

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

Saad's Food, Inc. d/b/a Julian's Market
and Saad's Oriental Rugs,
Plaintiff Below, Petitioner

vs) No. 11-1133 (Cabell County 05-C-384)

Verizon West Virginia, Inc.,
Defendant Below, Respondent

FILED

October 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Saad's Food, Inc. appeals the Circuit Court of Cabell County's July 5, 2011, order granting summary judgment in favor of Respondent Verizon West Virginia, Inc. Petitioner is represented by Thomas H. Peyton. Respondent is represented by Michael J. Schessler and Patrick C. Timony.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

For all times relevant to this lawsuit, petitioner obtained its business telephone service from Fibernet, LLC, which is a competing local telephone service provider to Respondent Verizon West Virginia, Inc. A third corporate entity, Verizon Information Services-East, Inc. (and its successor corporations), provided telephone directories that included free listings for customers of both respondent and Fibernet. Verizon Information Services also sold separate, paid advertisements in the directories. Petitioner's businesses had paid advertisements in these directories for a number of years.

Petitioner asserts that Verizon Information Services failed to correctly publish petitioner's free listings in the 2003 and 2004 directories, and failed to include petitioner's paid advertising in the 2005 directory. Verizon Information Services and its successor companies have since filed for bankruptcy, been discharged, and have emerged as SuperMedia, LLC.

Because all claims against Verizon Information Services were discharged in the bankruptcy proceeding, petitioner seeks to hold Respondent Verizon West Virginia, Inc. liable for harm that the incorrect listings and lack of paid advertisements allegedly caused to petitioner's businesses. Although petitioner never had a contractual relationship with respondent, petitioner asserts that respondent was engaged in a joint venture with Verizon Information

Services to publish the telephone directories. The circuit court granted summary judgment in favor of respondent upon finding that petitioner failed to present evidence showing a genuine issue of material fact in support of the existence of a joint venture. The court found, inter alia, that the two companies were separate corporate entities, that petitioner failed to present evidence that respondent had the right to control the publication of the directories or the content therein, and that petitioner failed to present evidence that respondent shared in any profits or losses from the publication of these directories.

This Court reviews the entry of summary judgment under a de novo standard of review. Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). Moreover, “the party opposing summary judgment must satisfy the burden of proof by offering more than a mere ‘scintilla of evidence’ and must produce evidence sufficient for a reasonable jury to find in a nonmoving party’s favor. *Anderson [v. Liberty Lobby, Inc.]*, 477 U.S. [242] at 252, 106 S.Ct. [2505] at 2512, 91 L.Ed.2d [202] at 214 [1986].” *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 60, 459 S.E.2d 329, 337 (1995). Upon a review of the circuit court’s order, the record on appeal, and the parties’ arguments, we agree with the circuit court that petitioner has failed to produce evidence sufficient for a reasonable jury to find the existence of a joint venture. Accordingly, summary judgment was properly granted for respondent.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: October 19, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh