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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

ANSETT AIRCRAFT SPARES & SERVICES, INC., Plaintiff and Appellant, v. TESSIE CUE et al., Defendants and Appellants.	B272100 (Los Angeles County Super. Ct. No. BC482166)

APPEAL from a judgment of the Superior Court of Los Angeles County. Melvin Sandvig, Judge. Affirmed and remanded with directions.

Boies Schiller Flexner, David K. Willingham, Jeanne A. Fugate, and Isabel Bussarakum for Plaintiffs and Appellants.

Carlsen Law Corporation and Miles Carlsen for Defendants and Appellants.

Defendants and appellants Tessie Cue (Cue) and Majestic Air (Majestic) (collectively, defendants) appeal from the judgment entered in favor of plaintiff and cross-appellant Ansett Aircraft Spares & Services, Inc. (Ansett), following a jury trial in this action for misappropriation of trade secrets, interference with prospective economic relationships, breach of contract, and unfair competition in violation of Business and Professions Code section 17200 (the UCL claim).

Ansett also appeals from the judgment, arguing that the trial court erred by refusing to instruct the jury on punitive damages, by apportioning liability among defendants on the breach of contract claim, and by refusing to enter a judgment that held defendants jointly and severally liable for the damages awarded by the jury. Ansett further contends judgment should have been entered in its favor on its UCL claim and a permanent injunction issued against defendants.

We remand the matter to the trial court to amend the judgment to allocate the damages award as indicated in this opinion. In all other respects, the judgment is affirmed.

FACTUAL BACKGROUND

The parties

Ansett acquires commercial aircraft parts and resells them, on a consignment basis, on the open market. Cue is a shareholder and the former controller of Ansett. She worked at Ansett from April 1999 until May 2009. In May 2010, Cue formed Majestic to acquire and sell aircraft parts.

Cue's employment contract with Ansett included a confidentiality provision that prohibited her from disclosing or using Ansett's trade secrets and confidential business information.[1]

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1 The confidentiality provision states, in pertinent part:

Ansett's consignment agreement with LTP

In 2007, Ansett began having discussions with Lufthansa Technik Philippines, Inc. (LTP), an aircraft maintenance and repair company, about a potential consignment deal to sell LTP's inventory of spare aircraft parts. Those discussions stalled, but

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"You acknowledge that, in the ordinary course of performing your duties, you are likely to be exposed to information about Ansett's business and that of its suppliers and customers which is of a trade secret, is confidential, or is commercially sensitive, and which may not be readily available to others engaged in a similar business to that of Ansett, or to the general public.

"You undertake that you shall keep secret and shall not at any time, either during employment or after termination, for whatever reason, use, communicate or reveal to any person for your own benefit, any secret or confidential information concerning the business, finances or organization of the company, its suppliers or customers which shall have come to your knowledge during the course of this agreement. You shall also use your best endeavors to prevent the publication of disclosure of any such information.

"For the purposes of this clause and by way of illustration and not limitation, information will prima facie be secret and confidential as long as it is not in the public domain or is required to be disclosed by a court or appropriate regulatory authority or required to be disclosed by Ansett itself, and relates to . . . [¶] Suppliers and their production, delivery capabilities, and the price of products to Ansett . . . . [¶] Current activities and future plans of the company relating to all or any of development, production or sales, including the timing of all or any of such matters. . . . [¶] Costing, profit margins, discounts, rebates and other financial information."

were resumed again in the spring of 2009 and continued through the summer of 2009. On March 20, 2009, Cue sent LTP a copy of Ansett's Inventory Management and Marketing Agreement (IMMA), a document that Ansett considered proprietary, and on April 13, 2009, LTP sent Cue the first of two emails that contained spreadsheets of aircraft parts that LTP proposed to consign to Ansett. During the next two months, Ansett and LTP continued to negotiate the specifics of the deal, including revisions to customize the IMMA. Ansett's valuation of LTP's April 13, 2009 spreadsheets led it to conclude that the proposed inventory was not worth the $100,000 deposit LTP was requesting as part of the deal.

On April 23, 2009, LTP sent Ansett additional spreadsheets of proposed consignment inventory that LTP valued at $12 million. Ansett assessed the value of the additional inventory and agreed that the $12 million valuation was accurate. Ansett predicted that it would be able to sell 80 percent of the value of that inventory, resulting in projected sales of $ 9.6 million, of which Ansett could keep 40 percent, or $3.84 million. Based on the value of the additional inventory, Ansett agreed to provide LTP with the $100,000 deposit and agreed to continue to make additional advance deposits after certain sales milestones were reached.

Ansett and LTP reached agreement on the terms of their deal in August 2009, and on August 19, 2009, LTP signed the IMMA and sent it to Ansett. On September 10, 2009, Ansett's CEO, Gregory Quinlan, sent LTP an email confirming that the IMMA signed by LTP was the parties' "final" agreement. Quinlan asked, however, when LTP would be sending a list of the specific aircraft parts covered by agreement, to be attached as Schedule 2 to the IMMA. Quinlan explained that Ansett could not sign the IMMA without a confirmed list of parts.

In response, LTP sent Ansett a partial list of parts on October 8, 2009, and indicated that it would continue to work on providing additional parts. LTP never sent a completed Schedule 2. Instead, on October 20, 2009, LTP sent Ansett a letter revoking the deal.

Infinity's agreement with LTP

Cue left Ansett in May 2009 and sought employment with Infinity. During her initial interview, Cue informed Infinity's CEO, Jimmy Wu, that LTP was seeking a vendor to sell its aircraft parts under a consignment agreement.

Shortly after joining Infinity, Cue showed Wu a flash drive that contained a list of LTP aircraft parts that Cue had acquired while working at Ansett. Cue also provided Infinity with a copy of the IMMA between Ansett and LTP and stated that Infinity's contract with LTP "will be identical to this."

On October 18, 2009, Infinity and LTP signed a consignment agreement identical to the Ansett/LTP IMMA except that Ansett's name was replaced with Infinity and the agreement included a completed Schedule 2. Cue asked Infinity to treat its agreement with LTP in "strict confidence" so that Ansett would not "go after them."

Majestic's agreement with LTP

Cue left Infinity in May 2010 and started Majestic, her own company. On September 14, 2010, LTP sent Majestic an agreement identical to the Ansett/LTP IMMA, except that Ansett's name was replaced with Majestic. Majestic and LTP signed the IMMA in September 2010.

Infinity's 2011 communication with Ansett

In December 2011, Infinity's CEO Wu telephoned Ansett's CEO Quinlan to inform him that Infinity had received Ansett's proprietary information from Ansett's former controller Cue. Quinlan stopped Wu from saying anything further and proposed another telephone call that would include both companies' legal counsel.

Counsel for both Infinity and Ansett participated in the second telephone call, which took place on December 13, 2011. During that call, Wu reiterated that Cue had disclosed to Infinity proprietary information belonging to Ansett, including the IMMA, purchasing information, sales history, and consignment agreements that she kept on a thumb drive. Wu stated that he believed Cue was showing him the information because she hoped to get more money from Infinity and to transition to a role other than Infinity's controller. Wu acknowledged that the IMMA between Ansett and LTP was a "very valuable agreement," that he "knew better," but that he "just couldn't help myself."

PROCEDURAL BACKGROUND

Ansett filed the instant action against Infinity, Cue, and Majestic on April 12, 2012. Defendants filed a demurrer to the complaint, and Ansett responded by filing a first amended complaint. In both its initial complaint and first amended complaint, Ansett sought recovery of punitive damages. Defendants filed a demurrer and motion to strike the punitive damages claim in the first amended complaint. Following a February 4, 2013 hearing, the trial court granted defendants' motion to strike Ansett's punitive damages claim on the ground that the first amended complaint did not plead sufficient facts to show malice, oppression, or fraud, but gave Ansett 20 days leave to amend. Ansett thereafter filed a second amended complaint that omitted any claim for punitive damages.

The matter proceeded to a jury trial in January 2016. At the January 11, 2016 pretrial conference, the trial court denied a motion to bifurcate the legal and equitable issues and tried them together over the course of a 13-day trial. The trial court denied Ansett's request for a punitive damages jury instruction.

The jury returned a special verdict on January 29, 2016, in which it found that Ansett's IMMA was a trade secret and that Infinity, Cue, and Majestic were liable for misappropriation of the IMMA and intentional interference with prospective economic relations. The jury awarded Ansett $6,154,810.40 in total damages, consisting of $3,815,000 in actual damages and $2,339,810.40 in unjust enrichment damages, and apportioned 30 percent of the liability to Cue, 30 percent to Majestic, and 40 percent to Infinity. The jury also found Cue liable for breach of her employment contract with Ansett and awarded Ansett $3,815,000 on that claim.

After the jury issued its verdict, Ansett informed the trial court that it would be contacting the clerk to set a hearing date on Ansett's UCL claim. Ansett states that it reserved an initial hearing date of May 24, 2016.

In early February 2016, Ansett served a proposed money judgment to be entered against Cue, Majestic, and Infinity, jointly and severally, in the amount of $6,154,810.40. The proposed judgment did not address the UCL claim nor did it grant any equitable or injunctive relief. The trial court struck the "joint and several" language in the form of the judgment it signed. The judgment entered on February 16, 2016, apportions the total damages award of $6,154,810.40 among Infinity, Cue, and Majestic, according to the percentages of liability the jury assigned to each of the defendants for misappropriation of trade secrets and intentional interference with prospective economic relations -- 30 percent to Cue, 30 percent to Majestic, and 40 percent to Infinity[2] and awards Ansett $1,846,443.12 against Cue (or 30 percent of $6,154,810).

On March 2, 2016, Ansett filed a motion to amend the judgment either to make all of the defendants jointly and severally liable, or to hold Cue liable for the entirety of the $3,815,000 breach of contract damages. The trial court denied that motion on April 5, 2016. The trial court also denied defendants' motions for a new trial and for judgment notwithstanding the verdict.

On May 2, 2016, Ansett filed a motion for a ruling on equitable issues, asking the trial court to rule that Cue, Majestic, and Infinity had violated Business and Professions Code section 17200 and to issue a permanent injunction enjoining Cue, Majestic, and Infinity from retaining, divulging, or using the IMMA.

On May 5, 2016, Cue and Majestic appealed from the judgment entered against them. On May 23, 2016, Cue and Majestic filed for bankruptcy, which stayed the trial court proceedings. Cue's bankruptcy action was dismissed on September 15, 2016.

Ansett's motion for equitable rulings was heard on December 6, 2016. The trial court denied the motion on the grounds that the request was barred by the one final judgment rule and that the trial court lacked jurisdiction to rule on the motion after defendants had filed their notice of appeal.

Ansett filed its cross-appeal on January 24, 2017.

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[2] Infinity is not a party to this appeal.

DEFENDANTS' CONTENTIONS

Defendants raise the following contentions on appeal:

1. The IMMA was not a proprietary trade secret under Civil Code section 3426.1, and if it was, Ansett failed to take reasonable steps to protect the IMMA as a trade secret.

2. Civil Code section 3426.7, subdivision (b) preempts Ansett's cause of action for interference with prospective economic relationship, and substantial evidence does not support the jury's findings with respect to this claim.

3. Civil Code section 3426.7, subdivision (b) preempts Ansett's breach of contract cause of action, and substantial evidence does not support the jury's findings with respect to this claim.

4. The trial court erred by allowing Ansett to cross-examine LTP witness Stanley Chiu based on a declaration he submitted in another lawsuit in support of a motion for a good faith settlement determination under Code of Civil Procedure section 877.6.

5. The jury's award of lost profits and damages for unjust enrichment was duplicative.

6. The trial court erred by allowing testimony from Ansett's expert witness on the valuation of the spare aircraft parts.

ANSETT'S CONTENTIONS

Ansett raises the following contentions:

1. The judgment should be amended to hold Cue liable for the full $3.815 million awarded on the breach of contract claim; alternatively, Cue, Majestic, and Infinity should be held jointly and severally liable for the $6.15 million damages award.

2. The judgment should be amended to impose a permanent injunction under Business and Professions Code

section 17200 prohibiting the further use of Ansett's trade secrets and proprietary information.

3. The jury should have been instructed on punitive damages and the matter should be remanded for a new trial on punitive damages.

DISCUSSION

I. Defendants' appeal

A. Misappropriation of trade secrets

Civil Code section 3426.1, subdivision (d) defines the term "trade secret" as "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."

Whether information constitutes a trade secret is a question of fact for the jury subject to substantial evidence review.[3] (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 300-301 (*Providian*).) Substantial evidence supports the jury's findings that the IMMA was a trade secret and that Ansett took reasonable measures to protect its secrecy.

Ansett presented evidence that it expended significant time and resources in creating and refining the IMMA in order to give Ansett an advantage in the highly competitive aircraft spare parts consignment business. Ansett never shared its IMMA with a competitor, and it implemented internal and external security measures to protect the IMMA from disclosure. The internal security measures include storing the electronic IMMA template

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[3] Defendants incorrectly contend the issue of whether the IMMA comes within the definition of a trade secret is an issue of statutory interpretation subject to de novo review.

and electronic copies of executed IMMAs in a computer database accessible only to Ansett's senior management. Ansett's servers are kept behind a locked security door, and executed hard copies of the IMMA are kept in a locked safe that even Ansett's CEO cannot access. Ansett follows a standard procedure for recovering proprietary information from employees who are terminated or resign. Ansett's employee handbook prohibits the unauthorized disclosure of business secrets or confidential information.

Ansett's external security measures include a confidentiality clause in the IMMA itself and a vetting process to ensure that only trustworthy potential consignors are provided the IMMA template. Ansett's employees are not allowed to circulate the IMMA to potential customers without obtaining prior approval.

Defendants argue that Ansett's voluntary disclosure of the IMMA to LTP in March 2009 without requiring LTP to sign a nondisclosure agreement was evidence that the IMMA was not a trade secret but merely a sales pitch for potential consignors. Defendants further argue that such disclosure extinguished any proprietary rights Ansett claimed to have had in the IMMA. There is substantial evidence, however, that Ansett took reasonable measures with LTP to keep the IMMA confidential. For example, there was evidence that Ansett provided the IMMA to LTP because Ansett had done business for many years with LTP's parent company, the German airline Lufthansa, and had a confidentiality agreement with Lufthansa. There was also evidence that Ansett waited until its negotiations with LTP had progressed to a certain point before providing the IMMA to LTP. Finally, the IMMA itself contained the following confidentiality provision:

> "The terms of this Agreement are confidential between the parties and shall not be disclosed by either party without the consent of the other, except

> to the extent that either party is legally obligated to do so or except to each parties' auditors, attorneys, lenders, financial advisors and/or regulatory agencies."

Providian and *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443 (*Whyte*), cases on which defendants rely to support their disclosure argument, are distinguishable. *Providian* involved telemarketing scripts that were not trade secrets because they were "sales pitches" that were necessarily disclosed to customers. (*Providian, supra,* 96 Cal.App.4th at p. 305.) *Whyte* involved product line review documents, essentially a marketing proposal prepared by Schlage at the request of The Home Depot, one of Schlage's customers. The Home Depot typically asked its vendors to submit such proposals, which contained product line pricing and marketing concessions, the amount of promotional discounts and advertising funds, and information about product changes, in order to determine which products it would sell and which products to remove from its shelves. (*Whyte, supra,* at p. 1447.) The court in *Whyte* concluded that the information disclosed to The Home Depot could not be considered a trade secret because it was disclosed without a secrecy agreement. (*Id.* at p. 1455.) Here, in contrast, the IMMA itself contained a confidentiality provision, and there was substantial evidence that Ansett took reasonable measures to safeguard its proprietary content.

Substantial evidence supports the jury's findings that the IMMA was a trade secret, that Ansett took reasonable measures to protect its secrecy, and that defendants misappropriated the IMMA. Defendants fail to establish any basis for reversing the judgment entered on the misappropriation of trade secrets cause of action.

B. Interference with prospective economic relationship

Defendants contend Ansett's cause of action for interference with prospective economic relationship was preempted by Civil Code section 3426.7, subdivision (b), as a matter of law. In the alternative, defendants contend substantial evidence does not support the jury's verdict.

1. Preemption

Division 4, part 1, title 5 of the Civil Code is the California Uniform Trade Secrets Act (CUTSA). Civil Code section 3426.7, subdivision (b), comes within the CUTSA and provides in relevant part: "This title does not affect . . . other civil remedies that are not based upon misappropriation of a trade secret." (Civ. Code, § 3426.7, subd. (b)(2).) Civil Code section 3426.7, subdivision (b) has been construed to "preempt[] common law claims that are 'based on the same nucleus of facts as [a] misappropriation of trade secrets claim for relief.' [Citation.]" (*K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939, 958-959.) Defendants argue that the statute operates to preempt Ansett's claim for interference with prospective economic relations because that claim is predicated on misappropriation of the IMMA.

Ansett presented evidence, however, that defendants engaged in wrongful conduct beyond misappropriation of trade secrets. Specifically, Ansett presented evidence that Cue breached her written employment contract by disclosing other confidential business information to Infinity. There was evidence that Cue provided Infinity with Ansett's lists of LTP's consignment inventory, information that Ansett considered confidential and proprietary separate and apart from the IMMA. Because Ansett established independently wrongful conduct by defendants, apart from trade secret misappropriation, as the basis for its interference with prospective economic relations claim, that claim is not preempted by section 3426.7, subdivision (b).

2. Substantial evidence

The elements of the tort of interference with prospective economic relations are (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff, (2) the defendant's knowledge of the relationship, (3) intentional acts by the defendant designed to disrupt the relationship, (4) actual disruption of the relationship, and (5) economic harm to the plaintiff proximately caused by the defendant's acts. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.) Defendants contend Ansett failed to present substantial evidence establishing either the existence of an economic relationship between LTP and Ansett that had a probability of future economic benefit to Ansett, or actual disruption of such a relationship. Substantial evidence supports the jury's verdict on this claim.

There was evidence that Ansett had been in negotiations with LTP since 2007, that LTP signed the final IMMA on August 19, 2009, that Ansett repeatedly asked LTP for a completed Schedule 2 so the agreement could be finalized, and that LTP told Ansett that it would be in a position to send a final listing of the consignment inventory by the end of September 2009.

Ansett's failure to sign the IMMA did not negate the existence of an economic relationship with LTP. There was evidence that LTP itself took steps to finalize the deal with Ansett by sending a partial listing of consignment parts in early October 2009.

There was also evidence that defendants disrupted Ansett's relationship with LTP. While Ansett and LTP were working toward finalizing a completed Schedule 2, Cue and Infinity were negotiating a consignment deal with LTP identical in form and substance to the Ansett/LTP IMMA. LTP eventually revoked its agreement with Ansett and entered into a consignment agreement with Infinity that was identical to the Ansett/LTP IMMA except that Ansett's name was replaced with Infinity and the agreement included a completed Schedule 2.

Defendants' communications with Infinity during the relevant time period demonstrate that they knew Ansett's deal with LTP was still pending. On October 9, 2009, Cue emailed Infinity stating that Infinity's deal with LTP was "on hold" because LTP was "under pressure" to close the deal with Ansett. After LTP revoked its agreement with Ansett, Cue asked Infinity to treat its agreement with LTP in "strict confidence" so that Ansett would not "go after them." Substantial evidence supports the jury's verdict on Ansett's cause of action for interference with prospective economic relations.

C. Breach of contract

Defendants contend Ansett's breach of contract claim is preempted by Civil Code section 3426.7, subdivision (b), or alternatively, that substantial evidence does not support the jury's verdict on that claim.

Defendants' arguments regarding preemption of the breach of contract cause of action fail for the same reasons as their challenge to the interference with prospective economic relations claim. Ansett's breach of contract cause of action was not preempted by Civil Code section 3426.7, subdivision (b) because it was also based in part on facts that were not part of their claim for misappropriation of trade secrets.

Ansett presented evidence that Cue breached her employment contract by providing Infinity with spreadsheets containing consignment parts LTP had provided to Ansett.

Substantial evidence supports the jury's verdict on Ansett's cause of action for breach of contract.

D. Cross-examination based on Code of Civil Procedure section 877.6 declaration

Evidence Code section 1152, subdivision (a) provides that settlement offers and communications or negotiations regarding settlement are inadmissible to prove liability on the part of the person communicating or making such an offer: "Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability for the loss or damage or any party of it." (Evid. Code, § 1152, subd. (a).)

Defendants contend the trial court violated Evidence Code section 1152 by allowing Ansett to cross-examine defendants' witness, LTP employee Stanley Chiu, using a declaration Chiu submitted in support of a Code of Civil Procedure section 877.6 good faith settlement determination between LTP and Infinity in a separate but related lawsuit, *Infinity Air, Inc. v. Lufthansa Technik Philippines, et al.,* Los Angeles Superior Court Case No. PC051839. We review the trial court's evidentiary ruling for abuse of discretion. (*Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1317.)

Chiu was a senior planner at LTP in 2009 who was responsible for arranging the consignment of LTP's aircraft spare parts inventory with Ansett. During his direct examination, Chiu testified that the value of the LTP parts was less than $12 million. Ansett's counsel then cross-examined Chiu about the declaration he submitted in the *Infinity* action, which estimated the total value of the LTP parts at $10.275 million. Defendants' counsel objected to portions of paragraph 22 of the declaration, which was published before the jury for a brief time before counsel's objection. That paragraph was then redacted in its entirety. The declaration had also been redacted to remove any reference to the fact that it pertained to a settlement, and Ansett's counsel elicited no testimony in that regard.

Defendants fail to establish that they have standing to challenge the admissibility of Chiu's declaration under Evidence Code section 1152. The statute precludes admission of an offer to compromise to prove liability on the part of the person making such an offer. (Evid. Code, § 1152, subd. (a).) LTP was not a party to this action, and its liability to Ansett accordingly was not at issue. The record does not support defendants' argument that the declaration was used to establish liability on the part of Cue or Majestic in this case, and defendants in any event cite no authority for their argument that such use would have been prohibited by Evidence Code section 1152.[4] The record discloses no abuse of discretion by the trial court.

E. Lost profit and unjust enrichment damages

Civil Code section 3426.3, subdivision (a), allows an aggrieved plaintiff to recover damages for the actual loss caused by misappropriation of a trade secret and for the defendant's unjust enrichment caused by the misappropriation. The statute prohibits, however, double counting of such damages: "A complainant may recover damages for the actual loss caused by misappropriation. A complainant may also recover for the unjust

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[4] Defendants' also cite Code of Civil Procedure section 877.5 as support for their argument that admission of Chiu's declaration was improper. That statute, which governs sliding scale "Mary Carter" settlements, is inapplicable.

enrichment caused by misappropriation that is not taken into account in computing damages for actual loss." (Civ. Code, § 3426.3, subd. (a).)

Defendants challenge the jury's award to Ansett of $3,815,000 in lost profit damages and $2,339,810.40 in unjust enrichment damages as an unlawful double recovery under Civil Code section 3426.3, subdivision (a). Substantial evidence supports both the basis and amount of the jury's award.

1. Lost profits

The jury's award of lost profits is supported by the testimony of Ansett's damages expert, Stacy Kinsel, who calculated Ansett's lost profits as follows:[5] (1) A 2009 email from LTP employee Stanley Chiu valued the LTP parts at $12 million. (2) A declaration by Ansett CEO Quinlan stated that Ansett could sell 80 percent of the value of the LTP parts, or $9.6 million. (3) Both Quinlan's declaration and the Ansett/LTP IMMA state that Ansett would earn a 40 percent commission on the parts it sold. Kinsel calculated that 40 percent of $9.6 million was $3.84 million. (4) Kinsel subtracted Ansett's marginal expenses of $25,000 from the $3.84 million figure to arrive at $3.815 million. Substantial evidence accordingly supports the jury's award.

2. Unjust enrichment

The jury's unjust enrichment award of $2,399,810.40 is supported by Kinsel's testimony regarding benefits Infinity received in its settlement with LTP. Kinsel's testimony is based on Chiu's trial testimony and the declaration he submitted in support of the good faith settlement determination between LTP and Infinity. As part of that settlement, LTP forgave Infinity

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[5] Kinsel also testified as to two alternative lost profit calculations, based on different valuations of the LTP parts, resulting in lost profit calculations of $3,286,230 and $5,016,090. The jury did not adopt these alternatives.

receivables in the amount of $255,000 and gave Infinity title to the LTP parts in Infinity's possession -- valued at $3,474,684.

Of the $3,474,684 in parts Infinity received, Ansett included only 60 percent of this value in its unjust enrichment calculation, because under the Ansett/LTP IMMA, Ansett was entitled to retain 40 percent of the sale amount as a commission. Because the 40 percent was already included in Ansett's lost profit calculation, that value was excluded from the unjust enrichment calculation to avoid double recovery. Ansett's request for unjust enrichment damages of $2,339,810.40 therefore consisted of (1) the $255,000 in forgiven receivables, and (2) 60 percent of $3,474,684 ($2,084,810.40), as unjust enrichment to Infinity. The unjust enrichment award did not include lost profits for the sale of the parts at issue, which would have been the 40 percent commission defendants earned for selling the parts LTP delivered to them pursuant to their agreement with LTP. Rather, the $2,339,810.40 award to Ansett consists primarily of 60 percent of the value of the spare parts Infinity received as a result of its settlement with LTP. That value was not attributable to Infinity's lost profits, but to the benefit Infinity derived as the result of being allowed to keep aircraft parts that should have been delivered to Ansett. There is substantial evidence that the jury's award of unjust enrichment damages did not duplicate the award for Ansett's lost profits. (See *Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 628 [when unjust enrichment is not coextensive with actual loss, both may be recovered].)

Defendants argue that they should not be liable for the unjust enrichment award because it was based on benefits received by Infinity, and not them. The jury assigned to Cue and Majestic together 60 percent of the responsibility for the total damages Ansett suffered as a result of their misappropriation of trade secrets. Substantial evidence supports the jury's allocation. There was evidence that Cue misappropriated the IMMA and other proprietary information to obtain employment at Infinity, and that Infinity entered into the agreement with LTP because Cue successfully diverted the deal between Ansett and LTP. Cue then used confidential information obtained from both Infinity and Ansett to divert LTP parts to Majestic.

Defendants next contend that Ansett's damages expert should not have been allowed to rely on the declaration Chiu submitted in support of the good faith settlement determination between LTP and Infinity, reiterating their previous arguments concerning purported violation of Evidence Code section 1152. We reject those arguments for the reasons previously stated.

F. Damage awards for breach of contract and interference with prospective economic relationship

Defendants claim that if the damages award for misappropriation of trade secrets is upheld, then the damages awarded for the breach of contract and interference with prospective economic relationship causes of action are unlawful because they are already addressed by the award on the trade secrets cause of action. Defendants' argument consists of a single case citation, *Board of Administration v. Glover* (1983) 34 Cal.3d 906, and is devoid of any legal analysis. "'When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary. [Citations.]' [Citation.]" (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1248.) We therefore decline to address this issue.

G. Expert testimony on value of aircraft parts

Defendants argue that the trial court committed prejudicial error by allowing Ansett's expert, Kara Levine, to testify as to the value of the aircraft parts at issue because she used a proprietary database for her valuation and would not disclose the value of each of the 1.9 million individual parts. Levine valued the subject parts at approximately $12.6 million.

"'The trial court's determinations on the admissibility of expert evidence are subject to review under the deferential abuse of discretion standard. [Citation.] The erroneous admission of evidence requires reversal of a judgment only when it results in a 'miscarriage of justice.' [Citation.] The admission of improper evidence results in a miscarriage of justice only if "'it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.'" [Citation.]" (*Burton v. Sanner* (2012) 207 Cal.App.4th 12, 22.)

Defendants' argument fails because they are unable to establish any prejudice as the result of Levine's testimony. The record shows that the jury did not rely on Levine's opinion as to the value of the aircraft parts when assessing Ansett's damages.

Ansett's damages expert provided three alternative calculations for lost profits based on different valuations of the spare parts. One of these valuations was Levine's $12.6 million, which would have resulted in a lost profits calculation of $5,016,090. In closing argument, Ansett did not ask the jury to apply that calculation of lost profits. Ansett's counsel stated that "the most conservative and accurate valuation[] isn't $12.6 million from Ms. Levine. We're not going to ask you for that." Instead, Ansett asked the jury to apply a lost profits calculation based on a 2009 email from LTP's Stanley Chiu that valued the subject aircraft parts at a lesser value of $12 million. The $12 million valuation resulted in a lost profits calculation of $3,815,000 -- the amount awarded by the jury.

The record accordingly shows that the jury relied on LTP's $12 million valuation, rather than Levine's $12.6 million, as the basis for awarding Ansett $3,815,000 in lost profits. Defendants therefore have not shown that it is reasonably probable that they would have achieved a more favorable result had Levine's testimony been excluded. (*Burton v. Sanner, supra*, 207 Cal.App.4th at p. 22.)

II. Ansett's appeal

A. Apportionment of damages

Ansett contends the judgment is inconsistent with the jury's special verdict, which found that defendants and Infinity were joint tortfeasors and that Cue was liable for $3,815,000 for breach of her employment contract. Ansett argues that the judgment should be amended to impose joint and several liability on defendants and Infinity. Alternatively, Ansett contends the judgment should be amended to reflect the jury's finding that Cue was solely liable for $3,815,000 in breach of contract damages.

"'[A] special verdict is that by which the jury find[s] the facts only, leaving the judgment to the Court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that *nothing shall remain to the Court but to draw from them conclusions of law*.' [Citation.]" (*Contreras v. Goldrich* (1992) 10 Cal.App.4th 1431, 1433.) "It is the function of the trial judge to interpret the verdict from its language considered in connection with the pleadings, evidence and instructions, and if the trial court has refused to do so or has interpreted it erroneously, the appellate court will interpret the verdict if it is possible to give a correct interpretation. [Citations.]" (*Telles v. Title Ins. & Trust Co.* (1969) 3 Cal.App.3d 179, 185.) "'A verdict should be interpreted so as to uphold it and to give it the effect intended by the jury, as well as one consistent with the law and the evidence.' [Citation.]" (*All-West Design v. Boozer* (1986) 183 Cal.App.3d 1212, 1223.) A judgment entered by the trial court upon verdicts rendered by the jury will not be reversed unless the "'record affirmatively shows that the trial court's interpretation is erroneous.' [Citation.]" (*Telles*, at p. 187.)

The record does not support Ansett's argument that the jury found Cue, Majestic, and Infinity to be jointly and severally liable. The special verdict form clearly allocates responsibility among the defendants for Ansett's damages on its claims for misappropriation of trade secrets and intentional interference with prospective economic relations as 30 percent to Cue, 30 percent to Majestic, and 40 percent to Infinity.

The record does show, however, that the trial court's allocation of the damages award among Cue, Majestic, and Infinity was inconsistent with the special verdict. In answering questions 9 through 13 of the special verdict form, the jury found that Cue had breached her employment contract with Ansett, and that Ansett suffered $3,815,000 in damages as a result of that breach. Ansett is therefore entitled to recover that amount from Cue, and the judgment should be amended accordingly.

Defendants argue that any error in the trial court's allocation of damages is barred by the invited error doctrine, because Ansett submitted the proposed judgment that purportedly conflicts with the special verdict. The invited error doctrine does not apply. Ansett's proposed judgment sought to hold Cue, Majestic, and Infinity jointly and severally liable for the total damages award. The trial court struck the joint and several language and made the allocations in the final judgment.

Ansett is also entitled to recover the balance of the $6,154,810.40 award, or $2,339,810.40, from each of Cue, Majestic, and Infinity in amounts equal to their respective percentages of fault. The judgment should be amended to award Ansett an additional $701,943.12 (30 percent of $2,339,810.40) as against Cue, $701,943.12 as against Majestic, and $935,924.16 (40 percent of $2,339,810.40) as against Infinity.

B. UCL claim

Ansett argues that the trial court erred by denying the motion for equitable rulings on the UCL claim and that it is entitled to injunctive relief against Cue and Majestic prohibiting them from further misappropriating Ansett's trade secrets and confidential business information.

The trial court did not err by denying Ansett's motion, which was not filed until after Ansett had requested and obtained entry of judgment against defendants and which was not scheduled to be heard until after defendants had appealed from that judgment. The filing of a notice of appeal vests jurisdiction in the appellate court and for most matters terminates the trial court's jurisdiction. (Code Civ. Proc., § 916, subd. (a); *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666.) The trial court correctly noted that the issues raised in Ansett's motion for equitable relief were affected by the then pending appeal. The record discloses no abuse of discretion.

C. Punitive damages

Ansett contends the trial court erred by refusing to instruct the jury on punitive damages and that the matter should be remanded for a new trial on punitive damages. The record discloses no error by the trial court.

Ansett's second amended complaint, the operative pleading in this action, alleges no claim for punitive damages. "No recovery of exemplary damages can be had unless such damages are alleged in the complaint. [Citation.]" (*Syfert v. Solomon* (1928) 95 Cal.App. 228, 237.) The trial court accordingly did not err by refusing to instruct the jury on punitive damages. (*Ibid.*; see *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1336 [trial court did not err by instructing jury on punitive damages where record showed court granted motion to amend complaint to add prayer for punitive damages].)

DISPOSITION

The matter is remanded to the trial court with direction to amend the allocation of damages awarded in the judgment as specified in this opinion. In all other respects, the judgment is affirmed. Ansett is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

____________________________, J.
CHAVEZ

We concur:

__________________________, Acting P. J.
ASHMANN-GERST

__________________________, J.
HOFFSTADT