SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - October 08, 2009

EVENT DATE: 10/30/2009 EVENT TIME: 11:00:00 AM DEPT.: C-70

JUDICIAL OFFICER:Jay M. Bloom

CASE NO.: 37-2008-00085400-CU-BT-CTL

CASE TITLE: KELLEY VS. THE COPLEY PRESS INC., A CALIFORNIA CORPORATION

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)
CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 08/10/2009

The court allowed a short continuance so that plaintiff could depose John Glynn. The court did not re-open discovery. The court has considered only the new evidence presented in the Glynn deposition and not additional evidence submitted in the supplemental papers by plaintiff that could have been presented prior to the October 9, 2009 hearing.

The court finds that the deposition testimony of Mr. Glynn has not created a triable issue of material fact and confirms the tentative ruling, as modified, as follows:

MOTION FOR SUMMARY JUDGMENT by defendants The Copley Press Inc., Union-Tribune Publishing Co. and The San Diego Union-Tribune LLC is GRANTED.

Defendants' and plaintiff's original pleadings failed to comply with CRC 3.1116(c) regarding deposition testimony as an exhibit. Plaintiff's separate statement does not fully comply with CRC 3.1350(f) and (h) as plaintiff disputes some facts without citing to evidence to support the position that the fact is controverted. The parties are required to comply with all applicable statutes and rules when submitting pleadings to the court and the court expects compliance with such.

Defendants' objection to plaintiff's Exs. G-J and M-R are sustained. Defendants' objections #1-9 to the Kelley Declaration are sustained. Defendants' objections to Ex. 1 of the Brownell Declaration, Exs. 1-2 of the Rees Declaration, Ex. 4 to the Thompson Declaration and #1 and #6 to the Glynn Deposition are sustained. All other objections are overruled.

Plaintiff's objections to Ex. 33 and the Breen Declaration filed in reply are overruled. Plaintiff's other objections concern evidence presented in the moving papers. These objections are untimely as they were filed the day before the hearing. (CRC 3.1354(a))

Plaintiff's request for oral testimony is denied. (See, Spencer v. Hibernia Bank (1960) 186 Cal.App.2d 702, 717; The Rutter Group, Civil Procedure Before Trial § 10:185g)

Plaintiff's 1st cause of action for intentional interference with contract and 2nd cause of action for

intentional interference with prospective economic advantage allege that around December 11, 2006, plaintiff and non-party Breen, defendants' employee, entered into a written contract with Universal Press Syndicate to develop and syndicate a comic strip. Plaintiff alleges defendants intimidated and coerced Breen to terminate his contract with plaintiff as a condition of continuing his employment. Based upon this alleged conduct, plaintiff also alleged a 3rd cause of action for unfair competition.

The claim for intentional interference with contract fails because plaintiff has not shown by admissible evidence any intentional act by defendant designed to purposefully disrupt the contractual relationship. (See, Reeves v. Hanlon (2004) 33 Cal.4th 1140, 1148; Dryden v. Tri-Valley Growers (1977) 65 Cal. App. 3d 990, 996; CACI 2201)

The claim for intentional interference with prospective economic advantage fails because plaintiff has not shown by admissible evidence that defendant engaged in any independently wrongful act in disruption of the relationship. (See, Salma v. Capon (2008) 161 Cal.App.4th 1275, 2190; Della Penna v. Toyota Motor Sales (1995) U.S.A., 11 Cal. 4th 376, 393; CACI 2202)

The following facts are not disputed: Breen spoke with his supervisors Osborne and Winner about his work on a comic strip with plaintiff. At that time [April 2006], plaintiff and Breen did not have a development or syndication contract for the comic strip, "Dustin". Plaintiff and Breen continued to work on the comic strip after Breen's meetings with his supervisor. Plaintiff and Breen continued to work on "Dustin" during 2007 after they reached an agreement with Universal Press Syndicate on or about December 11, 2006. In late August 2007, Breen told UPS that he would no longer be working on "Dustin". (Undisputed Facts Nos. 10, 11, 14, 17, 21)

There is evidence the defendants had no problem with Breen working on another comic strip or children's books while employed by defendants. (Ex. 1) Breen also testified that while he 'sensed' defendants were not crazy about him working with plaintiff, he quit working on the comic strip for reasons other than pressure from defendants. He testified he quit because he did not see the 'magic' in the strip, because of his workload and because he did not want to upset his employer. However, he was never told he could not work on the comic strip. Further, the concerns expressed by his employer related to whether he was taking on too much work. (Id., see also Exs. 3, 4, 5, 33)

Mr. Glynn testified that he received an email from Breen in which Breen wrote that his paper essentially did not want him working with plaintiff. Glynn also testified that Breen at some point mentioned he had too much to lose and had to think of his children, which Mr. Glynn believed meant his job. After receiving the email from Breen, Glynn wrote an email in which he wrote that Breen had been given an ultimatum by defendants not to do the comic strip with plaintiff, but he doesn't know if that was an assumption or whether Breen had actually said that to him. He also 'gleaned' information that defendants made it clear they did not want him to do the comic strip. None of this testimony contradicts Breen's testimony or creates a triable issue that defendants intentionally interfered with the contract or prospective economic advantage.

To the extent plaintiff claims that defendants defamed him by making remarks to Breen suggesting plaintiff was "not loyal" or not a "team player" or that Breen was "crazy" for working with plaintiff or that Breen would end up doing all the work, plaintiff has not shown by admissible evidence that these statements were actually made. He cannot identify who made the statements or when they were made. (Ex. 2) Further, rather than defamatory statements of fact, they are merely non-actionable statements of opinion. (See, McGarry v. University of San Diego (2007) 154 Cal.App.4th 97, 113)

Further, plaintiff's damages are speculative. The development contract at issue did not guarantee a launch date of January 2008; it provided that the comic strip would be syndicated if UPS exercised an written option to go forward by October 31, 2007. The contract could be terminated at any time, and was terminated, prior to that date. Further, UPS had reservations about the comic strip even before Breen quit in March 2007. (Glynn Deposition, Kelley Deposition, Exs. 22, 24, 28) (See, Westside Ctr. Assocs. v. Safeway Stores 23 (1996) 42 Cal. App. 4th 507, 523; Kids' Universe v. In2Labs (2002) 95 Cal. App. 4th 870)

The unfair competition claims fails inasmuch as it is based on the first two causes of action. Plaintiff has not produced evidence of any unfair or unlawful business practice.

This ruling disposes of the case in its entirety.