

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VINCENT PIAZZA, CHARLIE  
VICTOR, INC. d/b/a WEST  
CHESTER ACURA, and PIAZZA  
MANAGEMENT COMPANY,  
Plaintiffs,

CIVIL ACTION

v.

PORSCHE CARS NORTH AMERICA,  
INC.

Defendant

NO. 00-6549

ORDER

AND NOW, this 10<sup>th</sup> day of May, 2002, upon  
consideration of the Defendant's Motion for Summary Judgment  
(Docket No. 22), the plaintiffs' response thereto, and the  
defendant's reply, and following a conference, **IT IS HEREBY**  
**ORDERED** THAT the motion is **GRANTED IN PART** and **DENIED IN PART** for  
the reasons stated below. The motion is granted as to Counts III  
and IV, and the part of Count I relating to 63 P.S. §  
818.12(b)(5), and denied as to Count II and the remainder of  
Count I.

The **plaintiffs** allege, in Count I, that the decision of  
Porsche Cars North America, Inc. ("Porsche") not to grant Vincent  
Piazza a franchise violates section 12(b)(3) of the Pennsylvania  
Board of Vehicles Act regarding obtaining a manufacturer's

consent to a sale, transfer or exchange of a franchise. 63 P.S. § 818.12(b)(3). The defendant argues that summary judgment should be granted because the plaintiffs were not qualified buyers capable of being licensed under Porsche's reasonable requirements, and thus Porsche did not act unreasonably. Because the record reveals that there are genuine issues of material fact as to the plaintiffs' allegations under this statutory provision, the Court denies summary judgment.

The plaintiffs also allege in Count I that Porsche violated section 12(b)(5) of the Board of Vehicles Act, which requires a manufacturer to respond to a request for consent to the transfer or sale of a franchise in writing within 60 days. 63 P.S. § 818.12(b)(5). The defendant argues that it is entitled to summary judgment as to this provision because it responded in writing to YBH - the owner of the existing franchise - within the required 60 days. The plaintiffs do not contest that YBH was notified within 60 days; rather, they allege that Porsche had to respond directly to Mr. Piazza.

The Court finds no support for the plaintiffs' position that Porsche had to respond to Mr. Piazza. First, the language in Pennsylvania's statute discusses responding to a "request for consent" to a transfer, sale or exchange. Such a request would come from an existing franchisee - here, YBH. Thus, the response

to that request would be directed to the existing franchisee that had made the request.

Second, comparable statutes in other states explicitly state that responses should be directed to the existing franchisee. See, e.g., N.J. Stat. Ann. § 56:10-6 (1989); Florida Statutes § 320.643(1). Neither authority nor record evidence suggests that the response must be made to the prospective franchisee. Accordingly, the Court grants summary judgment in favor of the defendant as to section 12(b) (5) of the Pennsylvania Board of Vehicles Act.

The plaintiffs allege in Count II that Porsche intentionally chose to violate statutory obligations under the Act in order to prevent YBH from completing the sale of its assets to Mr. Piazza, thereby interfering in YBH's and Mr. Piazza's contractual relations. The defendant argues that improper conduct must be shown to succeed on such a claim, and that the plaintiffs have shown none here. A necessary element of intentional interference with contract is improper conduct by the alleged tortfeasor. Crivelli v. General Motors Corp., 215 F.3d 386, 394 (3d Cir. 2000).

Because, as noted above, issues of material fact remain as to whether there has been a violation of section 12(b) (3) of the Pennsylvania Board of Vehicles Act, the Court is not able to

find that there has been no wrongful conduct as a matter of law, and therefore denies summary judgment on this claim.

The plaintiffs allege in Counts III and IV that Porsche "repeatedly declared that it had the commitment and intention to go forward in a franchise relationship with Plaintiffs." Amended Comp. ¶ 15. The defendant moves for summary judgment on both counts, arguing that there were no misrepresentations of fact, and that any reliance by the plaintiffs would have been unreasonable.

These counts both revolve around statements made by Timothy Heffernan, Porsche's regional sales manager, to Mr. Piazza or employees of Mr. Piazza. Specifically, Mr. Heffernan, after looking at the facility at which the proposed Porsche dealership was to be located, commented that the facility "could" and "should" work, and that he was "comfortable" with the presentation. He also informed an employee of Mr. Piazza's as to what types of changes and improvements would need to be made in order for the facility to get approval from Porsche. In addition, Mr. Heffernan took several employees of Mr. Piazza's to another Porsche dealership to show them the manufacturer's style, design, and decor preferences. Later, Mr. Heffernan notified Mr. Piazza that there was a problem with the application, but he also indicated that he thought he could handle it. The plaintiffs

allege that these statements and actions were misrepresentations that were either intentionally or negligently made.

The Court will address intentional misrepresentation first. The elements of intentional misrepresentation in Pennsylvania are: (1) a representation; (2) 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 intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) an injury proximately caused by the reliance. Bortz v. Noon, 729 A.2d 555, 560 (Pa. 1999).

On this record, no reasonable juror could find that any reliance by Mr. Piazza on Mr. Heffernan's statements or actions was justifiable. **Not** only is Mr. Piazza an experienced businessman who has owned and operated many automobile dealerships, but in executing his application for a dealer sales and service agreement with Porsche, Mr. Piazza specifically acknowledged that: only the formal execution of a sales and service agreement would constitute an acceptance of the application; no representations or statements had been made to change the terms of the application; and any investments made in the proposed dealership were at his own risk. The Court will thus grant summary judgment on this claim.

The Court next addresses negligent misrepresentation. The elements are: (1) the misrepresentation of a material fact; (2) made under circumstances in which misrepresenter ought to have known of its falsity; (3) with intent to induce another to act on it; (4) which results in injury to party acting in justifiable reliance. Bortz v. Noon, 729 A.2d. at 560.

Aside from the question of whether any alleged reliance was justifiable, no reasonable juror could find the statements on which the plaintiffs allegedly relied were statements of material fact. Mr. Heffernan did not state, as a fact, that a franchise would definitely issue. Rather, he expressed his opinion that, with improvements, the facility "could" work, "should work" and that, at the time he was "comfortable." Expressions of opinion are not statements of fact. See Berda v. CBS, Inc., 800 F. Supp. 1272, 1277 (W.D. Pa. 1992); Schoen v. Youshock, 198 A.2d 437, 438 (Pa. Super. 1964). Moreover, Mr. Piazza had acknowledged that no agreement was effective until a formal written agreement was executed, and that no representations or statements made to him altered that.

The Court will therefore grant summary judgment as to negligent misrepresentation as well.

BY THE COURT:

  
MARY A. McLAUGHLIN, J.

Faxed 5/10/02:

B. Dantes, Esq.  
J. D. Angelo, Esq.  
J. Consevage, Esq.