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Docket: SUCV2017 -1065-BLS1

Date: March 2, 2018

Parties: MICROSEMI CORPORATION vs. DAVID LANGLOIS and DOES 1 - 5

Judge: Mitchell H. Kaplan

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION TO
DISMISS COUNTERCLAIMS

This case arises out of a dispute between the plaintiff, Microsemi Corporation, a manufacturer of semiconductors used in the defense industry, and its former employee, David Langlois. In substance, Microsemi alleges that, by some unknown means, Langlois managed to steal from Microsemi an HP laptop computer that Microsemi had issued to him in 2008 and confiscated from him when it terminated him in June, 2016. He then used that computer to send an email to a Microsemi customer under a false name disparaging Microsemi's product. Based upon this alleged conduct, Microsemi filed its seven count complaint against Langlois asserting claims for: conversion, replevin, interference with contractual relations, breach of contract (Langlois' separation agreement), breach of contract (confidentiality provisions in Langlois' employment agreement), theft of trade secrets, and a violation of G.L. c. 93A, §§2 and 11.

In response, Langlois filed counterclaims against Microsemi. In substance, Langlois alleges: outrage that he was abruptly terminated after working at Microsemi for 28 years; outrage

-1-

that he has been accused of stealing the laptop which Microsemi confiscated at the time it fired him and had him escorted from the premises; a belief the Microsemi concocted its allegations to try to cause his new employer Solid State Testing, Inc. (a start-up company founded by former Microsemi employees to compete with Microsemi) to fire him, thus depriving Solid State of his services; and that Microsemi's plastic coated semiconductors actually do have a latent defect. From these allegations, Langlois fashioned his four count counterclaim against Microsemi asserting claims for: abuse of process; interference with contract/business relations; violation of G.L. c. 93A, §§ 2 and 11; and breach of an implied covenant of good faith and fair dealing.

The case is now before the court on Microsemi's motion to dismiss all of Langlois' counterclaims. For the reasons that follow, the motion is allowed, in part, and denied, in part.

Count I-Abuse of Process

"To prevail on a cause of action for abuse of process, it must appear that the process was used to accomplish some ulterior purpose for which it was not designed or intended, or which was not the legitimate purpose of the particular process employed. While bad intentions alone are not enough to impose liability, the case is otherwise where there is a form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property." *Powers v. Leno*, [24 Mass. App. Ct. 381](#), 383-384 (1987) (Internal Citations and Quotations Omitted). See also Restatement (Second) of Torts § 682, comment b (1977) ("usual case of abuse of process is one of some form of extortion, using the process to put pressure upon the other to compel him ... to take some ... action"). In this case, Langlois has not alleged any attempt to extort some action or forbearance from him. For example, there is no suggestion in the pleadings that Microsemi would not have pursued this claim, if Langlois would only refrain from working for Solid State or some other competitor. Langlois does allege that Microsemi's

-2-

communications with Solid State were intended to impair his relationship with that company, but those allegations are relevant to his next cause of action for intentional interference with advantageous relations. They do not support a claim of abuse of process.

Rather, the gravamen of Langlois' counterclaim, is that Microsemi has no good faith basis to assert that he stole the laptop and authored the disparaging email, and this lawsuit has been filed only to punish him. Those allegations might support a claim for malicious prosecution, but that claim requires that Langlois first prevail on the claims asserted against him in this case. See, e.g., *Chervin v. Travelers Ins. Co.*, [448 Mass. 95](#) (2006) ("To prevail on a claim for malicious prosecution, a plaintiff must establish that he was damaged because the defendant commenced the original action without probable cause and with malice, and that the original action terminated in his favor.") This count is therefore dismissed.

Count II-Intentional Interference with Advantageous Relations[1]

To prevail on a claim of "intentional interference with advantageous relations, a plaintiff must prove that (1) he had an advantageous relationship with a third party ...; (2) the defendant knowingly induced a breaking of the relationship; (3) the defendant's interference with the relationship, in addition to being intentional, was improper in motive or means; and (4) the plaintiff was harmed by the defendant's actions." *Blackstone v. Cashman*, [448 Mass. 255](#), 260 (2007). Langlois has clearly alleged that he had an advantageous relationship with Solid State and that Microsemi sought to interfere with it by falsely asserting that he had committed a crime, i.e., stolen a laptop and trade secrets. The allegations of broken relationship and harm are weak,

[1] This counterclaim is actually entitled "Interference with Contract/Business Relations." The court has renamed it in order to view the factual claims in the light most favorable to Langlois, as it must in considering a Rule 12(b)(6) motion.

-3-

but adequate to state a claim. The court also notes that Microsemi's count asserting this same cause of action against Langlois is pretty vague and conclusory as to the damage that his alleged conduct caused Microsemi. This claim is not dismissed.

Count III-A Violation of Chapter 93A

Langlois has alleged that Microsemi told Solid State, both orally and in writing, that Langlois stole a laptop and trade secrets and intimated that this could result in Solid State being sued if it employed Langlois. That is sufficient to allege a violation of Chapter 93A, provided that this claim arises out of Langlois, personally, being engaged in trade or business. The court is not sure that it does, but Microsemi has asserted a Chapter 93A, § 11 claim against Langlois, so presumably it believes that both it and Langlois are engaged in trade or business in connection with their relationship to one another. This claim will not be dismissed.

Count IV-Breach of the Covenant of Good Faith and Fair Dealing

"Every contract in Massachusetts is subject, to some extent, to an implied covenant of good faith and fair dealing. This implied covenant may not be invoked to create rights and duties not otherwise provided for in the existing contractual relationship, but rather concerns the manner of performance. It has been explained that the implied covenant exists so that the objectives of the contract may be realized." *Ayash v. Dana-Farber Cancer Institute*, [443 Mass 367, 385](#) (2004) (Internal Citations and Quotations Omitted). The counterclaim fails to articulate what Microsemi did, not expressly prohibited by any contract, that prevented Langlois from realizing some contractual right or benefit due him under that contract. This claim is dismissed.

ORDER

For the foregoing reasons the plaintiffs motion to dismiss the counterclaims is ALLOWED as to Counts I and IV and DENIED as to Counts II and III.

Mitchell H. Kaplan
Justice of the Superior Court