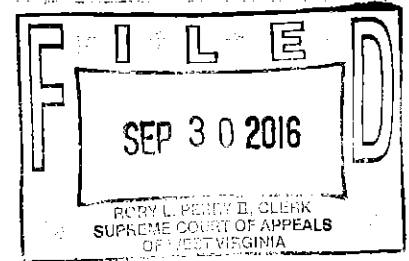


IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

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



vs.

CIVIL ACTION NO. 14-C-106
Hon. Lawrance S. Miller

RONALD O. SLEMBOSKI, JR., an
individual, SANDRA L. SLEMBOSKI, an
individual, d/b/a MTF AGENCY, and
MEDALLION TRANSPORT AND
LOGISTICS, LLC, a North Carolina
Limited Liability Company,
DEFENDANTS.

DEFENDANT SANDRA L. SLEMBOSKI'S
MEMORANDUM OF LAW IN SUPPORT OF HER MOTION FOR SUMMARY
JUDGMENT

Defendant, Sandra L. Slemboski by her counsel, Steven L. Shaffer, pursuant to Rule 56 (b) of the West Virginia Rules of Civil Procedure, herewith files with her Motion for Summary Judgment this Memorandum of Law in support thereof. There exists no genuine issue as to any material fact in regards to the ownership of Ronald O. Slemboski, Jr.'s, business, d/b/a MTF Agency, and that defendant Sandra L. Slemboski was not an owner of said business, therefore defendant Sandra L. Slemboski is entitled to a judgment, as a matter of law. The said Memorandum of Law is respectfully submitted accompanied with other exhibits in support of the said Motion for Summary Judgment. Should the Court grant this motion, defendant would request permission to file a motion for summary judgment on the other issues in this case because if she was not an owner of MTF, she was free to pursue her interest and there would be not conspiracy nor tortious interference.

Procedural History

Plaintiff filed its original complaint on or about the 6th day of June, 2014, against Ronald O. Slemboski, Jr., an individual, Sandra L. Slemboski, an individual, d/b/a MTF Agency. Defendant Sandra L. Slemboski (hereinafter "defendant Slemboski") was served with the complaint in this civil action on or about the 9th day of June, 2014, and defendant Slemboski filed a 12(b)(6) Motion to Dismiss her as a defendant in this matter because the plaintiff's allegations were three-fold: (1) defendants breached a 2011 contract which the plaintiff alleges existed between the Slemboski defendants and plaintiff; (2) defendants breached their fiduciary duty which plaintiff claims existed between the Slemboski defendants and plaintiff; and (3) defendants were unjustly enriched by Slemboski defendants' alleged breach of the 2011 contract and fiduciary duty. **See Complaint.** Defendant Slemboski alleged that dismissal of plaintiff's action against her was appropriate because the complaint was insufficient to establish a cause of action against her and it failed as a matter of law. W. Va. R. Civ. P. 12(b)(6). In her motion to dismiss, defendant Slemboski stated that she could not be liable to the plaintiff for a breach of contract and/or breach of fiduciary duty, as no contract existed between the plaintiff and Sandra L. Slemboski. Defendant Slemboski set forth in her pleading the history of her relationship with the plaintiff and its predecessor companies. Defendant Slemboski also requested that the plaintiff be responsible for the fees she incurred as a result of naming her as a party to the civil action when the plaintiff had knowledge that she was not a party to the 2011 addendum which plaintiff used as evidence to file this action. **See defendant Slemboski's Motion to Dismiss.**

In the plaintiff's response to defendant Slemboski's Motion to Dismiss, plaintiff stated that the defendants entered into the 2011 Addendum to an original agreement. Plaintiff alleged this even though it knew that Ronald O. Slemboski, Jr., was the only person to sign the Addendum in 2011. Plaintiff further stated in its response that defendant Slemboski relied upon unsupported conclusory factual

allegations not found in plaintiff's complaint. Plaintiff referred to defendant Slemboski discussing history between Greatwide and SLS, Inc., the business owned by defendant Slemboski, and that none of that was listed in plaintiff's complaint. This is true because plaintiff drafted its complaint and did not include factual information, all of which was in the control and possession of the plaintiff. Plaintiff did not do any research nor did the plaintiff provide documentation to its attorneys for the drafting of the complaint. Plaintiff set out to destroy Sandra L. Slemboski and has successfully done this by forcing her to spend thousands of dollars on this frivolous civil action. Plaintiff had all the documentation it needed to know that defendant Slemboski was not an owner of Ronald O. Slemboski, Jr.'s business, all plaintiff did was **assume** that Sandra L. Slemboski was an owner of her son's business. **See Plaintiff's Memorandum of Law in Opposition to Defendant Sandra L. Slemboski's Motion to Dismiss.**

This Court held a hearing on the 19th day of September, 2014, on defendant Slemboski's motion to dismiss, and at that hearing, Sandra L. Slemboski presented evidence that proved that she was not an owner of Ronald O. Slemboski, Jr.'s business and that she was an employee of her son's business. Greatwide responded that defendant Slemboski relied on unsupported conclusory allegations- factual allegations not found anywhere in Greatwide's complaint - in support of her motion to dismiss. The Court ruled that paragraph 4 of the complaint alleged that defendants conducted business jointly as MTF Agency and that defendant Slemboski testified during her deposition that "we were all in it together." The plaintiff also used as an exhibit, a 2005 promissory note signed by defendant Slemboski on behalf of MTF Agency. The Court ruled that the issue of defendant Slemboski's role in MTF Agency was a factual issue which could not be ruled on under Rule 12(b)(6) and that discovery should progress. The Court further stated that defendant Slemboski could raise this issue under a motion for summary judgment at a later date. **See Court's order from September 19, 2014, Motions Hearing.** Defendant Slemboski's attorney told the Court at that hearing that the plaintiff had in its possession all the

necessary documentation which was needed to prove that defendant Slemboski was not an owner of Ronald O. Slemboski, Jr.'s business, MTF Agency, and plaintiff failed to review this information prior to filing this civil action. Defendant Slemboski's counsel told the Court that he would be back in front of the Court for a motion for summary judgment and would request all attorney fees and costs incurred by defendant Slemboski in defending this frivolous action.

The parties have conducted enormous discovery totaling several tens of thousands of documents and through many discovery disputes. Both of the Slemboski defendants' have been subjected to \$20,000-\$30,000 of expert fees and over \$50,000 in attorney fees because of this civil action. After all this discovery was completed, every document needed to prove that defendant Slemboski was not an owner of Ronald O. Slemboski, Jr.'s business, MTF Agency, was in the possession of the plaintiff and it either negligently, carelessly, recklessly or intentionally never reviewed the documents nor provided the documents to its attorneys prior to filing this action and naming defendant Slemboski a party.

Statement of Undisputed Facts

1. Sandra L. Slemboski and her husband, Ronald O. Slemboski, Sr., on behalf of their company, SLS, Inc., entered into a Statement of Understanding and Agent Contract with Cheetah Transportation Company on September 18, 1996. Cheetah Transportation Company was a predecessor company of Greatwide. **See attached Exhibit A.**
2. Ronald O. Slemboski, Jr., on behalf of his company, MTF, entered into a Statement of Understanding and Agent Contract with Cheetah Transportation Company on September 5, 1997. Cheetah Transportation Company was a predecessor company of Greatwide. **See attached Exhibit B.**
3. Ronald O. Slemboski, Jr., completed a form W-9, Request for Taxpayer Identification Number and Certification for Ronald O. Slemboski, Jr., d/b/a MTF, on September 5, 1997, and on that

form the business was listed as an Individual/Sole proprietor. Ronald O. Slemboski, Jr., also completed an information sheet for new agencies with Cheetah Transportation Company on September 5, 1997, and that information sheet listed his Agency as MTF. On that document, it had Sandra L. Slemboski listed as a dispatcher for the company. **See attached Exhibit C.**

4. There was a one page Sales Agency Agreement, dated April 24, 2002, by and between Cheetah Transportation, LLC and MTF. **See attached Exhibit D.**
5. There was a Sales Agency Agreement, dated April 24, 2002, by and between Cheetah Transportation, LLC and SLS, Inc., This agreement was signed by Sandra L. Slemboski on behalf of her company. This contract was accompanied by an Addendum A. **See attached Exhibit E.**
6. There was an Amendment to Sales Agency Agreement, dated June 25, 2003, between Cheetah Transportation, LLC and Ronald O. Slemboski and Sandy L. Slemboski, both individually and severally, and it referred to the Sales Agency Agreements in numbers 4 and 5 above. This Addendum was good for 3 years and held both agencies to a 3 year exclusivity contract. **See attached Exhibit F.**
7. There was a Mortgage Note entered into between Ronald O. Slemboski, Jr., and Cheetah Transportation, LLC on December 29, 2006. The Note was secured by the Sales Agency Agreements dated April 24, 2002, and amended June 25, 2003. It was listed as the Maker, the Guarantors and MTF, Inc. Ronald O. Slemboski, Jr., signed as the maker and as guarantor and Sandra L. Slemboski signed as guarantor. **See attached Exhibit G.**
8. Sandra L. Slemboski's company, SLS, Inc., was forced to file bankruptcy sometime around 2007 and that company was terminated and closed. William Winey, who was the Executive Vice

President and General Manager of Cheetah Transportation, stated in his deposition that in 2007 Sandy L. Slemboski had owned a business by the name of SLS, Inc. and that it had filed for bankruptcy. Winey further testified that Sandy L. Slemboski had been the agent with that business and that Ronald O. Slemboski, Jr., was the agent for MTF. Mr. Winey stated that it was common knowledge at Cheetah that Sandy Slemboski was no longer the agent with Cheetah and that she was an employee of Ronald O. Slemboski, Jr. **W. Winey Dep. Tr., Exhibit H, at 170-173.**

9. There was an Independent Sales Agent Agreement entered into on April 2, 2008, by Cheetah Transportation, LLC d/b/a Greatwide Cheetah Transportation (the "Company") and Ronald O. Slemboski, Jr., d/b/a MTF (the "sales agent") Proprietorship, and Ronald O. Slemboski, Jr., as Principal of Sales Agent. Paragraph 14 of this agreement clearly states that this agreement supercedes all prior agreements between the parties and that the agreement could only be modified or amended by a written instrument executed by all parties. Paragraph 3 of this agreement gave Ronald O. Slemboski, Jr., sole responsibility for the day to day operation of his business and full control and direction of his employees. This contract was signed by Ronald O. Slemboski, Jr., d/b/a MTF and Ronald O. Slemboski, Jr., Principal, and William S. Winey for Cheetah Transportation, LLC. **See attached Exhibit I.**
10. Greatwide Truckload Management selected Ronald O. Slemboski, Jr., to participate in its National Accounts Club in 2010. To participate in this club, agents had to agree to certain criteria. Ronald O. Slemboski, Jr., agreed to the terms for membership on April 14, 2010. This prestigious membership was offered to Ronald O. Slemboski, Jr., it was not offered to Sandra L. Slemboski. **See attached Exhibit J.**

11. There was an Addendum C which was entered into on July 15, 2011, between Greatwide Cheetah Transportation, LLC and Ronald O. Slemboski, (Principal), and Ronald O. Slemboski, Jr., as Owner of MTF (Sales Agent). This agreement stated that Addendum C was an addendum to the Sales Agency Agreement by and between Agent and Greatwide Cheetah Transportation, LLC dated September 5, 1997 (the Agreement.) This 1997 agreement was between Ronald O. Slemboski, Jr., and Cheetah Transportation Company. Sandy Slemboski was not a party to that 1997 agreement. In addition, the April 2, 2008, agreement (to which Sandra L. Slemboski was not a party) between Cheetah Transportation, LLC d/b/a Greatwide Cheetah Transportation (the "Company") and Ronald O. Slemboski, Jr., d/b/a MTF (the "sales agent") Proprietorship, and Ronald O. Slemboski, Jr., as Principal of Sales Agent, superceded the 1997 agreement. As stated above paragraph 14 of the 2008 agreement clearly stated that the 2008 agreement superceded all prior agreements between the parties and therefore, the 1997 agreement which this 2011 addendum C refers to was null and void. The 2002 agreement would also have been void after the 2008 agreement. This 2011 Addendum refers to Section 10 of the Sales Agent Agreement and said that paragraph 10 of that agreement was replaced with this new paragraph. The 1997 agreement did not have a paragraph 10, however, the 2008 agreement did have a paragraph 10 and that paragraph dealt with the term of the contract, the same issue this new paragraph deal with. **See attached Exhibit K.**
12. There was a promissory note for \$196,000.00 entered into on January 6, 2012, by and between Ronald O. Slemboski, Jr., and Sandra L. Slemboski and Greatwide Cheetah Transportation, LLC. This note was secured by 17.617 acres of unimproved real property located in Preston County, West Virginia, and was further conditioned upon Ronald O. Slemboski, Jr., executing and

delivering to Greatwide Cheetah Transportation, LLC a 4 year extension relating to his Sales Agency Agreement by and between Ronald O. Slemboski, Jr., and Greatwide (the "Agency Agreement"). **See attached Exhibit L.**

13. There was a deed of trust which was linked to the promissory note dated January 6, 2012, which listed the Borrower of the \$196,000.00 as being Ronald O. Slemboski, Jr. On the deed of trust, Ronald O. Slemboski, Jr., was listed as the borrower and Sandra L. Slemboski signed as a witness. **See attached Exhibit M.**
14. There was a promissory note for \$34,880.53 entered into on May 8, 2012, by and between Ronald O. Slemboski, Jr. D/B/A MTF and Greatwide Cheetah Transportation, LLC. This note was conditioned upon Ronald Slemboski executing and delivering to Greatwide a Sales Owner Operator Agreement. **See attached Exhibit N.**
15. There was a promissory note for \$50,000.00 entered into on September 18, 2012, by and between Ronald O. Slemboski, Jr., and Greatwide Cheetah Transportation, LLC. This note was conditioned upon Ronald Slemboski executing and delivering to Greatwide a Sales Agency Agreement. **See attached Exhibit O.**
16. Greatwide, or one of its companies, issued several 1099s for the years of 2002 – 2013 and the

payees were as follows:

- | | | |
|----|---------------------------------|------------------------------|
| 1) | Slemboski, Jr. Ronald O. MTF | SSN 232-23-6218; |
| 2) | Ronald O. Slemboski Jr. DBA MTF | Recipient Number 232-23-6218 |
| 3) | MTF | Recipient Number 232-23-6218 |
| 4) | MTF | SSN 232-23-6218 |
| 5) | Slemboski, Jr. Ronald O. | Recipient Number 232-23-6218 |
| 6) | Slemboski, Jr. Ronald O. | SSN 232-23-6218 |
| 7) | Ronald O. Slemboski, Jr. | SSN 232-23-6218 |
| 8) | Ronald O. Slemboski, Jr. | Recipient Number 232-23-6218 |

This was provided by the plaintiff in discovery.

See attached Exhibit P.

17. Greatwide never provided any 1099s to Sandra L. Slemboski. See plaintiff's response attached Exhibit Q

Standard of Review

The West Virginia Rules of Civil Procedure provide for summary judgment in Rule 56. A defending party is permitted to move for summary judgment at any time and may do this with or without supporting affidavits. The purpose of this is to effect a prompt disposition of a controversy on its merits if there is no real dispute to the material facts, or if only a question of law is involved. The West Virginia Supreme Court of Appeals further recognized this in Larew v. Monongahela Power Co., 199 W. Va. 690, 487 S.E.2d 348 (1997).

Argument

Greatwide Cheetah Transportation, LLC set out to destroy Sandy Slemboski with this civil action. Greatwide had all the documentation in its possession to review to determine that Sandra L. Slemboski was not an owner of Ronald O. Slemboski, Jr.'s, business, d/b/a MTF Agency. Greatwide was the successor company to Cheetah, whom Sandy Slemboski and her husband, Ronald O. Slemboski, Sr., were agents for Cheetah from 1996 until around 2007. The business that Sandy and her husband ran was SLS, Inc. and that company went bankrupt in 2007. SLS, Inc. had entered into an agency relationship with Cheetah Transportation Company on September 18, 1996. This contract was renewed in a Sales Agency Agreement dated April 24, 2002, and was for one year terms. Another Agreement, dated June 25, 2003, between Cheetah Transportation, LLC and Sandy Slemboski, individually, referred to the Sales Agency Agreements dated April 24, 2002, and was for 3 years and was a 3 year exclusivity contract. These were the only contracts ever between Sandra L. Slemboski and Greatwide or any of its

predecessors. See Exhibits A, E and F attached hereto.

Sandy Slemboski's company, SLS, Inc., filed for bankruptcy in 2007 and the company closed. Sandy went to work as an employee of her son's company, Ronald O. Slemboski, Jr., d/b/a MTF. This company had been formed in 1997 and Ronald O. Slemboski, Jr., had entered into a couple of contracts with Cheetah. William Winey, the Executive Vice President and General Manager of Cheetah Transportation at that time, testified in his deposition that he was aware that Sandra Slemboski had filed for bankruptcy and that after the bankruptcy that Sandy was an employee of her son, Ronald O. Slemboski, Jr.'s business, MTF. Mr. Winey further testified that he was aware that Ronald O. Slemboski, Jr., was the agent with Cheetah. He further testified that this was common knowledge at Cheetah at that time. **W. Winey Dep. Tr., Exhibit H, at 170-172.**

Ronald O. Slemboski, Jr., the son of Sandra L. Slemboski and Ronald O. Slemboski, Sr., entered into a contract with Cheetah Transportation Company on September 5, 1997. Ronald Jr.'s company's name was MTF and it was listed as an individual/sole proprietor on his W-9 with the IRS. Ronald Slemboski, Jr., apparently renewed his contract with Cheetah on the same date, April 24, 2002, (only one page of contract exists) as Sandy Slemboski and her husband renewed their contract. Ronald O. Slemboski, Jr., also renewed his contract in the June 25, 2003, agreement and he signed that contract as Ronald O. Slemboski, Jr., individually and on behalf of his company, MTF.

Ronald O. Slemboski, Jr., received several awards from Greatwide from 2007 through 2012. These awards were Greatwide Truckload Management Platinum Circle and Greatwide Truckload Management Executive Platinum Circle awards which were for his performance as a Greatwide Agent. These awards were given to Ronald O. Slemboski, Jr., and was not given to Sandra L. Slemboski. See **Exhibit R attached hereto.**

Ronald O. Slemboski, Jr., and Greatwide Cheetah renegotiated their contract on April 2, 2008. In that contract, the sales agent was listed as Ronald O. Slemboski, Jr, d/b/a MTF (the Sales Agent) Proprietorship, and Ronald O. Slemboski, Jr., as Principal of Sales Agent. In that agreement, paragraph 14 stated that this Agreement supercedes all prior agreements between the parties and that the 2008 agreement could only be modified or amended by a written instrument signed by both parties. Paragraph 3 of that agreement gave Ronald O. Slemboski, Jr., the authority to hire his own employees and to manage the said employees. Ronald O. Slemboski, Jr., hired his mother, Sandra L. Slemboski as manager of his business. **See Exhibit I; See also Sandy Slemboski letter attached as Exhibit S.**

Ronald O. Slemboski, Jr.'s, agency was having some severe problems with Greatwide's new management team and was thinking of leaving Greatwide in 2011. Ronald O. Slemboski, Jr., testified at his deposition and said that he had spoken to Joe Wojciechowski about leaving Greatwide and Mr. Wojciechowski and Jasper Ciarni approached him about the addendum and the \$100,000.00 loan. **R Slemboski Dep. Tr., Exhibit T at 55-57.** Ronald O. Slemboski, Jr., had actually spoken to Joe Wojciechowski about leaving Greatwide on at least 5-12 occasions because of issues on billing, settlements, hiring of drivers and safety department issues. **id. at 61-63.** As a means to keep Ronald O. Slemboski, Jr., as an agent, Greatwide offered him an incentive of a \$100,000.00 forgivable loan if he would stay on with Greatwide. This contract was put together as an "Addendum C" by Greatwide. Greatwide management members, Pam Prior, Joe Chandler, Kim Demarco and Joe Wojciechowski assisted in putting this contract together. **See plaintiff's response Exhibit U; See also J Wojciechowski Dep. Tr. Volume 2, Exhibit V at 136-138.** Sandra L. Slemboski was not a party to this Addendum C because she was not an owner of the agency. Not one single member of Greatwide management ever suggested adding Sandra L. Slemboski as an owner on the contract. Robert LaRose,

the President of Greatwide did not know anything about Addendum C or that Greatwide was loaning Ronald O. Slemboski, Jr., the \$100,000.00. **R LaRose Dep. Tr., Exhibit W, at 86-87.**

Joe Wojciechowski, the Vice-President and General Manager of Greatwide testified at his deposition that he had never seen nor reviewed the 1996, 2002 and 2003 agreements/contracts between Cheetah and Sandy Slemboski nor had he ever seen or reviewed the 1997, 2002, 2003 or 2008 agreements/contracts between Ronald O. Slemboski, Jr., and Cheetah or Greatwide. **Wojciechowski Dep. Tr. Exhibit V, at 124-126.** Robert LaRose testified at his deposition that he was not aware of any contracts that referred to the agency as the "Slemboski Agency." **LaRose Dep. Tr., Exhibit W, at 37.** LaRose further testified that he made the decision to file the civil action and name Sandra L. Slemboski as a defendant based upon documents he reviewed, however, he did not remember which documents that was. **id. at 120.** The document relied upon by the plaintiff to file this civil action was identified as "Addendum C" and was dated July 15, 2011. This addendum stated that it was an addendum to the September 5, 1997, Sales Agency Agreement by and between the agent and Greatwide Cheetah Transportation, LLC. The September 5, 1997, agreement was actually between Cheetah Transportation and MTF and had Ronald O. Slemboski listed as the agent. This agreement was signed by Ronald O. Slemboski, Jr. The Addendum C also referred to a Section 10 of the Sales Agent Agreement. The 1997 contract was not called Sales Agent Agreement, it was called Statement of Understanding and Agent Contract. The only contract between Ronald O. Slemboski, Jr., and Greatwide Cheetah that had a title of Sales Agent Agreement was the April 2, 2008, contract. That contract superceded all previous contracts. The 2008 contract also had a section 10 in it that was designated as "Term," which is what the new paragraph in the 2011 addendum refers to.

The plaintiff based their entire case on this 2011 Addendum C. The plaintiff has alleged that

Sandra L. Slemboski was a party to that agreement. Sandy Slemboski was not a party to the 1997 agreement, she was not a party to the 2008 agreement nor was she a party to the 2011 addendum. The 2008 agreement between Ronald O. Slemboski, Jr., and Greatwide gave Ronald O. Slemboski, Jr., the authority to hire and manage his employees. He hired Sandy, his mother, as manager of his business. The plaintiff has attempted to show that Sandy Slemboski was an owner of her son's business by her statement in her deposition where she was asked the question, "the operation was a family business, correct?" and she answered "you could call it that." The next question was "well, I am asking you if you would call it that?" and Sandra L. Slemboski answered, "I would say it is. We are a family and we were in it together. Trucks consume everybody. You can't have a -- do laundry without talking trucks. You can't have dinner without talking trucks." **S Slemboski Dep. Tr. Exhibit X, at 45.**

At Robert LaRose's deposition, he said that "if there's no way we can get you back, can I have my \$100,000.00 back?" **LaRose Dep. Tr., Exhibit W, at 46.** Mr. LaRose was questioned about the statement "my \$100,000.00" and he was asked "are you an owner of Greatwide?" and he answered, "No." He was then asked, "when you would refer to your \$100,000.00, can you explain that?" LaRose stated, "I just treated the company as my money, the company as my money." **id. at 65-66.**

When Joe Wojciechowski was questioned how he came to the conclusion that Sandy Slemboski was an owner of her son's business when he had not seen any contracts to that effect, he answered, "any time you talked to the Slemboski agency, you spoke with Sandy. Sandy referred to herself as this is my business." **Wojciechowski Dep. Tr. Exhibit V, at 125-127.** Mr. Wojciechowski believes that it is okay for Robert LaRose to refer to his \$100,000.00 when he is not the owner of Greatwide, but it is wrong for Sandy Slemboski to refer to her son's business as hers. This is a double standard.

Mr. LaRose testified at his deposition that he had never seen a 1099 issued to anyone other than

Ronald and that MTF got a few. He further testified that if all of the documents which he reviewed during his deposition, with the exception of the photos, were produced as part of the discovery process by Greatwide employees, then he would agree that Greatwide had access to all of the documents prior to the filing of the civil action. **LaRose Dep. Tr., Exhibit W, at 126-127.**

Mr. LaRose held several prestigious positions with Greatwide, its predecessors and parent companies and in 2009 became an officer for Greatwide and in 2012, he became President of Greatwide Cheetah. **id. at 10-14.** When LaRose was asked the question, "is there a name of somebody that told you Sandy Slemboski was the owner of the agency, I need you to give that to me today." Mr. LaRose's response was, "You know, we never—I do not remember having a discussion with any of the employee base at Greatwide Truckload Management about the ownership of any particular agent saying are you sure that that person is the owner of the agency. As it relates specifically to the Slemboski agency, the organization in general, not specific, behaved as if it was Sandy's agency. I just came in and assumed that." **id. at 125.** Mr. LaRose testified at his deposition that he was not sure if he had seen any of the contracts between any of the Slemboskis' and Cheetah or Greatwide. He also testified that he did not believe that management team members Joe Wojciechowski, Timothy Hooper nor Jasper Ciarni told him that Sandy was the owner of the agency, that the people that worked for the company operated and assumed that the agency was Sandy's. **id. at 110-112.** Robert LaRose, the President of Greatwide, did not think it was important enough to ascertain who the owner of a business was before Greatwide filed this civil action. Mr. LaRose testified that he was the individual who decided to file the civil action and that he reviewed the complaint prior to it being filed. **id. at 114.** At his deposition, LaRose was asked the question, "Do you recall ever looking at the contracts or agency agreements involving either Sandy Slemboski or JR Slemboski?" LaRose testified, "I remember looking at some form, an addendum on

the attachment that dealt with a \$100,000.00 or so loan, and I believe I saw 1 or 2 agency agreements. I did not read them in detail. I simply forwarded them to general counsel.” LaRose was also asked, “Starting with the addendum that you referred to in which a \$100,000.00 loan was described, do you recall who was the – who was the agent, the named agent in the addendum?” Mr. LaRose answered, “I understand it to be Sandy Slemboski.” *id.* at 24-25.

Joe Wojciechowski, the Vice-President and General Manager of Greatwide, was the individual who took Robert LaRose to Ronald O. Slemboski, Jr.’s, office on March 11, 2014, for the meeting. He was also one of the management members who helped prepare the 2011 Addendum C which the plaintiff used as a basis to file this civil action. Mr. Wojciechowski testified that he never reviewed any of the prior contracts before he helped prepare the 2011 addendum. *Wojciechowski Dep. Tr. Exhibit V, at 123.* He also testified at his deposition that he had never seen any of the previous contracts or agreements between Sandy Slemboski and Cheetah or Greatwide nor had he ever seen any of the contracts or agreements between Ronald O. Slemboski, Jr., and Cheetah or Greatwide. *id.* at 124-126. Mr. Wojciechowski testified that when he went to the office of Ronald O. Slemboski, Jr., on March 11, 2014, that the only document he knew existed was the 2011 Addendum and that he was unaware of any contract that named Sandy Slemboski as an agent for Greatwide. *id.* at 151. Mr. Wojciechowski testified that he was not an owner of Greatwide, however, he is a member of management and makes management decisions and that people could infer that he may own Greatwide because he makes management decisions. He further testified that Sandy Slemboski managed the agency. *id.* at 150.

Mr. Wojciechowski was asked the question at his deposition, “Did Sandy Slemboski have a contract as an agent with Greatwide?” Mr. Wojciechowski answered, “No.” He was asked the question, “Did you consider Sandy Slemboski an agent of Greatwide during that time period from 2010

to November 2013?" Mr. Wojciechowski answered, "Yes." He was asked the question, "Why did you consider her an agent during that – of Greatwide during that period?" Mr. Wojciechowski answered, "She was part of the Slemboski Agency." He was asked the question, "And the Slemboski – what you are referring to as the Slemboski Agency, was Ronald O. Slemboski, Jr.'s agency?" Mr. Wojciechowski answered, "Yes." He was then asked the question, "Are you aware of Sandy Slemboski having contracts separately from Ronald Slemboski in the past for Greatwide prior to 2010?" Mr. Wojciechowski answered, "Am I aware now?" The followup question was, "Yes?" Mr. Wojciechowski answered, "Yes." He was asked the question, "Do you know about when was the last time that Sandy Slemboski had a contract with Greatwide Cheetah or its predecessors before 2010?" Mr. Wojciechowski answered, "Yes, after being involved in these proceedings." He was asked the question, "And when was it that she last had a contract with Greatwide as an agent to your understanding?" Mr. Wojciechowski answered, "2006." **J. Wojciechowski Dep. Tr. Volume 1, Exhibit Z at 28-30.**

Sean Bauder was employed at Cheetah and Greatwide from 2007 through 2012 as Controller and Vice President and had direct contact with Sandy Slemboski and Ronald O. Slemboski, Jr. Mr. Bauder believed that Sandy's title was operations manager and that she was an employee of Ronald O. Slemboski, Jr. Mr. Bauder testified that Ronald O. Slemboski, Jr., was the agent for Greatwide. Mr. Bauder was not aware of Sandy Slemboski being an agent for Cheetah or Greatwide during his employment there. Mr. Bauder also testified that Greatwide issued 1099s to Ronald O. Slemboski, Jr., but did not issue 1099s to Sandra L. Slemboski. **S. Bauder Dep. Tr. Exhibit Y, at 11-12, 45-48 and 101-102.**

Sandy Slemboski and her husband formed their company in 1996 and it closed in 2006. S

Slemboski Dep. Tr. Exhibit X, at 46. Sandy went to work for her son in 2006 and when she was questioned about her involvement with the company, Sandy responded "It's trucking. You're totally consumed with trucking. You do every aspect. If you have to run parts, you run parts. If you do books, you do books. If you have to dispatch, you dispatch. You're consumed with it." *id.* at 10. Sandy Slemboski was the office aspect of her son's business. *id.* at 12. At sandy's deposition, she was asked the question, "Was the business a collaboration between you and JR principally?" and Sandy answered, "I wouldn't call it that. It was Jr's business, and I worked for him." Sandy also testified when she was asked the question, "you made decisions without input from JR as it pertains to the business?" She answered, "No, JR and I always discussed it. I helped him with his business. I continue to help him with his business. I'm a mother." *id.* at 14. Sandy also testified that she was gone from JR's business for most of the years of 2011, 2012 and 2013 because of her parents' illnesses. *id.* at 34-35 and 42-45.

Ronald O. Slemboski, Jr., had an office in Reedsville, West Virginia, and also an office in Ohio where he lived and he spent approximately 70% of his time there. *id.* at 46. Sandy Slemboski served as terminal manager for her son, Ronald O. Slemboski, Jr., and ran the business from her son's Reedsville, West Virginia office. Ronald O. Slemboski, Jr., testified during his deposition that his mother, Sandy, worked for him and her job duties from 2009-2011, when her parents got sick, were accounting work, dispatching trucks and stuff like that and when JR was in the office, her duty was just bookkeeping, however, if JR was on the telephone and Greatwide called, Sandy talk with them or e-mail them. Ronald O. Slemboski, Jr., testified that he did approximately 60% of the communicating and Sandy did approximately 40%. **R Slemboski Dep. Tr., Exhibit T at 18-19.**

Ronald O. Slemboski, Jr., testified at his deposition that his mother, Sandy Slemboski did not work for him in the spring of 2014 and that when Sandy began as an agent for Medallion she was not

his employee. *id.* at 17-18. Ronald O. Slemboski, Jr., was asked the question at his deposition if he considered his mother Sandy a representative of his business and he answered, No, that she was an employee. *id.* at 50.

Defendant Slemboski filed her first set of discovery requests on October 6, 2014, just two short weeks after this Court denied her 12(b)(6) Motion to Dismiss. In those requests, she requested as follows:

Request for Admissions:

#2 Admit that Sandra L. Slemboski did not sign the July 2011 Addendum.

Response: Admitted only that Defendant Sandra L. Slemboski did not sign the Addendum attached as Exhibit A to Plaintiff's Complaint. Denied that this has any legal significance.

#3 Admit that Sandra L. Slemboski's name was not on the 2011 Addendum.

Response: Admitted only that Defendant Sandra L. Slemboski name is not expressly mentioned in the Addendum attached as Exhibit A to Plaintiff's Complaint. Denied that this has any legal significance.

#5 Admit that Greatwide Cheetah never paid Sandra L. Slemboski any income by virtue of a 1099 between the years 2006 through 2013.

Response: Admitted only that plaintiff did not issue Sandra L. Slemboski a 1099 between the years 2006-2013.

#7 Admit that Sandra L. Slemboski was not an agent for Greatwide from 2006 through 2013.

Response: Denied as untrue.

Interrogatories and Production of Documents:

#10 Please produce all agency agreements which have been entered into between this defendant and/or Greatwide Cheetah or any of its predecessors.

Response 11-5-2014: Plaintiff objects to this response as vague, ambiguous, and otherwise

unclear because it fails to identify the requested documentation with reasonable particularity. Subject to and without waiving this objection, Plaintiff states that, to the extent responsive documents are in its possession and/or control, Plaintiff will make a good faith effort to produce those documents, if any, at a mutually convenient time and location.

Response 11-23-2015:

Plaintiff objects to this response as vague, ambiguous, and otherwise unclear because it fails to identify the requested documentation with reasonable particularity. Subject to and without waiving this objection, Plaintiff states that, following a diligent search, to the best of its knowledge, information, and belief, Plaintiff has produced all documents responsive to this request and in its possession. See documents Bates stamped 01157-01261.

#13 Please produce all documentation in the possession of the plaintiff which shows that this defendant was an owner of the business, Ronald O. Slemboski, Jr., and/or Ronald O. Slemboski, Jr., d/b/a MTF.

Response 11-5-2014:

Plaintiff objects to this request for the reason that discovery is ongoing, and Plaintiff has requested, but has not yet received from defendants, all documentation that might show that defendant Sandra L. Slemboski was an owner and/or principal in the d/b/a MTF Agency. Moreover, Plaintiff objects to this request to the extent that it calls for Plaintiff to make legal judgments. Subject to and without waiving the foregoing objections, Plaintiff states that, to the extent responsive documents are in its possession and/or control, Plaintiff will make a good faith effort to produce those documents, if any, at a mutually convenient time and location.

Response 11-23-15:

Plaintiff objects to this request for the reason that discovery is ongoing, and Plaintiff has requested, but has not yet received from defendants, all documentation that might show that defendant Sandra L. Slemboski was an owner and/or principal in the d/b/a MTF Agency. Moreover, Plaintiff objects to this request to the extent that it calls for Plaintiff to make legal judgments. Plaintiff states that, following a diligent search, to the best of its knowledge, information, and belief, Plaintiff has produced all documents responsive to this request and in its possession. See documents Bates stamped 00001-06470; see also emails produced by defendants.

#15 Please produce every 1099 which Greatwide Cheetah has provided to this defendant for the time period of 1996 through 2013.

Response 11-5-14: Plaintiff states that, to the extent responsive documents are in it's possession and/or control, Plaintiff will make a good faith effort to produce those documents, if any, at a mutually convenient time and location.

Response 11-23-15: Plaintiff states that, following a diligent search, to the best of its knowledge, information, and belief, Plaintiff has produced all documents responsive to this request and in its possession. See documents Bates stamped 01760-01784. By way of further response, Sandra Slemboski did not receive 1099s from Plaintiff.

Conclusion

Sandy Slemboski has been punished for her love for her son. Sandy Slemboski was just like almost all other mothers in the United States, she wanted her son to succeed. Sandy testified during her deposition that she continues to help her son, "I am his mother."

There is no question about this case. Sandy Slemboski and her husband, Ronald O. Slemboski, Sr., owned a small business in Preston County, West Virginia, by the name of SLS, Inc. This was a trucking business. Sandy testified at her deposition about trucking and said that "trucks consume everybody. You can't have a -- do laundry without talking trucks. You can't have dinner without talking trucks." Her son had been around trucks for most of his life and when he graduated high school, he started his own business, and naturally it was a trucking business. Sandy signed a contract with Cheetah on September 18, 1996.

Ronald O. Slemboski, Jr., formed his business, Ronald O. Slemboski, Jr., d/b/a MTF. This business was formed in 1997 and he signed a contract with Cheetah, just like his mother and father had done in 1996. Ronald Jr., signed a contract with Cheetah on September, 5, 1997. This business was

listed as an individual/sole proprietorship on his W-9 that he filled out.

According to all the records which have been produced in this case, both Sandy's company, SLS, Inc., and Ronald Jr's., company, MTF, signed some form of Sales Agency Agreement with Cheetah on April 24, 2002. Ron's agreement was one page and Sandy's agreement was six pages. On June 25, 2003, there was an Amendment to Sales Agency Agreement which amended the 2002 agreements wherein both Ronald Jr., and Sandy signed. This agreement required both SLS, Inc., and MTF to be exclusive agents for Cheetah for three years. This would be the last contract or agreement which Sandy Slemboski would sign with Cheetah because her company, SLS, Inc., had to file for bankruptcy in 2006-2007.

Ronald O. Slemboski, Jr., continued to operate his company and over the next few years, signed various agreements and contracts with Cheetah and then later, Greatwide. The first of these agreements/contracts was signed on April 2, 2008. This contract was entitled "Independent Sales Agent Agreement" and is one of the two most important documents in this case. This contract was signed by Ronald O. Slemboski, Jr., d/b/a MTF and Ronald O. Slemboski, Jr., Principal, and William S. Winey for Cheetah Transportation, LLC. Both of these individuals have testified during their depositions that Sandra L. Slemboski was not a party to this contract and that Sandy Slemboski was an employee of Ronald O. Slemboski. This contract is important because paragraph 14 of this agreement clearly states that this agreement supercedes all prior agreements between the parties and that the agreement could only be modified or amended by a written instrument executed by all parties. This means that all previous contracts between Ronald O. Slemboski, Jr., d/b/a MTF and Cheetah was now terminated and voided. Paragraph 3 of this agreement also gave Ronald O. Slemboski, Jr., sole responsibility for the day to day operation of his business and full control and direction of his employees. Ronald O.

Slemboski, Jr., was free to hire anyone he wanted to as an employee and he chose to hire his mother, Sandra L. Slemboski as terminal manger of his business. Both William Winey, the Executive Vice President and General Manager of Cheetah Transportation until 2009, and Sean Bauder, the Controller and Vice President of Cheetah and Greatwide from 2007-2012 knew that Ronald O. Slemboski, Jr., was the agent for Greatwide.

Greatwide changed management over the next few years and management philosophy changed and Ronald O. Slemboski, Jr., d/b/a MTF began experiencing issues and problems with Greatwide. In 2011, Ronald O. Slemboski, Jr., was thinking about moving his business and in an attempt to keep his business with Greatwide, Greatwide offered him an incentive in a \$100,00.00 forgivable loan wherein he had to generate \$16 Million dollars worth of Adjusted Gross Revenue over a four year period and if he did, he would not have to repay the loan. Management personnel from Greatwide prepared what is also one of the two most important documents in this case. This "Addendum C" said that this agreement was to the Sales Agency Agreement dated September 5, 1997. That 1997 agreement had been terminated and voided by the 2008 agreement. This 2011 Addendum was between Ronald O. Slemboski, Jr., d/b/a MTF and Greatwide Cheetah. Sandra L. Slemboski's name was no where on this agreement because Greatwide Cheetah did not consider her an owner to the company so she was not included.

Both Robert LaRose, the President of Greatwide and Joe Wojciechowski, the Vice-President and General Manager of Greatwide both testified that they had not seen or reviewed the 1996, 1997, 2002, 2003 nor 2008 agreements. Wojciechowski testified that he helped prepare the 2011 Addendum C and never reviewed any documents before he did that. LaRose testified that he was the individual who made the decision to file the civil action and to name Sandra L. Slemboski as a defendant, yet he did not

remember what documents he looked at to come to the conclusion that Sandy was an owner of Ronald O. Slemboski, Jr's., business and that none of the management at Greatwide ever came out and told him that Sandy was the agent.

Greatwide never provided Sandy L. Slemboski with a 1099 for the years 2006-2013, however, Greatwide provided Ronald O. Slemboski, Jr., and MTF, 1099s with Ronald O. Slemboski, Jr's., social security number on it..

The best words a person can use to describe the injustice which Sandra L. Slemboski has suffered in this case is the words which Robert LaRose used in his deposition which was taken on May 10, 2016. Mr. LaRose held several prestigious positions with Greatwide, its predecessors and parent companies and in 2009 became an officer for Greatwide and in 2012, he became President of Greatwide Cheetah. When LaRose was asked the question, "is there a name of somebody that told you Sandy Slemboski was the owner of the agency, I need you to give that to me today?" Mr. LaRose's response was, "You know, we never—I do not remember having a discussion with any of the employee base at Greatwide Truckload Management about the ownership of any particular agent saying are you sure that that person is the owner of the agency. As it relates specifically to the Slemboski agency, the organization in general, not specific, behaved as if it was Sandy's agency. I just came in and assumed that." Mr. LaRose testified at his deposition that he was not sure if he had seen any of the contracts between any of the Slemboskis' and Cheetah or Greatwide. He also testified that he did not believe that management team members Joe Wojciechowski, Timothy Hooper nor Jasper Ciami told him that Sandy was the owner of the agency, that the people that worked for the company operated and assumed that the agency was Sandy's. Robert LaRose, the President of Greatwide, did not think it was important enough to ascertain who the owner of a business was before Greatwide filed this civil action. Mr. LaRose testified that he was the

individual who decided to file the civil action and that he reviewed the complaint prior to it being filed. At his deposition, LaRose was asked the question, "Do you recall ever looking at the contracts or agency agreements involving either Sandy Slemboski or JR Slemboski?" LaRose testified, "I remember looking at some form, an addendum on the attachment that dealt with a \$100,000.00 or so loan, and I believe I saw 1 or 2 agency agreements. I did not read them in detail. I simply forwarded them to general counsel."

Management for Greatwide **assumed** that Sandy Slemboski was the owner of her son's business and failed to review documents in its possession to determine who the owner really was. It was common knowledge at Greatwide when, Winey and Bauder were there, who the agent was and who owned the business, Ronald O. Slemboski, Jr., d/b/a MTF. LaRose and Wojciechowski failed to do their jobs and that failure has cost Sandy Slemboski tens of thousands of dollars. Greatwide had every document in its possession to realize and understand that Sandy Slemboski was not an owner of MTF. Management at Greatwide knew it had never issued Sandy Slemboski a 1099. Management at Greatwide knew that Sandy Slemboski had not signed the 2011 Addendum C. Yet, management at Greatwide set out to destroy Sandy Slemboski financially in this civil action.

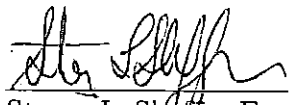
Sandy Slemboski was not an owner of Ronald O. Slemboski, Jr's., company MTF, she was a mother. Sandy Slemboski was not an agent of Greatwide and therefore she was not under an exclusivity contract. Therefore, Sandy Slemboski was free to negotiate with Medallion to be a Medallion Agent.

Ronald O. Slemboski, Jr., was free to move his trucking business anywhere he pleased because his trucking business was not under an exclusivity contract with Greatwide. Ronald O. Slemboski, Jr., never quit being an agent of Greatwide until Greatwide breached their contract with him. Ronald O. Slemboski, Jr., is not now, nor ever has been, an agent of Medallion. Sandy Slemboski did not conspire

with Medallion to lure Ronald O. Slemboski, Jr., away from being an agent with Greatwide nor did Sandy Slemboski tortious interfere with her son's relationship with Greatwide.

Sandy Slemboski is entitled to Summary Judgment on the issue of her not being an owner of her son's business, MTF. If Sandy Slemboski was wrong in anything, it was her love and caring for her son and using the pronoun, "we" when she testified "we were all in it together." But then, LaRose, the President of Greatwide could use the pronoun, "my" when he referred to "my \$100,00.00" and that was okay.

Defendant Sandra L. Slemboski respectfully requests that this Court grant her motion for summary judgment and award her all of her attorney fees and costs which she has had to incur to defend this matter, and any other relief this Court deems just.


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Respectfully Submitted
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