[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-10948

CARLOS ALFARO,
on behalf of themselves and all others similarly situated,
HENRIETTA I. EGBUNIKE,
on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

versus

BANK OF AMERICA, N.A.,
BANK OF AMERICA CORPORATION,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:19-cv-22762-MGC

Before JORDAN, LUCK, and LAGOA, Circuit Judges.

LUCK, Circuit Judge:

Carlos Alfaro and Henrietta Egbunike sued Bank of America, N.A., because it charged them an "international transaction fee" when they used their bank-issued debit cards for foreign transactions. They alleged claims for (1) breach of contract, (2) breach of the implied covenant of good faith and fair dealing, (3) unconscionability, and (4) unjust enrichment. The district court dismissed Alfaro and Egbunike's lawsuit because the Truth in Savings Act and its regulations preempted Alfaro and Egbunike's claims and because it failed to state a claim for relief. Because we agree that Alfaro and Egbunike failed to state a claim, we affirm the district court's dismissal.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Alfaro and Egbunike are Bank of America customers. Since May 16, 2014, both of them have held personal deposit accounts with the bank. The bank issued each one a debit card linked to their accounts.

Three documents make up the bank's contractual relationship with its personal deposit accountholders: the deposit agreement; the personal schedule of fees; and the card brochure. The

deposit agreement specifically referenced the personal schedule of fees. Under the heading "The Agreement for Your Account," it provided:

> This *Deposit Agreement and Disclosures*, the applicable *Schedule of Fees*, the signature card and other account opening documents for your account are part of the binding contract between you and us (this "Agreement") for your deposit account and your deposit relationship with us. They contain the terms of our agreement with you. . . . The *Schedule of Fees* lists our accounts and account fees. . . .
>
> We may change this Agreement at any time. We may add new terms. We may delete or amend existing terms. We may add new accounts and services and discontinue existing accounts or services. We may convert existing accounts and services into new accounts and services.
>
> We ordinarily send you advance notice of an adverse change to this Agreement. However, we may make changes without prior notice unless otherwise required by law. We may, but do not have to, notify you of changes that we make for security reasons or that we believe are either beneficial or not adverse to you.

Under the heading for "Checking and Savings Accounts," the deposit agreement explained that the "*Personal Schedule of Fees* describes our personal accounts and lists applicable fees." And under the heading for "Information About Fees and Charging Your

Account," the deposit agreement said that the "*Personal Schedule of Fees* lists account fees that apply to our personal deposit accounts."

Besides the personal deposit accounts, the bank "offer[ed] many other services." The deposit agreement described these other services and noted that the bank "may occasionally list fees for some of [them] in the *Schedule of Fees*."

> We offer a variety of electronic banking services for use with your deposit accounts. We describe some in this section and also provide certain disclosures that apply to use of an electronic banking service with personal deposit accounts. We provide separate agreements to you that govern the terms of some services, including separate agreements for ATM and debit cards and Online and Mobile Banking services. Please review the following provisions and the separate agreement for the service.
>
> . . . .
>
> We may issue you an ATM or debit card (either is called a 'card') . . . when you open your account. The terms that govern this service are in a separate agreement that you receive with your card. Please review that agreement carefully. . . .
>
> . . . .
>
> For other fees that apply to electronic banking services, please review the *Schedule of Fees* for your account and each agreement or disclosure that we provide to you for the specific electronic banking service,

> including the separate agreement for Online and Mobile Banking services and the separate agreement for ATM and debit cards.

The personal schedule of fees listed debit cards as an "Optional Service[]" that "can help you manage your account. To learn more about them, please review the agreement for that service." The "separate agreement" for the debit card was in the card brochure. In the card brochure, the accountholder agreed that if she "use[d] [the] debit card to purchase goods or services in a foreign currency or in [United States] dollars with a foreign merchant (a 'Foreign Transaction')," the bank would charge her an international transaction fee. The international transaction fee, the card brochure explained, would be three percent of the purchase price.

Between May 16, 2014, and May 8, 2015, the bank applied this three-percent fee to three purchases by Alfaro and Egbunike. The bank assessed a $2.44 fee when Alfaro used his debit card for an $81.40 purchase, a $1.79 fee when he used it for a $59.52 purchase, and a $0.81 fee when Egbunike used her debit card for a $26.95 purchase. But, according to Alfaro and Egbunike, they had not received a card brochure when they were issued their debit cards. And, before May 8, 2015, the personal schedule of fees didn't mention the international transaction fee.

On May 8, 2015, the bank amended the personal schedule of fees to list the international transaction fee and explain how it applied to foreign transactions. The bank didn't notify Alfaro and Egbunike of these changes to the schedule of fees, and it continued

assessing the international transaction fee for their foreign transactions. After May 8, 2015, the bank assessed a $15.60 fee when Alfaro used his card to make a $520.00 purchase, a $4.95 fee when he used it for a $165.00 purchase, and a $1.58 fee when Egbunike used her card for a $52.50 purchase.

Alfaro and Egbunike sued the bank on behalf of themselves and other Bank of America accountholders who were charged the international transaction fee. They proposed two classes of plaintiffs. The first proposed class—the "Undisclosed FX Fee Class"—included all accountholders who were assessed an international transaction fee on debit card transactions between July 3, 2014 and May 7, 2015. The second—the "Unnotified FX Fee Class"—included all accountholders who opened a personal deposit account before May 8, 2015, and were assessed an international transaction fee after May 8, 2015.

The eight-count complaint alleged four claims for each class. For the Undisclosed FX Fee Class, Alfaro and Egbunike first alleged a breach of contract claim, asserting that the bank "promised . . . that it would only assess the fees disclosed . . . in the [s]chedule of [f]ees" but, until May 8, 2015, the bank assessed the fee without disclosing it in the schedule. Second, they alleged that the bank breached the implied covenant of good faith and fair dealing because the bank assessed the international transaction fee despite it being "hidden, concealed, or disclosed . . . in an inaccessible manner in a document other than the [s]chedule of [f]ees prior to May 8, 2015." Third, they alleged that the international transaction

fee was procedurally and substantively unconscionable because the bank didn't (1) "disclose or reasonably disclose" the fee, its amount, or when it would be assessed, (2) obtain consent before charging it, (3) give accountholders a chance to cancel transactions before charging it, or (4) mention the fee in either the deposit agreement or personal schedule of fees before May 8, 2015, making those documents "ineffective, ambiguous, deceptive, unfair, and misleading." And fourth, they alleged that the bank unjustly enriched itself by collecting the international transaction fee without listing it in the schedule of fees before May 8, 2015.

For the Unnotified FX Fee Class, Alfaro and Egbunike brought the same four claims. First, Alfaro and Egbunike alleged that the bank breached the deposit agreement because it assessed the international transaction fee without notifying them of the May 8, 2015 amendments to the personal schedule of fees. Second, they alleged that the bank breached the implied covenant of good faith and fair dealing for the same reason. Third, Alfaro and Egbunike alleged the international transaction fee was procedurally and substantively unconscionable for the same reasons as the Undisclosed FX Fee Class, adding that the bank didn't notify them about the amendments to the schedule of fees. Lastly, they alleged that the bank unjustly enriched itself by assessing the international transaction fee without notifying them that it amended the personal schedule of fees.

The bank moved to dismiss the complaint for two reasons. First, the bank argued that Alfaro and Egbunike's claims were

preempted by the Truth in Savings Act and its regulations. *See* 12 U.S.C. § 4301 *et seq.*; 12 C.F.R. § 1030.1(a), (d). Second, the bank contended that, even if the Act did not preempt Alfaro and Egbunike's claims, "the claims . . . [we]re contradicted by the express language of the applicable account agreements and . . . based on conclusory, implausible allegations."

The district court granted the bank's motion to dismiss on both grounds. As for preemption, the district court explained that the Act and its regulations prescribed what information banks must disclose to their accountholders and how the banks must do it. And the regulations expressly preempted state-law requirements that were "inconsistent with" the federal disclosure requirements. 12 C.F.R. § 1030.1(d). Alfaro and Egbunike's claims, the district court concluded, were inconsistent with federal disclosure requirements because the complaint's "gravamen" was that the bank didn't disclose the international transaction fee as required by state law.

The district court also concluded that, even if the claims were not preempted, the complaint failed to state a claim. As to the Undisclosed FX Fee Class's breach of contract claim, the district court explained, the bank did not promise to disclose the international transaction fee in the personal schedule of fees, meaning the bank hadn't breached a promise by not listing the international transaction fee there. Similarly, as to the Unnotified FX Fee Class's breach of contract claim, the bank did not promise to notify accountholders about all changes to the schedule of fees. The deposit

agreement only provided that the bank would "ordinarily" send advance notice of adverse changes.

The remaining counts also failed to state a claim, the district court concluded, because: without any breach of an express contractual provision, the implied covenant of good faith and fair dealing claims failed; even if unconscionability was a standalone claim under Florida law, Alfaro and Egbunike sought money damages for breach of the allegedly unconscionable contract, a legal remedy not available for an equitable claim like unconscionability; and Alfaro and Egbunike couldn't pursue equitable unjust enrichment claims because they alleged that an express contract governed the parties' relationship, meaning they had adequate legal remedies.

Alfaro and Egbunike appealed the district court's dismissal order.

STANDARD OF REVIEW

We review de novo dismissals for failure to state a claim. *Cavalieri v. Avior Airlines C.A.*, 25 F.4th 843, 847 (11th Cir. 2022). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

DISCUSSION

On appeal, Alfaro and Egbunike argue that their complaint stated plausible claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unconscionability, and

unjust enrichment.[1] We break up our discussion by reviewing each claim.

Breach of Contract: Undisclosed FX Fee Class

As to the Undisclosed FX Fee Class, Alfaro and Egbunike alleged that the bank breached the deposit agreement because the bank imposed the international transaction fee despite "promis[ing] . . . it would only assess the fees disclosed . . . in the [s]chedule of [f]ees." Until May 8, 2015, they alleged, the bank assessed the international transaction fee even though it wasn't listed in the personal schedule of fees.

"For a breach of contract claim, Florida law requires the plaintiff to plead and establish: (1) the existence of a contract; (2) a material breach of that contract; and (3) damages resulting from the breach." *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1272 (11th Cir. 2009) (citing *Friedman v. N.Y. Life Ins. Co.*, 985 So. 2d 56, 58 (Fla. Dist. Ct. App. 2008)). Here, Alfaro and Egbunike did not plausibly allege a breach of their contract with the bank. That's because the bank didn't promise that it would assess only those fees listed in the personal schedule of fees.

First, the deposit agreement simply provided that the schedule of fees "list[ed the bank's] accounts and account fees." That

[1] Alfaro and Egbunike also contend that the district court erred in concluding that their claims were preempted by the Truth in Savings Act and its regulations. Because we agree with the district court that Alfaro and Egbunike failed to state a claim, we decline to reach the preemption issue.

language didn't promise accountholders that the schedule of fees would be an exhaustive list of *all* fees the bank might charge for other products or services.

Second, other language in the deposit agreement made clear that the bank assessed fees for "other services"—like for debit cards—that were not listed in the personal schedule of fees. The deposit agreement stated, for example, that the schedule "describe[d the bank's] *personal accounts*" and listed fees "that appl[ied] to [the bank's] *personal deposit accounts*" (emphasis added). But the international transaction fee related to the bank's debit cards. And the deposit agreement distinguished between the bank's debit-card services and its personal deposit accounts, providing that "[i]n addition to checking, savings and CD accounts[,] we also offer many other services . . . . *We may occasionally list fees for some of these services in the Schedule of Fees*" (emphasis added).

Likewise, the deposit agreement warned accountholders that "[*f*]*or other fees that apply to electronic banking services*, please review the *Schedule of Fees* for your account *and* each agreement or disclosure that we provide to you for the specific electronic banking service, including the separate agreement for Online and Mobile Banking services and the separate agreement regarding ATM and *debit cards*." One "other service" was the service that Alfaro and Egbunike used—the debit card. The deposit agreement, in short, referred debit card users to a separate agreement for debit cards that might list fees besides those listed in the personal schedule of fees.

Alfaro and Egbunike's arguments to the contrary aren't persuasive. First, they contend that, at worst, the deposit agreement is ambiguous as to whether the personal schedule of fees was the exclusive place to list fees and should be construed in their favor as the non-drafter. But, under Florida law, "[t]he intention of the parties must be determined from an examination of the whole contract and not from the separate phrases or paragraphs," and thus, we "must review the entire contract without fragmenting any segment or portion." *Jones v. Warmack*, 967 So. 2d 400, 402 (Fla. Dist. Ct. App. 2007) (first quoting *Lalow v. Codomo*, 101 So. 2d 390, 393 (Fla. 1958); then quoting *J.C. Penney Co. v. Koff*, 345 So. 2d 732, 735 (Fla. Dist. Ct. App. 1977)). Read as a whole, the deposit agreement's plain language isn't ambiguous as to whether the personal schedule of fees was the exclusive listing place for fees; it told accountholders to review separate agreements for ATM and debit cards to find "other fees that apply to electronic banking services." *See Frulla v. CRA Holdings*, 543 F.3d 1247, 1252 (11th Cir. 2008) (explaining that a contract's language is not ambiguous where one party's alternative interpretation "is unreasonable in light of the contract's plain language").

Second, Alfaro and Egbunike argue that they never received the card brochure, which listed the international transaction fee before May 8, 2015, and thus the card brochure wasn't incorporated into the deposit agreement. But whether the bank gave them a card brochure that listed the fee is irrelevant to whether the bank promised that it would only charge fees listed in the personal schedule of fees. Because the deposit agreement didn't make that

promise, we affirm the district court's dismissal of this breach of contract claim.

Breach of Contract: Unnotified FX Fee Class

As to the Unnotified FX Fee class, Alfaro and Egbunike alleged that the bank breached the deposit agreement by assessing the international transaction fee without notifying them of the May 8, 2015, amendments to the personal schedule of fees. But the bank did not breach the deposit agreement because that agreement didn't promise it would give advance notice of changes to the personal schedule of fees. The deposit agreement stated that the bank would "ordinarily send . . . advance notice of an adverse change," but the bank could "make changes without prior notice unless otherwise required by law." And the bank could, "but d[id] not have to," notify users of "changes that [the bank] ma[de] for security reasons or that [the bank] believe[d] [were] either beneficial or not adverse to [the accountholder]."

As this language makes plain, the bank didn't promise to *always* provide notice of an adverse change; it only promised to "ordinarily" provide advance notice unless otherwise required by law. Because Alfaro and Egbunike did not allege that notice was required by law, we affirm the district court's dismissal of this claim.

Breach of the Implied Covenant of Good Faith and Fair Dealing: Both Classes

For the Undisclosed FX Fee Class, Alfaro and Egbunike alleged that the bank breached the implied covenant of good faith and fair dealing because the bank charged the international

transaction fee although it was "hidden, concealed, or disclosed . . . in an inaccessible manner" before May 8, 2015. And for the Unnotified FX Fee Class, Alfaro and Egbunike alleged that the bank breached the implied covenant by charging them the fee without notice that the bank added it to the personal schedule of fees on May 8, 2015.

"Under Florida law, every contract contains an implied covenant of good faith and fair dealing, requiring that the parties follow standards of good faith and fair dealing designed to protect the parties' reasonable contractual expectations." *Centurion Air Cargo, Inc. v. United Parcel Serv. Co.*, 420 F.3d 1146, 1151 (11th Cir. 2005) (citing *Cox v. CSX Intermodal, Inc.*, 732 So. 2d 1092, 1097 (Fla. Dist. Ct. App. 1999)). But there is no breach of the implied covenant if "there is no accompanying action for breach of an express term of the agreement." *Diageo Dominicana, S.R.L. v. United Brands, S.A.*, 314 So. 3d 295, 299 (Fla. Dist. Ct. App. 2020) (citation omitted). Instead, a duty of good faith must "relate to the performance of an express term of the contract." *Id.* (citation omitted). "The duty of good faith does not attach until the [p]laintiff can establish a term of the contract that [the defendant] was obligated to perform." *Ins. Concepts & Design, Inc. v. Healthplan Servs., Inc.*, 785 So. 2d 1232, 1235 (Fla. Dist. Ct. App. 2001) (citations omitted).

Alfaro and Egbunike failed to state claims for breach of the implied covenant because, as we explained above, the bank did not breach express provisions of the contract. *See id.* Because the bank never promised to include *all* fees in the personal schedule of fees

or to *always* notify accountholders of adverse changes, it did not and could not breach an implied covenant to do those things. *Compare Main St. Mgmt. Servs., Inc. v. Eight Sixty S. Ocean Blvd., Inc.*, 993 So. 2d 1155, 1157–58 (Fla. Dist. Ct. App. 2008) ("In the present case, there was no express term in the contract that required 860 South to notify Main Street of its repair elections, and so there could not have been a breach of the implied covenant of good faith and fair dealing for 860 South's failure to do so."), *with Underwater Eng'g Servs., Inc. v. Util. Bd. of Key W.*, 194 So. 3d 437, 444–45 (Fla. Dist. Ct. App. 2016) (concluding that when the contract required notice to be given within 24 hours, the defendant failed to provide notice, and the failure to provide notice damaged the plaintiff, the failure to give notice constituted a breach of the duty of good faith and fair dealing). So the district court's dismissal of the implied covenant claims is also due to be affirmed.

Unconscionability: Both Classes

For both classes, Alfaro and Egbunike alleged that the international transaction fee was both procedurally and substantively unconscionable because the bank did not: (1) "disclose or reasonably disclose" the fee, its amount, or when it would be imposed; (2) obtain consent before charging the fee; (3) give accountholders a chance to cancel transactions before charging the fee; or (4) mention the fee in either the deposit agreement or personal schedule of fees before May 8, 2015, making those documents "ineffective, ambiguous, deceptive, unfair, and misleading." For the Unnotified FX Fee Class's unconscionability claim, specifically, Alfaro and

Egbunike also alleged that the bank failed to notify class members that it amended the schedule of fees.

Florida courts have invoked the unconscionability doctrine "to prevent the enforcement of contractual provisions that are overreaches by one party" to create unjust advantages over the other. *Basulto v. Hialeah Auto.*, 141 So. 3d 1145, 1157 (Fla. 2014) (citations omitted). It "has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." *Id.* at 1160 (citation omitted). The first prong, lack of a meaningful choice, is referred to as "procedural" unconscionability. *Id.* at 1157. And the second prong, which looks to the contract terms themselves, is referred to as "substantive" unconscionability. *Id.* at 1157–58. Each type must exist to some degree. *See id.* at 1159–61 (holding that "both elements must be present," although "they need not be present to the same degree"); *see also 12550 Biscayne Condo. Ass'n v. NRD Invs., LLC*, 336 So. 3d 750, 755 (Fla. Dist. Ct. App. 2021) (citations omitted).[2]

Although Alfaro and Egbunike claim the international transaction fee is both procedurally and substantively unconscionable, the complaint doesn't allege facts plausibly establishing either type of unconscionability. As for procedural unconscionability, Alfaro and Egbunike didn't allege a lack of meaningful choice to accept or reject the bank's terms. There are no allegations that Alfaro and

[2] We assume without deciding that Florida law recognizes unconscionability as a standalone cause of action.

Egbunike were unable to "obtain the desired product or services elsewhere," that the bank "pressured or rushed" them into contracting for debit cards, or that they were "otherwise precluded from inquiring into the terms." *Kendall Imports, LLC v. Diaz*, 215 So. 3d 95, 110 (Fla. Dist. Ct. App. 2017) (citations omitted). Nor are there any facts showing that the bank actually "did not disclose," or deceived Alfaro and Egbunike into believing through an "ambiguous" or "unfair" deposit agreement and schedule of fees, that they'd be responsible for fees not listed in the schedule. For example, the deposit agreement expressly stated that "other fees" for debit cards may be listed in a "separate agreement." *See Semerena v. Dist. Bd. of Trs. of Mia. Dade Coll.*, 282 So. 3d 974, 977–78 (Fla. Dist. Ct. App. 2019) (affirming dismissal of an unconscionability claim based on "excessive" insurance premiums because there were no allegations that the defendant "deceive[d]" the plaintiff or "lure[d] him into a bad bargain"). The complaint offers only conclusory allegations that a "great disparity" of bargaining power existed because the bank has "great business acumen and experience . . . in relation to [Alfaro and Egbunike]." But conclusory allegations aren't enough to state a plausible claim. *See Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." (citation omitted)).

Even assuming the complaint plausibly alleged procedural unconscionability, it falls short on substantive unconscionability. *See Basulto*, 141 So. 3d at 1159–61. "A substantively unconscionable contract is one that 'no man in his senses and not under delusion

would make on the one hand, and [one that] no honest and fair man would accept on the other.'" *12550 Biscayne Condo. Ass'n*, 336 So. 3d at 755 (quoting *Woebse v. Health Care & Ret. Corp. of Am.*, 977 So. 2d 630, 632 (Fla. Dist. Ct. App. 2008)). The challenged contract term must be "so 'outrageously unfair' as to 'shock the judicial conscience.'" *Id.* (quoting *Woebse*, 977 So. 2d at 632).

Conscience-shocking is a high bar to clear, even when money's at stake. For example, in *Hot Developers, Inc. v. Willow Lake Estates, Inc.*, after the buyer failed to close on an agreement to purchase commercial real estate, the buyer challenged the agreement's nonrefundable deposit provision as unconscionable. 950 So. 2d 537, 538–39 (Fla. Dist. Ct. App. 2007). Under that provision, the seller retained the buyer's $550,000 deposit, which was "only 9.65% of the total contract price." *Id.* at 539, 541. The Fourth District Court of Appeal affirmed summary judgment for the seller. *Id.* at 538. Under Florida law, it reasoned, the nonrefundable deposit provision didn't shock the conscience even though the deposit was hundreds of thousands of dollars. *See id.* at 541–42 (citing, among other cases, *Johnson v. Wortzel*, 517 So. 2d 42, 43 (Fla. Dist. Ct. App. 1987), where the amount exceeded three hundred thousand dollars, or 18.2% of the purchase price, and *Bradley v. Sanchez*, 943 So. 2d 218, 222 (Fla. Dist. Ct. App. 2006), where the deposit exceeded five hundred thousand dollars, or 4.85% of the total purchase price).

Take another example. In *Belcher v. Kier*, mobile-home renters alleged that annual increases to their rent across a six-year

span were unconscionable. 558 So. 2d 1039, 1040 (Fla. Dist. Ct. App. 1990). The increased rent prices "ranged from a low of [nine dollars] per month" above fair market value (or 6.6%) "to a high of [twenty-seven dollars] per month" above fair market value (or 15.9%). *Id.* at 1045. The Second District Court of Appeal reversed a trial judgment for the renters. *Id.* at 1040. It stressed that the relevant question was whether the rent increases were "monstrously harsh or grossly excessive," rather than just unreasonable. *Id.* at 1045. And, the court concluded, the six-to-fifteen-percent higher than fair market value monthly rent prices were not monstrously harsh or grossly excessive. *See id.* ("We cannot say that 'no man in his right mind' would pay these rents . . . .").

Here, the three-percent international transaction fee isn't monstrously harsh or grossly excessive, either. Charging a three-percent fee for foreign transactions is a far cry from retaining deposits exceeding hundreds of thousands of dollars or increasing rents up to twenty-seven dollars higher than fair market value per month. *See Hot Devs., Inc.*, 950 So. 2d at 541 (noting the $550,000 deposit was "only 9.65% of the total contract price"); *Johnson*, 517 So. 2d at 43 (noting the $347,011.66 "amount forfeited by the buyers represent[ed] 18.2% of the total contract"); *Bradley*, 943 So. 2d at 222 (noting the $510,000 deposit was "4.85% of the total sales price"); *Belcher*, 558 So. 2d at 1045 (noting the increased rent price was twenty-seven dollars or "15.9% above fair market rental value"); *cf. Dade Nat'l Dev. Corp. v. Se. Invs. of Palm Beach Cnty., Inc.*, 471 So. 2d 113, 114–17 (Fla. Dist. Ct. App. 1985) (reasoning that two contractual provisions stating the buyer would receive $200,000 in

cancellation fees if the seller cancelled after six months, which "amounted to 8.7% of [one contract's] purchase price and . . . 18% of the [other contract's] purchase price," did not "require[] equity to intervene"). Indeed, Alfaro and Egbunike's complaint provides six examples of when the bank applied the fee to their purchases. The fee exceeded five dollars only once—when the bank assessed $15.60 for a $520.00 purchase—and was only three percent of the price. Because the complaint did not allege plausible unconscionability claims, we affirm the district court's dismissal of them.

Unjust Enrichment: Both Classes

Finally, Alfaro and Egbunike alleged that the bank unjustly enriched itself by assessing the international transaction fee without (1) listing that fee in the personal schedule of fees before May 8, 2015, and (2) notifying accountholders that it amended the schedule to list the fee on May 8, 2015. But Florida law is clear that unjust enrichment claims are unavailable if there is an express contract on the same subject matter. *Diamond "S" Dev. Corp. v. Mercantile Bank*, 989 So. 2d 696, 697 (Fla. Dist. Ct. App. 2008) (explaining that "Florida courts have held that a plaintiff cannot pursue a quasi-contract claim for unjust enrichment if an express contract exists concerning the same subject matter" (citations omitted)).

Here, Alfaro and Egbunike's complaint alleged that, "[a]t all times relevant to this action, [the bank]'s relationship with [Alfaro and Egbunike] and all of its personal deposit [accountholders] has been governed by a standardized set of contractual documents." Both unjust enrichment counts incorporated that allegation. And

both unjust enrichment counts incorporated the allegations that the bank breached an express contract with Alfaro and Egbunike by assessing the international transaction fee. Because Alfaro and Egbunike alleged an express contract as part of their unjust enrichment claims, they are not entitled to an unjust enrichment remedy under Florida law.

Alfaro and Egbunike are right that they could have pleaded their unjust enrichment claims in the alternative. *See* Fed. R. Civ. P. 8(d)(2) ("A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones."). But they didn't; they alleged that the express contract governed "[a]t all times relevant to this action." Because "a plaintiff may not plead an unjust enrichment claim in the alternative to a claim for breach of contract when it is undisputed . . . that a valid contract exists," *Techjet Innovations Corp. v. Benjelloun*, 203 F. Supp. 3d 1219, 1234 (N.D. Ga. 2016), the district court properly dismissed the claims. *See Global Network Mgmt., Ltd. v. Centurylink Latin Am. Sols., LLC*, 67 F.4th 1312, 1316–19 (11th Cir. 2023) (applying Florida law and affirming the dismissal of an unjust enrichment claim because the complaint "alleged that there was an express agreement governing the relationship between the two parties"); *cf. Marquez v. Amazon.com, Inc.*, 69 F.4th 1262, 1276 (11th Cir. 2023) ("Plaintiffs . . . specifically incorporated the terms of their contract with Amazon as part of their unjust enrichment count. So, while plaintiffs may plead breach of contract and unjust enrichment in the alternative, . . . they have not done so. Instead, plaintiffs pleaded a contractual relationship as part of their unjust

enrichment claim, and that contractual relationship defeats their unjust enrichment claim under Washington law.").

CONCLUSION

We affirm the district court's order dismissing Alfaro and Egbunike's complaint for failure to state a claim.

AFFIRMED.