

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF STAUNTON

ERIC OBAUGH

Plaintiff,

v.

Case No. CL 16 000 135-00

MANUFACTURERS & TRADERS TRUST COMPANY.

et als

AFFIDAVIT OF ERIC OBAUGH

Eric Obaugh hereby swears and affirms as follows:

M&T Bank's Motion For Summary Judgment is based entirely on a false premise:

That I only offered to pay \$6.1 million for all of the assets - - real estate, New and Used Vehicles, and other dealership property, parts inventory, tools and equipment, and intangibles, of Elliott's Chevy and Chrysler franchises. M&T Bank says it was owed about \$8.6 million, secured by those assets. M&T Bank then reasons that it was not obliged as Secured Creditor to have allowed its Debtor to accept an offer which was insufficient to pay out M&T Bank in full. Indeed, M&T Bank argues that Obaugh's alleged \$6.1 million offer was for so far below what was required that there was no harm in its interfering in the negotiations between Elliott and Obaugh, regardless of the "No Shop Clause" in their agreement.

M&T Bank's employee, Kenneth P. Mangan states all that in his Affidavit as if it were true, but the problem is, it is false.

In fact, my offer was actually for in excess of \$11 million, enough to have paid out M&T Bank's liens in full, and to have had money left over.

Filed in the Clerk's Office of the
Circuit Court of the City of Staunton
Date: 5-11-16
Time: 4:25
Teste: CWM Clerk

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Eric Obaugh's Qualifications

I am 45 years old, a native of Augusta County. I grew up in the car sales business, working in my father Charlie Obaugh's original business, "Charlie Obaugh Pontiac Buick GMC" from the time I was 13 years old. I am now a 50% (actually, 49.7%) partner with my father in two of our businesses, and I am 75% owner of our fourth business, our very successful Chevrolet Franchise in Waynesboro.

Over the past 23 years, I have been involved with the negotiation and closing of the sale or acquisition of several New Vehicle Dealerships:

In 1993 Eric Obaugh and Charlie Obaugh bought the Mazda Franchise in Staunton from its then-owner.

In 1994 Eric Obaugh bought into the Obaugh Chevrolet Cadillac Franchise in Lynchburg.

In 1997 Eric Obaugh and Charlie Obaugh sold their "Obaugh Chevrolet Cadillac" Franchise in Lynchburg.

In 2000 Eric Obaugh and Charlie Obaugh bought what became their "Charlie Obaugh Pontiac Buick" Franchise in Harrisonburg.

In 2009 Eric Obaugh and Charlie Obaugh sold their "Obaugh Chevrolet Cadillac" Franchise in Harrisonburg.

In 2008 Eric Obaugh and Charlie Obaugh bought what became their Charlie Obaugh Chevrolet Buick Franchise

In 2010, Eric Obaugh and Charlie Obaugh acquired the Kia Franchise in 2010, as a brand-new "point."

The Franchise Agreement between a Manufacturer and the Dealer is a "Personal Services Contract," with an individual owner of the business. I am the co-Dealer Principal Franchisee for the Chevrolet Franchise in Waynesboro and the Dealer Principal Franchisee for the Kia dealership in Staunton. Charlie Obaugh is the Dealer Principal Franchisee for the GMC / Buick and Mazda Franchises, and I am the pre-approved successor Dealer Principal Franchisee for those Franchises.

How Transfers of New Vehicle Dealerships from Seller to Buyer Work

In order to understand what happened in this case, and to understand the exchanges of emails and draft contracts which were exchanged in this case, and referenced below, a brief explanation is necessary of how the New Vehicle business works, and the basic process of how transfers of New Vehicle Dealerships from Seller to Buyer work - - - a process which, for reasons which follow, necessarily takes about 2 to 3 months, from "first handshake" to "final Closing."

Asset Purchase Agreements for the purchase or sale of a New Vehicle Dealership are pretty standard fare. First, the parties establish the price for the dealership assets, including "Goodwill" or Going Concern Value," real estate and buildings, and equipment, but excluding the New Vehicle Inventory. Then, added to that "Dealership Price," is the value of the New Vehicle Inventory, which is established according to a simple, and universal, formula:

Dealers Invoice less the sum of: (i) holdback and (ii) advertising expenses.

New Vehicle Dealers routinely exchange vehicles among themselves on almost a daily basis - - for example if a customer wants a blue car of a particular model, and you don't have one on your lot, but another dealer down the road does - - - and this is the formula used in those exchanges. It is a well-understood, routine formula by which New Vehicles are priced

among dealers. No New Vehicle Dealer Buyer is going to pay more than that formula price for New Vehicles, because the New Vehicle Dealer Buyer can always get any number of New Vehicles from the Manufacturer or other Dealer Franchisees at that formula price.

Every New Vehicle Dealership also has an Inventory of Used Cars, and getting to agreement on the prices for the Used Cars can require a little more back-and-forth haggling on price - - - the Buyer and Seller are each Car Dealers, after all! - - - but the haggling is always a minor side event, engaged in more out of habit than a serious hold-up of the overall deal.

Almost all New Vehicle Dealers finance their purchase of New Vehicle Inventory from the Manufacturer through Floor Plan Lenders, and the amount owed per vehicle is always based on that same basic formula. In other words, the Lender will only advance that formula amount per New Vehicle against that New Vehicle. When that New Vehicle is sold, the Floor Plan Lender expects to be paid that formula price for the vehicle sold. So, once you establish the total value of the New Vehicle Inventory, you have also established the total amount required to pay off the Seller's Floor Plan Lender, at least within a percentage or two of the total price.

The reason that the value of the New Vehicle Inventory has to be set as a formula amount, rather than a fixed dollar amount, is that the total value of the New Vehicle Inventory in any dealership is a constantly moving target, as the selling dealer is, presumably, continuing to acquire new vehicles, and continuing to sell new vehicles, between the time of the "first handshake" right up until the day of Closing, a month or two later. So, on the day of Closing a final New Vehicle Inventory is taken, the total price is established per that formula, and that total amount is then paid to the Floor Plan Lender to release its liens on the Seller's New Car Inventory. Until the day of Closing you have an idea in general of how much the price will be - - - you know if the Seller's Inventory is about \$2 million, or about \$2.5 million - - - but you can't know the exact amount until the current Inventory is taken.

The relationship of any Car Dealer to the Manufacturer is a complicated one, based on the Dealer's Franchise Agreement with the Manufacturer (which tend to be fairly standard contracts across the industry), as regulated by the "Dealer's Bill Of Rights," a set of statutes enacted pretty uniformly across the United States, codified in Virginia at Virginia Code §46.2-1566 et seq., and in particular (as applied to this case) Virginia Code §§46.2-1569 and 46.2-1569.1.

At the risk of over-simplifying the interaction of the Franchise Agreements and the Dealers Bill Of Rights - - - but a simplified explanation which will suffice for the purpose of the case at this stage - - - the Dealer is granted an exclusive territory from the Manufacturer to sell their brand of Vehicles, in exchange for which the Dealer must make significant investments in real estate and buildings, signage, equipment, training for its employees (so as to be able to perform that manufacturer's warranty work), maintain a certain level of New Vehicle Inventory on site, cooperate and contribute to regional advertising campaigns, and of course, commit to stay open selling that Manufacturer's cars.

Once established, the Dealer has a limited right to transfer his Franchise rights to a third-party Buyer. The Dealer may propose a Buyer-Transferee to the Manufacturer, but the proposed Buyer-Transferee must be acceptable to the Manufacturer - - - must show a level of financial stability, experience, and track record to make the Manufacturer believe that the proposed Buyer-Transferee will be acceptable as a new Dealer.

Under the confluence of the standard Franchise Agreements and Dealer's Bill Of Rights laws, if the Dealer asks the Manufacturer to approve a legitimate contract to sell his business to a proposed Buyer-Transferee, the Manufacturer has a "Right Of First Refusal." That

is, the Manufacturer must either accept the proposed Buyer-Transferee, and allow the transfer, or else the Manufacturer must itself purchase the Dealer's business from the Dealer on the same proposed contract terms, lock, stock and barrel.

The usual approval period for the Manufacturer, from the time the existing Dealer submits a proposed fully-signed Asset Purchase Agreement to the Manufacturer until the Manufacturer either approves or disapproves the proposed Buyer-Transferee, is about 6 weeks.

There is also a fairly standard progression in the negotiation and sale of a New Car Dealership: (1) "Handshake deal;"

(2) Letter Of Intent;

(3) Asset Purchase Agreement;

(4) Forward final, signed Asset Purchase Agreement to the Manufacturer for (hopefully) its approval;

(5) Receive Manufacturer's Approval;

(6) Set Closing Date;

(7) Conduct Final Vehicle Inventory;

(8) Establish Final Sales Price based on Final Inventory;

(9) Wire Sales Proceeds to Seller (and Seller's Lender).

Step 1. The Buyer and Seller meet and "shake hands" on the broad terms of their deal.

Step 2. The Buyer and Seller enter into a "Non-Binding Letter Of Intent," which sets forth the broad terms discussed - - price for everything but New Vehicle Inventory (which both sides know will be established by formula), sometimes allocation of purchase price among assets, how information will be exchanged in order to prepare the Asset Purchase Agreement. The "Non-Binding Letter Of Intent" is always explicit that the parties have not yet

entered into a "binding" contract as to anything except that the parties agree to a binding contractual agreement for a period of time - - - called a "No Shop Clause" - - - during which time, now that the parties are engaged, that on the Seller's side, the Seller will not "shop" the business to anyone else, will not even discuss selling the business to anyone else, will not disclose business information to any other prospective purchaser; and on the Buyer's side, that the Buyer will maintain as confidential the inside information given by the Seller.

This "No Shop Clause" within the Letter Of Intent is essential to both sides - - - without it, business cannot be done. The Court will see in the documents that not only did I require it - - and Elliott agree to it - - - from the beginning, so did Weimer, when Elliott betrayed his agreement with me and began "shopping" the business to Weimer. The first thing Weimer did with his Letter Of Intent, in fact, was to require a commitment from Elliott that: (a) Elliott would betray his agreement with me; and (b) Elliott would not then "shop" the business to anyone else while negotiating with Weimer.

Step 3: Generally the Buyer has his attorney initially draft the Asset Purchase Agreement, which will be the final binding sales contract between the parties, and which will be the document submitted to the Manufacturer for approval of the Franchise Transfer. Seller's counsel then weighs in on the draft Asset Purchase Agreement, and like any other contract, drafts go back and forth for a while.

The "No Shop Clause" in the Letter Of Intent is essential because the process of evaluating the Dealership and preparing the final "Asset Purchase Agreement" is time-consuming and expensive for the Buyer. The Buyer has to receive from the Seller a lot of information and process and evaluate that information: How good are the existing Dealership employees, salesmen, service mechanics, and back room accounting employees? How much new training will they need? What have New Vehicle sales been for the past two years? In

general, fifty percent of the New Vehicle Dealership revenues come from service work, not just New Vehicle Sales - - - so how have service work revenues been for the past two years? What is the inventory of parts amount to? What equipment does the dealership own, and when new equipment will be needed? What is the condition of the dealership real estate and buildings? Are there any zoning issues? Does the computer inventory of vehicles, New and Used, match what is actually on the premises? There are always gaps, and at \$20,000 to \$40,000 per vehicle, those "gaps" between the theoretical computer inventory and the actual on-the-ground inventory are important.

Step 4: Once the final "Asset Purchase Agreement" is approved and signed by both Buyer and Seller, it is forwarded to the Manufacturer for its review and, hopefully, approval. The Manufacturer requires the proposed Buyer-Transferee to give the Manufacturer a lot of information about the proposed Buyer-Transferee's financial wherewithal, his plans for the Dealership if the transfer is approved, his past experience in the business - - - all the things the Manufacturer needs to know, to decide whether or not to "hitch its wagon" to the Proposed Buyer-Transferee.

In this case, since I am already an experienced New Vehicle Dealer, and already being an approved, and highly successful, Chevrolet Franchisee in the Waynesboro area just a few miles from Elliott's Staunton Chevrolet Franchise, I believe I was a "shoo-in" for approval by Chevrolet.

I am not at this time a Chrysler Franchisee, but given my experience and financial stability as a Franchisee for Chevrolet, Buick, GMC, Mazda, and Kia, it is reasonably foreseeable that Chrysler would approve me to be a Chrysler Franchisee as well.

As will be explained below, though, we did not get beyond Step 4 in this case, because of the tortious interference of M&T Bank and Weimer and the business conspiracy among Elliott, M&T Bank and Weimer.

What Happened In This Case

William Elliott, IV ("Elliott") and I know each other and move in many of the same circles of friends and acquaintances

In early November, 2015, William Elliott and I were at a Little League meeting at the Staunton Recreation building. After the meeting we talked a bit outside in the parking lot. I said to Elliott, "If you ever have any interest in selling your dealerships, I am out here and interested in talking to you."

Elliott asked me, "Would you have an interest in buying my Chrysler dealership?"

I said, "Sure." I had started the conversation off with Elliott because I had sort of heard around town before then that Elliott might be interested in selling.

I then talked to Elliott on the phone a few days later. We set up a meeting which took place on Thursday, November 19, 2016 at my dealership conference room at my Mazda dealership, a few blocks away from Elliott's dealership. We met for about three hours, worked out basic terms, resulting in a "handshake deal," to be followed up with a Letter Of Intent.

The basic terms of the "handshake deal," was that I would pay \$6.1 million for all of the assets of the Chevy and Chrysler dealerships other than the New Vehicle Inventory, **plus** the value of the New Vehicle Inventory as determined by the usual formula. At that time Elliott was unable to say what his total New Vehicle Inventory was - - - it was understood to be somewhere in excess of \$4 million, but the exact figure could not be known until current New Vehicle Inventory sheets were run off the computer and then verified in an on-the-ground check; plus the amount of Inventory would necessarily change as New Cars were sold prior to Closing.

The deal was complicated, as such deals always are, by the web of ownership. William Elliott was the Dealer Principal Franchisee for the Chevrolet Franchise in Staunton and the Dealer Principal Franchisee for the Chrysler Franchise in Staunton. The Chevy dealership assets were owned by Elliott Chevrolet, Inc., except the real estate on which the Chevy dealership operated was owned by Elliott & Elliott, LLC. The Chrysler dealership was owned by "Augusta Automotive, LLC," except that when we drafted the Letter Of Intent we thought the owner was Elliott Chevrolet, Inc. (that is, that Elliott Chevrolet owned both the Chevrolet and Chrysler Franchise assets). The real estate on which the Chrysler dealership operated was owned by ET Investments, LLC, owned by William Elliott and David Trainum, except at that time we thought its name was still "Hope Self Storage, LLC," its former business name, and the name by which the real estate is still listed as owned by in the Augusta County Tax Assessment records, which is what the parties referred to for purpose of drafting the Letter of intent.

On Tuesday, November 24, 2015, Eric Obaugh, William Elliott, and David Trainum entered in the "Letter Of Intent" setting forth the basic framework of the deal. As is acknowledged in the Complaint, while the November 24, 2015 Non-Binding Letter Of Intent was "Non-Binding" with respect to the underlying proposed but to-be-finalized Definitive Purchase Agreement, it did include fully binding contractual provisions requiring "Good Faith Negotiations" between the parties, and a "No Shop Clause," which were a binding contract and actionable as between the parties. Specifically, Paragraph 5 provided:

5. Exclusive Negotiating Rights; Good Faith Negotiations. In order to induce Buyer to commit the resources, forego other potential opportunities, and incur the legal, accounting and incidental expenses necessary properly to evaluate the possibility of acquiring the Membership Interests and business described above, and to negotiate the terms of, and consummate, the transaction contemplated hereby, Buyer and Seller agree that: (a) for a period of 90 days after the date hereof (unless sooner terminated as provided in Section 1(g)), Seller, Seller's affiliates and Seller and their respective officers, directors, employees and agents shall not, directly or indirectly, initiate,

solicit, encourage, participate in, or accept any offer, discussion, or proposal regarding the possible acquisition by any person or entity other than Buyer, including, without limitation, by way of a purchase of stock, purchase of assets or merger, of all or any substantial part of Seller's or dealerships' equity securities or assets, and shall not (other than in the ordinary course of business as heretofore conducted) provide any confidential information regarding dealerships' or Seller's assets or business to any person other than Buyer and Buyer's representatives; and (b) Buyer and Seller will negotiate the terms of this transaction and the Purchase Agreement in good faith and consistent with the terms of this letter of intent, specifically including the provisions of Section 1(c) regarding the non-refundable nature of the Deposit.

Thus, while the broadly discussed purchase and sale terms of the Letter Of Intent may not themselves have formed an enforceable Contract, being rather a fairly detailed but not fully finished description of what the parties anticipated that the Definitive Purchase Agreement would wind up encompassing, the "Good Faith Negotiations" clause and the "No Shop Clause" were binding and enforceable contractual obligations between the parties, intended to protect the reasonable and prospective business relationship between the parties and my reasonable contract and business expectancy, from November 24, 2015 to February 22, 2016.

Among other issues which would have to be worked out were determining the value of the New Vehicle Inventory to be added to the \$6.1 million basic purchase price, and allocation of the \$6.1 million among the assets other than the New Car Inventory.

It should be noted that subsequently Elliott and Trainum (owners of ET Investments, LLC) and Obaugh agreed to an allocation of \$2.4 million for the Chrysler real estate owned by ET Investments, LLC; and it appears from documents produced by the Defendants, that Elliott, M&T Bank and Weimer agreed to a price of \$1.7 million for the Chevrolet real estate owned by Elliott & Elliott, LLC. I am pretty sure I would have agreed to the same price for the Chevrolet real estate in a final Asset Purchase Agreement; I just wasn't given the chance.

The parties then moved on to the next step, gathering information and drafting and finalizing a Letter Of Intent during what was, by contract, supposed to be the 90-day "No Shop" period.

My attorney, Jeff Lenhart, drafted an initial rough draft of an Asset Purchase Agreement during the week of December 14-18, 2015.

On Saturday, December 19, 2015, Eric Obaugh, Charlie Obaugh, David Trainum and William Elliott met for three hours at William Elliott's office at his Chevy store. At the conclusion of that meeting, William Elliott said, "This is good. I am meeting with my attorney, Steve Milo on Monday morning [December 21, 2015]."

During the week of December 21-24, 2015, Mr. Lenhart (my attorney) and Mr. Milo (Elliott's attorney) conferred regularly. Mr. Lenhart repeatedly requested copies of the most current New Vehicle Inventory figures, so that figure could be filled in, subject to adjustments. Mr. Milo was unable to furnish those figures.

Between Monday, December 28, 2015 and Wednesday, December 30, 2015, Mr. Milo and Mr. Lenhart exchanged several drafts of an Asset Purchase Agreement, which included the following language with respect to the total purchase price:

ARTICLE TWO
PURCHASE PRICE

2.1 Purchase Price and Payment. The purchase price to be paid for the Assets (the "Purchase Price") shall be:

(a) the sum of Six Million, One Hundred Thousand Dollars (\$6,100,000), plus;

(b) the value of the Seller's new car, truck and other motor vehicle inventory existing as of the Closing Date based on dealer invoice less the sum of (i) holdback and (ii) advertising expenses; provided, however, the value of any 2014 model year vehicles in inventory at Closing shall be based on the Average Wholesale Value

between NADA and Black Book appraisal guides less the sum of (i) holdback and (ii) advertising expenses..

The Purchase Price, less Escrow Amount, shall be paid by Purchaser to Seller by cash or cash equivalents at Closing.

The sum of Three Hundred Thousand Dollars \$300,000 ("Escrow Amount") shall be held in further escrow subject to the terms and conditions of Section 7.5 below.

(c) The sum of the Purchase Price in subsection (a) above shall adjust, dollar for dollar, (i) upward to the extent the value of used car inventory is greater than the sum of Nine Hundred Thousand Dollars (\$900,000) ("Initial Used Car Inventory Value") at Closing and (ii) downward to the extent the value of used car inventory at Closing is less than the Initial Used Car Inventory Value. The value of the used car inventory at Closing shall be determined by mutual agreement of the Seller and Buyer. In the event the parties are unable to agree on the value of a vehicle, the parties shall use the vehicle's value as determined by based on the Kelly Blue Book Trade-In Expert value..

2.2 Allocation of Purchase Price. The parties agree to allocate the Purchase Price among the Assets for all purposes (including financial accounting and tax purposes) as follows:

<i>Tangible assets</i>	<i>\$ _____</i>
<i>Seller's Goodwill</i>	<i>\$ _____</i>

This was consistent with what "the deal" had been from the beginning: I would pay \$6.1 million PLUS the value of the New Vehicle Inventory, as ultimately determined by an inventory - - - an amount which we now know was almost exactly \$5 million, so the total effective amount of my offer at that point was almost exactly \$11.1 million.

I am almost certain that Mr. Milo forwarded a copy of the December 30, 2015 Draft Asset Purchase Agreement, showing the Purchase Price as \$6.1 million PLUS the value of New Vehicle Inventory, to M&T Bank's attorney, Michael Gallerizzo, either on December 30, 2015 or within a day or two, because on Monday, January 4, 2016, Michael Gallerizzo sent an email to Mr. Milo, specifically referencing the "draft asset purchase agreements" saying:

"This will confirm that we have scheduled a conference call today at 2:30 p.m. between you, me, Mr. Elliott, Eric Obaugh and his counsel to discuss the draft asset purchase agreements between Elliott Chevrolet, Inc., et al. and certain entities owned by Eric Obaugh, the recent closure of the GM and Chevrolet dealerships of Elliott Chevrolet, Inc., et al and a variety of other related matters. Dial in information for the call is set forth below Please confirm, via return e-mail, that you and Mr. Elliott will be participating in this call. Also, please forward this email to counsel for Mr. Obaugh and have him confirm, via return email, that he and Mr. Obaugh will be participating in the call as well."

That conference call occurred at 2:30 p.m. on Monday, January 4, 2016. I was present during that conference call. During that conference call it developed that the most important information both Eric Obaugh and M&T Bank needed was an up-to-date inventory of the New Vehicles for both the Chevrolet and Chrysler dealerships; and the Used Car Inventory. That Inventory information is normally readily available - - - it is essential information kept current on the dealership computers, and normally the owner can call that information up almost instantly. For some reason, though, we had been having a hard time getting this information from Elliott. I had been requesting that information since mid-December, 2015. Both M&T Bank and my attorney requested this information again during the January 4, 2016 phone call. Both M&T Bank and my attorney also requested payoff amounts for the liens on the respective real estate tracts.

During this conference call, M&T Bank's attorney, Michael Gallerizzo, asked me to draw up another Letter Of Intent to purchase all of the assets of both dealerships - - - real estate, vehicle inventory, tangible and intangible personal property. Mr. Gallerizzo insisted that "time was of the essence" for M&T Bank. As far as I was concerned, time was of the essence for me, as well.

My attorney, Jeff Lenhart, followed that telephone conference up with an email at 3:21 p.m. on Monday, January 4, 2016:

"Mike - - - it was great talking with you today. Below is my contact information. Once we have the requested information back from Steve's client, I anticipate that we will be able to get back to you fairly promptly."

The "requested information" was the list of New Car Inventory, to be able to calculate the actual total purchase price, and the real estate loan payoffs.

Elliott's attorney, Steve Milo, responded with an email at 4:04 p.m.:

William's estimates on real estate payoffs:

Chrysler properties: \$2.6 m.

GM properties (M&T) - - - \$1.5 m

Working on current auto inventory and best estimate on parts.

Elliott's attorney, Steve Milo, followed that up with another email at 6:10 p.m.:

Jeff and Mike:

Attached are reports re: new and used inventory for both stores (note that the used inventories are under the one tab marked GM Used. One page for each store). We are working with Keith Northern [an M&T Bank official] to reconcile the attached reports to the actual Certif. of Origin and titles we have in house.

Attached to this email were several pages of computer printouts of detailed Vehicle inventories.

On the following day, Tuesday, January 5, 2016, as requested by M&T Bank, my attorney, Jeff Lenhart, and I worked on and then sent another draft Letter Of Intent and sent it to both Elliott's attorney, Steve Milo, and M&T Bank's attorney, Michael Gallerizzo, for their review.

And then a weird thing happened. After repeatedly telling us on Monday, January 4, 2016 that "Time was of the essence," M&T Bank simply ceased communicating with my lawyer. We couldn't figure out why, and we were very frustrated at the lack of response from M&T Bank.

The November 24, 2015 Letter of Intent provided in the "No Shop Clause" that:

(a) for a period of 90 days after the date hereof (unless sooner terminated as provided in Section 1(g)), Seller, Seller's affiliates and Seller and their respective officers, directors, employees and agents shall not, directly or indirectly, initiate, solicit, encourage, participate in, or accept any offer, discussion, or proposal regarding the possible acquisition by any person or entity other than Buyer, including, without limitation, by way of a purchase of stock, purchase of assets or merger, of all or any substantial part of Seller's or dealerships' equity securities or assets, and shall not (other than in the ordinary course of business as heretofore conducted) provide any confidential information regarding dealerships' or Seller's assets or business to any person other than Buyer and Buyer's representatives;

I did not know at the time, but now through the initial discovery provided to date, that sometime prior to Thursday, January 14, 2016, over a month before the expiration of the "No Shop Clause," Elliott was breaching his contractual commitment to me in our "No Shop Clause," because he was by then negotiating and exchanging sales information with Defendant David Weimer.

M&T Bank and Elliott also simply ceased discussing with my attorney anything to do with the sale of the Chevrolet assets - - - real estate, Vehicle Inventory, tools and equipment.

M&T Bank in support of its Motion For Summary Judgment alleges that it was justified in cutting off communications with me not only because M&T Bank alleges that my total offer was for only \$6.1 million - - - which was false - - - but because Weimer was in a position to close quickly on the Chevrolet New Vehicle Inventory, being a Chevrolet dealer, and I was not.

But that is not true: I am also a Chevrolet dealer, and I was in a position to, and I was willing to, acquire all of Elliott's Chevrolet inventory on the same basis that Weimer ultimately did. For reasons not yet known, though, I was not afforded that opportunity, when in

violation of the "No Shop Clause," Elliott, at the direction of M&T Bank, instead "shopped" the Chevrolet deal to Weimer.

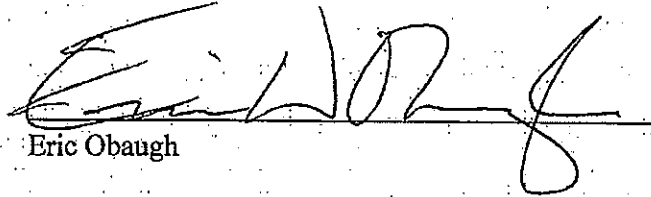
In January, 2016, Elliott advised Chrysler of his intent to transfer his Chrysler Franchise rights to Obaugh, subject of course to Chrysler's approval. Chrysler sent a "Chrysler Dealer Agreement Package" to me on February 22, 2016, which I promptly returned to Chrysler, Chrysler acknowledging receipt of the "Chrysler Dealer Agreement Package" on Monday, February 22, 2016.

Ironically, had M&T Bank and Weimer not interfered with the negotiations between Elliott and me, inducing Elliott to break his "No Shop" Agreement with Obaugh, I would then have been able to close and purchase that same Chrysler New Vehicle Inventory, upon approval of the transfer of the Chrysler Franchise to Obaugh, which in the normal course of business would have taken about six weeks from February 22, 2016, that is, by early April, 2016.

However, on Tuesday, March 8, 2016, my attorney Jeff Lenhart received a telephone call from an attorney from Chrysler, stating that Elliott was "withdrawing the purchase agreement," and had directed Chrysler to stop processing the "Chrysler Dealer Agreement Package." Chrysler would not say why, other than to say that Chrysler was "hoping to stay out of an ensuing litigation." We inferred from that, plus other things we had observed, that Elliott had signed an agreement to sell to someone else by then.

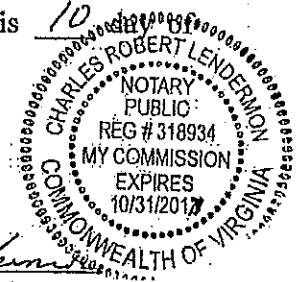
Among the other things I had observed, I had seen the bulk of Elliott's Chevrolet New Vehicle Inventory "disappear" from Elliott's Chevrolet dealership lot sometime after

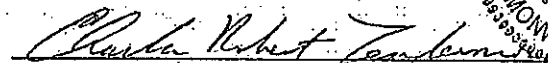
Thursday, February 11, 2016; and sometime after Monday, February 29, 2016 I had seen the bulk of Elliott's Chrysler New Vehicle Inventory "disappear" from Elliott's Chrysler dealership lot.


Eric Obaugh

Subscribed and sworn to before me in the jurisdiction aforesaid this 10 May, 2016, by Eric Obaugh.

My commission expires: 10/31/17




Notary Public Registration No: 318934