

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
 TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

NISSAN NORTH AMERICA, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 TUSTIN IMPORT AUTO SALES, LLC,)
 d/b/a TUSTIN NISSAN; RICKY)
 RAYMOND ENRIQUEZ; MARIA)
 VILLEGAS; and DOES 1 through 25,)
)
 Defendants)
)
 vs.)
)
 NISSAN NORTH AMERICA, INC.,)
)
 Counter-Defendant.)

NE
 NO. 16-117-BC

2017 FEB 15 PM 4:30
 CLERK & MASTER
 DAVIDSON CO. CHANCERY CT.
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FILED

MEMORANDUM AND ORDER: (1) REMOVING FROM 2/17/17 DOCKET MOTION FOR JUDGMENT ON THE PLEADINGS AND STATUS CONFERENCE; (2) SETTING 3/3/17 DEADLINE FOR COUNTER-PLAINTIFF TO FILE AN AMENDED COUNTERCLAIM, IF ANY; (3) SETTING 3/13/17 OPPOSITION AND SUPPLEMENTAL REPLY DEADLINE; AND (4) SCHEDULING ORAL ARGUMENT FOR 3/17/17 AT 10:30 A.M. ON ANY MOTION TO AMEND AND ON MOTION FOR JUDGMENT ON THE PLEADINGS, AND STATUS CONFERENCE

After studying the briefing on the Motion for Judgment on the Pleadings as to Tustin Nissan’s Counterclaim, the Court enters the following orders for rescheduling and additional steps to comply with the liberality of Tennessee law on amending pleadings when challenged for lack of sufficient factual allegations, and to conduct oral argument on potentially multiple motions in one hearing.

It is ORDERED that the oral argument on Plaintiff/Counter-Defendant's Motion for Judgment on the Pleading as to Tustin Nissan's Counterclaim is removed from the February 17, 2017 docket and rescheduled for oral argument on March 17, 2017, at 10:30 a.m.

It is further ORDERED that the Counter-Plaintiff/Defendant Tustin Nissan has a deadline of March 3, 2017, to file a motion to amend, if any, as requested in its opposition to the Motion for Judgment on the Pleadings. The motion to amend, if any, shall address the reason(s) for deviating from the December 16, 2016 deadline stated in the August 24, 2016 Rule 16 Order for amending pleadings, and, as per Davidson County Local Rule 26.04(c), the motion to amend shall attach a copy of the proposed amended pleading so that it becomes part of the record.

It is additionally ORDERED that argument on the motion to amend shall be held on March 17, 2017, at 10:30 a.m. in conjunction with argument on the Motion for Judgment on the Pleadings. Plaintiff/Counter-Defendant Nissan shall file by March 13, 2017, its response to any motion to amend filed by Counter-Plaintiff Tustin Nissan, and by that same date Plaintiff/Counter-Defendant Nissan shall file any supplement to its Motion for Judgment on the Pleadings including analysis of the sufficiency of facts of the proposed amended complaint.

The authorities on which the above orders are based are as follows.

Tennessee law has a liberal policy on amendments to pleadings. In the specific context of motions to dismiss or for judgment on the pleadings,¹ when a party requests leave to amend their complaint, the policy in Tennessee is to first allow the party the opportunity to amend their pleadings and then process the dismissal motion.

Tennessee Rule of Civil Procedure 15.01 provides that leave of court to amend pleadings “shall be freely given when justice so requires.” The Tennessee Supreme Court has recognized that the language of Tenn. R. Civ. P. 15.01 “substantially lessens the exercise of pre-trial discretion on the part of a trial judge.” In considering a motion to amend, a trial court is to consider several factors, including “undue delay in filing the amendment, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and the futility of the amendment.” **When “the legal sufficiency of the complaint is at issue—instead of delay, prejudice, bad faith or futility—the better protocol is to grant the motion to amend the pleading,” thereby giving the adversary the chance to test the legal sufficiency of the complaint by filing a motion to dismiss pursuant to Tenn. R. Civ. P. 12.02(6). This court has stated that “when the court grants a motion to dismiss for failure to state a claim, only extraordinary circumstances would prohibit the plaintiff from exercising the right to amend its complaint.” [Emphasis Added]**

Hill v. City of Memphis, No. W201302307COAR3CV, 2014 WL 7426636, at *8 (Tenn. Ct. App. Dec. 30, 2014) (citations omitted); *See, e.g., Green v. Green*, No. M2006-02119-COAR3CV, 2008 WL 624860 (Tenn. Ct. App. Mar. 5, 2008), *aff’d but criticized*,

¹ “Our Supreme Court has stated that, “[A] motion for judgment on the pleadings is ‘in effect a motion to dismiss for failure to state a claim upon which relief can be granted.’” Judgment on the pleadings is proper when the facts alleged in the complaint, even if proven, do not entitle the plaintiff to relief. In considering such a motion, the court must consider “as true ‘all well-pleaded facts and all reasonable inferences drawn therefrom’” alleged by the nonmoving party.” *Haynes v. Bass*, No. W201501192COAR3CV, 2016 WL 3351365, at *3 (Tenn. Ct. App. June 9, 2016), *appeal denied* (Oct. 21, 2016) (citations omitted); *see also, Harman v. Univ. of Tennessee*, 353 S.W.3d 734, 736 (Tenn. 2011) (citations and footnotes omitted) (“The legal sufficiency of a complaint can be tested by a Tennessee Rule of Civil Procedure 12.03 motion for judgment on the pleadings or a Tennessee Rule of Civil Procedure 12.02(6) motion for failure to state a claim upon which relief can be granted. The motions, being essentially the same, are reviewed under the same standards.”).

293 S.W.3d 493 (Tenn. 2009) (reversing trial court's decision to deny a motion to amend while proceeding forward with granting a motion to dismiss for failure to state a claim); *Fid. & Cas. Co. of N.Y. v. Gregory Entm't, Inc.*, No. 01-A-01-9804-CH00203, 1999 WL 173629 (Tenn. Ct. App. Mar. 31, 1999) (reversing a trial court's dismissal of a complaint on a motion for judgment on the pleadings when the ruling was made in the face of the plaintiff's offer to amend its complaint and attach the required documents to comply with Rule 10.03 of the Tennessee Rules of Civil Procedure).

In addition to the foregoing applicable law, in entering the above orders, the Court has retraced the steps in this case that brought it to its present posture.

On August 24, 2016, the Court entered a *Rule 16 Order* in this case in which it documented from discussions at the Rule 16 Conference conducted on August 18, 2016 that "it appears that amendments to pleadings and adding parties are unlikely" and therefore, set the deadline for adding parties and amending the pleadings as December 16, 2016. At the time of this *Rule 16 Order*, Defendant Tustin Auto Sales, LLC d/b/a Tustin Nissan ("Tustin") had not yet filed its *Answer* to the *Complaint* and confirmed that by September 19, 2016 its *Answer* would be filed.

On September 19, 2016, Defendant Tustin filed its *Answer* to the *Complaint* along with a *Counterclaim* against Plaintiff Nissan. The *Counterclaim* contained two counts alleging (1) Breach of The Implied Covenant Of Good Faith And Fair Dealing and (2) Violation Of California Business And Professions Code Section 17200. Thereafter, on

October 19, 2016, Plaintiff Nissan filed its *Answer* to Defendant Tustin's *Counterclaim* denying the allegations.

On January 11, 2017, following the December 16, 2016 deadline for amendments, Plaintiff Nissan filed a *Motion For Judgment On The Pleadings As To Tustin Nissan's Counterclaim*. Defendant Tustin filed its response to the *Motion* on February 3, 2017 and, in addition to opposing the *Motion* on the merits, Defendant Tustin argued in the alternative that "[i]f the Court is inclined to grant the *Motion*, Defendants request that its order be without prejudice to allow Tustin Nissan to file a *Motion for Leave to Amend*."

In support of this request, Defendant Tustin cited to Tennessee law on the liberality in granting amendments and an accompanying *Declaration of Linda M. Burrow* stating that Defendant Nissan continues to uncover facts in discovery that evidence Plaintiff Nissan's bad faith. Specifically, Defendant Tustin argued that given the circumstances in this case, an opportunity to seek leave to amend would be appropriate:

The policy of liberal amendment is particularly applicable here, where Tustin Nissan has not filed any previous amendments; seeks leave to amend its claims upon its first notice that NNA does not consider the original pleading sufficient; has not engaged in any bad faith or caused any prejudice to NNA; does not propose to add any substantive claims (thus precluding any argument that NNA was not on notice of the issues alleged); and where, as set forth in the accompanying declaration of Linda M. Burrow, Tustin Nissan continues to uncover facts in discovery (much of which NNA has resisted) that evidence NNA's bad faith. *See Gardniner*, 731 S.W.2d at 891-92 (instructing courts to consider "factors such as undue delay in filing the amendment, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and the futility of the amendment."); *see, e.g., Burrow Dec.*, ¶ 3.

Defendant And Counterclaimant Tustin Auto Import Sales, LLC, D/B/A Tustin Nissan's Opposition To Plaintiff And Counter-Defendant Nissan North America, Inc.'s Motion For Judgment On The Pleadings On Tustin Nissan's Counterclaim, p. 13 (Feb. 3, 2017).

In opposition to the request for leave to amend, Plaintiff Nissan argues that “an amended pleading is both untimely (the deadline to amend having expired on December 15, 2016) and futile. It has not remotely demonstrated that there exist facts that, if properly plead, could give rise to a claim against NNA.” *Reply Memorandum In Support Of Plaintiff's Motion For Judgment On The Pleadings As To Tustin Nissan's Counterclaim*, pp. 7-8 (Feb. 10, 2017).

From the law cited above and the proceedings just outlined, the Court, for efficiency and taking into account the case progression and scheduling deadlines set months ago in the August 2016 *Rule 16 Order*, has compressed the steps set out in *Hill v. City of Memphis* of holding the motion for judgment on the pleadings in abeyance, to first proceed with briefing, oral argument and ruling on the motion to amend, and then returning to proceeding with the motion for judgment on the pleadings. Instead, the above orders combine these steps to balance the case law requirement that the Counter-Plaintiff be provided the opportunity to propose an amendment against the Counter-Defendant's right to test the sufficiency of the *Counterclaim* without undue delay.

In light of the foregoing rescheduling, it is also ORDERED that the status conference set for Friday, February 17, 2017 is removed from the docket. If there are any issues that a party had planned to have addressed at the status conference, they shall file a

notice with the Court listing the items and stating the need for the conference prior to the March 17, 2017 hearing. Upon receipt of any notices filed, the Docket Clerk will follow up with all the parties regarding scheduling a conference call.



ELLEN HOBBS LYLE
CHANCELLOR
TENNESSEE BUSINESS COURT
PILOT PROJECT

cc: Eugene N. Bulso, Jr.
Steven A. Nieters
Kimball R. Anderson
Joanna Cornwell
Attorneys for Nissan North America, Inc.

Steven A. Riley
Milton McGee
Linda Burrow
Albert Giang
Attorneys for Tustin Import Auto Sales, Inc.

Ricky Enriquez
Pro Se Defendant



MAILED

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