UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Unbeatablesale.com, Inc. v. LIM Supplies Corp. d/b/a LIM Group, Inc.

Unbeatablesale.com · No. Civil Action No. 25-5389 (MAS) (JBD) · Decided January 29, 2026

SUMMARY

The United States District Court for the District of New Jersey grants Defendant's motion to dismiss a breach-of-contract action as barred by New Jersey's six-year statute of limitations. The court rejects Plaintiff's argument that the alleged cessation of freight-auditing services constituted a continuing breach, finding that the complaint alleged a single breach rather than successive breaches under an installment or periodically performed contract. The court allows Plaintiff an opportunity to amend to assert any claims that are not time-barred and can cure the identified deficiencies.

CASE DETAILS

COURT	United States District Court for the District of New Jersey
WRITING FOR THE COURT	Michael A. Shipp
JURISDICTION	United States District Court for the District of New Jersey
DECIDED	January 29, 2026
DOCKET	Civil Action No. 25-5389 (MAS) (JBD)
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff's diversity breach-of-contract complaint as time-barred and for failure to state a claim. The court also considered whether abstention was warranted because a related New York action was pending.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court identifies the elements of the claim, accepts well-pleaded factual allegations as true and construes them in the plaintiff's favor, disregards bare legal conclusions and unsupported accusations, and determines whether the allegations plausibly show entitlement to relief. The defendant bears the burden of showing that no claim has been presented.
PRECEDENTIAL VALUE	unpublished and not for publication

PARTIES	Unbeatablesale.com, Inc. v. LIM Supplies Corp. d/b/a LIM Group, Inc.

TOPICS

statute of limitations · breach of contract · motions to dismiss · contract interpretation · civil procedure

PRACTICE AREAS

contracts · civil procedure · commercial litigation · statute of limitations

QUESTIONS PRESENTED

1. Whether Plaintiff's breach-of-contract claim was barred by New Jersey's six-year statute of limitations.
2. Whether the continuing-breach doctrine applied because the Client Service Agreement allegedly involved continuing or periodic performance.
3. Whether abstention was warranted because of the related pending New York action.
4. Whether Plaintiff should be permitted to amend claims that might not be time-barred and could cure pleading deficiencies.

HOLDINGS

1. Under New Jersey law, a breach-of-contract claim is generally subject to a six-year statute of limitations accruing when the right to institute and maintain suit first arose. Plaintiff's claim accrued when Defendant allegedly ceased providing freight-auditing services in December 2018 and was untimely because Plaintiff did not file suit until May 23, 2025.
2. The continuing-breach doctrine did not apply to Plaintiff's claim as pleaded because the Complaint did not plausibly allege an installment contract or a contract requiring periodic performance that produced successive breaches.
3. Abstention was not warranted, and the court exercised its federal diversity jurisdiction.
4. Plaintiff was given an opportunity to file an amended complaint to the extent it could assert claims that were not time-barred and could cure the deficiencies identified by the court.

KEY QUOTATIONS

> *"Such allegations describe a single alleged breach, not a series of successive breaches which would make the continuing breach doctrine applicable."*

> *"Accepting Plaintiff's argument would effectively transform any contract containing a performance obligation into a continuing contract, a result unsupported by New Jersey law."*

> *"Plaintiff's claim is therefore dismissed as time-barred."*

FACTUAL BACKGROUND

In 2018, Plaintiff and Defendant entered into a Client Service Agreement under which Defendant was to provide freight-auditing services in exchange for 40 percent of realized savings, and a separate Consulting Agreement concerning the negotiation of shipping contracts. Plaintiff sent Defendant an email on November 6, 2018, giving 30 days' notice of termination, and Plaintiff alleged that the notice terminated only the Consulting Agreement. Defendant ceased providing freight-auditing services in December 2018. Plaintiff filed this action in May 2025, while a related New York breach-of-contract action between the parties remained pending.

PROCEDURAL HISTORY

Plaintiff filed this action on May 23, 2025, alleging that Defendant breached the Client Service Agreement in December 2018 by ceasing to provide freight-auditing services. Defendant moved to dismiss. After considering the parties' submissions without oral argument, the court granted the motion on statute-of-limitations grounds, while allowing Plaintiff an opportunity to amend to assert claims that are not time-barred and that can cure the identified deficiencies.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. The motion to dismiss was granted, and Plaintiff was given an opportunity to file an amended complaint asserting claims that are not time-barred and that cure the identified deficiencies.

CASES CITED

- Phillips v. County of Allegheny, 515 F.3d 224, 228 (3d Cir. 2008)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Conley v. Gibson, 355 U.S. 41, 47 (1957)
- Malleus v. George, 641 F.3d 560, 563 (3d Cir. 2011)
- Ashcroft v. Iqbal, 556 U.S. 662, 675, 678-79 (2009)
- Fowler v. UPMC Shadyside, 578 F.3d 203, 210-11 (3d Cir. 2009)
- Hedges v. United States, 404 F.3d 744, 750 (3d Cir. 2005)
- Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991)
- Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976)
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1 (1983)
- Erie Railroad Co. v. Tompkins, 304 U.S. 64, 72 (1938)
- Williams v. BASF Catalysts LLC, 765 F.3d 306, 316-17 (3d Cir. 2014)
- County of Morris v. Fauver, 707 A.2d 958, 971-72 (N.J. 1998)
- Rosenau v. City of New Brunswick, 238 A.2d 169, 172 (N.J. 1968)
- National Utility Service, Inc. v. Cambridge-Lee Industries, Inc., 199 F. App'x 139, 142-43 (3d Cir. 2006)
- Ballantyne House Associates v. City of Newark, 635 A.2d 551, 555 (App. Div. 1993)

- Arthur L. Corbin, Corbin on Contracts § 956 (rev. ed. 2002)
- Diakos v. Rudnick, No. A-2468-15T2, 2017 WL 6398928, at *4 (N.J. Super. Ct. App. Div. Dec. 15, 2017)
- Frederico v. Home Depot, 507 F.3d 188, 202 (3d Cir. 2007)
- Doe v. University of the Sciences, 961 F.3d 203, 208 (3d Cir. 2020)

OPINION

NOT FOR PUBLICATION UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY UNBEATABLESALE.COM, INC., Plaintiff, Civil Action No. 25-5389 (MAS) (JBD). MEMORANDUM OPINION LIM SUPPLIES CORP. d/b/a LIM GROUP, INC,, Defendant. SHIPP, District Judge This matter comes before the Court on Defendant LJM Supplies Corp.'s ("Defendant") Motion to Dismiss Plaintiff Unbeatablesale.com, Inc.'s ("Plaintiff') Complaint.

(ECF No. 12.) After careful consideration of the parties' submissions, the Court decides Defendant's motion without oral argument pursuant to Local Civil Rule 78.1(b). For the reasons outlined below, Defendant's motion is granted. 1. BACKGROUND! Plaintiff is a direct-to-consumer retailer who contracted with Defendant in 2018 to reduce certain shipping and billing expenses.

(Compl. 4 1-2, 6, 7, 12, ECF No. 1.) The parties entered into two agreements that year: (1) a "Client Service Agreement," pursuant to which Defendant was to provide Plaintiff with "freight auditing services" in exchange for 40% of any savings realized; and (2) a "Consulting Agreement," pursuant to which Defendant was to help lower Plaintiff's ' For the purpose of considering the instant motion, the Court accepts all factual allegations in the Complaint as true.

See Phillips v. Cnty. of Allegheny, 515 F.3d 224, 228 (3d Cir. 2008). shipping costs by negotiating more favorable contracts with UPS, FedEx, and other carriers. (Ud. qq 7-9, 12-13, 30.) On November 6, 2018, Plaintiff sent e-mail correspondence to Defendant, providing "official notice of 30 days to terminate our agreement." (/d. § 16.) While Plaintiff's correspondence did not specify what agreement it was purportedly terminating, Plaintiff alleges this notice terminated only the Consulting Agreement, and not the Client Service Agreement.' (/d. □□ 16, 37; Compl.

Ex. 2, ECF No. 1-2.) In December 2018, Defendant ceased providing Plaintiff with freight auditing services. (/d. J 19.) On March 12, 2019, Defendant commenced an action against Plaintiff in New York state court alleging breach of contract (the "New York Action"). See UnbeatableSale.com v. LIM Supplies, Index No. 603427/2019 (Sup. Ct. Nassau Cnty.).?

In that action, Defendant alleges Plaintiff breached the Consulting Agreement by purportedly terminating the contract via e-mail correspondence, and by failing to pay Defendant 40% of its realized cost savings. (See generally N.Y. Action, ECF No. 2.)

The parties have litigated the New York Action for over six years, and that case remains pending. (See id.; ECF No. 27 at 1.) On May 23, 2025, Plaintiff filed the instant action, alleging that Defendant breached the Client Service Agreement in December 2018 when it ceased providing its freight auditing? Defendant disputes Plaintiff's characterization of the November 2018 notice and contends that it reasonably understood the notice as purporting to terminate the Client Service Agreement.

(Def.'s Moving Br. 3-4, ECF No. 12-1.) 3 Docket entries from the related matter, UnbeatableSale.com v. LJM Supplies, Index No. 603427/2019 (Sup. Ct. Nassau Cnty.), are designated as "N.Y. Action, ECF No." services.* (See generally Compl.) Defendant now moves to dismiss the Complaint as time-barred and for failure to state a claim under Rule 12(b)(6). (See generally id.)

IL. LEGAL STANDARD Rule 8(a)(2) "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the... claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A district court conducts a three-part analysis when considering a motion to dismiss under Rule 12(b)(6).

See Malleus v. George, 641 F.3d 560, 563 (3d Cir. 2011). First, the court must identify "the elements a plaintiff must plead to state a claim." Ashcroft v. Igbal, 556 U.S. 662, 675 (2009). Second, the court must identify all of the plaintiff's well-pleaded factual allegations, accept them as true, and "'construe the complaint in the light most favorable to the plaintiff." Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (d Cir.

2009) (citation omitted). The court can discard bare legal conclusions or factually unsupported accusations that merely state the defendant unlawfully harmed the plaintiff. See Jgbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 555).

Third, the court must determine whether "the [well-pleaded] facts alleged in the complaint are sufficient to show that the plaintiff has a 'plausible claim for relief.'" Fowler, 578 F.3d at 211 (quoting Iqbal, 556 U.S. at 679). A facially plausible claim "allows the court to draw the reasonable inference that the * Plaintiff concedes that its breach of contract claim could have been brought as a permissive counterclaim in the New York Action.

(See ECF No. 26 at 2, 5.) The Court, accordingly, issued an Order to Show Cause as to why this action should not be dismissed or stayed pursuant to the abstention principles articulated in Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976), and Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. | (1983). CECF No. 22.)

Upon consideration of the parties' briefing, and the strong presumption in favor of exercising federal jurisdiction, the Court finds that abstention is not warranted and therefore exercises its jurisdiction over this action. defendant is liable for the misconduct alleged.” /d. at 210 (quoting Jgbal, 556 U.S. at 678).

On a Rule 12(b)(6) motion, the “defendant bears the burden of showing that no claim has been presented.” Hedges v. United States, 404 F.3d 744, 750 Gd Cir. 2005) (citing Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 Gd Cir. 1991)). Ill. DISCUSSION Defendant contends that Plaintiff’s breach of contract claim is untimely, and that Plaintiff otherwise fails to state a claim upon which relief can be granted.

(See generally Def.’s Moving Br.) Because the statute of limitations presents a threshold issue, the Court addresses it first.° Under New Jersey law, the statute of limitations for a breach of contract claim is six years from the date the cause of action accrues. N.J. Stat. Ann. § 2A:14-1.

As a general rule, a breach of contract claim accrues on “‘the date on which the right to institute and maintain a suit’ first arose.” County of Morris v. Fauver, 707 A.2d 958, 971 (N.J. 1998) (quoting Rosenau v. City of New Brunswick, 238 A.2d 169, 172 (N.J. 1968)). Plaintiff concedes that it did not bring this action until more than six years had elapsed after Defendant’s breach of the Client Service Agreement.

(Pl.s’ Opp’n Br. 9-11, ECF No. 20; see also Compl. 4 19 (alleging Defendant breached the Client Service Agreement in December 2018); see generally id. (indicating this action was filed on May 23, 2025).) Plaintiff, however, argues that its claim falls under the “continuing breach” exception, under which claims can be brought outside the statutory period if successive breaches occurred within a “continuing” contract.

(Pl.’s Opp’n Br. 9-11); see Fauver, 707 A.2d at 971-72 (explaining that a new cause of action arises upon each > A federal court exercising diversity jurisdiction must apply the substantive law of the state in which the court sits. Erie R.R. Co. v. Tompkins, 304 U.S. 64, 72 (1938).

Because the parties do not dispute the application of New Jersey law to the instant matter, the Court need not engage in a choice of law analysis at this stage and will apply New Jersey law to Plaintiff’s breach of contract claim. See Williams v. BASF Catalysts LLC, 765 F.3d 306, 316-17 (3d Cir. 2014). successive breach for such continuing contracts). Plaintiff argues that Defendant has “continuously breached a nonpayment obligation,” and therefore Plaintiff’s claim is timely.

(Pl.’s Opp’n Br. 10-11.) The Court disagrees. New Jersey courts apply the continuing breach doctrine narrowly, most often in the context of installment contracts or contracts that expressly require periodic performance. See Nat’! Util. Inc. v. Cambridge-Lee Indus., Inc., 199 F. App’x 139, 142 Gd Cir. 2006) (citation omitted) (“The standard is typically applied in installment contracts, so that ‘a new cause of action arises from the date each payment is missed.’”).

Here, Plaintiff states in a conclusory fashion that Defendant's conduct constitutes a "continuing breach of contract." (Compl. { 21; see also id. { 22.) The Complaint, however, does not plead facts from which the Court can plausibly infer that the Client Service Agreement was an installment contract, or otherwise required periodic performance giving rise to "a series of continuing breaches" over time.

See Ballantyne House Assocs. v. City of Newark, 635 A.2d 551, 555 (App. Div. 1993); see also 9 Arthur L. Corbin, Corbin on Contracts § 956 (rev. ed. 2002) ("[C]ontracts... that have been said to require continuing (or continuous) performance for some specified period of time... are capable of a series of 'partial' breaches.''). Plaintiff, for example, does not allege that Defendant's freight auditing services required periodic performance, nor do the terms of the Client Service Agreement delineate such obligations.® (See Client Service Agreement, ECF No. 4 (providing generally that Defendant "will provide freight audit services to 6 Although Plaintiff argues in opposition that the Client Service Agreement provided for a "monthly auditing service," (PI.'s Opp'n Br.

11), the Complaint contains no such allegation (see generally Comp!.). It is well settled that a plaintiff may not amend its Complaint through arguments raised in opposition to a motion to dismiss. Frederico v. Home Depot, 507 F.3d 188, 202 (3d Cir. 2007).

Moreover, the Court notes that Plaintiff's assertion that the auditing service was "monthly" is inconsistent with its allegations that Defendant breached the Client Service Agreement on a "daily" and "weekly" basis. (PI.'s Opp'n Br. 11; see also Compl. 22.) [Plaintiff]" without specifying periodic obligations));' see Nat'! Util. Serv. Inc., 199 F. App'x at 143 (applying the continuing breach doctrine where the contract obligated defendant to perform "every month during the contract term").

Rather, Plaintiff alleges that Defendant agreed to "provide freight audit services," and that Defendant ceased providing those services altogether in December 2018. (Compl. { 19.) Such allegations describe a single alleged breach, not a series of successive breaches which would make the continuing breach doctrine applicable. See Diakos v. Rudnick, No. A-2468-151T2, 2017 WL 6398928, at *4 (N.J.

Super. Ct. App. Div. Dec. 15, 2017) (rejecting plaintiff's argument that the agreement was a continuing contract where the agreement "{did] not call for a monthly or annual payment of profits or any other set periodic payment structure"). Accepting Plaintiff's argument would effectively transform any contract containing a performance obligation into a continuing contract, a result unsupported by New Jersey law.

The Court, accordingly, finds that the continuing breach doctrine does not apply to Plaintiff's breach of contract claim as currently alleged. Plaintiff was obligated to file this lawsuit within six years of the breach of contract, and Plaintiff failed to do so. Plaintiff's claim is therefore dismissed as time-barred. Complaint relies on and attaches as exhibits the Client Service Agreement and the Consulting Agreement.

(ECF Nos. 4, 5.) Because the contracts are “integral to or explicitly relied upon in the [C]omplaint,” and their authenticity is not disputed, the Court considers them in resolving the instant motion to dismiss. Doe v. Univ. of Scis., 961 F.3d 203, 208 (3d Cir. 2020) (citation omitted). IV. CONCLUSION For the foregoing reasons, the Court grants Defendant’s Motion to Dismiss.

To the extent that Plaintiff can set forth claims which are not time barred, and can cure the deficiencies outlined herein, the Court will give Plaintiff an opportunity to file an amended complaint. The Court will issue an Order consistent with this Memorandum Opinion. NLD SHIPP 7 UNITED STATES DISTRICT JUDGE DATED: January 29, 2026
