

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF STAUNTON

ERIC OBAUGH

Plaintiff,

v.

Case No. _____

**MANUFACTURERS & TRADERS TRUST COMPANY
d/b/a as "M&T Bank"**

**Serve: Corporation Service Company
Bank of America Center, 16th Floor
111 East Main Street
Richmond, Virginia 23219**

and

WEIMER CHEVROLET, INC.

**Serve: David Weimer, President
1151 US-220
Moorefield, West Virginia 26836**

and

DAVID L. WEIMER

**10715 Tisdale Street
Frostburg, West Virginia 21532**

and

WILLIAM J. ELLIOTT, IV

**161 West Amber Road
Verona, Virginia 24482**

and

AUGUSTA AUTOMOTIVE, LLC

**Serve: William J. Elliot, IV, Registered Agent
161 West Amber Road
Verona, Virginia 24482**

and

ELLIOTT CHEVROLET, INC.

Serve: William J. Elliot, IV, Registered Agent
161 West Amber Road
Verona, Virginia 24482

and

ELLIOTT & ELLIOTT, LLC

Serve: John C. Wirth, Registered Agent
12 North New Street
Staunton, VA 24401

Defendants.

COMPLAINT

The Plaintiff Eric Obaugh ("Obaugh"), by and through his undersigned counsel, brings this action against the Defendants Manufacturers & Traders Trust Company (doing business as "M&T Bank") ("M&T Bank"), David L. Weimer, individually, and Weimer Chevrolet, Inc., William J. Elliott, IV, individually ("William Elliott"), Augusta Automotive, LLC (doing business as "Elliott Chrysler Dodge Jeep, RAM"), Elliott Chevrolet, Inc. (doing business as "Elliott Chevrolet Cadillac"), and Elliott & Elliott, LLC, jointly and severally, pursuant to Virginia Code §§ 18.2-499 and 18.2-500, and request that this Court:

(a) Enjoin the Closing of the sale of any assets by Defendants Augusta Automotive, LLC, Elliott Chevrolet, Inc., and Elliott & Elliott, LLC, to Defendants Weimer Chevrolet, Inc., or any other business entity owned by Defendant David L. Weimer, or any other party other than Plaintiff Obaugh.

(b) Enter Judgment against Defendants M&T Bank, David L. Weimer, individually, and Weimer Chevrolet, Inc., William Elliott, individually, Augusta Automotive,

LLC, Elliott Chevrolet, Inc., and Elliott & Elliott, LLC, jointly and severally, in an amount to be determined at trial but estimated to be in excess of \$5,000,000, plus treble damages, costs and reasonable attorneys' fees.

NATURE OF ACTION

This is an action against Defendants M&T Bank, David L. Weimer, individually, and Weimer Chevrolet, Inc., William Elliott, individually, Augusta Automotive, LLC, Elliott & Elliott, LLC, and Elliott Chevrolet, Inc., jointly and severally, for conspiring together to injure Plaintiff Obaugh in his trade and business, by Defendants' concerted action in knowingly and intentionally and wrongfully interfering with the contracts and business expectancies, which Plaintiff Obaugh had to acquire the franchise rights, business assets and real estate of the Chevrolet and Cadillac Franchise Dealership in Staunton formerly known as "Elliott Chevrolet Cadillac", and the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM"; and for conspiring together to injure Plaintiff Obaugh in his trade and business, by Defendants' action in knowingly and intentionally and wrongfully interfering with the contracts, and business expectancies, which Plaintiff Obaugh had to acquire the franchise rights, business assets and real estate of the Chevrolet and Cadillac Franchise Dealership in Staunton formerly known as "Elliott Chevrolet Cadillac", and the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM."

Plaintiff seeks damages in an amount to be determined at trial but estimated to be in excess of \$5,000,000, plus treble damages, costs and reasonable attorneys' fees.

JURISDICTION AND VENUE

1. All of the actions alleged in this Complaint pertain to the operations, ownership, and sale contracts pertaining to the franchise rights, business assets and real estate of the Chevrolet and Cadillac Franchise Dealership in Staunton formerly known as "Elliott Chevrolet Cadillac," and the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM." The tortious conduct of the Defendants was all intended to, and did, cause tortious injury in the City of Staunton, in the Commonwealth of Virginia.

PARTIES

2. Plaintiff Eric Obaugh is a citizen of the Commonwealth of Virginia.

3. Defendant M&T Bank is a New York corporation, registered to do business in Virginia, which regularly conducts business in Virginia including, but not limited to making loans to one or more of Defendant William Elliott, Elliott Chevrolet, Inc., Augusta Automotive, LLC, and Elliott & Elliott, Inc.

4. Defendant Weimer Chevrolet, Inc. is a West Virginia corporation whose tortious actions in the City of Staunton are delineated below.

5. Defendant David L. Weimer is a Maryland resident whose tortious actions in the City of Staunton are delineated below.

6. Defendant William Elliott is a citizen of the Commonwealth of Virginia, and is an owner of Defendants Elliott Chevrolet, Inc., Augusta Automotive, LLC, Elliott & Elliott, LLC, and ET Investments, Inc. (formerly "Hope Selfstorage, Inc. ").

7. Defendant Elliott Chevrolet, Inc. is a Virginia corporation which owns or owned the franchise rights and business assets of the Chevrolet and Cadillac Franchise Dealership in Staunton formerly known as "Elliott Chevrolet Cadillac."

8. Defendant Augusta Automotive, LLC is a Virginia LLC which owns or owned the franchise rights and business assets of the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM."

9. Defendant Elliott & Elliot, LLC is a Virginia LLC which owns the real estate on which the business known as "Elliott Chevrolet Cadillac" conducted its business.

10. ET Investments, Inc. is not named as a Defendant because so far as Plaintiff knows, ET Investments was not a party to the conspiracy described in this lawsuit. ET Investments, Inc. is mentioned here at all because certain of the allegations describe its involvement in the underlying transactions, albeit not in any wrongful way. ET Investments, Inc. (sometimes doing business as "Hope Selfstorage, LLC") is a Virginia corporation which owns the real estate upon which the Chrysler Franchise Dealership in the City of Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM" conducted its business. ET Investments, Inc. was formerly "Hope Selfstorage, LLC" until it changed its name several years ago. Many of the Deeds to the property are in the name of "Hope Selfstorage, LLC," and for that reason the City of Staunton real estate tax assessment records for those properties still list the owner as "Hope Selfstorage, LLC." For that reason, certain of the documents referenced herein were signed in the name of "Hope Selfstorage, LLC" rather than "ET Investments, Inc."

FACTS

11. Plaintiff Obaugh is in the business of owning and operating automobile franchises.

12. Plaintiff Obaugh has considerable experience in the automobile franchise business, and is currently an owner (together with his father, Charlie Obaugh) of Charlie Obaugh Auto Group of Staunton, Inc. (doing business as Charlie Obaugh Buick, GMC, Mazda, Kia, RV) and Charlie Obaugh Automotive of Waynesboro (doing business as Charlie Obaugh Chevrolet).

13. Beginning in November, 2015, Plaintiff Obaugh began negotiating with Defendant William Elliott for the purchase of all of the franchise rights, business assets and real estate of the Chevrolet and Cadillac Franchise Dealership in Staunton formerly known as "Elliott Chevrolet Cadillac", and the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM."

14. Defendant William Elliott is the owner through various corporations of the franchise rights, business assets and real estate of the Chevrolet and Cadillac Franchise Dealership in Staunton formerly known as "Elliott Chevrolet Cadillac", and the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM."

15. Those negotiations led to a "Non-Binding Letter Of Intent" dated November 24, 2015, with respect to purchasing all the assets of the franchise rights, business assets and real estate of the Chevrolet and Cadillac Franchise Dealership in Staunton formerly known as "Elliott Chevrolet Cadillac", and the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM" for an expected total sum of \$6,100,000 (the "November 24, 2015 Non-Binding Letter Of Intent") (**Exhibit 1**).

16. The November 24, 2015 Non-Binding Letter Of Intent outlined the general terms of an agreement for Plaintiff Eric Obaugh to purchase all of the franchise rights, business assets and real estate of the Chevrolet and Cadillac Franchise Dealership in Staunton formerly known as "Elliott Chevrolet Cadillac", and the Chrysler Franchise Dealership in

Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM," and contemplated that the parties would proceed to work toward a Definitive Purchase Agreement to be fully documented between the parties.

17. 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.

18. 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 the reasonable contract and business expectancy of Plaintiff Obaugh.

19. By its terms, the “No Shop Clause” provided that William Elliott, Elliott Chevrolet, Inc., ET Investments, Inc. (sometimes doing business as “Hope Selfstorage, LLC”), and Elliott & Elliott, LLC, for a period of 90 days after November 24, 2015, that is, through February 22, 2016:

. . . . 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.

20. In addition, Elliott Chevrolet, Inc., ET Investments, Inc. (“Hope Selfstorage, LLC”), Elliott & Elliott, LLC and Obaugh entered into a Confidential Information Agreement dated November 25, 2015 (**Exhibit 2**) (“the November 25, 2015 Confidential Information Agreement”), pursuant to which the parties agreed to share confidential information with each other necessary to discuss, negotiate, draft and ultimately enter into a Definitive Purchase Agreement.

21. Therefore, Plaintiff Obaugh had a legitimate **contract** (with respect to the “Good Faith Negotiations” clause and the “No Shop Clause”) and legitimate **business expectancies** (with respect to the to-be-negotiated Definitive Purchase Agreement), giving Plaintiff Obaugh certain defensible property rights, interference with which by third parties constitute actionable tortious interference with both his contract and/or business expectancies.

22. Plaintiff Eric Obaugh and Defendant William Elliott did continue negotiation of terms for the purchase and sale of the franchise rights, business assets and real estate of the Chevrolet and Cadillac Franchise Dealership in Staunton formerly known as "Elliott Chevrolet Cadillac", and the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM" through December, 2015 until, without explanation, William Elliott abruptly ceased negotiations at the end of December, 2015, and then, without explanation, closed both the Chevrolet and Cadillac Franchise Dealership in Staunton formerly known as "Elliott Chevrolet Cadillac", and the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM" on or about January 1, 2016.

23. Negotiations resumed between Eric Obaugh and William Elliott a couple of weeks later with respect to the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM."

24. On January 22, 2016, ET Investments, Inc. (owner of the real estate on which the Chrysler dealership is located), signed a Real Estate Purchase And Sale Agreement with respect to the real estate on which the Chrysler Franchise was operating (**Exhibit 3**) ("the January 22, 2016 Chrysler Real Estate Purchase And Sale Agreement"), agreeing to sell that real estate for \$2,400,000 to "Obaugh Real Estate of Staunton, LLC," an LLC owned entirely by Plaintiff Obaugh, created for the purpose of acquiring that real estate; and simultaneously Defendant William Elliott and Defendant Augusta Automotive, LLC signed a separate Asset Purchase Agreement (**Exhibit 4**) ("the January 22, 2016 Chrysler Asset Purchase Agreement"), to sell the Chrysler Franchise to Plaintiff Obaugh (Plaintiff Obaugh signed the Asset Purchase Agreement as "Automotive of Staunton, Inc.," a newly-formed corporation owned by Plaintiff Obaugh, formed for the purpose of acquiring these franchise rights.

25. However, after signing the January 22, 2016 Chrysler Real Estate Purchase And Sale Agreement and the January 22, 2016 Chrysler Asset Purchase Agreement with Plaintiff Eric Obaugh, pursuant to which the assets of the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep RAM" would be sold to Eric Obaugh, Defendant William Elliott then turned around and commenced negotiations with Defendant David Weimer to sell those very same assets to David Weimer.

26. In so doing, William Elliott was yielding to improper pressure from M&T Bank.

27. Defendants M&T Bank, David Weimer and Weimer Chevrolet, Inc. were fully aware of the November 24, 2015 Non-Binding Letter Of Intent and the November 25, 2015 Confidential Information Agreement, as early as December, 2015.

28. Defendants M&T Bank, David Weimer and Weimer Chevrolet, Inc. were also fully aware of the January 22, 2016 Chrysler Real Estate Purchase And Sale Agreement and the January 22, 2016 Chrysler Asset Purchase Agreement within a day or two after they were signed.

29. It is in the nature of an unlawful conspiracy that not every concerted action taken, or communication between, Defendants M&T Bank, David Weimer and Weimer Chevrolet, Inc., William Elliott, Augusta Automotive, LLC, Elliott Chevrolet, Inc., and Elliott & Elliott, LLC is known by Plaintiff at this time. It is anticipated that through the course of pre-trial discovery Plaintiff Obaugh will learn the full details of when and how the communications between the Defendants occurred, what was communicated between the Defendants, and what plans and agreements were undertaken between the Defendants, and what actions were then taken in furtherance of those plans and agreements.

30. Defendants William Elliott, Augusta Automotive, LLC, Elliott Chevrolet, Inc., and Elliott & Elliott, LLC, were all under a contractual obligation not to “*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*” Plaintiff Obaugh, with respect to any of the assets contemplated in the November 24, 2015 Non-Binding Letter Of Intent and the November 25, 2015 Confidential Information Agreement.

31. Defendants M&T Bank, David Weimer and Weimer Chevrolet, Inc. were fully aware that pursuant to the January 22, 2016 Chrysler Real Estate Purchase And Sale Agreement and the January 22, 2016 Chrysler Asset Purchase Agreement, Plaintiff Obaugh had contractual rights and expectations to acquire the assets described therein, and that it was reasonably certain that such rights and expectations would be realized..

32. Plaintiff further alleges upon information and belief that Defendants M&T Bank, David Weimer and Weimer Chevrolet, Inc., acting in full knowledge of Plaintiff Obaugh’s contract rights and contract expectancies, wrongfully, willfully, intentionally and with malice, conspired together and acted in concert together with Defendants William Elliott, Elliott Chevrolet, Inc., Augusta Automotive, LLC, and Elliott & Elliott, LLC to tortuously interfere with the contract rights and expectancies of Plaintiff Obaugh during December, 2015 and January and February, 2016.

33. Defendant M&T Bank determined in late December, for reasons not known to Plaintiff Obaugh, that Defendant M&T Bank preferred that Defendants William Elliott, Elliott Chevrolet, Inc., Augusta Automotive, LLC, and Elliott & Elliott, LLC negotiate with, and ultimately sell to, David Weimer and Weimer Chevrolet, Inc., the assets already covered in the November 24, 2015 Non-Binding Letter Of Intent and the November 25, 2015 Confidential

Information Agreement, and later covered in the January 22, 2016 Chrysler Real Estate Purchase And Sale Agreement and the January 22, 2016 Chrysler Asset Purchase Agreement.

34. Prior to February 22, 2016, Defendant M&T Bank successfully pressured Defendants William Elliott, Elliott Chevrolet, Inc., Augusta Automotive, LLC, and Elliott & Elliott, LLC to violate the November 24, 2015 Non-Binding Letter Of Intent, and the January 22, 2016 Chrysler Real Estate Purchase And Sale Agreement, and the January 22, 2016 Chrysler Asset Purchase Agreement, by a combination of threats, cajolery, and other pressures, and successfully pressured Defendants William Elliott, Elliott Chevrolet, Inc., Augusta Automotive, LLC, and Elliott & Elliott, LLC to instead contract to sell those assets to Defendants David Weimer and Weimer Chevrolet, Inc.

35. Desiring to purchase those assets, Defendants David Weimer and Weimer Chevrolet, Inc. entered into negotiations with Defendants M&T Bank, William Elliott, Elliott Chevrolet, Inc., Augusta Automotive, LLC, and Elliott & Elliott, LLC, to purchase those assets prior to February 22, 2016, knowing full well that in doing so Defendants David Weimer and Weimer Chevrolet, Inc. were inducing Defendants William Elliott, Elliott Chevrolet, Inc., Augusta Automotive, LLC, and Elliott & Elliott, LLC to violate the November 24, 2015 Non-Binding Letter Of Intent, and the January 22, 2016 Chrysler Real Estate Purchase And Sale Agreement, and the January 22, 2016 Chrysler Asset Purchase Agreement.

36. Prior to February 22, 2016, all of the new car and truck inventory disappeared from the business premises of "Elliott Chevrolet Cadillac" and shortly thereafter all or almost all of the new car inventory appeared a few days later on the automobile dealer lots of companies owned by David L. Weimer.

37. A few days after February 22, 2016, all of the new car and truck inventory of "Elliott Chevrolet Cadillac" disappeared from its business premises, all of the new car and truck inventory of "Elliott Chrysler Dodge Jeep RAM," disappeared from its business premises and the inventory appeared a few days later on the automobile dealer lots of companies owned by David L. Weimer.

38. Manifestly this could not have happened unless William Elliott, Elliott Chevrolet, Inc., and Augusta Automotive, LLC, had entered into negotiations and contracts with David L. Weimer and/or companies owned by him, in direct contravention of the "No Shop Clause" and the "Confidentiality Agreement" portions of the November 24, 2015 Non-Binding Letter Of Intent.

39. As a consequence of the willful, intentional and wrongful concerted action of Defendants M&T Bank, David L. Weimer, individually, and Weimer Chevrolet, Inc., William Elliott, Augusta Automotive, LLC, Elliott Chevrolet, Inc., and Augusta Automotive, LLC, prior to February 22, 2016, Defendants William Elliott, Augusta Automotive, LLC, Elliott Chevrolet, Inc., and Elliott & Elliott, LLC:

- (a) Ceased negotiating in good faith with Plaintiff Obaugh;
- (b) Ceased sharing information in good faith with Plaintiff Obaugh;
- (c) Refused to take action which would have otherwise have led to entering into a definitive contract for Eric Obaugh to purchase the "Elliott Chevrolet Cadillac" assets;
- (d) Entered into negotiations with Defendants David L. Weimer, individually, and Weimer Chevrolet, Inc. to sell assets encompassed in the previous agreements with Plaintiff Obaugh.

(e) Contracted with Defendants David L. Weimer, individually, and Weimer Chevrolet, Inc., to sell assets encompassed in the previous agreements with Plaintiff Obaugh.

(f) Did sell to Defendants David L. Weimer, individually, and/or Weimer Chevrolet, Inc., certain assets encompassed in the previous agreements with Plaintiff Obaugh.

40. As a part of the conspiracy among all the Defendants, Defendants M&T Bank, David L. Weimer, individually, and Weimer Chevrolet, Inc., tortuously interfered with Plaintiff Obaugh's efforts to obtain approval from Chrysler of the transfer of Elliot's Franchise rights to Plaintiff Obaugh.

41. Defendants M&T Bank, David L. Weimer, individually, and Weimer Chevrolet, Inc., William Elliott, Augusta Automotive, LLC, Elliott Chevrolet, Inc., and Elliott & Elliot, LLC combined, associated, agreed, mutually undertook and concerted together without lawful justification for the purpose of willfully and maliciously injuring Plaintiff Obaugh in his business, by preventing the consummation of Plaintiff Obaugh's acquisition of the franchise rights, business assets and real estate of the Chevrolet and Cadillac Franchise Dealership in Staunton formerly known as "Elliott Chevrolet Cadillac" in Staunton, and the Chrysler Franchise Dealership in Staunton formerly known as "Elliott Chrysler Dodge Jeep ram" in Staunton.

42. As a result of these concerted actions by M&T Bank, David L. Weimer, individually, and Weimer Chevrolet, Inc., William Elliott, Augusta Automotive, LLC, and Elliott Chevrolet, Inc., Plaintiff Obaugh has been damaged by his loss of contract rights, business expectancies and lost profits, which would have been in excess of \$5,000,000 within the next five years.

COUNT 1 – CONTRACT CLAIM

43. The allegations of Paragraphs 1 through 42 are incorporated by reference and re-alleged as if set out in full.

44. Defendants William Elliott, Augusta Automotive, LLC, and Elliott Chevrolet, Inc. have breached their contractual obligations with Plaintiff Eric Obaugh in that these Defendants:

- (a) Ceased negotiating in good faith with Plaintiff Obaugh;
- (b) Ceased sharing information in good faith with Plaintiff Obaugh;
- (c) Refused to take action which would have otherwise have led to entering into a definitive contract for Eric Obaugh to purchase the “Elliott Chevrolet Cadillac” assets;
- (d) Entered into negotiations with Defendants David L. Weimer, individually, and Weimer Chevrolet, Inc. to sell assets encompassed in the previous agreements with Plaintiff Obaugh.
- (e) Contracted with Defendants David L. Weimer, individually, and Weimer Chevrolet, Inc.; to sell assets encompassed in the previous agreements with Plaintiff Obaugh.
- (f) Did sell to Defendants David L. Weimer, individually, and/or Weimer Chevrolet, Inc., certain assets encompassed in the previous agreements with Plaintiff Obaugh.

45. As a result of these breaches of contract, Plaintiff Obaugh has been damaged by his loss of contract rights, business expectancies and lost profits, which would have been in excess of \$5,000,000 within the next five years.

WHEREFORE, the Plaintiff Obaugh asks the Court to Order:

(1) injunctive relief restraining the Closing of the sale of any assets by Defendants Augusta Automotive, LLC, Elliott Chevrolet, Inc., Elliott & Elliott, LLC, and ET Investments, LLC, to Defendants Weimer Chevrolet, Inc., or any other business entity owned by Defendant David L. Weimer, or any other party other than Plaintiff Obaugh;

(2) an award of damages against Defendants Augusta Automotive, LLC, Elliott Chevrolet, Inc., Elliott & Elliott, LLC, jointly and severally, including compensatory and punitive damages in an amount to be determined, but estimated to be at least \$5 million; and

(3) all other appropriate legal and equitable relief.

**COUNT 2 - TORTIOUS INTERFERENCE WITH CONTRACTS,
BUSINESS RELATIONS AND BUSINESS EXPECTANCIES
OF PLAINTIFF OBAUGH**

46. The allegations of Paragraphs 1 through 45 are incorporated by reference and re-alleged as if set out in full.

47. Defendants M&T Bank, David L. Weimer, individually, and Weimer Chevrolet, Inc., having knowledge of the November 24, 2015 Non-Binding Letter Of Intent, Confidential Information Agreement dated November 25, 2015, and the January 22, 2016 Chrysler Real Estate Purchase And Sale Agreement and the January 22, 2016 Chrysler Asset Purchase Agreement, which were not terminable at will, improperly induced, pressured and persuaded Defendants William Elliott, Augusta Automotive, LLC, Elliott Chevrolet, Inc., and Elliott & Elliot, LLC to breach and/or terminate their agreements with Plaintiff Obaugh, and tortuously interfered with Plaintiff Obaugh's legitimate business expectancies. These business expectancies would have been realized by Plaintiff Obaugh but for Defendants' conduct.

48. While engaging in the conduct described above, each of Defendants M&T Bank, David L. Weimer, individually, and Weimer Chevrolet, Inc. acted intentionally, willfully, improperly, and purposefully to cause damage and loss of business to Plaintiff Obaugh.

49. The actions of Defendants M&T Bank, David L. Weimer, individually, and Weimer Chevrolet, Inc. have caused, and unless restrained, will continue to cause, Obaugh severe, immediate and irreparable injury, including lost profits, consequential damages, and irreparable injury to its reputation, customer relationships, and goodwill, for which Obaugh has no adequate remedy at law.

50. The actions of Defendants M&T Bank, David L. Weimer, individually, and Weimer Chevrolet, Inc. have caused, and unless restrained, will continue to cause, Obaugh loss and damages, including lost profits from the operations of the Staunton franchises of GM and Chrysler of which, but for the actions of Defendants, Obaugh would have reaped the benefit.

WHEREFORE, the Plaintiff Obaugh asks the Court to Order:

(1) injunctive relief restraining the Closing of the sale of any assets by Defendants Augusta Automotive, LLC, Elliott Chevrolet, Inc., Elliott & Elliott, LLC, and ET Investments, LLC, to Defendants Weimer Chevrolet, Inc., or any other business entity owned by Defendant David L. Weimer, or any other party other than Plaintiff Obaugh;

(2) injunctive relief restraining Defendants M&T Bank, David L. Weimer, individually, and Weimer Chevrolet, Inc. from further tortious behavior;

(3) an award of damages, including compensatory and punitive damages in an amount to be determined, but estimated to be at least \$5 million; and

(4) all other appropriate legal and equitable relief.

COUNT 3 - STATUTORY AND COMMON LAW CIVIL CONSPIRACY
(By Plaintiff Against All Defendants)

51. The allegations of Paragraphs 1 through 50 are incorporated by reference and re-alleged as if set out in full.

52. The Virginia Civil Conspiracy Act. Virginia Code §18.2-499, *et seq.*, provides:

18.2-499. Combinations to injure others in their reputation, trade, business or profession

A. Any two or more persons who combine, associate, agree, mutually undertake or concert together for the purpose of (i) willfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever or (ii) willfully and maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act, shall be jointly and severally guilty of a Class 1 misdemeanor. Such punishment shall be in addition to any civil relief recoverable under § 18.2-500.

B. Any person who attempts to procure the participation, cooperation, agreement or other assistance of any one or more persons to enter into any combination, association, agreement, mutual understanding or concert prohibited in subsection A of this section shall be guilty of a violation of this section and subject to the same penalties set out in subsection A.

53. Virginia Code §18.2-500 provides:

§ 18.2-500. Same; civil relief; damages and counsel fees; injunctions.

A. Any person who shall be injured in his reputation, trade, business or profession by reason of a violation of § 18.2-499, may sue therefor and recover three-fold the damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff's counsel, and without limiting the generality of the term, "damages" shall include loss of profits.

B. Whenever a person shall duly file a civil action in the circuit court of any county or city against any person alleging violations of the provisions of § 18.2-499 and praying that such party defendant be restrained and enjoined from continuing the acts complained of, such court shall have jurisdiction to hear and determine the issues

involved, to issue injunctions pendente lite and permanent injunctions and to decree damages and costs of suit, including reasonable counsel fees to complainants' and defendants' counsel.

54. The Defendants' concerted actions, as described above, violated Virginia's common law of conspiracy and the Virginia Civil Conspiracy Act, Va. Code § 18.2-499, *et seq.*, and Plaintiff Obaugh has been damaged as a result.

WHEREFORE, Plaintiff Eric Obaugh respectfully requests that the Court:

(a) Enjoin the Closing of the sale of any assets by Defendants Augusta Automotive, LLC, Elliott Chevrolet, Inc., and Elliott & Elliott, LLC to Defendants Weimer Automotive, Inc., or any other business entity owned by Defendant David L. Weimer, or any other party other than Plaintiff Eric Obaugh.

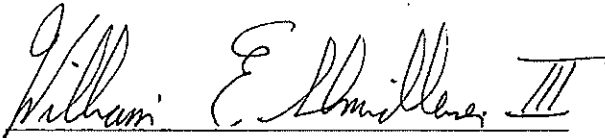
(b) Enter Judgment against Defendants Manufacturers & Traders Trust Company, doing business as "M&T Bank" ("M&T Bank"), David L. Weimer, individually, and Weimer Chevrolet, Inc., William J. Elliott, IV, individually, Augusta Automotive, LLC, Elliott Chevrolet, Inc., and Elliott & Elliott, LLC, jointly and severally, in an amount to be determined at trial but estimated to be in excess of \$5,000,000, plus treble damages, costs and reasonable attorneys' fees.

DEMAND FOR TRIAL BY JURY

The Plaintiff hereby demands a trial by jury of all claims so triable.

Respectfully submitted this 18th day of March, 2016.

ERIC OBAUGH
By Counsel

A handwritten signature in cursive script, reading "William E. Shmidheiser, III". The signature is written in dark ink and is positioned above a horizontal line.

William E. Shmidheiser, III (VSB 19047)

Andrew S. Baugher (VSB 74663)

Of Lenhart Pettit

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P. O. Box 1287

Harrisonburg, VA 22803

(540) 437-3137

(540) 437-3101 FAX

wes@lplaw.com

asb@lplaw.com

Counsel for Plaintiff Eric Obaugh

CERTIFICATE

I hereby certify that I mailed and/or emailed a true copy of the foregoing pleading this 18th day of March, 2016, to:

Manufacturers & Traders Trust Company d/b/a "M&T Bank"
c/o Corporation Service Company
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Richmond, Virginia 23219

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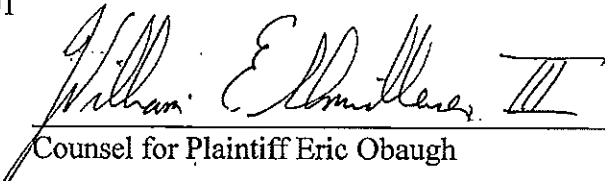
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Wharton, Aldhizer & Weaver
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Staunton, Virginia 24401
By Mail and email: smilo@wawlaw.com

Elliott & Elliott, LLC
c/o John C. Wirth, its Registered Agent
12 North New Street
Staunton, VA 24401


Counsel for Plaintiff Eric Obaugh

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VALIDATE CASE PAPERS
RCPT : 16000001819
DATE : 03/18/16 TIME: 13:45
CASE : 790CL16000135-00
ACCT : OBAUGH, ERIC
AMT. : \$356.00