

**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 [#49]**

CAME ON FOR HEARING the Motion to Dismiss Plaintiff's Complaint [#49] pursuant to **Mississippi Rule of Civil Procedure** 12(b)(6) filed by Defendant Mitchell Distributing Company, Inc., [Mitchell Distributing] The Court having heard the arguments of the parties, and having considered the premises grants the motion.

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.* The complaint must contain specific allegations indicating the availability of evidence that would prove the plaintiff's claims, not just conclusory allegations. See *Howe v. Andereck*, 88 So.2d 240, 245 (Miss. Ct. App. 2004)

Plaintiff has alleged that Mitchell Distributing, Mitchell Beverage, LLC, and Mitchell Rex Distributing, LLC, "operate as a single business enterprise or joint venture." Such an accusation would require piercing the corporate veil. Piercing the corporate veil is reserved for "those extraordinary factual circumstances where to do otherwise would subvert the ends of

justice.” *Gray v. Edgewater Landing, Inc.*, 541 So.2d 1044, 1046 (citing *Johnson & Higgins of Miss., Inc. v. Comm'r of Ins.*, 321 So.2d 281, 284 (Miss.1975)). A corporate entity will not be disregarded in contract claims unless the complaining party can demonstrate: (1) some frustration of expectations regarding the party to whom he looked for performance; (2) the flagrant disregard of corporate formalities by the defendant corporation and its principals; and (3) a demonstration of fraud or other equivalent misfeasance on the part of the corporate shareholder. *Gray*, 541 So.2d at 1047. *Penn Nat. Gaming, Inc. v. Ratliff*, 954 So. 2d 427, 431 (Miss. 2007) Plaintiff alleges nothing beyond the allegation that these entities “operate as a single business or joint venture.” This conclusory allegation fails to establish a potential “single business” claim against Mitchell Distributing.

The joint venture allegation also fails. The critical elements of the existence of a joint venture are (1) intent (2) control, and (3) profit sharing. *Mayer v. Angus*, 83 So.3d 444 (Miss. Ct. App. 2012). This complaint fails to make any assertion regarding the corporations which could lead to the proof required to establish that a joint venture exists. Plaintiff’s single allegation fails to allege a claim that would entitle plaintiff to a finding that the corporations were involved in a joint venture. It is, therefore,

ORDERED AND ADJUDGED that the Motion to Dismiss [#49] filed by Mitchell Distributing Company is granted and the claims against it are dismissed with prejudice.

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

**FILED**  
DEC 15 2017  
CONNIE LADNER  
CIRCUIT CLERK  
BY Cherie Kelly D.C.

Roger T. Clark  
ROGER T. CLARK  
CIRCUIT COURT JUDGE