SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NANCY M. BANNON** **PART** **61M**

Justice

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CENTRIC SOCKS LLC, and CENTRIC WEST LLC,

Plaintiffs,

- v -

SVES LLC,

Defendant.

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INDEX NO. 654355/2022

MOTION DATE 04/16/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for DISMISSAL / LEAVE TO AMEND.

I. INTRODUCTION

In this breach of contract action, the plaintiffs move to dismiss the defendant's four counterclaims pursuant to CPLR 3211(a)(7), and to dismiss the defendant's sixteenth, eighteenth, and nineteenth affirmative defenses pursuant to CPLR 3211(b). The defendant opposes the motion only as to the third counterclaim and the nineteenth affirmative defense, both alleging unjust enrichment, and cross-moves pursuant to CPLR 3025(b) to amend its answer to add a counterclaim for breach of an implied covenant of good faith and fair dealing. The plaintiffs' motion is granted and the defendant's cross-motion is denied.

II. BACKGROUND

The plaintiffs, Centric Socks LLC and Centric West LLC, are part of an affiliated group of lifestyle brand companies that design, market, and sell apparel and accessories. The defendant, SVES, Inc., is a buyer of overstocked and off-price fashion apparel and accessories which negotiated a sale and purchase agreement with the plaintiffs in June of 2022. Between June 24 and June 28, 2022, the defendant placed orders for various articles of apparel and accessories (the "Goods"), which were memorialized in four purchase orders, two from each plaintiff. During the month of July 2022, the plaintiffs delivered the Goods and issued a series of invoices to the defendant. The plaintiffs also issued a "Release Letter" dated July 12, 2022, by

which it confirmed that it was "licensed to design, manufacture, sell, import and distribute" certain licensed products and authorized the defendant to sell those products to off-price retailers, "including" five listed retailers, without infringing on the plaintiff's rights or the rights of the listed licensors. The invoices from Centric West LLC totaled $1,510,617; the invoices from Centric Socks LLC totaled $2,508,624. The defendant refused to pay any amount.

On November 15, 2022, the plaintiffs commenced the instant action, asserting three causes of action for each plaintiff - breach of contract, account stated, and goods sold and delivered and seeking a total of $4,019,241 in damages, plus interest and attorney's fees.

The defendant answered the complaint asserting 20 affirmative defenses and four counterclaims, the gravamen of which is that the plaintiffs failed to disclose to the defendant that the subject Goods were previously rejected by some off-price retailers to whom the defendant intended to re-sell the Goods at a profit and that the plaintiffs' deceitful conduct should bar recovery under the contract. The defendant alleges, without detail, that it discovered this alleged omission after receiving the Goods and then refused to pay for them. The defendant asserted counterclaims for: (i) fraud in the inducement; (ii) prima facie tort; (iii) unjust enrichment; and (iv) declaratory judgment that the parties' contracts are void and unenforceable. The defendant sought $5 million in damages, plus interest and attorneys' fees.

The plaintiffs' motion and the defendant's cross-motion ensued. The defendant's proposed amended answer submitted in support of its cross-motion alleges the same facts as in the original answer but asserts just two counterclaims - (i) unjust enrichment and (ii) breach of an implied covenant of good faith and fair dealing. Neither counterclaim is viable.

III. DISCUSSION

A. Unjust Enrichment

The plaintiffs' motion to dismiss the counterclaim alleging unjust enrichment is granted. Where, as here, a party seeks to recover under an express agreement, no cause of action lies to recover for unjust enrichment. See Pappas v Tzolis, 20 NY3d 228 (2012); JDF Realty, Inc. v Sartiano, 93 AD3d 410 (1st Dept. 2012). The doctrine of unjust enrichment invokes an "obligation imposed by equity to prevent injustice*, in the absence of an actual agreement between the parties concerned*." IDT Corp. v Morgan Stanley Dean Witter & Co., 12 NY3d 132, 142 (2009) (emphasis supplied). That is, "a party may not recover in ... unjust enrichment where

the parties have entered into a contract that governs the subject matter." Cox v NAP Constr. Co., Inc., 10 NY3d 592, 607 (2008). The defendant does not dispute that the parties entered into an agreement that governs the subject matter, the sale and purchase of goods. Indeed, the defendant alleges in its own counterclaim that the parties negotiated the agreement and that the defendant received the Goods from the plaintiffs and refused to pay for them. While the defendant would be permitted to proceed in the alternative upon a quasi-contractual theory such as unjust enrichment if there were a question as to whether a valid and enforceable contract existed (see Forman v Guardian Life Ins. Co. of America, 76 AD3d 866 [1st Dept. 2010]), the defendant alleges no basis for finding the parties' agreement to be unenforceable, as set forth herein. Further, as the defendant never paid the plaintiffs for the Goods, the plaintiffs were never "enriched", unjustly or otherwise. See Georgia Malone & Co. v Rieder, 19 NY3d 511 (2012); Alpert v M.R. Beal & Co., 162 AD3d 491 (1st Dept. 2018). Since the defendant's nineteenth affirmative defense also alleges unjust enrichment, it too is dismissed.

The defendant does not oppose dismissal of the first, second, and fourth counterclaims sounding in fraud in the inducement, prima facie tort, and declaratory judgment, respectively, and does not seek to plead these counterclaims in its proposed amended answer. Therefore, these three counterclaims are dismissed, without opposition.

Similarly, the defendant does not oppose dismissal of its sixteenth and eighteenth affirmative defenses, alleging offset or unclean hands and unconscionability, respectively. Nor does defendant plead these particular defenses in its proposed amended answer. Therefore, these affirmative defenses are dismissed, without opposition.

B. Breach of Implied Covenant of Good Faith and Fair Dealing

The defendant's cross-motion to file an amended answer to add a counterclaim for breach of the implied covenant of good faith and fair dealing is denied. It is well settled that leave to amend a pleading should be freely granted absent evidence of substantial prejudice or surprise, or unless the proposed amendment is palpably insufficient or patently devoid of merit. See CPLR 3025(b); JPMorgan Chase Bank, N.A. v Low Cost Bearings NY, Inc., 107 AD3d 643 (1st Dept. 2013); Cherebin v Empress Ambulance Serv., Inc., 43 AD3d 364, 365 (1st Dept. 2007). Here, while the plaintiffs do not allege prejudice or surprise, the proposed counterclaim of breach of an implied covenant to good faith and fair dealing is devoid of merit.

This is a breach of contact action and, although not expressly pleaded as such, the defendant's allegations in support of its counterclaims are essentially that it was the plaintiff that breached the contract. It is well settled that "New York law . . . does not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing when a breach of contract claim, based upon the same facts, is also pled." Harris v Provident Life and Acc. Ins. Co., 310 F3d 73, 81 (2nd Cir. 2002); see Berkeley Research Group, LLC v FTI Consulting, Inc., 157 AD3d 486 (1st Dept. 2018); Cambridge Capital Real Estate Invest., LLC v Archstone Enterp. LP, 137 AD3d 593 (1st Dept. 2016); Amcam Holdings, Inc. v Canadian Imperial Bank of Comm., 70 AD3d 423 (1st Dept. 2010). That is because "implicit in all contracts is a covenant of good faith and fair dealing in the course of contract performance." Dalton v Educational Testing Serv., 87 NY2d 384, 389 (1995); see 511 W. 232nd Owners Corp. v Jennifer Realty, Co., 98 NY2d 144 (2002). Stated otherwise, "a breach of the covenant of good faith and fair dealing is a breach of the contract itself" (Parlux v Carter Enterp., LLC, 204 AD3d 72, 92 [1st Dept. 2022]) such that a breach of the implied covenant of good faith and fair dealing claim must be dismissed as duplicative if it arises out of the same facts as a breach of contract claim. See MDRN Intelligence Living Wolfhome v Hartford Fin. Svcs. Group, Inc., 216 AD3d 409 (1st Dept. 2023); Ahsanuddin v Addo, 175 AD3d 1213 (1st Dept. 2019).

"The general rule [is] that fiduciary obligations do not exist between commercial parties operating at arm's length." EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 22 (2005); see CMB Export Infrastructure Invest. Group 48, LP v Motcomb Estates, Ltd., 223 AD3d 513 (1st Dept. 2024). The defendant's proposed counterclaim does not allege or indicate any confidential or fiduciary relationship between the parties that might give rise to a duty to disclose information. See e.g CMB Export Infrastructure Invest. Group 48, LP v Motcomb Estates, Ltd., supra [no fiduciary relationship between lenders in a foreclosure sale requiring disclosure of a related participation agreement]; Havell Capital Enhanced Mun. Income Fund, L.P. v Citibank N.A., 84 AD3d 588 (1st Dept. 2011) [defendant bank had no duty to disclose to plaintiff bond purchaser that it held bonds in its own account for which it was seeking a purchaser]; Northeast Wine Dev., LLC v Service-Universal Distr., Inc., 23 AD3d 890 (3rd Dept. 2005) [wine and liquor distributor's failure to disclose to plaintiff retailer that it was offering products at a lower price to other retailers did not deprive plaintiff of the benefit of its bargain]. To the extent the defendant relies on the Release Letter in its counterclaim, the plaintiff accurately points out that is not a guarantee that the defendant would be able to achieve sales to any retailers or realize any profit thereby, but only a representation that any such sale would not violate the rights to the plaintiff

or any licensor of the Goods. Nor does the defendant allege any conduct by the plaintiff that deprived the defendant of any right to receive benefits under the contract. See 511 W. 232nd Owners Corp. v Jennifer Realty, Co., 98 NY2d 144 (2002); Parlux v Carter Enterp., LLC, supra; Jaffe v Paramount Comm. Inc., 222 AD2d 17 (1st Dept. 1996). Rather, the defendant's own allegations reveal that this was an arms-length sales transaction between sophisticated parties in which the plaintiffs had no duty to protect the defendants from making a potentially unprofitable deal. Notably, the defendant provides no decisional authority where the court upheld a claim of breach of implied covenant of good faith and fair dealing based on a party's alleged failure to disclose information under comparable circumstances.

IV. CONCLUSION

Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiffs' motion to dismiss the defendant's four counterclaims and the sixteenth, eighteenth, and nineteenth affirmative defenses is granted, and those counterclaims and affirmative defenses are dismissed, and it is further,

ORDERED that the defendant's cross-motion for leave to amend its answer to add a counterclaim is denied, and it is further,

ORDERED that the parties shall appear for a status conference on July 25, 2024, at 10:00 a.m., as previously scheduled, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

6/13/2024
DATE

CHECK ONE:							
	CASE DISPOSED		NON-FINAL DISPOSITION				
X	GRANTED		DENIED		GRANTED IN PART		OTHER