IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF IDAHO

PRO-FORMANCE LUBE CENTER, INC., an Idaho Corporation,

Plaintiff,

vs.

BP LUBRICANTS USA, INC., formerly CASTROL CONSUMER NORTH AMERICA; DOES 1 through 10, and CORPORATIONS A through Z, inclusive,

Defendants.

CASE NO. CIV 08-00290— BLW

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This case, now before the Court on Defendant's motion for summary judgment, concerns the existence and enforceability of an oral agreement between Plaintiff Pro-Formance Lube Center ("PLC") and Defendant BP Lubricants ("BP" or "Castrol"), the manufacturer of Castrol-branded motor oils. PLC alleges BP entered into – and then violated – an oral agreement that "PLC would be the only stand-alone quick lube centers in the Spokane [Washington] market area allowed to feature Castrol lubricants . . . ." (Opp'n Br., 3.) BP violated this agreement, allegedly, in July, 2008 when an Oil Can Henry's ("OCH") location in Spokane took delivery of Castrol products and began selling them. PLC has sued BP for breach of contract, breach of covenant of good faith and fair dealing, and intentional interference with business relations.

//

//

I. STATEMENT OF FACTS

PLC "operates five 'free standing' lube center/quick lube business locations in Spokane County, State of Washington." (Compl., ¶ 1.) The Court understands "'free standing' lube center" to mean a place like Jiffy Lube that mostly sells oil changes, not a more comprehensive car care center like Meineke or Firestone. (Wyatt Dep., 64:16-24.) PLC is owned and run by David Stewart ("Stewart") and his wife Teresa.

It is undisputed that on January 25, 1999, around the time Stewart bought PLC, Stewart met with Castrol and its area distributor and asked about the possibility of acquiring an exclusive right to feature Castrol motor oils. (Stewart Dep., 54:14-18.) Castrol notes that the witnesses involved "have differing recollections about the scope of the exclusivity provision that was discussed," but it does not deny that some negotiations took place. (Summ. J. Br., 4.) It is also undisputed that, whatever was said, Castrol refused to put any right of exclusivity in writing, either at the time of the negotiations or when the parties signed a Supply Agreement on March 25, 2009. (Opp'n Br., 3; Stewart Dep., 195: 13-18, 196 14-25.)

Pursuant to the Supply Agreement, PLC agreed to buy 85 percent of its "monthly requirements . . . for automotive motor oil, lubricants, greases, fluids and cleaners" from Castrol, and Castrol, for its part, agreed to sell PLC 100 percent of its "requirements." (Dep. Ex. 9 ¶¶ 1 - 2, Dkt. No. 27-15.) This Supply Agreement contained other provisions, but two in particular are critical to the parties' dispute. First, under the heading "PROTECTION OF INTELLECTUAL PROPERTY," Castrol granted to PLC "a non-exclusive, non-transferable license to advertise and display Castrol's trademarks, trade names and other brand indicia solely in connection with the sales of the Castrol Products or of oil change or lubrication services . . . ." (*Id.* at ¶ 6.) Second, it contained a merger clause, worth reciting in its entirety:

> ENTIRE AGREEMENT. This Agreement represents the entire understanding and agreement between the parties hereto relating to the purchase and sale of the Castrol Products and supersedes any and all prior agreements, whether written or oral, between the parties regarding the same. No course of performance, usage of trade, understandings, purchase orders or agreements purporting to modify, supplement or explain any provision of this Agreement shall be effective unless it is executed in writing and signed by both parties.

(*Id.* at ¶ 13.) The parties do not disagree that the Supply Agreement contains these provisions.

What *is* in dispute is what became of Stewart's request, before the Supply Agreement was signed, that PLC have an exclusive right to feature Castrol products. Out of the negotiations that both parties admit took place, Stewart insists an oral agreement was reached between him and Robert Ritchie and David Wyatt of Castrol. (Compl., 4; Opp'n Br., 2-3). Castrol, giving a little to PLC, "does not contest Pro-Formance's allegation, and assumes that some time before March 25, 1999 someone from Castrol orally promised Pro-Formance a perpetual right to exclusivity in 'Spokane.'"[1] (Summ. J. Br. at 4.) This admission is somewhat corroborated by the testimony of Robert Ritchie in an affidavit submitted along with PLC's opposition brief:

> I want to make it crystal clear at the start of this Affidavit that, despite the denials by Castrol, the oral agreement complained of by PLC was entered into by Castrol. I was the Castrol manager who communicated Castrol's agreement to David Stewart of PLC. I was provided the authority to enter into the agreement by Bruce Marley, but was instructed by him to NOT put the agreement in writing. I clearly stated in my deposition, and I restate them here, the material terms of this oral agreement.

(Ritchie Aff., 2-3.)

The exact terms of the alleged agreement are unclear. In his complaint, Stewart alleges that "[t]he material term of the oral agreement between the parties provided that PRO-FORMANCE business locations in Spokane County, Washington would be the exclusive 'free standing' lube center/quick lube lubrications within said County authorized to sell Castrol lubricants . . . ." (Compl., ¶ 14.) Stewart's opposition brief describes the oral agreement differently:

> "The agreement was that PLC would be the only stand-alone quick lube centers in the Spokane market area allowed to feature Castrol lubricants and obtain the marketing support from Castrol that comes with featuring the Castrol brand at these centers. This exclusivity would remain so long as Castrol oil was the featured oil product by PLC in the Spokane market, meaning at least 85 % of the bulk oil sold by PLC was Castrol, and PLC's marketing and signage clearly represented its locations as Castrol quick lube centers."

---

[1] The Court is unsure what to make of this concession. Making a promise is not the same thing as reaching an agreement, so on a literal reading Castrol isn't giving up very much ground. On the other hand, Pro-Formance's "allegation," which Castrol says it "does not contest," was not just that Castrol *promised* exclusivity, but rather that Castrol *agreed to* exclusivity. Maybe Castrol doesn't think it matters whether it admits to making a promise to Stewart or reaching an oral agreement with him because it believes it has the winning argument, regardless, under contract law principles. Castrol is, however, consistent in using the word "promise" rather than "agreement," and the Court will therefore assume Castrol admits only to the former.

(Opp'n Br., 3.) If, as the complaint says, Castrol agreed that PLC would be the only business of its kind in Spokane allowed to *sell* Castrol motor oil, then Jiffy Lube or OCH would presumably have to sell Pennzoil, Quaker State, or some other motor oil. On the other hand, if Castrol agreed that only PLC could *feature* Castrol motor oil, there would be nothing to prevent Jiffy Lube or OCH from selling it; they just couldn't brand themselves, as PLC has, as an official Castrol dealer.

Castrol, too, is shifty in describing the terms of the alleged agreement. On the one hand, Castrol maintains that the Supply Agreement "does not restrict Castrol from selling lubricants to Pro-Formance's competitors or anyone else," the implication being that the alleged oral agreement gave PLC the exclusive right to *sell* Castrol motor oils in a certain area. (Opp'n Br., 9.) But Castrol also says "[t]he alleged promise" was "that Pro-Formance would be the exclusive Castrol branded quick lube in Spokane," and this implies a right to *feature* Castrol motor oils. (Opp'n Br., 13.) Despite these inconsistencies, the Court concludes it is really a right to *feature* Castrol products that is at issue in this case. PLC's complaint alleges not only that Oil Can Henry's is selling Castrol lubricant products, but also that it has advertised as a "valued partner of Castrol" and "offers Castrol lubricant products as its primary lubrication product." (Compl., ¶¶ 16-17.) PLC also says in its opposition brief that "the oral agreement only precludes sellers in the 'stand-alone' quick lube center segment of the marketplace from featuring Castrol lubricants as their primary lubricant." (Opp'n Br., 8.)

The parties disagree strongly on what damages, if any, PLC has suffered. PLC's position is that "[e]very car that is serviced [by Oil Can Henry's] damages [PLC]" (Opp'n Br. at 11.) Castrol maintains: (1) no evidence of damages was timely produced by PLC; (2) PLC offers little basis for its position that it lost $1 for every gallon of Castrol oil sold by Oil Can Henry's; and (3) the most Stewart can say is that PLC has "declining car counts" and that he assumes he has lost customers to Oil Can Henry's.

II. APPLICABLE LAW

Federal courts sitting in diversity "must look to the forum state's choice of law rules to determine the controlling substantive law." *Patton v. Cox*, 276 F.3d 493, 495 (9th Cir. 2002). The Supply Agreement stipulates that "[t]he validity, interpretation and performance of this Agreement shall be construed in accordance with the law of the State of New Jersey." (Dep. Ex. 9 ¶ 14(c).)

Because Idaho law honors choice-of-law provisions in contracts, I.C. § 28-1-301, the Court will analyze the first two of PLC's claims – breach of oral contract and breach of covenant of good faith and fair dealing – under New Jersey law.[2] New Jersey's Uniform Commercial Code in particular applies here because the Supply Agreement relates to a transaction in goods. N.J.S.A. § 12A:2-102. PLC's third claim for intentional interference with business relations will be analyzed under Washington law, however. It is a tort claim that is outside the scope of the choice-of-law provision of the Supply Agreement, and under those circumstances Idaho courts follow the "most significant relationship" test to determine which state's law to follow. *Ryals v. State Farm Mut. Auto Ins. Co.*, 1 P.3d 803, 806 (Id. 2000). PLC is located in Washington, the Supply Agreement called for performance there, and the Oil Can Henry's location at issue in this case is in Washington.

III. LEGAL STANDARD

Summary judgment is appropriate if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Arpin v. Santa Clara Valley Transp. Agency,* 261 F.3d 912, 919 (9th Cir. 2001). In considering the motion, the non-movant's evidence is to be believed and all justifiable inferences are to be drawn in his favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Determinations regarding credibility, the weighing of evidence, and the drawing of legitimate inferences are jury functions, and are not appropriate for resolution by the court on a motion for summary judgment. *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 337, 345 (9th Cir. 1995).

III. DISCUSSION

Because the analysis of PLC's bad faith and intentional interference with business relations claims may turn on the analysis of its breach of contract claim, the Court will consider the breach of contract claim first.

//

//

---

[2] PLC initially questions the applicability of New Jersey law but ultimately suggests it doesn't matter "[w]hether the Court applies New Jersey, Washington or Idaho law to the question of enforcing an oral agreement . . . ." (Opp'n Br., 2, 5.)

A. Breach of Contract

Castrol's argument is that the Supply Agreement is the *only* agreement between Castrol and PLC by which it is bound – and the Supply Agreement "does not restrict Castrol from selling lubricants to Pro-Formance's competitors or anyone else." (Summ. J. Br., 9.) PLC, citing chiefly to affidavits submitted by Stewart and Robert Ritchie, maintains that the oral agreement is still valid because it is "corollary to, NOT A PART OF, the agreements later executed in writing . . . ." (Opp'n Br., 3.) In other words, "the oral agreement stands on its own, separate and distinct from any of the written agreements executed by the parties." (Opp'n Br., 5.) Counsel for PLC reaffirmed this position at oral argument, and it is clear to the Court that it is at the core of PLC's opposition to summary judgment.

Castrol's case against the enforceability of the oral promise rests exclusively on the application of the parol evidence rule. As Castrol describes it, the rule "provides that the terms of a fully integrated contract may not be varied, contradicted, or supplemented by any pre-contractual promises or understandings." (Opp'n Br., 11.) Specifically, as it appears in New Jersey's Uniform Commercial Code, the rule states:

> Terms . . . set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented
>
> (a) by course of dealing or usage of trade (12A:1-205) or by course of performance (12A:2-208); and
>
> (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

N.J.S.A. 12A:2-202. The words "intended by parties as a final expression of their agreement" are important. Their effect is to say that only *final* agreements can't be contradicted by evidence of other prior or contemporaneous agreements. The parol evidence rule doesn't come into play otherwise. *See* 11 Williston on Contracts § 33:17 (4th ed.) ("[T]he parol evidence rule does not become applicable unless there is a written integration of the agreement . . . .); Restatement (Second) of Contracts § 209(2) ("Whether there is an integrated agreement is to be determined by the court as a question

preliminary to determination of a question of interpretation or to application of the parol evidence rule.")

1. Integration of the Supply Agreement

The first question the Court must confront, then, is whether the Supply Agreement is a "final expression" of the agreement between Castrol and PLC. Castrol argues that the Court cannot look beyond the writing itself for an answer, citing the following.

> The only safe criterion of the completeness of a written contract as a full expression of the terms of the parties' agreement is the instrument itself. I[f] it purports to contain the whole agreement, and it is not apparent from the writing itself that something is left out to be supplied by extrinsic evidence, parol evidence to vary or add to its terms is not admissible.

Flavorland Indus. Inc. v. Schnoll Packing Corp., 400 A.2d 883, 167 N.J.Super 376, 381 (Essex Cty. Ct. 1979). On the other hand, the Restatement of Contracts notes that "[w]hether a writing has been adopted as an integrated agreement is a question of fact to be determined in accordance with all relevant evidence." Restatement (Second) of Contracts § 209 Comment (c). *See also* Restatement (Second) of Contracts § 209 Comment (b) ("Written contracts, signed by both parties, may include an explicit declaration that there are no other agreements between the parties, but such a declaration may not be conclusive.") Whatever the right answer, PLC does not actually contest that the Supply Agreement is integrated, and it would take more evidence than PLC could marshal, anyway, to overcome the merger clause. That clause makes clear that the Supply Agreement is the "final expression" of Castrol and PLC's agreement with respect to the terms therein. Stewart understood that when he signed the document. (Stewart Dep., 167:16 - 168:1.) The Court therefore agrees, at least preliminarily, with Castrol's argument that "[h]aving read and understood the Supply Agreement – including its merger clause – before signing it . . . Stewart cannot now seek to enforce some other oral promise that contradicts what he signed." (Summ. J. Br., 13.) This appears to be a straightforward application of the parol evidence rule.

2. Scope of the Supply Agreement

There is, however, another consideration. By its terms, the parol evidence rule applies only to evidence of other agreements that would *contradict* the substance of the final, integrated agreement. "Where the parties have adopted a writing as a complete and exclusive statement of the terms of the

agreement . . . there may still be a separate agreement between the same parties which is not affected." Restatement (Second) of Contracts § 213 Comment (c). This explains the motivation behind PLC's claim that the Supply Agreement, merger clause and all, doesn't "end this litigation" because it is merely one live agreement among many between the parties: "A careful review of the oral agreement, juxtaposed against the several other written agreements . . . and one can only conclude that the written agreements do not address the exclusivity provisions of the oral agreement at all, either inclusively or exclusively." (Opp'n Br., 7.) The purpose of the alleged oral agreement, PLC maintains, was to "form a 'partnership' for the purpose of building Castrol's market share in the stand alone quick lube segment within the Spokane area market while protecting PLC's investments within that segment." (Opp'n Br., 8.) The question is whether that particular agreement is within the scope of the integrated Supply Agreement. This determination is made "in accordance with all relevant evidence, and requires interpretation both of the integrated agreement and of the prior agreement." Restatement (Second) of Contracts § 213 Comment (c).

Castrol offers three reasons to conclude that the alleged oral agreement is within the scope of and contradicts the integrated Supply Agreement. First, the Supply Agreement allows Castrol "to sell to 'other customers in the same class of trade' at 'similar locations'" and therefore the parties couldn't couldn't have intended that "Pro-Formance be an exclusive seller and marketer of Castrol branded products in any geographical area." (Summ. J. Br., 12.) The Court does not share this reading. What the Supply Agreement says is "Castrol agrees that it will charge purchaser no more than the lowest product prices Castrol charges other customers in the same class of trade of similar volumes delivered to similar locations at similar times." (Dep. Ex. 9, ¶ 2.) It would not be inconsistent with that language, in the least, for PLC to have an exclusive right to feature Castrol lubricants in or around Spokane. Without a geographic qualifier, the "other customers" and "similar locations" referenced in the Supply Agreement could easily be understood to mean customers and locations outside of Spokane. Also, PLC doesn't even argue that Castrol can't sell its products elsewhere in Spokane; it argues that it has the right among stand-alone lube centers to feature Castrol products.

Second, Castrol argues that PLC could not have been intended "as an exclusive dealer in Castrol products," contrary to the alleged oral agreement, because PLC had a non-exclusive license

to advertise and display Castrol trademarks under the Supply Agreement. (Summ. J. Br., 12-13.) The relevant provision in the Supply Agreement states: "Castrol grants to Purchaser a non-exclusive, non-transferable license to advertise and display Castrol trademarks, trade names and other brand indicia . . ." (Dep. Ex. 9, ¶ 6.) Here again the Court believes Castrol reads more into the Supply Agreement than is there. The alleged oral agreement pertains to PLC's exclusive right to feature Castrol products in some geographical boundary in or around Spokane. As PLC explains, "PLC has never contended, nor does the oral agreement given by Castrol provide, that other sellers of Castrol products could not display and advertise Castrol products within the Spokane marketplace." (Opp'n Br., 8.) Thus, there is no obvious contradiction between the alleged oral agreement and the integrated Supply Agreement such that the parol evidence rule would bar consideration of the former.

Castrol's third argument is the winner in the Court's view. The merger clause that integrates the Supply Agreement states: "This agreement represents the entire understanding and agreement between the parties hereto relating to the purchase and sale of the Castrol Products . . . ." (Dep. Ex. 9, ¶ 13.) The critical question, then, is whether the substance of the alleged oral agreement – that PLC shall have an exclusive right to feature Castrol motor oils – relates to "the purchase and sale" of Castrol motor oils. This determination is made "in accordance with all relevant evidence, and require[s] interpretation both of the integrated agreement and of the prior agreement." Restatement (Second) of Contracts § 213 Comment (c). For the substance of the oral agreement, PLC cites generically to the affidavits filed by Robert Ritchie and Stewart. (Opp'n Br. 6-7.) It appears to have two material terms:

> (a) PLC would be the only stand-alone quick fix lube center in the Spokane market allowed to feature Castrol lubricants and obtain the marketing support from Castrol that comes with featuring the Castrol brand at these centers. The 'Spokane market area' was in and around the immediate Spokane area, not necessarily limited to the city of Spokane.
>
> (b) This exclusivity would remain so long as Castrol oil was the featured oil product by PLC in the Spokane market, meaning at least 85% of the bulk oil sold by PLC was Castrol, and PLC's marketing and signage clearly represented its locations as Castrol quick lube centers.

(Ritchie Aff., ¶ 3.) Both of these provisions are plainly within the scope of the integrated Supply Agreement and inconsistent with its terms, thereby defeating PLC's argument that the two agreements

are separate for the purposes of a parol evidence analysis. The Court reaches this conclusion, first, on a close reading of the two agreements, and second, on the recognition that Stewart attempted unsuccessfully to have the alleged oral agreement incorporated into the Supply Agreement at the time the Supply Agreement was signed. (Stewart Dep., 195: 13 - 17.) Indeed, the Court shares Castrol's view that "[i]t is facetious to claim the Supply Agreement 'does not address the exclusivity provisions of the oral agreement' when the parties discussed exclusivity and deliberately and openly omitted it from the final written agreement." (Reply Br., 7.).

3. Equitable Estoppel

So, to summarize, the Court has determined as a matter of law that the Supply Agreement was a final, integrated contract and that its scope encompasses – and its terms contradict – the alleged oral agreement. This means the parol evidence rule applies, and the Supply Agreement is the only agreement by which Castrol is bound. PLC cannot rely on the oral agreement to add to or vary the Supply Agreement's terms. Left for the Court to consider is PLC's argument that it is shielded from the application of the parol evidence rule by the doctrine of equitable estoppel.

At the outset, the Court is puzzled because PLC asserts estoppel as an exception to the statute of frauds, which Castrol never raised in its summary judgment motion.[3] Only the parol evidence rule has been raised as a bar to its claims. PLC's estoppel argument is that "[i]t is inequitable for Castrol to acknowledge the existence of the oral exclusivity agreement, reap the benefit of PLC's near decade of performance to establish and build the stand alone quick lube segment of the Spokane market, and then invoke the Statute of Frauds or parol evidence rule to block enforcement of Castrol's oral exclusivity agreement." (Opp'n Br., 7.) PLC also alleges that it relied on the oral agreement to its detriment in signing the Supply Agreement and other relevant agreements, including loan funding agreements and long-term leases on property for its five PLC locations. (Opp'n Br., 4, 6, 9.)

//

---

[3] PLC does this in several places: "Washington and Idaho, and for that matter New Jersey, courts have enforced agreements that were out of compliance with the Statute of Frauds when the facts make it inequitable for the challenging parties to assert the invalidity of their agreements" (Opp'n Br., 7); "The governing purpose behind a statute of frauds and the application of the parol evidence rule is to *prevent* fraud, not to provide a 'technical' out for a party that deceptively avoids putting its agreement in writing" (Opp'n Br. 8). Castrol did raise a statute of frauds defense in its answer (Dkt. No. 6, ¶ 34), which may explain PLC's mistaken focus on it in its opposition brief.

There are a number of problems with PLC's equitable estoppel claims, all of which Castrol raises in its reply brief. First, the cases PLC cites in an attempt to enforce the oral agreement all involve exceptions to the statute of frauds, not the parol evidence rule. (*See* Opp'n Br., 10.) Second, equitable estoppel "is not available for offensive use by plaintiffs." *Mudarri v. State*, 196 P.3d 153, 170 (Wash.App. Div. 2008) (internal quotations omitted); *Chemical Bank v. Washington Pub. Power Supply Sys.*, 691 P.2d 524, 540 (Wash. 1984) ("Equitable estoppel is available only as a 'shield' or defense . . ."). Third, there is overwhelming case law standing for the rule that the doctrine of promissory estoppel (which PLC seems to rely on but does not name) cannot overcome the strictures of the parol evidence rule. Fourth, equitable estoppel is typically a claim that a plaintiff must plead in his complaint, not raise in a brief opposing summary judgment. "Simply put, summary judgment is not a procedural second chance to flesh out inadequate pleadings." *Navajo Nation v. United States Forest Service*, 535 F.3d 1058, 1080 (9th Cir. 2008) (raising claim at summary judgment phase was insufficient when it was not raised and pled in complaint); *Wasco Products, Inc. v. Southwall Technologies, Inc.*, 435 F.3d 989, 992 (9th Cir. 2008) (internal quotations omitted).

4. Conclusion

For the reasons stated above, PLC's claim for breach of contract is dismissed with prejudice. The Supply Agreement is the only agreement by which Castrol is bound, and PLC's arguments to the contrary, along with its attempt to raise an equitable estoppel claim this late in the litigation, must fail as a matter of law.

B. Breach of Covenant of Good Faith and Fair Dealing and Intentional Interference with Business Relations

In light of the Court's finding that Castrol did not breach an oral contract, PLC's final two claims can be addressed together, and swiftly so. PLC's own argument in its opposition brief – one small, conclusory paragraph in length – seems to acknowledge that the remaining two claims have no likelihood of success independent of its claim for breach of contract: "For the reasons, and in light of the authorities above, the oral argument is enforceable, and once so determined the implied covenant of good faith and fair dealing applies as does the potential tort claim for interference with business expectancy." (Opp'n Br., 10.) Castrol provided the reasons this is untrue in its summary judgment motion, and PLC did not attempt to respond to them.

It is well established that "the implied covenant of good faith and fair dealing cannot override an express term in a contract." *Seidenberg v. Summit Bank*, 791 A.2d 1068, 1076 (N.J. Super. 2002); *Willis v. Champlain Cable Corp.*, 748 P.2d 621, 627-28 (Wash. 1988) (declining to apply covenant of good faith and fair dealing to alter contract terms). Given this Court has found the integrated Supply Agreement to be the only binding contract in this case, Castrol has no good faith duty to honor the terms of the alleged oral agreement. "The implied duty of good faith and fair dealing does not operate to alter the clear terms of an agreement and may not be invoked to preclude a party from exercising its express rights under such an agreement." *Fields v. Thompson Printing Co.*, 363 F.3d 259, 271-72 (3d Cir. 2004); *see also Northview Motors, Inc. v. Chrysler Motors Corp.*, 227 F.3d 78, 91 (3d Cir. 2000). Also, as Castrol points out, breaching a covenant of good faith and fair dealing, under New Jersey law, requires some proof of an ill motive or intention, and here PLC can only guess as to one: "While Mr. Ritchie and Mr. Wyatt obviously had no *deceptive* or *fraudulent* intent in communicating the fact that Castrol would not put the exclusivity agreement in writing, it becomes apparent, in light of the conduct of Castrol, that senior management must have had deceptive intent." (Opp'n Br., 9.) *See Anderson*, 477 U.S. at 256 (nonmoving party cannot oppose a properly supported summary adjudication motion by "rest[ing] on mere allegations or denials in his pleadings.")

PLC's claim that Castrol intentionally interfered with its business relations is also a non-starter. Even assuming the alleged oral agreement is binding on Castrol – and it is not – PLC cannot stack a tort claim on top of a breach of contract claim without some additional wrongful conduct. *8902 Corp. v. Halmsley-Spear, Inc.*, 804 N.Y.S.2d 725, 726 (N.Y. App. Div. 2005) ("Dismissal of the cause of action for breach of contract necessarily requires dismissal of the cause of action for tortious interference with its prospective business relations, the claimed interference with the prospective assignee being a mere incident of the claimed breach of contract.") *See also Daniels v. City of Spokane*, 149 Wash.App. 1042 at *4 (Wash.App. Div. 2009) ("remedy for interference with a contract or expectancy by a party to the agreement is an action for breach of contract"); *Alejandre v. Bull*, 159 Wash.2d 674, 681-682 (economic loss rule "hold[s] parties to their contract remedies when a loss potentially implicates both tort and contract relief"). Tort liability doesn't arise, either, just because PLC may have been harmed by an alleged breach of the oral agreement. "Otherwise, virtually every

breach of a commercial contract to supply a plaintiff with a needed product, component or service would support an intentional interference claim." *Valley Forge Convention and Visitors Bureau v. Visitor's Serv., Inc.*, 28 F.Supp. 2d 947, 952 (E.D. Pa. 1998). *See also Rush v. United Tech., Otis Elevator Div.*, 930 F.2d 453, 456 (6th Cir. 1991) ("an action in tort will not arise for breach of contract unless the action in tort would arise independent of the existence of the contract").

IV. CONCLUSION

The Court concludes that the Supply Agreement is a final, integrated contract and that the alleged oral agreement between Castrol and PLC is inadmissible and unenforceable under the parol evidence rule. PLC's remaining two claims, one for breach of the covenant of good faith and fair dealing and the other for intentional interference with business relations, fail as a matter of law. Castrol's motion for summary judgment is **GRANTED**, and this case is dismissed with prejudice.

IT IS SO ORDERED.

DATED: 7.31-09

Larry A. Burns

HONORABLE LARRY ALAN BURNS
United States District Judge