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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LINGLONG AMERICAS INC.,
Plaintiff,
v.
GET IT ON WHEELS, INC. (d/b/a
TIRE & WHEEL OUTLET) and DOES
1-5, inclusive,
Defendants.

Civ. No. 2:17-01378 WBS GGH
MEMORANDUM AND ORDER RE: MOTION
TO DISMISS

Plaintiff Linglong Americas Inc. ("Linglong") brought this action against defendant Get it on Wheels, Inc. doing business as Tire & Wheels Outlet ("Tire Outlet") for damages arising from unpaid invoices for tires that Linglong delivered to Tire Outlet. (Compl. ¶¶ 11, 28 (Docket No. 1).) Before the court is plaintiff's Motion to dismiss defendant's amended Counterclaim for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). (Pl.'s Mot. (Docket No. 28).)

I. Factual and Procedural Background

Plaintiff is the American affiliate of a global tire

1 manufacturer that sells tires to customers around the country.
2 (Compl. ¶ 8 (Docket No. 1).) Defendant is a tire and wheel
3 distributor with several California locations. (Compl. ¶ 9.)

4 Plaintiff alleges that from April to July 2016, no
5 fewer than 15 times, it sold and delivered tires to defendant,
6 which defendant accepted without objection. (Compl. ¶ 10.) For
7 each order, plaintiff sent an invoice to defendant identifying
8 the product sold, quantity, price, and sales amount. (Id.)

9 Plaintiff claims the total amount due for the tires sold and
10 delivered under the invoices is \$857,861.92. (Id. ¶ 26.) The
11 invoices required payment within 60 days and included payment
12 instructions. (Id. ¶ 27.) Plaintiff alleges that on or about
13 June 29, 2016, defendant made a late, partial payment on one
14 invoice in the amount of \$31,216.15, but defendant has not made
15 any other payment. (Id. ¶ 29.) Plaintiff claims an outstanding
16 balance of \$768,800.92. (Id. ¶ 31.)

17 On October 24, 2016, plaintiff sent a letter to
18 defendant notifying it of its default under the invoices and
19 demanding payment of the outstanding overdue balance. (Id. ¶
20 32.) Defendant did not make any payment in response to the
21 October 24 letter. (Id. ¶ 33.) On July 5, 2017, plaintiff filed
22 a Complaint against defendant for: (1) breach of contract; (2)
23 breach of the covenant of good faith and fair dealing; (3) goods
24 sold and delivered; and (4) unjust enrichment.

25 On November 13, 2017, defendant filed an amended
26 Counterclaim against plaintiff alleging a breach of the covenant
27 of good faith and fair dealing. (Def.'s Am. Countercl. ¶ 29
28

1 (Docket No. 24-3).¹ Defendant contends that at the time the
2 parties entered into the contractual relationship, plaintiff was
3 not distributing tires to other wholesalers in defendant's market
4 area. (Id. ¶ 9.) Defendant further alleges plaintiff was aware
5 of defendant's expenditures of money and resources to introduce,
6 promote, and expand sales of plaintiff's tires in the region, but
7 nonetheless, without advance discussion or warning, plaintiff
8 began selling directly to defendant's wholesale competitors
9 within its market area. (Id. ¶ 11.)

10 Defendant alleges that there was an understanding
11 between it and plaintiff that defendant was not to be undersold
12 in the market, as long as defendant maintained certain purchasing
13 levels. (Id. ¶ 12.) In April of 2016, defendant learned that
14 plaintiff's Chinese parent corporation was selling to a
15 competitor at a lower price. (Id. ¶¶ 13, 15.) Jeff Perry,
16 plaintiff's Regional Sales Manager, told defendant that there was
17 nothing he could do about the sales from plaintiff's parent
18 corporation to defendant's competitors. (Id. ¶ 15.) The selling
19 of tires by plaintiff's parent corporation at a lower price was
20 allegedly in direct violation of what defendant had been assured
21 by plaintiff's representatives in texts, emails, and in person
22 meetings which are not alleged to be part of the contract between

23 ¹ In its initial Counterclaim, defendant alleged
24 plaintiff, by not selling to others in defendant's market area
25 when the contractual relationship began, violated the implied
26 covenant of good faith and fair dealing by selling to its
27 wholesale competitors without advance discussion or warning.
28 (Countercl. ¶¶ 9-14 (Docket No. 15).) In its amended
Counterclaim, defendant re-characterizes its Counterclaim stating
that the companies understood that defendant was not to be
undersold in its market area. (Def.'s Opp'n at 4.)

1 the parties. (Id. ¶ 17.) As a result of the alleged breach of
2 the covenant of good faith and fair dealing, defendant seeks
3 compensatory damages and its costs and attorney's fees. (Def.'s
4 Am. Countercl. Prayer for Relief ¶¶ 1-2).)

5 II. Discussion

6 "A motion to dismiss a counterclaim brought pursuant to
7 FRCP 12(b)(6) is evaluated under the same standard as motion to
8 dismiss a plaintiff's complaint." PageMelding, Inc. v. ESPN,
9 Inc., Civ. No. 11-6263 WHA, 2012 WL 3877686, at *1 (N.D. Cal.
10 Sept. 6, 2012). To survive a motion to dismiss, a plaintiff must
11 plead "only enough facts to state a claim to relief that is
12 plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S.
13 544, 570 (2007). This "plausibility standard," however, "asks
14 for more than a sheer possibility that a defendant has acted
15 unlawfully," Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and
16 "[w]here a complaint pleads facts that are 'merely consistent
17 with' a defendant's liability, it 'stops short of the line
18 between possibility and plausibility of entitlement to relief.'" Id.
19 (quoting Twombly, 550 U.S. at 557). In deciding whether a
20 plaintiff has stated a claim, the court must accept the
21 allegations in the complaint as true and draw all reasonable
22 inferences in favor of the plaintiff. Scheuer v. Rhodes, 416
23 U.S. 232, 236 (1974), overruled on other grounds by Davis v.
24 Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319, 322
25 (1972).

26 California recognizes that "[t]here is an implied
27 covenant of good faith and fair dealing in every contract that
28 neither party will do anything which will injure the right of the

1 other to receive the benefits of the agreement.” Kransco v. Am.
2 Empire Surplus Lines Ins. Co., 23 Cal. 4th 390, 400, (2000)
3 (quoting Comunale v. Traders & Gen. Ins. Co., 50 Cal. 2d 654, 658
4 (1958)). To state a claim for breach of the covenant of good
5 faith and fair dealing, plaintiff must allege:

6 (1) the plaintiff and the defendant entered into a contract;
7 (2) the plaintiff did all or substantially all of the things
8 that the contract required him to do or that he was excused
9 from having to do; (3) all conditions required for the
10 defendant’s performance had occurred; (4) the defendant
11 unfairly interfered with the plaintiff’s right to receive
12 the benefits of the contract; and (5) the defendant’s
13 conduct harmed the plaintiff.

14 Woods v. Google, Inc., 889 F. Supp. 2d 1182, 1194 (N.D. Cal.
15 2012).

16 A breach of the implied covenant of good faith and fair
17 dealing “involves something beyond breach of the contractual duty
18 itself.” Croshal v. Aurora Bank, F.S.B., Civ. No. 13-5435 SBA,
19 2014 WL 2796529, at *6 (N.D. Cal. June 19, 2014) (quoting Tilbury
20 Constructors, Inc. v. State Comp. Ins. Fund, 137 Cal. App. 4th
21 466, 474 (3d Dist. 2006)). Rather, the allegations must
22 establish “the conduct of the defendant . . . demonstrates a
23 failure or refusal to discharge contractual responsibilities
24 prompted . . . by a conscious and deliberate act, which unfairly
25 frustrates the agreed common purposes and disappoints the
26 reasonable expectations of the other party thereby depriving that
27 party of the benefits of the agreements.” Id. (quoting Careau &
28 Co. v. Sec. Pac. Bus. Credit, Inc., 222 Cal. App. 3d 1371, 1395
(2d. Dist. 1999)). Where a contractual relationship exists, “the
implied covenant is limited to assuring compliance with the

1 express terms of the contract, and cannot be extended to create
2 obligations not contemplated in the contract.” Racine & Laramie,
3 Ltd. v. Dep’t of Parks & Recreation, 11 Cal. App. 4th 1026, 1032,
4 (4th Dist. 1992) (citing Gibson v. Gov’t Emps. Ins. Co., 162 Cal.
5 App. 3d 441, 448 (5th Dist. 1984)).

6 Here, the parties do not dispute that there was a
7 contractual relationship to buy and sell tires, nor do they
8 dispute that plaintiff delivered the tires ordered by defendant.
9 Instead, the parties dispute whether defendant adequately pled
10 that plaintiff unfairly interfered with defendant’s right to
11 receive a benefit under the contract. Further, defendant
12 contends it did all or substantially all of the obligations
13 required of it up until plaintiff sold tires to its competitors,
14 and as a result of plaintiff’s conduct, defendant suffered
15 damages. (Def.’s Am. Countercl. ¶¶ 14, 16.)

16 A. The Parties

17 As an initial matter, defendant appears to assert a
18 counterclaim against plaintiff’s Chinese parent corporation, who
19 is not a party in this action.² (See Def.’s Am. Countercl.)
20 Under Rule 13, a party may state a counterclaim against an
21 opposing party. Fed. R. Civ. P. 13. “The plain meaning of
22 ‘opposing party’ is a party to the lawsuit—that is, a named party
23 who asserted a claim against the counterclaimants.” GIA-GMI,
24 LLC v. Michener, Civ. No. 06-7949 SBA, 2007 WL 1655614, at *4

25 ² Defendant leaves the court guessing as to what
26 allegations it is alleging against each named or unnamed party in
27 the action. At one point, defendant claims plaintiff’s parent
28 corporation was selling the tires and in another paragraph
defendant claims plaintiff was selling the tires. (Def.’s Am.
Countercl. ¶¶ 17, 21.)

1 (N.D. Cal. June 7, 2007). Thus, a party may not assert a
2 counterclaim against a party not in the action. See Wahoo Int'l,
3 Inc. v. Phix Doctor, Inc., Civ. No. 13-1395 GPC BLM, 2015 WL
4 3872343, at *1 n.1 (S.D. Cal. June 23, 2015) (“[A] counterclaim
5 cannot be brought against a non-party.”) Additionally, there is
6 no indication that defendant is attempting to join plaintiff’s
7 parent company in the action. (See Def.’s Opp’n at 3.) Nor is
8 there any indication that defendant is attempting to hold
9 plaintiff liable for the actions of its parent corporation—by
10 piercing the corporate veil. (See id.)

11 To the extent the Counterclaim is asserted against
12 plaintiff’s Chinese parent corporation, the Counterclaim is
13 dismissed. The court will now consider the allegations as they
14 extend to plaintiff.

15 B. The Counterclaim Against Plaintiff

16 To assert a counterclaim for a breach of the implied
17 covenant of good faith and fair dealing, defendant must establish
18 that the breach of the implied covenant arises from the
19 expectations of the contractual agreement. See e.g., Racine &
20 Laramie, Ltd., 11 Cal. App. 4th at 1032 (“The implied covenant of
21 good faith and fair dealing rests upon the existence of some
22 specific contractual obligation.”) (citation omitted); Guz v.
23 Bechtel Nat. Inc., 24 Cal. 4th 317, 349 (2000) (“The covenant of
24 good faith and fair dealing, implied by law in every contract,
25 exists merely to prevent one contracting party from unfairly
26 frustrating the other party’s right to receive the benefits of
27 the agreement actually made.”) (citation omitted). Here,
28 defendant’s counterclaim does not allege that the contract

1 between the companies prohibited plaintiff from selling goods to
2 its wholesale competitors at a lower price. Defendant simply
3 asserts there was an "understanding" between the companies that
4 defendant was not to be undersold in the market as long as it
5 maintained certain purchasing levels. (Def.'s Am. Countercl. ¶
6 12).

7 Further, defendant has not pled any terms of the
8 agreement beyond describing the contractual relationship between
9 the parties as one in which plaintiff sold tires to defendant,
10 who then resold the tires to area retailers. (Id. ¶ 8); Love v.
11 The Mail on Sunday, Civ. No. 05-7798 ABCP JWX, 2006 WL 4046180,
12 at *7 (C.D. Cal. Aug. 15, 2006) (dismissing plaintiff's claim for
13 breach of covenant of good faith and fair dealing because
14 plaintiff did not include the language of the contract itself or
15 plead specific terms of the agreement, because without such
16 terms, the court could not discern which terms gave rise to the
17 implied duties plaintiff claimed defendant breached); Citizens of
18 Humanity, LLC v. LAB sarl, Civ No. 12-10627 MMM JEMX, 2013 WL
19 12129393, at *11 (C.D. Cal. Apr. 22, 2013) (granting motion to
20 dismiss implied covenant of good faith and fair dealing
21 counterclaim, on the basis that the party "[did] not identify the
22 specific contractual provision(s) from which the allegedly
23 breached covenant arose.") Thus, defendant has not sufficiently
24 alleged that plaintiff's action--selling tires to its competitors
25 at a lower price--deprived it of any benefit to which it was
26 entitled under the contract to buy and sell tires.

27 Therefore, without any factual allegation regarding the
28 expectations between the parties that the distribution agreement

1 did not permit any sales to other market competitors at a lower
2 price, the court will not imply this term existed within the
3 agreement. See Spencer v. DHI Mortg. Co., 642 F. Supp. 2d 1153,
4 1165 (E.D. Cal. 2009) (O'Neill, J.) ("The 'implied covenant of
5 good faith and fair dealing is limited to assuring compliance
6 with the express terms of the contract, and cannot be extended to
7 create obligations not contemplated by the contract.'") (quoting
8 Pasadena Live, LLC v. City of Pasadena, 114 Cal. App. 4th 1089,
9 1093-1094 (2d Dist. 2004).

10 Even assuming that plaintiff, and not its parent
11 company, sold tires to defendant's competitors at a lower price,
12 defendant has not sufficiently alleged that by selling to its
13 competitors at a lower price, plaintiff deprived defendant of an
14 established contractual benefit. Therefore, defendant does not
15 sufficiently allege that plaintiff violated the implied covenant
16 of good faith and fair dealing.

17 IT IS THEREFORE ORDERED that plaintiff's Motion to
18 dismiss defendant's amended Counterclaim for failure to state a
19 claim upon which relief can be granted be, and the same hereby
20 is, GRANTED.

21 Defendant has twenty days from the date this Order is
22 signed to file a Second Amended Counterclaim, if it can do so
23 consistent with this Order.

24 Dated: January 4, 2018



25 **WILLIAM B. SHUBB**
26 **UNITED STATES DISTRICT JUDGE**
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