

HUTCHINS MOTORS INC. <i>d/b/a</i>)	
O’CONNOR MOTOR CO.,)	
)	
Plaintiff,)	ORDER DENYING DEFENDANT’S
v.)	MOTION FOR SUMMARY JUDGMENT
)	
BWS MANUFACTURING, LTD.,)	
)	
Defendant.)	

Plaintiff Hutchins Motors Inc. *dba* O’Connor Motor Co. (herein after “Hutchins”) filed a two-count complaint against Defendant BWS Manufacturing, Ltd. (“BWS”) on July 25, 2019. The complaint seeks a declaratory judgment reinstating a distribution agreement between the parties (Count I) and alleges BWS violated the Maine Franchise Act, 10 M.R.S. §§ 361 *et seq* (Count II). BWS filed a motion to dismiss on September 20, 2019 and shortly thereafter requested the case be transferred to the Business and Consumer Court. The application to transfer the case was accepted on October 9, 2019. The motion to dismiss was denied on December 16, 2019.

Following the denial of its motion to dismiss, BWS filed an answer with a two-count counterclaim on December 26, 2019. BWS’s counterclaim includes a request for a declaratory judgment that the distribution agreement is not governed by the Maine Franchise Act (Counterclaim Count I) and a declaratory judgment that the distribution agreement terminated upon its own temporal terms on October 21, 2015 (Counterclaim Count II). Hutchins responded to the counterclaim on January 14, 2021.

On May 3, 2021, BWS moved for Summary Judgment (the “Motion”) pursuant to Rules 7 and 56 of the Maine Rules of Civil Procedure. Hutchins filed a timely opposition on June 8, 2021

with an additional statement of material facts. BWS responded to Hutchins's opposition and opposed the additional statement of material facts on June 22, 2021. For the following reasons, the Court denies BWS's Motion.

STANDARD OF REVIEW

Courts will grant motions for summary judgment when no genuine issue of material facts exists and either party is entitled to judgment as a matter of law. *Gagnon's Hardware & Furniture v. Michaud*, 1998 ME 265, ¶ 5, 721 A.2d 193, 194; M.R. Civ. P. 56(c). A fact is material when it may change the outcome of the case and "a genuine issue exists when sufficient evidence supports a factual contest to require a fact finder to choose between competing versions of the truth at trial." *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573, 575. "When determining whether to rule on motions for summary judgment, courts may *only* consider the portions of the record referred to, and the material facts set forth in the statement of material facts." *Osgood v. C.U. York Ins. Co.*, No. CV-04-568, 2006 Me. Super. LEXIS, at *5 (June 5, 2006) (citing *Corey v. Norman, Hanson & Detroy*, 1999 ME 196, ¶ 8, 742 A.2d 933, 938) (internal quotations omitted). "A party's citation to its own complaint [or counterclaim] is insufficient to support a material fact." *Deutsche Bank Nat'l Tr. Co. v. Raggianni*, 2009 ME 120, ¶ 6, 985 A.2d 1 (citing *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 8, 770 A.2d 653, 656). Further, the court is neither required nor permitted to independently search the record to find support for facts offered by a party. *Id.* at ¶ 7. Finally, the court gives the party opposing a summary judgment the benefit of any inferences that might reasonably be drawn from the facts presented. *Curtis v. Porter*, 2001 ME 158, ¶ 9, 784 A.2d 18, 22.

FACTS

Despite the brevity of this Order, the Court has extensively reviewed the parties' statements of material facts. Most of the statements are not supported by record citations, or the cited portions of the record don't support the statements. *See Stanley v. Hancock County Commissioners*, 2004 ME 157, ¶¶ 27-29, 864 A.2d 169 (courts may deny motions for summary judgment solely on the basis that the statements of material facts do not conform to the rules.) Many of the statements that survive the first level of review are disputed. As a result, there are very few undisputed, material facts established on this summary judgment record, and those that are established are too few to allow resolution without an evidentiary trial. With that preamble, the Court finds, for the limited purpose of deciding this Motion, the following facts.

BWS is a business entity domiciled within the province of New Brunswick, Canada. (Supp.'g S.M.F. ¶ 1.) Glendon Findlater is the Vice President of Finance of BWS. (Supp.'g S.M.F. ¶ 10.) Hutchins is a business entity domiciled in Augusta, Maine. (Supp.'g S.M.F. ¶ 2.) Hutchins is a dealer for resale of automobiles, pickups, medium-duty trucks, heavy-duty trucks, buses, and trailers. (Supp.'g S.M.F. ¶ 5.)

The parties signed an agreement on October 21, 2014 (the "Agreement"). (Supp.'g S.M.F. ¶ 11.) The Agreement is governed by the laws of New Brunswick, Canada. (Supp.'g S.M.F. ¶ 9.) The Agreement contains an attached "Dealer Commitment" referenced as "Schedule A."¹ (Supp.'g S.M.F. ¶ 15.) The Agreement between the parties is similar to contracts BWS has with other dealerships. (Supp.'g S.M.F. ¶ 18.) Section 6, Marketing Responsibilities and Trade Names, states:

- (a) The Distributor may use the name "BWS Manufacturing Ltd.", "BWS" or any registered or trademark owner by BWS in Distributors promotional materials but only after having obtain the Company's prior written approval.

¹ The copy of Schedule A provided to the Court is illegible.

(Supp.'g S.M.F. ¶ 36.) Section 16, Period of the Agreement, states:

- (b) This agreement shall be deemed to have come into effect on the date of its execution by both parties being the "Commencement Date"
- (c) Unless sooner terminates, this agreement shall remain in force for an initial period of twelve (12) months from the Commencement Date and shall continue in force for that period unless and until terminated by either party.

(Supp.'g S.M.F. ¶¶ 21-22). Between 2014 and 2019, Hutchins did not request a grant of license to use trademarks and trade names from BWS. (Supp.'g S.M.F. ¶ 37.) Schedule A was never renewed in writing. (Supp.'g S.M.F. ¶ 52.)

BWS was the sole supplier of BWS products to Hutchins for the period of 2014 and 2019. (Supp.'g S.M.F. ¶¶ 47-48.) Hutchins never committed to any specific levels of sales or inventory. (Supp.'g S.M.F. ¶¶ 40, 56.) BWS would receive purchase orders from Hutchins and fill them. (Supp.'g S.M.F. ¶ 45.)

BWS trailers cannot move without a truck or a tractor. (Supp.'g S.M.F. ¶ 174.) The intended purpose of a trailer is to be connected to a truck or tractor to be towed over the road. (Supp.'g S.M.F. ¶ 76.) The trucks or tractors are powered by means of gas or diesel engines. (Supp.'g S.M.F. ¶ 75.) BWS trailers sold by Hutchins are manually connected to a truck or tractor with electrical connections and air lines. (Supp.'g S.M.F. ¶ 68.) The BWS trailers do not have an internal mechanism to generate power. (Supp.'g S.M.F. ¶ 69.) The trailers have lights. (Supp.'g S.M.F. ¶¶ 70-71.) However, the lights are connected by means of a wiring harness to an instrument panel in the cab of the truck or tractor to allow the lights to be operated by the vehicle's batteries. (Supp.'g S.M.F. ¶ 72). BWS trailers must be registered through the Motor Vehicle Division of the Secretary of State's Office. (Supp.'g S.M.F. ¶ 78.)

ANALYSIS

Most if not all the material facts in this matter are in dispute, especially with regard to the Agreement. The limited facts established on the summary judgment record are insufficient for the Court to interpret the Agreement; to make any determinations regarding when, whether and how the Agreement ended; or to decide the scope of the Agreement. BWS argues that Hutchins was unwilling to make any sale or inventory commitments, but Hutchins says it was never asked to make set commitments. This factual dispute directly relates to the issue of whether Schedule A, the Dealer Commitment part of the Agreement, was completed. The significance and role of the Schedule A Dealer Commitment is a highly debated point of contention in this case. BWS argues that Schedule A was not completed so the agreement was incomplete and void. Hutchins on the other hand argues that despite the levels of commitment being zero, Schedule A was completed and attached so the Agreement is complete and enforceable. The summary judgment record does not allow any of these issues to be decided. For similar reasons, the Court is unable to make any determinations about the whether the Maine Franchise Act was violated.

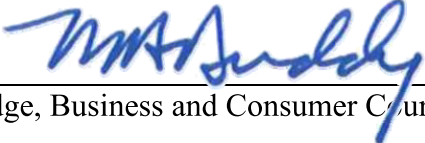
CONCLUSION

For the reasons stated above, BWS's Motion for Summary Judgment is DENIED.

So Ordered.

The Clerk is instructed to enter this Order on the docket for this case by incorporating it by reference. M.R. Civ. P. 79(a).

Dated: 09/14/2021



Judge, Business and Consumer Court

Entered on the docket: 09/14/2021