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United States District Court, C.D. California.

JB BROTHERS, INC.

v.

Jaewoo CHUNG et al.

Case No. 2:24-cv-01994-RGK-AS

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Attorneys and Law Firms

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Proceedings: (IN CHAMBERS) Order Re: Motion to Dismiss Counterclaims [DE 26]

R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

***1** On March 12, 2024, JB Brothers, Inc. ("JBB") filed a Complaint against Jaewoo Chung, an individual, and Mymulgogi, Inc., a Hawaiian corporation wholly owned by Chung ("Defendants") alleging claims related to Defendants' alleged breach of contract. (ECF No. 1.) On June 24, 2024, Defendants answered the Complaint and filed several counterclaims against JBB and a related individual, Kwang S. Lim. (ECF Nos. 20, 20-1.) Presently before the Court is JBB's Motion seeking partial dismissal of the counterclaims. For the following reasons, the Court **GRANTS** the Motion.

II. FACTUAL BACKGROUND

On December 9, 2016, JBB, a California corporation that licenses restaurant franchises, entered into an agreement (the "Agreement") with Chung to open a restaurant in Hawaii. Prior to executing the Agreement, JBB did not comply with a Hawaii law requiring the seller of a franchise to provide a purchaser with an offering circular containing various disclosures about the franchisor. The Agreement contained a California choice of law provision.

Each party now contends that the Agreement was breached. JBB alleges that Chung conspired with unspecified third parties "to steal JBB's proprietary system and marks" and open a competing restaurant. (Compl. ¶ 1.) Defendants allege that JBB breached the Agreement when it failed to provide operations and marketing support and allowed Lim to open a competing franchise within five miles of Defendants' restaurant. Defendants additionally allege that JBB misrepresented that it owned certain trademarks with national brand recognition prior to entering the Agreement.

III. JUDICIAL STANDARD

Under Federal Rule of Civil Procedure ("Rule") 12(b)(6), a party may move to dismiss for "failure to state a claim upon which relief can be granted." Fed R. Civ. P. 12(b)(6). "To survive 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)

(quoting *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible if the plaintiff alleges enough facts to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* A plaintiff need not provide "detailed factual allegations" but must provide more than mere legal conclusions. *Twombly*, 550 U.S. at 555. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

When ruling on a Rule 12(b)(6) motion, the Court must "accept all factual allegations in the complaint as true." *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007). The Court must also "construe the pleadings in the light most favorable to the nonmoving party." *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1159 (9th Cir. 2012). The Court, however, is "not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555. Dismissal "is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008).

IV. DISCUSSION

***2** Defendants assert the following claims against JBB: (1) breach of contract; (2) violations of California Business and Professions Code §§ 17200, *et seq.*; (3) breach of the implied covenant of good faith and fair dealing; (4) failure to provide an offering circular; (5) fraudulent misrepresentation; (6) negligent misrepresentation; and (7) fraudulent inducement. Against Lim alone, Defendants assert a claim for tortious interference with contract. Finally, Defendants assert claims for "Injunctive Relief" against both JBB and Lim.

JBB has moved to dismiss every claim except the claims for breach of contract and violations of the California Business and Professions Code. The Court addresses the counterclaims asserted against JBB and Lim in turn.

A. JBB

1. *Breach of Implied Covenant*

Under California law, "there is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement." *Kransco v. Am. Empire Surplus Lines Ins. Co.*, 23 Cal. 4th 390 (2000) (citing *Comunale v. Traders & Gen. Ins. Co.*, 50 Cal. 2d 654, 658 (1958)) (cleaned up). In most cases, however, a party asserting a breach of contract claim cannot assert a separate claim for breach of implied covenant because a "separate implied covenant claim, based on the same breach, is superfluous." *Guz v. Bechtel Nat. Inc.*, 24 Cal. 4th 317, 327 (2000).

Here, Defendants allege that JBB breached the implied covenant of good faith and fair dealing by (1) "failing to provide the support and assistance it represented it would provide" and (2) allowing Lim to open a competing franchise location within Defendants' exclusive territory. (Counterclaim ¶¶ 111–12.) These allegations are virtually identical to the allegations Defendants make in their breach of contract claim, in which they allege that JBB breached the Agreement by, among other things, (1) failing "to provide training, supervision, and assistance as to the operation" of Defendants' business and (2) allowing Lim to open a competing restaurant within five miles of Defendants' restaurant. (Counterclaim ¶¶ 80–86; 89–91.) Because Defendants' claim for breach of the implied covenant merely restates Defendants' breach of contract allegations, the Court **DISMISSES** the claim.

2. *Offering Circular*

Under Hawaii law, a person selling a franchise must present a buyer with an offering circular which discloses certain information about the franchisor. Haw. Rev. Stat. § 482E-3. A seller is also required to register a copy of the offering circular with the state of

Hawaii. *Id.* The parties do not appear to dispute that JBB did not comply with either requirement. The parties disagree, however, regarding whether the Agreement's California choice of law provision excuses JBB from complying with Hawaii law.

The Court need not analyze JBB's obligations to conform to Hawaii law under the Agreement because any claim Defendant might assert under Hawaii law for a violation of § 482E-3 is untimely. A civil action for a violation of Hawaii franchise investment law must be brought within five years of the violation. Haw. Rev. Stat. § 482E-10.5. Alternatively, a plaintiff may file an action "two years subsequent to the discovery of facts constituting the violation, but in no event shall any civil action be brought later than seven years subsequent to the date of the violation." *Id.*

Here, the alleged violation occurred when the parties entered the Agreement on December 9, 2016. At that time, Chung knew that JBB did not provide him with an offering circular and could have learned that JBB failed to register an offering circular with the state of Hawaii through a reasonable inquiry. Therefore, the limitations period for a claim premised upon this violation expired on December 9, 2021, roughly two and a half years before Defendants asserted their counterclaims.

***3** Defendants contend that the claim is not untimely because "Chung did not know that JBB had a duty to provide him with an offering circular and that JBB had a duty to register such offering circular in the state of Hawaii until late 2022 early 2023." (Defs.' Opp'n at 6, ECF No. 33.) This argument is unavailing. The Hawaii Supreme Court has made clear that a plaintiff's lack of knowledge of a defendant's legal duty does not toll a limitations period. *Hays v. City & Cnty. of Honolulu*, 81 Haw. 391, 399 (1996). Accordingly, the Court **DISMISSES** the offering circular claim.

3. *Fraud Claims*

Defendants assert counterclaims for fraudulent misrepresentation, negligent misrepresentation, and fraudulent inducement. JBB argues that these claims are preempted by the California Franchise Investment Law ("CFIL") and barred by the CFIL's two-year statute of limitations. The Court need not determine whether these counterclaims are preempted by the CFIL, however, since they are untimely even under California's general statute of limitations. Under California law, the statute of limitations for fraud claims is three years. Cal. Civ. Proc. Code § 338(d). Delayed discovery, however, can delay the accrual of a claim until a party "has, or should have, inquiry notice of the cause of action." *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 807 (2005). To show that it is entitled to delayed accrual, a party must "must plead that, despite investigation of the circumstances of the injury, [it] could not have reasonably discovered facts supporting the cause of action within the applicable statute of limitations period." *Id.* at 809.

Defendants allege that JBB fraudulently or negligently misrepresented material facts about its business to induce Chung to enter the Agreement. Specifically, Defendants allege that JBB misrepresented: (1) its trademark ownership and extent of its national brand recognition; (2) that it would provide Defendants with operations and marketing support; and (3) that Defendants would have exclusive rights to operate franchises within a five-mile radius of their restaurant. (Counterclaim ¶¶ 132–33; 143; 150.) Although these alleged misrepresentations occurred on or prior to December 9, 2016, Defendants contend their claims are timely because they "did not discover said fraud until late 2022 to early 2023." (Defs.' Opp'n at 10.)

Defendants fail to plead that the delayed discovery doctrine tolled the three-year statute of limitations for two reasons. First, Defendants should have been aware of the alleged misrepresentations long before 2022. Defendants could have learned that JBB misrepresented its trademark ownership through a simple search of United States Patent and Trademark Office's trademark database in 2016. And Defendants' contention that they did not learn of JBB's failure to provide marketing and operations support until roughly five years after opening their restaurant in 2017 is entirely implausible. Second, Defendants' allegation that JBB misrepresented the nature of Defendants' exclusive geographic territory because it allowed Lim to open his restaurant merely restates their breach of contract claim. For these reasons, the Court **DISMISSES** the fraud claims.

4. *Injunctive Relief*

Injunctive relief is a remedy, not an independent claim. *See Fortaleza v. PNC Fin. Servs. Grp., Inc.*, 642 F. Supp. 2d 1012, 1028 (N.D. Cal. 2009) ("A request for injunctive relief, by itself... does not state a cause of action and is properly brought before the court as a separate motion."). Accordingly, the Court **DISMISSES** the claim.

B. Lim [1]

1. *Tortious Interference with Contract*

***4** Under California law, a claim for tortious interference with contract can only be asserted against a noncontracting party without any "legitimate interest in the scope or course of the contract's performance." *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 514 (1994). This is because a "contracting party owes no general duty to another not to interfere with performance of the contract; its duty is simply to perform the contract according to its terms." *Id.*

Defendants allege that Lim, while acting as an agent of JBB, tortiously interfered with the Agreement when he opened a competing restaurant within Defendants' exclusive territory. However, agents and employees acting on behalf of a contracting corporation "cannot be held liable for inducing a breach of the corporation's contract." *Shoemaker v. Myers*, 52 Cal. 3d 1, 24 (1990).

Defendants mistakenly conflate California's prohibition on agent liability with the fact that "California courts have not recognized a corporate owner's absolute privilege to interfere with its subsidiary's contract." *Asahi Kasei Pharma Corp. v. Actelion Ltd.*, 222 Cal. App. 4th 945, 962 (2013). But there is a fundamental difference between a contracting party's agent and third parties with financial interests in a contracting party's business: the former acts directly on behalf of the contracting party, while the latter does not. *See Woods v. Fox Broad. Sub., Inc.*, 129 Cal. App. 4th 344, 352 (2005) (defining parties with "some general interest in the contractual relationship" as a class of defendants distinct from a contracting party's agents). For this reason, a third party with an attenuated financial relationship to the contracting party can be held liable for tortious interference. *Asahi Kasei Pharma Corp.*, 222 Cal. App. 4th at 965.

Here, Defendants' allegation that "Lim is and at all relevant times was an agent of JBB" forecloses any liability against Lim for JBB's alleged breach. *Shoemaker*, 52 Cal. 3d at 24. Accordingly, the Court **DISMISSES** the claim.

2. *Injunctive Relief*

Defendants' claim for injunctive relief against Lim suffers the same deficiency as the claim against JBB. Accordingly, the Court **DISMISSES** the claim.

C. Leave to Amend

Defendants request leave to amend if any of their claims are dismissed. The Court should "freely give leave" to amend "when justice so requires." Fed. R. Civ. P. 15(a)(2). "[U]ndue delay, bad faith or dilatory motive on the part of movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment" are sufficient reasons for a district court to deny leave. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Absent a showing of any of the above reasons for denying leave, "there exists a *presumption* under Rule 15(a) in favor of granting leave to amend." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (emphasis in original).

Here, the Court has dismissed Defendants' counterclaims because they fail as a matter of law. Because these defects cannot be cured by additional factual allegations, amendment is clearly futile. Therefore, the Court **DENIES** Defendants' request for leave to file amended pleadings.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the Motion and **DISMISSES** the counterclaims **with prejudice.** The remaining counterclaims in this action are Defendants' claims for **(1)** breach of contract and (2) violations of the California Business and Professions Code.

***5 IT IS SO ORDERED.**

All Citations

Slip Copy, 2024 WL 4404953

Footnotes

1 In addition to moving for dismissal of the claims asserted against it, JBB moves to dismiss the tortious interference with contract claim asserted against Lim. Oddly, the parties do not appear to dispute that Lim is not represented by JBB's counsel, and neither party cites any binding authority regarding whether or not JBB may properly move to dismiss claims that are asserted against a tim'd party. The Court, however, considers JBB's arguments pursuant to its authority to dismiss claims sua sponte if "the claimant cannot possibly win relief." *Ornar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987).

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