

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

MINUTE ORDER

DATE: 04/07/2016

TIME: 08:20:00 AM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Tiffany Froedge

REPORTER/ERM: None

CASE NO: **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: Motion to Strike Portions of Plaintiff's First Amended complaint

MOVING PARTY: Jordan Kotero, Dana A Warnes, Gene Leduff, Gene Scott Fein, Blake Delgado

CAUSAL DOCUMENT/DATE FILED: Motion to Strike Portions of Plaintiff PQL Incs First Amended Complaint, 02/16/2016

EVENT TYPE: Demurrer (CLM) to First amended complaint

MOVING PARTY: Jordan Kotero, Dana A Warnes, Gene Leduff, Gene Scott Fein, Blake Delgado

CAUSAL DOCUMENT/DATE FILED: Demurrer on First Amended Complaint, 02/16/2016

APPEARANCES

No Appearance by all parties

At 8:52 a.m., court convenes in this matter with all parties present as previously indicated.

There are no appearances by any party.

Counsel David Yoshida for Plaintiff has contacted the court (previous to the hearing) and is submitting on the tentative ruling and will not appear

Counsel Deborah Sirias for Defendants Delgado, Warnes, Kotero, Fein, and Leduff has contacted the court (previous to the hearing) and is submitting on the tentative ruling and will not appear

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling.

The court's tentative ruling is as follows:

Overrule demurrer to the 1st, 5th and 9th causes of action. Sustain demurrer to the 2nd, 6th and 7th causes of action with leave to amend. Grant the motion to strike with respect to the portion of ¶66 which

seeks damages. Deny as moot that part of the motion to strike for ¶¶44, ¶72 and ¶77 based on the sustaining of the demurrer to the 2nd, 6th and 7th causes of action. Deny the remainder of the motion to strike on the merits.

Discussion:

Demurrer is only appropriate where the grounds for objection appear on the face of the complaint or from any matter of which the court is required to or may take judicial notice. CCP § 430.30(a). For the purpose of a demurrer, the court must treat all properly pleaded facts as admitted. *Blank v Kirwan* (1985) 39 Cal.3d 311.

1st Cause of Action for Trade Secret Misappropriation –

Defendants claim that a wrongful acquirer or discloser of a trade secret must be a "person" under Civ. Code section 3426.1(b) and P has simply alleged that all defendants were involved. FAC ¶35. Defendants contend this contradicts P's earlier assertion as to who it provided earlier information to in ¶¶ 23 and 28 of the FAC.

P argues that there is nothing contradictory about ¶¶ 23 or 28. As P points out, defendants fail to provide legal authority to support their arguments. They also ignore the courts prior rulings. In addition, their claim that ¶¶ 23 and 28 somehow contradict the allegations in ¶35 is without merit. The demurrer to this cause of action is overruled.

2nd Cause of Action for Breach of the Duty of Loyalty –

Defendants claim that for a breach of the duty of loyalty claim, P must demonstrate: 1) the existence of a relationship giving rise to a duty of loyalty; 2) a breach of that duty; and 3) damage proximately caused by that breach. *Huong Que v. Luu* (2007) 150 Cal.App.4th 400, 410. Defendants further argue that the duty of loyalty arises from an agency relationship and that P has alleged the defendants were employees or independent contractor. Defendants argue that an independent contractor is not an agent or employee and that employment type relationships are not fiduciary in nature. Defendants claim that any duty ends when a relationship is terminated and notes the non-specific nature of P's allegations.

P claims that there is no heightened pleading standard for a breach of loyalty cause of action. P claims the existence of a fiduciary relationship is fact dependent and a question for the trier of fact, not a question of law that can be addressed at the pleading stage. See *Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 614. P also argues that while an employee or independent contractor status does not impose a fiduciary relationship as a matter of law, it does not preclude an employee or independent contractor from becoming a fiduciary.

P concedes that one's status as an employee or independent contractor does not automatically impose a fiduciary duty upon an individual. However, that appears to be the sole basis of the alleged duty of undivided loyalty owed to P in the second cause of action. See FAC ¶41. While there may theoretically be other reasons which could impose a fiduciary duty on the moving defendants, P has not alleged them in the second cause of action. As such, the demurrer to this cause of action is sustained with leave to amend.

5th Cause of Action for Unfair Competition –

Defendants maintain that "A claim for common law or even statutory unfair competition may be preempted under CC §3426.7 if it relies on the same facts as the misappropriation claim." *K.C.*

Multimedia Inc. v. Bank of America Tech. & Operations, Inc. (2009) 171 Cal.App.4th 939, 961 (internal citations omitted). Defendants claim that since P has provided no facts showing the basis of this cause of action, "in all likelihood, the facts are the same as the misappropriation cause of action, and accordingly are preempted." (Moving Papers p.4:11-13.) P argues that defendants are inappropriately asking the court to speculate on the factual basis of the fifth cause of action. P also claims that defendants ignore the factual allegations contained in the FAC and that the factual basis for the fifth cause of action is different than the factual basis for the 1st cause of action.

While a Civil Code section 3426.7 claim might preempt an unfair competition cause of action based upon the same facts, defendants have failed to demonstrate that the unfair competition cause of action in the first amended complaint is preempted by its first cause of action. The court's review on demurrer is limited to the face of the complaint and any items that it may take judicial notice of. There is nothing before the court that demonstrates that the factual basis of the first cause of action is identical to the factual basis of the fifth cause of action. The demurrer to this cause of action is overruled.

6th Cause of Action for Breach of Fiduciary Duty –

Defendants argue that P has failed to allege a fiduciary relationship. They note that a fiduciary relationship is "any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party." (*Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 29.) Defendants argue that merely asserting they "held key positions in the management of PQL's business" is not sufficient to establish a fiduciary relationship. They note that simple employment relationships are insufficient to create a fiduciary relationship.

Whether a fiduciary relationship existed is a fact dependent determination and sufficient facts must be alleged which make the existence of such a relationship possible. P has alleged that some of the moving defendants, "held key positions in the management of PQL's business and stood in a fiduciary relationship with PQL." FAC ¶69. Simply alleging that holding a "key position in management" creates a fiduciary relationship is incorrect. While the defendants may well have owed a fiduciary duty to P, P has not pled sufficient facts that would allow a trier of fact to come to that conclusion. As such, the demurrer to this cause of action is sustained with leave to amend.

7th Cause of Action for Usurpation of Corporate Opportunities -

Defendants argue that P has failed to plead that they owed it a sufficient duty or usurped an opportunity. P argues that it has alleged a fiduciary relationship. It argues that it has sufficiently pled usurpation of a corporate opportunity. The seventh cause of action requires the existence of a fiduciary relationship. As noted above, P has not alleged sufficient facts that would establish the existence of such a relationship. As such, the demurrer to this cause of action is sustained with leave to amend.

9th Cause of Action for Tortious Interference with Contract –

Defendants argue that to the extent this cause of action is based upon an alleged breach of a non-compete agreement, it is invalid. They also argue that to the extent this cause of action is based upon a breach of the non-disclosure agreement it is preempted by the first cause of action. P claims that defendants are only attacking a portion of the cause of action which is properly pled.

"A demurrer does not lie to a portion of a cause of action." (*PH II, Inc. v. Superior Court* [*218] (1995) 33 Cal.App.4th 1680, 1682 [reversing demurrer sustained to legal malpractice cause of action because plaintiff alleged at least one negligent act].) If there are sufficient allegations to entitle plaintiff to relief,

other allegations cannot be challenged by general demurrer. Defendants have not established that the first cause of action preempts any portion of the ninth cause of action. Even if it did, defendants have not established that all of the other facts alleged in the ninth cause of action are insufficient to state a claim. The demurrer to this cause of action is overruled.

Motion to Strike –

Defendant have moved to strike ¶44, a portion of ¶57, a portion of ¶66, ¶72, ¶77, and a portion of ¶6 of the prayer from the FAC. The part of the motion requesting the striking of ¶44, ¶72 and ¶77 is rendered moot by the court's ruling on the demurrer to the second, sixth and seventh causes of action.

Defendants argue that ¶66 lines 17-18 should be stricken because it requests damages and damages are generally not allowed for a B & P §17200 claim. (*See Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1144 [indicating that generally B&P §17200 claimants are limited to injunctive relief and restitution.]) P notes that the court previously struck this part of the fifth cause of action and claims it is therefore moot. Technically the request is not moot, since portions of a complaint may be stricken with respect to certain defendants and not others, P is conceding the merits of the argument. As such, the court grants the request to strike the portion of ¶66 seeking damages.

Defendants challenge that part of ¶6 of the prayer which seeks to prevent defendants "from soliciting or interfering with any PQL relationship with its customers." Defendants claim that "reading between the lines" P is trying to obtain a legally unenforceable non-competition agreement. Defendants claim if P gets what it really wants, then they will basically be unemployable. Defendants have not established that the injunctive relieve P seeks amounts to a non-competition clause. Even if they had established that P was seeking a non-competition clause, defendants concede that clauses are enforceable in limited cases and have not established that this is not one of those cases. Defendants can make their arguments regarding the appropriateness of a particular injunction to the court if the matter goes to trial and P prevails. Therefore, the court denies the request to strike portions of ¶57 and ¶6 of the prayer.

Notice to be given by clerk.