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SUCCESSFUL CLAIMS FOR BREACH OF CONFIDENCE AND UNLAWFUL CONSPIRACY

Norwegian naval architects, Salt Ship Design A/S, have succeeded with claims against the Italian cable laying company Prysmian Powerlink Srl. for breach of confidence and unlawful conspiracy following a trial in the High Court in London.

Background

In 2017, Prysmian retained Salt as the exclusive designer of a new cable laying vessel, following a competitive tender process. Salt prepared a design for the vessel, and Prysmian then asked shipyards to bid for the contract to build it using Salt's design. Vard Group AS was one of the shipyards that submitted a bid.

In spring 2018, Prysmian awarded Vard the contract to build the vessel. However, Prysmian dispensed with Salt's design services and another company in the Vard group, Vard Design AS, took over responsibility for the vessel's design. The vessel built under this arrangement, Leonardo Da Vinci, began operations for Prysmian in 2021.

Commercial Court decision

The Court found that Prysmian had, in breach of confidence, made available to Vard Design AS confidential documents which Salt had been prepared as Prysmian's exclusive designer, and had then encouraged Vard Design AS to produce an alternative design for the vessel, tracking key characteristics of Salt's design.

The Court found that Prysmian's conduct amounted to an unlawful conspiracy with Vard Design AS, made with the intention to injure Salt. The conspiracy began with discussions between senior employees of Prysmian and Vard in late 2017 and broadened to include others, as Prysmian and Vard worked to align Vard's design with the design that Salt had produced. This was done without Salt's knowledge at a time when Salt was still retained by Prysmian as exclusive designer.

It had emerged during the case that, on the date Prysmian and Vard signed the shipbuilding contract, Vard had separately agreed to indemnify Prysmian in the event of a claim by Salt for infringement of intellectual property rights.

There will be a further Court hearing to determine the amount of the damages Prysmian must pay to Salt for unlawfully conspiring with Vard and its unauthorised use of Salt's confidential documents. However, the Judge, Jacobs J, observed that this is may be a case where exemplary damages are appropriate.

It is unusual for an English Court to be willing to award damages that go beyond compensation, but it is well established that exemplary damages can be awarded where a party has calculated that its wrongful conduct will generate more profit than it would have to pay in compensation. The Judge found that this was such a case, with Prysmian expecting to make a considerable saving by terminating its arrangement with Salt but keeping the benefit of Salt's design work. He also took into account that Prysmian had obtained an indemnity from Vard.

The Judge concluded, "*I have ultimately formed the view that Prysmian's conduct was sufficiently high-handed or egregious so as to, potentially at least, justify a punitive response*".

HFW (Alistair Feeney, Clare Chyb, Rosie Morrison) represented Salt Ship Design A/S, with a counsel team of Michael Ashcroft QC (Twenty Essex) and Tim Austen (3 New Square).

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