

ENTERED 10-03-14

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

**BOONE MOTOR SALES, INC., D/B/A
STEPHENS AUTO CENTER**

Plaintiff,

v.

**Civil Action No.: 14-C-098
Circuit Court Judge: James H. Young, Jr.
Business Court Division**

**THORNHILL GROUP, INC, D/B/A
THORNHILL FORD LINCOLN, and
FORD MOTOR COMPANY,**

Defendants.

ORDER

On the 26th day of September, 2014, this matter came before the Court upon Defendant, Thornhill Group's Motion to Dismiss and upon Defendant, Ford Motor Company's Motion to Dismiss. The Defendant, Thornhill Motor Group, appeared by counsel, Andrew G. Fusco, Esq. and Dylan C. Lewis, Esq. Defendant, Ford Motor Company, appeared by counsel, William J. Hanna, Esq., and Timothy S. Millman, Esq. The Plaintiff, Boone Motor Sales, appeared by counsel, William T. Forester, Esq.

Thereupon, the Court proceeded to hear arguments of the parties; and at the conclusion of the same the Court held the matter in abeyance so it may review the parties' pleadings and briefs. Therefore, the Court upon reviewing the parties' pleadings and briefs finds and orders as follows:

The Plaintiff's Petition for Temporary Relief and Complaint alleges damages based upon Violation of West Virginia Code §17A-6A-1 et seq. (Ford Motor Company), Breach of Contract

(Ford Motor Company), Tortious Interference (Thornhill Group), and Civil Conspiracy (Ford Motor Company and Thornhill Group). For ease and clarity the Court will address the violation of statute count separate from the three others.

STANDARD OF REVIEW

The Supreme Court of Appeals of West Virginia in *Roth v. DeFeliceCare, Inc.*, stated that “[t]he trial court in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Syl Pt. 2, *Roth v. DeFelice Care Inc.*, 226 W.Va. 214, 700 S.E.2d 183(2010). Additionally, when reviewing a complaint on a Rule 12(b)(6) motion it is “to be construed in the light most favorable to the plaintiff.” *Highmark West Virginia, Inc. v. Jamie*, 221 W.Va. 487, 492, 655 S.E.2d 509, 514 (2007).

VIOLATION OF STATUTE

The Plaintiff alleges that Defendant, Ford Motor Company, is in violation of West Virginia Code §17A-6A-1 et seq. More specifically Plaintiff alleges that the Ford Motor Company by allowing Defendant, Thornhill Group, to move locations has violated West Virginia Code §17A-6A-12. West Virginia Code §14A-6A-12(1) states “[a]s used in this section, “relocate” and “relocation” do not include the relocation of a new motor vehicle dealer within four miles of its established place of business or an existing new motor vehicle dealer sells or transfers the dealership to a new owner and the successor new motor vehicle dealership owner relocates to a location within four miles of the seller's last open new motor vehicle dealership location. The relocation of a new motor vehicle dealer to a site within the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor may not be

within six air miles of another dealer of the same line-make.” West Virginia Code §17A-6A-12(1) (2008). Accordingly, if a move of location does not fall within the definition of “relocate” or “relocation” under the above quoted code section then the procedures and relief available under West Virginia Code §§17A-6A-12(2)-(5) are inapplicable.

All of the parties before the Court agree that the distance from Defendant, Thornhill Group’s current location to the new location is 4 miles by air or 1.2 miles on the ground. Accordingly, this move does not meet the definition of “relocate” or “relocation” under West Virginia Code §17A-6A-12(1), as such the previous of West Virginia Code §§17A-6A-12(2)-(5) are unavailable to the Plaintiff. Therefore, the Plaintiff has failed to state a ground upon which relief can be granted in regards to a statutory violation; thus the Defendant, Ford Motor Company’s Motion to Dismiss the cause of action entitled “Violation of Statute” is **GRANTED**.

BREACH OF CONTRACT, TORTIOUS INTERFERENCE, and CIVIL CONSPIRACY

In addition to the previously quoted standard of review applicable in Rule 12(b)(6) motions the Court must also consider what is required of a Plaintiff under Rule 8 of the West Virginia Rules of Civil Procedure. Rule 8 simply requires that “[a] pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks.” W. Va. R. Civ. P. 8(a)(1). The main purpose of Rule 8 is to “place a potential defendant on notice as to the nature of the claim(s) asserted against him/her.” *Bowers v. Wurzburg*, 205 W.Va. 450, 462, 519 S.E.2d 148, 160 (1999). When examining the remaining causes of action in the Plaintiff’s Complaint it is obvious what redress is being sought and the grounds upon which it is being sought. Therefore,

the Defendants' Motions to Dismiss the breach of contract, tortious interference, and civil conspiracy counts are **DENIED**.

Based upon the preceding the Court **ORDERS** as follows:

1. That the Motion to Dismiss in regards to the Violation of Statute count is **GRANTED**.
2. That the Motions to Dismiss in regards to the Breach of Contract, Tortious Interference, and Civil Conspiracy counts are **DENIED**.
3. That the Plaintiff's prayer for injunction under West Virginia Code §17A-6A-1 et seq. is **DENIED**.

All accordingly which is ORDERED and DECREED.

Enter this 2nd day of October, 2014.

ORDER
ENTER: 
HONORABLE JAMES H. YOUNG, JR.