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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY et al.,

Plaintiffs and Appellants,

v.

JOHN W. WIER et al.,

Defendants and Appellants.

JOHN W. WIER et al.

Defendants, Cross-complainants and Appellants,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY et al.

Plaintiffs, Cross-defendants and Appellants.

A101791

(Mendocino County
Super. Ct. No. SCUKCVG 00-82819)

Plaintiff insurance companies sued defendants, two insurance agents, for misappropriation of trade secrets and breach of contract. Defendants filed a cross-complaint alleging breach of contract and intentional interference with contract. The jury rendered a verdict for defendants on both pleadings and awarded substantial compensatory and punitive damages to defendants on their claims for intentional interference with contract. The trial judge thereafter granted plaintiffs a new trial on all claims.

Defendants challenge this grant of a new trial as untimely and contest the trial court's grant of a nonsuit on their claims for breach of contract. Plaintiffs cross-appeal from the trial court's denial of their motion for judgment notwithstanding the verdict (JNOV), as well as from the underlying jury determinations. We affirm the trial court's grant of a new trial and its dismissal of defendants' contract claims, reverse the denial of plaintiffs' motion for JNOV, and remand with instructions.

BACKGROUND

Plaintiffs and cross-defendants State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company, State Farm Life Insurance Company, and State Farm General Insurance Company (collectively State Farm) are a related group of insurance companies. State Farm sells insurance written by these companies through a network of exclusive agents. Defendants and cross-complainants John Wier and Richard Pyorre (defendants) were, at one time, State Farm agents based in northern California. Pyorre first became an agent in 1972, while Wier became an agent in 1989. Both continued as State Farm agents until early 1999, when State Farm terminated them.

State Farm's agents are required to execute a written "Agent's Agreement," a standard printed form drafted by the companies. Both defendants had signed a version of the Agent's Agreement. In pertinent part, the termination provisions of their Agent's Agreements read as follows: "You or State Farm have the right to terminate this Agreement by written notice delivered to the other or mailed to the other's last known address. . . . [¶] In the event we terminate this Agreement, you are entitled upon request to a review in accordance with the termination review procedures approved by the Board of Directors of the Companies, as amended from time to time."[1] Their Agent's Agreements also provided for posttermination payments based upon the business generated by the agent prior to termination.

[1] Although the two defendants signed different versions of the Agent's Agreement, the provisions quoted in this section are identical in both versions.

The Agent's Agreements also contained two provisions that limited the use that terminated agents could make of the information they gathered during their years of service to the companies. The first was a limited noncompetition clause: "For a period of one year following termination of this Agreement, you will not either personally or through any other person, agency, or organization (1) induce or advise any State Farm policyholder credited to your account at the date of termination to lapse, surrender, or cancel any State Farm insurance coverage or (2) solicit any such policyholder to purchase any insurance coverage competitive with the insurance coverages sold by the Companies." The second restrictive provision was a trade secrets clause: "Information regarding names, addresses, and ages of policyholders of the Companies; the description and location of insured property; and expiration or renewal dates of State Farm policies acquired or coming into your possession during the effective period of this Agreement, or any prior Agreement, . . . are trade secrets wholly owned by the Companies. All forms and other materials, whether furnished by State Farm or purchased by you, upon which this information is recorded shall be the sole and exclusive property of the Companies."

State Farm gave defendants advance notice of their terminations. Before the effective date of the terminations, each defendant began printing out copies of documents containing information about his customers and his customers' insurance policies from the computer database maintained by State Farm. Much of this information was in the form of "declaration pages" containing such information as policyholder name and address, policy premiums, coverages, and expiration dates.

Just before their terminations became final in February 1999, defendants sent notices to their customers telling them that defendants intended to begin representing other insurance carriers. In March, defendants signed with Mercury Insurance Company (Mercury), a competitor of State Farm, and turned over to Mercury the documents they had copied from their State Farm databases. Using this information, Mercury sent solicitations to defendants' former customers.

When State Farm became aware of this activity, it sent cease and desist letters to defendants and to Mercury. Mercury eventually agreed to return the information and

documents to State Farm and to advise defendants that it would no longer accept business resulting from their former State Farm customers.

State Farm then filed this lawsuit against defendants alleging misappropriation of trade secrets and breach of contract growing out of their posttermination activities. The misappropriation claim was based on the provision in the Agent's Agreement that reserved customer information to State Farm, while the breach of contract claim was based on the limited noncompetition clause. Defendants responded with a cross-complaint alleging, among other causes of action, claims for breach of contract and breach of the implied covenant of good faith and fair dealing challenging the propriety of their terminations, and intentional interference with contract based on State Farm's actions towards Mercury. [2]

The case proceeded to trial. State Farm had purported to terminate defendants as a result of their respective refusals to cooperate with two State Farm business initiatives. The termination letters stated that Pyorre had "refused to participate in any of the Charting and Ethical Course classes offered in 1998" and that Wier had "refused to sign the agreement which sets forth the relative responsibilities of the parties with regard to" a new "networked communication system" implemented by State Farm. Defendants contended that these terminations had been made in bad faith "as part of a scheme to deprive these agents . . . of their accumulated goodwill, business relationships, and files." Near the close of defendants' case, the trial court ruled that the Agent's Agreements were terminable at will upon written notice and granted nonsuit to State Farm on defendants' claim that the terminations had occurred in breach of the express terms of their Agent's Agreements. The trial court also dismissed defendants' claim that their terminations

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[2] In addition to the three claims noted, the first amended cross-complaint asserted causes of action for unfair competition under Business and Professions Code section 17200 et seq., breach of contract and breach of the covenant of good faith and fair dealing in connection with defendants' termination reviews, and unjust enrichment. By the end of the trial, only the claim under Business and Professions Code section 17200 had not been resolved.

violated the implied covenant of good faith and fair dealing contained in those agreements.

The remaining claims were submitted to the jury by special verdict. On State Farm's misappropriation claim, the jury found that the information and documents taken by defendants did constitute trade secrets. Nonetheless, the jury found for defendants on this claim, concluding that State Farm was not the owner of these trade secrets. On State Farm's breach of contract claim, the jury found that defendants had breached their contractual obligations not to solicit former State Farm clients. However, the jury found that defendants' breach was excused because State Farm had breached the implied covenant of good faith and fair dealing in the Agent's Agreements. Finally, the jury found for defendants on their intentional interference with contract claim, awarding $600,000 in economic damages, $3 million apiece in emotional distress damages, and $6 million in punitive damages.

Defendants moved for a new trial on their breach of contract claims, contending that the court erred in finding the Agent's Agreements terminable at will. State Farm moved for JNOV as to certain of the jury's findings and, alternatively, a new trial on all claims.

The trial court denied defendants' motion for a new trial but granted State Farm's. Although the trial court denied State Farm's JNOV motion, in doing so it concluded that the jury's verdict against State Farm was in all respects unsupported by the evidence. Because the jury made no findings as to misappropriation by defendants or State Farm's damages, however, the court found itself "unable to enter judgment in this matter until those factual determinations have been made by a jury." Noting that "[t]he court has granted [State Farm's] companion motion for a new trial on the same issues that are involved in this motion," the trial judge denied the motion for JNOV.

DISCUSSION

A. Defendants' Breach of Contract Claim

The basis for defendants' breach of contract claim is their contention that the Agent's Agreements could not be terminated without good cause. Both sides offered

extrinsic evidence in support of their respective interpretations of the termination provision. After a preliminary review of the extrinsic evidence, the trial court was of the opinion that "the proffered evidence has a tendency in reason to support the contention" that termination of the Agent's Agreements required cause. Nonetheless, after considering the extrinsic evidence as presented by both parties at trial, the court reached a final conclusion that the agreements "cannot be construed to require a showing of good cause as a condition of termination" and dismissed defendants' breach of contract claim. Defendants contend that the trial court erred in taking the issue of contract interpretation from the jury and in its conclusion that the extrinsic evidence did not support a finding that the agreements were terminable only with good cause.

The "source of contractual rights and duties" is "the intention of the parties as expressed in the contract." (*Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 38 (*PG&E)*.) In determining those rights and duties, the task of the court is to "ascertain and give effect to this intention by determining what the parties meant by the words they used." (*Ibid.*) Consistent with this focus on "the words they used" in the contract itself, the impact of evidence outside the language of the contract in the interpretation of integrated agreements is limited by the familiar parol evidence rule: Extrinsic evidence "is not admissible to add to, detract from, or vary the terms of a written contract." (*PG&E*, at p. 39; *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 345.)

Nonetheless, extrinsic evidence can have a very significant role in the interpretation of written contracts whose terms are not entirely clear. That role was recently well-summarized in *Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343: " 'Where the meaning of the words used in a contract is disputed, the trial court must provisionally receive any proffered extrinsic evidence which is relevant to show whether the contract is reasonably susceptible of a particular meaning. Indeed, it is reversible error for a trial court to refuse to consider such extrinsic evidence on the basis of the trial court's own conclusion that the language of the contract appears to be clear and unambiguous on its face. Even if a contract appears unambiguous on its face, a latent

ambiguity may be exposed by extrinsic evidence which reveals more than one possible meaning to which the language of the contract is yet reasonably susceptible.' [¶] The interpretation of a contract involves 'a two-step process: "First the court provisionally receives (without actually admitting) all credible evidence concerning the parties' intentions to determine 'ambiguity,' i.e., whether the language is 'reasonably susceptible' to the interpretation urged by a party. If in light of the extrinsic evidence the court decides the language is 'reasonably susceptible' to the interpretation urged, the extrinsic evidence is then admitted to aid in the second step—interpreting the contract." The trial court's determination of whether an ambiguity exists is a question of law, subject to independent review on appeal. The trial court's resolution of an ambiguity is also a question of law if no parol evidence is admitted or if the parol evidence is not in conflict. However, where the parol evidence is in conflict, the trial court's resolution of that conflict is a question of fact and must be upheld if supported by substantial evidence.' " (*Id.* at pp. 1350–1351, citations & fn. omitted.)

In the absence of conflicting extrinsic evidence,[3] our initial task is the same as the trial court's—to "provisionally" consider the language of the Agent's Agreement in light of the extrinsic evidence submitted by the parties to determine whether the agreement is "reasonably susceptible" to an interpretation requiring good cause for the termination of agents. The relevant language of the termination provision of defendants' agreements, identical in both agreements, is as follows: "You or State Farm have the right to terminate this Agreement by written notice delivered to the other or mailed to the other's last known address. . . . [¶] In the event we terminate this Agreement, you are entitled upon request to a review in accordance with the termination review procedures approved by the Board of Directors of the Companies, as amended from time to time."

The extrinsic evidence submitted by the parties consists primarily of an earlier version of State Farm's standard Agent's Agreement, the deposition testimony of a

[3] As discussed below, we do not find the proffered extrinsic evidence to be in conflict.

former State Farm officer, and a pair of magazine articles from 1977 and 1995 containing commentary by other State Farm officers published in a magazine distributed by State Farm to its agents.

This evidence tends to show that in 1966, State Farm decided to change its manner of handling the termination of its agents. The Agent's Agreement in effect before the change expressly permitted termination by State Farm "with or without cause" on written notice, and the agreement made no provision for review of the termination decision by an internal board. The circumstances of the change were explained in the deposition of Henry Keller, Jr., an "agency vice president" of State Farm in 1966. The deposition was taken in 2001 and 2002, when Mr. Keller was 89 years old and long-retired, testifying about events 35 years in the past. He explained that in 1966, decisions regarding agent terminations were made by "agency managers," who were supervisors in the field. At that time, agents had become concerned that certain agency managers were terminating agents for the purpose of taking over the business developed by the terminated agents. The company sought to alleviate that concern by changing its standard contract. The solution State Farm devised was to provide agents the option of having their termination reviewed by a company board. As Mr. Keller explained, the task of the board was to review the circumstances of the termination to insure that there was a "good reason" for it.[4] At the same time, the phrase "with or without cause" was deleted from the termination provision of the agreement.

The magazine articles purport to explain the 1966 contract changes and State Farm's termination review procedures. The 1977 article notes that "no one except the President . . . at corporate headquarters" can approve an agent's termination, and such approval is not given "unless the file clearly supports a serious violation of a contract agreement and indicates that reasonable effort was made to make the agent aware of the problems . . . . If the agent feels he's not getting a fair deal he can call for a review

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[4] Apparently, the company also provided agents more security by boosting the level of payments to agents upon termination.

hearing . . . ." The 1995 article describes the intent of the 1966 contract changes as "provid[ing] additional security—financial security [and] security against arbitrary terminations or voluntary terminations . . . ."

In evaluating the significance of this evidence, we do not write on a clean slate. Two prior decisions featuring very similar factual circumstances, *Wallis v. Farmers Group Inc.* (1990) 220 Cal.App.3d 718 (*Wallis*) and *Bionghi v. Metropolitan Water Dist.* (1999) 70 Cal.App.4th 1358 (*Bionghi*), have reached diametrically opposite conclusions. The facts of *Wallis* were virtually indistinguishable from those presented here. Defendant in *Wallis* was an insurance company; plaintiff was a former insurance agent who had been terminated. The agent's agreement allowed either party to terminate on three months' notice, without mentioning cause. (*Id.* at p. 729.) Terminations could be reviewed by an internal board. Extrinsic evidence demonstrated that the company's standard agreement at one time expressly provided that terminations could be without cause, but the company had deleted that language. Company officers testified that it was anticipated that terminations would not occur without good cause. (*Id.* at pp. 731–732.) Plaintiff in *Wallis* contended that the agreement should be interpreted to require good cause for termination, and the jury agreed. In reviewing this interpretation, the court began by noting that the agent's agreement was integrated with respect to termination, although not for all purposes.[5] (*Id.* at p. 730.) It then concluded that because the contract was "silent" on the issue of cause, the contract was reasonably susceptible to both interpretations proposed by the parties. (*Id.* at pp. 730–731.) Proceeding to review the extrinsic evidence, the court reached no independent conclusion regarding the proper interpretation of the contract. Instead, it concluded that substantial evidence supported the jury's finding of an implied-in-fact contract requiring good cause for termination and affirmed on that basis. (*Id.* at pp. 732–733.)

[5] Although State Farm attempts to distinguish *Wallis* on the ground that it involved a non-integrated contract, the court's conclusion that the agreement was integrated as to the issue of termination precludes distinguishing *Wallis* on that basis.

Bionghi involved a consulting agreement negotiated between an employment recruiter and the defendant government agency. The termination provision of their contract provided for termination 30 days after written notice, without mentioning cause. (*Bionghi, supra,* 70 Cal.App.4th at p. 1361.) Plaintiff provided extrinsic evidence demonstrating that the defendant's representative had told her, more than once, that the contract could not be terminated in the absence of good cause. (*Id.* at pp. 1366–1367.) After considering this evidence, the court concluded that the termination clause was "clear and unambiguous" in allowing termination without cause. (*Id.* at p. 1364.) The court distinguished this situation, in which the issue of cause was not mentioned at all in the contract, from a situation in which specific language in the contract could be taken to have more than one meaning, finding the latter situation more amenable to the use of extrinsic evidence. Because the contract contained no express language that could possibly be interpreted to require cause for termination, the court concluded that implying a requirement of cause would be equivalent to finding a collateral agreement, a result precluded by the parol evidence rule. (*Id.* at pp. 1367–1368.) Recognizing that its holding was contrary to that of *Wallis,* the *Bionghi* court rejected *Wallis* as permitting the insertion of a major contract condition, the requirement of cause, in violation of the parol evidence rule. (*Id.* at pp. 1368–1369.)

Considering the language of the Agent's Agreement in light of the extrinsic evidence provided by the parties, we find that the agreement is not reasonably susceptible to an interpretation requiring good cause for termination. Our reasoning echoes that of *Bionghi*. The language of the Agent's Agreement contains only one condition on termination: "written notice delivered to the other or mailed to the other's last known address. . . ." This language does not state or even suggest that the parties must have good cause for termination, and there are no other words in the agreement that can reasonably be construed to require cause. There is simply no ambiguity in the language that could be employed to incorporate a requirement of cause. (See *Bionghi, supra,* 70 Cal.App.4th at pp. 1364, 1369.) Assuming, as defendants contend, that State Farm's actions at the time and its subsequent comments suggest that agents will not be

terminated without cause, the extrinsic evidence of these acts and comments does not reveal any latent ambiguity in the language of the contract itself. We are required by the rules of contract interpretation to accord the contract the meaning irresistibly dictated by its actual language.

Although we recognize that the factual circumstances of *Wallis* are virtually indistinguishable from those presented here, we reject that court's analysis for several reasons. First, we cannot agree that when a termination provision is "silent" as to cause, the contract is thereby rendered ambiguous as to whether cause is required. (*Wallis, supra*, 220 Cal.App.3d at p. 730.) As *Bionghi* noted, "[a] good cause limit on the right to terminate is a significant contract term." (*Bionghi, supra,* 70 Cal.App.4th at pp. 1368–1369.) As a general principle, a contract is not rendered ambiguous as to whether a particular term is included in the contract merely because the contract does not include that term. On the contrary, the failure of a contract to include a term is ordinarily accepted as a persuasive indication that the parties did not intend the term to be part of the contract. *Wallis* appears to have been persuaded that because contracting parties sometimes include language expressly stating that their contract is terminable without cause, contracts that do not mention cause at all are ambiguous in this regard. By stating that a contract is terminable without cause, however, the parties are doing nothing more than acknowledging the *absence* of an affirmative condition—the condition that cause must exist before termination can occur. The fact that some parties expressly acknowledge the absence of this condition does not cause contracts that simply omit the condition to become ambiguous. As an affirmative contractual condition, a requirement of cause must be treated like other affirmative conditions. Contracts that do not include it must be understood not to contain it.[6]

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[6] As a corollary of this principle, the implication of a requirement of cause in a contract that does not expressly contain it is a violation of the parol evidence rule; it seeks to use extrinsic evidence to "add to" the terms of the contract. (See *Bionghi, supra,* 70 Cal.App.4th at pp. 1368–1369.)

Second, *Wallis* improperly affirmed the finding of an implied-in-fact contract in the context of a contractual relationship that, on the issue of termination, it found to be governed by an integrated agreement. In so doing, *Wallis* purported to follow a series of decisions governing termination of employment relationships. The existence of an implied-in-fact contract is permitted in such situations, however, precisely because the parties' relationship is rarely governed by an express, integrated agreement. (E.g., *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 336–337 (*Guz*) [an implied-in-fact contract can arise from the parties' conduct when they have no express contract]; *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 677.) When the parties have a written, integrated agreement, there is no place for an implied-in-fact contract; on the contrary, the parol evidence rule prohibits the use of extrinsic evidence—including evidence of the parties' conduct, which is the basis for an implied-in-fact contract—to vary the terms of their written agreement. (*PG&E, supra,* 69 Cal.2d at p. 39.)

Finally, the *Wallis* court improperly delegated its duty to construe the parties' contract to the jury, rather than interpreting the contract itself. The interpretation of a contract is "solely a judicial function" unless the interpretation turns on resolving factual conflicts in extrinsic evidence. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865; *Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912–913.) Although the parties certainly urged differing inferences from the extrinsic evidence presented in *Wallis,* there was no suggestion that the evidence itself was in conflict, requiring the jury's resolution. It was therefore improper for the court to apply a deferential standard of review in affirming the jury's finding rather than undertaking to construe the contract itself.

Because we conclude that the Agent's Agreement was not reasonably susceptible to the insertion of a requirement of cause for termination, it is not necessary for us to proceed to the second step of the analysis, interpretation of the contract in light of the extrinsic evidence. (*Oceanside 84, Ltd. v. Fidelity Federal Bank* (1997) 56 Cal.App.4th 1441, 1448 [if the contract is not reasonably susceptible to the proffered construction, " 'the case is over' "].) Nonetheless, we agree with the trial court that, even if there had been an ambiguity, the extrinsic evidence does not support interpreting the Agent's

Agreements to require cause for termination. The evidence is persuasive that State Farm intended to adopt a *corporate policy* of not terminating agents without cause and of instructing its internal review boards not to affirm the termination of an agent in the absence of cause. Intending to adopt an internal policy is very different from intending to incorporate a permanent and judicially reviewable cause requirement into the contract. Nothing in the extrinsic evidence before the trial court suggests such an intent; on the contrary, Mr. Keller testified that State Farm did *not* intend for its termination decisions to be subject to judicial challenge and that State Farm intended to reserve to itself the review of terminations. This is expressly reflected in the language of the Agent's Agreement, which states that "the termination review procedures" will be those "*approved by the Board of Directors* of the Companies, as amended from time to time." (Italics added.) This clause negates any inference that agreement was intended to require the company to follow particular procedures or apply specific guidelines in evaluating termination decisions. While it is true, as defendants argue, that Mr. Keller testified that the "with or without cause" language was deleted from the Agent's Agreement to reassure agents that they would not be arbitrarily terminated, such an action is consistent with State Farm's intent to adopt an internal policy and review process requiring cause for the terminations. If State Farm had intended to guarantee agents that they would be contractually protected from arbitrary termination, it presumably would have deleted only the portion of the phrase permitting termination *without* cause. We find no error in the trial court's grant of a nonsuit on defendants' breach of contract claim.

B. Failure to Submit Defendants' Breach of Contract Claim to the Jury

Defendants also contend that the trial court erred in interpreting the Agent's Agreement itself, rather than submitting the question to the jury.[7]

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[7] Although State Farm does not contend that this issue has been waived, the record demonstrates that defendants told the trial court "after the evidentiary decisions were made, . . . the credibility contest we were examining is no longer there." When asked by the court about "the interpretation of the contract," defendants' counsel replied, "[W]e are

As noted above, the interpretation of a contract is "solely a judicial function" unless the interpretation requires the resolution of a conflict in the extrinsic evidence. (*Parsons v. Bristol Development Co., supra,* 62 Cal.2d at p. 865; *Morey v. Vannucci, supra,* 64 Cal.App.4th at pp. 912–913.) When no such conflict is presented, the court is required to make "an independent determination of the meaning of the contract." (*Parsons v. Bristol Development Co.*, at p. 866; *City of El Cajon v. El Cajon Police Officers' Assn.* (1996) 49 Cal.App.4th 64, 70–71.) A conflict in the extrinsic evidence does not occur merely because the parties contend that differing inferences should be drawn from the extrinsic evidence; rather, the "evidentiary facts" themselves must be in conflict. (*Medical Operations Management, Inc. v. National Health Laboratories, Inc.* (1986) 176 Cal.App.3d 886, 892 (*Medical Operations*); see also, *Southern Christian Leadership Conference v. Al Malaikah Auditorium Co.* (1991) 230 Cal.App.3d 207, 220 [underlying evidence in "serious conflict"].)[8] In that situation, "credibility issues must be resolved by the jury." (*De Guere v. Universal City Studios, Inc.* (1997) 56 Cal.App.4th 482, 505.)

Morey v. Vannucci is a good example of a case in which the underlying evidence necessitated submission to the jury. In that case, the disputed contract term was undefined in the contract and found reasonably susceptible to the proffered interpretations of both parties. (*Morey v. Vannucci, supra,* 64 Cal.App.4th at pp. 912–913.) The parties claimed to have discussed the meaning of the term during their negotiations, making evidence of the negotiations both relevant and critical, but their respective accounts of the substance of the negotiations were directly at odds. (*Id.* at

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going to have you decide it." Because State Farm does not argue waiver, we consider defendants' argument on its merits.

[8] *Medical Operations* suggests that even when the evidentiary facts are in conflict actual interpretation of the contract remains an issue for the court. Where there is evidentiary conflict, *Medical Operations* recommends that the trial judge submit the evidentiary questions to the jury and base his or her interpretation on the jury's findings. (*Medical Operations, supra,* 176 Cal.App.3d at p. 892, fn. 4.)

p. 914.) Interpretation of the contract therefore "depended entirely on an assessment of the credibility of the opposing witnesses" because "[b]efore the disputed contractual language could be interpreted, the jury had to decide [whom] to believe." (*Ibid.*)

In this case, there is no factual conflict in the extrinsic evidence. Outside of the different versions of the Agent's Agreement, the extrinsic evidence consists of two magazine articles and the deposition testimony of a single witness. Neither side contends that the factual information contained in the articles is false, nor do they contend that the witness, Mr. Keller, was not telling the truth. Although the defendants note that the trial judge questioned the reliability of Mr. Keller's testimony, they point to no way in which Mr. Keller's recollection of events was at odds with any other evidence or testimony so as to create a conflict that could be resolved by the jury. Nor does either of the parties challenge Mr. Keller's credibility.[9] Rather, the parties' respective arguments assume that the information in the articles and the deposition is to be accepted at face value; where they differ is the implication of that evidence for the meaning of the contract. Under these circumstances, construction of the contract was a task for the court, as the trial judge properly concluded.

C. Defendants' Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing

Defendants contend that the trial court erred in dismissing their claim for breach of the implied covenant of good faith and fair dealing.

At least since *Foley v. Interactive Data Corp., supra,* 47 Cal.3d 654, it has been held that the implied covenant of good faith and fair dealing adds no substantive terms to a contract. (*Id.* at p. 698, fn. 39.) That holding has been reaffirmed repeatedly, most recently by the Supreme Court in *Guz, supra*, 24 Cal.4th 317, 349–350. The function of the implied covenant is "merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made." (*Id.* at

[9] In fact, although the trial judge noted that Mr. Keller's age and the long lapse of time might make his memory suspect, he also made clear that he was not resting his decision on any evaluation of Mr. Keller's credibility.

p. 349.) As a result, the implied covenant of good faith and fair dealing "cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." (*Id.* at pp. 349–350.) In the context of employment agreements, it is commonly held that the implied covenant cannot be used to impose a "cause" requirement for termination when the contract itself does not expressly impose that limitation. (*Id.* at pp. 349–351.) Rather, the implied covenant does not constrain an employer's decision to terminate unless that decision " 'breach[es] a substantive contractual provision.' " (*Agosta v. Astor* (2004) 120 Cal.App.4th 596, 607.)

Defendants' argument that the trial court improperly granted nonsuit on their claim for breach of the implied covenant of good faith and fair dealing rests on the contention that, despite the lack of a cause requirement for termination in the Agent's Agreement, State Farm's reasons for terminating defendants were inadequate. Because defendants cite no substantive contractual provision that constrained State Farm's discretion in this regard, their attempted use of the implied covenant is improper. The cases cited by defendants suggesting to the contrary*, Rose v. Wells Fargo & Co.* (9th Cir. 1990) 902 F.2d 1417, 1426, and *Hejmadi v. AMFAC, Inc.* (1988) 202 Cal.App.3d 525, 551, both rely on *Khanna v. Microdata Corp.* (1985) 170 Cal.App.3d 250 (*Khanna*), a case expressly disapproved on this ground by *Guz.* (*Guz, supra*, 24 Cal.4th at p. 343, fn. 13.) Although defendants seek to avoid this disapproval by arguing that *Khanna* has been preserved to the extent that "termination . . . was a mere pretext to cheat the worker out of another contract benefit to which the employee was clearly entitled, such as compensation already earned" (*Guz*, at p. 353, fn. 18), they are unable point to any clearly enumerated benefit in the contract of which they were deprived.[10] Accordingly, the trial court properly dismissed their claim for breach of the implied covenant.

[10] To support their contention that the covenant of good faith and fair dealing is violated by a termination "used to restrict and control the behavior of other members of the terminated person's group," defendants improperly cite the depublished decision *Jonathan Neil & Associates v. Jones* (2002) 98 Cal.App.4th 434, in violation of California Rules of Court, rule 977. Other than *Jonathan Neil* and cases following

D. The Timeliness of the Trial Court's Ruling on the New Trial Motions

Defendants contend that the trial court's grant of State Farm's motion for a new trial was void because it was rendered after the date at which the trial court's jurisdiction expired under Code of Civil Procedure section 660.

Section 660 establishes a time limit for a trial court's ruling on a motion for a new trial. Under section 660, the trial court must rule within 60 days after the earliest of 1) mailing by the clerk of court of notice of entry of judgment, 2) service on the moving party of written notice of entry of judgment, or 3) the filing of the first notice of intention to move for a new trial. If the trial court fails to rule within the 60-day period, the motion for a new trial is deemed denied. (Code Civ. Proc., § 660.) Indeed, the trial court's 60-day deadline is " 'jurisdictional, and cannot be evaded by stipulation or *nunc pro tunc* order.' " (*Fischer v. First Internat. Bank* (2003) 109 Cal.App.4th 1433, 1450.)

Judicial interpretation of section 660 confirms the express language of the statute that it is the mailing or service of *notice of* entry of judgment, rather than entry of the judgment itself, that begins the running of the 60-day period. (*Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1277.) When no notice of entry of judgment has been rendered, " 'section 660 unambiguously provides that the filing of the first notice of intention to move for a new trial is the operative event for determining the 60-day period.' " (*Fischer v. First Internat. Bank, supra,* 109 Cal.App.4th at p. 1451.)

The jury returned its verdicts on August 8 and 12, 2002. Judgment could not be entered immediately, however, because one cause of action asserted in defendants' cross-complaint, for unfair competition under Business and Professions Code section 17200 et seq., had not yet been resolved. On October 18, the court held a scheduling conference at which December 19 was set as the hearing date for posttrial motions. The parties estimated that this date would leave the trial judge 21 days to rule on the motions under

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Khanna, defendants rely on decisions from other jurisdictions, governed by other states' common law. (E.g., *Sons of Thunder, Inc. v. Borden, Inc.* (1997) 690 A.2d 575; *deTreville v. Outboard Marine Corporation* (4th Cir. 1971) 439 F.2d 1099.)

the 60-day limit of Code of Civil Procedure section 660, based on their anticipated date for the submission of defendants' dismissal of the lone remaining claim. For the court to have the allotted 21 days, the 60-day period could not begin to run before November 11.[11] In a letter to defendants' counsel on October 28, State Farm's counsel implicitly confirmed this arrangement by noting that State Farm wished to have the motion hearing date accelerated if the 60 days began to run earlier than anticipated because of an earlier entry of judgment.

On November 5, State Farm's counsel sent a letter to the court stating that the parties had agreed that the outstanding claim had been dismissed and judgment could be entered, but not before November 11. In response, on November 13, defendants' counsel sent a letter to the court contending that no agreement had been reached regarding the date for filing the judgment and asking that judgment be entered immediately. Judgment was not entered until November 27, and notice of entry of judgment was mailed the same day by the clerk. In the meantime, on November 19, defendants filed a notice of intention to move for a new trial.

The posttrial motions were heard as scheduled on December 19. At that hearing, State Farm's counsel represented to the court that the deadline for resolving the posttrial motions was 60 days from the filing date of defendants' notice of intention to move for a new trial, or January 20, 2003.[12] Defendants' counsel did not register any disagreement with this statement. The court's rulings were filed on January 17, 2003.

Because defendants' notice of intention to move for a new trial was filed before notice of entry of judgment was mailed, under the express language of Code of Civil Procedure section 660 the court's 60 days began to run on the date of filing of notice of intention. In arguing that the court should have held that the 60 days began to run at

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[11] Although November 10 was exactly 60 days before the planned expiration date, the 10th fell on a Sunday. Filing of judgment on November 11 would have established January 10 as the expiration date for the court's ruling.

[12] Again, the intervention of weekend days extended the date beyond 60 days.

some earlier date, defendants first contend that, for various reasons, judgment should be "deemed" to have been entered on or before November 11. Even if we accept this argument, however, it would not require an earlier commencement date for the 60 days. Regardless of an earlier "deemed" date of filing of the judgment, the time allotted the trial court would not have begun to run until *notice* of entry of that judgment was either mailed or served. (*Palmer v. GTE California, Inc., supra,* 30 Cal.4th at p. 1277.)

Recognizing this difficulty, defendants argue that State Farm either (1) waived receipt of notice of entry of judgment or (2) stipulated that the court would have jurisdiction only through January 9. Assuming solely for purposes of argument that the parties were legally authorized to alter the statutory requirements in this manner, we find no evidence to support defendants' claim that waiver in fact occurred or that there was an affirmative agreement that the court would lose jurisdiction.[13] Defendants contend that the waiver and/or stipulation is evidenced by the transcript of the October scheduling conference and State Farm's subsequent November 5, 2002 letter to the court regarding the hearing date. The transcript, however, contains no agreement to waive notice of entry of judgment or to deem jurisdiction exhausted at some date certain. The transcript suggests that the parties stipulated only that the motions would be heard on a particular date, with the date selected on the assumption that judgment would be entered on or about November 10. There was no further agreement that notice of entry of judgment was unnecessary or that the court would lose jurisdiction at a date certain. The letter does not mention these issues, stating only that the preconditions to entry of judgment have been removed and that judgment may be entered on or after November 11. Given the

[13] Defendants cite a series of cases from the turn of the century that, they argue, support the notion that notice can be waived. (*Estate of Richards* (1908) 154 Cal. 478; *Lewis v. Fowler* (1927) 80 Cal.App. 717; *Smith v. Questa* (1922) 58 Cal.App. 1.) While there is reason to doubt the continuing vitality of these cases in light of the clear statutory language and the Supreme Court's decision in *Palmer v. GTE California, Inc., supra,* 30 Cal.4th 1265, we need not decide the issue. As concluded in the text, the facts necessary to support such waiver are simply not present.

significance of the stipulations urged by defendants, we will not imply them in the absence of any evidence they were even discussed.

Although the failure of this evidence to support defendants' argument would, on its own, be sufficient to reject the argument as factually unsupported, there is more. First, the State Farm letter cited would have been unnecessary had there been some agreement about a stipulated date by which time the court's jurisdiction would cease. The purpose of the letter was, after all, to inform the court that it could enter judgment, thereby starting the 60-day clock to tick. This purpose is inconsistent with a prior agreement specifying when the 60-day period would begin or end. Second, defendants' counsel responded promptly upon learning of the November 5 letter, claiming that there was no agreement regarding the timing of entry of judgment and urging prompt entry of judgment to start the clock. Finally, and most convincingly, State Farm's counsel told the court at argument on the motions on December 19, that the date on which the 60-day period began to run was the date defendants filed their notice of intention to move for a new trial. Had there been some stipulation to the contrary, defendants' counsel would undoubtedly have disputed the assertion, but no objection was heard. In short, there is no evidence of an agreement that the 60-day deadline would be determined in some manner other than that specified in Code of Civil Procedure section 660. On the contrary, given the evidence before us that defendants' counsel never raised the issue of a claimed "stipulation" at the December 19 hearing, it becomes clear that defendants' argument has been pieced together after the fact, with no good faith basis in the parties' actual conduct.

E. The Trial Court's Denial of State Farm's JNOV Motion

Although the trial court found that the jury's verdict was unsupported by the evidence, it refused to grant State Farm's motion for JNOV. State Farm contends that the trial court should have entered partial judgment to the extent of the issues actually determined by the court. Defendants contend that the trial court's conclusion that the evidence did not support the jury's findings was unwarranted.

1. Ownership of the Trade Secrets

Although the trial court submitted the issue of the ownership of the trade secrets to the jury, the Agent's Agreement was quite clear on the matter: "Information regarding names, addresses, and ages of policyholders of the Companies; the description and location of insured property; and expiration or renewal dates of State Farm policies acquired or coming into your possession during the effective period of this Agreement, or any prior Agreement, . . . are trade secrets *wholly owned by the Companies*. All forms and other materials, whether furnished by State Farm or purchased by you, upon which this information is recorded shall be *the sole and exclusive property of the Companies*." (Italics added.) Reviewing this unambiguous contractual language after the jury rendered its verdict, the trial court concluded that "[t]he jury's determination that 'trade secret information' did not belong to State Farm is not only contrary to the evidence presented at trial but is unsupported by any evidence." We agree.[14]

As noted above, when there is no conflicting extrinsic evidence to be evaluated, interpretation of a contract is a task for the court. (*Parsons v. Bristol Development Co., supra,* 62 Cal.2d at p. 866; *City of El Cajon v. El Cajon Police Officers' Assn., supra,* 49 Cal.App.4th at pp. 70–71.) Whether a contract is clear and ambiguous is a question of law, not of fact. (*Apple Computer, Inc. v. Assessment Appeals Bd.* (2003) 105 Cal.App.4th 1355, 1371.) In this case, defendants do not even contend that the language is ambiguous, and they offer no extrinsic evidence to suggest an ambiguity. In fact, the contract could not be more clear in allocating possession of the trade secret information to State Farm. When a contract's terms are clear and unambiguous, they must be respected. (*Montrose Chemical Corp. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645, 666–667.)

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[14] In its appeal of the jury's verdict, State Farm contends that ownership is not properly an element of a claim for misappropriation of trade secrets. Because we find that State Farm was the owner of these trade secrets, we need not reach the role of ownership in a misappropriation claim, and we express no view on that issue.

Because of the clear allocation of ownership of the trade secrets in the Agent's Agreements to State Farm, defendants necessarily argue that the contractual language should be disregarded. Their overriding argument is that State Farm's contractual ownership of the trade secrets should not be honored because defendants did the work necessary to acquire the trade secrets. According to defendants, it is State Farm's agents, operating as independent contractors, who "develop policyholder information in the ordinary course of their business, at their own effort and expense, using their own methods, with no contribution, direction, or control by State Farm." Because it is the agents' labor that produces the information, defendants argue, the agents should be found to own the information thereby developed. There is no legal doctrine, however, that authorizes a court to ignore the terms of an unambiguous, integrated contract simply because an argument can be developed that the contract as drafted unfairly allocates benefits and obligations. On the contrary, courts cannot relieve parties of contracts they entered into merely because the contracts embody bad bargains. (*M. F. Kemper Const. Co. v. City of L. A.* (1951) 37 Cal.2d 696, 703 ["Generally, relief is refused for error in judgment . . . . Where a person is denied relief because of an error in judgment, the agreement which is enforced is the one he intended to make"]; *Crestview Cemetery Assn. v. Dieden* (1960) 54 Cal.2d 744, 754–755; *Hawkins v. Rehfeldt* (1967) 252 Cal.App.2d 919, 921.)[15]

Defendants' reliance on *State Farm Mut. etc. Ins. Co. v. Dempster* (1959) 174 Cal.App.2d 418 (*Dempster*) is unavailing. In that case, the court found that State Farm owned this type of trade secret information under an earlier form of the Agent's Agreement that did not contain any express assignment of ownership. In concluding that the prohibition on contracts in restraint of trade of Business and Professions Code section

[15] Defendants argue that they are not the type of fiduciary agents "whose work product automatically belongs to the principal." The issue is beside the point. Because the parties' contract expressly grants ownership of the trade secrets to State Farm, there was no need for State Farm to demonstrate ownership by operation of any other legal relationship.

16600 did not prohibit State Farm's claim for misappropriation, *Dempster* held that section 16600 "does not invalidate the protection of [a] trade secret or trust." (*Id.* at p. 425.) It then noted that whether a particular contractual provision constituted a lawful protection of trade secrets or an unlawful contract in restraint of trade must be determined from all facts and circumstances, not merely from the contractual language. In the words of the court, "the contract cannot make a trade secret out of a situation where none exists." (*Id.* at p. 426.) Defendants cite this language as supporting their claim that the contract's assignment of ownership of the trade secrets should be disregarded. The issue here is not whether the information is a trade secret, however; the jury answered that question in the affirmative, as does *Dempster*. The present issue is who owns the information, and nothing in *Dempster* suggests that ownership cannot be assigned by contract. On the contrary, assigning ownership of property is a common function of contracts.

In an effort to overcome the plain language of the contract, defendants label the Agent's Agreements "unilateral" and "adhesive" and characterize the provision in which the trade secret language is contained as a "recital." None of this justifies disregarding the contractual language. First, the contract is not "unilateral" but "bilateral," since it contains mutual commitments. (See *Coleman v. Mora* (1968) 263 Cal.App.2d 137, 149.) Yet even if it were a unilateral contract, that would in no way preclude its enforcement.

Defendants seem to contend that because the Agent's Agreements were standard form contracts drafted by State Farm, their provisions are somehow entitled to less respect than those of a negotiated contract. It is true that a provision of a contract of adhesion that is " 'permeated' " by "unconscionable" terms will not be enforced. (E.g., *Armendariz v. Foundation Health Pyschcare Services, Inc.* (2000) 24 Cal.4th 83, 122.) The mere fact that a contract is drafted by one party, however, does not make it a contract of adhesion, nor does it preclude enforcement of the contract's terms. (See *Greenbriar Homes Communities, Inc. v. Superior Court* (2004) 117 Cal.App.4th 337, 344–345.) Defendants have made no attempt to demonstrate either that the Agent's Agreements were truly contracts of adhesion or that the ownership term was legally unconscionable.

Nor was the provision establishing ownership of the trade secrets a "recital." The provision was not a statement of fact; rather, it was a term that established legal relations between the parties. This is suggested not merely by the inherent nature of the provision but also by its location in the contract. While the contract's recitals were contained in a section entitled "PREAMBLE," the provision regarding ownership of the trade secrets was contained in a section entitled "MUTUAL CONDITIONS AND DUTIES." It was quite plainly a covenant to which defendants had agreed. For this reason, *City of Santa Cruz v. Pacific Gas & Electric Co.* (2000) 82 Cal.App.4th 1167, 1176–1177, which held that a party would not be estopped from disproving a recital of fact in a form agreement, is inapplicable.

Finally, defendants characterize State Farm's argument as one of estoppel: "Essentially, State Farm is arguing that [defendants] are estopped by State Farm's contract recital from contesting the ownership/standing element in the separate tort action." This misunderstands State Farm's theory of recovery. The "essence" of State Farm's claim is breach of contract, not estoppel. Because ownership is assigned in a covenant of an express, written contract, State Farm has no need to resort to extra-contractual theories such as estoppel. Defendants' estoppel arguments are simply irrelevant.

Defendants contend alternatively that the jury's verdict on State Farm's misappropriation and breach of contract claims should be affirmed because State Farm engaged in an election of remedies by failing to make posttermination payments when defendants did not return the trade secret information. Defendants cite no authority for their contention, and it is contrary to law. The doctrine of election of remedies is applied when a party must choose among remedies that are inconsistent—for example, termination of a contract versus specific enforcement. (E.g., *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 906–907; *City of Orange v. San Diego County Employees Retirement Assn.* (2002) 103 Cal.App.4th 45, 59.) There is nothing inconsistent in State Farm's decisions not to make the posttermination payments, for which defendants had

not satisfied the contractual preconditions, and to seek damages for the misuse of trade secret information as a result of defendants' subsequent acts.

2. The Defense of Breach of the Covenant of Good Faith and Fair Dealing

The trial court concluded that the jury's finding that State Farm was barred from recovery on its breach of contract claim because it had breached a covenant of good faith and fair dealing was unsupported by the evidence and contrary to the "at will" nature of the agreements. Reviewing the evidence, the court stated, "No substantial evidence was presented that State Farm materially breached either agency agreement prior to the breaches by [defendants]."

As discussed above, defendants' affirmative claim for breach of the covenant of good faith and fair dealing fails because it depends upon using the implied covenant to insert a requirement of cause for termination into a contract that has no such express requirement. The function of the implied covenant is "merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made." (*Guz, supra,* 24 Cal.4th at p. 349, italics omitted.) As a result, "[i]t cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." (*Id.* at pp. 349–350.)

A review of defendants' briefs convinces us that their defense of breach of the covenant of good faith and fair dealing is not based on any different facts or legal theories from their affirmative claim of breach. The focus of defendants' defense is the contention that State Farm's decision to terminate defendants was wrongful, pretextual or unjustified. As noted above, *Guz, supra,* 24 Cal.4th at pp. 349–350 and *Foley v. Interactive Data Corp., supra,* 47 Cal.3d at p. 698, fn. 39, hold that the covenant of good faith and fair dealing cannot be used to add substantive terms to a contract to create a claim of breach of contract. Because defendants' Agent's Agreements do not contain a requirement of cause for termination, defendants' attempt to use breach of the covenant of good faith and fair dealing as an affirmative defense would also insert a substantive contract term that is not otherwise present. For that reason, their affirmative defense must be rejected under *Guz* and *Foley*.

Defendants argue in passing that the noncompetition clause in the Agent's Agreements is unenforceable under Business and Professions Code section 16600. On the contrary, the type of limited noncompetition clause found in the Agent's Agreement, which temporarily precludes the use of confidential customer information developed during a contractual relationship, has been held consistent with section 16600 for almost 50 years. (See *Gordon v. Wasserman* (1957) 153 Cal.App.2d 328, 329–330; *Thompson v. Impaxx, Inc.* (2003) 113 Cal.App.4th 1425, 1429–1430.) The sole case cited by defendants in support of their argument, *Scott v. Snelling and Snelling, Inc.* (N.D.Cal. 1990) 732 F.Supp. 1034, concerned a covenant not to form a competing franchise rather than to use trade secret information and is therefore inapplicable.

3. Defendants' Claim for Intentional Interference with Contractual Rights

Reviewing the jury's verdict in favor of defendants' claim for intentional interference with their contractual relationship with Mercury, the trial court found that "State Farm['s cease and desist] letters . . . were correct and justified" because State Farm had a legitimate contractual right to cessation of defendants' use of the trade secrets. The court therefore concluded, "There was no substantial evidence to support the jury conclusion that State Farm interfered with the contracts with Mercury in sending the letters." Again, we agree with the trial court's conclusions.

" 'The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.' [Citation.]" (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55.) Contrary to State Farm's argument, the tort does not require that the acts of interference be independently wrongful; "it is not necessary that the defendant's conduct be wrongful apart from the interference with the contract itself." (*Quelimane Co. v. Stewart Title Guaranty Co.*, at p. 55; *Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, 110.) In making this argument, State Farm misleadingly cites us to a case discussing

the separate tort of interference with prospective economic advantage, which *does* have a requirement of independently wrongful conduct. That case expressly distinguishes the tort of intentional interference with contract, noting that interference with an established contract does not require an independently wrongful act. (*Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co.* (1996) 47 Cal.App.4th 464, 477, fn. 2.)

For a similar reason, State Farm's assertion of the defense of "competition privilege" must be rejected; that defense has never been recognized outside the tort of intentional interference with prospective advantage. (*Gemini Aluminum Corp. v. California Custom Shapes, Inc.* (2002) 95 Cal.App.4th 1249, 1256; *San Francisco Design Center Associates v. Portman Companies* (1995) 41 Cal.App.4th 29, 33 ["The competition privilege is an affirmative defense to the tort of interference with prospective economic advantage."].)[16] As the Supreme Court explained many years ago, "It is well established, however, that a person is not justified in inducing a breach of contract simply because he is in competition with one of the parties to the contract and seeks to further his own economic advantage at the expense of the other. [Citations.] Whatever interest society has in encouraging free and open competition by means not in themselves unlawful, contractual stability is generally accepted as of greater importance than competitive freedom. Competitive freedom, however, is of sufficient importance to justify one competitor in inducing a third party to forsake another competitor if no contractual relationship exists between the latter two." (*Imperial Ice Co. v. Rossier* (1941) 18 Cal.2d 33, 36.)

Nonetheless, the recognized affirmative defense of "justification" for an intentional interference with contract supports the trial court's conclusion in these circumstances. (*Herron v. State Farm Mutual Ins. Co.* (1961) 56 Cal.2d 202, 206; *Savage v. Pacific Gas & Electric Co.* (1993) 21 Cal.App.4th 434, 449–450.) Justification

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[16] In making this argument, State Farm again misleadingly cites us to cases discussing the tort of intentional interference with prospective advantage, discussing them as though they applied equally to the tort of intentional interference with contract.

"was said to exist where the person inducing the breach is protecting an interest of greater social value than contractual stability." (*Aalgaard v. Merchants Nat. Bank, Inc.* (1990) 224 Cal.App.3d 674, 684.) Justification is ordinarily deemed an issue of fact: " 'Whether an intentional interference by a third party is justifiable depends upon a balancing of the importance, social and private, of the objective advanced by the interference against the importance of the interest interfered with, considering all circumstances including the nature of the actor's conduct and the relationship between the parties.' " (*Lowell v. Mother's Cake & Cookie Co.* (1978) 79 Cal.App.3d 13, 20–21, italics omitted.)

While justification ordinarily depends upon an evaluation of all the facts and circumstances, we have no hesitation in holding that, as matter of law, a party is justified in interfering with a contract when that interference consists of (1) informing the third party of a prior, valid, and inconsistent contractual commitment owed by the plaintiff to the interfering party and (2) threatening enforcement of that prior, valid contractual right. This principle is reflected in somewhat more general terms in the Restatement Second of Torts, section 773, which states that: "One who, by asserting in good faith a legally protected interest of his own or threatening in good faith to protect the interest by appropriate means, intentionally causes a third person not to perform an existing contract . . . with another does not interfere improperly with the other's relation if the actor believes that his interest may otherwise be impaired or destroyed by the performance of the contract or transaction." Unless justification were recognized as a defense in these circumstances, a person who enters into a contract with a third party that is in breach of a preexisting contractual commitment could escape the consequences of that breach altogether; moreover, the person could turn an effort to enforce the original contract into a tort—exactly as happened here.

As discussed above, the Agent's Agreements granted to State Farm ownership of the customer information given by defendants to Mercury and used by defendants to begin their new relationship with Mercury. In demanding that Mercury return the trade secret information and stop marketing insurance on the basis of that information, State

Farm was doing nothing more than insisting that its preexisting, valid contractual rights as against defendants be recognized and respected. As section 773 of the Restatement Second of Torts holds, there is nothing tortious in State Farm's insisting that its rights be respected, regardless of whether enforcing those rights resulted in an interference with defendants' later-acquired relationship with Mercury. (See, e.g., *Access Telecom v. MCI Telecommunications Corp.* (5th Cir. 1999) 197 F.3d 694, 710; *Schulman v. J.P. Morgan Inv. Management, Inc.* (3d Cir. 1994) 35 F.3d 799, 810.)

Although defendants complain that State Farm was "attempt[ing] to bully Mercury into doing something to [defendants by] threaten[ing] to disrupt Mercury's relationships with other former State Farm agents," we have reviewed the relevant letters and, like the trial court, find no improper threats. Moreover, we find no evidence that State Farm's letters were written in bad faith. State Farm's assertion of a protected interest in the relevant information was well-supported by the language of the Agent's Agreements, and its pursuit of this action against its former agents confirms its intent to take aggressive action to protect its contractual rights.[17]

Our conclusion that JNOV was appropriate on defendants' claim for intentional interference with contract moots State Farm's arguments regarding defendants' emotional distress damages and the finding of malice and oppression. In addition, we have no need to address State Farm's cross-appeal from the underlying judgment.

The jury did not reach the question of whether defendants misappropriated State Farm's trade secrets, and State Farm has not claimed on this appeal that judgment should have been entered in its favor on that issue. Accordingly, we do not reach the question of misappropriation.

4. The Proper Relief

Although the trial court found State Farm's motion for JNOV to be well-taken, it denied the motion. Noting that the jury had not answered various special interrogatories

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[17] Because we find State Farm's letters to have been legally justified, we need not address State Farm's argument concerning the litigation privilege.

addressed to misappropriation and damages, the trial court concluded: "The court is unable to enter judgment in this matter until those factual determinations have been made by a jury. The court has granted plaintiff's companion motion for a new trial on the same issues that are involved in this motion. Plaintiff's motion for a [JNOV] is therefore denied."

It was error for the trial court to decline to enter a partial JNOV. (*Beavers v. Allstate Ins. Co.* (1990) 225 Cal.App.3d 310, 323 (*Beavers*).) Code of Civil Procedure section 629, governing such motions, states that a JNOV can be granted whenever a directed verdict should have been granted. Code of Civil Procedure section 630, subdivision (b), states that a court can grant a directed verdict "as to some, but not all, of the issues involved in the action" and directs that if such a motion is granted, "the action shall proceed on any remaining issues." As *Beavers* logically concludes, since a JNOV must be granted whenever a directed verdict should have been granted, a partial JNOV is appropriate whenever a partial directed verdict should have been granted. (*Beavers*, at p. 323.) Subsequent cases have assumed or reaffirmed that a partial JNOV is appropriate. (See *Valentine v. Baxter Healthcare Corp.* (1999) 68 Cal.App.4th 1467, 1476 [citing *Beavers*]; *Hansen v. Sunnyside Products, Inc.* (1997) 55 Cal.App.4th 1497, 1510 [citing *Beavers*]; *Pratt v. Vencor, Inc.* (2003) 105 Cal.App.4th 905 [reviewing a grant of partial JNOV].) To the extent justified, the trial court should have granted a partial JNOV in favor of State Farm.

DISPOSITION

We affirm the trial court's orders granting (1) a nonsuit on defendants' claims for breach of contract and breach of the implied covenant of good faith and fair dealing and (2) State Farm's motion for a new trial. We reverse the trial court's order denying JNOV to State Farm and direct that (1) judgment be entered in favor of State Farm on the issues of State Farm's ownership of the trade secret materials and defendants' defense of breach of the implied covenant of good faith and fair dealing and (2) judgment be entered

against defendants on their claim for intentional interference with contract. We remand for further proceedings consistent with this decision. State Farm shall recover its costs on appeal.

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Margulies, J.

We concur:

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Marchiano, P.J.

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Swager, J.