SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** **PART** **60M**

Justice

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SIRE SPIRITS, LLC,SIRE CHAMPAGNES, LLC,SIRE BROWN, LLC,CURTIS J. JACKSON, STEPHEN J. SAVVA, G-UNIT BRANDS INC.,G-UNIT RECORDS, INC.,

Plaintiff,

- v -

BEAM SUNTORY, INC.,JIM BEAM BRANDS CO., JULIOUS GRANT, MICHAEL CARUSO, GINA CARUSO, MCF CONSULTING, INC.,G2J BRAND, INC.,BRAND HOUSE GROUP, LLC,Q BRANCH CONSULTING, LLC,4G'S VENTURES, INC.

Defendant.

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INDEX NO. 650799/2023

MOTION DATE 07/05/2024

MOTION SEQ. NO. 021

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 021) 366, 367, 368, 369, 370, 371, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 416, 417, 418, 419, 451, 452

were read on this motion to/for LEAVE TO FILE.

Upon the foregoing documents, plaintiff's motion for leave to file its amended complaint is mostly denied and granted in very limited part.

Leave to amend a pleading pursuant to CPLR 3025(b) is freely given, but will be denied if there is "prejudice or surprise resulting directly from the delay" in moving to amend, "or if the proposed amendment is palpably improper or insufficient as a matter of law" (*Carrasquillo v. Wilfred Realty Corp.*, 205 A.D.3d 516, 517 [1st Dep't 2022] *see also Perrotti v. Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498 [1st Dep't 2011] [denying motion to amend for failure to support proposed cause of action with sufficient factual allegations]).

On the record at oral argument, the court denied plaintiff's attempt to amend to add a claim for punitive damages (NYSCEF Doc. 477 at 25). This was because the court had previously dismissed plaintiff's punitive damages claim with prejudice. The Appellate Division,

First Department affirmed (*Sire Spirits, LLC v. Beam Suntory, Inc.*, 227 AD3d 630 [1st Dep't 2024). As the court dismissed plaintiff's claims of punitive damages with prejudice and was affirmed, plaintiff cannot at this juncture amend to add a claim for punitive damages.

Moreover, plaintiff's proposed amended complaint still does not assert any palpable claims against Gina Caruso. Even with plaintiff's new allegations, the amended complaint fails to plead in any substantive way that Gina Caruso knowingly participated in the alleged embezzlement scheme. Plaintiff's claims are conclusory and fail to plead substantial assistance (*Gaughan v. Russo*, 214 AD3d 592 [1st Dep't 2023]; *Oster v. Kirschner*, 77 AD3d 51, 55 [1st Dep't 2010]).

Plaintiff's equating of Gina's administrative role with knowledge and intentional wrongdoing lacks any factual basis. Plaintiff continues to make conclusory assertions about Gina's knowledge. The Appellate Division, First Department, already affirmed that it is not sufficient to allege Gina knowingly assisted the other defendants in their alleged fraudulent activity solely due to her proximity to the business. Plaintiff's new allegation that Gina communicated with Green directly does not save plaintiff's claim. It means nothing on its face and requires the court to infer her active participation based on nothing. Plaintiff's proposed amendments are just as conclusory as they were before. Therefore, plaintiff's proposed amendments are palpably insufficient as a matter of law (*Thompson v. Cooper*, 24 AD3d 203 [1st Dep't 2005]).

Plaintiff's unjust enrichment claim against Gina is equally improper. Unjust enrichment is not a catchall cause of action for when others fail. It is available only in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff (*Corsello*

v. Verizon N.Y., Inc., 18 NY3d 777, 790 [2012]). Here, plaintiff continues to assert nothing beyond speculation that Gina possesses Michael Caruso's allegedly ill-gotten gains. The mere allegation that Gina Caruso and Michael Caruso share a bank account, without more, is insufficient. Moreover, plaintiff's amended complaint fails to allege any facts which demonstrate inequity (*See Mandarin Trading Ltd. v. Wildenstein*, 16 NY3d 173, 182 [2011]). Rather, the only reason plaintiff appears to be suing Gina is because she is the wife of Michael Caruso.

Next, plaintiff's attempt to repackage barred lost profits damages by relabeling it "diminution of value" does not pass muster. Whatever plaintiff calls these damages, they are still based on the potential value the company could have realized absent the defendants' alleged misconduct. As the court has previously held in this matter, fraud claims are limited to recovery of the actual pecuniary loss. One cannot recover for potential lost earnings on a fraud theory (*Connaughton v. Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142-3 [2017]; *see also Rondeau v. Houston*, 224 AD3d 616, 617 [1st Dep't 2024]).

Plaintiff has also failed to assert a palpable claim against Michael Caruso under the faithless servant doctrine. Plaintiff's allegations indicate Caruso was at best Beam's employee, not plaintiff's (see, e.g., Compl ¶ 45; *see Two Rivs. Entities, LLC v. Sandoval*, 192 AD3d 528, 529 [1st Dep't 2021]). Even if the allegations correctly claim that Caruso was Sire's employee, it is too little too late. Discovery in this case is about to close, while plaintiff for years would have known Caruso had been its own employee. There is no excuse for bringing this claim so late in the proceedings. Allowing a claim for faithless servant to proceed would necessitate reopening discovery and therefore prejudices those parties who have already spent time and money on discovery. Rather, imposition of this claim appears to be merely an effort to manufacture a fiduciary relationship in order to assert punitive damages.

As to Julious Grant, plaintiff's faithless service claim is unopposed. Therefore, with respect to Grant, the amendment is granted.

Lastly, the prior arbitration prevents plaintiff from asserting its claims for excess storage and spoilation. The court agrees with defendants that collateral estoppel clearly bars these claims. The prior arbitration ruling determined:

> Claimant seeks damages of $97,900 in excess inventory storage costs and $900,309 in spoilage costs for a total of $998,209. The main premise of the claim is the allegation that Green ordered more champagne and cognac than was necessary to meet demand. While there is evidence in the record reflecting Green's involvement in the volume of product to be purchased, there is evidence that others, including Jackson, Savva and Robins Kaplan attorneys, were also involved. Further, Green did not make the ultimate decision of the volume to be purchased or how and where the product was to be stored. Claimant points to an email from Fabre dated June 4, 2018, wherein Fabre after discussing the timing of consumption states: 'it's better to make it be drunk earliest so we sell more.' (R-46) **There is nothing particularly nefarious about wanting to sell more product. That was in the interest of Sire Spirits, as well. Finally, it was not clear from the record whether, to date, the product has spoiled and, if so, in what amounts and what mitigation efforts can be taken to address possible future spoilage. Accordingly, Claimant's damage component for excess inventory storage and spoilage costs is denied**

(NYSCEF Doc. 98).

Plaintiff does not assert that the defendants here actually ordered the excess product themselves, but rather assert the defendants are liable for such damages because of their overall role in the embezzlement scheme. This same issue was already adjudicated in the prior arbitration. Plaintiff is therefore collaterally estopped from asserting its proposed amendment for excess inventory storage and spoilage costs (*See Simmons v. Trans Express Inc.*, 37 NY3d 107, 112 [2021]).

To the extent that plaintiff purports new claims of new spoilage different from that which plaintiff asserted in the arbitration, the allegations are unclear. Plaintiff therefore has leave to replead as to new spoilage only.

Pursuant to the court's interim order (NYSCEF Doc. 451), the court has considered the remainder of plaintiff's arguments and finds them unavailing.

Accordingly, it is

ORDERED that plaintiff's motion for leave to file its amended complaint is denied in part and granted in part as outlined above; and it is further

ORDERED that defendant Grant shall answer the second amended complaint within twenty days of this decision and order.

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10/16/2024
DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:		**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**