

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ASCOT VALLEY FOODS, LTD.,

Plaintiff,

v.

ADF FOODS (USA), LTD.,

Defendant.

Civil Case No. ____

COMPLAINT AND JURY DEMAND

Plaintiff ASCOT VALLEY FOODS, LTD. (“Ascot” or the “Plaintiff”), by and through its attorneys Brach Eichler LLC, brings the following Complaint against Defendant, ADF FOODS (USA), LTD. (“ADF” or “Defendant”), and alleges as follows:

NATURE OF THE ACTION

1. This is an action seeking: (a) money damages for breach of a July 29, 2015 minimum quantity demand contract for the sale of goods between two merchants; (b) common law and UCC remedies related to the sale of goods; (c) equitable relief related to the purchase of materials unique to the Defendant and not sellable to other customers; and (d) a declaratory judgment determining with finality that the Co-Pack Agreement was terminated by the Plaintiff.

PARTIES

2. Plaintiff, ASCOT VALLEY FOODS, LTD. is a limited liability company formed and organized under the laws of the State of **Ohio**.

3. Defendant, ADF FOODS (USA), LTD., is a corporation incorporated under the laws of the State of **Delaware**.

SUBJECT MATTER JURISDICTION

4. The Court has jurisdiction over the subject matter of this civil action pursuant to 28 U.S.C. § 1332(a)(2), because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states. 28 U.S.C. § 1332(c)(1).

5. Ascot's principal place of business is located in 205 Ascot Pkwy, Cuyahoga Falls, State of **Ohio**.

6. ADF's principal place of business is located in 800 South Claremont Street, San Mateo, State of **California**.

7. Based upon the foregoing, complete diversity of jurisdiction exists between all parties to this action.

8. This Court has supplemental subject matter jurisdiction over Plaintiff's state law claims, pursuant to 28 U.S. Code § 1367, for the Plaintiff's account stated (Count I), breach of contract (Count II), goods sold and delivered (Count III), promissory estoppel (Count IV), sale of goods by seller (Count V), and declaratory judgment (Count VI) causes of action.

VENUE

9. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(3) pursuant to an exclusive and mandatory forum selection clause in Paragraph (32) of the July 29, 2015 Co-Pack Agreement between Ascot and ADF designating the United States District Court of the Southern District of New York as the selected venue.

EXHIBITS TO THE COMPLAINT

10. Annexed hereto as **Exhibit "A"** to the Complaint is a true and accurate copy of the July 29, 2015 Co-Pack Agreement between the Plaintiff's predecessor-in-interest, Ascot Valley Foods, LLC, and Defendant, ADF, inclusive of all amendments and addendums thereto (hereinafter, the "**Co-Pack Agreement**").

11. Annexed hereto as **Exhibit “B”** to the Complaint is a true and accurate copy of the Consent to Assignment of the July 29, 2015 Co-Pack Agreement from Ascot Valley Foods, LLC to the Plaintiff, Ascot Valley Foods, Ltd. (hereinafter, the “Assignment”).

12. Annexed hereto as **Exhibit “C”** to the Complaint is a true and accurate copy of a letter dated October 11, 2021, including a printout of a spreadsheet calculating the weighted average price per case and Invoice No. 2479, sent from Ascot to ADF via email to swathi@adf-foods.com and overnight mail via FedEx (hereinafter, the “October 11, 2021 Letter”).

13. Annexed hereto as **Exhibit “D”** to the Complaint is a true and accurate copy of a letter dated October 22, 2021 sent from Ascot to ADF via email to swathi@adf-foods.com and overnight mail via FedEx (hereinafter, the “October 22, 2021 Letter”).

14. Annexed hereto as **Exhibit “E”** to the Complaint is a true and accurate copy of a letter dated January 21, 2022, including an itemization of all outstanding balances on past due invoices, a copy of Invoice No. 2424, 2428, 2433, 2451, 2468, 2479, and 2831, sent from Ascot to ADF via email to swathi@adf-foods.com and overnight mail via FedEx (hereinafter, the “January 21, 2022 Letter”).

15. Annexed hereto as **Exhibit “F”** to the Complaint is a true and accurate copy of an email sent from jgorski@smdklaw.com to swathi@adf-foods.com and bimaltravel@adf-foods.com on October 11, 2021, at 11:58 AM, with the document(s) annexed herein as **Exhibit “C”** included as PDF attachment to said email.

16. Annexed hereto as **Exhibit “G”** to the Complaint is a true and accurate copy of an email sent from alinen@smdklaw.com to swathi@adf-foods.com and bimaltravel@adf-foods.com on October 22, 2021, at 10:48 AM, with the document(s) annexed herein as **Exhibit “D”** included as PDF attachment to said email.

17. Annexed hereto as **Exhibit “H”** to the Complaint is a true and accurate copy of an email sent from jgorski@smdklaw.com to swathi@adf-foods.com, bimaltravel@adf-foods.com and hari@hksamaroo.com on January 21, 2022, at 4:58 PM, with the document(s) annexed herein as **Exhibit “E”** included as PDF attachment to said email.

BACKGROUND AND APPLICABLE NEW YORK STATE LAW

A. Assignment of Co-Pack Agreement

18. Plaintiff Ascot’s predecessor-in-interest was Ascot Valley Foods, LLC.

19. Ascot Valley Foods, LLC and Defendant ADF entered into the Co-Pack Agreement on July 29, 2015.

20. On November 11, 2016, Plaintiff Ascot purchased all or substantially all of Ascot Valley Foods, LLC’s business and assets (hereinafter, the “Acquisition”).

21. In connection with the Acquisition, Ascot Valley Foods, LLC and Plaintiff Ascot executed the Assignment.

22. Paragraph 30 of the Co-Pack Agreement permitted assignment of the Co-Pack Agreement without ADF’s written consent “to the purchaser of all or substantially all of [Ascot Valley Foods, LLC] business and assets, and [Ascot Valley Foods, LLC] may otherwise assign this Agreement by operation of law to any successor of [Ascot Valley Foods, LLC] due to merger or reorganization.”

23. Additionally, Plaintiff Ascot obtained the written consent to assign the Co-Pack Agreement from Ascot Valley Foods, LLC to Ascot Valley Foods, Ltd.

B. Choice of Law

24. Paragraph 31 of the Co-Pack Agreement states, “This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York, without regarding

to conflict of law principles which would otherwise require application of the law of any other jurisdiction.”

a. Statutory Interest

25. In New York, pre-judgment interest is determined by state law, since interest is considered part of the substantive claim. Erie R. Co. v. Tompkins, 304 U.S. 64 (1938); Quincy Mut. Fire Ins. Co. v. New York Cent. Mut. Fire Ins. Co., 89 F. Supp. 3d 291, 313 (N.D.N.Y. 2014).

26. Under New York law, the application of pre-judgment interest is set forth in CPLR § 5001(a), which provides that such interest "shall be recovered" by a prevailing plaintiff in a breach of contract action or in an action involving "an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property."

27. The use of the term "shall" in the statute has been found by the courts to make pre-judgment interest mandatory, not discretionary. Spodek v. Park Prop. Dev. Assoc., 96 N.Y.2d 577, 581, 733 N.Y.S.2d 674, 676 (2001).

28. CPLR § 5004 sets forth (9%) as the statutory rate of pre- and post-judgment interest in New York, calculated on a simple basis.

b. New York's Uniform Commercial Code

29. New York's Uniform Commercial Code ("UCC") § 2-201(1) states, "Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties"

30. UCC § 2-201(2) states, "Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party

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