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New Tree Co. Owners Can't Lodge Suit Over Defunct ESOP

By **Patrick Hoff**

Law360 (July 25, 2024, 7:38 PM EDT) -- Alerus Financial NA defeated a lawsuit claiming it unlawfully let the former owners of a tree care company take a large portion of the business's \$34 million sale price, with a California federal judge saying the new owners can't sue on behalf of a defunct employee stock ownership plan.

On Wednesday, U.S. District Judge Rita F. Lin **granted** without prejudice a motion to dismiss the Employee Retirement Income Security Act case brought by CI Quercus Inc. and parent company SavATree LLC. CI Quercus, which acquired Arborwell Inc. in 2020, alleged that Arborwell's former owners and Alerus, which served as ESOP trustee, breached their fiduciary duties by allocating too much of the purchase price to repaying a loan the former owners provided when the plan was established in 2017.

However, Judge Lin said that neither CI Quercus nor SavATree is a trustee to the ESOP, which was terminated after Arborwell Inc. was acquired and became Arborwell LLC. According to the opinion, the companies also can't rely on their status as former fiduciaries of the ESOP to bolster the suit.

"Nothing ensures that Arborwell LLC has an incentive to act in the interest of the plan participants, some of whom are former employees who may have a contentious relationship with the new owners of the company," Judge Lin wrote. "This is the very danger against which Article III's standing requirements seek to guard: a plaintiff with no 'personal stake' who purports to represent the interests of other individuals, even though those other individuals have not sought court intervention and may have different interests."

Judge Lin also dismissed CI Quercus and SavATree's claims that two former Arborwell owners — Andrew Lavelle and Neil Woolner — violated the Defend Trade Secrets Act when they bought a rival tree care company called Arbor MD Tree Care Inc. and recruited other Arborwell employees to join them.

According to the opinion, CI Quercus alleged that the former owners and employees who joined Arbor MD stole trade secrets about pricing, customer lists and tree care plans, but nowhere does the complaint allege this information was used in interstate or foreign commerce.

"To the contrary, the [first amended complaint] describes Arborwell's sites as being 'throughout the Bay Area and elsewhere in California,' not in other states," Judge Lin wrote. "Plaintiffs offer no opposition to dismissal of the DTSA claim on this basis."

Judge Lin said that while CI Quercus and SavATree can file an amended complaint that includes the ERISA claims, the trade secret allegations are dismissed with prejudice.

In June 2023, CI Quercus and SavATree sued Alerus; Arbor MD; several former employees and owners; and Alvin and Anne Sortwell, the husband and wife who founded Arborwell. According to its website, SavATree provides tree and lawn care services to residences and businesses across the country.

CI Quercus and SavATree said in their complaint that they paid \$34 million to acquire Arborwell in 2020, but the ESOP only received about \$12.5 million even though it owned all of the company's shares. The former Arborwell owners, meanwhile, received a combined \$13.6 million to repay funds

they had transferred to the ESOP so it could purchase the company's shares in 2017.

Representatives of the parties did not immediately respond to requests for comment Thursday.

Arborwell and SavATree are represented by Richard F. Munzinger, Sanjeet S. Ganjam, Suzanne S. Orza, Diego B. Flores and Alexander R. Morrow of Shartsis Friese LLP.

Alerus Financial is represented by Lars C. Golumbic and Ross McSweeney of Groom Law Group Chtd. and by Horace W. Green of Brothers Smith LLP.

The Sortwells are represented by Stephen P. Wilkes, Thomas E. Clark Jr. and Lee T. Polk of The Wagner Law Group PC.

Arbor MD Tree Care Inc., Lavelle and Woolner are represented by Christopher J. Rillo, Raerani Reddy and Christina A. Romak of Baker Botts LLP and by David M. Marchiano and Brandon V. Stracener of Brown Gee & Wenger LLP.

The case is Arborwell LLC et al. v. Alerus Financial NA et al., case number 3:23-cv-02770, in the U.S. District Court for the Northern District of California.

--Editing by Nick Petruncio.

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