

Chancery Court Denies Motion to Dismiss Breach of Contract Claim Based on Language in Limited Partnership Agreement

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In *Ms. Mary Giddings Wenske, et al. v. Blue Bell Creameries, Inc., et al.*, the Delaware Chancery Court denied Defendants' motion to dismiss a breach of contract claim, finding that Plaintiffs had pled a set of facts that allow a reasonable inference that Defendants breached the standards set forth in its partnership agreement.

Plaintiffs, the limited partners of Blue Bell Creameries, L.P. ("Blue Bell"), brought a derivative action against Blue Bell, a Delaware limited partnership in the business of manufacturing ice cream products. Blue Bell is managed by its general partner, Blue Bell Creameries, Inc. ("BB GP"), which is a wholly-owned subsidiary of Blue Bell Creameries USA, Inc. ("BB USA"). In 2015, the Food & Drug Administration ("FDA") and several state health agencies found *Listeria monocytogenes* bacteria in Blue Bell ice cream products. A few months later, Blue Bell recalled all of its products and shut down all of its production operations. Soon thereafter, Blue Bell fired or suspended more than half of its workforce and ceased paying distributions to its limited partners. Government authorities fined Blue Bell for its poor safety policies and practices related to the *Listeria* outbreak.

Plaintiffs brought action on behalf of Blue Bell against BB GP, BB USA and certain directors and officers of BB GP and BB USA (the "Individual Defendants"), setting

forth four counts: (1) Count I, against BB GP, for breach of Blue Bell's limited partnership agreement (the "LPA"); (2) Count II, against BB USA, "as controller, principal, and joint venturer" of BB GP, and the Individual Defendants as "controllers" of BB GP, for causing BB GP to breach the LPA; (3) Count III, against BB USA and the Individual Defendants, for aiding and abetting BB GP's breach of its "contractual fiduciary duties" under the LPA; and (4) Count IV, against BB USA and the Individual Defendants, "for breach of common law fiduciary duties" owed to Blue Bell. Defendants moved to dismiss the complaint. The court denied Defendants' motion as to Count I and granted Defendants' motion as to Counts II-IV. For Count I, the court concluded that Plaintiffs had pled a set of facts that allow a reasonable inference that BB GP breached the LPA by failing to manage Blue Bell "in accordance with sound business practices in the industry," as required by the LPA. However, for Counts II-IV, the court found that Plaintiffs did not advance any viable legal theory under which BB USA or the Individual Defendants may be liable for BB GP's alleged breach of the LPA, nor had they pled a viable breach of fiduciary duty claim against BB UA or the Individual Defendants, and thus those counts were dismissed.

Under Delaware law, a breach of contract claim comprises three elements: (1) the existence of a contract; (2) a breach of an obligation imposed by that contract, and (3) resulting damages. The court found that Count I stated a viable derivative claim for breach of contract against BB GP for several reasons. First, the LPA is a binding contract that imposes a "best efforts" oversight obligation on BB GP, stating that BB GP shall use its "best efforts" to conduct Blue Bell's business in a good and businesslike manner "and in accordance with sound business practices in the industry." The court was satisfied that the plain meaning of the LPA's language is that BB GP must endeavor diligently to conduct Blue Bell's business in accordance with practices that are based on thorough knowledge of and experience with Blue Bell's industry—the dairy industry—or agree with accepted views within that industry. The court found that the LPA's language supported an inference that "sound business practices in the industry" include food safety practices prescribed by federal laws, regulations, and guidelines applicable to dairy product manufacturers such as Blue Bell, as well as food safety practices recommended by trade organizations within the dairy industry.

Second, the court found that Plaintiffs' complaint adequately pled that BB GP breached the LPA provision in question. Based on the complaint's factual allegations and the FDA inspection reports incorporated by reference, the court found it reasonably conceivable that BB GP failed to use its best efforts to operate Blue Bell's plants in accordance with sound business practices in the dairy industry. Third, the court found that Plaintiffs had well pled resulting damages to Blue Bell, including that Blue Bell had lost a substantial portion of its value and was forced to pay personal injury settlements, fines, and penalties as a result of the breach. Finally, the court clarified that Count I was properly characterized as a breach of contract claim. Because language in the LPA unconditionally eliminated all common law standards of care and fiduciary duties owed by BB GP, the court found that BB GP's performance obligation under LPA Section 6.01(e) is not a "contractual fiduciary duty," but rather a purely contractual duty.

The court found that Count II failed to state a claim for several reasons. First, the complaint's well-pled allegations did not suggest that piercing BB GP's corporate

veil was warranted, as the complaint did not allege that BB GP existed solely as a vehicle for fraud. Second, Plaintiffs' attempt to hold BB USA liable for BB GP's alleged breach of the LPA based on an agency theory failed because Delaware law does not recognize a theory under which a principal can be vicariously liable for its agent's non-tortious breach of contract. While Plaintiffs alleged that BB USA acted as principal in an agency relationship with BB GP to operate and manage Blue Bell, they did not contend that BB GP's alleged breach of the LPA was tortious vis-à-vis Blue Bell. Finally, the court found Plaintiff's claim that BB USA was liable as BB GP's joint venturer was preempted by the LPA, which governs all aspects of BB USA and BB GP's relationship with respect to Blue Bell. The LPA's clear terms indicate that BB GP and BB USA did not intend to act together in a joint venture to operate and manage Blue Bell, and thus Plaintiffs' joint venture theory of BB USA's liability failed.

The court found that Count III, which alleged that BB USA and the Individual Defendants aided and abetted BB GP's alleged breach of the LPA, failed because Delaware law does not recognize a claim for aiding and abetting a breach of contract.

Finally, the court found that Count IV, which alleged that BB USA and the Individual Defendants owed common law fiduciary duties to Blue Bell and breached those duties by failing to exercise due care and loyalty in connection with the operation of Blue Bell's facilities, also failed because the LPA eliminated all common law fiduciary duties owed by BB GP. As a result, the court was satisfied that neither BB USA nor the Individual Defendants owed any fiduciary duties directly to Blue Bell or its limited partners. Assuming, *arguendo*, that they did owe such duties, the court stated that those duties required only that BB USA and the Individual Defendants not engage in self-dealing with respect to Blue Bell, which was not alleged here.

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