UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:	)	
	)	
CHARLOTTE COMMERCIAL GROUP, INC.,	)	**Case Number: 01-52684**
	)	
Debtor.	)	
	)	
CHARLOTTE COMMERCIAL GROUP, INC.,	)	**Adversary Proceeding No.: 01-6044W**
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
FLEET NATIONAL BANK	)	
	)	
Defendant.	)	

ORDER DISMISSING PLAINTIFF'S THIRD CAUSE OF ACTION

THIS MATTER came on for hearing before the undersigned bankruptcy judge in Winston-Salem, North Carolina upon the Defendant's Motion to Dismiss Adversary Proceeding, or in the alternative, to Dismiss Plaintiff's Third Cause of Action. Appearing at the hearing was Herman L. Stephens and David Niblock, attorneys for Charlotte Commercial Group, Inc. (hereinafter "Plaintiff") and Kenneth M. Greene and Jean-Marie Atamian, attorneys for Fleet National Bank (hereinafter "Defendant").

This court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This is a core

proceeding under 28 U.S.C. § 157(b)(2)(A) and (O) which this court may hear and determine.

FACTS

For the purposes of this motion to dismiss, the Plaintiff's version of the facts contained in the complaint and stated below will be taken as true.

The Plaintiff is engaged in the business of purchasing automobile financing receivables from retail vendors of motor vehicles. On September 24, 1998, the Plaintiff entered into a Loan and Security Agreement with Fremont Financial Corporation pursuant to which Fremont provided a revolving loan to the Plaintiff secured by automobile receivables. Subsequently, this loan was assigned to Summit Bank and the parties entered into an amended agreement (hereinafter referred to as the "Finance Agreement") which provides for a maximum principal amount of $10,000,000 and a termination date of September 24, 2003. All interest is treated as an advance and added to the principal balance on a monthly basis. The terms of the Finance Agreement obligate Summit and its successor, the Defendant, to make advances to the Plaintiff based upon a formula contained within the Finance Agreement. The Finance Agreement provides that advances are based upon a monthly Borrowing Base Certificate prepared in accordance with sound accounting practice, as defined in the Finance Agreement.

Commencing on or about August 16, 2001, Fleet has wrongfully asserted that the Plaintiff inaccurately and fraudulently prepared the Borrowing Base Certificates for the months of June and July of 2001. The Plaintiff insists that the Borrowing Base Certificates for the months of June, submitted July 13, 2001, and July, submitted August 15, 2001, were prepared in accordance with sound accounting practice, and that those certificates correctly certified that funds were available to the Plaintiff for advance. On August 16, 2001, Defendant informed the Plaintiff that it desired to be rid of the loan and did not intend to advance any further money.

Since August 27, 2001, the Defendant has asserted that the June and July Borrowing Base Certificates were not properly prepared in conformity with the terms of the Finance Agreement. The Defendant made these declarations despite earlier direct and indirect admissions made to the Plaintiff that the Defendant did not disagree with the accounting methods used by the Plaintiff for June and July.

As a result, the Defendant did not advance any more money and demanded that the Plaintiff immediately pay the sum of $769,561, which it falsely asserted was an over advance. The Defendant further claimed that is was entitled to exercise its powers pursuant to the Finance Agreement upon default and to foreclose upon its collateral. On October 29, 2001, the Defendant filed suit in the Eastern District of Pennsylvania and falsely alleged that the unpaid balance of the loan was due, that the Plaintiff's Chief Executive Officer breached a Validity Guaranty and committed fraud by knowingly submitting incorrect Borrowing Base Certificates.

Charlotte Commercial Group, Inc., Plaintiff and Debtor, filed a voluntary petition under Chapter 11 of the Bankruptcy Code on November 13, 2001. On December 17, 2001, Plaintiff filed this adversary proceeding against the Defendant alleging (1) breach of the finance agreement; (2) breach of duty of good faith; and (3) violation of North Carolina's Unfair Trade Practices Act (UTPA) pursuant to N.C.G.S. § 75-1.1. At the hearing on this matter, the Court denied the Defendant's motion to dismiss as to the first and second causes of action.

DISCUSSION

The court may grant a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), made applicable to these proceedings by Federal Rule of Bankruptcy Procedure 7012(b), only if it appears certain that the nonmoving party can prove no set of facts in support of its claim which would entitle it to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

In making this determination, the court should accept as true all well-pleaded allegations of the complaint, and construe the complaint in the light most favorable to the nonmoving party. Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993) cert. denied, 510 U.S. 1197, 114 S.Ct. 1307, 127 L.Ed.2d 658 (1994). "For purposes of such a motion, the material allegations of the complaint are taken as admitted and the complaint is to be liberally construed in the plaintiffs' favor." Risk Financial Savings Bank, Inc. v. American Banders Insurance Company, 699 F. Supp. 1158, 1161 (E.D.N.C.1988). Furthermore, "the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim."Revene v. Charles County Comm'rs., 882 F.2d 870, 872 (4th Cir. 1998) (quoting Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683 (1974)).

A motion to dismiss tests the legal sufficiency of the plaintiff's complaint. See Food Lion, Inc. v Capital Cities/ABC, Inc. 951 F. Supp. 1224, 1227 (M.D. N.C. 1996). The court is not bound by the plaintiff's legal conclusions. Schatz v. Rosenberg, 943 F.2d 485, 489 (4th Cir. 1991), cert. denied, 503 U.S. 936, 112 S.Ct. 1475, 117 L.Ed.2d 619 (1992); Peterkin v. Columbus County Bd. of Education, 126 N.C.App 826, 828, 486 S.E.2d 733, 735 (1997). The court should review each cause of action and consider whether the allegations asserted in the complaint are sufficient to state a claim. "To survive a motion to dismiss does 'not require a claimant to set out in detail the facts upon which he bases his claim." Swaim v. Westchester Academy, Inc. 170 F. Supp. 2d.580 (M.D. N.C. 2001) (quoting Conley, 355 U.S. at 47, 78 S.Ct. 99). In applying this standard the court finds that the complaint fails to state a cause of action for unfair and deceptive trade practices. The complaint alleges a breach of contract and fails to allege any substantially aggravating circumstances which would give rise to an unfair or deceptive practices claim and therefore dismissal under Rule 12 (b)(6) made applicable under Bankruptcy

Rule of Procedure 7012 is appropriate. See Miller v. Rose, 138 N.C. App. 582, 532 S.E.2d. 228 (mere breach of contract, even if intentional, is not sufficient to state a claim for unfair and deceptive trade practices and therefore 12(b)(6) dismissal is correct).

The Plaintiff bases its UTPA claim under G.S. § 75-1.1 on allegations that the Defendant intentionally and deliberately disregarded the terms of the Finance Agreement, demanded payment and decided to liquidate its collateral and applied unjustified pressure to Plaintiff with false accusations of fraud. Specifically, the action for unfair and deceptive trade practices alleges acts which are (a) unethical, oppressive and unscrupulous conduct as more specifically alleged in paragraphs 25 through 30, 40 and 41 of the complaint; (b) engaging in aggravating conduct accompanying its breach of its contractual obligations under the Finance Agreement as more specifically alleged in paragraphs 25 through 30, 40 and 41 of the complaint; (c) engaging in conduct which amounts to an inequitable assertion of its power or position as more specifically alleged in paragraphs 25 through 30, 40, and 41 of the complaint; and (d) engaged in deceptive conduct in an effort to falsely deny its contractual obligation to the plaintiff; as more specifically alleged in paragraphs 25(f),26(a), 26(c), 27 and 30 of the complaint.

These paragraphs are set out in their entirety and are as follows:

> 25. In conversations and communications commencing on or about August 16, 2001 and continuing thereafter, Fleet's Senior Vice President and other officers of Fleet have informed the plaintiff that:
>
> (a) Fleet desired to be rid of the loan established by the Finance Agreement and the Revolving Credit Note (although it had failed to disclose to the plaintiff that it had prior to July, 2001 engaged in substantial efforts to sell its rediscount portfolio which included the plaintiff's Revolving Credit loan established by the Finance Agreement);
>
> (b) Fleet did not intend to advance any further money to the plaintiff whatsoever under the Revolving Credit and the Finance Agreement; and
>
> (c) Fleet was not going to advance any money in conformity with the loan availability certified by plaintiff in the June and July Borrowing Base Certificates;

(d) Fleet would not advance any money to plaintiff based on loan availability calculated in the manner utilized by the plaintiff in the June and July Borrowing Base Certificates;

(e) Fleet wanted the plaintiff to obtain another lender to take out the loan established by the Finance Agreement and the Revolving Credit Note; and

(f) Fleet demanded that plaintiff immediately pay to Fleet on August 27, 2001 the sum of Seven Hundred, Sixty-Nine Thousand, Four Hundred and Sixty-One Dollars ($769,561) which Fleet falsely asserted was an "over advance" existing as of July 31, 2001 under the terms of the Revolving Credit and the Finance Agreement.

26. Fleet made these wrongful declarations that it would not advance any more money to the plaintiff under the Revolving Credit and the Finance Agreement, that it wanted to rid itself of the loan and that it wanted plaintiff to find another lender to take out the loan despite direct and indirect admissions made to plaintiff by its officers that:

(a) Fleet did not disagree with the accounting methods used by plaintiff for the June and July Borrowing Base Certificates; and

(b) the June and July Borrowing Base Certificates were prepared in accordance with generally accepted accounting procedures (which constitute Sound Accounting Practices as defined by SECTION 1.2. Accounting terms of the Finance Agreement).

27. On August 27, 2001, Fleet's Senior Vice President wrongfully sent the plaintiff a written demand for the immediate payment to Fleet of Seven Hundred Sixty-Nine Thousand, Four Hundred and Sixty-One Dollars ($769,461) which Fleet falsely asserted was an over advance existing as of July 31, 2001.

28. Since August 27, 2001, Fleet has continuously and wrongfully:

(a) asserted that the Borrowing Base Certificate for the months ending June 30, 2001 and July 31, 2001 were not properly prepared in conformity with the Finance Agreement;

(b) asserted that it would not advance any more money to the plaintiff under the loan established by the Finance Agreement and the Revolving Credit Note;

(c) asserted that plaintiff was over advanced in the sum of Seven Hundred, Sixty-Nine Thousand, Four Hundred and Sixty-One Dollars ($769,461) as of July 31, 2001;

(d) demanded immediate payment of Seven Hundred , Sixty-Nine Thousand, Four Hundred and Sixty-One Dollars ($769,461);

(e) claimed that it was entitled to exercise powers granted it by the Finance Agreement in the event of default by plaintiff which, if exercised, would give Fleet full power and control of the operations of plaintiff for the purpose of shutting down its operation, liquidating its assets and driving it out of business; and

(f) otherwise made its intentions clear not to further honor its obligations to plaintiff under the Finance Agreement;

29. On October 16, 2001, Fleet, through its attorneys, wrongfully sent plaintiff written notice that it declared all loans made pursuant to the Finance Agreement immediately due and payable, alleged fraudulent borrowing by plaintiff under the Finance Agreement and asserted other rights against plaintiff available to Fleet in the event of default by plaintiff under the Finance Agreement.

30. Despite substantial effort by the plaintiff to persuade Fleet to recognize the error of its acts and its assertions alleged above, Fleet wrongfully commenced suit against the plaintiff, its Chief Executive Officer and its Chief Financial Officer in the United States District Court for the Eastern District of Pennsylvania on October 29, 2001 in which it, inter alia:

(a) falsely alleged that the unpaid principal balance of the Revolving Credit Note is due and payable;

(b) falsely alleged that plaintiff's Chief Executive Officer breached a Validity Guaranty by knowingly permitting purportedly untrue and incorrect Borrowing Base Certificates to be submitted to Fleet; and

(c) falsely alleged that plaintiff's Chief Financial Officer committed fraud against Fleet in regard to the preparation and submission to Fleet of the June and July Borrowing Base Certificates.

40. Based on the matters communicated to plaintiff by Fleet, plaintiff alleges upon information and belief that:

(a) in or before August, 2001, Fleet formed an intent to rid itself of its obligations to the plaintiff established by the Finance Agreement, regardless of the plaintiff's performance and Fleet's obligations thereunder;

(b) Fleet deliberately disregarded the terms of the Finance Agreement and the application of Sound Accounting Practices to the relationship of the parties to the agreement and wrongfully insisted upon application of its own non contractual criteria for the loan availability under the Revolving Credit established by the Finance Agreement;

(c) Fleet decided and commenced efforts to terminate the Revolving Credit, to liquidate the Collateral securing the Revolving Credit and to sever its relationship with the plaintiff;

(d) Fleet undertook to apply unjustifiable pressure to the plaintiff to secure its objectives by:

(i) falsely accusing the plaintiff's Chief Financial Officer of fraud when in fact he had provided Fleet a full explanation of the underlying basis for the calculation of the loan availability certified in the June and July Borrowing Base Certificates at the time they were submitted and he had further provided Fleet full documentation of the basis for loan availability reported the June and July Borrowing Base Certificates prior to August 16, 2001;

(ii) falsely alleging a cause of action against the plaintiff's Chief Financial Officer in the suit Fleet filed in federal court when in fact he had provided Fleet a full explanation of the underlying basis for the calculation of the loan availability certified in the June and July Borrowing Base Certificates at the time they were submitted and

he had further provided Fleet full documentation of the basis for loan availability reported the June and July Borrowing Base Certificates prior to August 16, 2001;

(e) falsely alleging a cause of action against plaintiff's Chief Executive Officer for breach of the Validity Guaranty in the suit Fleet filed in federal court when in fact Fleet's officers expressly acknowledged to plaintiff's Chief Executive Officer that he had not in any way misled Fleet.

(f) threatening to report allegations of fraud against the plaintiff and the plaintiff's Chief Financial enforcement and regulatory authorities;

(g) by refusing to share with the plaintiff the results of an audit performed by Fleet's accountant at plaintiff's offices in early September, 2001, which Fleet asserted supported its demands despite promises by Fleet that it would provide information to the plaintiff on September 24, 2001;

(h) demanding that plaintiff fire its plaintiff's Chief Financial Officer;

(i) demanding that plaintiff place all money received by plaintiff from its automobile finance receivables into a lock box controlled by Fleet;

(j) refusing to withdraw its August 27, 2001 demand letter despite specific request and notice given to Fleet by plaintiff's Chief Executive Officer and Chief Financial Officer on August 28, 2001 that plaintiff was then in serious discussions that were substantially likely to result in plaintiff's merger with a public company that would infuse between three and five million dollars of operating capital into plaintiff's business and that Fleet's failure to withdraw the demand letter would virtually destroy that possibility; and

(k) demanding that plaintiff submit to the operative control of Fleet for the purpose of liquidating the plaintiff's business.

41. By refusing to acknowledge that the June and July Borrowing Base Certificates were prepared in conformity with Sound Accounting Practices and by declaring that it would never advance any more money under the Revolving Credit established by the Finance Agreement,

(a) Fleet has made it impossible for plaintiff to fully realize the profits to which it is reasonably likely to otherwise perform those things and conduct itself according to reason and justice which must be done so as not to injure the plaintiff's right to receive the fruits of its contract under the terms of the Finance Agreement.

(b) Fleet has refused to make reasonable efforts to perform its obligations under the Finance Agreement and do everything that the Finance Agreement presupposes that the lender thereunder will do to accomplish its purpose;

(c) Fleet has acted with the dishonest intention to take unconscionable advantage of the plaintiff.

Whether an act constitutes an unfair and deceptive act is a question of law. Section 75-1.1(a) provides "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful." N. C. Gen. Stat. §

75-1.1(a) (1999). The underlying goal of G. S. §75-1.1 is to provide a "private cause of action for consumers." Gray v. N. C. Underwriting Ass'n, 352 N.C. 61, 68, 529 S.E.2d 676, 681 (2000). Typically, claims under G.S. 75-1.1(b) involve disputes between buyers and sellers. Holley v. Coggin Pontiac, 43 N.C. App. 229, 259 S.E.2d 1. The North Carolina Unfair and Deceptive Trade Practices Act has been extended to business relationships, but the underlying purpose of the statute is "clearly intended to benefit consumers." HAJMM Co. v. House of Raeford Farms, 328 N.C. 578, 592, 403 S.E.2d 483 (1991)(quoting Pearce v. American Defender Life Ins. Co., 316 N.C. 461, 343 S.E.2d 174 (1986); see also, Prince v. Wright, 141 N.C.App. 262, 268-69, 541 S.E.2d 191, 197 (2000).

A trade practice is "unfair when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, substantially injurious to consumers." Marshall v. Miller, 302 N.C. 539, 548, 276 S.E.2d 397, 403 (1981). A trade practice is considered deceptive if it is one that "possesse[s] the tendency or the capacity to mislead, or create[s] the likelihood of deception." Poor v. Hill, 138 N.C. App. 19, 28-29, 530 S.E.2d. 838,844 (2000) (quoting Overstreet v. Brookland, Inc., 52 N.C. App. 444,453, 279 S.E.2d. 1, 7 (1981).

In North Carolina, courts have consistently held that standing alone, a "mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain an action under [the UTPA]." Broussard v. Meineke Discount Muffler Shops, Inc., 155 F.3d 331, 347 (4th Cir. 1998) (citing Branch Banking & Trust Co. v. Thompson, 107 N.C. App. 53, 418 S.E.2d 694, 700 (1992); see also, Canady v. Crestar Mortgage Corp., 109 F.3d 969, 975 (4th Cir. 1997); United Roasters, Inc. v. Colgate-Palmolive Co., 649 F.2d 985, 992 (4th Cir. 1981); Gatx Logistics, Inc. v. Lowe's Companies, Inc.,143 N.C.App. 695, 701, 548 S.E.2d 193, 197 (2001); Computer

Decisions, Inc. v. Rouse Office Management of North Carolina, Inc., 124 N.C.App. 383, 390, 477 S.E.2d 262, 266 (1996); Wachovia Bank and Trust Company v. Carrington Development Associates,119 N.C. App. 480, 487 459 S.E.2d 17 (1995). A claim under the UTPA must be supported by substantial aggravating circumstances in addition to a breach of contract. Id; see also, Mitchell v. Linville, 557 S.E.2d 620,624 (N.C. Ct. App. 2001) ("A violation of Chapter 75 is unlikely to occur during the course of contractual performance, as these types of claims are best resolved by simply determining whether the parties properly fulfilled their contractual duties").

North Carolina courts have repeatedly declined to allow a claim under the UTPA where that claim is based upon a breach of contract, even if intentional, in a commercial or consumer transaction. In United Roasters, the plaintiff contracted with Colgate to produce and distribute a snack food it had developed. The terms of the contract provided for termination by Colgate upon thirty days written notice. Colgate orally notified United Roasters that is was terminating the contract on July 19, 1976, and provided written notice a month later In fact, Colgate had ceased to perform the contract in March of that year. The court found that, under North Carolina law, the parties were required to perform their contractual obligations in good faith, and that Colgate did not do that. United Roasters, 649 F.2d at 990. However, in considering the UTPA claim, the court noted that "[i]n a sense, unfairness inheres in every breach of contract when one of the contracting parties is denied the advantage for which he contracted, but this is why remedial damages are awarded on contract claims." Id. at 992. The court then held,

> The contract here was carefully negotiated and drawn by sophisticated parties. There is no hint of any unfairness to either party before Colgate's cessation of performance. It then broke the contract, but we cannot conclude that unfairness inhered in the circumstances of the breach within the meaning of [G.S. § 75-1.1] simply because the breach was intentional and not promptly disclosed.

Id.

More recently, in Broussard, the Court of Appeals held that a party is not liable under § 75-1.1 if the dispute at issue is an ordinary contract dispute including disputes regarding the existence of an agreement, the terms contained in an agreement, and the interpretation of an agreement. In that case, a group of franchisees brought various claims against their franchisor asserting claims based on the franchisor's misuse of funds paid by the franchisees for advertising over a period of ten years pursuant to contract. The court found that the district court had erred by allowing the plaintiffs to advance tort and UTPA claims to piggyback on the plaintiffs' breach of contract action. Broussard, 155 F.3d at 347. The court held that "[g]iven the contractual center of this dispute, plaintiff's UTPA claims are out of place." Id.

Similarly, in Wachovia, a borrower asserted that Wachovia Bank had violated the UTPA by refusing to disburse further funds pursuant to a loan agreement. Wachovia, 459 S.E.2d at 21. The court held that "[e]ven if Wachovia had wrongfully failed to disburse funds . . . a failure to disburse funds is a breach of contract issue." Id. The court found that the record reflected no action taken by Wachovia which rose to the level of an unfair and deceptive trade practice. Id.

Again, in Miller v. Rose, the North Carolina Court of Appeals dismissed a claim under G.S. § 75-1.1 pursuant to Rule 12(b)(6) for failure to state a claim. Miller v. Rose, 138 N.C.App. 582, 532 S.E.2d 228 (2000). In that case, the defendants filed a counterclaim for unfair and deceptive trade practices which alleges that the plaintiff promised to assist them in purchasing a condominium. Plaintiff assured the defendants that they would help them obtain financing which required only 10 percent down, and if not, the plaintiff promised to pay the additional amount down required. The Plaintiff ultimately refused to do so. The court held that, at most, the claim was a simple breach of contract, and that the trial court committed no error by

dismissing the claim under Rule 12(b)(6). Id. at 593.

Courts do allow a claim under the UTPA when breach of contract is accompanied and supported by substantial aggravating circumstances. See Lake Mary Ltd. Partnership v. Johnston, 145 N.C. App. 525, 551 S.E.2d 546 (2001)(defendant, who was the vendor of a shopping center, retained tenant rent checks intended for the purchaser of shopping center, when he knew checks were not meant for him, failed to notify tenants to stop sending him the checks, continued to use shopping center's name, and kept checks in order to assure purchaser's future performance of contractual obligations, which amounted to an inequitable assertion of his power and position); Poor v. Hill, 138 N.C.App. 19, 530 S.E.2d 838 (2000)(vendor indicated to purchasers in letter terminating contracts that they might still purchase all three lots yet evidence indicated that at least one lot had become subject to an unrelated contract to purchase by date of that letter, vendor's continued offer to sell was subject to increased price, and vendor retained purchasers' earnest money deposits); Edwards v. West, 128 N.C.App. 570, 495 S.E.2d 920, cert. denied, 348 N.C. 282, 501 S.E.2d 918 (1998)(real estate agent misrepresented acreage of subdivision lot to a prospective home buyer through use of plat); Mosley & Mosley Builders v. Landin Ltd., 97 N.C. App. 511 389 S.E.2d 576 (1990)(two weeks prior to telling tenant that he had to relocate his business in shopping mall, landlord had sent tenant a letter wishing him another profitable year, the landlord attempted to relocate him to an area not contemplated by the lease and, at the time the "good wishes" letter was being sent, landlord was negotiating for lease of tenant's space to a potential competitor).

The circumstances in this case simply do not rise to the level of those present in cases such as Mosley & Mosley and Lake Mary Ltd. Unlike those cases above, all of the allegations in this matter relate to the rights and obligations of the parties under the Finance Agreement. The

Plaintiff's claim is essentially a contract dispute. In the instant case, the Plaintiff alleges that the Defendant initially indicated that the June and July certificates were acceptable, and then, after it actually received the July certificate in mid August, indicated that it would not consider those certificates acceptable and would advance no further funds. These facts amount to no more than an intentional breach.

The parties disagree over their rights and obligations under the Finance Agreement that governs their relationship. The allegations contained within the Plaintiff's complaint are based on the basic issue of whether the Defendant breached the contract when it asserted that the Borrowing Base Certificates were not prepared in accordance with sound accounting practices, refused to advance further funds and demanded payment, including filing suit for payment. In essence, the parties disagree over whether the Plaintiff was in default. If the Plaintiff was in default, then the Defendant had the right, under the terms of the Finance Agreement, to take the actions that it did, including filing suit against the Plaintiff. The Plaintiff alleges no facts that suggest that the Defendant's actions went beyond the bounds of a contract dispute.

To rise to the level of a claim for unfair and deceptive trade practices, the Plaintiff must allege that the Defendant engaged in acts that offend public policy, acts that are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, and if a breach of contract situation is at issue, substantial aggravating circumstances attending to the breach must be present. See Broussard, 155 F.3d at 347.

After careful review of the complaint, the court finds the Defendants alleged actions do not rise to the level of deceptive, immoral, unethical, oppressive or unscrupulous nor are there substantial aggravating circumstances attending to an alleged breach of contract. Accordingly, Plaintiff's claim for unfair and deceptive trade practices will be dismissed.

CONCLUSION

Therefore, IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff's third cause of action based upon N.C.G.S. § 75-1.1 is dismissed.

This the 27 day of March, 2002.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge