

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WHEELS AMERICA LI WHEEL REPAIR, LLC	:	
d/b/a FIXRIM MOBILE WHEEL REPAIR,	:	
	:	
Plaintiff,	:	CIVIL CASE NO.
	:	
-against-	:	
	:	JURY TRIAL
LKQ CORPORATION AND WHEEL FIX IT	:	DEMANDED
CORP.,	:	
	:	
Defendants.	::	
	:	
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Plaintiff's Original Complaint

Plaintiff Wheels America LI Wheel Repair, LLC d/b/a FixRim Mobile Wheel Repair ("FixRim") files this Declaratory Judgment Action pursuant to 28 U.S.C. §§ 2201 and 2202 seeking a declaration that the covenant not to compete included in an asset purchase agreement between Wheels America New York. Ltd. ("WANY") and Wheel Fix It Corp. ("WFI") is unenforceable against FixRim because FixRim was not a party to the agreement nor is it a successor to WANY. FixRim also seeks a declaration that the covenant is invalid and unenforceable because it violates the Sherman Antitrust Act, New York's Donnelly Act, and New York common law.

Parties

1. Plaintiff FixRim is a New York limited liability company.
2. On information and belief, Defendant LKQ Corporation ("LKQ") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.

3. On information and belief, Defendant Wheel Fix It Corp. (“WFI”) is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 55 St. Mary’s Place, Freeport, New York 11520.

Jurisdiction and Venue

4. This Court has jurisdiction over the subject matter pursuant to 15 U.S.C. § 4 and 28 U.S.C. § 1331 because the claims stated herein arise under 15 U.S.C. § 1. For any claims over which the Court does not have original jurisdiction pursuant to § 1, if any, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1367(a).

5. This Court has personal jurisdiction over WFI because, among other things, it is a New York corporation with its principal place of business in Freeport, New York. This Court has personal jurisdiction over LKQ because it maintains continuous and systematic contacts with the Eastern District of New York. Moreover, as described in greater detail below, LKQ has engaged in anticompetitive conduct that is the subject of FixRim’s claims within the Eastern District of New York.

6. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. 1391(b).

Factual Background

7. On information and belief, Defendant LKQ is the largest U.S. provider of alternative collision replacement parts for the repair of automobiles and other vehicles. On information and belief, LKQ runs more than 500 facilities, including operations in the United Kingdom, the Benelux, France, Canada, Mexico, and Central America.

8. On information and belief, Defendant WFI is a subsidiary of LKQ that operates a wheel repair business located in Freeport, New York. According to WFI's website, WFI is the Northeast's leading wheel repair and factory wheel warehouse.

9. FixRim is preparing to open a fixed wheel repair facility in Westbury, New York in April 2014.

10. On March 21, 2014, an attorney purporting to represent LKQ and WFI sent a letter to the following addressee: Robert Stretch, President, c/o Wheels America, 3380 Mint Way, Dallas, Texas, 75236. Counsel for LKQ and WFI identified a "Covenant Not to Compete contained in Paragraph 6 of the Asset Purchase Agreement of July 16, 2010, between Wheel Fix It and Wheels America." A true and correct copy of the letter dated March 21, 2014 is attached hereto as Exhibit A and is incorporated herein by reference.

11. Counsel stated in his March 21 correspondence that LKQ and WFI had become aware that "Wheels America intends to open a fixed location wheel repair facility in Westbury, NY (Nassau County) and is progressing towards doing so." *See* Ex. A. Counsel then demanded that "Wheels America immediately cease and desist from all activities relating to the opening of a fixed location wheel repair facility in Westbury, NY (Nassau County) or anywhere else prohibited by the Agreement" because such activities would be in violation of the covenant not to compete. *See id.*

12. The July 16, 2010 Asset Purchase Agreement is between Defendant WFI and non-party WANY. A true and correct copy of the Asset Purchase Agreement is attached hereto as Exhibit B and is incorporated herein by reference.

13. The covenant not to compete in the Asset Purchase Agreement states, in full:

In order to protect [WFI's] investment in the Assets subject to the Sale governed by this Agreement, [WANY] (or any successor of [WANY]) agrees not to engage

in the business of fixed location wheel repair and agrees not to operate a fixed location wheel repair facility in Nassau, Suffolk, Westchester or Rockland Counties in New York State, or the five boroughs of New York City for a period of seven years from the date of this Agreement. However, [WANY] (or any successor of [WANY]) may engage in the business of mobile wheel repair or may operate mobile wheel repair facilities within Nassau, Suffolk, Westchester and Rockland Counties in New York State, and the five boroughs of New York City without restriction.

See Ex. B.

14. FixRim was not a party to the Asset Purchase Agreement.

15. WANY ceased operating as a business concern anywhere in 2010. FixRim was formed in December 2013—approximately three and a half years after the Asset Purchase Agreement was executed. For this and other reasons, FixRim is not a successor to WANY.

Causes of Action

Count 1: Declaratory Judgment – Sherman Antitrust Act

16. FixRim repeats and realleges the preceding paragraphs as if fully set forth herein.

17. FixRim brings this action for declaratory judgment of the invalidity and unenforceability against FixRim of the covenant not to compete contained in the Asset Purchase Agreement under the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*

18. LKQ and WFI have asserted “Wheels America” is in violation of the covenant not to compete. FixRim denies “Wheels America” is in violation of the covenant or that the covenant is enforceable against FixRim, and it contends the covenant is invalid.

19. FixRim asserts that the non-compete clause is an unreasonable restraint of trade in violation of 15 U.S.C. § 1 given, among other things, the seven-year restriction on competition in relation to the scope of the relevant product market, the lack of goodwill transferred as part of the July 16, 2010 Asset Purchase Agreement, the public interest, LKQ’s relationship to WFI occurring after execution of the Asset Purchase Agreement, and LKQ’s market power.

20. FixRim also asserts that the non-compete clause is an attempt to monopolize in violation of 15 U.S.C. § 2. LKQ and WFI have engaged in anti-competitive conduct with a specific intent to monopolize as evidenced by its attempted enforcement of the covenant not to compete. Further, on information and belief, LKQ and WFI possess sufficient market power to create a dangerous probability of achieving monopoly power in the wheel repair markets within, at least, Nassau County.

21. An actual, present, and justiciable controversy has arisen between FixRim, LKQ, and WFI concerning whether the Sherman Antitrust Act prohibits the enforcement of the covenant not to compete contained in the Asset Purchase Agreement. Thus, the facts evince a substantial controversy between the parties having adverse legal interests.

22. FixRim therefore seeks a declaratory judgment from this Court that the covenant not to compete contained in the Asset Purchase Agreement is invalid and unenforceable as to FixRim as an unreasonable restraint on trade in violation of §§ 1 and 2 of the Sherman Antitrust Act.

Count 2: Declaratory Judgment – New York’s Donnelly Act

23. FixRim repeats and realleges the preceding paragraphs as if fully set forth herein.

24. FixRim brings this action for declaratory judgment of the invalidity and unenforceability of the covenant not to compete contained in the Asset Purchase Agreement under the Donnelly Act, N.Y. Gen. Bus. L. § 340, *et seq.*

25. FixRim asserts the non-compete clause is an unreasonable restraint of trade and attempt to monopolize in violation of N.Y. Gen. Bus. L. § 340.

26. An actual, present, and justiciable controversy has arisen between FixRim, LKQ, and WFI concerning whether New York’s Donnelly Act prohibits the enforcement of the

covenant not to compete contained in the Asset Purchase Agreement. Thus, the facts evince a substantial controversy between the parties having adverse legal interests.

27. FixRim therefore seeks a declaratory judgment from this Court that the covenant not to compete contained in the Asset Purchase Agreement is invalid and unenforceable as to FixRim as an unreasonable restraint on trade and attempt to monopolize in violation of the Donnelly Act, N.Y. Gen. Bus. L. § 340, *et seq.*

Count 3: Declaratory Judgment – Covenant not to Compete Invalid under New York Law

28. FixRim repeats and realleges the preceding paragraphs as if fully set forth herein.

29. FixRim brings this action for declaratory judgment of the invalidity and unenforceability of the covenant not to compete contained in the Asset Purchase Agreement under New York common law.

30. FixRim asserts the covenant not to compete contained in the Asset Purchase Agreement is invalid under New York state law as it does not protect a legitimate business interest and is unreasonable.

31. An actual, present, and justiciable controversy has arisen between FixRim, LKQ, and WFI concerning whether the covenant not to compete contained in the Asset Purchase Agreement is valid under New York common law. Thus, the facts evince a substantial controversy between the parties having adverse legal interests.

Count 4: Declaratory Judgment – Asset Purchase Agreement not Applicable to FixRim

32. FixRim repeats and realleges the preceding paragraphs as if fully set forth herein.

33. Upon information and belief, FixRim is not in violation of the covenant not to compete contained in the Asset Purchase Agreement and is under no obligation to cease and desist its activities related to the opening of its Westbury location.

34. The non-compete covenant applies to WANY or any successor of WANY. FixRim asserts it is not WANY nor is it a successor of WANY.

35. An actual, present, and justiciable controversy has arisen between FixRim, LKQ, and WFI concerning whether, even if the covenant not to compete is valid, it applies to FixRim. Thus, the facts evince a substantial controversy between the parties having adverse legal interests.

36. FixRim therefore seeks a declaratory judgment from this Court that the covenant not to compete contained in the Asset Purchase Agreement is inapplicable to FixRim.

Jury Demand

37. FixRim demands a trial by jury on all issues triable to a jury.

Demand for Judgment or Relief

38. For the foregoing reasons, FixRim respectfully requests the Court enter judgment declaring the covenant not to compete contained in the Asset Purchase Agreement is:

- a. invalid and unenforceable as an unreasonable restraint of trade in violation of 15 U.S.C. § 1;
- b. invalid and unenforceable as an attempted monopolization of trade in violation of 15 U.S.C. § 2;
- c. invalid and unenforceable as an unreasonable restraint and attempted monopolization of trade in violation of N.Y. Gen. Bus. L. § 340;
- d. invalid and unenforceable under New York law as it does not protect a legitimate business interest and its unreasonably limited in time and geographic scope;
- e. invalid and unenforceable against FixRim because it is not a party to the agreement nor is it a successor to a party to the agreement; and

f. Such other and further relief, in law or equity, as may be deemed just and appropriate.

Dated: March 26, 2014

Respectfully submitted,

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