAmp Systems Corp., WideBand Solutions Inc. and three of its principals, and Versatile DSP Inc. — liable for damages, saying they "willfully and maliciously misappropriated ClearOne's trade secrets," in particular a source code for audioconferencing technology.

Jurors originally awarded ClearOne a judgment of $10.5 million in damages, but Judge Campbell stripped the award of about $800,000 after vacating portions of the verdict that found the defendants had breached their fiduciary duties.

The defendants were each liable for between $637,332 and $2.5 million in exemplary damages, and some were also individually liable for $694,000 or $951,000 in unjust enrichment, the judge found in April.

Defendant Lonny Bowers filed his motions based on his contention that he found new evidence showing ClearOne committed fraud during litigation of the case. In particular, he claimed that ClearOne hid information that proved the so-called Honeybee Code he allegedly stole was, in fact, not a trade secret.

He also alleged that ClearOne withheld crucial portions of the code until trial, when it was too late

for him to mount a reasonable defense, according to court documents.

Bowers argued that because some 50 pages of the Honeybee Code were part of ClearOne's copyright application, it was a public document and therefore not a trade secret.

But in denying Bowers' motion, Judge Campbell noted that the total pages for the source code numbered in the hundreds, if not thousands. The judge wrote that "Bowers' protestations are simply not credible."

"Mr. Bowers does not come close to meeting his burden" of proof, Judge Campbell wrote. "Mr. Bowers' other arguments are equally ineffective. Not only is his evidence not new, but it was in the hands of the defendants before trial."

In tossing Bowers' motions for relief of judgment and stay of enforcement, Judge Campbell also denied motions for joinder by co-defendants Andrew Chiang, ClearOne's former president, and Jun Yang, who was an engineer for ClearOne's predecessor and co-founded WideBand with Chiang, according to court documents.

No contact information was immediately available for Yang. Bowers and Chiang did not return calls to their homes for comment.

A ClearOne spokeswoman did not return a call for comment. An attorney representing the company did not respond to requests for comment. Another referred questions to the previous attorney.

The plaintiffs are represented by Magleby & Greenwood PC and Burbidge Mitchell & Gross, both of Salt Lake City, Utah.

The defendants are representing themselves.

The case is ClearOne Communications Inc. v. Andrew Chiang; Jun Yang; Lonny Bowers; WideBand Solutions Inc.; Versatile DSP Inc.; and BiAmp Systems Corp., case number 2:07-CV-37-TC, in the U.S. District Court for the District of Utah.

--Additional reporting by Leigh Kamping-Carder, Julie Zeveloff and Tina Peng