

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

Quan-En Yang

Plaintiff

V.

G&C Gulf, Inc.  
And  
Glenn W. Cade, Jr.

Civil Action No. 403885-V  
Track VI  
Judge Ronald B. Rubin  
Specially Assigned

Defendants

MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT

Comes Now Defendant Glenn W. Cade, Jr. (herein "Defendant Cade"), by his attorney, Fredric J. Einhorn, Esquire, and pursuant to Maryland Rule 2-311(b)(2) moves to dismiss all counts of the FIRST AMENDED CLASS ACTION COMPLAINT (herein "First Amended Complaint") filed by Plaintiff Quan-En Yang (herein "Plaintiff"). In support hereof, Defendant Cade refers the Court to the MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT.

WHEREFORE, for the reasons stated above and in the MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT, Defendant Glenn W. Cade, Jr., prays that the Court dismiss the FIRST AMENDED CLASS ACTION COMPLAINT filed by Plaintiff Quan-En Yanh and that judgment be entered in favor of Defendant Glenn W. Cade, Jr.

Respectfully Submitted,

  
\_\_\_\_\_  
Fredric J. Einhorn, Esquire

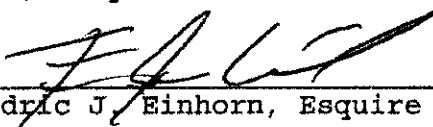
27 West Jefferson Street  
Suite 204  
Rockville, Maryland 20850  
(301) 762-5400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8 day of SEPT, 2015,  
a true copy of the foregoing was send by electronic mail and  
first-class mail (postage prepaid) to:

Richard S. Gordon, Esquire  
Gordon, Wolf & Carney, Chtd.  
102 West Pennsylvania Avenue, Suite 402  
Baltimore, Maryland 21204

Ronald S. Canter, Esquire  
200A Monroe Street, Suite 104  
Rockville, Maryland 20850

  
\_\_\_\_\_  
Fredric J. Einhorn, Esquire

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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Plaintiff

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Civil Action No. 403885-V  
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DEFENDANT GLENN W. CADE, JR.'S MEMORANDUM OF POINTS AND  
AUTHORITRES IN SUPPORT OF HIS MOTION TO DISMISS FIRST AMENDED  
CLASS ACTION COMPLAINT

Comes Now Defendant Glenn W. Cade, Jr. (herein "Defendant Cade"), by his attorney, Fredric J. Einhorn, Esquire, and states as follows in support of his MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT (herein "Amended Complaint") filed by Plaintiff Quan-En Yang (herein "Plaintiff").

A.  
DEFENDANT CADE'S ADOPTION BY REFERENCE OF DEFENDANT G&C GULF,  
INC.'S DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITRES IN  
SUPPORT OF ITS MOTION TO AMEND DISMISS COMPLAINT (SIC)

Pursuant to Maryland Rule 2-303(d), Defendant Cade adopts herein by reference and verbatim Defendant G&C Gulf, Inc.'s DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITRES IN SUPPORT OF ITS MOTION TO MOTION TO AMEND DISMISS COMPLAINT (sic) filed at Docket Entry 60.

B.  
LEGAL STANDARD ON MOTION TO DISMISS

In Advance Telecom Process LLC v. DSFEDERAL, Inc., No. 1371, Sept. Term, 2014, Decided July 30, 2015 (2015 Md.App. LEXIS 100), the Court of Special Appeals stated:

"A trial court may grant a motion to dismiss if, when assuming the truth of all well-pled facts and allegations in the complaint and any inferences that may be drawn, and viewing those facts in the light most favorable to the non-moving party, "the allegations do not state a cause of action for which relief may be granted." Latty v. St. Joseph's Society of the Sacred Heart, Inc., 198 Md.App. 245, 262-63 (2001) quoting RRC Northeast, LLC v. BAA Md., Inc., 413 Md 638, 643 (2010). The facts set forth in the complaint must be "pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." RCC, 413 Md. at 644."

In Arfaa v. Martino, 404 Md. 364 (2008), the Court Of Appeals reiterated its statement in Lloyd v. General Motors Corp., 397 Md. 108, 121-122 (2007).

"Mere conclusory charges that are not factual allegations my not be considered. Morris, supra, 340 Md. at 531, 667 A.2d at 631, Faya v. Almaraz, 329 Md. 435, 620 A.2d 327, 331 (1993)."

In Morris v. Osmose Wood Preserving, 340 Md. 519, 531 (1995), the Court Of Appeals stated:

"We do not consider, however, merely conclusory allegations that are not factual allegations. Faya, supra, 329 Md. at 444, 620 A.2d A.2d 327; Berman v. Karvounis, 308 Md. 259, 265, 518 A.2d 726 (1987).

In A.J. Decoster Co. v. Westinghouse, 333 Md. 245, 249 (1994), the Court Of Appeals stated:

"Dismissal is proper only if the facts alleged fail to state cause of action. Faya v. Almaraz, 329 Md. 435, 443, 620 A.2d 327 (1993); Sharrow v. State Farm Mutual, 306 Md 754, 768, 511 A.2d 492 (1986).

In Flaherty v. Weinberg, 303 Md. 116, 136 (1985) - a case decided when demurrers challenged the sufficiency of a declaration - the Court Of Appeals stated:

"In considering the sufficiency of a declaration on demurrer, we are required to accept as true all well-

pleaded material facts in the declaration and exhibits thereto as well as any reasonable inferences that may be drawn therefrom. Tadjer v. Montgomery County, 300 Md. 539, 542, 479 A.2d 1321, 1322 (1984)."

In Ungar v. State, 63 Md.App. 472, 479 (1985) - another case decided when demurrers challenged the sufficiency of a declaration - the Court Of Special Appeals stated:

"At the threshold, we acknowledge that Ungar has cited the appropriate test to be used to review the propriety of the grant or denial of a demurrer; well pleaded allegations of fact contained in the complaint are taken as true and the complaint should not be dismissed unless it appears that no set of facts can be proven in support of the claim set forth therein. Nistico v. Mosler Safe Co., 43 Md.App. 361 405 A.2d 340 (1979), Baltimore Import Car Service & Storage, Inc. v. Maryland Port Auth., 258 Md. 335, 65 A.2d 866 (1970)."

C.  
AS TO ALL COUNTS  
NO ALLEGATIONS OF FACT AS TO DEFENDANT CADE

Paragraph 6 of the First Amended Complaint states:

"6. G&C is a Maryland corporation, with its principal place of business in Montgomery County, Maryland. G&G is engaged in the daily business of towing vehicles without the permission of the vehicle owners from private parking lots in the state of Maryland. Glenn W. Cade, Jr. is the sole owner of G&G, and personally established, authorized, and enacted the policies of G&G described in this Complaint; he further inspired, participated in, and cooperated in the violations of the law alleged in this Complaint. Mr. Cade disregarded the corporate form of G&G, and failed to observe the corporate entity, operating the business and dealing with the corporation's property as if it were his own."

Plaintiff has not plead facts alleging that Defendant Cade had any contact(s) whatsoever with Plaintiff before, on or after December 12, 2014.

Plaintiff has not plead facts alleging that Defendant Cade

had any contact(s) whatsoever with the vehicles of Plaintiff and the Class before, on or after December 12, 2014.

Plaintiff has not plead facts to support its conclusory statement that Defendant Cade "inspired, participated in, and cooperated in the violations of the law alleged in this Complaint".

Plaintiff has not plead any facts to support its conclusory statement that Defendant Cade "disregarded the corporate form of G&G, and failed to observe the corporate entity, operating the business and dealing with the corporation's property as if it were his own."

Plaintiff's conclusory statements do not suffice to state a claim against Defendant Cade. See: RRC Northeast, LLC v. BAA Md., Inc., 413 Md 638, 643 (2010).

Plaintiff has not plead fraud.

Plaintiff's attempt to impose personal liability on Defendant Cade fails as a matter of law. Tedrow v. Deskin, 265 Md. 546 (1972); Roger Schlossberg, Chapter 7 Trustee v. Bell Builders Remodeling, Inc., 441 Md. 671 (2015); Hildreath v. Tidewater Equipment Co., 378 Md. 724 (2003).

D.  
COUNT I

Pursuant to Maryland Rule 2-303(d), Defendant Cade hereby adopts by reference and verbatim and in its entirety SECTION C. hereinabove.

E.  
COUNT II  
SUPPLEMENT TO DEFENDANT G&C'S ARGUMENT A. ON PAGES 4 THROUGH 8  
OF G&C'S MEMORANDUM

Pursuant to Maryland Rule 2-303(d), Defendant Cade hereby adopts by reference and verbatim and in its entirety SECTION C. hereinabove.

Defendant G&C had the statutory right to receive payment of the charges before a vehicle owner can redeem a towed vehicle.

Chapter 30C. Motor Vehicle Towing and Immobilization on Private Property of the Montgomery County Code contains the following provisions.

Sec. 30C-1. Definitions; scope; purpose.

(a) Definitions. As used in this Chapter, unless the context indicates otherwise:

\* \* \*

(3) Redemption area means any area or building where a vehicle owner may pay any charges necessary to redeem a vehicle.

Sec. 30C-8. Redemption and storage procedures.

(a) Storage of towed vehicles. A property owner must have an authorized vehicle towed to a storage site that complies with the following conditions:

\* \* \*

(5) The storage site must remain open for redemption of vehicles at least 2 hours after the completion of the last tow.

(b) Payment and promise to pay.

(1) Cash payment. A trespass towing service must accept payment in cash, or by a

traveler's check accompanied by reasonable identification.

(2) Options.

a. Each trespass towing service must accept as full payment either a credit card slip or a personal check, at the option of the towing service, validly signed by the vehicle owner or the owner's agent for the amount of all valid charges.

b. Each trespass towing service must notify the Department on the rate schedule filed under section 30C-3 whether it opts to accept credit cards or personal checks or both. The towing service must notify the Department if it changes that option.

c. The option chosen by a trespass towing service must be available to the owners of all vehicles towed by the service without the consent of their owners.

(3) Credit card options.

a. Each trespass towing service must accept the 2 most widely used major credit cards. The Department must define in regulations under method (2), which major credit cards are the 2 most widely used.

b. In addition, if trespass towing service accepts any other credit card for any other purpose, it must accept that credit card under this Chapter.

(4) Personal check option. A trespass towing service must, if it does not accept the 2 most widely used credit cards under subsection (c)(3), accept a personal check, with reasonable identification, if the vehicle is registered in Maryland.

(5) Withholding payment. If:

a. the vehicle owner withholds payment in a credit card transaction with a towing service under this Chapter: and

b. A court in any subsequent civil action finds that the tow was valid and the



amount charged was correct; the vehicle owner must pay the towing service, in addition to the amount validly charged, liquidated damages of 2 times the amount validly charged (but not more than \$1,000.00) and all reasonable costs of collection, including court costs and a reasonable attorney's fee.

(6) Stopping payment. If:

a. The vehicle owner stops payment written to a towing service under this chapter;

b. The towing service follows the procedures in state law for collection of dishonored checks; and

c. A court in any subsequent civil action finds that the tow was valid and the amount charged was correct; the vehicle owner must pay the towing service, in addition to the amount validly charged, liquidated damages of 2 times the amount validly charged (but not more than \$1,000.00) and a collection fee of \$25.00.

(7) Applicability. This subsection applies to payment of any charges arising from the towing or storage of a vehicle without the owner's consent, and to payment for an incomplete tow.

\* \* \*

(e) Receipt. Upon receiving payment, a towing service must furnish the vehicle owner a receipt on a form approved by the Department. The receipt must:

(1) Record the amount paid to redeem the vehicle, the actions for which the vehicle owner paid, and the date and time of the redemption.

The above provisions of Chapter 30C. require that the vehicle owner first pay "the charges necessary to redeem" his vehicle in order to redeem his vehicle, thus authorizing the towing service to require payment of the charges before it releases the vehicle to the owner.

Sec. 30C-1.(a) (3) states that the redemption area is any area or building where a vehicle owner may pay any charges "necessary to redeem a vehicle".

Sec. 30C-8. states "Upon receiving payment, a towing service must furnish the vehicle owner a receipt on a form approved by the Department" and that the receipt must "Record the amount paid to redeem the vehicle, the actions for which the vehicle owner paid, and the date and time of the redemption."

It is clear from the provisions of Chapter 30C. that the vehicle owner redeems his vehicle by the payment of the charges "necessary to redeem" his vehicle.

It is clear from the provisions of Chapter 30C. what forms of payment the towing service must accept from a vehicle owner for payment of the charges "necessary to redeem a vehicle".

It is clear from the provisions of Chapter 30C. that the receipt to be furnished to the owner by the towing service must record the "amount paid to redeem the vehicle"; the use of the word "paid" - the past tense of pay - means that the amount "necessary to redeem a vehicle" has been received by the towing service and it is giving the receipt to acknowledge its having received that amount.

F.  
COUNT III

Pursuant to Maryland Rule 2-303(d), Defendant Cade hereby adopts by reference and verbatim and in its entirety SECTION C. hereinabove.

G.  
COUNT IV  
SUPPLEMENT TO DEFENDANT G&C'S ARGUMENT B. ON PAGES 8 THROUGH 12  
OF G&C'S MEMORANDUM

Pursuant to Maryland Rule 2-303(d), Defendant Cade hereby adopts by reference and verbatim and in its entirety SECTION C. hereinabove.

H.  
COUNT V  
SUPPLEMENT TO DEFENDANT G&C'S ARGUMENT C. ON PAGE 12 OF G&C'S  
MEMORANDUM

Pursuant to Maryland Rule 2-303(d), Defendant Cade hereby adopts by reference and verbatim and in its entirety SECTION C. hereinabove.

SECTION I.  
COUNT VI  
SUPPLEMENT TO DEFENDANT G&C'S ARGUMENT D. ON PAGE 13 OF G&C'S  
MEMORANDUM

Pursuant to Maryland Rule 2-303(d), Defendant Cade hereby adopts by reference and verbatim and in its entirety SECTION C. hereinabove.

SECTION J.  
COUNT VII  
SUPPLEMENT TO DEFENDANT G&C'S ARGUMENT E. ON PAGE 14 OF G&C'S  
MEMORANDUM

Pursuant to Maryland Rule 2-303(d), Defendant Cade hereby adopts by reference and verbatim and in its entirety SECTION C and SECTION D hereinabove.

SECTION K.  
COUNT VIII (CONVERSION) AND COUNT VIII (TRESPASS TO CHATTELS)  
SUPPLEMENT TO DEFENDANT G&C'S ARGUMENT F. ON PAGE 15 OF G&C'S  
MEMORANDUM

Pursuant to Maryland Rule 2-303(d), Defendant Cade hereby adopts by reference, verbatim and in its entirety SECTION C and

SECTION D hereinabove.

SECTION L.  
COUNT IX  
SUPPLEMENT TO DEFENDANT G&C'S ARGUMENT G. ON PAGES 15 AND 16 OF  
G&C'S MEMORANDUM

Pursuant to Maryland Rule 2-303(d), Defendant Cade hereby adopts by reference, verbatim and in its entirety SECTION C and SECTION D. hereinabove.

Plaintiff's allegations of fact admit that his vehicle was an "unauthorized vehicle" as to Walgreens's under Sec. 30C-1.(a)(8), meaning, a motor vehicle which Walgreen's as the "property owner" under 30C-1.(a)(2) has not consented to have parked on its property.

Plaintiff has alleged:

23. On December 12, 2014, Dr. Yang travelled to Rockville, Montgomery County from his home in Frederick County. While in Rockville, he drove to and parked in a space outside Walgreen's Pharmacy, which is located at 430 Hungerford Drive, Rockville, Maryland 20850 ("Walgreen's").

24. On that day, Dr. Yang parked outside Walgreen's ("Walgreen's Parking Lot") so that he could go into Walgreen's to purchase something to eat.

25. G&G has a contract or agreement with Walgreen's that provides that G&G will tow and store unauthorized vehicles from Walgreen's Parkinmg Lot.

26. December 12, 2014, was particularly cold, with the temperature hovering around freezing, and snow falling. Although it was cold, Dr. Yang left his coat in the car because he did not plan to be outside for long - only long enough to travel between his vehicle and the store.

27. Before going into Walgreen's, however, Dr. Yang briefly went to a grocery store he was familiar with - directly across the street from Walgreen's Parking Lot - to use the rest room. This took

approximately five minutes.

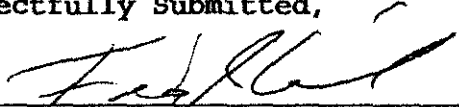
28. Dr. Yang then immediately returned to Walgreen's where he purchased a package of cookies.

29. When Dr. Yang exited Walgreen's he noticed his car was missing.

Plaintiff has not alleged - nor can he allege - that Plaintiff was a prospective purchaser, lessee or recipient of consumer good, consumer realty, or consumer credit from Defendant G&G; thus, as to Defendant Cade, Plaintiff has not alleged a factual basis for Plaintiff being within the definition of "consumer" under the Maryland Consumer Protection Act. Maryland Consumer Protection Act, Section 13-101(c)(1), Commercial Law Article, Annotated Code Of Maryland.

WHEREFORE, for the reasons stated above, Defendant Glenn W. Cade, Jr., prays that the Court dismiss the FIRST AMENDED CLASS ACTION COMPLAINT filed by Plaintiff Quan-En Yanh and that judgment be entered in favor of Defendant Glenn W. Cade, Jr.

Respectfully Submitted,



Fredric J. Einhorn, Esquire  
27 West Jefferson Street  
Suite 204  
Rockville, Maryland 20850  
(301) 762-5400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8 day of SEP., 2015, a true copy of the foregoing was send by electronic mail and first-class mail (postage prepaid) to:

Richard S. Gordon, Esquire  
Gordon, Wolf & Carney, Chtd.  
102 West Pennsylvania Avenue, Suite 402  
Baltimore, Maryland 21204

Ronald S. Canter, Esquire  
200A Monroe Street, Suite 104  
Rockville, Maryland 20850

  
\_\_\_\_\_  
Fredric J. Einhorn, Esquire