

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	C/A NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,)	
)	
)	
)	ORDER
Plaintiff,)	RECEIVED
v.)	Dec 17 2021
)	SC Court of Appeals
W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,)	
)	
)	
Defendants.)	

This matter is before the Court on Defendants' Motion for Judgment on the Pleadings.

PROCEDURAL HISTORY

The parties entered into two Asset Purchase Agreements (APAs) to buy automobile dealerships owned by Plaintiff on January 7, 2020. Defendant asserted Plaintiff failed to preserve the goodwill of the businesses until the time of closing and to provide relevant financial information as required under the APAs. Defendants contend that as a result, Peacock Automotive terminated the APAs on March 27, 2020.

Plaintiff filed its Complaint on April 13, 2020 and an Amended Complaint on July 2, 2020 alleging Defendants breached the APAs. Both the Complaints alleged causes of action for Declaratory Judgment, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Violation of the Dealer's Act, an untitled Cause of Action against Warner Peacock, and Veil Piercing. Defendants timely filed Answers and Counterclaims to the Complaint and the Amended Complaint.

Plaintiff's Fourth Cause of Action alleged that Defendants' conduct in breaching the APAs violated the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers

Act”). S.C. Code §56-15-10 et seq. (2005). Plaintiff’s Amended Complaint alleged specific violations of S.C. Code §§56-15-30 and 40(i) in that Defendants’ actions were unfair methods of competition and unfair and deceptive. Defendants filed a Motion for Judgment on the Pleadings on December 9, 2020 requesting the dismissal of Plaintiff’s cause of action for violation of the Dealers Act.

Plaintiff filed its own Motion and Memorandum for Judgment on the Pleadings and Memorandum in Opposition to Defendants’ Motion for Judgment on the Pleadings on February 5, 2021. Plaintiff then filed a Supplemental Memorandum on March 12, 2021. Defendants filed a Reply Memorandum on Wednesday, March 17, 2021, in compliance with my Order that all Memoranda for Motions pending before me be filed the Wednesday before the week of the hearing. Plaintiff filed a second Supplemental Memorandum on Friday, March 19, 2021.

Plaintiff then sent a four page letter to the Court on Monday, March 22, 2021, which included copies of all of the pleadings, affidavits, and discovery in the case. Also, the letter enclosed copies of three Circuit Court Orders that Plaintiff’s counsel submitted to “throw light upon the issues before the Court” with respect to the Motions for Judgment on the Pleadings.

Based on the Motions and Memoranda filed before me, the pleadings, Plaintiff’s submissions, and oral arguments, I make the following findings of fact and conclusions of law.

MOTION STANDARD

Any party may move for a judgment on the pleadings under Rule 12(c) SCRPC, *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687, S.E.2d 47 (2009). A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in its favor. *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E. 2d 338, 339 (1991).

S.C. CODE § 56-15-80

Stivers sued Peacock Automotive and Warner twice for specific performance of each of “two separate Asset Purchase Agreements (APAs)” for the purchase of its Chevrolet and Hyundai/Genesis dealerships in Columbia, South Carolina. Stivers’ Complaint was filed on April 13, 2020 and its Amended Complaint was filed three months later on July 2, 2020. Plaintiff’s claims regarding the Dealers Act arise from the alleged breach of the APAs. (Complaint, ¶s 68-76, Amended Complaint ¶s 82-90).

Section 56-15-80 is headed “Agreements to which chapter applies.” It states in pertinent part:

The provisions of this chapter shall apply to all written or oral agreements between a manufacturer, wholesaler or distributor with a motor vehicle dealer . . . and all other such agreements in which the manufacturer, wholesaler or distributor has any direct or indirect interest.

S.C. Code § 56-15-80.¹

Section 80 is clear and unambiguous. When the statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and the court must apply the statute according to its literal meaning, *Sloan v. Hardee*, 371 S. C. 495, 498, 640 S.E. 2d 457, 459 (2007).

The canon of construction “expressio unius est exclusio alterius” or “inclusio unius est exclusio alterius” holds that “to express or include one thing implies the exclusion of another, or of the alternative.” *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578 (2000) citing Black’s Law Dictionary 602 (7th ed. 1999).” *See also Brown v. State*, 343 S.C. 342, 349, 540 S.E.2d 846, 850 (2001) (“Thus, the maxim of expressio unius est exclusio alterius ... applies to exclude day care centers from falling within the statute since day care centers are not expressly included.”).

¹ Plaintiff argues that the South Carolina Unfair Trade Practice Act (SCUTPA) is analogous to the Dealers Act and supports an interpretation of the Dealers Act that one dealer may sue another. I find the SCUTPA differs from the Dealers Act in that it does not contain a provision similar to §56-15-80.

I therefore conclude the Legislature intended to exclude contractual relationships between dealers when it did not expressly include such contracts in § 56-15-80.

I must also look to the essence of the Plaintiff's claim to determine whether it is actionable under the Dealers Act. *Ferguson v. Charleston Lincoln Mercury*, 564 S.E.2d 94, 349 S.C. 558 (2002) is instructive. The South Carolina Supreme Court was asked to consider whether Mrs. Ferguson could recover under the Dealers Act for allegedly fraudulent acts committed against her husband. The Court recognized the Dealers Act encompasses multiple causes of action. *Id.* at fn. 2 ("The Dealers Act has a wide ambit and covers causes of action not rooted in fraud and deceit...."). The Court found the essence of Mr. Ferguson's allegation was that CLM misled him into paying more for the car than he should have paid and that it concealed the overcharge either through intentionally deceptive actions or through grossly negligent disclosure practices. The Court therefore held that allegations of such fraud and deceit were exempted from the general survival statute and did not survive Mr. Ferguson's death. The Court further found it was irrelevant whether Ferguson labeled CLM's actions as unfair, misleading, or deceptive.

In the present case, Plaintiff alleges:

The Defendants engaged in conduct designed to deceive or mislead prompted by an interested or sinister motive, including but not limited to, using the current environment and breaching the APAs to renegotiate the terms.

Amended Complaint ¶ 89. I find the essence of the Plaintiff's claim against Defendants arises from the alleged breach of the APAs, and therefore it is excluded from the Dealers Act.

LEGISLATIVE INTENT

In Section 1 of the 1972 Act No. 1237 the South Carolina Legislature provides:

The General Assembly finds that the distribution of motor vehicles in the State of South Carolina vitally affects the general economy of the State and the public interest and public welfare, and in the exercise of its police power, it is necessary to regulate motor vehicle manufacturers, distributors, dealers and their

representatives doing business in South Carolina in order to prevent frauds, impositions and other abuses upon its citizens.

Plaintiff argues that the use of the word “citizens” in the 1972 Act indicates that the Act applies to the relationships between dealers; however, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect. *SC States Ports Author. v. Jasper County*, 368 S.C. 388, 398, 629 S.E. 2d. 624, 629 (2006). The use of the word “citizens” in Section 1 of the 1972 Act does not alter the specific provisions of § 56-15-80 to mean the Act applies to a contract dispute between two dealers.

The South Carolina Supreme Court has made it clear that the purpose of the Act is consumer protection. See *Herron v. Century BMW*, 378 S.C. 525, 693 S.E.2d 394, 399 (2010).² The Act contains provisions to protect dealers from manufacturers and distributors, due to the unequal bargaining power between the parties. The Act also contains general provisions to protect consumers from dealers.

I have considered Plaintiff’s arguments that § 56-15-46 and § 56-15-320 indicate that the Act applies to actions by one dealer against another; however, I find these Sections inapplicable to the present case. Section 56-15-46 requires that the manufacturer give notice of its intent to establish a new motor vehicle dealership or relocate a dealership within 10 miles of an existing dealership of the same make. The burden under this Section is on the manufacturer and not the potentially competing dealer.

S.C. Code § 56-15-320 is limited in its scope to recovery under a dealer’s surety bond. The Supreme Court found that clear intent of the Legislature was to provide only the owner of a motor

² The Act does not define “consumer.” The South Carolina Consumer Protection Code defines a consumer as “buyer, lessee, or debtor to whom credit is extended in a consumer transaction.” S.C. Code § 37-1-301(10). The inclusion of legal entities in the definition of “person” under S.C. Code Ann. § 56-15-10 does not indicate that these entities are not consumers, as vehicles can be purchased in the name of a corporation or other entity. Plaintiff does not claim to be a consumer in the present action.

vehicle, or the owner's legal representative, with a cause of action against the surety on a bond issued pursuant to that statute. *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, --, 476 S.E.2d 690, 692 (1996). Plaintiff is not seeking to recover under Peacock's surety bond for a loss it claims as the owner of a motor vehicle; therefore, this provision is inapplicable.

The parties in this case are dealers who have sophisticated businesses and were engaged in arms-length transactions with one another. They do not need the added protection provided by the Dealers Act in this factual scenario. The Legislature made clear in the exclusionary language of §56-15-80 that it did not intend to regulate agreements between two dealers under the Act.

READING THE ACT AS A WHOLE

The Act must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect. *SC States Ports Author. v. Jasper County*, 368 S.C. 388, 398, 629 S.E. 2d. 624, 629 (2006).

Reading all of Chapter 15 together requires § 56-15-40(1) to be interpreted within the whole Chapter. It provides:

(1) It shall be deemed a violation of paragraph (a) of Section 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.

This section allows a dealer to bring an action for another dealer's fraudulent act under § -320, (against the dealer's surety bond and if the dealer owns the automobile), but § -80 does not allow a dealer to bring an action regarding a written or oral agreement against another dealer.

Likewise, reading § 56-15-110, as a whole, which provides in part:

(1) In addition to temporary or permanent injunctive relief as provided in Section 56-15-40(3)(c), any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas

together with Section 80 requires that an oral or written agreement between two dealers does not fall under “anything forbidden in this chapter.” This is consistent not only with the rule of interpretation that all Sections be read together, but also with the rule that a specific statutory provision prevails over a more general one. *Wooten ex rel. Wooten v. S.C. Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999).

CASES CITED BY THE PLAINTIFF

Plaintiff cites a number of cases between customers and dealers and argues that because those cases “involved a contract” that was not between a manufacturer and a dealer, the South Carolina Courts have expanded the scope of the Dealers Act to include any breach of contract claim involving a dealership. While it is true that a contract is involved in all customer purchases, the cases cited by Plaintiff do not address the application of the Dealers Act to a contract dispute between two dealers.

Plaintiff’s citation to other Richland County Orders is also unpersuasive. The outcomes of these other cases are not precedential. *See Ford v. Beaufort Cnty. Assessor*, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012) (“Trial or inferior court decisions are not precedents binding other courts, including appellate courts or other judges of the same trial court.”). Further, none of the defendants in the cases cited by Plaintiff objected to the application of the Dealers Act on the grounds that § 56-15-80 applied only to contracts between dealers and manufacturers or distributors. Defendants, in contrast, have denied Plaintiff is entitled to protection under the Act from actions of other dealers based on the language of the Chapter.

Finally, I find *Tober Foreign Motors, Inc. v. Better Oldsmobile, Inc.*, 381 N.E.2d 908 (1978), cited by Plaintiff, does not stand for the proposition that one dealer can sue another under the Massachusetts Dealers Act. Reiter was an established Oldsmobile franchise in Springfield

Massachusetts. General Motors sent Reiter a letter of intent to establish a competing dealership in the area. Reiter's suit for injunctive relief against GM and Tober failed, and the issue before the Supreme Judicial Court of Massachusetts was the constitutionality of the statute. In considering the statute, the Massachusetts Court recognized it was "essentially an act for the protection of consumers" and that it was "designed to protect franchisees from having to succumb to dictation by manufacturers . . ." *Id.* at 913. The Massachusetts Court does not suggest the statute was designed to protect motor vehicle dealers from one another.

CONCLUSION

The South Carolina Dealers Act provides protections for its citizens for certain acts related to the automobile industry. The Act enumerates the circumstances under which protections are provided to various citizens of South Carolina, including automobile dealers, owners of automobiles, and consumers. The rules of statutory construction compel the Court to apply the plain meaning of § 56-15-80 and to find that the Dealers Act is not applicable to agreements between two dealers.

Defendants' Motion for Judgment on the Pleadings is therefore GRANTED and Plaintiff's cause of action under the Dealers Act is dismissed.

AND IT IS SO ORDERED.

The Honorable Jocelyn Newman
Presiding Judge

_____, South Carolina This ____ day of _____, 2021.



Richland Common Pleas

Case Caption: Stivers Brothers Automotive Inc vs W Warner Peacock , defendant, et al
Case Number: 2020CP4001934
Type: Order/Other

So Ordered

Jocelyn Newman

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