

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BEKIM FRROKAJ and
ILIR FRROKAJ,

Plaintiffs,

v.

CHT CORP. d/b/a/
CHARLIE TROTTER'S and
CHARLES H. TROTTER,

Defendants.

No. 13-cv-4376

TRIAL BY JURY DEMANDED

AMENDED COMPLAINT

Plaintiffs, Bekim Frrokaj and Ilir Frrokaj, by their undersigned attorneys, for their
Complaint against Defendants, allege as follows:

NATURE OF THE CASE

1. This is an action for breach of contract, breach of warranty, and deceptive practices under the Illinois Consumer Fraud Act arising from Defendants' sale of a counterfeit bottle of wine, which Defendants had misrepresented as a 1945 Domaine de la Romanee-Conti magnum ("DRC magnum"), to Plaintiffs.

PARTIES

2. Plaintiff Bekim Frrokaj ("Benn") resides in Bronx, New York.
3. Plaintiff Ilir Frrokaj ("Ilir") resides in Bronx, New York.
4. Defendant CHT Corp. d/b/a Charlie Trotter's ("Charlie Trotter's") is an Illinois corporation and maintains its principal place of business in Chicago, Illinois.
5. Defendant Charles H. Trotter ("Mr. Trotter") resides in Chicago, Illinois.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because Plaintiffs and Defendants are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

7. This Court has subject matter jurisdiction over the related Illinois state law claims, which have an amount in controversy less than \$75,000, pursuant to 28 U.S.C. § 1367 because those claims arise out of the same transactions and occurrences that give rise to Plaintiffs' federal claim.

8. Venue is proper in this district under 28 U.S.C. § 1391 because both Defendants reside in this District.

DEMAND FOR JURY TRIAL

9. Pursuant to Federal Rule of Civil Procedure 38(b), Stavropoulos requests a trial by jury on the claims so triable.

FACTUAL ALLEGATIONS

10. Defendants operated "one of the finest restaurants in the world" – Charlie Trotter's. Mr. Trotter was the head chef and owner of Charlie Trotter's. Mr. Trotter has been given numerous awards, including a yearly "Grand Award" from Wine Spectator from 1993 to the present. Defendants have significant experience and expertise in selecting and selling some of the finest wines in the world.

11. Defendants operate a website where they advertise the wines Charlie Trotter's offered prior to closing. Defendants' website provides:

Wine

Charlie Trotter's wine list has received the Wine Spectator's coveted Grand Award and the James Beard Foundation's Outstanding Wine Service Award. This list is created with Charlie's

culinary philosophy in mind - that food and wine are intended not only to complement each other, but to inspire one another, making the selection and interplay of the wine and food an integral part of the dining experience.

In addition to housing the classic food wines from Burgundy and Bordeaux, Charlie Trotter's offers the connoisseur a great selection of wine from Rhone, Alsace, and Champagne. The cellar also has great breadth in Californian, Australian and German wines.

...

With over 1,800 selections to choose from, our wine list offers a great selection and breadth from practically every wine producing country including the United States, Italy, Austria, Spain, Australia, New Zealand, Portugal, Hungary, and South Africa. The wine program offers a great selection of wines by the glass that changes frequently to accommodate each evening's menu.

...

Our wine list provides choices to complement our cuisine, in all ranges. The strong sections of the list include Burgundy, Bordeaux and California, as well as other major regions of the world. It balances between the great vintages of classic regions, to unknown, small-production wineries, sure to be future stars. Each section of the wine list is introduced by a short description of the general characteristics of the wines it contains such as regions, grape varietals and producers.

Some of the highlights of our wine program include:

- 20 vintages of Penfolds " Grange " dating back to 1960, plus 6 vintages in Magnums*
- 12 vintages of Grace Family Vineyards Cabernet*
- 48 selections of Angelo Gaja, in various sized formats*
- 24 selections of single vineyard Cote-Rotie from Guigal*
- Vertical of Chateau Mouton-Rothschild from 1945 to 2003*
- 23 selections of Henri Mayer including 8 vintages of Echezeaux starting in 1982*

· Over 48 selections from *Domaine Leroy* including the 1949 *Musigny*

· Over 130 selections in large formats including 12 vintages of *La Jota Imperials* starting in 1982, 9 Double Magnums of *Angelo Gaja's Barbarescos* and an Imperial of 1990 Penfolds "Grange" which is only 1 of 5 Imperials of Grange ever made.

12. On or about June 2012, Benn contacted Charlie Trotter's. Benn informed the Charlie Trotter's employee with whom he spoke that he wanted to add a DRC magnum to his family's wine collection. Benn had learned about Charlie Trotter's wine collection through the advertising on Defendants' website. The employee informed Benn that he should make a reservation and that he could discuss purchasing the DRC magnum over dinner.

13. On June 15, 2012, Benn and Ilir went to Charlie Trotter's. During dinner, Charlie Trotter and the sommelier explained the rarity and value of the DRC magnum to Benn and Ilir. Charlie Trotter and the sommelier also spoke about wines from the *Domaine de la Romanee-Conti* estate and how those wines are some of the rarest and most valuable in the world. A Charlie Trotter's employee negotiated the price – \$46,227.40 – with Benn and Ilir. Based on Defendants' representation of the rarity and value of the DRC magnum, Benn and Ilir agreed to purchase it. Ben and Ilir paid Charlie Trotter's \$40,000 in cash and \$6,227.40 by credit card for the DRC magnum.

14. On June 17, 2012, Defendants shipped the DRC magnum to Benn's New York residence.

15. Upon receiving the DRC magnum, Benn contacted his insurance carrier. He notified the carrier that he wanted to list the DRC magnum on his homeowners insurance. Benn's carrier informed Benn that 1945 bottles of *Domaine de la Romanee-Conti* are often counterfeited and that Benn would need to authenticate the DRC magnum through an expert before it would provide coverage.

16. On or about September, 2012, Benn retained Maureen Downey, DWS, CWE, FWS of Chai Consulting to authenticate the DRC magnum. Ms. Downey determined that the DRC magnum was counterfeit and valueless based on the physical attributes of the DRC magnum, the provenance provided by Charlie Trotter's, and her discussions with Domain de la Romanee-Conti Employees. *See Exhibit 1.* Ms. Downey has visited the estate of Domaine de la Romanee-Conti, where she spoke with Jean-Charles Cuvelier, the estate director of Domaine de la Romanee-Conti. Mr. Cuvelier told that Ms. Downey's that Domaine de la Romanee-Conti only produced small yields in 1945 and as a result, the Domaine is not able to categorically support or deny that it produced any large-format magnum-size bottles in that vintage, but that it is likely that none were produced.

Count I: Violation of the Illinois Consumer Fraud and Deceptive Practices Act
(Charlie Trotter's)

17. Plaintiffs reallege Paragraphs 1-16.

18. At all relevant times, there was in full force and effect in the State of Illinois a statute commonly known as the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/2, which provides in pertinent part as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

19. The Consumer Fraud and Deceptive Business Practices Act further provides [815 ILCS 505/10(a)]:

Any person who suffers actual damages as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper.

20. Plaintiffs are consumers within the meaning of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/1(e)].

21. Selling a bottle of DRC magnum, as alleged, constitutes trade or commerce as defined by the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/1(f)].

22. Charlie Trotter's misrepresented that the DRC magnum was authentic, though Charlie Trotter's was aware or should have been aware the DRC magnum was a counterfeit, based on the experience and expertise of its owner and sommeliers.

23. Charlie Trotter's omitted to disclose the material fact that the DRC magnum was counterfeit.

24. Charlie Trotter's misrepresentations and omissions were material in that a reasonable consumer would have relied upon them in making the decision to purchase the DRC magnum.

25. Charlie Trotter's omitted to disclose material facts regarding the lack of authenticity of the DRC magnum it sold to Plaintiffs knowing that Plaintiffs would rely on that omission in purchasing the DRC magnum.

26. As a direct and proximate result of Charlie Trotter's consumer fraud alleged herein, Plaintiffs suffered damages including the purchase price of the DRC magnum, the cost of air travel to Chicago to purchase the DRC magnum, and the cost of expert fees.

27. Charlie Trotter's misrepresentations and omissions of material fact alleged herein were willful and wanton, thus allowing for a punitive damage award in excess of \$30,000.

WHEREFORE, Plaintiffs, Bekim Frrokaj and Ilir Frrokaj, request that this Court enter judgment in their favor and against Defendant, CHT Corp. d/b/a Charlie Trotter's, as follows:

- A. Award Plaintiffs actual damages of \$46,227.40, representing the cost of the DRC magnum;
- B. Award Plaintiffs the cost of travel expenses to Chicago to purchase the wine;
- C. Award Plaintiffs the cost of expert fees incurred to authenticate the wine;
- D. Award Plaintiffs punitive damages in excess of \$30,000;
- E. Award Plaintiffs expenses of litigation, including attorneys' fees and costs; and
- F. Grant Plaintiffs any other relief that the Court deems just.

Count II: Violation of the Illinois Consumer Fraud and Deceptive Practices Act
(Charlie Trotter)

28. Plaintiffs reallege Paragraphs 1-27.

29. At all relevant times, there was in full force and effect in the State of Illinois a statute commonly known as the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/2, which provides in pertinent part as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

30. The Consumer Fraud and Deceptive Business Practices Act further provides [815 ILCS 505/10(a)]:

Any person who suffers actual damages as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper.

31. Plaintiffs are consumers within the meaning of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/1(e)].

32. Selling a bottle of DRC magnum, as alleged, constitutes trade or commerce as defined by the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/1(f)].

33. Charlie Trotter misrepresented that the DRC magnum was authentic, though Charlie Trotter was aware or should have been aware the DRC magnum was a counterfeit, based on his experience and expertise.

34. Charlie Trotter omitted to disclose the material fact that the DRC magnum was counterfeit.

35. Charlie Trotter's misrepresentations and omissions were material in that a reasonable consumer would have relied upon them in making the decision to purchase the DRC magnum.

36. Charlie Trotter omitted to disclose material facts regarding the lack of authenticity of the DRC magnum it sold to Plaintiffs knowing that Plaintiffs would rely on that omission in purchasing the DRC magnum.

37. As a direct and proximate result of Charlie Trotter's consumer fraud alleged herein, Plaintiffs suffered damages including the purchase price of the DRC magnum, the cost of air travel to Chicago to purchase the DRC magnum, and the cost of expert fees.

38. Charlie Trotter's misrepresentations and omissions of material fact alleged herein were willful and wanton, thus allowing for a punitive damage award in excess of \$30,000.

WHEREFORE, Plaintiffs, Bekim Frrokaj and Ilir Frrokaj, request that this Court enter judgment in their favor and against Defendant, Charlie Trotter, as follows:

- A. Award Plaintiffs actual damages of \$46,227.40, representing the cost of the DRC magnum;
- B. Award Plaintiffs the cost of travel expenses to Chicago to purchase the wine;
- C. Award Plaintiffs the cost of expert fees incurred to authenticate the wine;
- D. Award Plaintiffs punitive damages in excess of \$30,000;
- E. Award Plaintiffs expenses of litigation, including attorneys' fees and costs; and
- F. Grant Plaintiffs any other relief that the Court deems just.

Count III: Breach of Contract

39. Plaintiffs reallege Paragraphs 1-38.

40. On June 15, 2012, Plaintiffs made an offer to Charlie Trotter's to purchase the DRC magnum for \$46,227.40.

41. On June 15, 2012, Charlie Trotter's accepted Plaintiffs' offer and sold the DRC magnum to Plaintiffs for \$46,227.40.

42. On June 15, 2012, Plaintiffs paid \$46,227.40 to Charlie Trotter's for the DRC magnum. Plaintiffs paid a portion of the purchase price – \$40,000 – in cash and the remainder – \$6,227.40 – by credit card.

43. On June 17, 2012, Charlie Trotter's shipped the DRC magnum to Plaintiffs' New York residence.

44. Charlie Trotter's breached the contract with Plaintiffs because it did not provide Plaintiffs with an authentic DRC magnum. *See Exhibit 1.*

45. On or about January 29, 2013, Plaintiffs notified Charlie Trotter's of its breach of contract. *See Exhibit 2.*

46. Charlie Trotter's has not remedied its breach of contract.

47. As a direct and proximate result of Charlie Trotter's breaches of the contract alleged herein, Plaintiffs suffered damages including the purchase price of the DRC magnum, the cost of air travel to Chicago to purchase the DRC magnum, and the cost of expert fees.

WHEREFORE, Plaintiffs, Bekim Frrokaj and Ilir Frrokaj, request that this Court enter judgment in their favor and against Defendant, CHT Corp. d/b/a Charlie Trotter's, as follows:

- A. Award Plaintiffs actual damages of \$46,227.40, representing the cost of the DRC magnum;
- B. Award Plaintiffs the cost of travel expenses to Chicago to purchase the wine;
- C. Award Plaintiffs the cost of expert fees incurred to authenticate the wine;
- D. Award Plaintiffs expenses of litigation, including attorneys' fees and costs; and
- E. Grant Plaintiffs any other relief that the Court deems just.

Count IV: Breach of Implied Warranty in Violation of the Magnusson Moss Act

48. Plaintiffs reallege Paragraphs 1-47.

49. Charlie Trotter's is a merchant of wine within the meaning of 810 ILCS 5/2-314(1) because Charlie Trotter's has knowledge and skill peculiar to rare wines, including wines produced by the Domaine de la Romanee-Conti estate.

50. Charlie Trotter's is a "warrantor" within the meaning of the Magnuson-Moss Act ("MMA"). 15 U.S.C. § 2301(5).

51. The DRC magnum is a “consumer product” within the meaning of the MMA because it is normally used for personal purposes and Plaintiffs purchased it wholly or primarily for personal use. 15 U.S.C. § 2301(1).

52. Plaintiffs are “consumers” as defined by the MMA. 15 U.S.C. § 2301(3).

53. On June 15, 2012, Charlie Trotter’s sold the DRC magnum to Plaintiffs.

54. As a part of the sale, Charlie Trotter’s employees made several claims regarding the DRC magnum. Those employees assured Plaintiffs that the DRC magnum was authentic. Those employees also assured Plaintiffs that the wine was rare and valuable because of its vintage and because Domaine de la Romanee-Conti did not produce a large yield in 1945.

55. An “implied warranty,” within the meaning of the MMA, arose by operation of law as part of the sale. 15 U.S.C. § 2301(7); 810 ILCS 5/2-314.

56. The DRC magnum was not merchantable at the time of sale within the meaning of 810 ILCS 5/2-314(2) because it is counterfeit. *See Exhibit 1.*

57. On or about January 29, 2013, Plaintiffs notified Charlie Trotter’s of its breach of warranty. *See Exhibit 2.*

58. Charlie Trotter’s breach of the implied warranty of merchantability constitutes a violation of 15 U.S.C. § 2310(d).

59. As a result of Charlie Trotter’s breach of the express and implied warranties, Plaintiffs have suffered economic losses and other general, consequential and specific damages, including but not limited to the amount paid to purchase the DRC magnum, the cost of air travel to Chicago, and the cost of expert fees incurred to authenticate the wine. Plaintiffs are also entitled to attorneys’ fees and costs under the MMA. 15 U.S.C. § 2310(d)(2).

WHEREFORE, Plaintiffs, Bekim Frrokaj and Ilir Frrokaj, request that this Court enter judgment in their favor and against Defendants, CHT Corp. d/b/a Charlie Trotter's, as follows:

- A. Award Plaintiffs actual damages of \$46,227.40, representing the cost of the DRC magnum;
- B. Award Plaintiffs the cost of travel expenses to Chicago to purchase the wine;
- C. Award Plaintiffs the cost of expert fees incurred to authenticate the wine;
- D. Award Plaintiffs expenses of litigation, including attorneys' fees and costs; and
- E. Grant Plaintiffs any other relief that the Court deems just.

Count V: the Magnusson Moss Act – Revocation of Acceptance

60. Plaintiffs reallege Paragraphs 1-59.

61. As detailed above, Charlie Trotter's breached an implied warranty of merchantability.

62. Charlie Trotter's breach, enumerated above, substantially impaired the DRC magnum's value to Plaintiffs, who reasonably thought that Charlie Trotter's breach could be cured, but Charlie Trotter's are either unable or have refused to cure the breach.

63. Plaintiffs notified Charlie Trotter's that Plaintiffs were revoking acceptance of the DRC magnum within a reasonable time after Plaintiffs discovered the grounds for it, and before any substantial change in the condition of the DRC magnum, which was not caused by its own defects.

64. Charlie Trotter's has refused to cancel the sale or to acknowledge Plaintiffs' revocation of acceptance.

65. Plaintiffs are entitled to revoke their acceptance of the DRC magnum and cancel the sales contract because the DRC magnum is counterfeit.

66. Plaintiffs are entitled to attorneys' fees and costs under the MMA if they prevail in their request for equitable relief. 15 U.S.C. § 2310(d)(1), (2).

WHEREFORE, Plaintiffs, Bekim Frrokaj and Ilir Frrokaj, request that this Court enter judgment in their favor and against Defendants, CHT Corp. d/b/a Charlie Trotter's, as follows:

- A. Award Plaintiffs actual damages of \$46,227.40, representing the cost of the DRC magnum;
- B. Award Plaintiffs the cost of travel expenses to Chicago to purchase the wine;
- C. Award Plaintiffs the cost of expert fees incurred to authenticate the wine;
- D. Award Plaintiffs expenses of litigation, including attorneys' fees and costs; and
- E. Grant Plaintiffs any other relief that the Court deems just.

BEKIM FRROKAJ and ILIR FRROKAJ

By: /s/ John Auchter

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