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BLOGS

Terminations

Court Allows Claim to Proceed Despite Impossibility Defense Raised by Brewer After Sale of Brands

A New Jersey federal court issued a lengthy opinion last month addressing cross motions for summary judgment filed by a group of beer distributors and defendants InBev and Anheuser-Busch. The case is *Warren Distributing Co., et al. v. InBev, et al.*, 2010 U.S. Dist. LEXIS 55542 (D.N.J. June 7, 2010). While the court addressed several issues, it held that InBev could not succeed on its motion for summary judgment on the plaintiffs' breach of contract claim, finding that the plaintiffs had put forth viable evidence that InBev's reliance on the doctrine of impossibility/impracticability would fail at trial because InBev created the circumstances that caused the impossibility to occur.

The history of the case is complex, but the central issue involves whether the plaintiffs were paid fair market value for the termination of their beer distribution rights after InBev sold certain brands to Anheuser-Busch. In attempting to win summary judgment on the plaintiffs' breach of contract claim, InBev argued that it had good cause to terminate under the New Jersey Malt Alcoholic Beverage Practices Act because its duty to perform was discharged by the doctrine of impossibility/impracticability, as it no longer had the right to control the terminated brands and thus could not supply the plaintiffs. The plaintiffs countered that the impossibility was a circumstance of InBev's own making, since it had sold the brands to Anheuser-Busch. The court agreed with the plaintiffs, finding that there were at least genuine issues of fact as to whether InBev had created its own impossible circumstances, and denied InBev's motion as to the plaintiff's breach of contract claim.