

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

ALAN ENTERPRIZES, LLC

Plaintiff,

v.

Civil Action No.: 14-C-503-2
Judge Bedell

MAC'S CONVENIENCE STORES LLC,
d/b/a Circle K, JOYCE SALMON, and
LOUIS DIAB,

Defendants.

**REPLY OF ALAN ENTERPRIZES LLC
TO DEFENDANT MAC'S CONVENIENCE STORES LLC'S COUNTERCLAIM**

Plaintiff Alan Enterprizes LLC, by and through its undersigned counsel, hereby replies to the Counterclaim asserted by Defendant Mac's Convenience Stores LLC ("Mac's) against Alan Enterprizes in Mac's Convenience Stores, LLC, Joyce Salmon, and Louis Diab's Answer to the Amended Complaint and Counterclaim, as follows:

FIRST DEFENSE

Mac's Counterclaim fails to state a claim against Plaintiff upon which relief can be granted as a matter of law.

SECOND DEFENSE

1. Plaintiff admits that it is a seller of motor fuel to the general public, and, as such, is a retailer within the meaning of the West Virginia Unfair Practices Act.

2. Plaintiff admits that there may have been occasions when, out of concern for its solvency and in order to meet and/or stay competitive with Mac's retail gasoline prices, Plaintiff sold motor fuel below its cost as calculated under the West Virginia Unfair Practices Act. Plaintiff further states that it complied with all applicable law.

3. Plaintiff denies the allegations in Paragraph 3 of the Counterclaim and demands strict proof thereof.

4. Plaintiff denies the allegations in Paragraph 4 of the Counterclaim and demands strict proof thereof.

5. Plaintiff denies the allegations in Paragraph 5 of the Counterclaim and demands strict proof thereof.

6. Plaintiff denies that Defendant is entitled to any relief against Plaintiff whatsoever.

THIRD DEFENSE

The Plaintiff complied with all legal requirements necessary to sell retail gasoline in West Virginia, including, without limitation, endeavoring in good faith to meet competition in setting retail gasoline prices, as permitted by *W. Va. Code* § 47-11A-8(d).

FOURTH DEFENSE

At all material times, Mac's retail price of gasoline, meaning the price paid at the pump by its customers, was lower than the Plaintiff's retail price of gasoline.

FIFTH DEFENSE

The damages, if any, of which Mac's complains were caused by the acts, omissions or fault of Mac's and/or others, and not by Plaintiff.

SIXTH DEFENSE

Mac's Counterclaim is barred by the doctrines of waiver and/or estoppel.

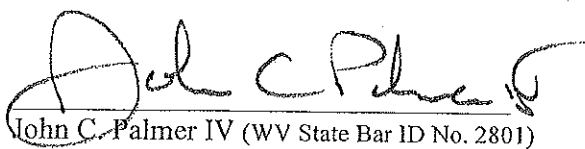
SEVENTH DEFENSE

Mac's claims for damages are barred in whole or in part by the applicable statute of limitations, doctrine of laches, failure to mitigate damages, comparative negligence and/or fault,

contributory negligence, assumption of risk, self-inflicted injury, lack of causation, unclean hands, indemnification and/or setoff-offset.

ALAN ENTERPRIZES, a limited liability company

By Counsel

A handwritten signature in dark ink, appearing to read "John C. Palmer IV", is written over a horizontal line.

John C. Palmer IV (WV State Bar ID No. 2801)

Keith J. George (WV State Bar ID No. 5102)

Stephen D. Annand (WV State Bar ID No. 150)

ROBINSON & MCELWEE PLLC

Post Office Box 1791

Charleston, West Virginia 25301

Tel.: (304) 344-5800

Fax: (304) 344-9566

Devan K. Flahive (WV State Bar ID No. 12539)

ROBINSON & MCELWEE PLLC

140 West Main Street, Suite 300

Clarksburg, WV 26301

Tel.: (304) 622-5022

Fax: (304) 622-5065

Counsel for Plaintiff Alan Enterprizes LLC

CERTIFICATE OF SERVICE

I, John C. Palmer IV, counsel for the Plaintiff, hereby certify that on this 9th day of September, 2015, I served copies of the attached **REPLY OF ALAN ENTERPRIZES LLC TO DEFENDANT MAC'S CONVENIENCE STORES LLC'S COUNTERCLAIM** upon counsel for the Defendants by U.S. Mail, postage prepaid, in an envelope addressed to:

Zach Chaffee-McClure, Esquire
Shook, Hardy & Bacon LLP
2555 Grand Boulevard
Kansas City, Missouri 64108

Kyle T. Turnbull, Esquire
Flaherty Sensabaugh Bonasso PLLC
48 Donley Street, Suite 501
Morgantown, West Virginia 26501

Michael Bonasso, Esquire
Flaherty Sensabaugh Bonasso, PLLC
200 Capitol Street
Charleston, West Virginia 25301


John C. Palmer IV (WV State Bar ID No. 2801)