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

MATRIX GROUP, INC. dba MATRIX SUZUKI, D & R AUTOMOTIVE, INC., MARION Q. CANTLO, and SHERMAN D. BROOKS, III,	:	**CIVIL ACTION**
Plaintiffs,	:	
v.	:	
FORD MOTOR CREDIT COMPANY, PRIMUS AUTOMOTIVE FINANCIAL SERVICES dba AMERICAN SUZUKI AUTOMOTIVE CREDIT, and AMERICAN SUZUKI CORPORATION,	:	**NO. 04-CV-1552**
Defendants.	:	

MEMORANDUM AND ORDER

LEGROME D. DAVIS, J. NOVEMBER 29, 2004

I. INTRODUCTION

Presently before the Court is Defendants Ford Motor Credit Company and Primus Automotive Financial Services dba American Suzuki Automotive Credit's ("Moving Defendants") Amended Motion to Dismiss (Doc. No. 12) ("Defs.' Am. Mot."), filed September 16, 2004, and Plaintiff's Response in Opposition to Defendants' Amended Motion to Dismiss (Doc. No. 15), filed October 4, 2004. For the reasons set forth below, Moving Defendants' Amended Motion to Dismiss is GRANTED.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs began operation of Matrix Group, Inc. dba Matrix Suzuki ("Matrix"), a new vehicle franchised dealership, and D&R Automotive, Inc. ("D&R"), a vehicle service repair

business, in Newark, Delaware, in March of 2002. Pls.' Mem. of Law in Opp'n to Defs.' Mot. to Dismiss for Failure to State a Claim ("Pls.' Mem.," incorporated by reference into Pls.' Mem. of Law in Opp'n to Defs.' Am. Mot. to Dismiss for Failure to State a Claim ("Pls.' Am. Mem.")) at unnumbered 1. Plaintiff Mr. Brooks served as President of Matrix and D&R. Id. Plaintiff Mr. Cantlo served as Vice President of Matrix and D&R. Id. Both Mr. Brooks are Mr. Cantlo are African-American, as are the majority of shareholders in the two companies. Id. Matrix entered into a franchise agreement with Nonmoving Defendant American Suzuki providing the dealership with the right to buy, and D&R with the right to service, new Suzuki motor vehicles. Pls.' Compl. ¶ 9. In 2002, Moving Defendants contracted with Matrix to provide new and used vehicle inventory wholesale floorplan financing for the floorplanning of new vehicles, used vehicles, program cars, and demonstrators. Id. Messrs. Brooks and Cantlo signed personal guarantees to secure the financing. Id. In addition, Plaintiffs obtained a working capital loan guaranteed by the Small Business Administration ("SBA") and personally guaranteed by Mr. Cantlo. The loan was designated a "low doc" loan which is utilized by the SBA for the issuance of loans to minorities. Pls.' Mem. at unnumbered 2.

On or about July 18, 2002, Defendant Ford Motor Credit Company dba American Suzuki Automotive Credit filed suit against Matrix, D&R, and Messrs. Cantlo and Brooks, both in Delaware Superior Court for breach of the wholesale floorplan financing agreement and in Delaware Chancery Court for a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction. Pls.' Am. Mem. at unnumbered 1-2. Because Plaintiffs could not afford to retain legal counsel, Moving Defendants obtained default judgments against Plaintiffs Brooks and Cantlo on January 30, 2004, and against Plaintiffs Matrix and D&R on July 28, 2004. Id. at

unnumbered 2; Id. at Exh. D; Defs.' Am. Mot. at 5.

On April 8, 2004, Plaintiffs brought the instant action against Defendants, in which they contend that Defendants engaged in a series of racially-motivated discriminatory actions against Plaintiffs that ultimately resulted in the demise of the Matrix dealership. Pls.' Mem. at unnumbered 2. In their Complaint (Doc. No. 1), Plaintiffs allege that Moving Defendants racially discriminated against Plaintiffs, first, by requiring Matrix to possess substantially more working capital than was required of similarly-situated Caucasian dealerships (Pls.' Compl. Count I, ¶¶ 30-33)[1]; second, by damaging Plaintiffs reputation by way of a racially derogatory statement made by an employee of Defendants during an audit by Defendants on or about April 12, 2002 (Id. Count II, ¶¶ 39-43)[2]; and third, by increasing the working capital requirement (Id. Count IV, ¶ 62). Plaintiffs assert that such conduct violates of Title VII of the Civil Rights Act. Id. ¶¶ 33, 48. Plaintiffs also allege that Moving Defendants breached the fiduciary duties of trust and loyalty owed to Plaintiffs by seizing possession of all keys for the vehicle inventory, maintaining control over the keys during daily operation of the dealership, and taking the keys at approximately 4:30 p.m. every day, prohibiting Matrix from making sales and offering demonstration rides. Id. Count III, ¶¶ 50-53. Further, Plaintiffs allege that they were "damaged" by Moving Defendants' practice of demanding payment for vehicles sold by the dealership prior to the five day release period and refusing to "floorplan" trade-ins of new and used vehicles. Id. Count IV, ¶¶ 58-59. Finally, Plaintiffs allege that Moving Defendants: (1) breached their

[1] Plaintiffs also allege in Count I that these actions were in breach of Defendants' fiduciary duty to Plaintiffs.

[2] Plaintiffs also allege in Count II that these actions were in breach of Defendants' fiduciary duties of trust and loyalty owed to Plaintiffs.

fiduciary duty and duty of confidentiality to Plaintiffs by disclosing the floorplan account status of Matrix to another unrelated dealership; (2) breached the floorplan contract and their fiduciary duty by prohibiting Plaintiffs from selling and buying vehicles at nearby auctions; (3) breached their fiduciary duty by increasing the working capital requirement; and (4) breached their fiduciary duty by requiring Matrix to prematurely pay off demonstrator vehicles on floorplan. Id. Count IV, ¶¶ 60-63.[3] Plaintiffs also allege a fifth Count against Nonmoving Defendant American Suzuki.

Moving Defendants, in their Amended Motion to Dismiss, contend that Plaintiffs' claims as to the Moving Defendants must be dismissed in light of the prior Delaware litigation and because Plaintiffs' claims under the Civil Rights Act cannot be maintained.

III. STANDARD OF REVIEW

Dismissal for failure to state a claim is appropriate when it clearly appears that plaintiff can prove no set of facts in support of the claim which would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Robb v. City of Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984). Such a motion tests the legal sufficiency of a claim while accepting the veracity of the claimant's allegations. See Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987); Winterberg v. CNA Ins. Co., 868 F. Supp. 713, 718 (E.D. Pa. 1994), aff'd, 72 F.3d 318 (3d Cir. 1995). A claim may be dismissed when the

[3] The Court notes that Plaintiffs' complaint fails to satisfy Federal Rule of Civil Procedure 10(b), which requires that "all averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances." Fed. R. Civ. P. 10(b). However, this Court declines to require the Plaintiffs to replead the complaint merely because the complaint contains a technical violation of Rule 10(b) because, as discussed below, each of Plaintiffs' counts fail to state a claim upon which relief can be granted. Therefore, this technical flaw is moot.

facts alleged and the reasonable inferences therefrom are legally insufficient to support the relief sought. See Pennsylvania ex rel. Zimmerman v. PepsiCo., Inc., 836 F.2d 173, 179 (3d Cir. 1988).

IV. DISCUSSION

A. Res Judicata bars Litigation of Compulsory Counterclaims

Moving Defendants argue, in sum, that Plaintiffs are barred from bringing the instant action on claim preclusion, or res judicata, grounds because the Delaware state court actions constitute final decisions on the merits. According to Moving Defendants' argument, Plaintiffs failed to raise and therefore waived compulsory counterclaims they now seek to litigate before this Court. Defs.' Am. Mot. at 4-7.

Although two of Plaintiffs' claims for relief are brought under the Civil Rights Act, the effect of res judicata is nevertheless determined by reference to the law of Delaware. Benoit v. GE Capital Mortgage Servs., Inc., No. 94-6949, 1995 WL 216967, at *2 (E.D. Pa. Apr. 11, 1995) (citing Brady v. C.F. Schwartz Motor Co., 723 F. Supp. 1045, 1047 (D. Del. 1989)). The Delaware Supreme Court has not addressed whether the procedural bar of res judicata extends to unraised compulsory counterclaims in cases where judgment was rendered by default. However, in determining how the Delaware Supreme Court would decide, this Court is guided by lower Delaware state courts and other federal District Courts that have addressed this issue.

Delaware courts have held that res judicata permits "a final judgment upon the merits rendered by a court of competent jurisdiction [to] be raised as an absolute bar to the maintenance of a second suit in a different court upon the same matter by the same party or his privies." Epstein v. Chatham Park, Inc., 153 A.2d 180, 184 (Del. Super. Ct. 1959). This "absolute bar" is

equally applicable where judgment is obtained upon default, State v. National Automobile Ins. Co., 290 A.2d 675, 676 (Del. Ch. 1972) ("a judgment by a court of competent jurisdiction is res judicata even if it is obtained upon default."), and embraces, not only those claims brought by a plaintiff, but also compulsory counterclaims that were or should have been raised by the defendant. Bank of Delaware v. Summers,1979 WL 149969 at *1-*2 (Del. Com. Pl. 1979) ("Even where default judgment has been taken, the defendant will be barred from subsequently asserting a compulsory counterclaim.") (citing Fireman's Ins. Co. of Newark v. L.P. Steuart & Bro., Inc., 158 A.2d 675 (D.C. 1960)). Moreover, according to Federal Practice & Procedure,

> Consent and default judgments present a special problem with regard to the effect of failing to plead a Rule 13(a) [compulsory] counterclaim. . . .Typically, courts have given default judgments full effect and have held that a counterclaim omitted from an action that terminates in a default judgment will be barred from any subsequent suits.

6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1417 (2004) (citing Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 160 (2d Cir. 1992); Carteret Savs. & Loan Ass'n v. Jackson, 812 F.2d 36 (1st Cir. 1987); Fireman's Inc. Co. v. L.P. Steuart & Bro., Inc., 158 A.2d 675 (D.C. 1960)).

Therefore, in keeping with the majority of other courts to address this issue, including a Delaware court, this Court concludes that under Delaware law, the prior default judgments should be given full effect and that any omitted compulsory counterclaims are barred from this subsequent suit.

The remaining issue, then, is whether the claims brought by Plaintiff in the instant action were compulsory, and therefore barred, counterclaims; or permissive, and therefore cognizable, counterclaims.

Delaware Superior Court Rule 13(a) provides, in relevant part, "A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim . . . ." "Courts generally have agreed that [the words 'transaction or occurrence'] should be interpreted liberally in order . . . to carry out the philosophy of Rule 13(a)." 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1410 (2004). Wright and Miller identify that philosophy as "to enable the court to settle all related claims in one action, thereby avoiding a wasteful multiplicity of litigation on claims arising from a single transaction or occurrence." Id. at § 1409.

The litigation brought by Moving Defendants in the Delaware state courts was essentially a contract claim for replevin, Pls.' Am. Mem. at unnumbered 1, based upon the contract, which defined the scope of the relationship between Plaintiffs and the Moving Defendants. Moving Defendants' claimed that Plaintiffs had defaulted under the terms of the agreement, the determination of which would have required reading and interpreting the terms of the agreement between Plaintiffs and Defendants. Therefore, any counterclaim possessed by Plaintiffs arising before entry of the default judgment that would have required reading and interpreting the agreement was part of the same controversy and therefore compulsory. Applying the principle that Rule 13(a) should be liberally construed, 6 Wright, Miller & Kane, supra § 1410, when one party to a contract puts provisions of it at issue, here Plaintiffs' duty to pay Defendants when Plaintiffs sold a vehicle and the ramifications if it did not, all actions taken pursuant to that contractual relationship become part of the relevant transaction or occurrence. Many of the allegations made by Plaintiffs regarding actions taken by Defendants are within the scope of their

contractual relationship. Specifically, given that the dealership operated for only a few months in 2002 and default judgment was not entered until 2004, all of the allegations contained in Counts III and IV described relevant actions taken by Defendants pursuant to their contractual relationship with Platintiffs.[4] Therefore, Counts III and IV of Plaintiffs' Complaint are DISMISSED as barred for failure to raise as a compulsory counterclaim in a prior action with res judicata effect.

B. Breach of Fiduciary Duty Claims

Plaintiffs assert a total of seven claims of breach of fiduciary duty in Counts I (Pls.' Compl. ¶ 34), II (Id. ¶ 44), III (Id. ¶ 53), and IV (Id. ¶¶ 60, 61, 62, 63) of their Complaint. To the extent they were not dismissed above (Section IV.A, supra), such claims cannot be maintained because Plaintiffs have not, and cannot, establish that a fiduciary relationship exists with the Moving Defendants. According to the Restatement of Torts, "A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." Restatement (Second) of Torts § 874

[4] Count III alleges that Moving Defendants breached the fiduciary duties of trust and loyalty owed to Plaintiffs by seizing possession of all keys for the vehicle inventory, maintaining control over the keys during daily operation of the dealership, and taking the keys at approximately 4:30 p.m. every day, prohibiting Matrix from making sales and offering demonstration rides. Pls.' Compl., Count III, ¶¶ 50-53. Count IV alleges that: (1) Defendants racially discriminated against Plaintiff by increasing the working capital requirement; (2) Plaintiffs were "damaged" by Moving Defendants' practice of demanding payment for vehicles sold by the dealership prior to the five day release period and refusing to "floorplan" trade-ins of new and used vehicles; (3) Defendants breached their fiduciary duty and duty of confidentiality to Plaintiffs by disclosing the floorplan account status of Matrix to another unrelated dealership; (4) Defendants breached the floorplan contract and their fiduciary duty by prohibiting Plaintiffs from selling and buying vehicles at nearby auctions; (5) Defendants breached their fiduciary duty by increasing the working capital requirement; and (6) Defendants breached their fiduciary duty by requiring Matrix to prematurely pay off demonstrator vehicles on floorplan. Id. Count IV, ¶¶ 58-63.

(2004). An arm's length business relationship, such as the one that existed between Plaintiffs and Defendants, does not give rise to such a duty. Such a duty clearly cannot arise between two contracting parties who stand on equal footing in the eyes of the law. Therefore, Plaintiffs' claims in Counts I through IV for breach of fiduciary duty are DISMISSED.

C. Civil Rights Claims

Finally, Plaintiffs assert in Counts I and II (as well as one part of Count IV, dismissed above) that Defendants' actions violated Title VII of the Civil Rights Act (1) by requiring Plaintiffs to posses substantially more working capital than Caucasian-operated dealerships (Pls.' Compl. ¶¶ 30-32); (2) by the making of a racially derogatory statement by one of Defendants' employees (Id. ¶¶ 41, 48); and (3) to the extent that Plaintiffs' claim of "racial discrimination" is brought under Title VII, for unreasonably increasing the working capital requirement of Matrix (Id. ¶ 62) (This allegation, made in Count IV is included for the purposes of completeness. As previously discussed, Count IV was dismissed above. See supra Section IV.A).

Title VII of the Civil Rights Act protects individuals from discriminatory treatment by employers. Therefore, "the threshold legal question in considering the liability under Title VII is whether defendant is plaintiff's employer." Rodriguez v. Lauren, 77 F. Supp. 2d 643, 645 (E.D. Pa. 1999). Plaintiffs cite American Jurisprudence as their sole legal support for the contention that an employee/employer relationship exists. Plaintiffs assert that a franchisor (here, Defendants) could be considered the employers of its franchisees (here, Plaintiffs). However, no case held this to be true. Furthermore, Moving Defendants are not franchisors, but financial credit companies, with whom Plaintiffs stood on equal footing. Therefore, because no employment relationship existed between Plaintiffs and Defendants, and because one could not

be imputed under a franchisor–franchisee relationship, Counts I and II for violation of Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000(e) et seq., are hereby DISMISSED.

V. CONCLUSION

In summary, Platintiffs' Complaint fails to state claims against Moving Defendants upon which relief can be granted. An appropriate order follows.

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ORDER

AND NOW, this 29th day of November, 2004, upon consideration of the Amended Motion to Dismiss (Doc. No. 12), filed September 16, 2004 by Defendants Ford Motor Credit Company and Primus Automotive Financial Services dba American Suzuki Automotive Credit ("Moving Defendants"), and Plaintiffs' Response in Opposition to Defendants' Amended Motion to Dismiss (Doc. No. 15), filed October 4, 2004, **IT IS HEREBY ORDERED** that Moving Defendants' Amended Motion to Dismiss is GRANTED. It is **FURTHER ORDERED** that Nonmoving Defendant American Suzuki shall enter a pleading responsive to Plaintiffs' complaint on or before Tuesday, December 7, 2004.

BY THE COURT:

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Legrome D. Davis, J.