

**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

ORDER ON MOTION TO DISMISS [#20]

CAME ON FOR HEARING the Motion to Dismiss Plaintiff's Complaint [#20] pursuant to **Mississippi Rule of Civil Procedure 12(b)(6)** filed by Defendant Anheuser-Busch, LLC.

[AB] The Court having heard the arguments of the parties, and having considered the premises grants the motion.

Rex Distributing Company [Rex] operated as the exclusive wholesale distributor for Anheuser Busch products in South Mississippi for more than forty years pursuant to an equity agreement or distribution contract. Rex also distributed Yuengling products. In 2016 Rex announced its intent to sell its business. The "highest and best" offer for the sale was from Adams Beverages, Inc. [Adams] However, before the sale could close AB stepped in and, pursuant to its right to do so as set out in the equity agreement, "redirected" the sale to Mitchell Beverage Company, Inc. [Mitchell] On October 2, 2016, Yuengling refused to consent to the transfer of its distribution rights to Mitchell Beverage causing a reduction of the purchase price by \$3.1 million. Aggrieved, on February 21, 2017, Rex filed its complaint against 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 and Son, Inc.

The complaint alleges six causes of action against AB.

At the center of the controversy are two contracts, the *Wholesale Equity Agreement*¹ between AB and Rex and the *Asset Purchase Agreement* between Rex and Adams. All of Plaintiff's claims are related in one way or another to these contracts and depend on them for resolution of this matter. The contracts are unambiguous.

A 12(b)(6) motion tests the legal sufficiency of the complaint. *Rose v. Tullos*, 994 So.2d 734, 737 (Miss. 2008). Assuming the Plaintiff's allegations to be true the Court must determine whether there is any set of facts pled that would entitle the plaintiff to relief. *Id.* It is true that Mississippi Rule of Civil Procedure 8 only requires pleadings to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." However, "[c]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to defeat a motion to dismiss." *Penn Nat'l Gaming, Inc. v. Ratliff*, 954 So.2d 427, 431 (¶ 6) (Miss.2007). *See also, Cook v. Wallot*, 172 So. 3d 788, 801 (Miss. Ct. App. 2013)

Count I, Breach of Contract, alleges AB breached the Wholesaler Equity Agreement. Rex put its business up for sale to the highest and best bidder, which it considered to be Adams. The Wholesaler Equity Agreement Rex had with AB provided that AB had to approve the purchase or it could "match and redirect" it. Prior to the sale's completion, AB exercised this right and redirected the sale of Rex's AB distributorship to Mitchell. Pursuant to the agreement AB had to ensure that the sale was "at the price and on the terms and conditions" as set forth in the Asset Purchase Agreement between Rex and Adams. Adams had offered Rex a total of

¹The last Wholesale Equity Agreement was executed in 1997.

\$50.5 million², which Rex claims is the “price” it was entitled to receive from Mitchell.

However, before the sale of assets by Rex to Mitchell was consummated, Yuengling, another of Rex’s suppliers, withheld its consent to the sale and terminated its contractual relationship with Rex. As a result Rex did not have a Yuengling distributorship to transfer to Mitchell. The Asset Purchase Agreement provides that if one of Rex’s suppliers refuses to give consent to the transaction “then the purchase price shall be reduced by the portion of the purchase price attributable” to such supplier. The Yuengling distributorship rights were valued at \$3.1 million which were deducted from the offered price of \$50.5 million. The sale to Mitchell was then completed. Rex is attempting to recover the \$3.1 million.

Rex specifically agreed to the terms and conditions of the sale by executing the two contracts. AB did not breach its contract with Rex because AB exercised its lawful contractual right to “match and redirect” the sale from Adams to Mitchell under the “terms and conditions” of the contracts. The Court further notes that even though Rex claims that it was “forced” to conclude the sale from Rex to Mitchell, in fact, Rex voluntarily concluded the sale. Rex took the risk that Yuengling would not approve if AB decided to match and redirect.

Count II alleges that AB is liable to Rex for its bad-faith breach of contract with regard to the breach of the Wholesales Equity Agreement. There was no breach of contract, therefore there can be no bad faith breach of contract. *Limbirt v. Miss. Univ. for Women Alumnae Ass’n*, 998 So. 2d 993, 999 (Miss. 2008).

Count III alleges tortious interference by AB and Mitchell with the “valid and enforceable agreement” Rex had with Adams to sell its distributorship. Again, if there is no

²The purchase price is the sum of all the various assets, including the value each of the distribution rights. The AB distribution rights are one amount and the Yuengling rights are a separated amount.

breach of the Asset Purchase Agreement there can be no tortious interference with that agreement. The Asset Purchase Agreement was expressly conditioned on AB's approval. Since AB is not an "outsider" or "disinterested third party" to the Asset Purchase Agreement, it can not be liable for tortious interference with the agreement. See *Genet Co. v. Anheuser-Busch Inc.*, 498 So.2d 683, 684 (Fla. Dist. Ct. App. 1986); *Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.*, 611 So.2d 238, 247 (Ala. 1992). Rex does not and cannot adequately allege that AB acted with malice when AB acted pursuant to a contractual right.

Count IV alleges civil conspiracy. Rex alleges that AB and Mitchell conspired to redirect the sale of Rex's business from Adams to Mitchell in order to "reward Mitchell and marginalize Yuengling." The exercise, in a lawful manner, of a contractual right cannot form the basis for a conspiracy claim under Mississippi law. *Shaw v. Burchfield*, 481 So.2d 247, 255 (Miss. 1985).

Count V alleges Violations of Mississippi's **Beer Industry Fair Dealing Act** [BIFDA]. It is Rex's position that AB violated **Miss. Code Ann.** §67-7-13(2) by refusing to accept the transfer of Rex's business to Adams. The section states that a supplier "shall not interfere with, prevent or unreasonably delay the transfer of the wholesaler's business, including an assignment of wholesaler's rights under the agreement, if the proposed transferee is a designated member, or if the transferee other than a designated member meets such nondiscriminatory, material and reasonable qualifications and standards." Rex transferred its business to Mitchell under the same terms and conditions that it negotiated with Adams for the AB assets. Yuengling terminated Rex's right to distribute Yuengling products and transferred those assets to another wholesaler. Thus there was no violation of BIFDA.

Count VI makes a claim for punitive damages. Punitive damages are not an independent cause of action, they are a remedy." *Cole v. Chevron USA, Inc.* 554 F.Supp.2d 655, 674 (S.D.

Miss. 2007) Punitive damages “are awarded to the injured party as a reward for his public service in bringing the wrongdoer to account.” *Neal v. Newburger Co.*, 154 Miss. 691, 700, 123 So. 861 (1929). Without actual damages, punitive damages are not recoverable. *Hopewell v. Trustmark Nat'l Bank*, 680 So.2d 812, 820 (Miss.1996). “If there is no cause of action independent of a supposed right to recover exemplary damages, there is no cause of action at all. *Western Union Tel. Co. v. Jennings*, 110 Miss. 673, 675, 70 So. 830, (1916)” *Kaplan v. Harco Nat. Ins. Co.*, 716 So. 2d 673, 679 (Miss. Ct. App. 1998). It is, therefore,

ORDERED AND ADJUDGED that the Motion to Dismiss Plaintiff's Complaint pursuant to **Mississippi Rule of Civil Procedure 12(b)(6)** filed by Defendant Anheuser-Busch, LLC.(AB) [#20] is granted and the complaint filed by Rex Distributing Company Inc., is dismissed with prejudice as to Defendant Anheuser-Busch.

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

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

[Signature]
ROGER T. CLARK
CIRCUIT COURT JUDGE