

Ware Cosmetics, LLC v France Lab, Inc.

2024 NY Slip Op 30197(U)

January 16, 2024

Supreme Court, New York County

Docket Number: Index No. 652493/2023

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

WARE COSMETICS, LLC

Plaintiff,

- v -

FRANCE LAB, INC.,

Defendant.

-----X

INDEX NO. 652493/2023

MOTION DATE 12/20/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for DISMISS

Background

The allegations in the Complaint in this case are as follows.1 The parties had agreements whereby Defendant was engaged to develop, produce, and supply certain skincare products for Plaintiff including lipstick. The parties agreed on the price of the products. Defendant was to produce and supply products that would be merchantable and conform with certain benchmarks, samples, descriptions, and standards.

The parties had agreements and though the parties agreed on many terms, the UCC supplied any unstated terms. Plaintiff made a down payment for the goods and certain terms of the agreements were memorialized via purchase orders. The Defendant allegedly breached the agreements between the parties by failing to deliver conforming goods and Defendant has refused to return the funds Plaintiff has paid.

Discussion

1 The Court would like to thank Jason Lowe, Esq. for his assistance in this matter.

Plaintiff moves to dismiss the complaint pursuant to both CPLR 3211(a)(1) and (a)(7). It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. (See *Avgush v Town of Yorktown*, 303 AD2d 340, 755 N.Y.S.2d 647 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD.2d 348, 756 N.Y.S.2d 96 [2d Dept 2003]). "The test on a motion to dismiss for insufficiency of the pleadings is not whether the plaintiff has artfully drafted the complaint but whether, deeming the complaint to allege whatever can be reasonably implied from its statements, a cause of action can be sustained." (*Pepler v Coyne*, 33 AD3d 434, 435, 822 N.Y.S.2d 516 [1st Dept 2006], citing *Stendig, Inc. v Thom Rock Realty Co.*, 163 AD2d 46, 48, 558 N.Y.S.2d 917 [1st Dept 1990]).

A complaint may also be dismissed on the basis of documentary evidence pursuant to CPLR 3211(a)(1) where the documentary evidence utterly refutes the factual allegations and conclusively establishes a defense as a matter of law. (See *Lopez v. Fern*, 90 A.D.3d 569, 572 [1st Dep't 2011] quoting *Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 326 [2002]).

Breach of Contract

The Complaint's first cause of action is for breach of contract and the second cause of action is for breach of the covenant of good faith and fair dealing. The essential elements of a cause of action for breach of contract are the existence of a contract, plaintiff's performance under the contract, defendant's breach of its contractual obligations, and damages resulting from the breach (see *Furia v Furia*, 116 AD2d 694, 695, 498 N.Y.S.2d 12 [2d Dept 1986]).

The Complaint properly alleges the existence of a valid contract between the parties. The terms of the contract are alleged. Further, the invoices which set forth the names and addresses of

the buyer and seller, the date, payment terms, price of the goods, a description of the goods, the amount of goods, and the total price of the sale is sufficient evidence of the existence of an agreement at this stage of the litigation (see *B & R Textile Corp. v Domino Textiles, Inc.*, 77 AD2d 539, 539-540, 430 N.Y.S.2d 89 [1st Dept 1980]). The allegation that Defendant failed to deliver conforming goods is sufficient to allege a breach of the agreement. Thus, Defendant's motion to dismiss the breach of contract cause of action is denied.

Similarly, Defendant argues that the breach of the covenant of good faith and fair dealing fails because Plaintiff failed to allege a contractual relationship between the parties. However, since this Court finds that Plaintiff has alleged a contractual relationship between the parties, the motion to dismiss the breach of the duty of good faith and fair dealing is similarly denied.

Breach of Express Warranty

Plaintiff's third cause of action alleges a breach of an express warranty, and plaintiff's fifth cause of action alleges a breach of the implied warranty of merchantability.

The material elements for breach of an express warranty are (1) a material representation expressly made about the product by defendant, (2) the truthfulness of this representation was relied upon by plaintiff, (3) the product did not live up to the representation and (4) plaintiff suffered damages as a result of a breach of the express warranty. (*CBS v Ziff-Davis*, 75 NY2d 496, 553 N.E.2d 997, 554 N.Y.S.2d 449 [1990]). In order for an express warranty to exist, there must be a representation of fact or promise that induced the plaintiff, and plaintiff must set forth the terms of the alleged express warranty with sufficient particularity. (*Hicksville v Stanley*, 37 AD3d 218, 830 N.Y.S.2d 530 [1st Dept 2007]; *Friedman v Medtronic*, 42 AD2d 185, 345 N.Y.S.2d 637 [2nd Dept 1973]).

Paragraph 17 of the Complaint sufficiently alleges the terms of the alleged express warranty. Further, the Complaint alleges reliance on the terms of the warranty, that the product did not live up to the representations, and that the Plaintiff suffered damages as a result of the breach of the express warranty. Therefore, the motion to dismiss the breach of the express warranty cause of action is denied.

The implied warranty of merchantability requires goods to be "fit for the ordinary purposes for which [such] goods are used." UCC 2-314 (2)(c). "To establish that a product is defective for purposes of a breach of implied warranty of merchantability claim, a plaintiff must show that the product was not reasonably fit for its intended purpose, an inquiry that 'focuses on the expectations for the performance of the product when used in the customary, usual and reasonably foreseeable manners.'" (*Wojcik v Empire Forklift, Inc.*, 14 AD3d 63, 66, 783 N.Y.S.2d 698 [3rd Dept. 2004] quoting *Denny v. Ford Motor Co.*, 87 NY2d 248, 258-259, 662 N.E.2d 730, 639 N.Y.S.2d 250 [1995]).

The Complaint alleges that the products at issue were not reasonably fit for their intended purpose. For instance, the lipstick is alleged to have had a malfunctioning container so that it could not be used. Consequently, Defendant is not entitled to dismissal of the cause of action for breach of the implied warranty of merchantability.

Breach of Warranty of Fitness for a Particular Purpose

The Complaint's fourth cause of action is for breach of the implied warranty of fitness for a particular purpose. A claim for breach of implied warranty of fitness for a particular purpose "requires allegations that defendants had reason to know any particular purpose for which the goods are used, and that plaintiff relied on defendants' skill or judgment to select or furnish those suitable goods." (*Fiuzzi v. Paragon Sporting Goods Co., LLC*, 212 A.D.3d 431, 433 [1st Dep't

2023] (quoting UCC § 2-315)). The Complaint does not allege, other than in a conclusory manner, that Defendant had a reason to know of any particular purpose for which the goods would be used. Further, it is not clear that the particular purpose Plaintiff argues the goods would be used for, that they be “genderless”, is anything different than the general purpose of the goods, to act as a beauty product. Nor has Plaintiff alleged any facts which show that the goods were not genderless. Therefore, Plaintiff has failed to allege a breach of the warranty of fitness for a particular purpose and the cause of action is dismissed.

Non-Contractual Theories of Liability

The Complaint alleges causes of action on various non-contractual theories. The sixth cause of action is for conversion, the seventh cause of action is for unjust enrichment, and the eighth cause of action is for promissory estoppel. For the reasons stated below, the motion to dismiss each of these causes of action is denied.

To state a claim for unjust enrichment, a plaintiff must allege “that (1) the other party was enriched, (2) at that party’s expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered.” *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 182 (2011). The Plaintiff alleges that it paid Defendant and that Defendant failed to return the funds and did not deliver the goods it was supposed to deliver. This is sufficient to allege a cause of action for unjust enrichment.

To state a claim for promissory estoppel, a plaintiff must allege (1) a promise that is “sufficiently clear and unambiguous”; (2) reasonable reliance on the promise by a party; and (3) injury caused by the reliance. *Schroeder v. Pinterest Inc.*, 133 A.D.3d 12, 32 (1st Dep’t 2015) (internal citations and quotations omitted). The Complaint sufficiently alleges certain promises regarding the delivery of products by the Defendant. Further, Plaintiff made payments to

Defendant based on those promises. Finally, the allegation that Plaintiff never received what it was promised is a sufficient allegation of injury caused by reliance. Thus, the Complaint sufficiently alleges a cause of action for promissory estoppel.

"A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession. Two key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights" (Colavito v New York Organ Donor Network, Inc., 8 NY3d 43, 49-50, 860 N.E.2d 713, 827 NYS2d 96 [2006] [citations omitted]). Plaintiff alleges that it sent money to Defendant, that money is Plaintiff's money, and Defendant is refusing to return the money. This states a claim for conversion.

Defendant's argument that the promissory estoppel and conversion claims are duplicative because they are based on a breach of contract ignores the fact that Defendant also argues that there is no contract. Thus, conversion is an alternative rather than a duplicative theory of liability.

Accordingly, it is hereby

ORDERED that Defendants' motion to dismiss the complaint is granted with respect to the fourth cause of action only; and it is further

ORDERED that Defendants' motion to dismiss is otherwise denied.

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1/16/2024
DATE


LYLE E. FRANK, J.S.C.

CHECK ONE:

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<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
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<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: