

**IN THE CIRCUIT COURT FOR HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

REX DISTRIBUTING COMPANY, INC.

PLAINTIFF

V.

CIVIL ACTION NO. 24CI1:17-cv-33

**ANHEUSER-BUSCH, LLC, MITCHELL
BEVERAGE, LLC, MITCHELL-REX
DISTRIBUTING, LLC, MITCHELL
DISTRIBUTING COMPANY, INC. and
D.G. YUENGLING AND SON, INCORPORATED
d/b/a D.G. YUENGLING & SON, INC.**

DEFENDANTS

**D.G. YUENGLING AND SON, INCORPORATED
d/b/a D.G. YUENGLING & SON, INC.**

CROSS-CLAIMANT

v.

**ANHEUSER-BUSCH, LLC, MITCHELL
BEVERAGE, LLC, MITCHELL-REX
DISTRIBUTING, LLC, MITCHELL
DISTRIBUTING COMPANY, INC.**

CROSS-DEFENDANTS

ORDER ON MOTIONS TO DISMISS [#81 #86]

CAME ON FOR HEARING the Cross-Defendants' Motions to Dismiss [#81 #86] the Cross-Claim of D. G. Yuengling & Son, Inc. [#55] pursuant to Mississippi Rule of Civil Procedure 12(b)(6). The Court, having heard the arguments of the parties and having considered the premises denies the motions.

A 12(b)(6) motion tests the legal sufficiency of the complaint. *Rose v. Tullos*, 994 So.2d 734, 737 (Miss. 2008). Mississippi Rule of Civil Procedure 8 sets forth the general rules of pleading and only requires a "short and plain statement of the claim showing that the pleader is entitled to relief[.]" "Rule 8 abolishes many technical requirements of pleadings[; however,] it

does not eliminate the necessity of stating circumstances, occurrences, and events which support the proffered claim.” *Hudson v. WLOX, Inc.*, 108 So. 3d 429, 441 (Miss. Ct. App. 2012)

“[U]nder our rules, [plaintiff] is not required to plead the specific wrongful conduct. At the pleading stage, he is required only to place [defendant] on reasonable notice of the claims against it and to demonstrate that he has alleged a recognized cause of action upon which, under some set of facts, he might prevail.” *Children’s Med. Group, P. A., v. Phillips*, 940 So.2d 931, 934 (¶10) (Miss. 2006). A motion to dismiss under 12(b)(6) should not be granted unless it appears “beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of the claim.” *Id.* (¶7)

Rex’s complaint alleged violations and/or interference with contractual obligations it had with each of the Defendants. Unlike Rex, Yuengling has no contractual relationship with AB or Mitchell. Yuengling has alleged Mitchell’s part in a conspiracy with AB to exclude Yuengling brands from the market, to impair Yuengling’s ability to compete against AB in Mississippi (thereby diminishing competition in the marketplace), and to interfere with Yuengling’s relationships with existing and prospective wholesalers and retail customers – unlawful acts for which Mitchell would be rewarded by AB. These allegations are sufficient to survive a pure 12(b)(6) motion to dismiss. Also the submission of material outside of the pleadings effectively converted the motion to a Rule 56 Motion for Summary Judgment. Thus, the Court is going to deny the motion to dismiss at this time and allow the case to proceed on Rex’s claims against Yuengling and Yuengling’s cross-claims against AB and the Mitchell Defendants. Of course, after discovery, Motions for Summary Judgment can be re-urged. It is, therefore,

ORDERED AND ADJUDGED that the Motions to Dismiss [#81 #86] filed by Anheuser-Busch, LLC and by Mitchell Beverage, LLC, Mitchell-Rex Distributing, LLC, and Mitchell Distributing Company, Inc. are denied.

SO ORDERED AND ADJUDGED this the 14 day of December 2017.

FILED
DEC 15 2017
CONNIE LADNER
CIRCUIT CLERK
BY Chelle P. [Signature] D.C.

Roger T. Clark
ROGER T. CLARK
CIRCUIT COURT JUDGE