

How They Won IT

Catching Lies Landed Susman Godfrey \$706M IP Verdict

By **Dani Kass**

Law360 (April 30, 2018, 9:05 PM EDT) -- Susman Godfrey LLP in March brought in what might be the year's largest intellectual property verdict to date by digging up proof that Title Source Inc. used proprietary data from data-analytics startup HouseCanary Inc. to make its own competing real estate appraisal software, in violation of collaborator agreements.

The firm, led by partners Max Tribble and Kalpana Srinivasan, was able to dig up an internal TSI presentation proving that it was making software that would compete with HouseCanary's, allowing the lawyers to discredit multiple witnesses who swore otherwise and ultimately win over a Texas state jury to get a massive \$706 million verdict.

HouseCanary makes a program that provides real estate evaluations, Tribble said. A user can input a residential address and in seconds see the worth of that property calculated from a variety of factors. The software then lets users see how the value of the property is expected to change over the next few years and what the risk value is.

TSI, now known as Amrock Inc., provides valuation services for Quicken Loans, helping that company figure out whether it should grant loans, refinancings or other services. To better that service, TSI worked with HouseCanary on custom software that its appraisers could use, and as part of that, TSI signed a nondisclosure agreement in 2013, Tribble said.

Over time, TSI asked for more proprietary data, and as it promised not to use it to make its own software and was bound by agreements not to disclose, use or reverse-engineer that data, HouseCanary complied, Tribble said. But HouseCanary later discovered TSI had used significant amounts of its data to make its own automated valuation model, or AVM, and stopped providing that data.

TSI sued first, alleging breach of contract for not providing data on time, violation of an NDA by telling investors that the two companies had a relationship and other claims. HouseCanary countersued, accusing TSI of stealing trade secrets, and had a decisive victory.

During discovery, TSI told HouseCanary that it wasn't making its own AVM, Tribble said. However, during a Google search, Susman Godfrey discovered a PowerPoint document called "Title Source Automated Valuation Model," which TSI used at an internal Quicken Loans conference detailing its own AVM. That PowerPoint "broke open the path to discovery" about what TSI was making and was crucial to building

the case, Srinivasan said.

“The title of the whole presentation showed that everything Title Source and its lawyers said was not true, but then when you go into presentation it shows you the details,” Tribble said. “It has diagrams of the logic that Title Source used in its automated valuation model, and each element is something that is also contained in the HouseCanary automated valuation model — elements that we had disclosed to them.”

The presentation showed that TSI’s statements that it wasn’t making its own AVM model, especially one based on House Canary’s data — made during the contractual relationship through the litigation — were false, Tribble added.

To back up its case, Susman Godfrey got the audio from that Quicken Loans presentation played at trial. The fight for all of this evidence involved multiple motions to compel, Tribble said.

The trial lasted seven weeks. Tribble said during the first half, which focused on TSI’s original allegations, Susman Godfrey repeatedly discredited witnesses on cross-examination.

“They would get on the stand and tell this story that sounded awesome for the TSI side of the case, but it was all completely contradicted by the documents, the deposition testimony of other witnesses,” he said. “Cross-examinations were quite lengthy because there were so many false statements given by almost every witness, so we walked them through every piece of evidence, contracted almost every key point that that witness had testified to.”

One example of this was tied to a similarity score HouseCanary developed, which looks at a property and rates how similar it is to other properties. While TSI had argued it didn’t have a similarity score model, some TSI employees would later say on the stand that they had seen it in the company, Tribble said.

Since the trial had already gone on for weeks by the time the counterclaims were ready to be argued, Srinivasan said they had to adjust their plans to keep the jury’s attention. This included cutting back on duplicative witnesses to focus on what was new or different from what had already come up.

The jury deliberated for three hours, during which they sent a note back to the court asking if they were allowed to allot more than the specified \$403.2 million for exemplary damages, and if so, what that maximum would be. Judge David A. Canales sent the note back saying to refer to the original instructions, but the Susman Godfrey team took that as a good sign.

“We try not to overread things because that is part of being in a jury trial, you can’t always know what people are thinking no matter how much you try to read the tea leaves,” Srinivasan said. “We tried to take that to heart, even with a very promising jury note.”

On March 14, the jury awarded \$201.6 million for the value of the misappropriated trade secrets to HouseCanary at the time they were stolen, \$403.2 million for exemplary damages for the appropriation, \$33.8 million for fraud in connection with the November 2015 contract and \$67.6 million in exemplary damages for the fraud.

The case is now going through post-trial motions, with a possible appeal looming.

HouseCanary is represented by Max Tribble, Kalpana Srinivasan, Matthew Behncke, Elisha Barron, Rocco Magni and Bryce Barcelo of Susman Godfrey LLP.

TSI is represented by Peter Wahby, Kendyl Hanks and Karl Dial of Greenberg Traurig LLP.

The case is Title Source Inc. v. HouseCanary Inc., case number 2016CI06300, in the 73rd Judicial District Court of Bexar County, Texas.

--Additional reporting by Cara Salvatore. Editing by Brian Baresch and Alanna Weissman.

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