

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

KB INDUSTRIES, INC., an Illinois Corporation, KIMBERLY GANDY, an individual, and ROBERT HOSIER, an individual

Plaintiffs,

v.

MR. APPLIANCE, LLC, a Texas Limited Liability Company, DWYER GROUP, INC., a Delaware Corporation, DWYER FRANCHISING LLC, a Delaware Limited Liability Company, THE DWYER GROUP LLC, a Delaware Limited Liability Company, THE FINANCE STORE, INC., a Nevada Corporation, PROTRADENET, LLC, a Delaware Limited Liability Company, MARK BRUCKBAUER, an individual, and Grey Nguyen, an individual, and John Does,

Defendants.

Case No. 3:16-cv-50202

**TDG DEFENDANTS' MOTION FOR JUDGMENT ON COUNTS I AND VII
OF PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO RULE 12(C)**

Now come Defendants, Mr. Appliance LLC (“Mr. Appliance”), The Dwyer Group, Inc. (“TDG,” improperly named as Dwyer Group, Inc.) (“TDG”), Dwyer Franchising LLC (“Dwyer Franchising”), The Dwyer Group LLC (“Dwyer”), ProTradeNet LLC (“ProTradeNet”), and Mark Bruckbauer (“Bruckbauer”) (collectively the “TDG Defendants”), by and through their attorneys, Faegre Baker Daniels LLP, and move for judgment on Counts I and VII of Plaintiffs’ Amended Complaint pursuant to Rule 12(c). In support of this Motion, the TDG Defendants state as follows:

1. In 2014, Plaintiff Kimberly Gandy contracted with Mr. Appliance to license a Mr. Appliance® Franchise.

2. In their Amended Complaint, KB Industries, Inc., Kimberly Gandy, and Robert Hosier (collectively “Plaintiffs”) allege that The Finance Store and Grey Nguyen (“The Finance Store Defendants”) fraudulently secured financing for their Mr. Appliance franchise, causing them to close their franchise and suffer certain economic losses. Because The Finance Store was a “preferred vendor” of ProTradeNet, a network of vendors owned by TDG, Plaintiffs allege that the TDG Defendants are also to blame for the closure of their Mr. Appliance Franchise.

3. Pursuant to the franchise agreement that governs Plaintiffs’ relationship with the TDG Defendants all state law claims are governed by Texas Law.

4. In Counts I and VII of the Amended Complaint, Plaintiffs allege that the TDG Defendants negligently recommended (or endorsed) that they explore the services of The Finance Store Defendants. Plaintiffs seek economic damages for injuries they allegedly incurred as a result of the TDG Defendants’ alleged negligence.

5. Under Texas law (as under Illinois law), the economic loss rule bars parties to a commercial transaction from recovering for economic losses based on a theory of negligence, regardless of whether either party can sustain a claim for breach of contract.

6. Further, though framed as negligent misrepresentation, Count I of Plaintiffs’ Amended Complaint alleges that the TDG Defendants negligently induced Plaintiffs to enter into a franchise agreement with TDG. Negligent inducement, however, is not a recognized cause of action under Texas law.

7. Accordingly, Counts I and VII of Plaintiffs Amended Complaint fail as a matter of law.

WHEREFORE, the TDG Defendants respectfully ask this Court to grant their Rule 12(c) Motion for Judgment on Counts I and VII of Plaintiffs' Amended Complaint, dismiss Counts I and VII of Plaintiff's Amended Complaint with prejudice, and grant such other relief as the Court deems just and appropriate.

Dated: July 21, 2017

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

/s/ Kerry L. Bundy

Colby A. Kingsbury (No. 6272842)
Kerry L. Bundy (No. 0266917)
Kate E. Middleton (No. 6306578)
FAEGRE BAKER DANIELS LLP
311 South Wacker Drive, Suite 4300
Chicago, IL 60606
Tel: (312) 212-6500
Fax: (312) 212-6501
Colby.Kingsbury@FaegreBD.com
Kerry.Bundy@FaegreBD.com
Kate.Middleton@FaegreBD.com

*Attorneys for Defendants, Mr. Appliance LLC,
Dwyer Group, Inc., Dwyer Franchising LLC, The
Dwyer Group, LLC, ProTradeNet LLC and Mark
Bruckbauer*

CERTIFICATE OF SERVICE

I, Kerry L Bundy, an attorney, hereby certify that on July 21, 2017, I caused a true copy of **TDG Defendants' Motion to For Judgment on Counts I and VII of Plaintiffs' Amended Complaint Pursuant to Rule 12(c)** to be filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system:

Sara E. Cook
Kristin Tauras
MCKENNA STORER
1004 Courtaulds Drive, Suite A
Woodstock, Illinois 60098
scook@mckenna-law.com
ktauras@mckenna-law.com
(815) 334-9690
Counsel for Plaintiffs

Law Office of Thomas E. Ladegaard
923 Bloomfield Ave.
San Marcos, CA 92078
(858)-699-2461
tel@ladegaardlaw.com

Joseph E. Mallon
JOHNSON & KROL, LLC
300 S. Wacker Drive, Suite 1313
Chicago, IL 60606
mallon@johnsonkrol.com
(312) 757-5462
*Counsel for The Finance Store, Inc.
and Greg Nguyen*

/s/ Kerry L. Bundy