

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CIVIL ACTION NO: 08-CVS-4259

SONIC AUTOMOTIVE, INC.,
Plaintiff,

v.

MERCEDES-BENZ USA LLC,
Defendant.

**MERCEDES-BENZ'S OPPOSITION TO
MOTION TO REMAND**

In the *Automotive News*, Plaintiff Sonic Automotive, Inc. (“Sonic”) describes this lawsuit as being about Defendant Mercedes-Benz USA, LLC’s (“MBUSA”) alleged attempts to “extort” millions of dollars from Sonic by illegally “tying” the acquisition of Beck Imports Limited Partnership (“Beck”) in Charlotte to renovations at other Mercedes dealerships owned by Sonic nationwide.¹ Such an accusation – one that MBUSA denies – implicates antitrust and unfair competition issues squarely within the Business Court’s jurisdiction. N.C. Gen. Stat. § 7A-45.4(3); N.C. Gen. Stat. § 75-1 (North Carolina’s antitrust statute making illegal “[e]very contract ... in restraint of trade or commerce in the State of North Carolina”). To the Business Court, however, Sonic asserts that the case “does not involve any material issue related to antitrust law other than Sonic’s claim for unfair and deceptive trade practices under N.C. Gen. Stat. § 75-1.1,” a different statute from the antitrust prohibitions of § 75-1. Sonic’s Motion at 2. However Sonic tries to style the issue, the kind of illegal, restraining conduct Sonic alleges – and MBUSA denies – are precisely the types of legal issues the Business Court can and does address. Moreover, the Business Court is the forum best suited to their prompt and efficient resolution.

¹ See D. Smith, “Sonic: Mercedes Tries To ‘Extort’ Store Upgrades,” *Automotive News* (May 19, 2008) at 1 & 43 (in print version) (online version of article attached as Exhibit 1).

Sonic's Theory of Its Case Implicates Antitrust Issues, Not Just Issues of Unfair and Deceptive Trade Practices. Sonic maintains that the case “does not involve any issue related to antitrust law other than unfair competition under N.C. Gen. Stat. § 75-1.1.” Sonic Memo at 5. Sonic’s own observations show that it is wrong. According to Sonic’s President, Scott Smith, MBUSA is “trying to extort all they can. It’s so unfair. Mercedes-Benz is holding the [Beck asset acquisition] transaction hostage.” *See* Ex. 1. What Mr. Smith accuses MBUSA of doing – and what the allegations in Sonic’s Complaint implicate no matter how Sonic styles them – is potentially a type of “contract ... in restraint of trade or commerce in the State of North Carolina.” N.C. Gen. Stat. § 75-1.

According to Sonic’s expansive reading, North Carolina’s Motor Vehicle Dealers and Manufacturers Licensing Act (the “Act”), N.C. Gen. Stat § 20-285 *et seq.*, prevents businesses involved in any way in the retail sale of automobiles – like Sonic and MBUSA – from imposing any restrictions on the transfer of assets or corporate interests of automobile dealers other than what the Act (or Sonic’s reading of it) provides. This interpretation of the Act presents this Court with material antitrust and business competition issues under North Carolina law. Antitrust issues – as defined under § 75-1 – are separate and distinct issues from those presented under the Unfair and Deceptive Trade Practices Act at § 75-1.1 and under which Sonic pleads one of its claims. Invoking § 75-1.1, however, is not some talisman that allows Sonic to avoid Business Court jurisdiction of a business dispute. Sonic’s Complaint – as Mr. Smith’s assertions bear out – necessarily implicates antitrust issues, a proper subject for the Business Court under N.C. Gen. Stat. § 7A-45.4(3) (stating that a “mandatory complex business case” is one with “a material issue related to: ... [a]ntitrust law”).

The Case Presents Important Legal Issues of Industry-Wide Application. Sonic is no less wrong to assert that the Act prohibits MBUSA from refusing its consent to Sonic's acquisition of Beck for the reasons MBUSA has stated. As an initial matter, MBUSA challenges Sonic's standing to assert the Act's provisions here. Answer at 9 (Second Affirmative Defense).² Additionally, as explained below, many factual issues attend Sonic's operation of its various Mercedes dealerships and whether Sonic's failure to adhere to its various business contracts with MBUSA impact Sonic's "qualifications" to acquire Beck's assets. See N.C. Gen. Stat. § 20-305(4). Whatever the resolution of these legal and factual questions, they will determine how the State's regulation of "motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in North Carolina" impacts business relations, like those Sonic has put in issue here. N.C. Gen. Stat § 20-285.

The retail sale of automobiles "vitaly affects the general economy of the State and the public interest and public welfare." *Id.* When a case presents undecided legal issues affecting an economically important industry, that case merits Business Court jurisdiction. See March 3, 2008 Order in *Women's Healthcare Associates, P.A. v. TSI Healthcare, Inc.*, Onslow County Superior Court Civil Action No. 07-CVS-4895 (overruling objection to removal to Business Court because the industry at issue "has become an integral part of economic life") (Tenille, C.J.) (attached as Exhibit 2). Moreover, resolution of the legal issues presented by this case may have significant implications for companies not involved in the present dispute.

² The Court also should be aware that Beck has filed a petition with the Commissioner of the North Carolina Division of Motor Vehicles seeking to force MBUSA to consent to Beck's sale of assets to Sonic. Beck filed that administrative proceeding over a month after Sonic filed this lawsuit. That proceeding is the subject of MBUSA's Motion to Stay before the Commissioner, and eventually may require joinder with this lawsuit to avoid the possibility of inconsistent results in the required judicial review of any administrative determination. See N.C. Gen. Stat. § 20-300 (providing that appeals from the Commissioner's action shall be governed by Chapter 150B); N.C. Gen. Stat. § 150B-43 (providing for right of judicial review of administrative proceedings).

A decision in this case could set important precedents affecting the relations between motor vehicle manufacturers and dealers on an industry-wide basis. *See id.* (“Decisions concerning [this industry] can have an impact beyond the confines of a particular case and development of a body of case law in this area of law will be beneficial to the bar and business”); January 31, 2008 Order in *Delhaize America, Inc. v. Hinton*, Wake County Superior Court Civil Action No. 07-CVS-020801 (overruling objection to removal to Business Court because the “decision in this case could have implications for other companies and thus the publication of a written opinion by the Court could prove beneficial to the State and those companies”) (Tenille, C.J.) (attached as Exhibit 3); February 27, 2007 Order in *Cox v. Mitchell*, Forsyth County Superior Court Civil Action No. 06-CVS-8371 (overruling objection to removal to Business Court because “industry-wide application” of potential legal holding “is sufficient for purposes of removal to the Business Court”) (Tenille, C.J.) (attached as Exhibit 4).

The Case Presents Legal Issues Relating to a Corporate Acquisition. Ultimately, this case hinges on whether one business (Beck Imports) can sell its assets to a second business (Sonic) when the second business has a contract with a third business (MBUSA) barring such an acquisition because of the historical business relationship between the second and third businesses. Can Sonic acquire the assets of Beck when Sonic has agreed not to acquire another Mercedes dealership until it makes substantial progress in remedying facility deficiencies at several of the Mercedes dealerships it already owns? Sonic tries mightily to cast such an issue as wholly separate from North Carolina’s “law governing corporations ..., including ... [corporate] acquisitions.” *See* N.C. Gen. Stat. § 7A-45.4(a)(1). Such a position defies logic, the text of the applicable statute, and the purpose of the Business Court. This case specifically presents an issue relating to North Carolina’s law of corporate acquisitions: the ability to transfer ownership

of corporate interests or assets of every automobile dealership in the State of North Carolina. These are “material issues related” to “[t]he law governing” a business “acquisition[]”, thus falling precisely within the ken of the Business Court. N.C. Gen. Stat. § 7A-45.4(a)(1).

The Case Presents Complex Factual and Legal Issues that the Business Court Can More Efficiently Resolve. As a factual matter, this controversy involves an extensive course of business dealings between two large corporations. The relationship between Sonic and MBUSA extends for more than six years, and the present dispute implicates automobile dealerships in at least four different states. In 2002, Sonic signed a Dealer Agreement Improvement Addendum to correct various deficiencies at its Mercedes dealership in Belmont, California. *See* Complaint Ex. C at 1. On December 6 and December 8, 2005, respectively, Sonic signed a second Agreement promising yet again to correct the ongoing deficiencies at the Belmont dealership and another Dealer Agreement Improvement Addendum agreeing to make repairs at its Mercedes dealership in Walnut Creek, California. *Id.* at 1-2. By June 2007, Sonic had acquired even more Mercedes dealerships across the country, but Sonic still had not honored its obligations to correct deficiencies in over half of those dealerships. Frustrated with Sonic’s recalcitrance, MBUSA required Sonic to agree to make the needed improvements at five of its nine Mercedes dealerships or forego acquiring any more Mercedes dealerships until Sonic could show “substantial progress” in correcting those deficiencies.

Specifically, prior to Sonic purchasing an additional Mercedes dealership in Calabasas, California, MBUSA and Sonic entered into a June 12, 2007 Agreement (the “Agreement”). In the Agreement, “Sonic acknowledges that [remedies for] the Belmont facility deficiencies ... are significantly overdue” and that Sonic’s failures to honor its commitments “negatively impact” MBUSA. *Id.* at 1. Similarly, Sonic “acknowledges” that it had failed to remedy deficiencies at

Walnut Creek and that failure also “negatively impacts” MBUSA. *Id.* at 2. Finally, MBUSA and Sonic agreed “that MBUSA shall not approve the acquisition of any additional Mercedes-Benz dealerships by Sonic until substantial progress is realized in remedying the respective dealership deficiencies as noted herein.” *Id.* at 3.

The parties disagree about whether Sonic has made such progress in all of the dealerships. Sonic now contends it has submitted plans for remedying defects at some dealerships and that is all that “substantial progress” means under the Agreement. MBUSA, on the other hand, both disputes that “substantial progress” means – or ever was intended to mean – simply the submission of plans, and maintains that (i) Sonic even was late in submitting various plans under the Agreement’s schedule; (ii) little, if any, actual work has been done at the dealerships in question; (iii) MBUSA continues to be harmed by Sonic operating too many deficient facilities; and (iv) “substantial progress” has not been realized. *Compare* Complaint ¶¶ 20-32 *with* Answer ¶¶ 20-32 (denying virtually all of Sonic’s allegations about the Agreement and its implementation).

Given the nature of this factual dispute and the increasingly contentious relationship between the parties – as evidenced by Sonic’s front-page allegations of “extortion” – discovery in this case will likely be extensive and complex. To avoid the inefficiency that would result from arguing a series of discovery motions before different judges unfamiliar with the proceedings, continued jurisdiction in the Business Court makes common sense. Resolution by the Business Court also will help to avoid the additional inefficiency of requiring a series of different judges to familiarize themselves with the complexities of the North Carolina Motor Vehicle Dealers and Manufacturers Licensing Law. In short, this case is precisely the sort in which application of the Business Court’s specialized procedures and expertise will “permit just

and prompt determination of all proceedings and promote the efficient administration of justice.”

See Bus. Ct. R. 1.4

Conclusion

Chief Justice Parker properly designated this matter as a mandatory complex business case. April 18, 2008 Order. For all of the reasons stated in MBUSA’s April 17, 2008 Designation as well as those advanced herein, this case remains a mandatory complex business case that the Business Court should retain.

This 2nd day of June, 2008.

/s/ Julian H. Wright, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **MERCEDES-BENZ'S OPPOSITION TO MOTION TO REMAND** was served this 2nd day of June, 2008, by depositing in the U.S. mail, postage prepaid, and addressed as follows:

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