

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 10/13/2016

EVENT TIME: 08:20:00 AM

DEPT.: 43

JUDICIAL OFFICER: Kevin DeNoce

CASE NUM: 56-2014-00461060-CU-NP-VTA

CASE TITLE: P.Q.L INC VS REVOLUTION LIGHTING TECHNOLOGIES INC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Demurrer (CLM) - 1)Demurrer to Plaintiff PQL Inc's third amended complaint

CAUSAL DOCUMENT/DATE FILED: Demurrer, 08/30/2016

The morning calendar in courtroom 43 will begin at 9 a.m. Cases including *ex parte* matters will not be called prior to 9 a.m. Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by CourtCall, please call in between 8:35 and 8:45 a.m.

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you can send an email to the court at: Courtroom43@ventura.courts.ca.gov or send a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-477-5894, stating that you submit on the tentative. Do not call in lieu of sending an email or telefax. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce's rules and procedures for law and motion matters, *ex parte* matters, telephonic appearances, trial rules and procedures, etc., please visit: <http://www.ventura.courts.ca.gov/Courtroom/C43>

The court's tentative ruling is as follows:

Overrule the demurrer. Answer to be filed and served within 10 days. (CRC Rule 3.1320.)

Grant the motion to strike.

Discussion:

Demurrer

Defendants Dana A. Warnes, Gene LeDuff, Blake Delgado, and Jordan Koteru ("Individual Defendants" or "Defendants") demurrer to Plaintiff PQL's Third Amended Complaint ("TAC") as to the 9th cause of action. Defs contend that the 9th cause of action for tortious interference with contract fails to state facts sufficient to sustain a cause of action. CCP 430.10(e).

Defendants' demurrer alleges that the 9th cause of action is deficient because it only states that they disrupted their own contracts with PQL as opposed to PQL's contracts with others. Individual Defendants assert that ". . . to survive this demurrer, PQL must have alleged facts showing that Individual Defendants interfered with valid contracts between PQL and third parties." (See Demurrer, page 3, lines 12-13.) What PQL alleges is that the Individual Defendants solicited each other to disrupt their employment contracts with PQL. (TAC, ¶54.) By breaching their own non-solicitation contract, each defendant disrupted the contracts of third parties. In other words, the act of solicitation by each defendant induced the disruption of contractual relationships between PQL and persons other than themselves.

The disruption of contracts between PQL and third parties is sufficiently alleged in that when Blake Delgado solicited Dana Warnes to leave PQL, he disrupted his own contractual relationship with PQL and induced the disruption of Ms. Warnes' contractual relationship with PQL. Ms. Warnes' contractual relationship was disrupted when she left PQL and PQL was damaged as a result. Defendants challenge to the credibility of these allegations is not cognizable on demurrer. In ruling on a demurrer, the court must not only assume the truth of the alleged facts, but also those facts that may be implied or inferred from those expressly alleged in the pleading. (See CCP § 452.) Further, a pleading need only allege the ultimate facts that constitute the cause of action, not the evidence by which the ultimate facts will be proved at the trial. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 551, fn.5.)

Individual Defendants argue that some allegations in the 9th cause of action are preempted by the California Uniform Trade Secret Act ("CUTSA") because they concern trade secret misappropriation. CUTSA prohibits the misappropriation of trade secrets, but specifically preserves (1) "contractual remedies, whether or not based upon misappropriation of a trade secret," (2) "other civil remedies that are not based upon misappropriation of a trade secret," and (3) "criminal remedies, whether or not based upon misappropriation of a trade secret." (Civ. Code, § 3426.7, italics added.) The Act preempts another civil remedy only if that remedy "hinges upon," is "predicated upon," "rests squarely on," or is "based entirely on" allegations that a trade secret was misappropriated. (*K.C. Multimedia, Inc. v. Bank of America Technology & Operations Inc.* (2009) 171 Cal.App.4th 939, 955, 959, 962; *Silvaco*, at p. 234.) The Act "does not displace noncontract claims that, although related to a trade secret misappropriation, are independent and based on facts distinct from the facts that support the misappropriation claim." (*Angelica Textile Services, Inc. v. Park* (2013) 220 Cal.App.4th 495, 506; cf. *K.C. Multimedia*, at p. 955 [preemption reaches only claims "'based on the same nucleus of facts as the misappropriation of trade secrets claim . . ."].) Notably, CUTSA does not preempt "contractual remedies, whether or not based upon misappropriation of a trade secret," or "other civil remedies that are not based upon misappropriation of a trade secret . . ." (Civ. Code, § 3426.7, subd. (b); *K.C. Multimedia*, supra, 171 Cal.App.4th at p. 958.) "[B]reach of contract claims, even when they are based on misappropriation or misuse of a trade secret, are not displaced by UTSA." (*Angelica Textile Services, Inc. v. Park*, 220 Cal. App. 4th 495, 508 (Cal. App. 4th Dist. 2013)

Motion to Strike.

Defendants move to strike the 2nd, 6th, and 7th causes of action, which are directed only to former defendant Gene Scott Fein ("Fein"), whom PQL has previously dismissed with prejudice from this action. On July 13, 2016, Defendant Gene Fein was dismissed from this action with prejudice. The Third Amended Complaint was filed after a motion for leave was granted on August 9, 2016, and adds defendants Aston Capital, LLC and James DePalma. It also still includes Gene Fein as a named defendant. Mr. Fein is no longer a party, and was dismissed by PQL with prejudice. Notwithstanding the dismissal, PQL still alleges that Mr. Fein is a defendant. (See TAC, ¶5.) Thus, the Court must strike the 2nd, 6th, and 7th cause of action, as well as paragraph 5 of the TAC.