Filed 11/20/19 Smith-Emery Co. v. Internat. Union of Operating Engineers, Local No. 12 CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SMITH-EMERY COMPANY et al., Plaintiffs and Appellants, v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 12 et al., Defendants and Respondents.	B289840 (Los Angeles County Super. Ct. No. BC587840)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara A. Meiers, Judge. Affirmed.

Hunter Salcido & Toms, John Logan Hunter and Robert L. Toms, Jr. for Plaintiffs and Appellants.

Hugo Antonio Tzec for Defendant and Respondent International Union of Operating Engineers, Local No. 12.

Laquer Urban Clifford & Hodge, Christopher M. Laquer, Susan Graham Lovelace and Marija Kristich Decker for

Defendants and Respondents Trustees of the Operating Engineers Pension Trust, Trustees of the Operating Engineers Health and Welfare Fund, Trustees of the Operating Engineers Vacation Holiday Savings Trust, and Trustees of the Operating Engineers Training Trust.

INTRODUCTION

Smith-Emery Company (SEC) and Smith-Emery Laboratories, Inc. (SEL) (collectively, Smith-Emery) filed this action for fraud and other causes of action against the International Union of Operating Engineers, Local No. 12 (Local 12) and the trustees of several trusts benefitting Local 12 members (the trustees). Smith-Emery appeals from the judgment entered after the trial court sustained demurrers by Local 12 and the trustees to the second amended complaint without leave to amend. Smith-Emery does not contend the trial court erred in sustaining the demurrers, but argues the court erred in denying Smith-Emery leave to file a proposed third amended complaint. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Parties*

SEC provides construction inspection services for schools and hospitals, for which it employs building construction inspectors who belong to a labor union, Local 12. A collective bargaining agreement (CBA) between SEC and Local 12 requires SEC to contribute to several trusts benefitting Local 12 members

(the trusts)[1] whenever SEC employs Local 12 members to perform work covered by the CBA. The CBA gives the trusts the right to audit SEC's compliance with its contribution obligations.

SEC's competitors also employ Local 12 members, but those competitors are party to a master labor agreement (MLA) with Local 12, which defines covered work more broadly. SEC is not a party to the MLA and has resisted efforts by Local 12 to expand the CBA's definition of covered work to mirror the MLA's definition of covered work.

SEL is a separate company from SEC.[2] SEL provides laboratory testing services required for school and hospital construction projects. SEL is not a party to any labor union contract.

B. *The Trustees' Federal Actions Against SEC*

In March 2009 the trustees filed an action against SEC in federal district court (the first federal action) to collect allegedly delinquent contributions to the trusts. After filing the action, the trustees audited SEC's records for the period March 1, 2003 through December 31, 2009, and for that period the trustees contended SEC had not made benefits payments for several categories of work covered by the CBA. SEC contended the CBA

---

[1] These trusts are the Operating Engineers Pension Trust, the Operating Engineers Health and Welfare Fund, the Operating Engineers Vacation Holiday Savings Trust, and the Operating Engineers Training Trust.

[2] The record indicates SEL was once a division of SEC, but became a separate corporate entity in 1999.

did not cover some of those categories, in particular work relating to anchor-bolt testing and inspection.[3]

In July 2013, after a bench trial, the district court ruled in the trustees' favor on some claims and in SEC's favor on others. The court ruled the CBA did not cover the work relating to anchor-bolt testing and inspection. Key to that ruling was the court's determination that a 2006 arbitration award in favor of Local 12 and against SEC did not preclude SEC from contending the CBA did not cover anchor-bolt testing and inspection. And finding the applicable CBA provision ambiguous, the court agreed with SEC that it did not cover anchor-bolt testing and inspection. In its analysis the court cited testimony by the trustees' auditor that he was unsure of the scope of the provision at issue and had interpreted it in accordance with instructions from Local 12 officials "to 'mirror' the Master Labor Agreement."

The district court entered judgment in favor of the trustees for $199,591.72. Finding the trustees were the prevailing party, the court then granted a motion by the trustees for attorneys' fees and costs in the amount of $594,667.10 and denied a motion by SEC for attorneys' fees. Both parties appealed, the trustees challenging the district court's ruling that the 2006 arbitration award had no preclusive effect on SEC's contentions, and SEC challenging the rulings on the parties' cross-motions for attorneys' fees.

In December 2013, with the parties' appeals pending, the trustees filed a second and substantially similar federal action

---

[3] "Anchor bolts are large bolts embedded in the concrete foundation of a building, to which structural iron pieces are attached." (*U.S. v. Dougherty* (E.D.Pa. 2015) 98 F.Supp.3d 721, 738.)

against SEC (the second federal action), this time seeking to collect allegedly delinquent contributions for the period January 1, 2010 through March 31, 2015. The parties repeatedly agreed to continuances in the second federal action while they engaged in settlement negotiations to resolve both federal actions together.

In March 2016 the Ninth Circuit Court of Appeals reversed the judgment in the first federal action, concluding the district court erred in ruling the 2006 arbitration award did not preclude SEC from contending the CBA did not cover anchor-bolt testing and inspection. The Ninth Circuit held that the arbitrator found the CBA covered this work and that therefore "the district court should have considered this issue to have been previously decided." The Ninth Circuit rejected SEC's challenge to the rulings on the cross-motions for attorneys' fees, observing the trustees might now be entitled to an even larger award of attorneys' fees based on their success on the claims relating to anchor-bolt testing and inspection, and remanded for further proceedings.

In September 2016 the parties participated in a settlement conference, at the conclusion of which they executed a memorandum of understanding (MOU) for settlement of the first and second federal actions. The MOU provided, among other things, SEC would pay the trustees a "total settlement amount" of $1.6 million, plus 5 percent interest, over the course of 120 monthly payments. The trustees subsequently filed motions in both federal actions to enforce the settlement according to the terms in the MOU, which the district court granted. In August 2017 the district court entered judgments totaling $1.6 million in favor of the trustees and against SEC in the first federal action

(for $1,289,591.59) and the second federal action (for $310,408.41). SEC appealed the orders enforcing settlement and the judgment entered in the two actions, but later dismissed those appeals.

But there's more.

C. *The Initial and First Amended Complaints in This Action*

Meanwhile, in July 2015 SEC filed this action in state court against Local 12 asserting one cause of action for fraudulent misrepresentation. SEC alleged that an officer of Local 12 had misrepresented to the trusts' auditor the scope of work covered by the CBA and that, as a result, the trusts "pursue[d] legal action against SEC for alleged delinquent claims on work which is not and was never covered by the . . . CBA." SEC sought to recover more than $2 million in legal fees incurred in that litigation.

Local 12 removed the action to federal district court on the ground SEC's claim was preempted by section 301(a) of the Labor Management Relations Act of 1947 (29 U.S.C. § 185(a)) (section 301(a)) and moved to dismiss the action on various grounds. The district court granted the motion to dismiss on the ground section 301(a) preempted SEC's claim because the claim "would likely require the Court 'to interpret an existing provision of a CBA.'"

SEC filed a first amended complaint in the district court, again asserting one claim against Local 12 for fraudulent misrepresentation, but this time omitting any mention of the CBA. Instead, SEC alleged Local 12's business agent, "Mr. Billy," made unspecified misrepresentations to the trusts' in-house auditor, "Mr. Babel," about the proper scope of the trusts' audit of

SEC, which induced the trusts to pursue legal action against SEC for alleged delinquent contributions.

When Local 12 again moved to dismiss on the ground of preemption, the district court denied the motion. Stating that section 301(a) preemption applies only when a claim requires the court to "interpret" a collective bargaining agreement, not when a claim requires merely that the court "look to" a collective bargaining agreement, the district court ruled SEC's claim, as now pleaded, did not necessarily require the court to interpret the (previously alleged) CBA. "That is not to say," the court explained, "that plaintiff's claim . . . may not ultimately prove to be preempted by Section 301." Because preemption by section 301(a) was the only available basis for federal court jurisdiction, the district court remanded the case to state court.

D. *The Second Amended Complaint and Judgment of Dismissal*

On remand the trial court granted SEC leave to file a second amended complaint that added SEL as a plaintiff and the trustees as defendants. The second amended complaint asserted (1) a cause of action by SEC against Local 12 for fraudulent misrepresentation, (2) a cause of action by SEC against Local 12 for intentional interference with prospective economic advantage, (3) a cause of action by SEC against Local 12 and the trustees for intentional interference with contract, and (4) a cause of action by SEL against the trustees for intentional interference with prospective economic advantage.

The trustees removed the case (again) to federal court on the ground the second amended complaint asserted causes of action preempted by section 301(a). Local 12 and the trustees

moved to dismiss the first, third, and fourth causes of action on the ground the claims were preempted by section 301(a). The district court denied their motions, ruling "none of plaintiffs' claims in this action is preempted by Section 301," and remanded the case (again) to state court for lack of federal subject matter jurisdiction.

Back in state court (again), Local 12 and the trustees demurred to all causes of action in the second amended complaint. Smith-Emery opposed the demurrer and, in the alternative, sought leave to amend, lodging a proposed third amended complaint. The trial court sustained the demurrers without leave to amend and entered judgment dismissing the action.[4] Smith-Emery timely appealed.

DISCUSSION

A. *Standards of Review*

"""On appeal from an order of dismissal after an order sustaining a demurrer, our standard of review is de novo, i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law.'" [Citation.] In reviewing the complaint, "we must assume the truth of all facts properly pleaded by the plaintiffs, [including those in exhibits attached to or referred to in the complaint,] as well as those that

---

[4] After the hearing on the demurrers, the trial court requested supplemental briefing on various issues. With its supplemental briefs, Smith-Emery lodged another proposed third amended complaint, which differed in some respects from the one already lodged. On appeal, however, the basis for Smith-Emery's request for leave to amend is the first proposed third amended complaint.

are judicially noticeable." [Citation.] We may affirm on any basis stated in the demurrer, regardless of the ground on which the trial court based its ruling.'" (*Ward v. Tilly's, Inc.* (2019) 31 Cal.App.5th 1167, 1174; accord, *McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1172-1173.)

"When a trial court sustains a demurrer without leave to amend, 'we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. . . . If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. . . . The plaintiff has the burden of proving that an amendment would cure the defect.'" (*Modisette v. Apple Inc.* (2018) 30 Cal.App.5th 136, 155; see *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

B. *The Trial Court Did Not Err in Sustaining the Demurrers Without Leave To Amend*

Smith-Emery does not argue the trial court erred in sustaining the demurrers to the second amended complaint, but argues only the court abused its discretion in denying Smith-Emery leave to file the proposed third amended complaint. Because "[w]e have the [proposed third amended complaint] before us, . . . we can make a determination as to whether any viable causes of action are stated and, if not, whether further amendment should be permitted." (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1387.) The proposed third amended complaint asserts causes of action (1) by SEC against Local 12 for fraudulent concealment, (2) by SEC against Local 12 for intentional interference with contract, (3) by SEC against Local 12 and the trustees for intentional

interference with contract, and (4) by SEL against the trustees for intentional interference with prospective economic advantage. None of these causes of action is viable, and Smith-Emery has not shown that or how further amendment would make them viable.

1. *SEC's Cause of Action for Fraud*

SEC proposes to assert a cause of action against Local 12 for fraudulent concealment. "In general, to prove a fraud based on concealment, a plaintiff must demonstrate: "'(1) the defendant . . . concealed or suppressed a material fact, (2) the defendant [had] a duty to disclose the fact to the plaintiff, (3) the defendant . . . intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff [was] unaware of the fact and would not have acted as he [or she] did if he [or she] had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff sustained damage."'" (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1129.)

"'In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] "Thus "'the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect.'" [Citation.] [¶] This particularity requirement necessitates pleading *facts* which 'show how, when, where, to whom, and by what means the representations were tendered."'"'" (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993; see *Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1472 ["the requirement that '[f]raud must be pleaded with specificity . . . ' applies equally to a cause of action for fraud and deceit based on concealment"]; *Moncada v. West Coast Quartz*

Corp. (2013) 221 Cal.App.4th 768, 776 (*Moncada*) ["[t]his pleading requirement of specificity applies not only to the alleged misrepresentation, but also to the elements of causation and damage"].)

SEC proposes to allege Mr. Billy, a business agent of Local 12 and a trustee of the trusts, intentionally did not disclose to SEC that he instructed the trusts' auditor, Mr. Babel, "to conduct an audit of [SEC's] contribution payments to the Trusts using as the basis of the audit the [MLA]," rather than the CBA. SEC proposes to allege that it did not learn of this until Mr. Babel testified during the first federal action and that, had it known of the concealed instruction, it "would have corrected Mr. Babel at the outset of the audit," the trustees would not have initiated their federal actions against SEC, and SEC "would have continued to subcontract . . . hospital testing work to [SEL]." SEC proposes to allege it suffered three harms from the concealment: (1) SEC "subcontracted the work of testing technicians on school and hospital construction to Union Contractors, and not to [SEL], thereby losing money on the subcontracted work"; (2) SEC incurred legal fees defending the first federal action "without knowing that the basis of the claimed delinquency was" the MLA; and (3) SEC's "settlement [of the first and second federal actions] with the Trustees now requires the payment of money to the Trustees for benefits for persons who are not even members of the Union, not [building construction inspectors], and not employed by SEC."

These allegations are insufficiently specific. In particular, SEC does not propose to allege facts sufficient to show a causal connection between any concealment of an instruction to use the MLA as the basis of the audit in the first federal action and the

harms SEC allegedly suffered. (See *Moncada*, *supra*, 221 Cal.App.4th at p. 776 [""[w]hatever form it takes, the injury or damage must not only be distinctly alleged but its causal connection with the reliance on the representations must be shown""].) Indeed, its first allegation of resulting harm is barely intelligible: Nothing in the proposed third amended complaint or in Smith-Emery's briefs on appeal attempts to explain the logical or even temporal relationship between the alleged concealment and a decision by SEC to discontinue subcontracting work to SEL.

SEC proposes to allege its remaining harms with marginally more specificity, but only to doom its fraud cause of action again because "the only reasonable conclusion" from SEC's allegations "is an absence of causation." (*Modisette v. Apple Inc.*, *supra*, 30 Cal.App.5th at p. 152.) SEC proposes to allege that, had it known of Mr. Billy's instruction, it would have "corrected" Mr. Babel at the outset of his audit, the trustees would not have initiated the federal actions, and SEC would have avoided the legal fees it incurred to defend the actions. But the audit in question occurred *after* the trustees initiated the first federal action. Moreover, the trustees contested SEC's position on the propriety of the audit—i.e., whether it accurately reflected the scope of the work covered by the CBA—throughout the first federal action, including on appeal, which they would not have done if they were amenable to being "corrected" on that subject by SEC. Finally, SEC does not explain how the alleged concealment could have induced it to agree to adverse settlement terms some three years after the concealment was disclosed. Because SEC has not demonstrated how it could cure the defects

in this proposed cause of action, the trial court did not err in denying leave to amend as proposed.

2. *SEC's Causes of Action for Intentional Interference with Contract*

SEC proposes to assert two causes of action for intentional interference with contract, one against Local 12, the other against both Local 12 and the trustees. The elements of a cause of action for intentional interference with contract are "'(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.'" (*Redfearn v. Trader Joe's Co.* (2018) 20 Cal.App.5th 989, 997.)

In the proposed cause of action against Local 12 only, SEC proposes to allege that Local 12 knew SEC had a contract with J.H. Snyder Company to perform inspection at a particular construction site, that Local 12 picketed the site with signs falsely claiming SEC had no union contract, that Local 12 did this intending to disrupt SEC's contractual relationship with J.H. Snyder, and that as a result of the picketing J.H. Snyder cancelled its contract with SEC. In its cause of action against both Local 12 and the trustees, SEC proposes to allege that, in an effort to have SEC sign on to the MLA, Local 12 and the trustees, acting in concert and each for the benefit of the other, intentionally disrupted SEC's contracts with Greenland USA to inspect the latter's construction site. SEC proposes to allege, for example, that Local 12 and the trustees "threatened [Greenland's

project manager] that unless [SEC] signed the [MLA], [Local 12 and the trustees] would actively interfere with [SEC's] existing contracts with Greenland," that Local 12 and the trustees let it be known they were "blocking commencement of [the] project until [SEC] signed the [MLA]," and that, when SEC did not sign the MLA, Local 12 and the trustees made good on the threat by causing delays that "halted commencement of the . . . project and prevented [SEC] from performing its contract." SEC also proposes to allege Local 12 and the trustees falsely informed Greenland that SEC was delinquent in its contributions to the trusts, which caused Greenland to terminate SEC's contract for inspecting "Phase II" of the project.

We agree with Local 12 that, under *San Diego Bldg. Trades Council v. Garmon* (1959) 359 U.S. 236 [79 S.Ct. 773] (*Garmon*), the National Labor Relations Act (29 U.S.C. § 151 et seq.) (NLRA) preempts both proposed causes of action for intentional interference with contract. In *Garmon* the United States Supreme Court "held that when an activity is arguably prohibited or protected by section 7 [29 U.S.C. § 157] or section 8 [29 U.S.C. § 158] of the [NLRA], the state courts must defer to the exclusive competence of the NLRB [National Labor Relations Board] in order to avoid state interference with national labor policy." (*Kelecheva v. Multivision Cable T.V. Corp.* (1993) 18 Cal.App.4th 521, 527; see *Dang v. Maruichi American Corp.* (2016) 3 Cal.App.5th 604, 608 (*Dang*) ["[t]he NLRB, and not a state court, has exclusive authority to determine whether a claim 'arguably subject to' section 7 or 8 is preempted"].) Thus, the NLRA preempts a state law cause of action that is based on activity arguably prohibited or protected by section 7 or section 8

of the NLRA. (*Dang*, at p. 608.) "State jurisdiction is 'extinguished' when there is preemption under *Garmon*." (*Ibid*.)

SEC's proposed interference cause of action against Local 12 is based on the latter's picketing activity. Local 12 argues, SEC does not dispute, and we agree Local 12's picketing activity was arguably protected or prohibited by section 7 or section 8 of the NLRA. (See *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters* (1978) 436 U.S. 180, 187 [98 S.Ct. 1745] (*Sears*) [picketing alleged in state law claim "was both arguably prohibited and arguably protected" by sections 7 and 8]; *Retail Property Trust v. United Broth. of Carpenters and Joiners of America* (9th Cir. 2014) 768 F.3d 938, 950 (*Retail Property*) ["Section 7 protects the right of employees 'to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection,' [citation] including the right to conduct pickets and consumer boycotts."]; *T & H Bail Bonds Inc. v. Local 199 Laborers Internat. Union of North America* (D.Del. 2008) 579 F.Supp.2d 578, 582 ["'[t]he right to picket is either protected under Section 7 . . . , or prohibited under Section 8 . . . , depending on the circumstances"].)

Nor does SEC dispute that the proposed cause of action against both Local 12 and the trustees rests on allegations of activity arguably prohibited by section 8's "secondary boycotting" prohibitions. (See *Fashion Valley Mall, LLC v. National Labor Relations Bd.* (2007) 42 Cal.4th 850, 857, fn. 3 ["A 'secondary boycott' is 'union activity directed against a neutral employer.'"]; *Iron Workers Dist. Council of Pacific Northwest v. N.L.R.B.* (9th Cir. 1990) 913 F.2d 1470, 1475 ["Section 8(b)(4)(B) . . . prohibits

secondary boycott activities."].) The relevant provision in section 8 prohibits labor organizations and their agents from, among other things, "threatening, coercing, or restraining a neutral employer with the object of forcing a cessation of business between the neutral employer and the employer with whom a union has a dispute." (*Local 560, Internat. Broth. of Teamsters* (2014) 360 NLRB 1067, 1067; see 29 U.S.C. § 158(b)(4)(ii)(B).)[5] This provision at least arguably prohibits the activity SEC proposes to allege Local 12 and the trustees engaged in here—threatening and coercing Greenland with delays to its construction project in an attempt to have Greenland terminate its contractual relationship with SEC. (See *BE & K Constr. Co. v. United Broth. of Carpenters and Joiners of America, AFL-CIO* (8th Cir. 1996) 90 F.3d 1318, 1327-1330 [state law claim for tortious interference with contractual relationship was preempted because it was based on activity arguably prohibited by 29 U.S.C. § 158(b)(4)(ii)]; *Point Ruston, LLC v. Pacific Northwest Regional Council of the United Broth. of Carpenters and Joiners of America* (W.D.Wash. 2009) 658 F.Supp.2d 1266, 1277 [state law claims for tortious interference with contract sought "damages for conduct already prohibited by Section 158(b)(4)"].)

SEC makes two arguments against *Garmon* preemption. First, it argues the federal district court already rejected the

---

[5] Section 8 makes it unlawful for "a labor organization or its agents . . . to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is . . . forcing or requiring any person . . . to cease doing business with any other person . . . ." (29 U.S.C. § 158(b)(4)(ii)(B).)

"preemption defense" when the court remanded the case (for the second time) based on an evaluation of the second amended complaint. According to SEC, "Nothing more need be said." But what the district court said was that no claim in the case was preempted by section 301, which provides removal jurisdiction for "'[s]uits for violation of contracts between an employer and a labor organization.'" (*Curtis v. Irwin Industries, Inc.* (9th Cir. 2019) 913 F.3d 1146, 1151; see *id.* at pp. 1152-1153 [determining whether section 301 preemption applies may require the court to "ask 'whether a plaintiff's state law right is substantially dependent on analysis of [the CBA],' which turns on whether the claim cannot be resolved by simply 'look[ing] to' versus 'interpreting' the CBA"]; *Retail Property*, *supra*, 768 F.3d at p. 948 [section 301 preemption "is a doctrine applicable to removal jurisdiction only; it is not a doctrine of defensive preemption"].) The district court said nothing about defensive preemption under *Garmon*. (See *Retail Property*, at p. 951 [*Garmon* preemption is defensive].)

Second, SEC suggests *Garmon* preemption does not apply because in some unspecified way Local 12's conduct ran "afoul of the exclusive police power of the State of California to legislate, regulate and administer the *Building Code* . . . ."[6] SEC appears to invoke, without naming it, the "local interest" exception to *Garmon* preemption, which applies when a cause of action rests on alleged "'conduct that touches "interests so deeply rooted in local feeling and responsibility that, in the absence of compelling

---

[6] "Title 24, part 2 of the California Code of Regulations is also known as the California Building Code and is published separately under that name." (*Urhausen v. Longs Drug Stores California, Inc.* (2007) 155 Cal.App.4th 254, 259, fn. 2.)

congressional direction, we could not infer that Congress had deprived the States of the power to act.'"'" (*Hillhaven Oakland Nursing Etc. Center v. Health Care Workers Union* (1996) 41 Cal.App.4th 846, 854; see *Sears*, *supra*, 436 U.S. at p. 188.) But SEC cites no authority suggesting that conduct comes within the local interest exception merely because it is subject to state building regulations, and the case law suggests it does not. (See, e.g., *Lodge 76, Internat. Assn. of Machinists and Aerospace Workers, AFL-CIO v. Wisconsin Employment Relations Com.* (1976) 427 U.S. 132, 136 [96 S.Ct. 2548] ["Policing of actual or threatened violence to persons or destruction of property has been held most clearly a matter for the States."]; *Hillhaven*, at p. 854 ["Traditionally conduct falling within the 'local interest' exception to preemption has included violence . . . ; threats of violence . . . ; libel . . . ; infliction of emotional distress . . . ; trespass . . . ; obstructions of access to property . . . ; and state breach of contract actions by laid-off replacement employees."].)

Because the NLRA preempts SEC's proposed amended causes of action for intentional interference with contract, and SEC has not shown how it could further amend to cure that defect, the trial court did not err in sustaining the demurrers to those causes of action without leave to amend.

3. *SEL's Cause of Action for Intentional Interference with Prospective Economic Advantage*

Finally, SEL proposes to assert, but fails to sufficiently allege, a cause of action against the trustees for intentional interference with prospective economic advantage. That cause of action "has five elements: (1) the existence, between the plaintiff

and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action." (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.)

SEL proposes to allege that it is properly accredited to perform testing services uniquely required for school construction projects and that for decades it "has enjoyed an ongoing business relationship" with the Los Angeles Unified School District, for whom SEL has been a "preferred provider" of such services through an arrangement that does not depend on a competitive bid process. SEL proposes to allege that in January 2014 the trustees served the school district with a writ of execution based on the judgment in the first federal action, "seeking to attach revenues belonging to [SEL]," even though the judgment was against SEC, not SEL. SEL proposes to allege the trustees did this intending to disrupt the business relationship between SEL and the school district, which in fact subsequently ceased doing business with SEL, citing as its reason the writ of execution served by the trustees.

SEL has not sufficiently alleged the third element of a cause of action for intentional interference with prospective economic advantage because SEL has not identified any wrongful act by the trustees apart from the purported interference. (See *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1158.) The third element requires a plaintiff to "plead that the defendant engaged in an independently wrongful act," and "[a]n act is not independently wrongful merely because defendant

acted with an improper motive." (*Ibid.*) Rather, "an act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Id.* at p. 1159.)

SEL does not allege in the proposed third amended complaint or explain in its briefs on appeal what was unlawful about the trustees' service of the writ of execution on the school district.[7] SEL proposes to allege the legal conclusion that the service was an abuse of process (see *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057 ["[t]o succeed in an action for abuse of process, a litigant must establish that the defendant (1) contemplated an ulterior motive in using the process, and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings"]), but a court does not assume the truth of such alleged """""conclusions of fact or law""""" (*Minton v. Dignity Health* (2019) 39 Cal.App.5th 1155, 1161).

SEL has not shown how it could amend to cure the defect in its proposed cause of action for intentional interference with prospective economic advantage. Therefore, the trial court did not err in sustaining the demurrer to that cause of action without leave to amend.

---

[7] The writ identified SEC as the judgment debtor and stated the trustees were "informed that the [school district] may owe contract funds to [SEC] based on work performed by [SEC] on [school district] construction projects." The writ did not mention SEL.

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.