

**BLOGS**  
Contracts

## New York Appellate Court Upholds Claim of Oral Distribution Agreement Against Supplier

A New York appellate court has rejected a statute of frauds defense to a claim for breach of oral exclusive distribution agreements. *Last Time Beverage Corp. v. F & V Distribution Co., LLC*, 2012 N.Y. App. Div. LEXIS 6092 (N.Y. App. Div. Sept. 12, 2012). This case began when two separate groups of soft drink distributors sued their common supplier for several breaches of the distribution agreement between one group of distributors (Last Time Beverage) and the original franchisor. The distributors alleged that the supplier had changed their distribution rights without additional compensation, directly sold to distributors' customers, improperly transhipped products, and unreasonably withheld consent to distributor sales of franchises. A referee appointed by the court found F & V Distribution liable to Last Time Beverage for breaching several contract provisions, including the provisions giving the distributors exclusive rights to distribute certain beverages in designated territories.

The second group of distributors, J.C. Tea, did not have a written agreement with F & V Distribution. Instead, they relied on oral and written promises that, among other things, they would receive contracts giving them exclusive rights in their geographic territories. F & V Distribution argued that the statute of frauds prevented J.C. Tea from asserting a claim for breach of an oral contract. The court ruled, however, that the doctrine of partial performance removed the oral agreement from the statute of frauds because J.C. Tea's actions were "unequivocally referable" to the oral agreement. The court determined that J.C. Tea performed substantial obligations based on F & V Distribution's alleged oral promises and that the promises were articulated in express terms set forth in the distribution agreements that governed Last Time Beverage. Thus, the court affirmed the oral agreements and held that the statute of frauds did not apply.

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