

Corporate & Financial Weekly Digest

Posted at 2:31 PM on February 25, 2011 by [Bruce M. Sabados](#)

Manufacturer's Breach of Contract Claims Survive Improper Remedy Demand

Co-authored by [Brian Schmidt](#)

The U.S. Court of Appeals for the Eighth Circuit reversed a trial court's dismissal of claims relating to a shipping dispute between a manufacturer and a distributor, holding that plaintiff's selection of an improper remedy in its demand for relief was not fatal to its claims.

Plaintiff, a Chinese manufacturer of organic insulin, entered into an agreement with the defendant, a Minnesota distributor. Under the agreement, the plaintiff was to send four shipments to the defendant. The defendant received and paid for the first shipment, but refused to pay for the second because of mold on its exterior. Plaintiff recalled the third and fourth shipments, and claims and cross-claims were filed. In plaintiff's breach of contract claim, it relied on the fact that all four shipments were delivered as specified in the purchase orders, and that defendant failed to pay for the last three shipments. The defendant moved to dismiss, arguing that a seller that recalls goods before they reach a buyer may not recover the contract price of retained goods even if there was a breach. The trial court dismissed the plaintiff's contract claims relating to shipments three and four.

The Eighth Circuit reversed. Although plaintiff's recall of shipments three and four may preclude recovery of their full contract price, if plaintiff "proves that [defendant] breached the contract as to shipments three and four, it is almost certain to be entitled to some monetary relief." Plaintiff's claims were not subject to dismissal merely because of its initial demand for the full price of the goods at issue. (*Dinxi Longhai Dairy, Ltd. v. Becwood Tech. Group LLC*, No. 10 Civ. 2612, 2011 WL 536490 (8th Cir. Feb. 17, 2011))

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC