

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

**MINUTE ORDER**

DATE: 08/03/2015

TIME: 08:20:00 AM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Laurie Simons

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

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**EVENT TYPE:** Motion to Strike punitive & exemplary damages & certain other allegations from first amended cross complaint.

MOVING PARTY: Andy Sreden, P.Q.L Inc

CAUSAL DOCUMENT/DATE FILED: Motion to Strike punitive & exemplary damages & certain other allegations from first amended cross complaint. Memo of ps&as in support thereof, 06/29/2015

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**EVENT TYPE:** Demurrer (CLM) to first amended cross complaint of Gene Fein.

MOVING PARTY: Andy Sreden, P.Q.L Inc

CAUSAL DOCUMENT/DATE FILED: Demurrer to first amended cross complaint of Gene Fein. Memo of ps&as in support thereof, 06/29/2015

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**APPEARANCES**

David Y Yoshida, specially appearing for P.Q.L Inc, Plaintiff.

H. Steven Schiffres, Cross - Complainant, present telephonically.

David Y. Yoshida, specially appearing for Andy Sreden, Cross - Defendant.

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Matter submitted to the court with argument.

Cross-defendant's counsel states objection to attorney Schiffres specially appearing after withdrawing as counsel.

The Court finds/orders:

**The court's tentative ruling is as follows:**

Overrule the demurrer. Enough specificity is pled for Cross-Defendants to fully understand the nature of the fraud allegations set forth in the 1<sup>st</sup> and 3<sup>rd</sup> causes of action of the First Amended Cross-Complaint. Deny the Motion to Strike since the fraud allegations are sufficiently pled and a well-pled fraud cause of action supports a claim for punitive damages.

**Discussion**

1st and 3rd causes of action – fraud based causes of action:

Both the 1st cause of action, for fraud, and the 3rd cause of action, for "Cancellation of Promissory Note due to Fraud," are based on allegations of fraud. The elements of fraud are "(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage." (*citation*) (*Behnke v. State Farm General Ins. Co.* (2011) 196 Cal.App.4th 1443, 1452-53.) Note that a **statement may be implied, see *Hinesley v. Oakshade Town Ctr.* (2005) 135 CA4th 289, 295, and a representation may be conveyed by conduct, see Rest.2d Torts § 525 and *Thrifty-Tel, Inc. v. Bezenek* (1996) 46 CA4th 1559, 1567.**

Fraud must be pleaded specifically. To survive demurrer, plaintiff must plead facts that "show how, when, where, to whom, and by what means the representations were tendered." (*Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 CA4th 1602, 1614.) The specificity requirement serves two purposes: (1) to furnish the defendant with certain definite charges that can be intelligently met; and (2) to ensure the complaint is specific enough so that the court can "weed out nonmeritorious actions on the basis of the pleadings." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216-217.)

The First Amended Cross-Complaint (FACC) is somewhat vague with respect to some of the allegations. For instance, ¶8 says that Fein brought PQL 3 good offers; Hunter Industries in 12/13, RVLT in 2/14 and again in 9/14, while ¶9 says that Hunter offered \$10 million in 7/13, and ¶11 says that RVLT offered \$14 million in 6/14, and \$16.5 million in 8/14. Were there 6 offers, or was the Hunter offer in July or December 2013 and were the RVLT offers made in February and September 2014 or June and August 2014? Despite that limited uncertainty, the FACC contains sufficiently specific allegations to survive demurrer. Cross-Defendant has enough information to intelligently meet the charges. Cross-Defendant Sreden is alleged to be the CEO of PQL (¶3). ¶5 contains the allegations that each cross-defendant was acting with authority of the other cross-defendants, and that their actions were authorized and ratified by each other. When read in context, the representations are clear enough. Sreden, as CEO of PQL, hired Fein to sell PQL in exchange for 5% commission at or before February 2013. ¶8. Sreden allegedly told Fein on multiple occasions in 2014, including in his Simi office and in June 2014 in Stanford, CT, (presumably orally) that he would sell PQL if the target price of \$15 million was met (¶¶ 9-10); despite never intending to sell PQL (¶19). The demurrer is overruled.

#### **Motion to Strike:**

A motion to strike may be brought to strike any irrelevant, false or improper matter inserted in any pleading or to strike any pleading or part thereof not drawn or filed in conformity with the laws of this state, a court rule or order of court. CCP § 436. The grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice. (CCP § 437.)

To survive a motion to strike exemplary damages, a plaintiff must allege that the defendant is guilty of oppression, fraud, or malice. Civil Code §3294(a). "The mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages. Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim." (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166 [citations omitted].) However, there is no heightened pleading requirement for punitive damages. "The allegation that defendants were guilty of 'oppression, fraud, and malice' simply pleaded a claim for punitive damages in the language of the statute authorizing such damages. (Civ.Code, § 3294.) Pleading in the language of the statute is not objectionable when sufficient facts are alleged to support the allegation." (*Perkins v Superior Court*

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(1981) 117 Cal.App.3d 1, 6-7.) "A fraud cause seeking punitive damages need not include an allegation that the fraud was motivated by the malicious desire to inflict injury upon the victim. The pleading of fraud is sufficient." (*Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 610.) Since the Court has found that the fraud causes of action are adequately pled, the motion to strike is denied.

Parties waive notice.