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How Kasowitz Revived SAP, Deloitte Whistleblower Claims

By **Emma Cueto**

Law360 (September 24, 2021, 1:52 PM EDT) -- After taking over a whistleblower case against Deloitte Consulting LLP and the American arm of SAP in a California state court appeal, attorneys from Kasowitz Benson Torres revived claims that the companies cheated the city of San Diego.

Kasowitz partners Jason Takenouchi and Mark Ressler successfully convinced a state appellate panel that whistleblower Tomas Rocco had made a case that SAP, which has strong business ties to Deloitte, did not provide the impartial analysis it promised the city when evaluating possible contractors, and that Deloitte, once it was awarded the contract at issue, billed the city for work it did not perform.

The panel, however, disagreed that Rocco, a former SAP employee, had done enough to support allegations that Deloitte and SAP had actively collaborated to defraud the city.

Takenouchi and Ressler told Law360 Pulse that they were gratified by the decision and the chance to continue pursuing the case, which helps illustrate the "incestuous relationship" that major providers can have in this space.

"It's common ... for municipalities especially to bring in SAP or some other entity to give them an analysis on where they should go forward with technology, and to count on that entity to give them unvarnished advice," Takenouchi said. "But it's also, I think, well-known in the industry that SAP, Deloitte, and other implementation partners have common interests. ... And you don't see a lot of cases that expose that as directly as this one does. That's one of the reasons we took this case on."

Rocco originally filed suit against SAP and Deloitte in 2018, alleging that he was fired from his job as a "City Client Partner" with SAP after he objected to the way colleagues seemed intent on steering a San Diego city contract to Deloitte. Rocco alleged that SAP employees discussed the idea that the company could "buddy to Deloitte" and disparaged Deloitte's competition for the contract, despite SAP's contractual obligation to provide an impartial recommendation to the city.

The work, which involved integrating the city's SAP-designed infrastructure management software, was awarded to Deloitte in 2015.

Rocco also alleged that Deloitte billed San Diego \$835,000 for deployment of geographic tracking technology, which would track city assets, despite the fact that it allegedly never performed those services. In fact, Rocco said, it was SAP that performed that work, billing the city \$1.6 million for it.

Rocco also included claims related to his termination, which the trial court allowed to stand and were thus not part of the appeal.

In attempting to revive Rocco's claims that the two companies violated the California False Claims Act, Takenouchi and Ressler were taking over the case from a solo practitioner David P. Strauss. They were brought in, they said, because of the firm's expertise in software-related cases and experience litigating against both SAP and Deloitte.

The Rocco complaint had been amended four times and included over 100 pages, so a big part of their approach, they said, was to try to simplify the case in the briefs. They were aware, they said, that all the amendments could easily create the impression that the case was clearly deficient, so they kept the focus on the key allegations.

"I think prior counsel had done a good job," Takenouchi said, but the many amendments had created a document that was "unwieldy." It was important, therefore, to lay things out clearly and focus on what Rocco was alleging.

"It doesn't get any better for plaintiff's counsel in a false claims act [case] than to be able to allege that a vendor for a government entity was paid for work it did not perform," Ressler said. Keeping the allegations themselves at the forefront was therefore key.

It was gratifying, the pair said, to see the appellate decision reference many of the specific allegations in the decision, which ruled that Rocco met the threshold to proceed to discovery.

"We were very pleased with the decision," Takenouchi said.

Although the court supported the trial court's decisions to nix claims related to alleged collusion between Deloitte and SAP, agreeing that nothing Rocco witnessed directly indicated such a thing had occurred, Takenouchi and Ressler said that they were pleased to be able to conduct discovery on the false claims allegations.

The pair will be staying on as counsel when the case returns to the trial court, and said they are confident that discovery will produce further proof of Rocco's allegations.

Counsel for Deloitte declined to comment on the record. Counsel for SAP did not respond to a request for comment.

Rocco is represented by Mark P. Ressler and Jason S. Takenouchi of Kasowitz Benson Torres.

SAP America Inc. and SAP Public Services are represented by Stephen H. Sutro of Duane Morris.

Deloitte is represented by John C. Hueston, Joseph A. Reiter and Haoxiaohan Cai of Hueston Hennigan.

The case Thomas Rocco v. SAP America Inc. et al., case number G058937 in the Court of Appeal for the State of California, Fourth Appellate District.

--Editing by Amy Rowe.

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