

**Labatt USA Operating Co., LLC v Friends Beverage
Group, LLC**

2025 NY Slip Op 35204(U)

December 30, 2025

Supreme Court, New York County

Docket Number: Index No. 651590/2022

Judge: Nancy M. Bannon

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART 61M

Justice

-----X

LABATT USA OPERATING CO., LLC,

Plaintiff,

- v -

FRIENDS BEVERAGE GROUP, LLC, FUN WINE
(USA) LLC

Defendants.

-----X

INDEX NO. 651590/2022

MOTION DATE 04/21/2025

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 118, 123, 124, 203, 209, 213, 216, 218

were read on this motion to/for JUDGMENT - SUMMARY.

I. INTRODUCTION

In this breach of contract action, the plaintiff moves pursuant CPLR 3212 for summary judgment on all causes of action of the amended complaint, dismissal of the defendants' counterclaims, damages of \$1,106,281.00 plus attorney's fees. The defendants opposed the motion and cross-moved for partial summary judgment on the issue of liability for storage expenses. By interim order dated March 17, 2025, the court struck the defendants' opposition and cross-motion for having twice used artificial intelligence in drafting its filings, which contained hallucinated case citations. As such, the motion is unopposed.

II. BACKGROUND

On April 1, 2019, the parties entered into a Distribution Agreement, whereby the plaintiff, a beverage distributor, would purchase low-alcohol flavored wine products (the "Fun Wine Product") from the defendants, Fun Wine (USA) and its subsidiary, Friends Beverage Group, LLC, and sell it to downstream distributors. This comprehensive contract included provisions for minimum product orders and profit sharing, The defendant to receive 50% of all net profits and reimburse plaintiff for 50% of any "negative net profit." Paragraph 7.4 provides that the plaintiff "shall have no right to return conforming products accepted by [it]." Paragraph 15.3 precludes

any party to the contract from seeking to hold another party “liable for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, lost profits or revenues or diminution in value, arising out of or relating to any breach of this agreement.” Paragraph 15.2 entitles the parties to recover attorney’s fees incurred in enforcing any term of condition of the agreement. After the parties agreed to wind down and terminate their relationship and the plaintiff placed its last order of Fun Wine Product in June of 2020, this agreement was modified.

On July 24, 2020, the parties entered into the First Amendment to the Distribution Agreement by which the parties agreed to terminate their relationship by December 31, 2020. Under paragraph 9, the defendants were obligated to take possession and reimburse the plaintiffs for all unsold Fun Wine Product and point-of-sale materials remaining in the plaintiff’s possession or designate a location for the plaintiff to ship the unsold Fun Wine Product or arrange for a mutually agreed upon time for the defendants to retrieve the Product, at the expense of the defendants, within 45 days after the termination date. Paragraph 10 of the First Amendment provides that both parties agreed that, as of July 2020, neither party was in material breach of their obligations under the Distribution Agreement.

The parties’ relationship terminated as planned on December 31, 2020, leaving the plaintiff with more than 30,000 cases of unsold Fun Wine Product, for which it had paid. The defendants also continued to ship product to the plaintiff after being informed that no further deliveries were needed. However, after several demands by the plaintiff, the defendants refused to take possession of the product or reimburse the plaintiff for that and for point-of-sale marketing material the plaintiff had purchased in an attempt to sell the product and refused to provide a location for the plaintiff to send the product within 45 days after December 31, 2020.

As a result, the plaintiff was forced to store the Fun Wine Product for two years, from February 15, 2021, until February 1, 2023, incurring substantial storage costs \$.75 per case per month, totaling \$529,342.06. The defendants eventually took possession of the unsold Fun Wine Product in February of 2023, and thereupon transferred it to a third party, ICON, in exchange for advertising credits. By that time, the defendants had replaced the product sold to the plaintiff with a new competing product. On March 6, 2023, the plaintiff sent the defendants a final statement of account, including all storage costs and product costs, a total of \$1,106,281.00. No payment was made.

The plaintiff commenced this action on April 5, 2022, alleging two causes of action - for breach of contract and breach of the implied covenant of good faith and fair dealing. The plaintiff was permitted to add a third cause of action, for unjust enrichment in regard to the storage fees paid and costs incurred for marketing materials by an amended complaint filed on March 18, 2024 (MOT SEQ 001). The defendants asserted two counterclaims, for breach of contract and breach of the implied covenant of good faith and fair dealing, seeking \$10,000,000.00 in damages. This motion ensued.

III. DISCUSSION

On a motion for summary judgment, the moving party must make a *prima facie* showing of its entitlement to judgment as a matter of law by submitting evidentiary proof in admissible form sufficient to establish the absence of any material, triable issues of fact. See CPLR 3212(b); Jacobsen v New York City Health & Hosps. Corp., 22 NY3d 824 (2014); Alvarez v Prospect Hosp., 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980). In opposition, the nonmoving party must demonstrate by admissible evidence the existence of a triable issue of fact. See Alvarez v Prospect Hospital, *supra*; Zuckerman v City of New York, *supra*. The plaintiff met its burden to the extent indicated herein and the defendants, whose opposition was stricken, wholly failed to meet their burden.

A. First Cause of Action: Breach of the First Amendment

The plaintiff's motion is granted as to its first cause action since it established a *prima facie* cause of action for breach of contract (1) the existence of a contract, (2) the party's performance under the contract; (3) the opposing party's breach of the contract, and (4) resulting damages. See Second Source Funding, LLC v Yellowstone Capital, LLC, 144 AD3d 445 (1st Dept. 2016); Harris v Seward Park Housing Corp., 79 AD3d 425 (1st Dept. 2010). As there is no dispute as to the existence of a contract, the plaintiff's performance and resultant damages, the element at issue here is the defendants' breach.

The plaintiff submits the deposition testimony of eight witness, including David Simoni, the plaintiff's general counsel, Richard Andrews, plaintiff's general manager, Joshua Krebs and Jennifer McCauley, plaintiff's brand managers, and Douglas Smith, plaintiff's vice-president of wholesale development, as well as documentary evidence. In an affirmation, David Simoni explains that at the time the First Amendment was entered, the Fun Wine Products were not selling well, perhaps due in part to the Covid-19 pandemic, and that the new agreement, the

First Amendment, was intended to address some of the plaintiff's risk in continuing to do business with the defendants. According to Simoni and the plaintiff's other witnesses, the plaintiff continued its efforts to market and distribute Fun Wine Product from execution of the First Amendment through December 31, 2020. The testimony also established that the plaintiff requested the defendants to take back the unsold Fun Wine Product and point of sale materials, as required by paragraph 9 of the First Amendment, on January 4, 11, 13, 26, and May 18, 2021. However, the defendants failed to take possession or provide the plaintiff a location to send these materials by February 15, 2021, the contractual deadline. Indeed, the plaintiff also submits deposition transcripts of defendants' representatives, Joseph Peleg and Joseph Bernstein, who both testified that they never took possession of the unsold Fun Wine Product and never reimbursed the plaintiff. Thus, the plaintiff's submissions demonstrate, *prima facie*, the defendants' breach of the First Amendment.

As for damages, Simoni avers that the plaintiff expended \$576,938.99 to purchase Fun Wine Product and point-of-sale materials, which remained unsold after December 31, 2020. This amount is supported by invoices dated from February 2021 to February 2023, which show that \$26,840.13 of this amount was for point-of-sale materials, including sample cups and bottle displays, while \$550,098.68 was the price the plaintiff paid for the ultimately unsold Fun Wine Product. Thus, the plaintiff established breach of contract damages of \$576,938.99.¹

B. Second Cause of Action: Breach of the Implied Covenant of Good Faith and Fair Dealing

The plaintiff's motion is denied as to its second cause of action, as it is duplicative of its breach of contract claim and indeed, seeks the same amount of damages. "[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).

¹ The plaintiff cannot seek additional breach of contract damages to recover the storage fees it incurred in warehousing Fun Wine Product and point-of-sale material for two years as the parties' agreement does not expressly support such relief. However, as set forth below, the plaintiff may recover the fees under an unjust enrichment theory.

C. Third Cause of Action: Unjust Enrichment

Unjust enrichment is an equitable remedy available to a plaintiff where there is no adequate legal remedy. See Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382 (1987); Empire Outlet Builders LLC v Constr. Res. Corp. of New York, 170 AD3d 582, 583 (1st Dept. 2019). The plaintiff must show that: “(1) the [defendant] was enriched, (2) at [plaintiff’s] expense, and (3) that it is against equity and good conscience to permit the [defendant] to retain what is sought to be recovered”. Georgia Malone & Co., Inc. v. Rieder, 19 NY3d 511, 516 (2012); see Schroeder v Pinterest Inc., 133 AD3d 12 (1st Dept. 2015). By granting the plaintiff’s motion to amend the complaint to add an unjust enrichment claim seeking reimbursement for the storage fees, the court found that claim was not devoid of merit as pleaded. On this motion, the plaintiff supports that cause of action with proof in admissible form. The plaintiff’s submissions establish that the defendants were “enriched” not only by retaining both the price the plaintiff’s paid to the defendants for the unsold Fun Wine Product and the substantial credit it received from ICON for the same product, but for transferring the costs of storage in the interim upon the plaintiff. Quite clearly, this was done at the plaintiff’s expense. Additionally, under the circumstances presented, allowing the defendants to retain this enrichment would be against “equity and good conscience” Georgia Malone & Co., Inc. v. Rieder, supra at 516.

The plaintiff’s invoices dated from February 2021 to February 2023 show that plaintiff incurred \$529,342.06 in storage fees. Peleg’s deposition testimony includes an admission that the defendants refused to take back the Fun Wine Product because they had made the decision to and did replace it with a new competitive beverage containing a different type of sweetener which was stored by them in their warehouse. Simoni testified that he also became aware that around that time the defendants were seeking to reduce their own storage costs. Both Peleg and Bernstein testified at their deposition that the defendants ultimately transferred the Fun Wine Product to ICON in exchange for advertising credits of approximately \$650,000.00-\$700,000.00, effectively being paid twice for the same product.

To be sure, “unjust enrichment is not a catchall cause of action to be used 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 New York, Inc., 18 NY3d 777, 790 (2012); see Realty Group, LLC v Lamar Advertising Co., 193 AD3d at 589 (1st Dept. 2021); Maya NY, LLC v Hagler, 109 AD3d 583, 585 (1st Dept. 2013). This case presents one of those unusual

situations. The defendants' failure to reimburse the plaintiff for storage fees was not an express breach of the parties' agreement as storage fees fell outside the scope of the agreement. See Ashwood Capital v OTG Mgmt, Inc., 99 AD3d 1 (1st Dept. 2012). Nor did it constitute a recognizable tort. However, the circumstances created an equitable obligation of the plaintiff to reimburse the plaintiff. Thus, even if Paragraph 15.3 of the Distribution Agreement had survived, it would not preclude the plaintiff's recovery of the storage fees under the equitable theory of unjust enrichment. Having no opposition, the defendants proffer no argument to the contrary.

D. The Defendants' Counterclaims

The plaintiff establishes a *prima facie* case for dismissal of the defendants' breach of contract counterclaim. The defendants allege that the plaintiff failed to generate sales for the Fine Wine Product from April 1, 2019, until December 31, 2020, a period which largely pre-dates the First Amendment executed in July 2020. However, this argument is precluded by Paragraph 10 of the First Amendment which provides that, as of July 2020, neither party was in material breach of their obligations under the Distribution Agreement.

Nor do the agreements include any provision in either the Distribution Agreement or First Amendment that require the plaintiff to meet particular goals in selling or distributing Fun Wine Product, but only that it be "committed to supporting the promotion and sale of the products." And this was shown. The plaintiff's submissions demonstrate that it made significant efforts to distribute and market Fun Wine Product throughout the United States for the duration of the agreement. For example, in his affirmation, Simoni explains that during the period from July to December of 2020, the plaintiff exposed the Fun Wine Product as a brand in 24 states, secured a deal with Wal-Mart to sell Fun Wine Product through a sales incentive program, and invested in television and radio advertising in several states. The plaintiffs' general manager, Richard Andrews, and two of the plaintiff's brand managers, Joshua Krebs and Jennifer McCauley, testified that the Fun Wine Product was given a proportionate amount of resources devoted to marketing and distribution. Vice-President Douglas Smith testified that these efforts continued through December 31, 2020. The plaintiff's proof also established that it set up a sales support team to advertise in various markets, hired a legal team to ensure compliance with local product regulations and secured licensing agreements with other distributors.

The defendant's counterclaim for breach of the implied covenant of good faith and fair dealing fails for the same reasons the plaintiff's cause of action based on that theory fails.

E. Attorneys' Fees

It is well settled that attorneys' fees are recoverable where, as here, there is a specific contractual provision for that relief. See Fleming v Barnwell Nursing Home and Health Facilities, Inc., 15 NY3d 375 (2010). Paragraph 15.2 of the Distribution Agreement provides for such relief. However, the plaintiff has not established the amount of fees incurred on the papers submitted. The plaintiff may submit supplemental papers within 30 days to establish the amount of fees incurred, or the application will be deemed waived.

IV. CONCLUSION

Accordingly, upon the foregoing papers, it is


ORDERED that the plaintiff's motion is granted to the extent that it is granted summary judgment on the first and third causes of action of the complaint, dismissal of the defendants' counterclaims and attorneys, and it is further

ORDERED that the Clerk shall enter judgment in favor of the plaintiff, Labatt USA Operating Co., LLC, and against the defendants, Friends Beverage Group. LLC, and Fun Wine (USA) LLC, jointly and severally, in the principal sum of \$1,106,281.05, plus statutory interest from March 6, 2023, and it is further

ORDERED that plaintiff may file supplemental papers, within thirty (30) days of the date of this order, to establish the amount of attorneys' fees incurred, and shall notify the Part 61 Clerk at SFC-Part61-Clerk@nycourts.gov of any such filing; 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

12/30/2025
DATE

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART

OTHER