

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

RAINES IMPORTS, INC., d/b/a  
LESTER RAINES HONDA, a West Virginia  
Corporation,

Plaintiff,

v.

Civil Action No. 06-C-1422  
Judge Charles E. King, Jr.

AMERICAN HONDA MOTOR  
COMPANY, INC., a California  
Corporation,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT**

On the 21<sup>st</sup> day of March, 2007, came the Plaintiff, by and through Lester Raines, in person and by counsel, David Barnette, and the Defendant, by counsel, Mychal Schulz and John Sullivan, for consideration of Defendant's Amended and Supplemental Motion for Summary Judgment and/or Dismissal.

After carefully reviewing the Defendant's motion, the Plaintiff's response, the parties' memoranda of law, and pertinent legal authority and hearing the arguments of counsel, this Court has concluded the Defendant's motion should be granted.

**Findings of Fact**

1. Plaintiff, Raines Imports, Inc., operates an automobile dealership located in South Charleston, West Virginia.
2. Defendant, American Honda Motor Company, Inc., is in the business of manufacturing Honda automobiles which are among the makes of vehicles sold and leased by the



Plaintiff.

3. In a letter dated May 24, 2006, Defendant advised Plaintiff, as a courtesy, that the Defendant was planning to locate another Honda franchise in the "South Charleston area". This letter further indicated that no exact location for this new franchise had been determined.

4. In a letter dated July 19, 2006, Plaintiff objected to the Defendant's letter and indicated that Plaintiff had construed the May 24, 2006 letter as a written notice pursuant to West Virginia Code Section 17A-6A-12(2). West Virginia Code Section 17A-6A-12(2) provides:

Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line-make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line-make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

5. On July 20, 2006, Plaintiff filed a complaint for declaratory judgment pursuant to West Virginia Code Section 17A-6A-12(3) in the Circuit Court of Kanawha County. Under this subsection, a new motor vehicle dealer may bring a declaratory judgment action to determine whether good cause exists for the opening of the proposed new motor vehicle dealer within the established dealer's relevant market area. West Virginia Code Section 17A-6A-3(14) defines "relevant market area" as the area located within a fifteen (15) air-mile radius around an existing same line-make new motor vehicle dealership.

6. In a letter dated July 27, 2006, Defendant, without knowledge of the pending lawsuit, responded to Plaintiff's July 19, 2006 letter. In its response, the Defendant stated the May 24, 2006 letter was not a notice pursuant to West Virginia Code Section 17A-6A-12(2);

restated that the location for the new dealership had not been determined; advised Plaintiff that the Defendant did not anticipate the new dealership would be within the Plaintiff's relevant market area and advised Plaintiff that if the Defendant decided to locate the new dealership within the Plaintiff's relevant market area, the Defendant would send Plaintiff notice pursuant to West Virginia Code Section 17A-6A-12(2).

7. On August 21, 2006, Defendant removed this action to United States District Court for the Souther District of West Virginia.

8. On December 12, 2006, the Honorable David A. Faber remanded this action to the Circuit Court of Kanawha County, West Virginia.

9. Defendant has recently decided on the location for the new dealership. The site for the new dealership is located more than 15 air-miles from the location of the Plaintiff's existing dealership.

#### Conclusions of Law

1. Standing is defined as party's right to make a legal claim to seek judicial enforcement of a duty or right. *Findley v. State Farm Mutual Automobile Insurance Company*, 213 W.Va. 80, 576 S.E.2d 807 (2003).

2. Defendant's letter of May 24, 2006, to Plaintiff did not constitute notice pursuant to West Virginia Code Section 17A-6A-12(2).

3. Because Defendant's letter of May 24, 2006 to Plaintiff did not constitute notice pursuant to West Virginia Code Section 17A-6A-12(2), Plaintiff does not have standing to bring its claim against Defendant.

4. The standard for granting motions for summary judgment has been stated by the

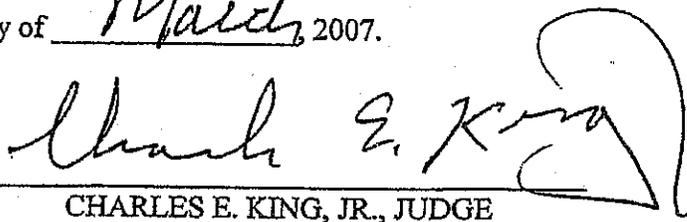
West Virginia Supreme Court of Appeals as “[a] motion for Summary Judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of law.” *Williams v. Precision Coal, Inc.*, 194 W.Va. 52, 59, 459 S.E.2d 329, 336 (1995), quoting Syllabus Point 1, *Andrik v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992), quoting Syllabus Point 3, *Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963). In following this standard, this Court finds that there is no genuine issue of fact to be tried in this matter.

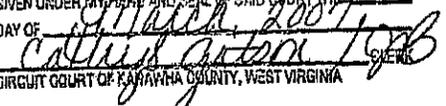
WHEREFORE, this Court does hereby **ORDER** that the Defendant’s Amended and Supplemental Motion for Summary Judgment and/or Dismissal is **GRANTED**.

The Court does **FURTHER ORDER** that a certified copy of this Order be sent to all parties or counsel of record.

The Court notes the objection and exception of the party aggrieved by this Order.

Entered this 26<sup>TH</sup> day of March, 2007.

  
CHARLES E. KING, JR., JUDGE

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 27<sup>th</sup>  
DAY OF March, 2007  
  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA