

IN THE CIRCUIT COURT OF HAMPSHIRE COUNTY, WEST VIRGINIA

ROBERT E. MAYHEW,
PLAINTIFF,

vs.

CIVIL ACTION NO. 15-C-109

DAVID WEIMER, Individually, and
WEIMER CHEVROLET, INC.,
a West Virginia Corporation.,
DEFENDANTS.

COMPLAINT

Comes now the Plaintiff, Robert E. Mayhew, and would allege, aver and
complain against each of the named Defendants herein as follows:

1. The Plaintiff, Robert E. Mayhew, is a citizen and actual bona fide resident
of 111 Depot Valley Road, P.O. Box 63, Romney, Hampshire County, West Virginia,
26757, and he was a resident of Hampshire County, West Virginia, at all times referred
to within this Complaint.

2. The Defendant, David Weimer, individually, is believed to be a citizen and
actual bona fide resident of 405 Crestview Drive, Frostburg, Maryland, 21532, and
David Weimer is believed to be the sole owner of the named Defendant corporation,
Weimer Chevrolet, Inc., a West Virginia "C" corporation which was established on
November 7, 2012, according to on-line data services of the business and licensing
division of the Office of the West Virginia Secretary of State.

3. The Defendant, Weimer Chevrolet, Inc., is a West Virginia "C" corporation
organized pursuant to the laws of the State of West Virginia as a domestic profit
corporation effective November 7, 2012, with its stated principal office address,

according to the West Virginia Secretary of State, at US Rt. 50, Ridge Loop Road, Romney, West Virginia, 26757, however, upon information and belief, Hampshire County, West Virginia, now uses a 911 address for Weimer Chevrolet, Inc., at 22338 Northwestern Pike, Romney, West Virginia, 26757.

4. Weimer Chevrolet, Inc., a West Virginia Corporation, formed November 7, 2012, is a successor corporation to Mayhew Chevrolet, Inc., also a West Virginia Corporation, heretofore located at HC 63, Box 3570, Romney, West Virginia, 26757, which said successor corporation, Weimer Chevrolet, Inc., has a current 911 address of 22338 Northwestern Pike, Romney, West Virginia, 26757, and the successor corporation, Weimer Chevrolet, Inc., occupies the same location as the original Mayhew Chevrolet, Inc., referred to within this paragraph as a Chevrolet automobile dealership business.

5. The Plaintiff and the Defendant, David Weimer, individually, entered into an Agreement to sell/purchase Mayhew Chevrolet, Inc., the West Virginia Corporation hereinbefore referred to in preceding paragraphs dated June 18, 2013, a copy of which is attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 1.

6. The Plaintiff, Robert E. Mayhew, and the Defendant, David Weimer, individually, each signed an Invoice for Sale of stock of Mayhew Chevrolet, Inc., dated June 18, 2013, whereby David Weimer became the sole owner of Mayhew Chevrolet, Inc., stock, a copy of which is attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 2.

7. The Plaintiff, Robert E. Mayhew, as president of Mayhew Chevrolet, Inc., and the Defendant, David Weimer, individually, each signed a Bill of Sale for all

personal property, inventory, as well as all tools and advertising materials, etc., dated June 18, 2013, a copy of which is attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 3.

8. The Plaintiff, Robert E. Mayhew, on behalf of K.B. Mayhew Holdings, LLC, and the Defendant, David Weimer, as president of BTA, Inc., entered into a Lease Agreement with an option to purchase real estate on which the Mayhew Chevrolet, Inc., corporation and its facilities then existed at the time of purchase, which said Lease Agreement was entered into on the 18th day of June, 2013, a copy of which is attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 4.

9. As further consideration for the transfer and sale of the Mayhew Chevrolet, Inc., corporation by the Plaintiff to the Defendant, these parties entered into a Consulting Agreement dated June 18, 2013, a copy of which is attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 5.

10. The terms of the attached Consulting Agreement, Plaintiff's Exhibit No. 5, have a stated term of three (3) years; beginning July 1, 2013, noted at paragraph 2, with compensation noted at paragraph 3 within the said Consulting Agreement at seventy thousand dollars (\$70,000.00) per year, payable monthly in arrears, thereby contemplated at \$5,333.33 per month for a fixed 3 year term. Plaintiff specifically refers to Plaintiff's Exhibit No. 5 attached hereto and incorporated herein by reference, the Consulting Agreement, dated June 18, 2013, in its entirety.

11. Pursuant to the Consulting Agreement attached hereto as Plaintiff's Exhibit No. 5, dated June 18, 2013, the Plaintiff commenced his consulting duties

effective July 1, 2013, with the first monthly payment made to the Plaintiff by the Defendants on or about August 1, 2013.

12. Payments under the Consulting Agreement between these parties, attached hereto as Plaintiff's Exhibit No. 5, continued without interruption until April, 2015. The Defendant failed to provide monthly payments for the consulting compensation as required by the Consulting Agreement to the Plaintiff for the months of April and May, 2015, without any notice as required pursuant to the Consulting Agreement, and upon the oral representation by the Defendant, David Welner, to the Plaintiff, that the automobile dealership sold to the Defendants by the Plaintiff was not making sufficient money to justify payment of the continuing consulting compensation.

13. During June, 2015, the Defendants tendered to the Plaintiff a document entitled "Memorandum of Understanding" between Mayhew Chevrolet, Inc., and Robert E. Mayhew, a copy of which is attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 6, whereby the Defendants proposed to terminate the Consulting Agreement of June 18, 2013, with the Plaintiff, Robert E. Mayhew. The Plaintiff notes that certain dates within the "Memorandum of Understanding" attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 6, appear incorrect, and the said "Memorandum of Understanding" was tendered to the Plaintiff by the Defendant by placing same within the mailbox of the Plaintiff at the Chevrolet automobile dealership of the Defendants in Romney, West Virginia, without prior notice to the Plaintiff, and without the agreement of the Plaintiff.

14. The Plaintiff, Robert E. Mayhew, refused to sign the "Memorandum of Understanding" attached hereto and incorporated herein by reference as Plaintiff's

Exhibit No. 6; the Plaintiff refused to terminate the Consulting Agreement dated June 18, 2013; and the Plaintiff demanded of the Defendants that the terms and conditions of the Consulting Agreement Contract of June 18, 2013, continue without interruption for the full term of three (3) years as set forth within the attached Plaintiff's Exhibit No. 5.

15. Compensation was reinstated by the Defendant commencing for the month of June, 2015, pursuant to the Consulting Agreement of June 18, 2013, upon the Defendant, David Weimer, representing to the Plaintiff that he would agree to extend the Consulting Agreement for two (2) additional months past the termination date previously established within the Agreement of June 18, 2013. Payments continued until the last payment made by the Defendants to the Plaintiff on or about September 1, 2015. The payments then terminated without notice and without further contact by the Defendants to the Plaintiff, and the Plaintiff has received no compensation as required pursuant to the Consulting Agreement of June 18, 2013, since September 1, 2015.

16. The Plaintiff is owed a total of twelve (12) months of compensation pursuant to the Consulting Agreement of June 18, 2013, with total compensation owed by the Defendants to the Plaintiff of seventy thousand (\$70,000.00) dollars for which the Defendants are contractually bound to pay for the fixed three (3) year term of the Consulting Agreement of June 18, 2013.

17. During October, 2015, the Plaintiff retained the undersigned counsel, J. David Judy, III, to represent the Plaintiff for purpose placing the Defendants on notice of Breach of Contract and to demand compliance with the full term of the Consulting Agreement dated June 18, 2013, all of which is represented within a letter dated

October 19, 2015, sent to the Defendants, a copy of which is attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 7.

18. The Defendants have failed and refused to comply with the written terms of the Consulting Agreement entered into between these parties of June 18, 2013, in violation of the binding contractual terms stated therein.

COUNT I
BREACH OF CONTRACT

19. Plaintiff restates each paragraph numbered 1 through 18, as if stated verbatim herein.

20. Plaintiff's Exhibits 1 through 5 attached hereto represent binding contractual agreements which integrally form the entire contract and sale/purchase of the Chevrolet dealership between the Plaintiff and the Defendants previously known as Mayhew Chevrolet, Inc., located in Romney, Hampshire County, West Virginia.

21. Each of the contractual agreements attached hereto as Plaintiff's 1 through 5 represent the entire binding contract between these parties, jointly and severally, upon the which the sale of Mayhew Chevrolet, Inc., was premised between the Plaintiff and the Defendants.

22. The Consulting Agreement entered into between the Plaintiff and the Defendants represent binding consideration required for the sale of Mayhew Chevrolet, Inc., by the Plaintiff to the Defendants with a fixed term and with fixed compensation, therein representing Robert E. Mayhew as an independent contractor and not an employee, upon which each of the parties hereto are contractually bound with valuable consideration.

23. The Consulting Agreement attached hereto as Plaintiff's Exhibit No. 5, is represented as the "entire agreement" between these parties for purposes of the Consulting Agreement, as stated at paragraph 9 of the June 18, 2013, contract, wherein each of the parties hereto agreed to be contractually bound by the terms of the Consulting Agreement, and that the Consulting Agreement is legally enforceable by each of the parties, their successors and assigns.

24. The Defendants are in contumacious breach of the contractual terms of the Consulting Agreement by the failure and refusal of the Defendants to comply with the written contractual terms of the Consulting Agreement dated June 18, 2013.

25. The Plaintiff is entitled to legally enforce the Consulting Agreement dated June 18, 2013, signed by the respective Defendants in this action for purposes of damages in the amount of the unpaid compensation owed by the Defendants to the Plaintiff in the amount of seventy thousand (\$70,000.00) dollars.

26. The Plaintiff is entitled to accelerate the compensation owed to the Plaintiff pursuant to the breach of the Consulting Agreement attached hereto as Plaintiff's Exhibit No. 5, and to require the Defendants to immediately pay all unpaid compensation under the Consulting Agreement attached hereto as Plaintiff's Exhibit No. 5.

COUNT II
FRAUD

27. Plaintiff incorporates each of the paragraphs numbered 1 through 26 as if stated verbatim herein.

28. The Defendant, David Weimer, is in contumacious and intentional breach and violation of the contractual terms and conditions of the Consulting Agreement dated

June 18, 2013, attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 5.

29. The Plaintiff was induced by the Defendant, David Weimer, to enter into the sale of Mayhew Chevrolet, Inc., a profitable business in Romney, Hampshire County, West Virginia, owned solely by the Plaintiff, as represented within those contracts dated June 18, 2013, and attached hereto and incorporated herewith as Plaintiff's Exhibits No. 1 through 5.

30. The Defendants have demonstrated an intent to intentionally breach the contractual terms and conditions of the Sales Agreements and Consulting Agreement entered into between the Plaintiff and the Defendant, David Weimer, by knowingly and intentionally breaching the contractual terms of the Consulting Agreement, and by making material and false representations that the Defendants would pay compensation to the Plaintiff as stated within the Consulting Agreement attached hereto as Plaintiff's Exhibit 5, and the Plaintiff relied upon the contractual terms of the Consulting Agreement and the representations of the Defendant as stated within the written contractual terms of the Consulting Agreement attached hereto as Exhibit No. 5, and your Plaintiff was justified under the circumstances in relying upon the contractual terms requiring compensation to be paid to the Plaintiff by the Defendant pursuant to the Consulting Agreement.

31. The Plaintiff has been damaged by his reliance upon the written contractual terms of the Consulting Agreement and upon the representations made therein by the Defendant, David Weimer.

therein by the Defendant, David Weimer.

32. The Defendant, David Weimer, and the successor corporation, Weimer's Chevrolet, Inc., have fraudulently withheld payments which are contractually bound to be paid to your Plaintiff, as a breach of good faith and fair dealing and as intentional acts based upon misrepresentations to the Plaintiff by the Defendants that the Chevrolet dealership in Romney, West Virginia, does not have sufficient profit and income to pay the consulting compensation required under the contract agreement attached hereto as Plaintiff's Exhibit 5.

33. The Defendants are using their superior financial position to the detriment of the Plaintiff in a fraudulent manner, with malice, and without any bona fide claim of right which thereby requires an award of punitive damages as well as attorney's fees and costs generated in the prosecution of this action against the Defendants.

34. The actions of the Defendants in failing and refusing to comply with the contractual written terms of the Consulting Agreement attached hereto as Plaintiff's Exhibit 5 are intentionally calculated to damage the Plaintiff financially and against his reputation in the community.

COUNT III
BREACH OF CONTRACT
LEASE AGREEMENT AND BUSINESS SALES AGREEMENT

35. Plaintiff incorporates each of the paragraphs numbered 1 through 34 as if stated verbatim herein.

36. The Defendant, David Weimer, has caused a letter to be written by his attorney to counsel for the Plaintiff dated November 12, 2015, therein prohibiting the Plaintiff from coming on to the property now operated by Weimer's Chevrolet, Inc., the

successor of Mayhew Chevrolet, Inc., a copy of which is attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 8.

37. Within the Agreement to Sale (sic) Business dated June 18, 2013, a copy of which is attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 1, at paragraph 4 A, at page 9, the Plaintiff was contractually left as the "Dealer Principal" as defined with General Motors Dealers Sales and Service Agreement which was in existence at the time of the sale of Mayhew Chevrolet, Inc., between General Motors, Inc., and Mayhew Chevrolet, Inc.. The Defendant, David L. Weimer, and Weimer Chevrolet, Inc., have failed to complete the application process with General Motors, Inc., to become "Dealer Principal" for the dealership now known as Weimer Chevrolet, Inc., thereby leaving the Plaintiff, Robert E. Mayhew as "Dealer Principal" of the Weimer Chevrolet, Inc., Chevrolet dealership.

38. By the failure of the Defendants to complete the application process to become "Dealer Principal", and to replace Robert E. Mayhew, the Plaintiff, as "dealer principle" for the Romney Chevrolet dealership now known as Weimer Chevrolet, Inc., and by prohibiting access of Robert E. Mayhew, the Plaintiff, to enter the dealership business, the Chevrolet dealership in Romney, West Virginia is without a "Dealer Principal" to act for and on behalf of the dealership with General Motors, Inc.

39. The current contract of Robert E. Mayhew, the Plaintiff named herein, within General Motors, Inc., as "Dealer Principal" for the Mayhew Chevrolet, Inc., dealership in Romney, West Virginia, ends as of December 31, 2015. By the breach of the Consulting Agreement with the Plaintiff, the Defendant has also breached the Agreement to Sale (sic) Business of June 18, 2013, attached hereto and incorporated herein by reference as Plaintiff's Exhibit No. 1, and the Defendant has breached the Lease Agreement, also entered into between these parties for the real estate of the

in Romney, signed on June 18, 2013, which specifically permitted entry onto the premises by the Plaintiff, Robert E. Mayhew.

40. By the letter directed by the Defendant from Attorney Max White dated November 12, 2015, the Defendants have breached the Lease Agreement of Robert E. Mayhew and his holding company, K.B. Mayhew Holdings, LLC, the actual owner of the real estate on which the Chevrolet dealership is situate in Romney, West Virginia, known as Weimers Chevrolet, Inc.

41. By the letter dated November 12, 2015, from Max White, Attorney for David L. Weimer and upon the breach of the Lease Agreement by David L. Weimer, the principal of BTA, Inc., the lessee of the real estate, the Plaintiff declares the Lease Agreement breached, and thereby terminated, and thereby terminating also the option to purchase the real estate as stated within that Lease Agreement.

42. Upon the breach of the Lease Agreement by the Defendants, a copy of which is attached to Plaintiff's Complaint as Exhibit No. 4, the Defendants are left with two (2) choices: (1) Either immediately vacate the dealership premises; or (2) immediately purchase the real estate pursuant to the terms and conditions of the Lease Agreement under paragraph 16, at page 7.

PRAYER

WHEREFORE, Plaintiff respectfully demands relief as follows:

1. That this Court find and conclude that the Consulting Agreement entered into these parties dated June 18, 2013, and incorporated herein by reference as Plaintiff's Exhibit No. 5 is a binding contractual agreement between these parties with a specific object, term and consideration.

2. That the Court enter judgment in favor of the Plaintiff and against the Defendants for all compensatory, special and general damages found to have been suffered by the Plaintiff as a result of the breach of contract and fraudulent conduct of the Defendants against the interests of the Plaintiff.

3. That your Plaintiff recover of and from the Defendants punitive damages in an amount to be set upon the evidence presented at trial in this action.

4. That your Plaintiff recover of and from the Defendants his costs and expenses of this litigation, as well as all reasonable attorney's fees and litigation expenses incurred in the prosecution of this action.

5. That the Court accelerate the compensation due and payable to the Plaintiff under the Consulting Agreement of June 18, 2013, and thereby cause the Defendants to immediately compensate the Plaintiff for the remaining contractual term owed under the contract attached hereto as Plaintiff's Exhibit No. 5, which the Plaintiff duly believes is seventy thousand (\$70,000.00) dollars representing the full final twelve (12) months owed to the Plaintiff by the Defendants under the contractual Consulting Agreement.

6. That the Court specifically find and conclude that the Defendants are guilty of fraudulent conduct by fraudulently inducing the Plaintiff to enter into a contractual agreement upon which the Defendants clearly intended to breach; upon the fraudulent and intentional breach of the contract; and that the Plaintiff was justified in relying upon the contractual terms set forth within the Consulting Agreement, and that the Plaintiff was damaged thereby.


7. That the Court declare, find and conclude that the actions of the Defendants are in breach of the agreement for sale of the business of Mayhew Chevrolet, Inc., entered into between these parties dated June 18, 2013, and that the

Defendants are in breach of the Lease Agreement also signed by these parties on June 18, 2013, and pursuant thereto, that the terms and conditions of the Lease Agreement require the Defendants to either vacate the property on which the Chevrolet dealership exists in Romney, West Virginia, or that the Defendants are immediately required to consummate the option to purchase the real estate as set forth within the said Lease Agreement.

8. Such other and further general relief as the Court deems just.

Robert E. Mayhew
Plaintiff - By Counsel

JUDY & JUDY
Attorneys at Law

By: 
J. David Judy, III
P.O. Box 636
Moorefield, WV 26836
(304) 538-7777
WV State Bar No.: 1939
Counsel for Plaintiff

STATE OF West Virginia
COUNTY OF DeWitt, to-wit:

Robert E. Mayhew, a credible person, being first duly sworn, says that the facts and allegations contained in the "COMPLAINT" are true, except so far as they are therein stated to be on information and belief and he believes them to be true.


Robert E. Mayhew

Taken, sworn to and subscribed before me, the undersigned authority, this the 16th day of November, 2015.

My Commission expires: May 1st 2024


NOTARY PUBLIC



**EXHIBITS ARE
ON FILE IN THE
SUPREME
COURT CLERK'S
OFFICE AND
THE CIRCUIT
COURT OF
HAMPSHIRE
COUNTY**