

In the Circuit Court of Logan County, West Virginia

**Tri-State Wholesale, Inc., d/b/a Tri-State
Cannabis,**)
Plaintiff,)
)
vs.))
)
3C LLC,)
Justin Journey,)
Defendants)
)

Case No. CC-23-2020-C-113

**Order Denying Defendants' Motion to Dismiss and Motion for Protective Order to Stay
Discovery Pending Resolution of Defendants' Motion to Dismiss**

Pending before the Court is the Motion to Dismiss by the Defendants, 3C LLC and Justin Journey ("Defendants"), filed December 1, 2020. The Motion to Dismiss has been briefed by the parties, and the Court conducted oral argument on the Motion to Dismiss on April 28, 2021. The Defendants also have filed a Motion for Protective Order to Stay Discovery Pending Resolution of Defendants' Motion to Dismiss, filed April 6, 2021. Although the parties have not fully briefed the Motion for Protective Order, because of the Court's disposition of the Motion to Dismiss, the Motion for Protective Order also is ripe for decision.

Upon consideration of the record before it and the oral argument of the parties, the Court is of the opinion that Defendants' Motion to Dismiss and Motion for Protective Order should be denied, as follows:

The Defendants have filed a motion to dismiss the Complaint of the Plaintiff, Tri-State Wholesale, Inc., d/b/a Tri-State Cannabis ("Plaintiff"),[1] pursuant to Rule 12 of the *West Virginia Rules of Civil Procedure*. When there is a Rule 12 motion, the facts stated in the Plaintiff's Complaint are presumed to be true.

First, with regard to Mr. Journey, an individual, he is not party to this contract at

issue in this action. And, the allegations against him sound in tort for fraud and tortious interference with a contract, part of which was to be performed here in Logan County. So, Mr. Journey, not having been a party to the contract, would not be able to require the Plaintiff to bring suit against him individually anywhere else. Nor does the contract create a benefit for Mr. Journey for any claims against him that sound in tort to be the subject to mediation prior to suit. Moreover, it was argued and not disputed that the mediation has now occurred, at least between the companies, and was unsuccessful.

The Motion to Dismiss the Complaint as to Defendant Justin Journey would be respectfully overruled.

Second, with regard to the 3C LLC claim that the Complaint should be dismissed as to it, the Court again, taking the allegations in the Complaint as true, would find that the mediation clause and the restricted venue clause would not be jurisdictional but would be contract provisions. Those contract provisions are presumptively enforceable unless the Court would deem them to be unreasonable or unjust. The complaint taken as a whole, would indicate that this Defendant, 3C LLC, has engaged in fraudulent acts, which affect the contract, part of which was to be enforceable here. So, taking the allegations of the Complaint as true, the Court would find that enforcement of these contract provisions would be unreasonable and unjust as to the Plaintiff.

The Motion to Dismiss the Complaint as to Defendant 3C LLC would be respectfully overruled.

The Motion to Dismiss having been overruled as to both Defendants, Defendants' Motion for Protective Order to Stay Discovery Pending Resolution of Defendants' Motion to Dismiss would be respectively overruled, as well.

Accordingly, it is **ORDERED** that Defendants' Motion to Dismiss is **DENIED**, and Defendants are to file their Answer within the time provided by the *West Virginia Rules of Civil Procedure*;

It is further **ORDERED** that Defendants' Motion for Protective Order to Stay Discovery Pending Resolution of Defendants' Motion to Dismiss is **DENIED**, and Defendants should respond to Plaintiff's pending discovery to them within the time allowed by the *West Virginia Rules of Civil Procedure*;

It is further **ORDERED** that Defendants' exceptions and objections are noted and preserved;

It is further **ORDERED** that the Scheduling Conference for this action shall be held telephonically or by Zoom, at the Plaintiff's initiation, on July 8, 2021, at 1:30 p.m.; and

It is further **ORDERED** that an attested copy of this Order shall be provided to all counsel of record and unrepresented parties.

Submitted by:

TRI-STATE WHOLESALE, INC., d/b/a
TRI-STATE CANNABIS,
By Counsel,

/s/Russell D. Jessee

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Reviewed by:

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Counsel to Defendants

[1] The operative complaint in this action is Plaintiff's First Amended Complaint, filed as of right on November 9, 2021, but for the sake of efficiency, the Court refers simply to the "Complaint."

/s/ Eric O'Briant

Circuit Court Judge

7th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.