UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DEVAN MOTORS OF FAIRFIELD, INC. D/B/A INFINITI OF FAIRFIELD Plaintiff, v. INFINITI DIVISION OF NISSAN NORTH AMERICA, INC., Defendant.	:	Civ No. 3:04CV00308(AWT)

RULING ON MOTION FOR SUMMARY JUDGMENT

For the reasons set forth below, defendant Infiniti Division of Nissan North America, Inc.'s ("Infiniti") Motion to Dismiss Plaintiff's Complaint (Doc. No. 21), which the court is treating as a motion for summary judgment, is being denied.

As an initial matter, the court notes that it has treated the instant motion as a motion for summary judgment pursuant to the last sentence of the Fed. R. Civ. P. 12(b), which provides:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Here, Infiniti included with its motion to dismiss a Local Rule 56(a)1 Statement, accompanied by the Dealer Term Sales and

Service Agreement of April 30, 2002 and the Dealer Sales and Service Agreement of August 11, 2003 (collectively, the "Dealer Agreements"), a copy of the Asset Purchase Agreement between New Country Motor Cars of Greenwich, Inc. and the plaintiff's predecessors in interest, and the affidavit of Mark McDowell. In opposing the instant motion, the plaintiffs submitted Plaintiff's Local Rule 56(a)2 Statement and the affidavit of Jonathan Brostoff. Thus, the court concludes that parties have been given a reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

The focus of Infiniti's motion is the parol evidence rule. In Tie Communications, Inc. v. Kopp, 218 Conn. 281 (1991), the Connecticut Supreme Court discussed the parol evidence rule at length. It stated:

> As we have so often noted, the parol evidence rule is not a rule of evidence, but a substantive rule of contract law. *Security Equities v. Giamba*, 210 Conn. 71, 77-78, 553 A.2d 1135 (1989); *Damora v. Christ-Janer*, 184 Conn. 109, 113, 441 A.2d 61 (1981); *Cohn v. Dunn*, 111 Conn. 342, 346, 149 A. 851 (1930); see also 2 Restatement (Second), Contracts § 213, comment (a); 3 A. Corbin, supra, § 573; 4 S. Williston, supra, § 631. The rule is premised upon the idea that "when the parties have deliberately put their engagements into writing, in such terms as import a legal obligation, without any uncertainty as to the object or extent of such engagement, it is conclusively presumed, that the whole engagement of the parties, and the extent and manner of their understanding, was reduced to writing. After this, to permit oral testimony, or prior or contemporaneous conversations, or circumstances, or usages [etc.], in order to learn what was intended, or to contradict what is written, would be dangerous and unjust in the extreme." *Glendale Woolen Co. v. The*

Protection Ins. Co., 21 Conn. 19, 37 (1851).

> The parol evidence rule does not of itself, therefore, forbid the presentation of "parol evidence," that is, evidence outside the four corners of the contract concerning matters governed by an integrated contract, but forbids only the *use* of such evidence *to vary or contradict the terms* of such a contract. Parol evidence offered solely to vary or contradict the written terms of an integrated contract is, therefore, legally irrelevant. When offered for that purpose, it is inadmissible not because it is parol evidence, but because it is irrelevant. By implication, such evidence may still be admissible if relevant "(1) to explain an ambiguity appearing in the instrument; (2) to prove a collateral oral agreement which does not vary the terms of the writing; (3) to add a missing term in writing which indicates on its face that it does not set forth the complete agreement; or (4) to show mistake or fraud." *Jay Realty, Inc. v. Ahearn Development Corporation*, 189 Conn. 52, 55-56, 453 A.2d 771 (1983). These recognized "exceptions" are, of course, only examples of situations where the evidence (1) does not vary or contradict the contract's terms, or (2) may be considered because the contract has been shown not to be integrated, or (3) tends to show that the contract should be defeated or altered on the equitable ground that "relief can be had against any deed or contract in writing founded in mistake or fraud." *Nobel v. Comstock*, 3 Conn. 295, 299 (1820); see also *Dale v. Gear*, 38 Conn. 15, 18-19 (1871) (agency, trust, equitable relation or equity may be shown by parol evidence).

Id. at 288-89.

The plaintiff's two-count complaint sets forth causes of action under the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a et seq. and the Connecticut Automobile Franchise Statute, Conn. Gen. Stat. § 42-133r et seq. The plaintiff alleges it has been damaged as a result of the defendant's reneging on representations made by the defendant to

the plaintiff in connection with the plaintiff's transaction with New Country Motor Cars of Greenwich, Inc. The complaint alleges no facts concerning the negotiation of the Dealer Agreements, and the plaintiff does not seek interpretation, enforcement or damages for breach of either of the Dealer Agreements. Thus, the plaintiff's complaint is based solely upon alleged statutory violations, not upon any allegation of breach of the Dealer Agreements.

Moreover, it appears that in response to any effort by Infiniti to assert a defense based on the Dealer Agreements, the plaintiff will be able to, at a minimum, create a genuine issue of material fact as to one or more of the exceptions to the parol evidence rule discussed in Tie Communications, and if it is successful in establishing an exception, recover against the defendant.

Accordingly, the defendant's motion for summary judgment (Doc. No. 21) is hereby DENIED.

It is so ordered.

Dated at Hartford, Connecticut this 14th day of December 2004.

/s/
Alvin W. Thompson
United States District Judge