UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

FinWise Bank v. Great American Finance Holdings, LLC

No. 2:24-cv-00408-DBB-DBP (D. Utah Jan. 23, 2026) · No. 2:24-cv-00408-DBB-DBP · Decided January 23, 2026

SUMMARY

The United States District Court for the District of Utah denied Great American Finance Holdings, LLC’s motion for partial summary judgment in a dispute with FinWise Bank concerning fees under a Loan Program Agreement and Financial Terms Letter Agreement. The court held that the agreement did not automatically terminate when the notice-and-cure period expired, and that the claimed minimum bank program fees were direct damages rather than barred lost profits. The court also declined to dismiss FinWise’s unjust enrichment claim because the enforceability or scope of the parties’ contract remained disputed.

CASE DETAILS

COURT	United States District Court for the District of Utah
WRITING FOR THE COURT	David Barlow
JURISDICTION	United States District Court for the District of Utah
DECIDED	January 23, 2026
DOCKET	2:24-cv-00408-DBB-DBP
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved for partial summary judgment on whether plaintiff could recover certain post-termination minimum bank program fees and whether plaintiff could pursue unjust enrichment in addition to breach-of-contract claims. The court denied the motion in its entirety.
STANDARD OF REVIEW	Summary judgment is proper under Federal Rule of Civil Procedure 56(a) when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court views the evidence and draws reasonable inferences in favor of the nonmoving party.
PRECEDENTIAL VALUE	unpublished_nonprecedential

TOPICS

summary judgment · contract interpretation · breach of contract · unjust enrichment · commercial litigation

PRACTICE AREAS

contract law · civil procedure · commercial litigation · remedies

QUESTIONS PRESENTED

1. Whether the Loan Program Agreement automatically terminated when the thirty-day notice-and-cure period expired, thereby precluding FinWise from recovering minimum bank program fees accruing after May 17, 2024.
2. Whether the minimum bank program fees were lost profits or consequential damages excluded by the agreement's limitation-of-liability provision.
3. Whether FinWise's unjust enrichment claim was subject to summary judgment because an express contract allegedly governed the parties' rights and obligations.

HOLDINGS

1. The agreement did not automatically terminate when the thirty-day cure period expired. The termination provision gave the nonbreaching party discretionary authority to terminate after notice and failure to cure, and FinWise had not clearly and unequivocally exercised that authority.
2. Great American did not establish that the minimum bank program fees were lost profits or consequential damages excluded by the limitation-of-liability clause. The fees were direct damages because they represented bargained-for compensation and FinWise's primary contractual benefit, flowing naturally from Great American's failure to pay.
3. Summary judgment was not appropriate on the unjust enrichment claim because the parties disputed the scope and enforceability of the agreement after May 17, 2024. Although unjust enrichment generally is unavailable when an enforceable contract governs the subject matter, dismissal at the summary-judgment stage was premature while that issue remained unresolved.

KEY QUOTATIONS

> *"The conditional language of section 8.1(a)(i) provides discretionary authority to terminate but does not automatically terminate the contract"* (Discussion § I.A)

> *"Therefore, the MBP Fees that FinWise seeks to recover are not lost profits or consequential damages, but rather direct damages "flowing naturally from the breach.""* (Discussion § I.B)

> *"Accordingly, the court declines to dismiss FinWise's unjust enrichment claim at this stage when the Program Agreement's enforceability or scope is disputed by Great American."* (Discussion § II)

> *"Accordingly, Great American's Motion for Partial Summary Judgment is DENIED in its entirety."* (Order)

FACTUAL BACKGROUND

FinWise Bank and Great American Finance Holdings, LLC entered into a Loan Program Agreement under which Great American provided marketing, administrative, and subservicing services for loans originated by FinWise. Great American agreed to pay FinWise minimum bank program fees and bank program expenses under a related

Financial Terms Letter Agreement. Great American fell into arrears, and FinWise sent a notice of breach on April 17, 2024, but the notice did not expressly terminate the agreement. The parties disputed whether the agreement ended automatically after the thirty-day cure period and whether fees accruing after that period were barred as lost profits.

PROCEDURAL HISTORY

FinWise filed suit on June 6, 2024, asserting breach-of-contract claims under the Loan Program Agreement and Financial Terms Letter Agreement and an unjust enrichment claim. Great American moved for partial summary judgment. The district court denied the motion after concluding that the contract did not automatically terminate when the cure period expired, that the disputed fees were not shown to be excluded lost profits, and that dismissal of unjust enrichment was premature while the scope or enforceability of the contract remained disputed.

DISPOSITION

other

CASES CITED

- Klein v. Roe, 76 F.4th 1020, 1028 (10th Cir. 2023)
- Scott v. Harris, 550 U.S. 372, 380 (2007)
- N.M. Oncology & Hematology Consultants, Ltd. v. Presbyterian Healthcare Services, 994 F.3d 1166, 1171-72 (10th Cir. 2021)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)
- Baca v. Sklar, 398 F.3d 1210, 1216 (10th Cir. 2005)
- James v. Wadas, 724 F.3d 1312, 1319-20 (10th Cir. 2013)
- Georgelas v. Desert Hill Ventures, Inc., 45 F.4th 1193, 1197 (10th Cir. 2022)
- Butler v. Daimler Trucks North America, LLC, 74 F.4th 1131, 1140 (10th Cir. 2023)
- WebBank v. American General Annuity Service Corp., 2002 UT 88, ¶ 17, 54 P.3d 1139
- Mind & Motion Utah Investments, LLC v. Celtic Bank Corp., 2016 UT 6, ¶ 24, 367 P.3d 994
- Vanderwood v. Woodward, 2019 UT App 140, ¶ 24, 449 P.3d 983
- McNeil Engineering & Land Surveying, LLC v. Bennett, 2011 UT App 423, ¶ 8, 268 P.3d 854
- Brady v. Park, 2019 UT 16, ¶ 53, 445 P.3d 395
- Adv. Recovery Systems, LLC v. American Agencies, LLC, No. 2:13-cv-283, 2016 WL 6916539, at *8 (D. Utah Sept. 28, 2016)
- Glenn v. Reese, 2009 UT 80, ¶ 19, 225 P.3d 185
- Stein Eriksen Lodge Owners Association Inc. v. MX Technologies Inc., 2022 UT App 30, ¶ 69, 508 P.3d 138
- In re C.W. Mining Co., 641 F.3d 1235, 1241-42 (10th Cir. 2011)
- SOLIDFX, LLC v. Jeppesen Sanderson, Inc., 841 F.3d 827, 839 (10th Cir. 2016)
- Penncro Associates, Inc. v. Spring Spectrum, LP, 499 F.3d 1161, 1156 (10th Cir. 2007)

- United States v. Leffler, United States v. Leffler, 942 F.3d 1192, 1197-98 (10th Cir. 2019)
- Kraatz v. Heritage Imports, 2003 UT App 201, ¶ 4, 71 P.3d 188
- McCleve Properties, LLC v. D. Ray Hult Family Ltd. Partnership, 2013 UT App 185, ¶ 17, 307 P.3d 650
- Beck v. Farmers Insurance Exchange, 701 P.2d 795, 801 (Utah 1985)
- Trans-Western Petroleum, Inc. v. U.S. Gypsum Co., 2016 UT 27, ¶ 19 & n.13, 379 P.3d 1200
- Allen v. Hall, 2006 UT 70, ¶ 26, 148 P.3d 939
- AGTC Inc. v. CoBon Energy LLC, 2019 UT App 124, ¶¶ 19, 22, 447 P.3d 123
- American Towers Owners Association v. CCI Mechanical, Inc., 930 P.2d 1182, 1193 (Utah 1996)
- Davencourt at Pilgrims Landing Homeowners Association v. Davencourt at Pilgrims Landing, LC, 2009 UT 65, 221 P.3d 234
- Ashby v. Ashby, 2010 UT 7, ¶ 14, 227 P.3d 426
- Gulf Coast Shippers Ltd. Partnership v. DHL Express (USA), Inc., No. 2:09-cv-00221, 2015 WL 4557573, at *19 (D. Utah July 28, 2015)