

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2002

BACARDI U.S.A., INC. and **
MHW, LTD., **
Appellants, **

vs.

CASE NO. 3D02-1699

GALLO WINE DISTRIBUTORS, LLC **
d/b/a PREMIER WINES & **
SPIRITS, INC., **
Appellee. **

LOWER

TRIBUNAL NO. 02-4382

Opinion filed October 30, 2002.

An Appeal from a non-final order from the Circuit Court for
Dade County, Margarita Esquiroz, Judge.

Hunton & Williams and Marty Steinberg and Thomas R. Julin;
Holland & Knight and Daniel S. Pearson, for Bacardi U.S.A., Inc.;
Zuckerman Spaeder and Daniel S. Gelber and Walter J. Tache, for
MHW, Ltd.

Podhurst, Orseck, Josefsberg, Eaton, Meadow, Olin & Perwin
and Joel S. Perwin; Jenner & Block and Chester T. Kamin and Terri
L. Mascherin and Eric A. Sacks (Chicago), for Gallo Wine
Distributors d/b/a Premier Wines & Spirits, Inc.

Before SCHWARTZ, C.J., and RAMIREZ, J., and NESBITT, Senior
Judge.

SCHWARTZ, Chief Judge.

This is an appeal from a temporary injunction which
mandatorily enforced an alleged oral agreement concerning the New

York State rights to distribute certain brands of liquor manufactured by the appellant Bacardi. Assuming the dubious proposition that the finding below that the purported contract even existed may be upheld, we conclude as a matter of law that the "agreement" was (a) so indefinite in its terms as to be legally unenforceable, see *Eclipse Medical, Inc. v. American Hydro-Surgical Instruments, Inc.*, No.96-8532-Civ-Ryskamp, 1999 WL 181412 (S.D. Fla. Jan. 20, 1999)(unpublished), *aff'd*, 235 F.3d 1344 (11th Cir. 2000)(table); *Dreyfuss v. Dreyfuss*, 701 So. 2d 437 (Fla. 3d DCA 1997); *Shay v. First Fed'l, Inc.*, 429 So. 2d 64 (Fla. 3d DCA 1983); *Smith v. Smith*, 375 So. 2d 1138 (Fla. 3d DCA 1979); (b) invalidly contrary to New York law, which forbids the alleged contracting party, Bacardi, from entering into such a contract, see also New York Alcoholic Beverage Control Law § 99 b(j)(McKinney 2002); and (c) superseded by a later, totally inconsistent written agreement dealing with the same subject matter. Eclipse, and cases cited; *Azar v. Richardson Greenshields Security, Inc.*, 528 So. 2d 1266 (Fla. 2d DCA 1988). Furthermore, there was no showing that any alleged harm could not be fully compensated by an award of damages. See *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70 (2d Cir. 1979); *Paradise Distribs. v. Evansville Brewing Co., Inc.*, 906 F.Supp. 619 (N.D. Okla. 1995); *Jacksonville Electric Authority v. Beemik Builders*, 487 So. 2d 372 (Fla. 1st DCA 1986).

Hence, of the legal prerequisites to the appropriate issuance of a temporary injunction--substantial likelihood of success on the

merits, Bradley v. Health Coalition, Inc., 687 So. 2d 329 (Fla. 3d DCA 1997); City of Jacksonville v. Naegele Outdoor Advertising Co., 634 So. 2d 750 (Fla. 1st DCA 1994), approved, 659 So. 2d 1046 (Fla. 1995), absence of an adequate remedy at law, Deleon v. Aerochago, S.A., 593 So. 2d 558 (Fla. 3d DCA 1992), existence of irreparable injury in the absence of injunctive relief, Deleon, and non-disservice of the public interest; Smith Barney Shearson, Inc. v. Berman, 678 So. 2d 376 (Fla. 3d DCA 1996)--not a single one exists on this record. It follows that the injunctive order below is reversed and the cause remanded with directions to deny that relief.

Reversed and remanded.