

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08-CVS-4259

SONIC AUTOMOTIVE, INC.,)
)
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 Plaintiff,)
)
 v.)
)
 MERCEDES-BENZ USA, LLC,)
)
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 Defendant.)
)
)

**MEMORANDUM OF LAW IN
SUPPORT OF OPPOSITION TO
DESIGNATION AS A MANDATORY
COMPLEX BUSINESS CASE AND
MOTION TO REMAND**

Plaintiff Sonic Automotive, Inc. (“Sonic”), submits this memorandum of law in support of its opposition to designation of this action as a mandatory complex business case and Motion to Remand.

Introduction

On April 17, 2008, Defendant Mercedes-Benz USA, LLC (“MBUSA”), filed and served by mail a Notice of Designation of Action as Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4 by Defendant (“Designation”). As the bases for its removal of this action to the Business Court, MBUSA certified that this action involves material issues related to: “The law governing corporations, partnerships, limited liability companies, and limited liability partnerships;” and “Antitrust law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.” Designation, p. 1. This action does not involve any such issue. This action therefore is not a mandatory complex business case and its status as such must be revoked.

Case Summary

This case arises out of MBUSA's refusal to consider and approve Sonic's acquisition of a Mercedes-Benz automobile dealership business located in Charlotte ("the dealership"). See Complaint, ¶¶12-13, 16, 50. Beck Imports Limited Partnership ("Beck Imports") owns the dealership. Complaint, ¶ 8. On February 12, 2008, Sonic and Beck Imports entered into an Asset Purchase Agreement whereby Sonic agreed to purchase and Beck Imports agreed to sell the dealership. Id. Sonic and Beck Imports need MBUSA's approval in order to consummate the deal. MBUSA refused to consider or approve Sonic's acquisition of the dealership on the sole ground that Sonic allegedly had not made "substantial progress" in making improvements to four (4) of its existing Mercedes-Benz dealerships as agreed in a June 12, 2007, letter agreement between Sonic and MBUSA ("the letter agreement"). Complaint, ¶¶ 12-13, 16, 20.

Sonic and MBUSA disagree as to whether Sonic has made "substantial progress" under the letter agreement, but whether Sonic has or has not, MBUSA cannot lawfully rely upon the letter agreement to withhold its approval. See, e.g., Complaint, ¶¶ 17, 31. Under North Carolina Motor Dealers and Manufacturers Licensing Law, N.C. Gen. Stat. § 20-285, *et. seq.* ("Motor Vehicle Dealer Act"), MBUSA's objection to the proposed sale of the dealership can be premised only upon a proposed transferee's lack of good moral character, lack of general business experience, or lack of financial ability. Complaint, ¶ 17; N.C. Gen. Stat. § 20-305(4). MBUSA does not object to Sonic's acquisition of the dealership on any of these grounds (and indeed it cannot legitimately make any such objection – Sonic currently owns and operates nine (9) Mercedes-Benz dealerships, one of which MBUSA recently recognized as being "Best of the Best"). Complaint, ¶¶ 12-13, 16-17. Rather, as noted, MBUSA's only objection is its contention that Sonic has not made "substantial progress" under the letter agreement. Id.

Meanwhile, Sonic and MBUSA are engaged in discussions and negotiations regarding facility plans and MBUSA has requested modifications that would cost Sonic millions of dollars to implement. Complaint, ¶ 29. It is evident that MBUSA is withholding its approval of Sonic's acquisition of the dealership in an effort to gain unfair leverage in these dealings. Id.

Sonic's claims against MBUSA are for a Declaratory Judgment that MBUSA is obligated to approve Sonic's acquisition of the dealership and Mandatory Injunction requiring MBUSA to approve the acquisition (Complaint, ¶¶ 33-37); Declaratory Judgments that the letter agreement is invalid or that "substantial progress" under the letter agreement has been realized (Complaint, ¶¶ 38-48); Unfair and Deceptive Trade Practices under N.C. Gen. Stat. § 75-1.1, *et. seq.* (Complaint, ¶¶ 49-54); Tortious Interference with Contract (Complaint, ¶¶ 55-60); Tortious Interference with Prospective Economic Advantage (Complaint, ¶¶ 61-66); Reformation of the letter agreement for mutual mistake (Complaint, ¶¶ 67-69); and Reformation of the letter agreement for unilateral mistake (Complaint, ¶¶ 70-73).

Analysis

This action is not a mandatory complex business case. A mandatory complex business case is an action that involves a material issue related to one or more of seven (7) categories of law delineated in N.C. Gen. Stat. § 7A-45.4(a). MBUSA relied upon subdivisions (1) and (3) of section 7A-45.4(a) in filing its Designation. Designation, p. 1. They state as follows:

(a) A mandatory complex business case is an action that involves a material issue related to:

(1) The law governing corporations, except charitable and religious organization qualified under *G.S. 55A-1-40(4)* on the grounds of religious purpose, partnerships, limited liability companies, and limited liability partnerships, including issues concerning governance, involuntary dissolution of a corporation, mergers and acquisitions, breach of duty of directors, election or removal of directors, enforcement or interpretation of shareholder agreements, and derivative actions.

(3) Antitrust law, except claims based solely on unfair competition under G.S. 75-1.1.

N.C. Gen. Stat. § 7A-45.4(a)(1) and (3) (underscore added). This action does not involve any such material issue.

This action does not involve any material issue related to any law governing corporations or any entity. An action is a mandatory complex business case if it involves a material issue related to law “governing corporations ... partnerships, limited liability companies, [or] limited liability partnerships.” N.C. Gen. Stat. § 7A-45.4(a)(1). The law governing each of these entities is the Chapter of the General Statutes under which the entity exists, i.e., Chapters 55 (Business Corporation Act), 55B (Professional Corporation Act), 57C (Limited Liability Act) and 59 (Partnership). This is evident from the plain language of section 7A-45.4(a)(1) (“law governing corporations ...”), including the specific examples of such issues (“issues concerning governance, involuntary dissolution of a corporation ...”), and is all the more evident from the Comment to Rule 2.2 of the General Rules of Practice for the Superior and District Courts. The Comment to Rule 2.2 (adopted in 1995) states that “[i]t is anticipated that any case involving significant issues arising under Chapters 55, 55B, 57C, 59 ... of the General Statutes of North Carolina would be designated a complex business case.” Section 7A-45.4(a)(1), adopted some ten (10) years later in 2005, very plainly corresponds to this anticipated subject matter for complex business cases. This action involves MBUSA’s misconduct in unlawfully refusing to approve Sonic’s acquisition of the dealership and the validity, construction and potential reformation of the letter agreement. It does not involve any issue, material or otherwise, related to the governance of any entity and therefore does not meet the criteria of section 7A-45.4(a)(1).

MBUSA’s explanation for why this case falls within category (a)(1) of section 7A-45.4 is unavailing. MBUSA vaguely states that “[t]his action involves the law governing corporations

and limited liability companies, including issues involving acquisitions of the assets of limited partnerships and the interpretation of business agreements relating thereto.” Designation, p. 4. This lawsuit does not present any issue involving Sonic’s acquisition of Beck Imports’ dealership other than MBUSA’s unjustified refusal to approve the transaction. There is no dispute between Sonic and Beck Imports (and even if there were, it would not involve any issue related to the governance of any entity). As to interpretation of business agreements, the validity, construction or reformation of the letter agreement does not have anything to do with the governance of Sonic, MBUSA, Beck Imports, or any entity.

This case also does not involve any issue related to antitrust law other than unfair competition under N.C. Gen. Stat. 75-1.1. Federal antitrust laws are found in the Sherman Act (15 U.S.C. § 1, *et. seq.*) the Clayton Act (15 U.S.C. § 12, *et. seq.*) and the Federal Trade Commission Act (15 U.S.C. § 41, *et. seq.*), and North Carolina antitrust law is found in Chapter 75 of the General Statutes. See, e.g., DKH Corporation v. Rankin-Patterson Oil Co., Inc., 131 N.C.App. 126, 128-29, 506 S.E.2d 256, 258 (1998). This action does not involve any issue related to the Sherman Act, the Clayton Act, the Federal Trade Commission Act, and the only issues involving Chapter 75 of the North Carolina General Statutes relate to Sonic’s claim for unfair and deceptive trade practices under N.C. Gen. Stat. § 75-1.1 (Complaint, ¶¶ 49-54), which explicitly is not a basis for Business Court jurisdiction. N.C. Gen. Stat. § 7A-45.4(a)(3).

MBUSA’s attempt to explain why this action involves issues related to antitrust is nonsense. MBUSA says this action “involves the law of antitrust particularly the monopolization of markets and unfair practices under the Motor Vehicle Dealer Act.” Designation, p. 4. “A monopoly consists in the ownership or control of so large a part of the market supply or output of a given commodity as to stifle competition, restrict freedom of

commerce, and give the monopolist control over prices.” State v. Atlantic Ice & Coal Co., 210 N.C. 742, 747, 188 S.E. 412, 416 (1936) (quoting Black’s Law Dictionary (3d Ed.), p. 1202). This action does not in any conceivable way involve any claim or issue related to the monopolization of any market. As to unfair practices under the Motor Vehicle Act, MBUSA does not, and cannot, explain how Sonic’s allegation that MBUSA is withholding its approval in violation of N.C. Gen. Stat. § 20-305(4) (Complaint, ¶¶ 17, 50) involves any issue related to antitrust law.¹ It simply does not.

Conclusion

This action does not involve any material issue related to the law governing corporations or any entity, or any material issue related to antitrust law other Sonic’s claim under N.C. Gen. Stat. § 75-1.1. MBUSA’s removal of this action to the Business Court was improper. This action must be remanded and treated as any other civil action.

This the 16th day of May, 2008.

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¹ For sake of accuracy, it should be noted that MBUSA mischaracterizes Sonic’s claim. Sonic does not assert any claim for unfair practices under the Motor Vehicle Dealer Act. Sonic does assert a claim for unfair and deceptive trade practices under N.C. Gen. Stat. § 75-1.1, a component of which is MBUSA’s knowing, willful and wanton violation of the Motor Vehicle Dealer Act (N.C. Gen. Stat. § 20-305(4) in particular) in withholding its approval of Sonic’s acquisition of the dealership. Complaint, ¶¶ 17, 50.

CERTIFICATION OF WORD COUNT

The undersigned certifies that this Brief complies with Business Court Rule 15.8, in that this Brief contains 1,641 words, including headings, footnotes, quotations and citations, but excluding the case caption and required certificates.

This the 16th day of May, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MEMORANDUM OF LAW IN SUPPORT OF OPPOSITION TO DESIGNATION AS A MANDATORY COMPLEX BUSINESS CASE AND MOTION TO REMAND** has this date been served upon Defendant by depositing a copy of same in the United States mail, sufficient postage prepaid, addressed as follows:

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