UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

L&F BRANDS, INC.,

Plaintiff,

v.

CROWN VALLEY WINERY, INC.,

Defendant.

Civil Action No.: 1:19-cv-00134-SNLJ

DEFENDANT CROWN VALLEY WINERY, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS COUNTS V, VI, AND VII OF PLAINTIFF'S AMENDED COMPLAINT [D.E.23] AND ITS MOTION FOR ATTORNEYS' FEES AND COSTS

Defendant Crown Valley Winery, Inc. ("Crown Valley"), pursuant to Federal Rule of Civil Procedure 12(b)(6) and Local Rule 7-4.01, hereby files its Memorandum of Law in Support of its Motion to Dismiss Counts V, VI, and VII of the Amended Complaint filed by Plaintiff L&F Brands, Inc. ("L&F") on October 7, 2019, (the "Amended Complaint") and its Motion for Attorneys' Fees and Costs, and states as follows:

BACKGROUND

On March 28, 2018 L&F entered into a 3-year Manufacturing Agreement (the "Agreement") with Crown Valley, a winery, brewery, and distillery, pursuant to which Crown Valley would produce, blend, and package certain products for L&F (the "Products") pursuant to the terms of a written agreement (DE:23-1).[1] This lawsuit appears to be based on L&F's allegations that about five (5) months after entering into the Agreement, L&F discovered what it vaguely asserts to be supposedly wrong ingredients L&F now claims to have been used in

connection with certain suspected product failures despite the very Agreement L&F seeks to rely on stating that L&F, not Crown Valley, was to provide the ingredients. Based on what the Agreement itself provides to be L&F's own failings, L&F filed a lawsuit seeking to avoid L&F's own responsibility and instead asserting a litany of baseless claims on August 12, 2019. After Crown Valley moved to dismiss all of the counts of the Complaint based on its deficiencies, L&F filed the operative Amended Complaint on October 7, 2019 eliminating some counts but keeping at least three that still fail to state a claim: fraud (Count V), unjust enrichment (Count VI), money had and received (Count VII); each of which must be dismissed.[2]

ARGUMENT

I. Legal Standard.

To withstand a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *accord Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Cox v. Mortg. Elec. Registration Sys. Inc*., 685 F.3d 663, 668 (8th Cir. 2012). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678; *accord Cox*, 685 F.3d at 668. "A pleading that offers 'labels and conclusions' or a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678; *accord Twombly*, 550 U.S. at 555; *Cox*, 685 F.3d at 668. Factual allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Although the Court accepts the Complaint's factual allegations as true, "[t]hreadbare recitals" of claim elements, supported only by

[1] "DE" designates the docket entry and is followed by the corresponding docket entry or exhibit and page numbers. Where appropriate, citations to the allegations of the Amended Complaint or to the Agreement follow.
[2] An Answer and Affirmative Defenses to Counts I, II, III, and IV of the Amended Complaint are being filed contemporaneously with this Motion to Dismiss.

conclusory statements, are insufficient, and need not be accepted as true. *Iqbal*, 556 U.S. at 678.

II. Counts V, VI, and VII of the Amended Complaint Fail to State Any Claim upon which Relief Can Be Granted.

A. Plaintiff Continues to Fail to Plead a Fraud Claim as Any Such Claim is Barred by the Economic Loss Rule.[3]

While L&F's has added allegations to the Amended Complaint as it tries to allege a fraud claim, the claim is nonetheless still barred by the economic loss rule. "The economic loss doctrine prohibits a commercial buyer of goods 'from seeking to recover in tort for economic losses that are contractual in nature.' " *Nestle Purina Petcare Co. v. Blue Buffalo Co. Ltd.*, 181 F. Supp. 3d 618, 639 (E.D. Mo. 2016) (citing *Dannix Painting, LLC v. Sherwin–Williams Co.*, 732 F.3d 902, 905–06 (8th Cir.2013) (internal quotations omitted). "'[D]istinguished from harm to person or damage to property,' economic, or commercial, 'loss includes cost of repair and replacement of defective property which is the subject of the transaction, as well as commercial loss for inadequate value and consequent loss of profits or use.' " *Id.* at 905 (internal quotations omitted) (quoting *Groppel Co. v. U.S. Gypsum Co.*, 616 S.W.2d 49, 55 n. 5 (Mo.Ct.App.1981)). Thus, because Plaintiff is alleging economic or commercial losses in tort claims that Missouri courts bar unless the claims are based on misrepresentations that are *independent* of the contract, Plaintiff's claims must be dismissed. *AKA Distrib. v. Whirlpool Corp.*, 137 F.3d 1083, 1086 (8th Cir.1998) (emphasis added). No allegations or facts exist to save Plaintiff's spurious claims. Further, adding highly charged but unspecific words like "willful, wanton, outrageous, and malicious," to contract claims without more, does not change the nature of the claim or the analysis. *See Iqbal*, 556 U.S. at 678.

[3] While L&F titles this count as "fraud" the few allegations made reveal that this is a claim grounded in fraudulent representation.

In *Nestle* the plaintiff sued the defendant alleging that fraudulent misrepresentations were made regarding the quality of chicken and turkey products that were supposed to contain no byproducts. *Nestle Purina Petcare Co.*, 181 F. Supp. 3d at 639. The contract between the parties also specified that the meats purchased by the plaintiff would contain no byproducts. *Id*. As in the case at bar, when the plaintiff in *Nestle* tried to allege both fraudulent misrepresentation and breach of contract claims based on the same grounds, that the meats purchased actually contained byproducts and were the of the quality promised by the defendants representations or in the contract, the fraud claim failed. *Id*. The District Court, on a motion to dismiss, dismissed the fraud claim based on the economic loss rule because it was "substantially redundant" of the contract claims. *Id*. This Court should do the same here.

In our case, the Agreement attached as Exhibit "A" to the Amended Complaint, and what Plaintiff describes as the Coffee Cream Agreement, attached as Exhibit "B" to the Amended Complaint (collectively the "Agreements") govern the relationship between the Parties. Those Agreements cover all of the aspects of this failed fraud claim. Specifically, the Agreement addresses how the Product should be prepared, including addressing a sanitary environment. The Coffee Cream Agreement sets the terms for the purchase of the coffee cream ingredients that the Plaintiff claims were never actually purchased or used. (DE:23-1:§§5, 9, 11).

If the Plaintiff believes there were breaches of the respective Agreements its recourse is to pursue a breach of contract claim(s) not a tort action for fraud. Just as the court in *Nestle* held, there cannot be a claim for fraud where the claims are substantially redundant of the breach of contract claim. *Id*. This is especially true in this case where the Agreement was entered into some five months prior to the actions complained of in the Amended Complaint. The purported items Plaintiff seeks to label as misrepresentations, of which there were none, are not only redundant to what was already agreed upon in the Agreements but they are specifically for the basis of, and

are set forth in, the breach of contract actions (Counts I and II of the Amended Complaint) that are being answered contemporaneously with the filing of this Motion to Dismiss.

Finally, the Plaintiffs cannot support or even allege a claim for punitive damages (or for that matter, loss of sales or profit), given the express terms of the Agreement which specifically limits the damages available for any claim. (DE:23-1:3, §10) ("In no event shall [Crown Valley] be liable for any special, indirect, incidental, or consequential damages, including, but not limited to, loss of profits, or punitive damages"). Accordingly Count V should be dismissed and certainly any allegation as to punitive damages or any damages beyond those provided in the Agreement should be stricken.

E. L&F's Claims for Unjust Enrichment (Count VI) and Money Had and Received (Count VII) Fail to State a Claim.

To state a claim for unjust enrichment, L&F must allege: (1) defendant was enriched by the receipt of a benefit; (2) the enrichment was at the expense of the plaintiff; and (3) it would be unjust to allow the defendant to retain the benefit." *Dubinsky v. Mermart LLC*, No. 4:08-CV-1806, 2009 WL 1011503, at *5 (E.D. Mo. Apr. 15, 2009) ("[m]ere receipt of benefits is not enough"), *aff'd*, 595 F.3d 812 (8th Cir. 2010).[4] Similarly, a properly pled claim for money had and received requires L&F to allege: "(1) the defendant received or obtained possession of the plaintiff's money; (2) the defendant thereby appreciated a benefit; and (3) the defendant's acceptance and retention of the money was unjust." *Gerke v. City of Kansas City*, 493 S.W.3d 433, 438 (Mo. Ct. App. 2016). Both claims are founded on equitable principles.

[4] However, "[e]ven if a benefit is 'conferred' and 'appreciated,' if no injustice results from the defendant's retention of the benefit, then no cause of action for unjust enrichment will lie." *Howard v. Turnbull*, 316 S.W.3d 431, 436 (Mo. Ct. App. 2010). In fact, unjust retention of benefits only occurs when the benefits were "conferred (a) in misreliance on a right or duty; or (b) through dutiful intervention in another's affairs; or (c) under constraint." *Id.* (footnote omitted) (in this context, "misreliance" means mistake of fact). Consequently, "a *voluntary* payment, made under a mistake of law but not fact, cannot be recovered in an unjust enrichment claim." *Id.* at 437, 439 (emphasis in original) ("where money has been voluntarily paid with full knowledge of the facts it cannot be recovered on the ground that the payment was made . . . under a mistake of law").

"[I]mplied contract claims [such as those pled here] arise only where there is no express contract." *Grisham v. Mission Bank*, 531 S.W.3d 522, 538–39 (Mo. Ct. App. 2017), *reh'g and/or transfer denied* (Aug. 1), *transfer denied* (Nov. 21, 2017). A plaintiff "cannot recover under an equitable theory when she has entered into an express contract for the very subject matter for which she seeks to recover." *Id.*; *accord Dubinsky*, 2009 WL 1011503, at *5 ("the existence of a valid and enforceable contract governing the subject matter at issue ordinarily precludes recovery for events arising out of the same"). Instead, "the plaintiff's rights are limited to the express terms of the contract." *Grisham*, 531 S.W.3d at 539.

Here the very Agreement attached to the Amended Complaint, and referenced at length in that Amended Complaint, negates these equitable claims. The Agreement sets forth the terms of the entire relationship between the L&F and Crown Valley. Indeed there would be no obligations or financial relationship but for the Agreement.[5] Accordingly, these equitable claims raised in Counts VI and VII are unavailable to Plaintiff and must be dismissed.

As for the relief demanded, L&F fails to adequately plead damages. An unjust enrichment recovery is not the actual amount of the enrichment, but the amount of enrichment which would be unjust for the defendant to retain. *Holliday Inves., Inc. v. Hawthorn Bank*, 476 S.W.3d 291, 296 (Mo. Ct. App. 2015). Neither is pled here. As for L&F's claim for money had and received, L&F does not seek any relief, but, even if it had, any relief is ultimately foreclosed because the remaining allegations for that claim mirror those for unjust enrichment. A party cannot be compensated for the same supposed injury twice. *E.g.*, *Steward v. Sioux City & New Orleans Barge Lines, Inc.*, 431 S.W.2d 205, 210 (Mo. 1968). For these reasons, both counts fail and are subject the limitation on remedies authorized under the express contract; and no more.

[5] There is no question that an express contract exists between the parties as it was alleged and also admitted in the Answer to the Amended Complaint that was filed in concert with this Motion to Dismiss.

III. Crown Valley is Entitled to Attorney's Fees and Costs.

Crown Valley seeks entitlement to attorneys' fees and costs pursuant to Section 26 of the Agreement (DE:23-1), Section 514.060, Mo. Ann. Stat. (2018), and Mo. Sup. Ct. R. 77.01, and any other applicable statutory provision. *See Lee v. Investors Title Co*., 241 S.W.3d 366, 367 (Mo. Ct. App. 2007).

CONCLUSION

Based on the foregoing, Counts V, VI, and VII of L&F's Amended Complaint fail to state a claim and require dismissal.

WHEREFORE, Defendant Crown Valley respectfully requests this Court to dismiss count V, VI, and VII of the Amended Complaint, award Crown Valley attorneys' fees and costs, and award any other relief in favor of Crown Valley and against L&F as the Court deems just and proper.

Dated: October 21, 2019.

Respectfully submitted,

CAPES, SOKOL, GOODMAN & SARACHAN, P.C.

By: */s/ Amy L. Fehr*

Amy L. Fehr, MBE #60033
7701 Forsyth Boulevard, Twelfth Floor
St. Louis, Missouri 63105
Telephone: (314) 505-5464
Facsimile: (314) 505-5465
Fehr@capessokol.com

-and-

Beth-Ann E. Krimsky
Fla. Bar No. 968412
Admitted Pro Hac Vice
Email: beth-ann.krimsky@gmlaw.com
Email: clemencia.corzo@gmlaw.com
Aaron Williams
Fla. Bar No. 99224
Admitted Pro Hac Vice
Email: aaron.williams@gmlaw.com
Email: agatha.mctier@gmlaw.com

GREENSPOON MARDER LLP
200 East Broward Blvd., Suite 1800
Fort Lauderdale, Florida 33301
Telephone: (954) 527-2427
Facsimile: (954) 333-4027
Attorneys for Defendant Crown Valley Winery, Inc.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 21, 2019.

By: */s/ Amy L. Fehr*