

DOCKET NO. UWY-CV-14-6026552-S : SUPERIOR COURT
 :
 NUCAP INDUSTRIES INC., ET AL. : J.D. WATERBURY
 :
 VS. : AT WATERBURY
 :
 PREFERRED TOOL AND DIE, INC., ET AL. : SEPTEMBER 2, 2015

PLAINTIFFS’ REPLY IN SUPPORT OF THEIR MOTION TO STRIKE COUNTS V AND VI OF DEFENDANT BOSCO’S COUNTERCLAIMS

Plaintiffs, Nucap Industries Inc. (“Nucap Industries”) and Nucap US Inc., as the successor to Anstro Manufacturing (“Nucap US”) (collectively “Plaintiffs” or “NUCAP”), respectfully file this Reply in support of their Motion to Strike Counts V and VI of Defendant Robert A. Bosco Jr.’s (“Bosco” or “Defendant”) Counterclaims.

I. POINT 1 – Bosco Has Failed to Allege That NUCAP Had Actual Knowledge of an Actual Business Relationship and, Therefore, Bosco’s Counterclaim for Tortious Interference Should be Stricken.

Despite having an affirmative burden to do so, Bosco has not identified any actual business relationship he had with which NUCAP knowingly interfered. Actual knowledge of an actual relationship is not a level of proof or summary judgment issue, as Bosco incorrectly claims in his Objection, but a necessary and required element of a tortious interference claim that Bosco was required to allege in his Counterclaim. Bosco admits as much. *See* Bosco Objection at 6 (citing “business relationship” and interference “while knowing of the relationship” as elements of tortious interference).

Baer, which is the principal case NUCAP cites in its Motion, is directly on point and Bosco’s only argument is that *Baer* was wrongly decided. Bosco does not cite any relevant or helpful cases of his own. Instead, he argues that the issue of whether he alleged an essential element of a cause of action is an evidentiary one that should be determined by a fact finder. There is no support under Connecticut law for that argument. Connecticut courts routinely grant

motions to strike for inadequate pleading in this precise situation, including where the pleading party failed to assert the essential “knowledge” element or show the existence of an actual business relationship. *See Baer v. New Eng. Home Delivery Servs., LLC*, 2007 Conn. Super. LEXIS 2696, at *10-11 (Conn. Super. Ct. Oct. 18, 2007) (granting motion to strike tortious interference claim for failure to allege existence of actual business opportunities); *Loiselle v. Browning & Browning, LLC*, 2011 Conn. Super. LEXIS 3306, at *12 (Conn. Super. Ct. Dec. 29, 2011) (granting motion to strike tortious interference claim where complaint did not adequately plead a known business relationship); *Negro v. Hirsch*, 2004 Conn. Super. LEXIS 2484, at *4 (Conn. Super. Ct. Aug. 31, 2004) (granting motion to strike because plaintiff failed to plead facts concerning the business relationship or knowledge of the relationship by defendants); *see also Northeast Double Disc Grind, LLC v. Pietrowicz*, 2013 Conn. Super. LEXIS 2991 (Conn. Super. Ct. Dec. 31, 2013) (granting motion to strike tortious interference claim when plaintiff failed to allege facts on essential element of the claim).

Bosco’s Objection offers vague allusions to opportunities but avoids ever identifying the entities or opportunities where Bosco was allegedly denied employment. Due to Bosco’s failure to plead these essential elements, the Motion to Strike Count V should be granted. *See Baer, LLC*, 2007 Conn. Super. LEXIS 2696, at *10-11; *Loiselle*, 2011 Conn. Super. LEXIS 3306, at *12.

II. POINT 2 - The Economic Loss Doctrine Exists For This Precise Situation, Where A Party Improperly Seeks to Recover In Tort Law for Purely Commercial and Contract-Based Losses.

Bosco does not dispute that all of his alleged damages are purely economic and he further fails to address NUCAP’s claim that Bosco is seeking to recover in tort for contract-based harm. Indeed, the allegations Bosco frames as representing tortious interference are the exact same allegations on which Bosco bases his breach of contract claims. *See, e.g., Ex. A, Counterclaim*

at ¶¶ 59-60. The Counterclaim is entirely devoid of any tort-based damage claims, such as injury to property or physical harm.

The economic loss doctrine squarely applies in this situation, regardless of whether a tort is intentional or negligence-based, because sophisticated parties should not be entitled to recover under tort law for losses that are governed by a bargained-for contract. *American Progressive Life & Health Insurance Co. v. Better Benefits, LLC*, 971 A.2d 17, 20 (2009). Here, both Bosco and NUCAP are sophisticated parties and their losses, if any, arising from a breach of contract should be controlled by the parties' bargained-for agreement. Thus, Count V of Bosco's Counterclaims should also be dismissed based on the economic loss doctrine.

III. POINT 3 - The Court Should Strike Count VI (Abuse of Process).

Count VI of Bosco's Counterclaims (Abuse of Process) should also be stricken. In the first instance, Bosco does not even attempt to defend this claim in his Objection, most likely because he recognizes that the claim is patently frivolous. In any event, Bosco has not made any specific allegation in his Counterclaims that NUCAP has used unreasonable force or has engaged in extortionate tactics against him. On this basis alone, the Counterclaim for Abuse of Process should be stricken. *Mills v. Harrison*, 2015 Conn. Super. LEXIS 790, at *6 (Conn. Super. Ct. Apr. 8, 2015) (granting motion to strike generalized allegations that legal action was used for improper purpose because there were no specific facts that primary purpose of legal action was improper).

In addition, even if NUCAP had brought this case for an improper purpose (which it certainly has not), Bosco does not identify any specific competitors who were allegedly discouraged from hiring him and his allegations lack any specifics. For this reason as well, the Court can strike Bosco's abuse of process claims. *Id.* (granting motion to strike and finding that

court has no obligation to accept legal conclusions or conclusory factual statements when considering motion to strike).

IV. CONCLUSION

For the foregoing reasons, and those stated in Plaintiffs' Motion to Strike, Plaintiffs respectfully request the Court grant Plaintiffs' Motion and strike Counts V and VI of Bosco's Counterclaims.

PLAINTIFFS,
NUCAP INDUSTRIES, INC. and NUCAP US,
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CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid or delivered electronically or non-electronically, on this 2nd day of September, 2015 to all counsel and self-represented parties of record, as follows:

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