

**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 TO DISMISS ON BEHALF OF  
DEFENDANT JESSIE'S ITALIAN RESTAURANT, LLC**

This matter came before the Court pursuant to the Motion to Dismiss on Behalf of Defendant Jessie's Italian Restaurant, LLC. The Court has reviewed the Defendant's Supplemental Memorandum of Law in Support of the Motion and the Plaintiff's Response to Defendant's Supplemental Memorandum of Law in Support of Motions to Dismiss and finds it appropriate to GRANT Defendant Jessie's Motion to Dismiss.

Generally, a motion to dismiss should be granted only where 'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Murphy v. Smallridge*, 196 W.Va. 35, 36, 468 S.E.2d 167, 168 (1996). The Supreme Court of Appeals of West Virginia has advised that motions to dismiss are viewed with disfavor and that lower courts should rarely grant such motions. *Forshey v. Jackson*, 222 W.Va. 743, 671 S.E.2d 748 (2008); citing *John W. Lodge Distrib. Co., Inc. v. Texaco, Inc.*, 161 W.Va. 603, 605-06, 245

S.E.2d 157, 159 (1978). For the purpose of evaluating motions to dismiss, complaints must be “construed in the light most favorable to plaintiff, and its allegations are to be taken as true.” *Lodge Distrib. Co., Inc. v. Texaco, Inc.*, 161 W.Va. 603, 605, 245 S.E.2d 157, 158 (1978); *Forshey v. Jackson*, 222 W.Va. 743, 671 S.E.2d 748 (2008). However, where it “appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief” the courts may grant a motion to dismiss to weed out unfounded suits. Syl. pt. 3, in part, *Chapman v. Kane Transfer Co., Inc.*, 160 W.Va. 530, 236 S.E.2d 207 (1977); *Williamson v. Harden*, 214 W.Va. 77, 585 S.E.2d 369 (2003).

Here, the issue is whether the Plaintiff has passed the minimum threshold to support the essential elements of a claim for tortious interference against the Defendant Jessie’s Italian Restaurant (“Jessie’s.”) In order to sustain a case for tortious interference, a plaintiff must properly allege:

- (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).

In the instant case, Plaintiff alleges that Jessie’s tortiously interfered with a contract between the Plaintiff, Southern Amusement, and Defendant Greg Dotson on behalf of B & J Enterprises, Inc., doing business as Giovannis Pizza (“Greg Dotson/B & J/Giovannis.”) Plaintiff alleges that Jessie’s tortiously interfered with this contract when its owners purchased Jessie’s along with video lottery contracts from Dawn Enterprises, LLC, knowing that there was a contract between the Plaintiff and Greg Dotson/B & J/Giovannis and that only 5 machines were permitted at the business location.

While Plaintiff states a preference that former defendants Jeannie Dotson and Bridget Dotson White should have taken over Greg Dotson's business and the contract at issue, the Complaint does not allege that Jeannie Dotson, Bridget Dotson White, or any other person or entity had a *duty* to uphold the contract to which they were not a party. Nor does the Complaint allege any unity of ownership between another and the party to the contract, Greg Dotson/B & J/ Giovannis.<sup>1</sup>

Therefore, it naturally follows if there was no other person or entity charged with upholding the contract in dispute, the causation of the alleged breach<sup>2</sup> can be narrowed to Mr. Dotson's federal conviction wherein he was precluded from ownership or operation of limited video lottery machines. It is undisputed that Greg Dotson was the signor of the contract and unable to uphold the alleged obligations under the contract. Accordingly, Plaintiff can prove no set of facts to support the essential element that Jessie's committed an intentional act that caused the harm sustained by Southern Amusements, the alleged breach of the Southern Amusement contract.

Furthermore, even if Jeannie Dotson and Bridget Dotson White did have a duty to uphold the contract, which is not alleged, then Jessie's still would not be a tortious interferer because it would not be a third party. At most, Jessie's would be an instrument of interference wielded by Jeannie Dotson and Bridget Dotson White, whom were dismissed from this case without objection by the Plaintiff.

In any case, the allegations and undisputed facts before the Court clearly demonstrate that Jessie's could not have tortiously interfered with the contract at issue and therefore no relief could be granted under any set of facts that could be proved consistent with the allegations.

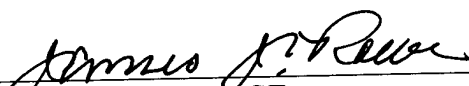
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<sup>1</sup> In a previous Order, leave was given to amend the Complaint to pierce the corporate veil, but no amendment was requested.

<sup>2</sup> The parties dispute whether the contract had lapsed or automatically renewed.

THEREFORE, the Court ORDERS that the Motion to Dismiss filed by Defendant Jessie's Italian Restaurant, LLC is hereby GRANTED, and that the Plaintiffs' lawsuit against Defendant Jessie's Italian Restaurant LLC dba Joyce's Tobacco & More Express is DISMISSED with prejudice. The objections and exceptions of the Plaintiff are noted for the record. The Circuit Clerk shall transmit certified 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](mailto:Business.Court@courtswv.gov).

ENTER this 22<sup>nd</sup> day of May, 2015.

  
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JAMES J. ROWE, JUDGE  
BUSINESS COURT DIVISION

RECEIVED & FILED  
2015 MAY 28 A 9:41  
VICKIE HODGIN  
CIRCUIT CLERK  
LOGAN COUNTY