

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

**SOUTHERN AMUSEMENT CO., INC.,
Plaintiff,**

vs.

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

**B & J BUSINESS ENTERPRISES, INC., dba
GIOVANNIS PIZZA, a West Virginia Corporation;
DOTSON'S MANAGEMENT CO., INC., a West
Virginia Corporation;
JESSIE'S ITALIAN RESTAURANT LLC, dba
JOYCE'S TOBACCO & MORE EXPRESS,
a West Virginia Limited Liability Company;
DAWN ENTERPRISES LLC, a West Virginia
Limited Liability Company;
GREG DOTSON, individually,
Defendants.**

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT
FILED ON BEHALF OF DAWN ENTERPRISES, LLC**

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LOGAN COUNTY, WV

This matter came before the Court pursuant to the Motion for Summary Judgment Filed on Behalf of Dawn Enterprises, LLC ("Dawn") pursuant to Rule 56 of the West Virginia Rules of Civil Procedure, seeking dismissal with prejudice of the causes of action filed by the Plaintiff against Dawn. The Court has received Plaintiff's Response to Defendant Dawn's Motion for Summary Judgment and Reply by Dawn Enterprises LLC to Plaintiff's Response to Motion for Summary Judgment. After careful and complete consideration of these filings, the Court finds it appropriate to GRANT Defendant Dawn's Motion for Summary Judgment.

Summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of law. *San Francisco v. Wendy's Int'l Inc.*, 221 W.Va. 734, 750, 656 S.E.2d 485 (2007). "The circuit court's function at the summary judgment stage is not to weigh the evidence and determine the truth of the matter, but is to determine whether there is a genuine issue for trial." Syl. Pt. 9, *Law v. Monongahela Power Co.*, 210 W.Va. 549, 558 S.E.2d 349

(2001). A motion for summary judgment should be denied “even where there is no dispute to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom.” Syl. Pt. 2, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 459 S.E.2d 329 (1995). When considering a motion for summary judgment, the court “must draw any permissible inference from the underlying facts in the most favorable light to the party opposing the motion.” *Id.* However, “[s]ummary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove.” *Id.*

The crux of the matter before the Court is whether the Plaintiff has passed the minimum threshold to support the essential elements of a claim for tortious interference.

Here, Plaintiff alleges that former defendants Jeannie Dotson and Bridget Dotson White purchased Jessie’s Italian Restaurant, LLC (“Jessie’s”) and video lottery contracts from Dawn and that all three knew or should have known that there was a contract between the Plaintiff and Greg Dotson as signor for B & J Business Enterprises, Inc., doing business as Giovannis Pizza (“Greg Dotson/B & J/Giovannis”), and that only 5 machines were allowed at the location in issue. Plaintiff alleges that the action of selling Jessie’s and the accompanying video lottery contracts constituted tortious interference by Dawn with the contract between Southern Amusement and Greg Dotson/B & J/Giovannis.

Dawn argues that tortious interference occurred when the machines were swapped by former defendants Jeannie Dotson and Bridget Dotson White, not by Dawn’s selling of Jessie’s and the contracts to Jeannie Dotson and Bridget Dotson White. However, this Court finds that the support for summary judgment runs deeper.

To establish prima facie proof of tortious interference, a plaintiff must show:

- (1) existence of a contractual or business relationship or expectancy;
- (2) an intentional act of interference by a party outside that relationship or expectancy;
- (3) proof that the interference caused the harm sustained; and
- (4) damages.

Torbett v. Wheeling Dollar Sav. & Trust Co., 173 W. Va. 210, 211, 314 S.E.2d 166, 167 (1983).

Under the undisputed facts, the contract at issue was between Plaintiff, Southern Amusement, and Defendant Greg Dotson on behalf of B & J/Giovannis. Plaintiff states a preference that former defendants Jeannie Dotson and Bridget Dotson White should have taken over Greg Dotson's business and the contract with Southern Amusement; however, the Complaint does not allege that Jeannie Dotson, Bridget Dotson White, or any other person or entity had any *duty* to uphold the contract to which they were not a party. Nor does the Complaint allege any unity of ownership between another person or entity and Greg Dotson/B & J/Giovannis.¹ Unless some entity or person beyond the parties to the contract had a duty to uphold the obligations outlined therein, which has not been alleged, Dawn could not have caused the harm sustained.²

With no other person or entity charged with upholding the Southern Amusement contract, causation of the alleged breach³ can be narrowed to Greg Dotson's federal conviction for unlawful monetary transactions by which he was precluded from ownership or operation of limited video lottery machines. Accordingly, the breach could not have been induced by a third-party. Consequently, Plaintiff cannot support the essential element that Dawn committed an intentional act that caused the harm sustained by Southern Amusement.

¹ Jeannie Dotson was an incorporator for B & J, but to pierce the corporate veil, the Plaintiff would need more than a general statement that Jeannie Dotson was an incorporator, as generally an incorporator's roles and responsibilities cease to exist once the business becomes a corporation. Here Plaintiff makes no such argument or allegation.

² In a previous Order, leave was given to amend the Complaint to pierce the corporate veil, but no amendment was requested.

³ The parties dispute whether the contract had lapsed or automatically renewed.

THEREFORE, the Court ORDERS, pursuant to Rule 56 of the West Virginia Rules of Civil Procedure, that the Motion for Summary Judgment Filed on Behalf of Dawn Enterprises, LLC is hereby GRANTED, and that the Plaintiff's lawsuit against Defendant Dawn Enterprises, LLC is DISMISSED with prejudice. The objections and exceptions of the Plaintiff are noted for the record. The Circuit Clerk shall transmit attested copies to all counsel of record, the Resolution Judge, the Honorable Paul T. Farrell, Cabell County Courthouse, 750 Fifth Avenue, Huntington, WV 25701, and the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Martinsburg, West Virginia 25401, or via email at Business.Court@courtswv.gov.

ENTER this 22nd day of May, 2015.



JAMES J. ROWE, JUDGE
BUSINESS COURT DIVISION

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