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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

WILLIAM BLACKWELL,

Plaintiff and Appellant,

v.

BLIZZARD ENTERTAINMENT, INC., et
al.,

Defendants and Respondents.

B227249

(Los Angeles County
Super. Ct. No. BC415012)

APPEAL from the judgment of the Superior Court of Los Angeles County. Ruth Ann Kwan, Judge. Affirmed.

Paul Kujawsky for Plaintiff and Appellant.

Manatt, Phelps & Phillips, Sharon B. Bauman, Benjamin G. Shatz and Justin Carter Johnson for Defendants and Respondents.

* * * * *

Plaintiff and appellant William Blackwell appeals from the trial court's grant of summary judgment in favor of defendants and respondents Blizzard Entertainment, Inc. (Blizzard), Chris Metzen and Russell Brower. Plaintiff contends the trial court improperly resolved disputed issues of fact in summarily disposing of his claims against defendants. We conclude plaintiff failed to present material evidence he made reasonable efforts to maintain the confidentiality of his alleged trade secret, and therefore failed to raise a triable issue that his trade secret qualified for protection. (Civ. Code, § 3426.1, subd. (d)(2).) We further conclude plaintiff's common law claims, based on the same nucleus of facts as the statutory trade secret claim, are preempted by the statutory scheme. (Civ. Code, § 3426.7; *K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939, 958-959 (*K.C. Multimedia*).) We therefore affirm the grant of summary judgment in defendants' favor.

FACTUAL AND PROCEDURAL BACKGROUND

After he resigned from Blizzard, plaintiff brought this action against Blizzard and two of its employees, Metzen (Senior Vice President of Creative Development) and Brower (Director of Audio and Video). Plaintiff pled seven causes of action, for constructive termination, negligent misrepresentation, misappropriation of trade secrets and related claims. Defendants successfully moved for summary judgment. Plaintiff challenges on appeal only the summary adjudication of his second cause of action for promissory fraud, third cause of action for negligent misrepresentation, and seventh cause of action for misappropriation of trade secrets. We limit our summary of the pertinent facts and procedure accordingly, as we need not consider issues not supported by argument and citation to legal authority. (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 522-523.) For purposes of our review, we accept plaintiff's facts and defendants' undisputed facts as true. (*Raghavan v. Boeing Co.* (2005) 133 Cal.App.4th 1120, 1125.)

Plaintiff is a sound audio professional. For over a decade, plaintiff operated his own business, Bill Black Audio. He offered various services to the entertainment industry, including sound effects design, sound effects editing, video editing, casting and directing, and music licensing. Bill Black Audio was routinely hired, as an independent

contractor, to perform audio work for different companies specializing in the creation and production of videogames. Some of this work entailed the casting and hiring of actors to perform voiceover work for characters in videogames under development; a process similar to casting and hiring voice actors to perform in an animated film or program.

From his years in the business, plaintiff had cultivated a list of actors willing to perform both union and nonunion voiceover work. Plaintiff created a computer database of contact information for these actors. Plaintiff's database of actors was password-protected and included about 70 actors and their contact information, including private numbers to contact them outside the normal channels of their respective agencies, in order to discreetly schedule nonunion work. The database was also referred to as plaintiff's "rolodex," which means, in entertainment industry parlance, one's personal business contacts. Plaintiff regarded this contact information as confidential because the actors were risking their membership in the Screen Actors Guild by performing nonunion work, and plaintiff considered it a valuable privilege to have such information entrusted to him. Bill Black Audio was able to pass along the benefits of these contacts to its clients by arranging for quality actors to work for rates less than those required by union contracts.

One of the companies with which Bill Black Audio contracted was a videogame company called Nova Logic. Brower worked at Nova Logic before transferring to Blizzard, and he hired Bill Black Audio to provide audio work for Nova Logic. By 2005, Brower had started working for Blizzard. Brower believed plaintiff had provided good work for him in the past and had good industry contacts and therefore arranged for Blizzard to hire Bill Black Audio as an independent contractor to work on several videogames, including World of Warcraft and StarCraft: Ghost.

In casting voiceover actors for videogame companies like Nova Logic and Blizzard, plaintiff generally disclosed the names and contact information of the actors to those entities, primarily to ensure the actors were paid and for tax identification purposes. Brower stated plaintiff never objected to disclosing contact information to him during any of the jobs Brower hired Bill Black Audio to perform. Plaintiff could not recall whether

he ever required Blizzard or any other company he contracted with on a freelance basis to include in his professional services agreement that Bill Black Audio's proprietary information was confidential, was being disclosed for a limited purpose or otherwise had to be protected from further disclosure to third parties. Plaintiff did not present any documentation that he had ever obtained any such agreements from any company with which he contracted while operating his own business.

In December 2005, Brower suggested plaintiff apply for a newly-opened position as an Audio Lead at Blizzard. Plaintiff applied for and was offered the job by Blizzard's chief operating officer. Plaintiff accepted the position and subsequently signed a written offer of employment dated January 17, 2006, as well as a document titled "Confidential and Proprietary Rights Assignment Agreement" (Agreement).

The Agreement contained provisions identifying certain information developed and maintained by Blizzard as confidential and identifying Blizzard as the sole owner of all works developed in the course of plaintiff's employment. The Agreement required plaintiff to not disclose any confidential information acquired during his employment and to assign any ownership rights to Blizzard in any games or works, among other things, that plaintiff helped to develop while in Blizzard's employ. Paragraph 7 of the Agreement also provided that plaintiff could append a document identifying "inventions or original works of authorship" made or created by plaintiff *before* his employment with Blizzard that would be excluded from the Agreement's assignment provisions. Plaintiff identified certain previous works in an appendix, but he did not list his "rolodex" of contact information, believing his contact list was not an "invention" or "work of authorship" within the meaning of paragraph 7.

Before formally starting work in his new position at Blizzard, plaintiff had a conversation with Brower, who was going to be plaintiff's supervisor. Brower said he hoped plaintiff realized Blizzard was "hiring your rolodex too." Plaintiff was "taken aback" by the comment, which he understood to mean that Blizzard wanted and expected the disclosure of the proprietary contact information contained in his database. Plaintiff could not recall whether he objected or complained about Brower's comment, but

believed he had “additional words” with Brower before the conversation ended. Plaintiff offered no material evidence he took any steps at that time, in response to Brower’s comment, to assert the confidentiality of his “rolodex” contact information.

At the end of January 2006, plaintiff began working in his new position as Blizzard’s Audio Lead for the videogame titled StarCraft: Ghost. Plaintiff understood his job duties as an Audio Lead included the casting of actors for voiceover work, similar to what he had performed on a freelance basis through Bill Black Audio. Plaintiff also understood that some contact information had to be disclosed to Blizzard to facilitate audition scheduling, to ensure the actors were paid, and to maintain proper tax records. Plaintiff offered no evidence that, concurrent with these voluntary and knowing disclosures of his contact information, he advised anyone at Blizzard that the information was confidential, was being disclosed for those limited administrative purposes, or otherwise could not be disclosed to third parties because the information was his personal trade secret.

At some point after plaintiff started working at Blizzard, Brower told plaintiff he wanted him to turn over the audition scheduling and related administrative tasks to Keith Landes, a production assistant who was also supervised by Brower. Dennis Crabtree, another production assistant, also eventually handled some of those duties. Plaintiff stated he complied with Brower’s instruction and supplied his contact information to Landes and/or to Crabtree, to perform the audition scheduling and to procure the information necessary for payroll in the event an actor was hired. Plaintiff offered no evidence that, when he turned over that information to the production assistants, he took any steps to advise them of its trade secret status or to otherwise assert the confidentiality of that information.

Plaintiff regularly gave actor contact information to Landes, usually by email, to schedule auditions, and at no time did plaintiff ever tell Landes the information was confidential or ask him to sign any document acknowledging the confidentiality of the contact information. Landes believed the information was for internal Blizzard use and he treated it accordingly, obtaining the relevant additional information from the hired

actors to ensure payment and forwarding same to the appropriate Blizzard departments, like legal or payroll. Landes also input the information into a computer database of actor information that he maintained as part of his job duties at Blizzard.

At some point plaintiff became aware that Landes was compiling a Blizzard database incorporating the actor contact information plaintiff supplied him from his “rolodex.” He also discovered Landes, in his role as production assistant, was acting inappropriately with actors during auditions, including soliciting gifts and engaging in other conduct plaintiff referred to as “fan boy activity.” Plaintiff was concerned for the actors and for his reputation with them, as the nonunion auditions (conducted at third-party studios) were supposed to be low-key, with as little attention drawn to them as possible.

Plaintiff may have raised his first complaint to Brower about Landes’s improper conduct sometime at the end of 2006, but he definitely raised repeated objections both orally, and in emails, between February and June 2007. Plaintiff objected that Landes had no reason for keeping the contact information plaintiff supplied, since he was only supposed to schedule the auditions. Plaintiff also objected that Landes’s “fan” behavior with the actors served no legitimate Blizzard purpose and, when done in front of third parties otherwise unaware that union actors were working on a nonunion videogame production, could create problems for those actors with the union. Plaintiff asked Brower to curtail Landes’s involvement at auditions, enforce a clear policy of how employees could interact with actors during auditions, and clarify Blizzard’s policies regarding actors providing nonunion work for the company. Plaintiff stated that Brower indicated he would take care of the situation.

In addition to raising these objections to Brower, plaintiff also spoke to Metzen, Brower’s supervisor, during the same time period. Metzen acknowledged plaintiff’s concerns and agreed that discretion should be exercised as to the identity of the actors who provided nonunion voiceover work for Blizzard.

Near the end of June 2007, Brower became frustrated with the manner in which plaintiff was raising his concerns about Landes. Brower thought plaintiff’s behavior was

often unprofessional. Brower had previously taken issue with an incident in which it had been reported to him that plaintiff had yelled at Landes in the office in front of other coworkers. On June 27, 2007, plaintiff was called into a meeting with Brower and Erika Sayre-Smith of Blizzard's human resources department. Plaintiff was given a written warning about unprofessional conduct related to the manner in which he presented his complaints about Landes and how he treated coworkers. From that meeting, plaintiff concluded he was being chastised for raising concerns about the lack of discretion concerning actors' identities, and that unless he continued to provide his proprietary contact information to Blizzard with no conditions attached, he would risk being terminated. Plaintiff therefore resigned and filed this lawsuit.

On August 6, 2010, following full briefing, including supplemental briefs requested by the court, and oral argument, summary judgment was entered in favor of Blizzard, Metzen and Brower. This appeal followed.

DISCUSSION

Plaintiff contends he offered evidence raising triable issues as to the viability of his claims against defendants, but the court abdicated its proper role on summary judgment, failing to limit itself to determining whether there were factual disputes and instead resolving the disputed factual issues. Plaintiff argues he raised material disputed facts as to his statutory misappropriation of trade secrets claim, as well as his common law claims for promissory fraud and negligent misrepresentation. We disagree.

An appellate court independently reviews an order granting summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860 (*Aguilar*)). We determine whether the court's ruling was correct, not its reasons or rationale. (*Salazar v. Southern Cal. Gas Co.* (1997) 54 Cal.App.4th 1370, 1376.) "In practical effect, we assume the role of a trial court and apply the same rules and standards which govern a trial court's determination of a motion for summary judgment." (*Zavala v. Arce* (1997) 58 Cal.App.4th 915, 925.) "In performing our de novo review, we must view the evidence in a light favorable to plaintiff as the losing party [citation], liberally construing [his or] her evidentiary submission while strictly scrutinizing [defendant's] own showing, and

resolving any evidentiary doubts or ambiguities in plaintiff’s favor.’ [Citations.]” (*United Parcel Service Wage & Hour Cases* (2010) 190 Cal.App.4th 1001, 1009; accord, *Aguilar, supra*, 25 Cal.4th at p. 843.) As we explain, each of the three claims plaintiff contends is viable was appropriately summarily adjudicated.

1. The Trade Secrets Claim

California’s Uniform Trade Secrets Act, set forth at Civil Code, section 3426 et seq. (CUTSA), defines a 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.*” (Civ Code, § 3426.1, subd. (d), italics added.)

To claim trade secret protection for any allegedly confidential or proprietary information, there must be reasonable efforts to maintain its secrecy. “Trade secrets are a peculiar kind of property. Their only value consists in their being kept private.’ [Citation.] Thus, ‘the right to exclude others is central to the very definition of the property interest. *Once the data that constitute a trade secret are disclosed to others, or others are allowed to use those data, the holder of the trade secret has lost his property interest in the data.*’ [Citation.]” (*DVD Copy Control Assn., Inc. v. Bunner* (2003) 31 Cal.4th 864, 881, italics added (*DVD Copy*).)

In assessing the reasonableness of secrecy measures, no specific act is determinative. The statutory inquiry is what is deemed reasonable “under the circumstances.” (Civ Code, § 3426.1, subd. (d).) “[R]easonable efforts to maintain secrecy have been held to include advising employees of the existence of a trade secret, limiting access to a trade secret on “need to know basis,” and controlling plant access.’ [Citation.]” (*Courtesy Temporary Service, Inc. v. Camacho* (1990) 222 Cal.App.3d 1278, 1288.) Other relevant factors “are restricting access and physical segregation of the information, confidentiality agreements with employees, and marking documents with warnings or reminders of confidentiality.” (*In re Providian Credit Card Cases* (2002) 96

Cal.App.4th 292, 304 (*In re Providian*); see also *Mattel, Inc. v. MGA Entertainment, Inc. & Consol. Actions* (C.D.Cal. 2010) 782 F.Supp.2d 911, 959-960 [disputed issue as to reasonableness of secrecy measures where employer provided extensive training to employees regarding trade secrets, controlled access to databases, but often failed to mark documents as confidential and gave vague direction to employees about what was and was not covered].¹

Plaintiff may have intended the contact information from his “rolodex” that he voluntarily disclosed to Blizzard to be treated with discretion and maintained as confidential. However, there is no material evidence plaintiff took *any* affirmative steps to articulate that intent to anyone at Blizzard before he disclosed the information to Blizzard. Plaintiff offered no evidence he asserted the trade secret status of his contact list, that he designated as confidential any of the emails or writings containing the contact information which he routinely forwarded to Blizzard personnel like Landes, that he advised anyone he was disclosing the contact information only for a limited purpose, or that he requested anyone at Blizzard to execute any type of nondisclosure agreement.

Indeed, plaintiff admitted in deposition he could not recall having any such discussions. Therefore, any claim plaintiff might have made such requests would be pure speculation. Plaintiff conceded that as soon as he started working at Blizzard he began voluntarily disclosing information from his “rolodex” to Blizzard personnel as part of his work duties in assisting with casting for various productions -- disclosures which plaintiff understood were to benefit Blizzard, allowing Blizzard to hire quality voice actors for their videogame productions at reduced, nonunion rates.

Particularly noteworthy is plaintiff’s admission he raised his objections to Brower in February 2007 about Landes’s conduct because he “had reached a point where [he]

¹ California adopted the Uniform Trade Secrets Act in 1984, without significant change, and therefore case law from other jurisdictions interpreting provisions of the uniform act similar to CUTSA may be persuasive. (See Civ. Code, § 3426.8; *Cadence Design Systems, Inc. v. Avant! Corp.* (2002) 29 Cal.4th 215, 221; *Ajaxo Inc. v. E*Trade Financial Corp.* (2010) 187 Cal.App.4th 1295, 1305, fn. 6.)

realized that [his] information that [he] was kind enough to allow Blizzard to use was being used inappropriately by Mr. Landes.” Plaintiff’s statement underscores the voluntary nature of plaintiff’s disclosure of the “rolodex” information to Blizzard for its own beneficial use, as well as his failure to take any reasonable steps to ensure the confidentiality of that information as a condition of that use until he eventually grew weary of the alleged misuse of the information by Landes. “The unprotected disclosure of a trade secret will cause the information to forfeit its trade secret status”

(*Religious Technology Center v. Netcom On-Line Com.* (N.D.Cal. 1995) 923 F.Supp. 1231, 1254 (*Religious Technology Center*); see also *DVD Copy, supra*, 31 Cal.4th at p. 881 and *In re Providian, supra*, 96 Cal.App.4th at p. 304.)

Even then, plaintiff failed to offer evidence that he made any effort to assert his proprietary interest in the “rolodex” information. Plaintiff’s objections were vague and generalized and primarily concerned the lack of discretion in protecting the identity of union actors providing nonunion work for Blizzard. Such evidence does not raise a triable issue of fact as to whether plaintiff took timely and reasonable secrecy measures to protect *his trade secrets*. Plaintiff’s objections concerned Landes’s lack of discretion with the auditioning actors, which could compromise *those actors’* respective positions with their union and, in turn, damage plaintiff’s reputation for discretion that he had built up with those actors. This may have been a legitimate issue for plaintiff to have raised in the context of his job, but it was not the substantive equivalent of making a reasonable effort to maintain the confidentiality of his contact list as an identified trade secret.

Moreover, plaintiff’s argument he only disclosed discreet portions of his contact list but never the entire “rolodex,” which is *the* trade secret, citing *Religious Technology Center, supra*, 923 F.Supp. 1231, is not persuasive. Each individual actor’s contact information was considered private by plaintiff and each had value on its own, despite the fact it was contained within a larger database. Therefore, the trade secret here is not similar to the alleged trade secret in *Religious Technology Center*. There is simply no evidentiary basis here to find that plaintiff took any reasonable measures to protect his “rolodex” as a whole or any part thereof with respect to Blizzard.

Whether information constitutes a trade secret is ordinarily a question of fact. (*In re Providian, supra*, 96 Cal.App.4th at p. 300; accord, *DVD Copy Control Assn., Inc. v. Bunner* (2004) 116 Cal.App.4th 241, 251 [resolution of secrecy requirement requires fact-intensive analysis].) However, on summary judgment, a factual issue may be resolved as a matter of law where the evidence and reasonable inferences arising therefrom are insufficient to support a reasonable jury finding in favor of the nonmoving party on that issue. (*Aguilar, supra*, 25 Cal.4th at pp. 856-857.) That is the case revealed by the record below. Plaintiff failed to offer material disputed evidence of a protectable trade secret, and as a matter of law, there was no basis upon which plaintiff could proceed on his statutory misappropriation claim. Summary adjudication of plaintiff's seventh cause of action was therefore proper.

Because we conclude plaintiff failed to raise a triable issue he had a protectable trade secret which was dispositive of his statutory cause of action, plaintiff's additional argument regarding defendants' purported acts of misappropriation is moot.

2. The Fraud and Misrepresentation Claims

Plaintiff's second cause of action for promissory fraud and third cause of action for negligent misrepresentation are both unquestionably based on the alleged misappropriation of plaintiff's trade secret; plaintiff so concedes in his brief before this court. Both claims are based on the allegation that defendants hired plaintiff under false pretenses, seeking to wrongfully "usurp" plaintiff's proprietary business contacts. As such, both claims are preempted by CUTSA. (Civ. Code, § 3426.7; *K.C. Multimedia, supra*, 171 Cal.App.4th at pp. 958-959.)

Plaintiff's contention the two common law claims are preempted *only* if the statutory trade secret claim is viable is without merit. (*Silvaco Data Systems v. Intel Corp.* (2010) 184 Cal.App.4th 210, 237 ["[a] statute may supersede other causes of action even though it does not itself provide relief on a particular set of facts"], overruled in part on other grounds in *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 337.) Plaintiff's argument that his common law claims are somehow resurrected if we uphold the dismissal of the statutory misappropriation claim stands the doctrine of preemption on

its head. The legislative purpose behind CUTSA was to “formulate a consistent set of rules to govern and define liability for conduct falling within its terms.” (*Ibid.*) Plaintiff failed to establish that his misappropriation claim was viable within the meaning of CUTSA. He is precluded, as a matter of law, from attempting to restate that statutory claim as common law claims in order to circumvent CUTSA’s statutory scheme. Summary adjudication of plaintiff’s second and third causes of action was proper.

DISPOSITION

The judgment entered August 6, 2010, in favor of Blizzard Entertainment, Inc., Chris Metzen and Russell Brower is affirmed. Respondents are awarded costs on appeal.

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GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.