IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 16, 2013 Session

LE-JO ENTERPRISES, INC. v. CRACKER BARREL OLD COUNTRY STORE, INC. ET AL.

Appeal from the Chancery Court for Wilson County
No. 2012CV375 Charles K Smith, Judge

No. M2013-01014-COA-R3-CV- Filed November 20, 2013

Plaintiff, a supplier of customized lamps that were used exclusively in Cracker Barrel restaurants, filed this action for breach of express contract and breach of contract implied in fact and at law against Cracker Barrel Old Country Store, Inc. ("Cracker Barrel"), and its subsidiary CBOCS Distribution, Inc. ("CBOCS"). The plaintiff alleged in the complaint that both defendants were bound by the Supply Agreement entered into between the plaintiff and CBOCS, and that both defendants breached the contract by failing to purchase 120 days of floor-stock inventory after cancellation of the Supply Agreement or discontinued use of the "Approved Products" identified in the agreement. Defendants filed a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss for failure to state a claim upon which relief can be granted on the basis that the Supply Agreement expired on July 31, 2011, and that, thereafter, the parties conducted at-will transactions not governed by the Supply Agreement. The trial court granted the motion dismissing all claims against both defendants finding, *inter alia*: 1) there was no contract between the plaintiff and Cracker Barrel; 2) the Supply Agreement between the plaintiff and CBOCS terminated by its own terms on July 31, 2011, and there was no written extension; 3) there was no contract implied in fact; and 4) there was no contract implied at law. We affirm the dismissal of all claims against Cracker Barrel because Cracker Barrel was never a party to the contract and the complaint failed to state a claim against Cracker Barrel upon which relief could be granted. As for the claims against CBOCS, we have determined that the factual allegations in the complaint are sufficient to state claims against CBOCS for breach of express contract, contract implied in fact and contract implied at law. Therefore, we reverse the dismissal of the claims against CBOCS and remand the claims against CBOCS for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in part; Reversed in part and Remanded

FRANK G. CLEMENT, JR., J., delivered the opinion of the Court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

J. Lewis Wardlaw, Memphis, Tennessee, for the appellant, Le-Jo Enterprises, Inc.

E. Steele Clayton, IV, and John W. Dawson, IV, Nashville, Tennessee, for the appellees, Cracker Barrel Old Country Store, Inc., and CBOCS Distribution, Inc.

OPINION

CBOCS Distribution, Inc. ("CBOCS") and Le-Jo Enterprises, Inc. ("Le-Jo") entered into a Supply Agreement on February 2, 2011. Attached thereto and incorporated therein was, *inter alia*, an appendix of General Terms and Conditions of Supply ("General Terms"). Pursuant to the Supply Agreement, Le-Jo agreed to sell to CBOCS, or its designees, all of the "Approved Products," as defined in the agreement, for resale to Cracker Barrel Old Country Store restaurants pursuant to the terms specified in the General Terms. The "Approved Products" to be sold by Le-Jo were listed in Exhibit A to the Supply Agreement:

(a) Dine-Aglow Lamp Fuel - Mfg. # DF150 - 24/case
(b) Lamp Base - Mfg. # DL550 - 12/case
(c) 3" Brass Fitter - Mfg. # DLP500 - 12/case
(d) Globe/Chimney - Mfg. # DG500 - 12/case

Exhibit B of the Supply Agreement identified the estimated volume of each Approved Product and the contract FOB price of each; it read as follows:

(a) Dine-Aglow Lamp Fuel - Mfg. # DF150 - 24/case
27,631 cases at $32.84 per case;
(b) Lamp Base - Mfg. # DL550 - 12/case
462 cases at $84.00 per case;
(c) 3" Brass Fitter - Mfg. # DLP500 - 12/case
202 cases at $60.00 per case;
(d) Globe/Chimney - Mfg. # DG500 - 12/case
2,200 cases at $16.20 per case.

The term of the Supply Agreement was specified as follows:

(a) Commencement Date: April 1, 2010
(b) Termination Date: July 31, 2011.

From April 1, 2010 to July 31, 2011, CBOCS purchased the Approved Products from Le-Jo pursuant to the Supply Agreement. For several months after the scheduled expiration of the "term" of the Supply Agreement, CBOCS continued to purchase from Le-Jo the Approved Products pursuant to purchase orders; the last purchase of Approved Products occurred on March 16, 2012. Three days later, on March 19, 2012, CBOCS advised Le-Jo that it would no longer be purchasing products from Le-Jo.

On April 9, 2012, Le-Jo notified the President and CEO of Cracker Barrel of the remaining floor-stock inventory of customized Approved Products and demanded its depletion (purchase) by Cracker Barrel and CBOCS. On May 29, 2012, legal counsel for Le-Jo restated the foregoing notice and again demanded that Cracker Barrel and CBOCS purchase 120 days of floor-stock inventory of the customized products as required by the Supply Agreement.

On October 30, 2012, after Cracker Barrel and CBOCS failed to purchase the floor-stock inventory, Le-Jo filed this action against Cracker Barrel Old Country Store, Inc. ("Cracker Barrel"), and CBOCS, alleging breach of express contract, breach of quasi-contract implied in fact, and breach of quasi-contract implied at law. Le-Jo contends it was contractually required to maintain an inventory with an adequate supply of products, and in return, the defendants, Cracker Barrel and CBOCS (hereinafter collectively "the defendants"), agreed to purchase 120 days of Le-Jo's floor-stock inventory following the conclusion of their business relationship. Le-Jo relies on the express terms of the Supply Agreement and its attached and incorporated General Terms.

In its Complaint, Le-Jo asserts that the Supply Agreement's inventory purchase obligation, which appears in Exhibit E to the Supply Agreement, was as follows:

> In the event that CBOCS discontinues its use of an Approved Product or CBOCS cancels this Agreement or any order, the CBOCS shall pay Supplier for up to one hundred twenty (120) days of floor stock inventory ("Leftover Inventory") of such Approved Product and work in process at the price set forth on Exhibit B to the Supply Agreement, with such Leftover Inventory not to exceed CBOCS' historical usage of the same for such time period.

In addition, Le-Jo contends, and defendants' counsel conceded in oral argument, that the General Terms continued to govern all transactions after the July 31, 2011, termination date. The General Terms require the supplier to maintain an adequate level of inventory, and, moreover, "if a minimum level of inventory is specified in the CBOCS Supply Agreement . . . then, upon expiration or termination of the CBOCS Supply Agreement . . . CBOCS and

Supplier shall either cause the Restaurants to purchase such inventory or compensate Supplier for any loss incurred with respect to such inventory." Le-Jo contends that a minimum level of inventory was specified in the Supply Agreement, which included the 120-day leftover inventory purchase obligation.

Defendants filed a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss, arguing that the Supply Agreement had expired without any written extension, and that the Supply Agreement did not specify a minimum level of inventory. Specifically, they argue that during the stated term of the Supply Agreement, the 120-day purchase obligation was never triggered by discontinued use or cancellation of supplier's products; thus, the obligation to purchase never came into effect. In response to the stated provisions of the General Terms, defendants argue that a minimum level of inventory was never specified in the Supply Agreement; instead, the Supply Agreement merely caps the purchase obligation at a level of 120 days of floor-stock inventory in the event of discontinued use or cancellation.

Moreover, defendants argue in their motion that Cracker Barrel was neither a party nor a signatory to either the Supply Agreement or General Terms, and, therefore, it is not a proper party in this case. Lastly, in response to Le-Jo's quasi-contract claims, defendants contend that the parties' conduct did not create a contract implied in fact because CBOCS did not assent to an obligation to purchase leftover inventory, and no contract implied at law can be established because CBOCS paid in full for all goods received from Le-Jo, thereby barring any allegation of unjust enrichment.

On April 17, 2013, the trial court granted defendants' motion to dismiss, finding that 1) there was no contract between Le-Jo and Cracker Barrel; 2) the Supply Agreement ended on July 31, 2011, and there was no written extension; 3) there was no contract implied in fact; and 4) there was no unjust enrichment, and thus, no implied contract at law. This appeal followed.

STANDARD OF REVIEW

This appeal arises from the grant of a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss for failure to state claims upon which relief can be granted. The standards by which Tennessee courts are to assess a Rule 12.02(6) motion to dismiss are well established. As our Supreme Court stated in *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011), "[a] Rule 12.02(6) motion challenges only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence." "The resolution of a 12.02(6) motion to dismiss is determined by an examination of the pleadings alone." *Id.* (citations omitted). By filing a motion to dismiss, the defendant "admits the truth of all of the relevant and material allegations contained in the complaint, but . . . asserts that

the allegations fail to establish a cause of action." *Id.* (citations omitted).

When a complaint is challenged by a Rule 12.02(6) motion, the complaint should not be dismissed for failure to state a claim *unless* it appears that the plaintiff can prove no set of facts in support of his or her claim that would warrant relief. *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999) (citing *Riggs v. Burson*, 941 S.W.2d 44, 47 (Tenn. 1997)). Making such a determination is a question of law. Our review of a trial court's determinations on issues of law is de novo, with no presumption of correctness. *Id*. (citing *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997)).

ANALYSIS

On appeal, Le-Jo argues, *inter alia*, that the trial court erred in dismissing its claims against Cracker Barrel and CBOCS for breach of express contract, breach of quasi-contract implied in fact, and breach of quasi-contract implied at law. We address each claim in turn as it pertains to each defendant.

I. BREACH OF EXPRESS CONTRACT

In Count I of its Complaint, Le-Jo asserts a "Breach of Express Contract" claim against Cracker Barrel and CBOCS. The pertinent allegations in the Complaint regarding this claim are that the Supply Agreement and the General Terms incorporated therein are valid and controlling contracts, that Le-Jo provided Cracker Barrel and CBOCS with valuable goods and services pursuant to the agreement, that Le-Jo detrimentally relied on the actions of Cracker Barrel and CBOCS in maintaining sufficient floor-stock inventory levels as required in the terms of the agreement, that Le-Jo expected to be paid for 120 days of floor-stock inventory when the use of its customized products was discontinued, and that Cracker Barrel and CBOCS are in breach of the agreement because they did not pay for the inventory upon discontinuing use of Le-Jo's customized products.

A claim for breach of contract requires "(1) the existence of an enforceable contract, (2) nonperformance amounting to a breach of the contract, and (3) damages caused by the breach of the contract." *C & W Asset Acquisition, LLC v. Oggs*, 230 S.W.3d 671, 676-77 (Tenn. Ct. App. 2007) (citing *ARC LifeMed, Inc., v. AMC-Tennessee, Inc.*, 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005)).

A. EXPRESS CONTRACT CLAIM AGAINST CRACKER BARREL

Le-Jo's breach of express contract claim against Cracker Barrel is based upon the Supply Agreement and the General Terms incorporated therein; however, it is undisputed that Cracker Barrel is neither a signatory to the agreement nor is it identified as a party to the

agreement. The Supply Agreement expressly identifies the parties as follows:

> **2. PARTIES**: The parties to this Supply Agreement are:
>
> (a) Le-Jo Enterprises, Inc. ("Supplier"), and
>
> (b) CBOCS Distribution, Inc. ("CBOCS"), a Tennessee corporation, with its principal office located at 305 Hartmann Drive, Lebanon, TN 37087.

In its Complaint, Le-Jo makes conclusory legal allegations that an enforceable contract with Cracker Barrel exists; however, allegations in a Complaint of purely legal conclusions are insufficient when challenged by a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss. *PNC Multifamily Capital Institutional Fund XXVI Ltd. P'ship v. Bluff City Cmty. Dev. Corp*., 387 S.W.3d 525, 537 (Tenn. Ct. App. 2012) (citing *Ruth v. Ruth*, 372 S.W.2d 285, 287 (Tenn. 1963)); *see Riggs v. Burson*, 941 S.W.2d 44, 47 (Tenn. 1997) (stating we are not required to accept conclusions of law as true); *see also Chenault v. Walker,* 36 S.W.3d 45, 56 (Tenn. 2001) (stating that the court should not credit conclusory allegations or draw farfetched inferences). Significantly, Le-Jo does *not allege facts* to establish that Cracker Barrel is a party to the Supply Agreement; to the contrary, in its brief, Le-Jo acknowledges that Cracker Barrel is *not a party* to the agreement.

The foregoing notwithstanding, Le-Jo correctly notes that the Supply Agreement and incorporated General Terms expressly identifies Cracker Barrel as a "third-party beneficiary," and this fact is admitted by CBOCS and Cracker Barrel. Both defendants, however, insist that Cracker Barrel, as a third party beneficiary to the Supply Agreement, does not give rise to a viable cause of action by Le-Jo against Cracker Barrel for breach of contract. As the defendants correctly assert, the Supply Agreement does not impose an obligation on Cracker Barrel. Further, the only references to Cracker Barrel specify that Cracker Barrel will benefit from the agreement between Le-Jo and CBOCS, but is not bound by the agreement.

A breach of contract claim cannot be asserted against a non-contracting party who has no obligation to perform. *See Bonham Group Inc. v. City of Memphis*, No. 02A01-9709-CH-00238, 1999 WL 219782, at *7 (Tenn. Ct. App. April 16, 1999). Unless a non-contracting third party beneficiary seeks affirmative relief under a contract, the contracting parties have no cause of action against the third party beneficiary. *Id*. As this court noted in *Bonham*, "the very description of the status of 'third party beneficiary' belies an assertion of liability as an obligor." *Id*. The beneficiary gets a benefit, not an obligation, at least not until the beneficiary seeks to enforce the benefit under an agreement to which it is not a contracting party. *Id*.; *see*

Benton v. Vanderbilt University, 137 S.W.3d 614, 619 (Tenn. 2004) (stating that, when seeking enforcement of the benefits of a contract, a beneficiary must also accept all implied and express obligations). "To attempt to hold someone liable on a contract to which it is not a party is contrary to common reason." *Bonham*, 1999 WL 219782, at *7. For these reasons, we held that Bonham had no cause of action against the third party beneficiaries, the City and County, for breach of contract.[1] The same rationale applies here, for Cracker Barrel is not a contracting party to the Supply Agreement, and it has not sought to enforce the benefits it expects to receive under the agreement.

As noted above, the purpose of a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss is to determine whether the pleadings state a claim upon which relief can be granted, and such a motion only challenges the legal sufficiency of the Complaint; it does not challenge the strength of the plaintiff's proof. *Webb*, 346 S.W.3d at 426. In our examination of the legal sufficiency of the Complaint, it is readily apparent that Le-Jo does not allege the most basic element of a breach of an express contract claim: that an express contract between Le-Jo and Cracker Barrel exists. The only allegation in the Complaint relevant to this contract claim is that Cracker Barrel is a third party beneficiary (but not a party) to a contract to which Le-Jo is a party.

Giving Le-Jo the benefit of all reasonable inferences and presuming that all of Le-Jo's factual allegations are true, we have concluded, as the trial court did, that the Complaint fails to state a breach of express contract claim against Cracker Barrel upon which relief can be granted. Thus, we affirm the dismissal of the breach of express contract claim against Cracker Barrel.

B. Express Contract Claim Against CBOCS

The Complaint, the Supply Agreement, and the briefs before us establish that Le-Jo and CBOCS entered into an enforceable written agreement; in fact, this is undisputed by CBOCS. What is disputed is whether the Supply Agreement terminated by its own terms on July 31, 2011, or whether it was extended by agreement, by acquiescence, or by the subsequent dealings of the parties.

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[1] In that case, Bonham asserted breach of contract claims against the City and County based upon the assertion that the City and County were third party beneficiaries to the contract between PMA and Bonham, and, therefore, were liable under the contract for the commissions earned due to Bonham's efforts in renegotiating the MSU contract and in negotiating the various sponsor and concessionaire contracts. *Bonham Group Inc. v. City of Memphis*, No. 02A01-9709-CH-00238, 1999 WL 219782, at *7 (Tenn. Ct. App. April 16, 1999).

In its Complaint, Le-Jo alleges that it and CBOCS mutually assented to extending the term of the original Supply Agreement, which alleged fact we must assume as true in a challenge to the sufficiency of the complaint in a Rule 12.02 analysis. Specifically, and relevant to the allegations that the term was extended by mutual consent, Le-Jo alleges:

> 25) Notwithstanding the stated term of the Supply Agreement and incorporated General Terms Agreement, until March 19, 2012, the parties continued to recognize the contracts as being in full force.
>
> 26) Notwithstanding the stated term of the Supply Agreement and incorporated General Terms Agreement, until March 19, 2012, the parties continued to proceed under the precise terms of the contracts.
>
> 27) From July 31, 2011 through March 19, 2012, the parties' course of performance, dealing and conduct did not change from the specific terms of the Supply Agreement and incorporated General Terms Agreement.
>
> 28) From July 31, 2011 through March 19, 2012, the parties' objectively manifested mutual assent to continue under the terms of the Supply Agreement and incorporated General Terms Agreement.
>
> 29) Notwithstanding the stated term of the Supply Agreement and incorporated General Terms Agreement, by their mutual assent, course of performance, dealing and conduct, Le-Jo, Cracker Barrel and Cracker Barrel Distribution waived any applicable termination provisions of the Supply Agreement and incorporated General Terms Agreement.
>
> 30) Notwithstanding the stated term of the Supply Agreement and incorporated General Terms Agreement, Le-Jo, Cracker Barrel and Cracker Barrel Distribution impliedly renewed the contracts.

As stated earlier, by filing a Rule 12.02(6) motion to dismiss, CBOCS admits the truth of the relevant and material allegations in Le-Jo's complaint. *Webb*, 346 S.W.3d at 426. Thus, we assume the facts alleged above are true, and we must give Le-Jo the benefit of all reasonable inferences to be drawn from the factual allegations in the Complaint. *Id*.

Le-Jo's allegations are sufficient to create the inference that CBOCS and Le-Jo either extended the term of the Supply Agreement by agreement, or by acquiescence agreed, to abide by the Supply Agreement. Thus, the Complaint is sufficient to withstand a Rule 12.02(6) motion to dismiss for breach of contract.

II. BREACH OF CONTRACTS IMPLIED IN FACT AND IMPLIED AT LAW

Le-Jo also asserts claims against CBOCS and Cracker Barrel based upon contracts implied in fact and/or implied at law.

Tennessee recognizes "two distinct types of implied contracts; namely, contracts implied in fact and contracts implied in law, commonly referred to as 'quasi-contracts.'" *ICG Link, Inc. v. Steen*, 363 S.W.3d 533, 543 (Tenn. Ct. App. 2011) (quoting *Ferguson v. Nationwide Prop. & Cas. Ins. Co.*, 218 S.W.3d 42, 49 (Tenn. Ct. App. 2006)).

A contract implied in fact is similar to an express contract, in that it "arises under circumstances which show mutual intent or assent to contract," and "it must be supported by . . . consideration and lawful purpose." *Id*. (quoting *Jones v. LeMoyne-Owen College*, 308 S.W.3d 894, 905 (Tenn. Ct. App. 2009); *Ferguson*, 218 S.W.3d at 49). "The primary difference between the two is the manner in which the parties express their assent." *Jones*, 308 S.W.3d at 905 (citing *Thompson v. Hensley*, 136 S.W.3d 925, 930 (Tenn. Ct. App. 2003)). "In an express contract, the parties assent to the terms of the contract by means of words, writings, or some other mode of expression. . . . In a contract implied in fact, the conduct of the parties and the surrounding circumstances show mutual assent to the terms of the contract." *Id*. (quoting *River Park Hosp., Inc. v. BlueCross BlueShield of Tenn., Inc*., 173 S.W.3d 43, 57 (Tenn. Ct. App. 2002)).

By contrast, a contract implied in law is "created by law without the assent of the party bound, on the basis that [it is] dictated by reason and justice." *ICG Link, Inc.*, 363 S.W.3d at 543 (quoting *Ferguson,* 218 S.W.3d at 50). A claim for contract implied at law requires "[a] benefit conferred upon the defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance of such benefit under such circumstances that it would be inequitable for him to retain the benefit without payment of the value thereof. The most significant requirement for a recovery . . . is that the enrichment to the defendant must be unjust." *Haynes v. Dalton*, 848 S.W.2d 664, 666 (Tenn. Ct. App. 1992) (quoting *Paschall's, Inc. v. Dozier*, 407 S.W.2d 150, 155 (Tenn. 1966)).

A. IMPLIED CONTRACT CLAIMS AGAINST CRACKER BARREL

The allegations in Le-Jo's Complaint that pertain to alleged contracts implied in fact or at law are the following: that Le-Jo provided Cracker Barrel with goods and services *pursuant to the Supply Agreement with CBOCS*; that Le-Jo detrimentally relied on actions of Cracker Barrel in maintaining sufficient inventory levels *as required by the Supply*

Agreement with CBOCS; that *"the parties"* reasonably understood that Le-Jo expected to be paid for 120 days of floor-stock inventory in the event the customized products were discontinued; that Cracker Barrel is in breach of a contract either implied in fact or at law; that Le-Jo continues to be damaged by Cracker Barrel's breach of "the contract;" and that Cracker Barrel would be unjustly enriched *if Defendants were not required to comply with the terms of the Supply Agreement*, either implied in fact or at law.

The foregoing allegations that we italicized in part reveal that they are carefully crafted to create the impression that Le-Jo had direct dealings with Cracker Barrel; however, a close reading of the allegations reveals that these dealings with Cracker Barrel were not direct, but rather the result of Le-Jo's interactions with CBOCS and merely derivative of Le-Jo's contractual duties under the Supply Agreement with CBOCS, of which Cracker Barrel was never a party. The mere fact that Le-Jo was directed by CBOCS to "ship" the goods to particular Cracker Barrel restaurants, as expressly contemplated in the Supply Agreement, does not establish a contract, express or implied, between Le-Jo and Cracker Barrel. These allegations establish nothing more than the fact that Le-Jo was dealing with CBOCS and that Le-Jo was fulfilling its duties to CBOCS under the Supply Agreement of which Cracker Barrel was a third party beneficiary.

As for the remaining allegations, that Cracker Barrel *is in breach of a contract* either implied in fact or at law, and *that Le-Jo continues to be damaged* by Cracker Barrel's breach of "the contract," they are merely legal conclusions, not allegations of facts, which are insufficient when the legal sufficiency of a complaint is challenged by a Rule 12.02(6) motion to dismiss. *Bluff City*, 387 S.W.3d at 537.

As the Complaint reveals, Le-Jo only interacted with CBOCS when providing the Approved Products. Further, and most importantly, there are no assertions of *fact* in the Complaint as to either a direct business relationship or communications with Cracker Barrel that could give rise to a claim of either breach of contract implied in fact or at law. Therefore, the Complaint fails to state claims for breach of contract implied in fact and at law against Cracker Barrel for which relief could be granted; thus, these claims against Cracker Barrel were properly dismissed by the trial court.

B. Implied Contract Claims Against CBOCS

(1) Contract Implied in Fact

As noted earlier, a contract implied in fact is similar to an express contract in that it "arises under circumstances which show mutual intent or assent to contract." *ICG Link, Inc.*, 363 S.W.3d at 543. Further, a contract implied in fact must be supported by "consideration

and lawful purpose." *Id*.

In its Complaint, Le-Jo alleges facts that it entered into a valid and enforceable contract with CBOCS, and additional facts from which one could reasonably infer that the subsequent conduct of CBOCS and Le-Jo, including their course of performance and course of dealing arising from their express contract, showed a manifested mutual assent to the existence of an implied contract by which CBOCS would purchase the 120 days of inventory when CBOCS discontinued use of Le-Jo's products, even if that occurred after the termination of the specified term of the express contract. Giving Le-Jo the benefit of all reasonable inferences, as is required in a Rule 12.02(6) inquiry, we find the factual allegations in the Complaint are sufficient to articulate a claim for relief for breach of contract implied in fact against CBOCS.

(2) Contract Implied at Law

As stated earlier, a claim for contract implied at law requires "[a] benefit conferred upon the defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance of such benefit under such circumstances that it would be inequitable for him to retain the benefit without payment of the value thereof." *Haynes*, 848 S.W.2d at 666. "The most significant requirement for a recovery . . . is that the enrichment to the defendant must be unjust." *Id*.

Le-Jo specifically asserts in the Complaint that its maintenance of 120 days of readily available floor-stock inventory benefitted CBOCS and its customer restaurants, because the inventory was available for immediate shipment to CBOCS' customers. It further alleges that the acceptance of this substantial benefit, immediately available inventory, without having to satisfy its obligation to purchase the inventory, is inequitable and would unjustly enrich CBOCS. Thus, Le-Jo has alleged specific facts to suggest that it conferred a benefit on CBOCS by maintaining 120 days of inventory of Approved Products, that CBOCS appreciated the benefits that resulted from the large and immediate inventory, and that acceptance of this benefit under such circumstances of this case would make it inequitable for CBOCS to retain the benefit without payment of the value it received. Based on these alleged facts, which we are required to accept as true for purposes of a Rule 12.02(6) motion, Le-Jo's allegations of fact, and the reasonable inferences to be drawn therefrom, are sufficient to state a claim upon which relief could be granted.

Therefore, Le-Jo has pled these claims sufficiently to survive a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss for failure to state a claim upon which relief could be granted.

IN CONCLUSION

We affirm the dismissal of all claims against Cracker Barrel Old Country Store, Inc. Finding the factual allegations in the Complaint sufficient to state claims against CBOCS for breach of express contract, contract implied in fact and contract implied at law, we reverse the dismissal of these claims and remand with instructions for the trial court to enter an order denying the motion of CBOCS for dismissal of the claims against it. We also remand for further proceedings consistent with this opinion.

Costs of appeal assessed equally against appellant Le-Jo Enterprises, Inc. and appellee CBOCS Distribution, Inc.

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FRANK G. CLEMENT, JR., JUDGE