

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MOSSIMO HOLDINGS, LLC, a Delaware  
limited liability company,

Plaintiff,

v.

HARRY HARALAMBUS,

Defendant,

v.

THE LAMBUS CORPORATION, a  
California corporation,

Third-party-plaintiff-  
Appellant,

v.

VICTOR SIASAT,

Third-party-defendant-  
Appellee.

No. 17-55642

D.C. No.

2:14-cv-05912-DDP-JEM

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Dean D. Pregerson, District Judge, Presiding

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted August 7, 2018  
Pasadena, California

Before: HAWKINS and CHRISTEN, Circuit Judges, and HOYT,\*\* District Judge.

The Lambus Corporation (“Lambus”) appeals the adverse grant of summary judgment in favor of Victor Siasat. We have jurisdiction under 28 U.S.C. § 1291. Reviewing de novo, *Easley v. City of Riverside*, 890 F.3d 851, 855 (9th Cir. 2018) (citations omitted), we affirm.

Summary judgment was properly granted on Lambus’s intentional-interference-with-contract claim because Lambus failed to present a genuine dispute of material fact as to the existence of a valid contract. *See Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014) (requiring “a valid contract between plaintiff and a third party” (quoting *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 791 P.2d 587, 589–90 (Cal. 1990))). Though Lambus’s complaint alleges the existence of a 2012 oral agreement,<sup>1</sup> it failed to present evidence of “mutual consent, which cannot exist unless the parties ‘agree upon the same thing in

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\*\* The Honorable Kenneth M. Hoyt, United States District Judge for the Southern District of Texas, sitting by designation.

<sup>1</sup> The district court also addressed the existence of an alleged 1996 agreement—an agreement referenced vaguely for the first time in Lambus’s opposition to summary judgment. But, simply put, “summary judgment is not a procedural second chance to flesh out inadequate pleadings.” *Wasco Prods., Inc. v. Southwall Techs, Inc.*, 435 F.3d 989, 992 (9th Cir. 2006) (quoting *Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 24 (1st Cir. 1990)).

the same sense.”” *Bustamante v. Intuit, Inc.*, 45 Cal. Rptr. 3d 692, 698 (Cal. Ct. App. 2006) (quoting Cal. Civ. Code § 1580) (citing Cal. Civ. Code §§ 1550, 1565).

Summary judgment was also properly granted on Lambus’s intentional-interference-with-economic-advantage claim because, among other things, Lambus never alleged Siasat “engaged in conduct that was wrongful by some legal measure other than the fact of interference itself.” *Fresno Motors*, 771 F.3d at 1125 (quoting *Della Penna v. Toyota Motor Sales, USA, Inc.*, 902 P.2d 740, 751 (Cal. 1995)). By failing to challenge this conclusion in its brief, Lambus waived this claim on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“[A]rguments not raised by a party in its opening brief are deemed waived.” (citing *Brookfield Commc’ns, Inc. v. W. Coast Entm’t Corp.*, 174 F.3d 1036, 1046 n.7 (9th Cir. 1999))).

**AFFIRMED.**