

**DO NOT REMOVE
FROM FILE**

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

**GREATWIDE CHEETAH TRANSPORTATION, LLC,
a Delaware Limited Liability Company,
successor in interest to,
CHEETAH TRANSPORTATION, LLC,**

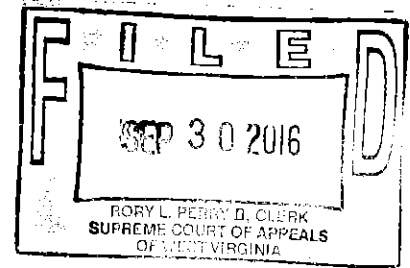
Plaintiff,

v.

**RONALD O. SLEMBOSKI, JR., an individual,
and SANDRA L. SLEMBOSKI, an individual,
d/b/a MTF AGENCY,**

Defendants.

**Civil Action No. 14-C-106
Hon. Lawrance S. Miller, Jr.**



FILED
14 SEP 23 PM 3:07
DEPT. OF
CIVIL JUSTICE
PRESTON COUNTY WV

FIRST AMENDED COMPLAINT

Plaintiff Greatwide Cheetah Transportation, LLC, by and through its counsel, brings this First Amended Complaint¹ against Defendants and alleges as follows:

THE PARTIES

1. Greatwide Cheetah Transportation, LLC ("Greatwide"), successor in interest to Cheetah Transportation, LLC ("Cheetah"), is a Delaware Limited Liability Company with its principal place of business located at 2150 Cabot Blvd W, Langhorne, Pennsylvania 19047.

2. Ronald O. Slemboski, Jr., is a resident of West Virginia, residing at 38 S. Robert Stone Way, Reedsville, West Virginia 26547.

3. Sandra L. Slemboski is a resident of West Virginia, residing at 38 S. Robert Stone Way, Reedsville, West Virginia 26547.

¹ The sole purpose of this amended complaint is to assert alternative claims against Defendant Sandra L. Slemboski. Pursuant to W. Va. R. Civ. P. 15(a), Greatwide amends its complaint as a matter of course as Mrs. Slemboski has not filed an answer in this matter.

4. Ronald O. Slemboski, Jr. and Sandra L. Slemboski (collectively "Defendants"), conduct business under the name "MTF Agency."

JURISDICTION AND VENUE

5. This Court may exercise general and specific personal jurisdiction over the Plaintiffs to this civil action because Plaintiffs reside in Preston County, West Virginia and routinely conduct business in West Virginia;

6. This Court may exercise jurisdiction over the subject matter of this civil action because the amount in controversy in this civil action significantly exceeds two thousand five hundred dollars. See W.Va. Code § 51-2-2 (circuit courts shall have original and general jurisdiction over civil matters where amount in controversy exceeds two thousand five hundred dollars).

7. This Court is the proper venue for this civil action. See W. Va. Code § 56-1-1(a)(1) (venue is proper where defendants reside or cause of action arose in county in which action is filed).

FACTUAL ALLEGATIONS

8. Greatwide is a leader in the transportation industry and provides truckload transportation services to its customers throughout the United States.

9. Greatwide's fleet of trucks is comprised of power units leased from independent owner-operators, with equipment specializing in a variety of industries, including industrial dedicated flatbed offerings.

10. Through contractual relationships with its customers, Greatwide provides one-way truckload services, without any obligation for the return trip, as well as round-trip services.

11. Defendants, doing business as "MTF Agency," are in the business of soliciting freight from potential customers, and the freight is subsequently hauled by transportation companies, such as Greatwide.

12. On or around September 5, 1997, Defendants entered into a Sales Agency Agreement (the "Original Agreement") with Cheetah.

13. The Original Agreement was subsequently assigned to Greatwide as the successor in interest to Cheetah.

14. Under the Original Agreement, Defendants agreed to serve as Cheetah's agents and to solicit from the public general commodities freight, originating at various points throughout the United States, to be hauled by Cheetah.

15. On or around July 11, 2011, Defendants and Greatwide entered into an Addendum to the Original Agreement (the "Addendum"), which became effective on July 15, 2011. A copy of the Addendum is attached as *Exhibit A*.

16. Pursuant to the Addendum, Greatwide paid Defendants \$100,000 in the form of a forgivable loan.

17. Pursuant to the Addendum, Defendants agreed to repay Greatwide a percentage of the forgivable loan in the event that Defendants failed to generate a specified amount of adjusted gross revenue.

18. Upon information and belief, Defendants have failed to generate the required amount of adjusted gross revenue.

19. In consideration of the forgivable loan, Defendants agreed to serve as exclusive sales agents for Greatwide for an initial term of four (4) years (the "Initial Term"), commencing July 15, 2011.

20. On or around December 1, 2013, Defendants ceased soliciting freight for Greatwide on an exclusive basis.

21. Upon information and belief, Defendants began to solicit freight for a competitor of Greatwide prior to December 1, 2013, without Greatwide's knowledge or approval.

COUNT I - BREACH OF CONTRACT (ALL DEFENDANTS)

22. The preceding paragraphs are incorporated by reference as if fully restated herein.

23. Defendants have breached their agreement to serve as Greatwide's exclusive sales agent by soliciting business for, or on behalf of, a competitor of Greatwide during the term of the Addendum.

24. As a result of Defendants' failure to generate the requisite adjusted gross revenue, Defendants were obligated to repay a certain percentage of the loan to Greatwide pursuant to the terms of the Addendum.

25. Contrary to the express terms of the Addendum and in further breach thereof, Defendants have failed or refused to repay the loan, or any portion thereof.

26. As a result of Defendants' breaches of the obligations imposed upon them under the Addendum, Greatwide has and will continue to suffer damages, including, but not limited to, the following:

- A. The amount of the loan paid to Defendants (\$100,000), including interest thereon;
- B. Amounts of revenue which could or should have been generated by Defendants for and on behalf of Greatwide pursuant to the exclusive agency relationship agreed to by Defendants under the Addendum; and
- C. Such other consequential damages which are the result of Defendants' breach of the Addendum.

WHEREFORE, Plaintiff respectfully requests that the Court enter a Judgment in favor of Plaintiff directing Defendants to pay damages to Plaintiff in an amount exceeding \$2,500 and

such other and further relief as is in accordance with applicable law plus interest, costs, and attorneys' fees.

COUNT II - BREACH OF FIDUCIARY DUTY (ALL DEFENDANTS)

27. The preceding paragraphs are incorporated by reference as if fully restated herein.

28. By virtue of the Addendum, and Defendants' long-term service as Greatwide's exclusive agent, which pre-dated the Addendum, Defendants had a fiduciary relationship with Greatwide.

29. By virtue of their longstanding fiduciary relationship with Greatwide, Defendants owed Greatwide various duties, including duties of loyalty, good care, and disclosure.

30. Defendants therefore had a fiduciary obligation to act solely for the benefit of Greatwide and to refrain from taking action adverse to Greatwide or its business interests.

31. Likewise, as Greatwide's agents and fiduciaries, Defendants had an obligation to refrain from competing with Greatwide or assisting others to compete with Greatwide.

32. In light of their longstanding fiduciary relationship, Greatwide placed its trust and confidence in Defendants to act in Greatwide's best interests and to generate new business on Greatwide's behalf.

33. Defendants breached their fiduciary duties and responsibilities to Greatwide by compromising Greatwide's competitive position in the market by virtue of their interactions in support of a Greatwide competitor, and in contravention to their fiduciary obligations to Greatwide.

34. Defendants' conduct actively assisted one or more of Greatwide's competitors, to the detriment of Greatwide.

35. As a result of Defendants' breach of their fiduciary responsibilities and duties, Greatwide has been damaged in the following respects:

- A. Loss of business to a competitor of Greatwide;
- B. Loss of a competitive advantage within the geographic areas serviced by Defendants on behalf of Greatwide; and
- C. Such other consequential damages which are the result of Defendants' breach of the Addendum.

WHEREFORE, Plaintiff respectfully requests that the Court enter a Judgment in favor of Plaintiff directing Defendants to pay damages to Plaintiff in an amount exceeding \$2,500 and such other and further relief as is in accordance with applicable law plus interest, costs, and attorneys' fees.

COUNT III – UNJUST ENRICHMENT (ALL DEFENDANTS)

36. The preceding paragraphs are incorporated by reference as if fully restated herein.

37. Based on Defendants' longstanding fiduciary relationship with Greatwide, Greatwide placed trust and confidence in Defendants to act in its best interests and to generate new business for Greatwide.

38. In reliance on their longstanding history, during which Defendants jointly conducted business as "MTF Agency," Greatwide provided Defendants with a \$100,000.00 forgivable loan.

39. In providing Defendants with \$100,000.00, Greatwide conferred a direct, substantial benefit upon Defendants.

40. That benefit was at the expense of Greatwide, and Defendants were aware of such benefit.

41. Greatwide made the loan with the express understanding that Defendants would put forth their best efforts to create additional profits for Greatwide, by generating a specified amount of adjusted gross revenue.

42. Defendants accepted the forgivable loan from Greatwide knowing that Greatwide expected them to generate additional revenue by which to generate additional profits on Greatwide's behalf.

43. Despite this understanding, Defendants abruptly halted their efforts to solicit new business for Greatwide and, upon information and belief, began to solicit business for a Greatwide competitor.

44. At the same time, Defendants retained the \$100,000.00 provided by Greatwide, which was provided with the good faith understanding that Defendants would continue their longstanding efforts on Greatwide's behalf.

45. Under the circumstances, Defendants have been unjustly enriched, and equity and good conscience require that restitution should be made.

WHEREFORE, Plaintiff respectfully requests that the Court enter a Judgment in favor of Plaintiff directing Defendants to pay damages to Plaintiff in an amount exceeding \$2,500 and such other and further relief as is in accordance with applicable law plus interest, costs, and attorneys' fees.

COUNT IV – TORTIOUS INTERFERENCE (SANDRA SLEMBOSKI)

46. The preceding paragraphs are incorporated by reference as if fully restated herein.

47. Defendant Sandra Slemboski was an active participant with Defendant Ronald Slemboski in doing business as "MTF Agency." In the alternative, and in the event Defendant Slemboski was not a member of MTF Agency and was not a party to the Addendum, Defendant

Sandra Slemboski tortiously interfered with the contractual relationship between Greatwide and Defendant Ronald Slemboski.

48. Pursuant to the Addendum, a contractual business relationship existed between Greatwide and Defendant Ronald Slemboski.

49. Under the Addendum, Ronald Slemboski agreed to serve as Greatwide's exclusive sales agent and to solicit freight exclusively on Greatwide's behalf.

50. Having previously solicited freight for Greatwide, in or around November of 2012, Defendant Sandra Slemboski joined a competitor of Greatwide and began soliciting freight on behalf of that competitor, rather than Greatwide.

51. Defendant Sandra Slemboski knew of the contractual relationship between Greatwide and Defendant Ronald Slemboski, including Ronald Slemboski's agreement to serve as Greatwide's exclusive sales agent for the Initial Term, commencing July 15, 2011.

52. Despite knowing of the exclusivity agreement between Greatwide and Defendant Ronald Slemboski, Defendant Sandra Slemboski knowingly and intentionally solicited and induced Ronald Slemboski to serve as a sales agent for one of Greatwide's competitors and to cease soliciting freight on Greatwide's behalf, all in breach of Ronald Slemboski's contractual obligations to Greatwide.

53. Further, Defendant Sandra Slemboski actively assisted Defendant Ronald Slemboski in transitioning his business away from Greatwide and to a competitor of Greatwide, in breach of Ronald Slemboski's contractual obligations to Greatwide.

54. Defendant Sandra Slemboski solicited and assisted Defendant Ronald Slemboski with the express intent of causing damage to the relationship between Greatwide and Ronald Slemboski and to benefit Greatwide's competitor.

55. Defendant Sandra Slemboski's actions were without justification and caused Greatwide to suffer damages, including:

- A. Loss of business to a competitor of Greatwide;
- B. Loss of a competitive advantage within the geographic areas serviced by Defendant Ronald Slemboski on behalf of Greatwide; and
- C. Such other consequential damages which are the result of Defendant Ronald Slemboski's breach of the Addendum.

WHEREFORE, Plaintiff respectfully requests that the Court enter a Judgment in favor of Plaintiff directing Defendants to pay damages to Plaintiff in an amount exceeding \$2,500 and such other and further relief as is in accordance with applicable law plus interest, costs, and attorneys' fees.

COUNT V – CIVIL CONSPIRACY (SANDRA SLEMBOSKI)

56. The preceding paragraphs are incorporated by reference as if fully restated herein.

57. As outlined above, Defendants, working in concert, conspired to transition business away from Greatwide and to a competitor of Greatwide, in breach of their fiduciary duties to Greatwide as Greatwide's agents.

58. After leaving Greatwide and joining one of Greatwide's competitors, and in furtherance of Defendants' conspiracy, Defendant Sandra Slemboski solicited and actively assisted Defendant Ronald Slemboski in transitioning business away from Greatwide and to a competitor of Greatwide, in breach of Defendant Ronald Slemboski's fiduciary obligations to Greatwide.

59. As a result of Defendant Sandra Slemboski's participation in the conspiracy to breach the fiduciary obligations owed by Defendants to Greatwide, Defendant Sandra Slemboski is jointly and severally liable for all resulting damages to Greatwide, including:

- A. Loss of business to a competitor of Greatwide;

- B. Loss of a competitive advantage within the geographic areas serviced by Defendants on behalf of Greatwide; and
- C. Such other consequential damages which are the result of Defendants' breach of the Addendum.

WHEREFORE, Plaintiff respectfully requests that the Court enter a Judgment in favor of Plaintiff directing Defendants to pay damages to Plaintiff in an amount exceeding \$2,500 and such other and further relief as is in accordance with applicable law plus interest, costs, and attorneys' fees.

Respectfully submitted,

**GREATWIDE CHEETAH
TRANSPORTATION, LLC,**

By Counsel,



Wendy Adkins
W.Va. State Bar No. 9412
Jackson Kelly PLLC
150 Clay Street, Suite 500
Morgantown, WV 26501
(304) 284-4136
Local Counsel for Plaintiff

VARNUM LLP
Lawrence J. Murphy (*Pro hac vice*)
Timothy P. Monsma (*Pro hac vice*)
P.O. Box 352
Grand Rapids, Michigan 49501-0352
616/336-6000
Lead Counsel for Plaintiff

EXHIBIT "A"



Greatwide Truckload Management, LLC
2150 Cabot Boulevard West
Langhorne, PA 19047

ADDENDUM C

Agent Name: MTF

Principal: Ronald O. Stemboski, Jr

Company: Greatwide Cheetah Transportation, LLC

Effective Date: July 15, 2011

Agreement: This Addendum to the Sales Agency Agreement by and between Agent and Greatwide Cheetah Transportation, LLC dated September 5, 1997 (the "Agreement") is part of and incorporated by reference into Agreement. In the event the terms, conditions or provisions of this Addendum conflict with the terms of the Agreement, the terms, conditions and provisions of the Addendum shall govern and control, in all respects.

Forgivable Loan

Upon signing of this addendum Agent will receive a \$100,000.00 forgivable loan. Agent acknowledges and agrees that the forgivable loan is based on Agent exceeding 16 Million in Adjusted Gross Revenue ("AGR") over the 48 month period commencing on August 1, 2011. The forgivable loan will be amortized over the 4 year sales agency addendum term, \$25,000.00 per year. Should Agency AGR not Exceed 16 Million during the 4 years, Agent will be responsible to reimburse Greatwide Cheetah Transportation, LLC the percentage shortfall difference multiplied by the \$100,000.00 forgivable loan amount.

Section 10 of Sales Agent Agreement replaced with:

Unless otherwise terminated by the Company as set forth below, in consideration for the Forgivable Loan the Sales Agent and all Successors shall be and remain an exclusive sales agent of the Company for a period of four (4) years (the "Initial Term") from the date of this addendum Agreement for all present and any future customers and business of Sales Agent. After the Initial Term, this addendum and Agreement shall continue from year to year until terminated by either party upon 30 days written notice to the other party prior to the end of any term. Notwithstanding the foregoing, the Company may terminate this Addendum and the Agreement at any time upon written termination notice delivered to Sales Agent.

Breach by Agent: Cure

Notwithstanding anything to the contrary set forth in the Agency Agreement or Addendum thereto, in the event of a breach by Agent of his duties or other non-financial obligations or covenants under the Agreement, the Company shall deliver notice to Agent setting forth (a) the nature of the breach and (b) providing 15 days within which Agent may cure the breach.

Set-Off


Handwritten initials, possibly "R. Stemboski", in dark ink.

In the event the Company or any of its affiliates should advance or lend money to Agent or its Principal, and Agent or Principal fails to pay the Company or its affiliates under the terms and conditions of such advance or loan, the Agent and Principal hereby expressly grant to the Company the right to set-off against any and all amounts due to Agent or its Principal from the Company or its affiliates. In addition, Agent hereby expressly grants to the Company the right to set-off against any money due Agent from the Company for overpayment of commissions, commissions advanced on unpaid Customer invoices, bad debts resulting from Agent exceeding credit authorization, advances to Independent Contractors guaranteed by the Agent or for any and all other money due Company from Agent which is due and unpaid.

Capitalized Terms


Any capitalized terms used in this Addendum which are not defined herein, but which are defined in the Agreement, shall have the meanings ascribed to such terms in the Agreement.

MTF [Sales Agent]


Name: Ronald O. Stemboski, Jr.
Title: Owner


7/18/11
Date

Ronald O. Stemboski, Jr. [Principal]



7/18/11
Date

Greatwide Cheetah Transportation, LLC


Joseph Wojciechowski/V.P. & General Mgr

7/18/11
Date

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

**GREATWIDE CHEETAH
TRANSPORTATION, LLC**, a
Delaware Limited Liability Company,
successor in interest to **CHEETAH
TRANSPORTATION, LLC**,

Plaintiff,

v.

**Civil Action No. 14-C-106
Honorable Lawrance S. Miller, Jr.**

RONALD O. SLEMBOSKI, JR., an
individual, and **SANDRA L. SLEMBOSKI**, an
individual, d/b/a **MTF AGENCY**,

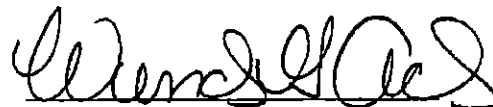
Defendants.

CERTIFICATE OF SERVICE

I, Wendy G. Adkins, do hereby certify that I served the foregoing, "**FIRST AMENDED COMPLAINT**," upon the following, *via Facsimile*, this 23rd day of **September, 2014**.

Lawrence J. Murphy, Esquire
Timothy P. Monsma, Esquire
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Lead Counsel for Plaintiff

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Wendy G. Adkins, Esquire