

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Palm Springs Courthouse

Hearing re: Demurrer on Complaint for Breach of Contract/Warranty (Over \$25,000) of PLANET BINGO LLC

01/17/2023
8:30 AM
Department PS1

CVPS2202747

PLANET BINGO LLC vs ADVANTECH CO.LTD. A TAIWANESE PUBLICLY HELD COMPANY

Honorable Kira L. Klatchko, Judge
D. Elless, Courtroom Assistant
Court Reporter: None

APPEARANCES:

No Appearances

In accordance with California Rule of Court 3.1308 & Local rule 3316, a tentative ruling was issued and timely oral argument was not requested.

Court makes the following order(s):

Tentative ruling shall become the ruling of the court.

Demurrer by ADVANTECH CORPORATION, A CALIFORNIA CORPORATION on Complaint for Breach of Contract/Warranty (Over \$25,000) of PLANET BINGO LLC sustained as to first, second, third and eighth cause(s) of action, overruled as to fourth, fifth, sixth, seventh, ninth, tenth and eleventh cause(s) of action.

Leave to amend Complaint for Breach of Contract/Warranty (Over \$25,000) of PLANET BINGO LLC granted, with 20 days to leave to amend.

Sustain with 20 days leave to amend as to the first (breach of contract), second (breach of implied in-fact contract), third (breach of implied covenant of good faith and fair dealing), and eighth (negligent interference with prospective economic relations) causes of action, otherwise overrule.

To withstand a demurrer the complaint must contain "a statement of the facts constituting the cause of action, in ordinary and concise language." (Code Civ. Proc., § 425.10.) "[T]he complaint need only allege facts sufficient to state a cause of action, each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged. (C.A. v. William S. Hart Union High School Dist. (2012) 53 Cal.4th 861, 872.) Generally, a plaintiff need only plead facts necessary "to acquaint a defendant with the nature, source and extent of his claims." (Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 549-550.) A demurrer on the ground of uncertainty will only be sustained where a defendant cannot reasonably determine what issues must be admitted or denied, or what claims are directed against

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them. (Khoury v. Maly's of California, Inc. (1993) 14 Cal.App.4th 612, 616.)

Plaintiff Planet Bingo alleges eleven causes of action against multiple defendants, whom it collectively refers to as "ADVANTECH." Here, Advantech Corporation, one of these Defendants, demurs to the complaint in its entirety, and to the first, second, third, fifth, eighth, ninth, tenth, and eleventh causes of action based on uncertainty and failure to state a cause of action.

The Complaint is lengthy, but in essence it alleges that ADVANTECH failed to produce electronic bingo tablets for Planet Bingo, which has been developing, manufacturing, and designing software and hardware for the electronic bingo industry since the early 2000s. The first three causes of action all concern breaches of contract. The demurrer to these causes of action is sustained because while it appears that the Complaint pleads a breach of contract, it appears to plead multiple breaches and multiple different types of breaches such that the first three causes of action are uncertain. It is unclear to the Court whether Plaintiff alleges that there is one written contract at issue, with supporting allegations detailing oral modifications to the contract, or if the Complaint alleges multiple separate contracts that are written, oral, or implied. It appears that this issue could be easily remedied, perhaps even in one paragraph detailing precisely what promises Defendants are alleged to have breached such that Defendants could reasonably determine what claims are directed against them. For that reason, the Court sustains the demurrer to the first three causes of action with leave to amend.

The fifth cause of action is for breach of express warranty. This cause of action is sufficiently pleaded as the Complaint articulates the specific warranty terms given for the specific products provided, when they were given in relation to the purchase of the products, and how they are alleged to have been breached. (See *Weinstat v. Dentsply Internat., Inc.* (2010) 180 Cal.App.4th 1213, 1227.) The demurrer is overruled as to this cause of action.

The eighth cause of action is for negligent interference with prospective economic relations. "The tort of negligent interference with prospective economic advantage is established where a plaintiff demonstrates that (1) an economic relationship existed between the plaintiff and a third party which contained a reasonably probable future economic benefit or advantage to plaintiff; (2) the defendant

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knew of the existence of the relationship and was aware or should have been aware that if it did not act with due care its actions would interfere with this relationship and cause plaintiff to lose in whole or in part the probable future economic benefit or advantage of the relationship; (3) the defendant was negligent; and (4) such negligence caused damage to plaintiff in that the relationship was actually interfered with or disrupted and plaintiff lost in whole or in part the economic benefits or advantage reasonably expected from the relationship. [Citation.]” (North American Chemical Co. v. Superior Court (1997) 59 Cal.App.4th 764, 768.)

“[A] plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful ‘by some measure beyond the fact of the interference itself.’” (Lange v. TIG Ins. Co. (1998) 68 Cal. App. 4th 1179, 1187.) “The requirement that the defendant's interference be independently wrongful means that it is not enough for a plaintiff to show that the defendant interfered with the plaintiff's economic relationship with the third party [Citation], even if the defendant did so with an improper motive [Citations]. To establish that the defendant's interfering conduct was independently wrongful, the plaintiff must instead prove that the conduct—whether directed at the plaintiff or someone else—was “ ‘proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.’” (Drink Tank Ventures, LLC v. Real Soda in Real Bottles, Ltd. (2021) 71 Cal.App.5th 528, 539.)

Here, the Complaint does not allege any particular economic relationship with a third party that contained a reasonably probable future economic benefit, does not allege that Defendant knew about, or should have been aware of, any relationship that it might be interference with, how Defendant was negligent, or how Defendant's negligence caused damage to Plaintiff in the relationship. Defendant also has not alleged an independent wrongful act beyond breach of contract. For those reasons, the demurrer to this cause of action is sustained with leave to amend.

The ninth cause of action is for fraudulent misrepresentation, the tenth cause of action is for fraudulent concealment, and the eleventh cause of action is for negligent misrepresentation. Although it could be clearer which allegations pertain to which specific species of fraud or misrepresentation, the Complaint and attached exhibits sufficiently allege facts to support these causes of action, including specific details about who made misrepresentations, when and how they were made, and to

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whom. (Stansfield v. Starkey (1990) 220 Cal.App.3d 59, 73, quoting Hills Trans. Co. v. Southwest (1968) 266 Cal.App.2d 702, 707.) It also details numerous concealments or suppressions of fact that constitute actionable fraud in the context of the parties' business relationship, or at the very least negligent misrepresentations or deceit. For those reasons, the demurer to these causes of action is overruled.

Notice to be given by Clerk to Gene Richard Gambale, Christina N Goodrich.