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IN THE UNITED STATES JUDICIAL DISTRICT COURT  
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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BEST VINYL, LLC, a Utah limited liability  
 company; and VANGUARD VINYL, INC.,  
 a Delaware corporation,

Plaintiffs,

v.

HOMELAND VINYL PRODUCTS, INC.,  
 an Alabama corporation,

Defendant.

**MEMORANDUM DECISION AND ORDER  
 GRANTING HOMELAND VINYL, INC.’S  
 MOTION TO DISMISS MARWIT CAPITAL  
 PARTNERS, L.P.’S TWELFTH AND  
 THIRTEENTH CAUSES OF ACTION FOR  
 INTENTIONAL AND NEGLIGENT  
 INTERFERENCE WITH PROSPECTIVE  
 ECONOMIC RELATIONS**

Consolidated Case No. 2:10-cv-01158

Judge David Nuffer

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Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Homeland Vinyl, Inc. (“Homeland Vinyl”) has moved the Court to dismiss Marwit Capital Partners II, L.P.’s (“Marwit”) Twelfth Cause of Action for Intentional Interference with Prospective Economic Relations and Thirteenth Cause of Action for Negligent Interference with Prospective Economic Relations, contained in Marwit’s First Amended Complaint. (Dkt. No. 45.) The hearing on Homeland’s Motion to Dismiss (Dkt. No. 56) was held at 8:30 a.m. on October 25, 2012, before this Court. Homeland appeared by and through its counsel, Eric G. Maxfield and J. Andrew



state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

In order to plead a claim for intentional interference with prospective economic advantage, a party must plead “(1) that the defendant intentionally interfered with the plaintiff’s existing or potential economic relations, (2) for an improper purpose or improper means, (3) causing injury to the plaintiff.” *Leigh Furniture & Carpet Co. v. Isom*, 657 P.2d 293, 304 (Utah 1982). Marwit has failed to plead the first element of this claim.

Marwit does not allege that it had ever, or would ever, purchase vinyl products from any supplier. Instead, it only alleges that it “indirectly owned a majority of the outstanding stock of Best,” that it “undertook efforts to obtain suppliers to replace Homeland for the requirements of Best,” and that Homeland convinced “other suppliers to refuse to do business with Best.” (Dkt. No. 45, ¶¶ 54-56 (emphasis added).)

Marwit does not allege interference between vinyl suppliers and Marwit, or that Marwit had an existing or potential economic relationship with those suppliers. As a result, Marwit has failed to allege that Homeland interfered with Marwit’s “existing or potential economic relations.” *Leigh Furniture*, 657 P.2d at 304. Instead, Marwit clearly alleges that any prospective economic relations were between suppliers and Best, not suppliers and Marwit. Having failed to plead facts sufficient to state a claim for intentional interference with prospective economic relations, Marwit’s claim is dismissed with prejudice.

#### **IV. THIRTEENTH CAUSE OF ACTION FOR NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS**

Homeland’s Motion to Dismiss Marwit’s Thirteenth Cause of Action for Negligent Interference with Prospective Economic Relations is also GRANTED with prejudice for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules

of Civil Procedure. The claim of negligent interference with prospective economic advantage is not recognized under Utah law. See *Leigh Furniture*, 657 P.2d at 304; *Manassas Travel, Inc. v. Worldspan, L.P.*, 2008 U.S. Dist. LEXIS 35217, \*5 (D. Utah April 30, 2008). Therefore, Marwit's claim for negligent interference with prospective economic relations is hereby dismissed with prejudice.

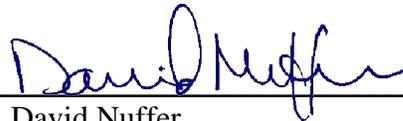
**V. CONCLUSION AND ORDER**

IT IS THEREFORE ORDERED that Homeland Vinyl Products, Inc.'s Motion to Dismiss Marwit Capital Partners II, L.P.'s Twelfth and Thirteen Causes of Action for Intentional and Negligent Interference With Prospective Economic Relations (docket no. 56) is GRANTED.

IT IS FURTHER ORDERED that the claims for intentional interference with prospective economic relations (claim no. 12) and negligent interference with prospective economic relations (claim no. 13) in Marwit Capital Partners II, L.P.'s First Amended Complaint (docket no. 45) are DISMISSED WITH PREJUDICE.

Dated this 15th day of November, 2012.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer  
United States District Court Judge