

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

SOUTHERN AMUSEMENT CO., Inc.,
Plaintiff,

v.

Civil Action No.: 14-C-231
Presiding Judge: James J. Rowe
Resolution Judge: Paul T. Farrell

B&J BUSINESS ENTERPRISES, Inc.;
Dotson's Management Co., Inc.; Jessie's
Italian Restaurant LLC; Dawn Enterprises
LLC; Greg Dotson, Jeannie Dotson,
and Bridget Dotson White, Individually,
Defendants.

ORDER FOLLOWING HEARING ON MOTIONS TO DISMISS

On the 8th day of January, 2015, this matter came before the undersigned for a hearing on the defendants' motions to dismiss, as follows: Motion to Dismiss on behalf of Jessie's Italian Restaurant, LLC ("Jessie's Italian Restaurant"); Motion to Dismiss on behalf of Greg Dotson, Jeannie Dotson, and Bridget Dotson White; Motion to Dismiss on behalf of Dotson's Management Co., Inc. ("Dotson's Management"); and Motion to Dismiss on behalf of B&J Business Enterprises, Inc. ("B&J"). Southern Amusement Co, Inc. ("Plaintiff") appeared by counsel, Robert B. Kuenzel, Kuenzel & Associates, PLLC; defendants B&J, Dotson's Management, Jessie's Italian Restaurant, Greg Dotson, Jeannie Dotson, and Bridget Dotson White appeared by counsel, J. Mark Adkins, Bowles Rice LLP; defendant Dawn Enterprises LLC ("Dawn Enterprises") appeared by counsel, William D. Stover.

Plaintiff's Complaint alleges breach of contract, fraud, civil conspiracy and tortious interference relative to a contract between Plaintiff and B&J for the placement of five (5) limited video lottery machines in Giovanni's Pizza, an establishment operated by B&J. This contract between Plaintiff and B&J, executed on or about May 15, 2003, provided for a term of ten (10)

years, with profits to be shared between Plaintiff and B&J. On or about May 15, 2013, at the conclusion of the initial, ten-year term, the contract by its terms renewed for a successive term of ten (10) years in the absence of any written notice of termination by B&J.

On or about March 6, 2014, Greg Dotson pleaded guilty to unlawful monetary transactions in the United States District Court for the Southern District of West Virginia, stemming from illegal gambling operations in West Virginia and Kentucky. As a result, Greg Dotson is precluded from ownership or operation of limited video lottery machines with the West Virginia Lottery. B&J, under the sole control of Greg Dotson, thereafter terminated its contract with Plaintiff for the placement of the limited video lottery machines at Giovanni's Pizza.

In addition to breach of contract, Plaintiff's complaint alleges as follows: that the actions of the defendants in willfully breaching the contract constitute fraud, that the parties conspired to commit a fraud upon the Plaintiff, and that several of the defendants tortiously interfered with the contract between Plaintiff and B&J.

I. Breach of Contract

At the commencement of the hearing on the defendants' motions to dismiss, the Plaintiff stipulated that its claim for breach of contract pertained only to defendants B&J and Greg Dotson. Plaintiff, by and through counsel, represented that, to the extent the Complaint appeared to allege breach of contract against any of the other, named defendants, it was unintentional and moved to dismiss such claims against the remaining defendants. As to Plaintiff's claim for breach of contract against Greg Dotson, the Court ruled that such defendant was not a party to the contract, but granted leave that Plaintiff amend its Complaint to state a claim for such breach against Greg Dotson in his individual capacity.

II. Fraud

As to Plaintiff's claims for fraud, the Court determined that the Complaint failed to allege reliance on any material misrepresentation or concealment by any of the named defendants. Accordingly, the Plaintiff's claims for fraud were dismissed in their entirety.

III. Civil Conspiracy

It was thereupon determined that the Plaintiff's claim for civil conspiracy was predicated on the tort of fraud. Inasmuch as the Plaintiff's Complaint fails to state a claim for the predicate tort, its claim for civil conspiracy is similarly dismissed.

IV. Tortious Interference

Plaintiff alleges that the Dotsons, through their various business entities, tortiously interfered with the contract between Plaintiff and B&J, in order to purchase the business organization Jessie's Italian Restaurant and five (5) limited video lottery machines from Dawn Enterprises. Counsel for the Plaintiff explained his theory of the case, that Jessie's Italian Restaurant interfered in the contract between Plaintiff and B&J. On this basis, counsel for B&J, et al, moved to dismiss any and all remaining claims against defendants Jeannie Dotson and Bridget Dotson White. Noting no argument in opposition thereto, such motion to dismiss was granted.

The Motion to Dismiss Plaintiff's claim for tortious interference as to the remaining defendants was taken under advisement, with the parties granted leave to submit additional authority within the time frames set forth below.

In consideration of the foregoing, and for reasons set forth more particularly on the record, the ORDER of the Court is as follows:

Plaintiff's claim for breach of contract against B&J Business Enterprises, Inc. MAY PROCEED. Plaintiff's claim for breach of contract against the remaining defendants is hereby DISMISSED. Plaintiff is granted leave to amend its complaint to state a claim for breach of contract against Greg Dotson in his individual capacity.


Plaintiff's claim for fraud is hereby DISMISSED.

Plaintiff's claim for civil conspiracy is hereby DISMISSED.

Plaintiff's claim for tortious interference is DISMISSED as to Jeannie Dotson and Bridget Dotson White. The remaining defendants shall be permitted two weeks from entry of this Order to submit additional authority in support of their motions to dismiss; Plaintiff shall have two weeks upon receipt for their response thereto.

The Circuit Clerk shall forward a copy of this Order to all counsel of record; to the Honorable Paul T. Farrell, Resolution Judge, Cabell County Courthouse, 750 Fifth Avenue, Huntington, WV 25701; and to the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Ste. 2100, Martinsburg, West Virginia 25401.

IT IS SO ORDERED this 11th day of February, 2015.


James J. Rowe, Presiding Judge
Business Court Division

ACOPY/TEST