IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AUDI OF AMERICA, INC.,	:	3:16-cv-2470
	:	
Plaintiff,	:	
	:	
v.	:	Hon. John E. Jones III
	:	
BRONSBERG & HUGHES PONTIAC, INC. d/b/a WYOMING VALLEY AUDI,	:	
	:	
Defendant.	:	

ORDER

August 25, 2020

Pending before the Court is a Motion to Enforce the Court's June 29, 2017 Order filed by Audi of America, Inc. and Volkswagen of America, Inc. filed on July 10, 2020. (Doc. 587). The Motion has been fully briefed by the parties (Docs. 588, 589 and 590) and is therefore ripe for our review. For the reasons that follow, the Motion shall be granted.

I. BACKGROUND

Factual Background and Procedural History

As the parties and the Court are acutely aware, the procedural background of this matter is extensive, however a brief summary of the relevant history is necessary to the disposition of the instant Motion.

This matter was commenced in December of 2016 by Audi of America, Inc. (hereinafter "AoA"), which is an organizational unit of Volkswagen Group of America, Inc., and is the United States importer and distributor of Audi-brand vehicles, parts and accessories. Named as Defendant was Bronsberg & Hughes Pontiac, Inc., (hereinafter referred to as "Wyoming Valley"), which owns and operates automobile dealerships, including an Audi dealership pursuant to a dealership agreement with AoA. This action arose out of a contract dispute between AoA and Wyoming Valley.

In 1997, Wyoming Valley entered into a Dealership Agreement with AoA to be an authorized Audi dealer. As part of this agreement, if Wyoming Valley sought to sell its Audi dealership, AoA had a right to approve the new owners, provided that the approval or disapproval was made in good faith. Moreover, Audi retained a right of first refusal if Wyoming Valley chose to sell its Audi dealership.

In July of 2016, Wyoming Valley and its affiliates North American Auto Services, Inc. (hereinafter referred to as "Napleton") entered into an Asset and Real Estate Purchase Agreement ("APA"). Through the APA, Wyoming Valley sought to sell its seven dealerships, its properties, and all of its liabilities to Napleton. The total purchase price agreed to in the APA was $17 million dollars, but the agreement did not separately price the assets of the Audi dealership.

In September of 2016, Wyoming Valley provided AoA with a copy of the APA. AoA responded to Wyoming Valley that it was unable to evaluate its right of first refusal without an apportionment of the assets of the Audi dealership. Ultimately, in November of 2016, Wyoming Valley sent a letter to AoA communicating an $8 million value for the transfer of the Audi franchise within the APA. The parties agreed that AoA had until December 28, 2016 to determine whether to consent to the sale proposed by the APA.

Thereafter, on December 2, 2016, AoA sent a letter to Wyoming Valley stating that "it is obvious that [the eight million dollar] amount does not constitute a good faith, proportionate breakdown of the overall blue sky price set forth in the APA." (Doc. 394, Ex. 31). The letter ended with a request that "Wyoming Valley provide a legitimate, good faith breakdown of: (i) the blue sky purchase price as set forth in the APA for the Audi Transfer, *and* (ii) the other, non-price terms as set forth in the APA attributable to the Audi transfer" by December 9, 2016. (*Id*.). Wyoming Valley responded by letter dated December 9, 2016 that it believed it had indeed provided a good faith price breakdown for the Audi franchise. AoA's filing of this lawsuit promptly followed on December 13, 2016.

On December 14, 2016, AoA filed a motion for a temporary restraining order and preliminary injunction, seeking primarily to enjoin Wyoming Valley from closing the APA or transferring its Wyoming Valley Audi dealership assets.

(Doc. 3). On December 22, 2016, we entered a temporary restraining order barring Wyoming Valley from closing the APA "and otherwise transferring Wyoming Valley's Audi dealership assets." (Doc. 16). We also restrained the transfer of any other assets contemplated by the APA. (*Id.*). On January 18, 2017, we entered a preliminary injunction order to the same effect. (Doc. 30).

The June 28, 2017 Conference and Resulting Order

Thereafter, AoA filed a motion to extend the preliminary injunction, and we scheduled a preliminary injunction hearing for June 28, 2017. On that date, the undersigned met with counsel for the parties before the start of the hearing, and it was agreed by all that at an attempt settlement would be worthwhile before commencing the hearing.

As the Court reflected when we re-convened in the courtroom:

> We're reconvening after a lengthy session that involved discussions among the court and all counsel. And let me say that I am deeply gratified by counsel's willingness to engage in a very thorough dialogue in this case. It was frank, it was appropriate, it was, I think, necessary under the difficult circumstances that we find ourselves in this case, this hotly litigated case, and those discussions really represented to me the best traditions of our profession, and I thank counsel very sincerely for that.
>
> And although we don't have a global resolution at this point, that could happen at some future time. As I said, I remain the quintessential optimist. But we do have a path forward that I think is reflective of all the good sense that counsel and the parties – and I don't want to leave the parties out, obviously – to brought to bear. And I do thank, sincerely, the parties for their willingness to work with their very able lawyers in this case towards a settlement.

> So with that in mind, what I would like to do is to place the terms of what my understanding of the agreement is among the parties in this case and then, in turn, as counsel to augment that appropriately so that we can distill this into a workable order that will give us a path forward pending a full hearing as will be described.

(Doc. 591, Transcript of Preliminary Injunction Hearing[1], pp. 5-6).

On the record, the undersigned then recounted the agreements and stipulations made by the parties during the conference. (*See* Doc. 591, Transcript, pp. 6-9). The next day, the Court promulgated an Order (Doc. 213) memorializing the same. Particularly relevant to our inquiry on the instant Motion is paragraph 5 of the June 29, 2017 Order, stating that "Napleton **SHALL** forever quit its interest, if any it has, in the ownership of the Wyoming Valley Audi and Volkswagen Dealerships." (Doc. 213, p. 3).

Later Procedural History

Following the June 28, 2017 conference and resulting Order, the case continued to be actively litigated. After the Court issued our order on the parties' summary judgment motions (Doc. 479), Wyoming Valley and AoA settled their claims. Thereafter, Napleton's damages claims were ultimately denied on summary judgment. (Doc. 523). On June 4, 2020, the United States Court of Appeals affirmed this ruling. (Doc. 586-2). In so doing, the Third Circuit

[1] The Court has had the June 28, 2017 proceeding officially transcribed, and the transcript was docketed in this case on August 24, 2020. It can be found at Docket Entry 591.

reviewed the June 29, 2017 Order and described its effect, explaining that "the District Court issued an order permitting [Wyoming Valley] to transfer the non-Audi and non-Volkswagen assets to Napleton but also requiring Napleton to 'forever quit its interest' in owning the Audi and Volkswagen assets and maintain the status quo during litigation." *Audi of Am., Inc., v. Bronsberg & Hughes Pontiac, Inc.*, No. 19-2072, 2020 WL 2988888, at *2 (3d Cir. June 4, 2020). The Third Circuit issued its mandate on June 26, 2020. (Doc. 586).

Before the proverbial ink was even dry on the Third Circuit's mandate letter, on June 25, 2020 Wyoming Valley and Napleton executed and thereafter sent to AoA new APAs in which Napleton *again* seeks to acquire ownership of the Wyoming Valley Audi and Volkswagen dealerships. The instant Motion from AoA followed, wherein AoA moves the Court to enforce our June 29, 2017 Order and thereby declare the new APAs void inasmuch as they violate the said Order. As noted above, the Motion is ripe for our review.

II. DISCUSSION

The threshold question we must address is whether the Court has jurisdiction to enforce the June 29, 2020 Order. This question turns on whether the Order is considered a "consent order" or "consent decree" as AoA argues, or whether it is a preliminary injunction order, as posited by Napleton. If the Order is regarded as a "consent order" or "consent decree," then we retain ancillary jurisdiction to

enforce the order after final judgment.[2] Were we to construe the Order as a preliminary injunction order, it would be considered an interim order which cannot survive the dismissal of a complaint.[3]

The answer to this dispositive question is clear to the Court because the undersigned was in the proverbial "room where it happened" when the terms of the June 29, 2017 Order were made and agreed to. *See* Lin-Manuel Miranda, *The Room Where it Happens*, Hamilton (Original Broadway Cast Recording). While the Order might have been entered mid-stream in the litigation and did not represent a global settlement, it can only be appropriately considered a consent order. There is utterly no doubt in our mind as to this fact, despite Napleton's nonsensical attempt to characterize it as something else.

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[2] *See Halderman by Halderman v. Pennhurst State Sch. & Hosp.*, 901 F.2d 311, 317-18 & n.9 (3rd Cir. 1990) (stipulation "so ordered" by district court was "the functional equivalent, and has the same effect as, a consent order or consent decree," and was "subject to continued judicial policing") (citation omitted); *National City Mortg. Co. v. Stephen*, 647 F.3d 78, 85-87 (3d Cir. 2011) ("Ancillary enforcement jurisdiction … give[s] federal courts the power to enforce their judgments …."); *Shell's Disposal & Recycling, Inc. v. City of Lancaster*, 504 Fed. App'x 194, 198 (3d Cir. Nov. 16, 2012) (district court retains jurisdiction over agreement embodied in court order based on "its inherent authority to manage its proceedings, vindicate its authority, and effectuate its decrees") (citation omitted); *Dickler v. Cigna Pro. & Cas. Co.*, 48 Fed. Appx. 856, 858 (3d Cir. Oct. 4, 2002) ("[T]he district courts have inherent power to modify and enforce compliance with properly entered consent decrees."); 13 Charles A. Wright et al., F*ederal Practice and Procedure* § 3523.2 (3d ed. 2020) ("Without doubt, a federal court has [ancillary] jurisdiction to enjoin actions that threaten to interfere with an order it has entered[.]").

[3] *See Venezia v. Robinson*, 16 F.3d 209, 211 (7th Cir. 1994); *see also Rodriquez v. 32nd Legislature of the Virgin Islands*, 859 F.3d 199, 207 (3d Cir. 2017) (dismissing prevailing party's appeal) ("To the extent he is seeking the dissolution of the preliminary injunction [against him], that injunction was dissolved automatically when the District Court dismissed the [case]. After all, '[a] preliminary injunction cannot survive the dismissal of a complaint.'") (quoting *Venezia*, 16 F.3d at 211)).

Plainly put, the Order memorialized a partial settlement of the case and was the result of a bargained-for exchange. As a result, Napleton *forever* quit its interest in purchasing the Audi and Volkswagen dealership but was permitted to proceed with the purchase of the other 5 dealerships contained in the APA. The fact that Napleton preserved its rights to pursue damages claims arising out of the failed attempt to purchase the Audi and Volkswagen dealerships further bolsters the fact that all parties and the Court understood that Napleton was foreclosed from ever purchasing these dealerships. This was the clear essence of the agreements made in the room that day, and they were set out at length on the record and in the subsequent June 29, 2017 Order. In the three years and hundreds of filings that have been made in this case since, Napleton never once attempted to contest, undo or qualify the meaning of "forever quit its interest," as contained in the Order. Further, we query why Napleton would preserve and litigate its damages claims if it believed it could attempt to purchase the Audi dealerships at some future date.

Moreover, as AoA points out, Napleton characterized the Order as a consent order in filings made with the Third Circuit:

> "The [June 29 Order] is a consent order; essentially, it is a compact between the parties. To read the Consent Order as mandating a 'status quo' is to violate the principle that courts must not interpret consensual orders to 'impose obligations upon the parties beyond those they have voluntarily assumed.' … 'A consent decree 'must be construed as it is written….". (*See* Exhibit 1, d Cir. Case 17-2773, Dkt. 003112729152, Joint Brief for Intervenors-Appellants ("Joint Br."), p. 21 (citations omitted).)

Thus, Napleton's argument that the June 29, 2017 Order is a preliminary injunction order is a mischaracterization at best, and intellectually dishonest, bordering on sanctionable, at worst. This is not appropriate, aggressive advocacy. Rather, it is brazen and wearying gamesmanship that is emblematic of Napleton's conduct throughout this case. This behavior has created a scenario that is the judicial equivalent of whack-a-mole. It is flatly inappropriate and we are compelled to once again stop it.

Thus, Napleton's current attempt to purchase the Audi and Volkswagen dealership are clearly violative of paragraph 5 of the June 29, 2017 Order, and the Court shall enter an Order that the June 25, 2020 APAs are void *ab initio.*

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Motion to Enforce the Court's June 29, 2017 Order filed by Audi of America, Inc. and Volkswagen of America, Inc. (Doc. 587) is **GRANTED**.

2. The APAs executed June 25, 2020 between Bronsberg & Hughes Pontiac, Inc. ("Wyoming Valley") and affiliates of North American Automotive Services, Inc. for the sale of Wyoming Valley's Audi and Volkswagen dealerships are null and void for violation of the Court's June 29, 2017 Order.

3. Any and all statutory or contractual deadlines for AoA and VWoA to respond to the proposed transaction are hereby stayed, *nunc pro tunc* to the date of

execution of the APAs (June 25, 2020), and shall remain stayed pending resolution of any appeals of this Order.

s/ John E. Jones III
John E. Jones III, Chief Judge
United States District Court
Middle District of Pennsylvania