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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE BELVEDERE HOTEL  
PARTNERSHIP,

Plaintiff and Appellant,

v.

HOUSSEM TASCO et al.,

Defendants and Respondents.

B292903

(Los Angeles County  
Super. Ct. No. SC127379)

APPEAL from an order of the Superior Court of Los Angeles County, Mitchell L. Beckloff, Judge. Affirmed.

Miller Barondess, Louis R. Miller, Jason H. Tokoro and Minh-Van T. Do; Greines, Martin, Stein & Richland, Timothy T. Coates and Gary J. Wax for Plaintiff and Appellant.

California Appellate Law Group, Anna-Rose Mathieson and Susan Yorke; Rosoff, Schiffres & Barta, Robert Marc Barta and Daniel Y. Simkin for Defendant and Respondent Housseem Tasco.

O'Melveny & Myers, Eric J. Amdursky and Ryan Rutledge  
for Defendants and Respondents Binyamin Alagem and Oasis  
West Realty.

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## **INTRODUCTION**

Plaintiff The Belvedere Hotel Partnership operates the Peninsula Beverly Hills hotel. Peninsula (as we hereafter refer to plaintiff) sued one of its former employees, Houssem Tasco, alleging he misappropriated trade secrets before leaving Peninsula to work for a competitor, the Waldorf Astoria Beverly Hills (Waldorf Astoria). Peninsula also sued Oasis West Realty and its Chairman and Chief Executive Officer Benyamin Alagem (collectively Oasis West), who Peninsula alleges were in cahoots with Tasco. Oasis West did not employ Tasco, but instead is the owner and developer of the property used by the Waldorf Astoria for its hotel.

The allegedly misappropriated trade secrets consist largely of Peninsula work emails residing on Tasco's personal devices. Tasco did not steal those emails. They were on his personal devices because he was required to use those devices to be available outside of the office, as Peninsula did not supply him with a laptop. While the emails remained on his personal devices after he left Peninsula, evidence indicated Tasco did not review, disclose, or otherwise use the emails after leaving Peninsula's employ. Once litigation began, Tasco provided the emails to a forensic expert and no longer had access to them for any commercial purpose.

Thereafter, approximately seven months after Tasco began working at the Waldorf Astoria, Peninsula sought a preliminary

injunction to prevent Tasco and Oasis West from accessing Peninsula's proprietary information, soliciting certain individuals to stay at the Waldorf Astoria, and otherwise misappropriating Peninsula's trade secrets during the pendency of the litigation. The trial court denied the request, finding Peninsula made no more than a minimal showing of a probability of success on the merits as to Tasco—and none as to Oasis West—and the balance of harm fell in favor of Tasco.

Peninsula now appeals from the denial of its preliminary injunction request. Finding no legal error, and substantial evidence in support of the trial court's factual findings, we affirm.

### **FACTUAL BACKGROUND**

#### **A. Peninsula and Proprietary Information**

Peninsula is a five-star, luxury hotel. It cultivates a wealthy clientele including business executives, celebrities, and foreign royalty. Peninsula asserts it “has developed and maintained a highly confidential database that contains specific information about its worldwide clientele.” Peninsula's Managing Director, Offer Nissenbaum, identified this “database” as “thousands of documents and information developed over two decades and electronically stored on the Peninsula's secured servers.” Peninsula avers its database contains valuable information about Peninsula's guests, including their special requests and preferences, booking histories and payment details, and summaries of past guest experiences.

Peninsula's guests value familiarity and customized experiences. For example, if a guest does not drink alcohol, Peninsula will remove alcohol from the mini bar. If a guest is a light sleeper, that information gets logged into the database and efforts are made to give the guest a room away from the street

and without a connecting door. If a guest has unique dining habits, Peninsula will make sure the kitchen staff is prepared in advance to handle this request. This information allows Peninsula to customize each guest's hotel experience to ensure its guests enjoy their stays, and to entice repeat visits.

Peninsula also maintains information regarding hotel operations, including marketing strategies, department meeting minutes, financial records (including room rates and guest payment arrangements), payroll information, and information concerning its vendors.

#### **B. Peninsula's Protection of Proprietary Information**

Peninsula protects the proprietary information contained in its internal database. To access Peninsula's computers, a user must enter a login and password. Employees are instructed to log off when leaving their computers; computers automatically log off users after 15 minutes of inactivity. Each department's confidential information is kept in that department's folder on Peninsula's computer system, and only users in that department have access to that folder. Peninsula also requires that all documents containing confidential information be password protected.

Unless specifically authorized, employees can access their hotel email accounts only from the hotel's computers; they cannot access other employees' email or calendars. Authorized employees can access their hotel email accounts from their personal computers, but Peninsula requires a multifactor authentication process for online access.

Peninsula has written policies covering computer use, login and passwords, email, and mobile devices. Pursuant to these policies, employees are required "to ensure the confidentiality" of

proprietary information to which they are given access. They are prohibited from disclosing any proprietary information without permission, including information relating to “client databases” and “sales and marketing plans.” Peninsula’s written policy provides that while employees can store hotel files on laptop computers when on business trips or out of the office, upon their return they must transfer the files to the hotel network. Additionally, all employees with access to confidential information are required to sign a confidentiality agreement.

**C. Tasco’s Employment with Peninsula**

Peninsula hired Tasco as its guest relations manager in November 2013. In this position, Tasco had access to the hotel’s confidential database. Tasco signed a confidentiality agreement. That agreement provided that Tasco would not disclose confidential information, and that upon termination of his employment Tasco would “return all Hotel Materials [defined as items containing proprietary information] and any reproduction of such materials.” The agreement further provided that during his employment as well as for one year after the termination of employment “I shall not use any Proprietary Information to benefit another person or business entity in competition with the Hotel.”

During his employment with Peninsula, Tasco was not provided with a company laptop. Instead, he was required to use his own personal electronic devices to fulfill his work duties outside of the office and during non-business hours. This included using his personal laptop to access, receive, draft, and send work emails and other documents. Nissenbaum and others at Peninsula were aware Tasco was using his personal electronic devices for work related purposes. Tasco asserts Peninsula never

gave him specific instructions regarding use of his personal electronic devices for work. Nor did Peninsula provide Tasco with remote computer access, resulting in Tasco having to store his email account and needed work documents on his personal computer.

Peninsula promoted Tasco to group and diplomatic sales manager in March 2015, where he became responsible for cultivating and developing Peninsula's business contacts and professional reputation in the Middle East. Tasco traveled to the Middle East twice a year to meet with contacts there. On these trips, Tasco used his own personal devices to carry out his work responsibilities. This included using those devices to access and download documents and data from Peninsula's computer system. The information obtained from Peninsula's computer system enabled Tasco to identify actual and potential client contacts to visit, and to prepare proposals and presentations tailored to each client's preferences and past booking history.

#### **D. Tasco Seeks Employment with Waldorf Astoria**

In January 2016, Tasco met with Luc Delafosse, the Waldorf Astoria's managing director, regarding employment with the Waldorf Astoria (which was not yet open for business). In a follow-up email to Delafosse dated January 22, 2016, Tasco stated he had cultivated a number of business connections and personal relationships pertinent to the luxury hotel industry, and "I am counting on utilizing this database and intelligence to help out" with sales at the Waldorf Astoria. Tasco noted that his "years of experience with many different venues and cultures throughout the world," and his "sales, local, and foreign contacts," would "help build a very diverse and exclusive customer base, who will all soon be Waldorf Astoria loyalists."

In June or July 2016, Tasco told Peninsula that he intended to resign. Tasco was offered a raise to stay at Peninsula, which he accepted. Tasco later told his supervisor that he would stay until he found another opportunity.

**E. Tasco Meets with Oasis West**

Oasis West owns the property for the Waldorf Astoria (the real estate and physical plant). It does not own the Waldorf Astoria brand or operate the hotel. The hotel itself is operated by Waldorf-Astoria Management LLC, a subsidiary of Hilton Domestic Operating Company, Inc.

In September 2016, Oasis West's president, Ted Kahan, interviewed Tasco at Delafosse's request. Following the meeting, Tasco sent an email on September 14, 2016 thanking Kahan for the meeting, and expressing excitement about the possibility of joining the team at the Waldorf Astoria. On September 15, 2016, Kahan emailed back that it was a pleasure to meet Tasco. Kahan provided input to Delafosse, but it was Delafosse who made the decision to hire Tasco.

**F. Tasco's Resignation and Employment with the Waldorf Astoria**

In November 2016, Tasco resigned his position at Peninsula to start work at the Waldorf Astoria. Tasco's last day of work at Peninsula was November 14, 2016. At that time, he returned all physical property belonging to Peninsula. He also signed a document acknowledging he had returned all confidential information, and would abide by the confidentiality agreement mentioned above. According to Peninsula, "Tasco did not return any of Peninsula's confidential, proprietary information at the time of his resignation or any time thereafter."

Tasco stated that no one spoke to him regarding any information he might have on his personal devices, such as old work emails, or told him to delete any such emails on those devices. According to Tasco, in the absence of Peninsula instructing him what to do with those emails “or even bringing it to my attention, the account simply stayed on my computer and Peninsula did not remotely wipe or block access to the email account upon my resignation.”

**G. Tasco’s Trip to the Middle East**

Waldorf Astoria’s director of sales and marketing, Vanessa Williams, asked Tasco “to travel to the Middle East in February 2017 to meet with . . . travel agencies and government officials and members of royal families known to travel to the United States.” On February 10, 2017, Tasco emailed Williams listing the travel agencies and individuals with whom he had met.

While Peninsula later described this email as “smoking gun” evidence of trade secret misappropriation, Williams stated she already “was aware of all the travel agencies and individuals [Tasco] mentioned and had been for many years. [Williams had] worked with the same Middle Eastern travel agencies, government officials, and members of royal families over the past 30 years.” Williams also stated, based on her years of experience in sales and marketing in the luxury hospitality industry, that the Middle Eastern travel agencies, government officials, and royal family members identified in Tasco’s February 10, 2017 email are well known in the luxury hospitality industry more generally, and publicly available.



## **H. Peninsula Becomes Concerned Tasco Is Using Its Confidential Information**

In March 2017, Nissenbaum took a sales trip to visit several Peninsula business contacts in the Middle East. Those customers told Nissenbaum that Tasco had been in personal communication with them, traveled to the Middle East to meet with them directly, and sought to solicit their business for the Waldorf Astoria. These contacts included foreign dignitaries and owners of luxury travel agencies in Saudi Arabia, Qatar, Dubai, Bahrain, and Kuwait. Nissenbaum claimed that Tasco was aware Peninsula's sales trip to the Middle East was planned for March 2017, and had sought to get out ahead of it with Tasco's own trip.

## **PROCEDURAL BACKGROUND**

### **A. Peninsula Commences Suit**

On April 13, 2017, Peninsula filed suit against Tasco. Peninsula alleged causes of action for breach of contract, breach of the duty of loyalty, breach of fiduciary duty, misappropriation of trade secrets under the California Uniform Trade Secrets Act (UTSA; Civ. Code, § 3426 et seq.), violation of Labor Code section 2860, declaratory relief, conversion, violation of Business and Professions Code section 17200 et seq., and intentional interference with prospective economic relations. Peninsula alleged the Waldorf Astoria was scheduled to open in the summer of 2017, and would be a direct competitor of Peninsula. Peninsula claimed Tasco was improperly soliciting Peninsula's customers, using Peninsula's proprietary and confidential information to assist the Waldorf Astoria in competing unfairly with Peninsula.

## **B. Peninsula Examines the Hard Drives of Tasco's Work Computers**

Tasco's work computers remained in Peninsula's possession when Tasco resigned, but apparently were not examined prior to Peninsula filing suit. On April 19, 2017, Peninsula provided the hard drives from Tasco's work computers to a digital forensic consultant. The consultant reported that between November 11 and November 14, 2016, Tasco viewed several files in the "Sales and Marketing" folder and conducted over 40 system searches. These searches included such terms as "Princess" and "[Q]atar" and "[D]iplomatic." Peninsula asserted these searches would produce results that included confidential data related to Peninsula's clients from all over the world, as well as Peninsula's business relationships with them.

A separate computer forensic expert examined the hard drives in September 2017. That expert's examination indicated a USB thumb drive was connected to one of the computers on October 27, 2016 for approximately 10 minutes. A smartphone was connected to one of the computers around 9:30 a.m. on November 7, 2016. A different smartphone was connected to one of the computers around 5:30 p.m. on November 9, 2016. The expert opined that during these same time periods, "some files were created, some files were modified, some files were accessed, and some internet browsing occurred."

When made aware of this analysis, Tasco responded that on October 27, 2016, he was in the Middle East on a Peninsula-related business trip and could not have attached the thumb drive to the computer. Tasco said that other Peninsula employees were able to and in fact did use his desktop computer at Peninsula, particularly when Tasco was traveling.

Additionally, the identification numbers of the two smartphones did not match the identification number of his phone, which Tasco asserted showed he was not the one responsible for connecting the phones to the computer or accessing Peninsula's files. Tasco stated he searched the sales and marketing folder on a daily basis as part of his job responsibilities at Peninsula, and would have needed to access that folder because he was still working at Peninsula between November 11 and 14, 2016. Noting again that others used his Peninsula computer, Tasco pointed out the forensic analysis did not indicate which user profile was logged in when files were opened on November 14, 2016.

### **C. The Second Amended Complaint**

Peninsula filed a second amended complaint on December 20, 2017 against Tasco, which additionally named Alagem and Oasis West as defendants. Against Tasco, Peninsula alleged causes of action for breach of contract, breach of fiduciary duty, and violation of the California Computer Data Access and Fraud Act (Pen. Code, § 502). Peninsula alleged causes of action against Tasco, Alagem and Oasis West for misappropriation of trade secrets under UTSA, conversion, unfair competition (Bus. & Prof. Code, § 17200 et seq.), and intentional interference with prospective economic advantage. Peninsula also alleged that Alagem and Oasis West aided and abetted Tasco's breach of fiduciary duty.<sup>1</sup>

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<sup>1</sup> Tasco filed a cross-complaint against Peninsula and Nissenbaum. On September 4, 2018, after the trial court denied the preliminary injunction, Peninsula filed a third amended complaint. Although Peninsula refers to this as the "operative third amended complaint," for purposes of this appeal, the second

#### **D. Peninsula's Discovery Requests**

In April and May 2017, Peninsula served Tasco with document production requests. In June 2017, Tasco filed a motion for a protective order pursuant to Code of Civil Procedure section 2019.210 to prohibit Peninsula from conducting trade secret discovery until it identified its trade secrets with particularity. That motion was denied in December 2017. Peninsula thereafter served additional document production requests on both Tasco and Oasis West.

On May 3, 2018, Oasis West produced 45 pages of documents, including (1) a copy of the September 14-15, 2016 email exchange between Tasco and Kahan regarding Tasco's interview for the Waldorf Astoria position, and (2) a copy of the February 10, 2017 email from Tasco to Williams. On May 7, 2018, Tasco produced over 45,000 documents consisting of emails and attachments that Tasco sent or received while employed by Peninsula, which resided on Tasco's personal electronic devices.

#### **E. Peninsula's Motion for a Preliminary Injunction**

On June 8, 2018, Peninsula filed its motion for a preliminary injunction. Peninsula argued the recently produced documents showed "compelling evidence of trade secret misappropriation," and that "[b]ased on the 45,000+ documents stolen by Tasco, the scope of wrongdoing here is pervasive and brazen." Peninsula asserted that "Tasco took the Peninsula's entire database of worldwide clients." Peninsula claimed Tasco

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amended complaint controls. " " "The appeal reviews the correctness of the judgment or order as of the time of its rendition, leaving later developments to be handled in subsequent litigation." ' ' " (*Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 323, fn. 2.)

was using the stolen information “to undercut the Peninsula and solicit guests to the Waldorf [Astoria]—acts of unfair competition and unjust enrichment.” Peninsula asserted that to preserve the status quo, a preliminary injunction should issue (1) ordering defendants to return all documents containing Peninsula’s confidential, proprietary information, (2) enjoining defendants from accessing or disclosing Peninsula’s confidential, proprietary information, and (3) enjoining defendants from soliciting any of the clients or client contacts identified in the February 10, 2017 email.

In opposition, Tasco submitted a declaration stating “[t]he luxury hotel market for travelers from the Middle East to Beverly Hills is highly competitive. There are six comparable hotels within three miles of the Peninsula,” all of which “compete for the same valuable business from the Middle East, targeting travel agencies, foreign dignitaries and government officials, and business people. There are a limited number of travelers from the Middle East to Beverly Hills that spend upwards of \$500,000 to \$1,000,000 in seasonal hotel accommodations, and all of these luxury hotels compete for that same business.”

Tasco explained he was from Tunisia, spoke fluent French and Arabic, and had “extensive contacts in the Middle East region well beyond Peninsula’s Middle Eastern guests.” Tasco had “worked in the luxury hospitality industry for more than a decade.” In Tasco’s experience, Peninsula’s “strategies for tracking historical customer information and for developing relationships with business contacts, travel agencies, and customer representatives are neither novel nor unique to [Peninsula]. In addition, [Tasco testified] the travel agents, and also many guests and their assistants, from the Middle East who

book rooms at luxury hotels in Beverly Hills were very familiar with [him], as well as the other Arabic-speaking hotel employees in this market, and they often reach[ed] out . . . directly to inquire about accommodations.” Tasco noted that “travel agents, guests or potential guests often disclose rates they have been offered at other hotels, as well as the amounts they have previously spent or number of rooms booked, in order to negotiate a better rate, upgrades or inclusions.” Tasco also stated: “I do not believe it is possible that my entire Peninsula email account, which I understand to consist of approximately 45,000 documents, is a trade secret. In any event, I do not have possession of my laptop nor access to the subject email account or any other documents on it, as I turned it over to my forensic consultant in 2017.”

Tasco asserted he “would suffer extreme harm if the [c]ourt issues a preliminary injunction enjoining me from working with certain Middle East business contacts and travel agencies. To the extent the persons identified in the proposed injunction requested information or services and I was not able to freely communicate with them out of concern of being accused of violating a court order, I would be severely disadvantaged in my job duties for the Waldorf [Astoria]. If I am prohibited from performing my job duties, I could conceivably lose my current job.” Tasco also expressed concern that the requested injunction was not limited to any actions as a Waldorf Astoria employee, and could also prevent him from finding any other comparable job. Tasco explained that “many of these business contacts have also become my friends and acquaintances over the years, and an injunction would prevent me from spending time enjoying these

invaluable friendships from fear of being accused of violating the injunction.”

Oasis West also opposed the preliminary injunction request. It argued that it did not operate the Waldorf Astoria or employ Tasco. It asserted there was no evidence Oasis West had any access to or used the emails on Tasco’s personal devices. Oasis West further argued that its passive receipt of two emails from Tasco (the September 14, 2016 and February 10, 2017 emails it produced) did not constitute misappropriation of trade secrets, and that the emails in any event did not contain any trade secrets. Oasis West also asserted Peninsula failed to establish irreparable harm or a balance of hardships in its favor, and the requested injunction was overbroad and too vague to be enforced.

#### **F. The Trial Court’s Denial of a Preliminary Injunction**

In denying the motion for a preliminary injunction, the trial court first noted that Peninsula “heavily relies on two factors to support its claim—a ‘database’ of ‘45,000 documents’ ” Peninsula claimed contained “ ‘virtually all of [Peninsula’s] trade secrets’ and an email dated February 10, 2017” that Peninsula characterized as a “ ‘smoking gun.’ ” The court found, however, “[w]hen the actual evidence is considered absent hyperbole, [Peninsula’s] showing of success on the merits is, at best, minimal.”

##### **1. *Likelihood of Prevailing Against Tasco***

###### **(a) *The “Database”***

The court found Peninsula’s assertion that Tasco stole Peninsula’s confidential database before resigning was misleading: “Labeling the 45,000 documents as a ‘database . . . developed by the Peninsula for over two decades through the

expenditure of substantial time, money and resources' is inaccurate." The court found "no evidence a formal database of [Peninsula's] alleged trade secrets exists." Rather, "the 'database' was merely a collection of email . . . on defendant Tasco's personal computer." Peninsula failed to identify "any alleged trade secrets in any of the 45,000 emails. For example, [Peninsula] has not demonstrated defendant Tasco has an actual customer list within the 45,000 emails. (Moreover, it is not even clear to the court that such a list exists.)"

The court found Tasco used his own laptop computer to access his work email when away from the hotel. "Certainly, if [Peninsula] had not provided defendant Tasco with a business computer and it expected him to work off premises, [Peninsula] had to know the email was being accessed by something outside of its own computer network. That defendant Tasco had the 45,000 email[s] on his computer under those circumstances is not theft." Moreover, Peninsula did not make any effort to retrieve the emails, or instruct Tasco to delete or return the emails, when Tasco left Peninsula's employ. The court noted it was insufficient for a preliminary injunction "to merely submit evidence [that] defendant Tasco may have (arguably, inadvertently) retained some of [Peninsula's] confidential information after he resigned." There was "no evidence defendant Tasco did anything with the email after leaving [Peninsula's] employ" or "reviewed, disclosed or used the 45,000 emails for any purposes."

The court acknowledged Tasco's representations in the January 22, 2016 email to Delafosse that "he would use a 'database' and his 'intelligence' to help with the Waldorf [Astoria]'s sales efforts," but found that those references "appear[] to relate to what is generally known to those who labor



in this niche market—the limited pool of potential clients and the travel agents they work through. [¶] Along those lines, [Peninsula] has not submitted any evidence defendant Tasco has used information about [Peninsula’s] negotiated room rates, client annual spending and lodging preferences after he resigned.”

(b) *The February 10, 2017 Email*

With regard to Tasco’s February 10, 2017 email to Williams, the court found “the travel agencies and individuals discussed therein are generally known in the luxury hotel industry” and Peninsula had failed to demonstrate “the individuals listed in the [February] 10 email are not generally known as potential clients within the ultra-competitive Beverly Hills luxury hotel market.” The court agreed, however, that two sentences in the February 10, 2017 email concerning revenues generated by two clients supported Peninsula’s trade secret claim, although “[w]hether and to what extent, if any, such information would have been disclosed by that client in negotiating rates is unknown.”

(c) *Conclusion*

The court found that “[o]verall—with the exception of the two sentences in the February 10 email—[Peninsula’s] evidence . . . is insufficient to demonstrate defendant Tasco improperly took and used [Peninsula’s] trade secret information. Defendant Tasco’s acts of soliciting [Peninsula’s] clients alone is not adequate to show a misappropriation of trade secrets where the clients’ identities appear to be generally known in that niche industry.”

## **2. *Likelihood of Prevailing Against Oasis West***

As to Oasis West, the trial court found no admissible evidence of misappropriation of trade secrets. The court thus found Peninsula failed to meet its burden of showing a probability of prevailing on its substantive claims against Oasis West.

## **3. *Balancing of Harms***

Balancing the harms, the trial court found that if the preliminary injunction were granted, Tasco would suffer substantial harm. The court acknowledged irreparable harm can exist when there is a threat a former employee will use trade secrets to solicit away his former employer's clients. However, the requested injunction would "effectively prevent [Tasco] from doing the job he was hired to do, and puts his entire livelihood at risk. Given the limited nature of [the] ultra-competitive Beverly Hills luxury hotel market and the scope of the requested [preliminary injunction], defendant Tasco would likely no longer be able to work in that sector of the hospitality market until this matter is resolved." Based on Peninsula's "minimal showing of a probability of prevailing on the merits of its first and third causes of action and the court's balancing and consideration of the relative harms," the court denied Peninsula's motion for a preliminary injunction.

## **DISCUSSION**

On appeal, Peninsula contends the trial court applied incorrect legal standards to conclude, at the preliminary injunction stage, that Peninsula had shown only two sentences in one of Tasco's emails were arguably trade secrets. Peninsula also argues legal error in the court's irreparable harm analysis, and

disputes the trial court’s finding that no evidence supported its claims against Oasis West.

#### **A. Standard of Review**

UTSA, “codified in [Civil Code] sections 3426 through 3426.11,<sup>[2]</sup> authorizes a court to enjoin the actual or threatened misappropriation of trade secrets. (§ 3426.2.)” (*CytoDyn of New Mexico, Inc. v. Amerimmune Pharmaceuticals, Inc.* (2008) 160 Cal.App.4th 288, 296.) Stating a claim under UTSA “ ‘requires the plaintiff to demonstrate: (1) the plaintiff owned a trade secret, (2) the defendant acquired, disclosed, or used the plaintiff’s trade secret through improper means, and (3) the defendant’s actions damaged the plaintiff.’ [Citation.]” (*Id.* at p. 297.)

“Injunctions in the area of trade secrets are governed by the principles applicable to injunctions in general. [Citation.]” (*Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1449 (*Whyte*).) In determining whether to issue a preliminary injunction, a court must “weigh two ‘interrelated’ factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. [Citations.]” (*Ryland Mews Homeowners Assn. v. Munoz* (2015) 234 Cal.App.4th 705, 711 (*Ryland Mews*).) “Thus, ‘[t]he trial court’s determination must be guided by a “mix” of the potential-merit and interim-harm factors; the greater the plaintiff’s showing on one, the less must be shown on the other to support an injunction.’ [Citation.]”

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<sup>2</sup> All further unspecified statutory references are to the Civil Code.

(*SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217 Cal.App.4th 272, 280.)

The decision whether to grant a preliminary injunction “‘rests in the sound discretion of the trial court.’ [Citation.] Accordingly, on appeal we review that decision for abuse of discretion. ‘A trial court will be found to have abused its discretion only when it has “‘exceeded the bounds of reason or contravened the uncontradicted evidence.’” [Citations.] Further, the burden rests with the party challenging the [court’s ruling on the requested] injunction to make a clear showing of an abuse of discretion.’ [Citations.]” (*Ryland Mews, supra*, 234 Cal.App.4th at p. 711.) However, “‘[w]here the “likelihood of prevailing on the merits” factor depends upon a question of law . . . the standard of review is not abuse of discretion but whether the superior court correctly interpreted and applied [the] law, which we review de novo.’ [Citation.]” (*Vo v. City of Garden Grove* (2004) 115 Cal.App.4th 425, 433.)

With regard to the trial court’s factual findings, we neither reweigh the evidence nor reevaluate witness credibility. (*Ryland Mews, supra*, 234 Cal.App.4th at p. 712; *Whyte, supra*, 101 Cal.App.4th at p. 1450.) “‘Our task is to ensure that the trial court’s factual determinations, whether express or implied, are supported by substantial evidence. [Citation.] Thus, we interpret the facts in the light most favorable to the prevailing party and indulge in all reasonable inferences in support of the trial court’s order.’ [Citation.]” (*Ryland Mews, supra*, at p. 712; see *Whyte, supra*, at p. 1450.)

**B. The Trial Court Did Not Err in Analyzing Whether the Emails Constituted Trade Secrets**

A trade secret is “information, including a formula, pattern, compilation, program, device, method, technique, or process, that: [¶] (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and [¶] (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” (§ 3426.1, subd. (d).)

Peninsula contends the trial court misapplied this legal standard. Peninsula asserts the court (1) imposed an additional condition that to be a trade secret the information must be contained in a “ ‘database’ or ‘Excel spreadsheet,’ ” (2) misconstrued the requirement that the alleged trade secret not be generally known to the public, and (3) failed to credit what Peninsula considered reasonable efforts to maintain the confidentiality of its alleged trade secrets. Peninsula also argues, more generally, that substantial evidence does not support the trial court’s factual findings.

**1. *The Trial Court Did Not Require Trade Secrets Be Maintained in a Database***

Although neither appears to be a database in the traditional sense, throughout this litigation to date Peninsula has conflated its internal “database” of confidential information with the collection of emails on which its actual trade secret claim is based. The preliminary injunction briefing stated that Tasco downloaded a “ ‘database’ of ‘45,000 documents’ with ‘virtually all of [plaintiff’s] trade secrets.’ ” The briefing elsewhere stated the 45,000 documents in question were emails on Tasco’s personal devices. These garbled statements led the trial court to clarify at

the hearing that, when it heard the term database, it thought of “an Excel spreadsheet” with rows of data, but that it appeared Peninsula was instead referring to the emails on Tasco’s laptop as a “database.” Peninsula’s counsel responded by confirming “That’s exactly right, your Honor.”

In its written ruling, the trial court noted that labeling the 45,000 documents in Tasco’s possession as a “database” was misleading, because when it asked for clarification “the court learned the ‘database’ was merely a collection of email.” Peninsula tries to spin the confusion it created as legal error, claiming the trial court held Tasco’s emails were not protectable trade secrets because the documents were not a formal database or Excel spreadsheet. This assertion is meritless.

The trial court imposed no “database” or “Excel spreadsheet” standard. The court asked Peninsula to clarify what the allegedly stolen “database” was. The court then pointed out in its written order that Peninsula’s arguments about Tasco stealing a “database” were misleading. The trial court did not, as Peninsula suggests, hold the emails were not trade secrets because they were not in a database format. Instead, after noting Peninsula’s specious use of the word “database,” the trial court proceeded to analyze whether the emails in fact contained trade secrets—something it would not have done if it had in fact imposed a “database” requirement. The court found the documents were not trade secrets because, at the preliminary injunction stage, Peninsula “ha[d] not identified any alleged trade secrets in any of the 45,000 emails,” not because of the

format in which those emails and the information contained in them were stored.<sup>3</sup>

**2. *The Trial Court Did Not Err in Finding Claimed Trade Secret Information Was Known to other Luxury Hoteliers***

Peninsula next argues the trial court erred in holding the emails did not contain trade secrets because the names of its guests are generally known to others in the Beverly Hills luxury hotel market. Focusing in particular on the February 10, 2017 email, Peninsula argues the trial court failed to recognize that while guest names may be generally known, their status as Peninsula guests, their personal preferences, and how much they spent are not generally known.

While Peninsula attempts to frame this argument as a legal error requiring de novo review, it is in fact a claim that substantial evidence does not support the trial court's findings about what was and was not a trade secret. Peninsula points to no portion of the court's order indicating the court misapplied the legal standard. An "order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.'" (*Denham v. Superior Court* (1970) 2

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<sup>3</sup> At the time of the preliminary injunction hearing, Peninsula had reviewed only a portion of the 45,000 emails. We accordingly reach no conclusion regarding the existence of trade secrets in the remaining emails. We further note that this matter reaches us at an interim stage, and "a decision on an application for a preliminary injunction does not amount to a decision on the ultimate rights in controversy." (*Bomberger v. McKelvey* (1950) 35 Cal.2d 607, 612.)

Cal.3d 557, 564.) We therefore assume the trial court applied the correct legal standard in weighing the evidence.

With regard to its factual findings, the trial court held Peninsula failed to demonstrate the persons named in the February 10, 2017 email were not generally known to others in the luxury hotel industry. That finding was supported by substantial evidence, including declarations from Tasco and Williams. With regard to financial data associated with such guests, the trial court found two sentences in the February 10, 2017 email discussing private Peninsula financial information were arguably trade secret information (something the trial court would not have analyzed if it was focused only on how generally known the names were), and found those two sentences supported Peninsula's misappropriation of trade secrets claim.

Finally, with regard to guest preferences, in the February 10, 2017 email Tasco referred to one customer who was concerned about excellence of service, and who Tasco assured that the Waldorf Astoria would provide even more excellent service than Peninsula. Peninsula argues "[t]his promise could only refer to providing more than what [Tasco] knew from the trade secret information he misappropriated from Peninsula." The trial court obviously drew a different conclusion—that Peninsula had not shown the emails on Tasco's computer contained trade secrets, and that assuring a big spending client he would receive even better service if he switched hotels was standard sales talk and not evidence of trade secret misappropriation. Where the trial court has drawn reasonable inferences from the evidence, as it did here, "we have no power to draw different inferences, even though different inferences



may also be reasonable.’ [Citation.]” (*Thompson v. Tracor Flight Systems, Inc.* (2001) 86 Cal.App.4th 1156, 1171.)

**3.     *The Trial Court Did Not Err in Finding  
Peninsula Failed To Take Reasonable Steps To  
Keep its Information Confidential***

Peninsula further asserts, with regard to the likelihood of success factor, that the trial court erred in finding Peninsula did not take reasonable steps to maintain the confidentiality of the alleged trade secrets. Peninsula claims that it did take such reasonable steps by, among other things, having Tasco execute a confidentiality agreement, and in Peninsula’s view it was not legally required to do more.

While the trial court commented on the steps (or lack thereof) that Peninsula took to maintain confidentiality of the emails sent to and by Tasco, those comments were made in the context of explaining that Tasco did not misappropriate the emails. The court noted that Peninsula did not provide Tasco with a laptop, yet expected him to work off-premises, and therefore had to know that Tasco was accessing email outside of Peninsula’s network. The trial court held “[t]hat defendant Tasco had the 45,000 email[s] on his computer under those circumstances is not theft.” The court then noted that Peninsula took no efforts to retrieve the emails when Tasco left Peninsula’s employ, further indicating they were not wrongfully misappropriated.

Thus, contrary to Peninsula’s claimed concern, the court did not hold that any information that met the trade secret definition of section 3426.1, subdivision (d)(1), did not in fact qualify for trade secret protection because Peninsula failed to take reasonable steps to preserve the confidentiality of that

information as required by subdivision (d)(2). While Peninsula tries to frame the sufficiency of its confidentiality agreement as an issue of law, “whether a party claiming a trade secret undertook reasonable efforts to maintain secrecy is a question of fact.” (*In Re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 306; see also *Mattel, Inc. v. MGA Entertainment, Inc.* (C.D.Cal. 2011) 782 F.Supp.2d 911, 971 [whether efforts to maintain secrecy were reasonable is question of fact]; *Hilderman v. Enea Teksci, Inc.* (S.D.Cal. 2008) 551 F.Supp.2d 1183, 1201 [same].) As the trial court did not make factual findings regarding whether Peninsula’s efforts were sufficient to meet the requirements of section 3426.1, subdivision (d)(2), we likewise decline to address that question and leave its resolution to further factual development in the future.

**C. The Court Did Not Fail To Consider the Possibility of Threatened Harm**

Moving beyond its likelihood of success arguments, Peninsula asserts the trial court erred in assessing whether Peninsula showed irreparable harm. Peninsula claims the trial court declined to issue a preliminary injunction based on the lack of evidence Peninsula had in fact lost any guests to the Waldorf Astoria from the alleged misappropriation, without crediting Peninsula’s evidence of threatened harm.

We reject Peninsula’s claim the trial court committed a legal error by ignoring that the threat of irreparable harm can support an injunction, as the court’s opinion makes clear it understood the applicable law. UTSA provides that “[a]ctual or threatened misappropriation may be enjoined.” (§ 3426.2, subd. (a), *italics added*.) “[P]laintiffs are not required to wait until they have suffered actual harm before they apply for an

injunction, but may seek injunctive relief against the threatened infringement of their rights.” (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292.) The trial court cited *Maria P.* for exactly this proposition, noting “the threat of irreparable harm is sufficient” for injunctive relief.

Peninsula’s actual challenge, therefore, is again not to the legal standard applied by the trial court, but to the sufficiency of the evidence supporting its finding that there was not a threat of irreparable harm. Peninsula argues that the trial court made conflicting findings, and disregarded uncontroverted evidence, regarding threatened irreparable harm. It is not our role, however, to reweigh the evidence presented to the trial court. “ ‘ “[T]he power of an appellate court *begins* and *ends* with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact.” ’ [Citation.] It will not reweigh the evidence.” (*Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 781.) Here, the court found that (with two small exceptions) the emails identified by Peninsula in the preliminary injunction briefing did not contain trade secrets, that Tasco did not steal the emails, and that Tasco did not do anything with the emails after leaving Peninsula’s employ. There was also evidence Tasco no longer had the emails, as he had surrendered them to a forensic consultant working with his attorneys, and that the customers Tasco was soliciting were generally known within the luxury hotel industry. All of this was substantial evidence supporting the court’s finding that there was not a threat of irreparable harm.

**D. The Trial Court Did Not Abuse Its Discretion in Denying a Preliminary Injunction Against Oasis West**

Peninsula lastly contends the trial court erred in finding that Peninsula “provide[d] no admissible evidence of misconduct with regard to the trade secrets claim” against Oasis West. We reject this argument.

The evidence before the trial court showed Oasis West did not hire Tasco, employ Tasco, or operate the Waldorf Astoria.<sup>4</sup> Peninsula’s evidence against Oasis West consisted of two emails sent by Tasco after meeting with Oasis West representatives. One, the September 14, 2016 email, merely states in sum and substance that Tasco was thrilled and honored to be potentially joining the Waldorf Astoria team. The other was the February 10, 2017 email discussed above, which the court found contained little in the way of trade secrets.

Whatever nefarious inferences Peninsula may seek to tease out of these emails, the trial court read them differently and we are required to defer to the trial court’s interpretation. While the court found the February 10, 2017 email contained two pieces of financial information that were arguably trade secrets, wrongful acquisition of a trade secret requires more than just passive receipt (*Silvaco Data Systems v. Intel Corp.* (2010) 184 Cal.App.4th 210, 222-223, disapproved on another ground in *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 337), and

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<sup>4</sup> The only “evidence” on which Peninsula relies to claim otherwise is its third amended complaint. In addition to being an unverified pleading and thus not evidence, it was not the operative complaint at the time the trial court ruled on the motion for a preliminary injunction.

passive receipt by Oasis West was all Peninsula showed. The trial court's finding that Peninsula made no showing of a probability of prevailing on its substantive claims against Oasis West did not exceed the bounds of reason or contravene the uncontradicted evidence. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69.) We accordingly find no abuse of discretion.

Asserting Peninsula's claims against it are frivolous, Oasis West requests we award it reasonable attorneys' fees under UTSA's fee provisions. Under UTSA, a court may award reasonable attorneys' fees to the prevailing party "[i]f a claim of misappropriation is made in bad faith . . . ." (§ 3426.4.) "Bad faith" requires both that the claim be objectively specious, and that the plaintiff acted in subjective bad faith in bringing or maintaining the claim. (*SASCO v. Rosendin Electric, Inc.* (2012) 207 Cal.App.4th 837, 845.) "Subjective bad faith under section 3426.4 means the action was commenced or continued for an improper purpose, such as harassment, delay, or to thwart competition." (*Id.* at p. 847.)

The record before us does not contain sufficient information to address these questions. Given that the matter comes to us at the preliminary injunction stage with discovery still ongoing, the appellate record regarding whether the claims are objectively specious is not sufficiently developed. Nor does the record contain sufficient information regarding any subjective bad faith, or the attorneys' fees purportedly incurred by Oasis West and why they are (or are not) reasonable. We accordingly decline to award any attorney fees, without prejudice to any such claim being raised in the trial court.

**DISPOSITION**

The order denying the issuance of a preliminary injunction is affirmed. Respondents are to recover their costs on appeal.

NOT TO BE PUBLISHED

WEINGART, J.\*

We concur:

CHANEY, Acting P. J.

BENDIX, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.