

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

BOULEVARD AUTO GROUP, LLC  
d/b/a BARBERA'S AUTOLAND

v.

CHRYSLER GROUP LLC;  
CHRYSLER GROUP REALTY  
COMPANY LLC; AND GARY  
BARBERA ENTERPRISES, INC.

MARCH TERM, 2013

NO. 01255

COMMERCE PROGRAM

CONTROL NO. 13072062

DOCKETED

SEP 17 2013

C. HART  
CIVIL ADMINISTRATION

ORDER

AND NOW, this 17<sup>th</sup> day of September, 2013, upon  
consideration of the motion for judgment on the pleadings of defendants, Chrysler Group LLC  
and Chrysler Group Realty Company LLC, and any response thereto, it is hereby

**ORDERED**

that said motion is **GRANTED**.

BY THE COURT:

  
GLAZER, J.

Boulevard Auto Group, L-ORDOP



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Boulevard Auto alleges that it primarily interacted with Chrysler's Steve Hoffman (hereinafter "Hoffman") and Brett M. Tunic (hereinafter "Tunic") who were agents of Chrysler. Plaintiff claims that it was hesitant to purchase the dealership "in light of the many substantial risks presented." See plaintiff's memorandum in opposition to judgment on the pleadings, pp. 6. However, plaintiff further alleges that the only reason it considered purchasing the dealership was that it would be the only Chrysler/Dodge/Jeep location in the immediate area. Specifically, plaintiff alleges that "Hoffman and Tunic never contradicted or corrected these statements" and instead, "repeatedly affirmed [p]laintiff's understanding and assured [p]laintiff in November and December 2010 (and at a later date) that, if [p]laintiff acquired the Dealership, it would be the only Chrysler dealer in the immediate area, as the other four Chrysler dealerships in the area had been terminated or otherwise closed..." See plaintiff's complaint, ¶ 21.

Contrary to plaintiff's alleged beliefs, "Hoffman and Tunic were then working to establish a competing Chrysler/Dodge/Jeep dealership in Abington Township at the very time that they were recruiting [p]laintiff and inducing it to promptly acquire both the Dealership and the lease." Id. at ¶ 22. The Abington Township dealership would be 4.4 miles from the subject dealership. Id. at ¶ 29. Plaintiff alleges that it was unaware of Chryslers' intentions. As a result, Boulevard Auto acquired the dealership from Barbera for \$3.2 million, accepted a lease from Chrysler Realty at a rent equivalent to approximately \$1 million per year, and committed approximately \$11 million more to floor plan financing with required personal guarantees signed by Hessel. The transactions were formalized in an Asset Purchase Agreement with Gary Barbera Enterprises dated January 29, 2011, a series of Dealership Agreements with Chrysler Group dated February 18, 2011, a lease with Chrysler Realty dated February 18, 2011, and a floor plan financing agreement.

The dealership agreements state specifically:

#### 4. Sales Locality

DEALER shall have the non-exclusive right, subject to the provisions of this Agreement, to purchase from [Chrysler Group] those new specified [Chrysler Group] vehicles, vehicle parts, accessories and other [Chrysler Group] products for resale at the DEALER's facilities and location described in the Dealership Facilities and Location Addendum, attached hereto and incorporated herein by reference. DEALER will actively and effectively sell and promote the retail sale of [Chrysler Group] vehicles, vehicle parts and accessories in DEALER's Sales Locality. As used herein, "Sales Locality" shall mean the area designated in writing to the DEALER by [Chrysler Group] from time to time as the territory of DEALER's responsibility for the sale of [Chrysler Group] vehicles, vehicle parts and accessories, although DEALER is free to sell said products to customers wherever they may be located. Said Sales Locality may be shared with other [Chrysler Group] dealers of the same line-make as [Chrysler Group] determines to be appropriate.

See defendants Chryslers' answer to complaint, Exhibits B & C.

Moreover, the agreements have an integration clause that states:

#### 6. FORMER AGREEMENTS, REPRESENTATIONS OR STATEMENTS

This ... Sales and Service Agreement and other documents, (or their successors as specifically provided for herein) which are specifically incorporated herein by reference constitute the entire agreement between the parties relating to the purchase by DEALER of those new specified [Chrysler Group] vehicles, parts and accessories from [Chrysler Group] for resale; and it cancels and supersedes all earlier agreements, written or oral, between [Chrysler Group] and DEALER of ... vehicles, parts and accessories, except for (a) amounts owing by [Chrysler Group] to DEALER, such as payments for warranty service performed and incentive programs, or (b) amounts owing or which may be determined to be owed, as a result of an audit or investigation, by DEALER to [Chrysler Group] due to DEALER's purchase from [Chrysler Group] of vehicles, parts, accessories and other goods or services, or (c) amounts DEALER owes to [Chrysler Group]

as a result of other extensions of credit by [Chrysler Group] to DEALER. No representations or statements, other than those expressly set forth herein or those set forth in the applications for this Agreement submitted to [Chrysler Group] by DEALER or DEALER's representatives, are made or relied upon by any party hereto in entering this Agreement.

Id. Plaintiff alleges that defendant Chrysler fraudulently induced plaintiff into the agreements and thus plaintiff is entitled to damages.

## DISCUSSION

### I. Standard of Review

Pennsylvania Rule of Civil Procedure 1034 provides that “[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.” Judgment on the pleadings may be entered where there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law. In ruling on a motion for judgment on the pleadings, the court may consider only the pleadings and attached documents. Mellon Bank, N.A. v. National Union Fire Ins. Co., 768 A.2d 865, 870 (Pa. Super. 2001).

### II. Fraudulent Omission

Under Pennsylvania law, the specific elements of fraud are: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation at hand; and (6) the resulting injury was proximately caused by the reliance. Gibbs v. Ernst, 538 Pa. 193, 647 A.2d 882, 889 (1994). Moreover, “[w]here the parties to an agreement adopt a writing as the final and complete expression of their agreement, alleged prior or contemporaneous oral representations or

agreements concerning subjects that are specifically covered by the written contract are merged in or superseded by that contract.” Blumenstock v. Gibson, 811 A.2d 1029, 1037 (Pa.Super. 2002). “[I]n a case of fraud in the inducement, parol evidence is inadmissible where the contract contains terms that deny the existence of representations regarding the subject matter of the alleged fraud.” Youndt v. First Nat. Bank of Port Allegany, 2005 PA Super 42, 868 A.2d 539, 546 (Pa. Super. Ct. 2005).

In the instant matter, plaintiff alleges that it was fraudulently induced into acquiring the dealership because Chrysler agents repeatedly confirmed that the dealership acquired by plaintiff was going to be the only dealership in the immediate area. However, the court finds this claim and argument to be meritless. The express terms of the contract conversely state, “DEALER shall have the non-exclusive right” and “[s]aid Sales Locality may be shared with other CG dealers of the same line-make as CG determines to be appropriate.” See defendants Chryslers’ answer to complaint, Exhibits B & C. Moreover, the contracts contain integration clauses that specifically state, this contract “cancels and supersedes all earlier agreements, written or oral, between CG and DEALER of ... vehicles, parts and accessories...” Id. Thus, the prior oral agreements alleged are superseded by the contract and plaintiff’s claim for fraudulent inducement is dismissed.

### **III. Unjust Enrichment**

Under Pennsylvania law, a claim of unjust enrichment must allege the following elements: (1) plaintiff conferred a benefit on the defendant; (2) the defendant appreciated the benefit; and (3) acceptance and retention by the defendant of the benefits, under the circumstances, would make it inequitable for the defendant to retain the benefit without paying for the value of the benefit. Com. ex. Rel. Pappert v. TAP Pharm. Prods., Inc., 885 A.2d 1127

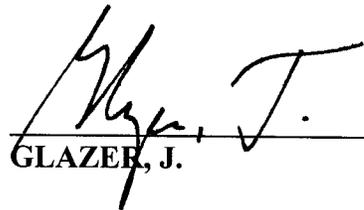
(Pa. Commw. 2005). “A cause of action for unjust enrichment may arise only when a transaction of the parties not otherwise governed by an express contract confers a benefit on the defendant to the plaintiff’s detriment without any corresponding exchange of value.” Villoresi v. Femminella, 856 A.2d 78, 84 (Super. Ct. 2004) (citation omitted).

Plaintiff does not allege that the agreements are invalid, request they be rescinded, or otherwise. While plaintiff does attempt to plead this count in the alternative, the express contract in the instant case is the instrument that confers the benefit on the defendant to the plaintiff’s detriment. Therefore, plaintiff’s claim for unjust enrichment is dismissed.

#### CONCLUSION

Based on the foregoing, Chrysler defendants’ motion for judgment on the pleadings is granted and Claim I for fraudulent inducement and Claim II for unjust enrichment are dismissed.

**BY THE COURT:**

  
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GLAZER, J.