

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BOTANICAL BEVERAGES, LLC)
and NDB DISTRIBUTION, LLC,)

Plaintiffs,)

v.)

A&R DISTRIBUTION, LLC,)

Defendant.)

C.A. No. N26C-05-282 SSA

Submitted: October 13, 2026

Decided: October 19, 2026

Upon Defendant's Motion to Dismiss for Failure to State a Claim: Denied

Upon Plaintiff's Motion for Leave to Amend: Granted

Upon Defendant's Motion to Dismiss for Lack of Jurisdiction and Venue: Deferred

MEMORANDUM OPINION

Plaintiffs have brought breach of contract and unjust enrichment claims against Defendant. The Complaint alleges this Court has jurisdiction over Defendant by virtue of consent within the alleged contract. Defendant moves to dismiss, arguing this Court does not have jurisdiction over it, that venue is improper, and that the Complaint fails to state a claim upon which relief can be granted. Principal to Defendant's argument is its email in response to receiving the Master Distributor Agreement which states Defendant is "in agreement except...." The Court must determine, on a Motion to Dismiss, whether the parties had a

contract at all. For the reasons that follow, the Court Denies Defendant's Motion to Dismiss for Failure to State a Claim, Grants Plaintiffs request to Amend, and Defers Judgment on the Motion to Dismiss for Lack of Jurisdiction and Venue.

Factual Background

As the legal standard for deciding these matters requires, these facts are drawn from well-pleaded allegations in the Complaint. Plaintiffs are Delaware entities engaged in the sale of "consumer packaged goods."¹ They allege an agreement with Defendant, effective December 18, 2024, which incorporates 4 exhibits. The three-page, unsigned Master Distributor agreement and its corresponding exhibits are attached to the Complaint. Relevant to Plaintiff's Complaint, the Master Distributor Agreement addresses exclusivity of product sales and sets forth minimum pricing.

Plaintiffs allege an email from Defendants' authorized representative sent on December 19, 2024,² constitutes acceptance. Because this communication is central to the resolution of this matter, the Court reproduces it here:

Thank you for addressing my concerns....I m [sic] in agreement except as i mentioned before background checks and providing financial statements...thanks and regards...ANDY ACHARYA

¹ Complaint, ¶ 1.

² The Complaint is unclear as to when the offer was sent to Defendant. The Complaint alleges acceptance as a result of the email dated December 19, 2024. Despite that, the Complaint alleges a contract as of December 18, 2024. Whether acceptance was December 18th or 19th does not appear of significant relevance at this time.

The Complaint alleges Plaintiff's provision of over \$70,000 in rebates to Defendant, pursuant to the Master Distributor Agreement.³ Exhibit 2 of the Master Distributor Agreement is a table for three products including rebates ranging from \$0.35 to \$2.19. Relevant to venue, exhibit 4 of the Master Distributor Agreement states:

This Agreement is subject to, and shall be construed in accordance with and governed by the laws of the State of Delaware. The state and federal courts of Delaware shall have exclusive jurisdiction over any action at law, suit in equity or judicial proceedings relating [sic] the enforcement of this Agreement or any disputes or claims arising out of or in connection with this Agreement, the interpretation, performance, breach, termination or invalidity thereof or of any provision contained herein.

The Complaint alleges Defendant sold competitor's products.⁴ It further alleges Defendant sold Plaintiff's products at prices below those set forth in Exhibit 1, the Minimum Advertised Pricing Policy.⁵ Plaintiffs allege both actions violate the Master Distributor Agreement. For support that the parties acted in accordance with the Master Distributor Agreement, Plaintiffs point to their payment of rebates, as outlined with that document.

Defendant moved to dismiss the Complaint.⁶ It argues Plaintiffs' claim for breach of contract fails because the Complaint does not include a signed copy of

³ Complaint, ¶ 27.

⁴ Complaint, ¶ 17.

⁵ *Id.* ¶ 19.

⁶ D.I. 8.

the Master Distributor Agreement and the email response of Mr. Acharya does not constitute acceptance. Defendant argues “[b]oth subjects Mr. Acharya excepted are express requirements of the very agreement Plaintiffs seek to enforce.” Defendant presses that Plaintiff’s Complaint makes no allegation it responded to Mr. Acharya’s email or waived the requirements which formed the basis of his objection. According to Defendant, there was no meeting of the minds. Building off the argument that there was no valid contract, Defendant asserts the forum selection clause within it is inapplicable. Defendant points out the Complaint does not allege jurisdiction or venue in Delaware on any other basis beyond the contract itself, which it claims is not valid.

Plaintiffs counter the two provisions referenced in Mr. Acharya’s email are not at issue here. They incorporate an additional fact within their response which is not found within the Complaint itself—that the parties did business for 18 months. The Court will not consider that fact as it is outside the Complaint. However, the Court considers the payment of \$70,000 in rebates by Plaintiff under the Master Distributor Agreement as suggestive of some undetermined length of a relationship between the parties. As for venue, Plaintiffs point to Mr. Acharya’s email and argue his response did not take issue with jurisdiction and venue in Delaware.

Legal Standards

Motion to Dismiss Under Rule 12(b)(6)

Pursuant to Rule 12(b)(6), the Court reviews the Complaint for “any reasonably conceivable set of circumstances, susceptible of proof, upon which a plaintiff may recover.”⁷ It “accept[s] all well-pleaded factual allegations in the Complaint as true [and] ... draw[s] all reasonable inferences in the plaintiff’s favor....”⁸ “A complaint is sufficient so long as [a] short and plain statement gives Defendant fair notice of the claim.”⁹ Factual disputes are out of bounds.¹⁰ “The complaint generally defines the universe of facts that the trial court may consider in ruling on a Rule 12(b)(6) motion to dismiss.”¹¹

Breach of Contract

A claim for breach of contract exists “when [it] alleg[es] specific contractual obligations of the defendant, describes how defendant’s conduct constituted a

⁷ *Boissonneault v. Del. Podiatric Med., P.A.*, 2024 WL 5055538, at *2 (Del. Super.) citing *Vinton v. Grayson*, 189 A.3d 695, 700 (Del. Super. 2018).

⁸ *CLP Toxicology, Inc. v. Casla Bio Holdings LLC*, 2020 WL 3564622, at *9 (Del. Ch.) citing *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 27 A.3d 531, 536 (Del. 2011).

⁹ *Boissonneault*, 2024 WL 5055538, at *3 citing *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 611 (Del. 2003). That statement “is to be liberally construed.” *VLIW Tech., LLC*, 840 A.2d at 611 (citations omitted).

¹⁰ *Id.* (citations omitted). The rationale is that “[b]ecause a motion to dismiss ... must be decided without the benefit of a factual record,” at this stage “the court is required to assume as true the well-pleaded allegations in the complaint.” *Malpiede v. Townson*, 780 A.2d 1075, 1082 (Del. 2001) (citations omitted).

¹¹ *Murray v. Mason*, 244 A.3d 187, 192 (Del. Super. 2020) (citation omitted) quoting *In re Gen. Motors (Hughes) S’holder Litig.*, 897 A.2d 162, 169 (Del. 2006).

breach of those obligations, and articulates damages resulting from the breach.”¹²

Thus, “the plaintiff must show: (1) the existence of a contract between the parties; (2) [that] the defendant breached an obligation owed to plaintiff under the contract; and (3) [that] the breach resulted in damages.”¹³ “[A] valid contract exists when (1) the parties intended that the contract would bind them, (2) the terms of the contract are sufficiently definite, and (3) the parties exchange legal consideration.”¹⁴

Defendant brings *Eagle Force Holdings* to the Court’s attention in support of their argument for dismissal.¹⁵ *Eagle Force* begins with the basic reminder that contracts require “manifestation of mutual assent to the exchange and a consideration.”¹⁶ It is the “overt manifestation of assent—not subjective intent”¹⁷ that this Court should examine in determining whether the parties formed a contract. To apply this objective test, this Court should “review[] the evidence that the parties communicated to each other up until the time that the contract was

¹² *Boissonneault v. Del. Podiatric Med., P.A.*, 2024 WL 5055538, at *3 (Del. Super.) citing *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612–13 (Del. 2003).

¹³ *Piper Jaffray, Inc. v. Marrone Bio Innovations, Inc.*, 2018 WL 6261493, at *4 (Del. Super.) citing *VLIW Tech., LLC*, 840 A.2d at 612. At the pleading stage, though, “[a] plaintiff is not required to plead evidence demonstrating the requisite elements.” *Boissonneault*, 2024 WL 5055538, at *3 citing *VLIW Tech., LLC*, 840 A.2d at 611.

¹⁴ *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010) citing *Carlson v. Hallinan*, 925 A.2d 506, 524 (Del. Ch. 2006).

¹⁵ Def.’s Mot. to Dismiss, at 3. See also *Eagle Force Holdings, LLC v. Campbell*, 187 A.3d 1209, 1229 (Del.).

¹⁶ *Eagle Force Holdings, LLC*, at 1212 quoting Restatement (Second) of Contracts § 17 (1981).

¹⁷ *Id.* at 1229 quoting *Black Horse Cap., LP v. Xstelos Holdings, Inc.*, 2014 WL 5025926, at *12 (Del. Ch.).

signed – i.e., their words and actions—including the putative contract itself.”¹⁸

Within its decision, the Delaware Supreme Court adopted the test from the Restatement (Second) of Contracts § 33(2) as it relates to determining whether the material terms of a contract are definite.¹⁹ Specifically, this Court should examine the terms to determine if they “provide a basis for determining the existence of a breach and for giving an appropriate remedy.”²⁰ But, the facts of *Eagle Force* suggest some signed agreements.

Plaintiffs cite *Shilling v. Shilling*²¹ for support. Shilling did not include a signed formal agreement but rather email communication between the parties. Defendant counters that case involved an unequivocal acceptance—one they claim is not found here. Despite that difference, the facts of *Shilling* bear some resemblance to this case and the law cited within is helpful guidance for this Court. In *Shilling*, the parties exchanged emails over the course of nine months related to the sale of certain property which were all considered by the Delaware Supreme Court in its determination as to whether a valid contract existed and what its material terms included. The parties referenced a Settlement Stipulation which went unsigned and was the subject to proposed changes.

¹⁸ *Id.* at 1229–30 citing *Black Horse Cap., LP v. Xstelos Holdings, Inc.*, 2014 WL 5025926, at *12 (Del. Ch.).

¹⁹ *Id.* at 1232.

²⁰ *Id.* citing *Carteret Bancorp, Inc v. Home Grp., Inc.*, 1988 WL 3010, at *9 (Del. Ch. Jan. 13, 1988). See also Restatement (Second) of Contracts § 33(2).

²¹ *Shilling v. Shilling*, 332 A.3d 453 (Del. 2024).

Analysis

Defendant is not wrong that the facts of *Shilling* are distinct insofar as the party accepting that contract unequivocally accepted via email communication. The parties in *Shilling* had a long history before the trial court.²² Here, we are at a Motion to Dismiss stage, and this Court has only the pleadings and the corresponding exhibits. In sum, the Court has an unsigned contract and the email from Mr. Acharya that he is “in agreement” but for two terms related to background and financial checks.

Exhibit 3 references the background and financial checks at issue. The items are required for “all new and existing customers who desire to have credit extended by [Plaintiff].” The Court determines that those are not material terms sufficient to warrant dismissal of a breach of contract claim under 12(b)(6). The Master Distributor Agreement provides a basis for determining the existence of a breach and an appropriate remedy sufficient to state a claim for breach of contract. Within Exhibit 1 of the Master Distributor Agreement, paragraphs 3 (“Monitoring”) and 4 (“Enforcement”) detail Plaintiff’s intent to monitor pricing and the way a breach of the agreement would be addressed. At this stage, the Court must draw all reasonable factual inferences in favor of Plaintiff. As such, the Court determines the material terms of this agreement did not include background-related

²² *S.S. v. E.S.*, 2024 WL 889590, at *1–3 (Del. Fam.).

requirements for customers who desired credit. Therefore, Motion to Dismiss for failure to state a claim is denied.

Venue and Personal Jurisdiction

“Where a party commits to the jurisdiction of a particular court or forum by contract, such as through a forum selection clause, a ‘minimum contacts’ analysis is not required as it should clearly anticipate being required to litigate in that forum.”²³ The email response from Mr. Acharya takes issue with two specific items—neither of which is venue or jurisdiction.

The Court is not determining whether the Master Distributor Agreement constitutes a valid contract. At this stage of the litigation, there is insufficient information to conclude Plaintiff cannot recover under any conceivable set of facts. If discovery suggests the Master Distributor Agreement does not constitute a meeting of the minds, then the forum selection clause within it may have no force. A decision on personal jurisdiction and venue cannot be made at this time. This matter is deferred, pursuant to Superior Court Civil Rule 12(d).

Unjust Enrichment

As discussed above, the assertion of jurisdiction and venue in this Complaint is predicated on the Master Distributor Agreement. Unjust enrichment requires

²³ *Eagle Force Holdings, LLC*, at 1228 citing *Nat’l Indus. Grp. (Holding) v. Carlyle Inv. Mgmt. L.L.C.*, 67 A.3d 373, 381 (Del. 2013).

“(1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, (4) the absence of justification, and (5) the absence of a remedy provided by law.”²⁴ *In Hiller & Arban*, this Court determined “quasi-contractual relief *in the alternative* to [a party’s] contract claims ... is generally appropriate in cases where ‘there is doubt surrounding the enforceability or the existence of the contract.’”²⁵ Although the facts suggested that a governing contract existed there, sufficient doubt stemmed from the plaintiff’s belief that the defendants were “reserving the right to challenge the existence of an enforceable agreement.”²⁶ The Court may gauge “the existence of a contractual relationship” by whether or not the contract is disputed.²⁷ Here, Defendant disputes the alleged contract,²⁸ thus raising sufficient doubt to permit alternative pleading.

If the existence of the Master Distributer Agreement is in question, then pleading unjust enrichment in the alternative is permissible. But, if the Master Distributer Agreement is invalid, then the Complaint says little regarding venue and jurisdiction to litigate unjust enrichment in this Court. Plaintiff seeks leave to

²⁴ *Ford Motor Co. v. Earthbound LLC*, 2024 WL 3067114, at *13 (Del. Super.) *quoting Garfield ex rel. ODP Corp.*, 277 A.3d at 341.

²⁵ *Hiller & Arban, LLC*, 2016 WL 3678544 *3 (Del. Super.).

²⁶ *Id.*

²⁷ *Albert*, 2005 WL 2130607, at *8 (Del. Ch.). *See also BAE Sys. Info. & Elec. Sys. Integration, Inc. v. Lockheed Martin Corp.*, 2009 WL 264088, at *8 (Del. Ch.) (prohibiting unjust enrichment claim on basis that “it is undisputed that a contract governs that aspect of the parties’ relationship.”).

²⁸ D.I. 9, at 2–3; D.I. 18, at 4–5 (contending that it “is not even arguably a party to the alleged contract.”).

amend on this point. Superior Court Civil Rule 15(a) provides “leave shall be freely given...” Plaintiff’s request for leave to amend is granted.

CONCLUSION

For these reasons, Defendant’s Motion to Dismiss for failure to state a claim is DENIED. The Motion for Leave to Amend is GRANTED. The Motion to Dismiss for jurisdiction and venue is DEFERRED.

IT IS SO ORDERED.

/s/Sonia Augusthy
Sonia Augusthy, J.