

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RIDGE CHRYSLER JEEP, L.L.C. d/b/a )  
MARQUETTE CHRYSLER JEEP and )  
SALES, INC. d/b/a DODGE OF )  
MIDLOTHIAN, )

Plaintiffs, )

v. )

DAIMLER CHRYSLER SERVICES )  
NORTH AMERICA LL., )

Defendants. )

No. 03 C 760

Wayne R. Andersen  
District Judge

**ORDER**

This case is before the Court on the motion of Daimler Chrysler Services North America d/b/a/ Chrysler Financial for summary judgment. For the reasons stated below, the motion for summary judgment is denied.

Plaintiffs are two Chrysler automobile dealerships. Plaintiff Ridge Chrysler Jeep, L.L.C. d/b/a/ Marquette ("Marquette") is a former dealer of vehicles manufactured by DaimlerChrysler Corporation and had a dealer franchise agreement with DaimlerChrysler Motors Company. Plaintiff Sales, Inc. d/b/a/ Dodge of Midlothian ("Midlothian") is a current dealer of vehicles manufactured by DaimlerChrysler Corporation and has a dealer franchise agreement with DaimlerChrysler Motors Company.

Defendant Chrysler Financial is a wholly owned subsidiary of DaimlerChrysler Corporation. Chrysler Financial is in the business of providing wholesale inventory financing to automobile dealers, including Plaintiffs, and providing retail installment sales contract financing

to consumer buyers by purchasing retail installment contracts from dealers. By purchasing retail installment contracts from Plaintiffs, Chrysler Financial provided retail financing for vehicle purchases by Plaintiffs' customers. Chrysler Financial also enters into inventory or "floor plan" financing agreements with dealers. Chrysler Financial has an agreement with plaintiff Midlothian for the financing of Midlothian's inventory of new and used vehicles.

Plaintiffs have filed a four count complaint alleging breach of contract (Count I), tortious interference with prospective business or economic advantage (Count II) and violations of the Automobile Dealers' Day in Court Act (Count III) and the Illinois Motor Vehicle Franchise Act (Count IV). Chrysler Financial has moved for summary judgment on Counts III and IV.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). In considering such a motion, the court accepts as true the evidence set forth by the non-moving party and draws all reasonable inferences in favor of the party opposing the motion. *Associated Milk Producers, Inc. v. Meadow Gold Dairies*, 27 F.3d 268, 270 (7th Cir. 1994).

Count III alleges a violation of the Automobile Dealers' Day in Court Act ("ADDCA"), which provides that an automobile dealer may bring suit against an automobile manufacturer for failure "to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in performing or complying with any of the terms of the franchise, or in terminating, canceling, or not renewing the franchise." 15 U.S.C. § 1222. Chrysler Financial argues that the ADDCA does not apply because: (1) Chrysler Financial is not an "automobile manufacturer;"

and (2) Chrysler Financial is not a signatory to the franchise agreements between Plaintiffs and DaimlerChrysler. We find both of these arguments unpersuasive.

First, Chrysler Financial maintains that summary judgment is not appropriate because the ADDCA only applies to automobile manufacturers. The ADDCA defines the term “automobile manufacturer” as:

any person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing or assembling of passenger cars . . . including any person, partnership, or corporation which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said automobiles.

15 U.S.C. § 1221(a). Given this broad definition, this term has been construed to include subsidiaries of manufacturers that facilitate the distribution and sale of automobiles. In *Colonial Ford Inc. v. Ford Motor Co.*, 592 F.2d 1126 (10th Cir. 1979), the Tenth Circuit held that Ford Motor Credit Company was subject to the ADDCA because it “was a wholly owned subsidiary of Ford Motor and ... its involvement with [the plaintiff] was exclusively for the purpose of facilitating the distribution of automobiles manufactured by its parent.” 592 F.2d at 1129.

Similarly, in two cases decided by judges in this District, the court refused to dismiss ADDCA claims because the plaintiffs had alleged that the defendant automobile credit companies provided financing to facilitate the sale of automobiles. See *TLMS Motor Corp. v. Toyota Motor Distributors, Inc. et al.*, 912 F. Supp. 329 (N.D. Ill. 1995) (allegations that Toyota Credit was the financing arm of Toyota Distributors and Toyota Sales and that Toyota Credit facilitated plaintiff’s sale of Toyota vehicles was sufficient to raise the inference of agency under the ADDCA); *DeValk Lincoln Mercury, Inc. v. Ford Motor Co.*, 550 F. Supp. 1999, 1202 (N.D. Ill. 1982) (holding that an ADDCA claim should not be dismissed against Ford Motor Credit

Company because the plaintiff alleged that the defendant company provided financing to facilitate the sale of Ford manufactured automobiles at the dealership).

In addition, Chrysler Financial also asserts that the ADDCA does not apply because Chrysler Financial is not a signatory to the franchise agreements between Plaintiffs and DaimlerChrysler. In *DeValk*, the court recognized that ADDCA liability may be imposed on a non-signatory to a franchise agreement and set forth the proof required for a finding of liability against such a party. 550 F. Supp. at 1202. Indeed, in *TLMS Motor Corp. v. Toyota Motor Distributors, Inc.*, the court held that “if an agency relationship exists between a signatory and a non-signatory, the latter may still be held responsible under the ADDCA even though it is not a party to the franchise agreement.” 912 F. Supp. at 333.

As set forth above, an automobile manufacturer is defined to include “any person, partnership, or corporation which acts for and is under the control of such manufacturer ... in connection with the distribution of ... automotive vehicles.” The control requirement can be satisfied by showing either “corporate ownership and confluence of interest” or by showing an agency relationship. *TLMS Motor Corp. v. Toyota Motor Distributors, Inc.*, 1998 WL 182475, at \*7 (N.D. Ill. April 15, 1998). It is not disputed that Chrysler Financial is a wholly owned subsidiary of DaimlerChrysler and that Chrysler Financial provides financing to Plaintiffs to help facilitate the sale of Chrysler automobiles.

In light of the cases discussed above, we are persuaded that Chrysler Financial may be subject to the ADDCA. Plaintiffs have come forward with sufficient evidence to raise factual questions concerning the corporate ownership and confluence of interest between Chrysler Financial and DaimlerChrysler and whether there is an agency relationship between Chrysler

Financial and DaimlerChrysler. However, whether or not Chrysler Financial is liable for any violation of the ADDCA remains an issue for the jury to decide. Thus, summary judgment is denied as to Count III.

Count IV alleges violations of sections 4(b) and 4(d)(1), (3), (4) and (6) of the Illinois Motor Vehicle Franchise Act ("MVFA"). Section 4(b) prohibits any arbitrary or bad faith act against a franchisee by "any manufacturer, factory branch, factory representative, distributor or wholesaler, distributor branch, distributor representative or motor vehicle dealer." 815 ILCS 710/4(b). A "factory representative" is defined as:

a representative employed by a manufacturer or factory branch for the purposes of making or promoting the sale of motor vehicles or for contracting with, supervising, servicing or instructing vehicle dealers or prospective vehicle dealers.

815 ILCS 710/1.1(e).

Chrysler Financial relies upon *TLMS Motor Corp. v. Toyota Motor Distributors, Inc.* for the proposition that Chrysler Financial is not subject to section 4(b) of the MVFA because it does not fall within any of the categories listed in that section. 912 F. Supp. at 333. However, the holding in that case is contrary to a decision issued by the Illinois Appellate Court three years later, which concluded that Chrysler Credit Corporation was subject to the provisions of the MVFA:

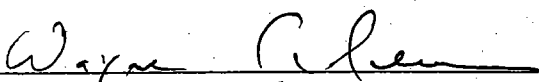
Chrysler Credit argues that it is not subject to section 4(b) of the Act, which only prohibits violative conduct by a "manufacturer, factory branch, factory representative, distributor or wholesaler, distributor branch, distributor representative or motor vehicle dealer." 815 ILCS 710/4(b). Plaintiffs contend that Chrysler Credit is subject to that section because it is a factory representative. We agree.

*Guardino v. Chrysler Corp.*, 691 N.E.2d 787, 793 (Ill. App. Ct. 1998). We are bound by the subsequent decision of the Illinois Appellate Court interpreting an Illinois statute. Thus, Chrysler Financial is subject to section 4(b) of the MVFA. However, whether Chrysler Financial is liable for a violation of section 4(b) of the MVFA remains an issue for the jury to decide

Section 4(d) prohibits various unfair or arbitrary acts against a franchisee by “any manufacturer, a distributor, a wholesaler, a distributor branch or division, or officer, agent or other representative thereof.” 815 ILCS 710/4(d). Thus, section 4(d) applies to Chrysler Financial if it is a “manufacturer, a distributor, a wholesaler, a distributor branch or division, or officer, agent or other representative thereof.” *Id.* For the same reasons discussed above, Plaintiffs have come forward with sufficient evidence to raise factual questions concerning a possible agency relationship between Chrysler Financial and DaimlerChrysler. Thus, whether or not Chrysler Financial is liable for any violations of section 4(d) of the MVFA remains an issue for the jury to decide, and summary judgment is denied as to Count IV.

For the foregoing reasons, defendant Chrysler Financial’s motion for summary judgment as to Counts III and IV is denied.

It is so ordered.

  
Wayne R. Andersen  
United States District Judge

Dated: February 25, 2004