

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY,  
FLORIDA

CASE NO.: 502012CA023358XXXXMBAG

JAMES TODD WAGNER, SUPERCAR  
ENGINEERING, INC., a Florida  
Corporation  
Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO  
CARE CENTER, INC. ("MACC"), a  
Florida Corporation, d/b/a Mosler  
Automotive, and ALAN RICHARD  
SIMON.

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR DIRECTED VERDICT  
AS TO COUNT 3: EXCLUSIVE DISTRIBUTORSHIPS IN CHINA AND THAILAND**

Plaintiffs, JAMES TODD WAGNER, INC. and SUPERCAR ENGINEERING, INC.,  
by and through their undersigned attorneys, hereby file this Reply to DEFENDANTS'  
Motion for Directed Verdict as to PLAINTIFF's Defamation claim in support hereof state:

1. The Contract for Exclusive Distributorships of Mosler Products in China and Thailand (**EXH 290 PL#74**) has plain language that if MACC doesn't provide vehicles for SEI to purchase, then there are zero functions that could cause SEI to lose its exclusivity. The parties CONTEMPLATED that the future owners of MACC might attempt to FORCE DEFAULT via simply not providing vehicles, thus the clause in C-1 was included.
2. C-1 states in plain language, "SEI will forfeit its Exclusive Distribution Rights in China and Thailand immediately upon failure to perform any of Terms 2-6 in Paragraph A, **provided** that MACC has fulfilled its

obligation to supply vehicles as described in Paragraph B.”

For a Directed Verdict to succeed, the burden of proof is on the moving party (Defendants) to prove that they provided the 3 vehicles (or at a minimum COULD HAVE provided the 3 vehicles in calendar year 2011 and onward through the 25-year-term of the signed Contract). **It is noteworthy, that SEI did ATTEMPT to purchase 3 vehicles as part of the \$1,000,000 purchase agreement.** Mr. Mosler took those vehicles away from SEI’s reach by secretly selling them off shortly after accepting Mr. Wagner’s \$100,000 deposit.

Evidence shows that Warren Mosler attempted to force default by stripping MACC of assets and resources, instructing MACC employees to not build vehicles, and very clearly refusing to sell anything to MACC (EXH 765 / PL#23). In PL#23, Sylvia Klaker states to James Todd Wagner, ***“The warranty you referenced is void and be advised that MACC will not sell to you.”***

The statement by Ms. Klaker, “...MACC will not sell to you” was directed to an insignificant (to MACC), but critical-to-SEI single component. If MACC is taking this position with regard to a simple component, it is clear to any reasonable person that the “MACC will not sell to you” stance applies to both parts and finished vehicles. This is consistent with Warren Mosler’s repeated BLOCKS of James Todd Wagner’s attempts to purchase MACC itself.

Mr. Mosler testifies that in May of 2011, he is unsure if he can build even one vehicle before the end of the year for his business partner, Thomas Olafsson. MACC certainly could not build 3 vehicles for SEI.

**Warren Mosler’s Testimony on Day 4 pg 146 ln 15 – pg 147 ln 2**

Q Okay. Now when you were going to build him one in Florida that would take the rest of the year, you were going to build him a Photon, right?

A This is a hypothetical, right?

Q Well, that's what you meant when you said "We could build you one, a new one." You were going to build a new Photon for him, right?

A Well, a new car for him.

Q Okay.

A If he wanted a Photon, I would have had to --

**I would have either talked him out of it or figure out how to do that before the end of the year. I don't know if I could have done that.**

The sentence "I don't know if I could have done that.", refers to Mr. Mosler's ability to have MACC build only-one vehicle between May 6, 2011 and December 31, 2011.

In Mr. Mosler's interview with Jalopnik (**EXH 68 / PL#75**), which was published on November 21, 2011; Mr. Mosler states to the journalist, Matt Hardigree, **"We're not building a vehicle."** This is definitive proof that Mr. Mosler had stripped MACC of the resources necessary to fulfill MACC's contractual obligations under the Exclusive Distributorship in China and Thailand. If those resources, meaning manpower, had been returned to MACC, then MACC could easily provide 10 – 12 vehicles per year as it had been prior to Warren Mosler laying off the staff.

Snip of Jalopnik article (**EXH 68 / PL#75**) on page 3 is below:

## **The agreement**

"He goes around claiming he has a distributorship agreement. he's a distributor of nothing because we're not producing a car." Warren Mosler tells me in a phone call on Friday.

On the opposite side of the coin, Defendants provided no record evidence to prove that MACC was “ready, willing, and able” to provide vehicles for SEI to purchase. None whatsoever. Defendants have fully failed to live up to their requirements to Prove that SEI was in breach, AND that MACC was not in breach [which precludes any possibility of SEI breaching].

On cross-examination, Defendants attempted to get James Todd Wagner to admit that he had exclusively written the Agreement, but Mr. Wagner rightfully refused to admit that. Mr. Wagner specifically testified that Warren Mosler is co-scrivener on the Exclusive Distributorship Agreement. On **Plaintiff’s EXH 966 (DEF 5118-5126)**, Warren Mosler writes on November 16, **2010** at 2:58pm St. Croix time *“ok, made a couple of other small wording changes you should be ok with?”*. On November 16, **2010** at 3:42pm St. Croix time Mr. Mosler writes, *“yes. anything can be changed with mutual agreement. standing by for docs.”*

In an abundance of caution, given the surprise of the Motion for Directed Verdict on this executed Contract in record evidence with no objection, Plaintiffs are including their **EXH 966** in this Motion for reconsideration in the event the Court was swayed by Defense attorney’s verbal assertion / argument that vehicles had be paid for BEFORE THEY WERE BUILT. There is nothing in the Contract that says anything about either a deposit prior to build nor full payment prior to build. All payments are contemplated by both parties to be given some time AFTER BUILD, but prior to delivery. If no vehicles are built, then no vehicles can be paid for.

***Mr. Mosler attempted to force SEI's default*** in three ways; all of which have been noted in record evidence. First, Mr. Mosler rampantly defamed the 2012 Mosler RaptorGTR vehicle model, which was the sole and only EPA-Certified product offering of MACC at the time. Second, Mr. Mosler refused to build vehicles for SEI to purchase. Third, MACC via Sylvia Klaker stated in no uncertain terms, "...be advised MACC will not sell to you."

**RECORD EVIDENCE THAT MACC WAS INCAPABLE OF BUILDING 3 CARS PER YEAR IN 2011, AND THAT IN BETWEEN JULY AND AUGUST 2011, WARREN MOSLER STRIPPED MACC OF THE 3 FINISHED CARS THAT IT HAD ON-HAND:**

Mr. Mosler testifies that in May of 2011, he is unsure if he can build even one vehicle before the end of the year. MACC certainly could not build 3.

**Warren Mosler's Testimony on Day 4 pg 146 ln 15 – pg 147 ln 2**

Q Okay. Now when you were going to build him one in Florida that would take the rest of the year, you were going to build him a Photon, right?

A This is a hypothetical, right?

Q Well, that's what you meant when you said "We could build you one, a new one." You were going to build a new Photon for him, right?

A Well, a new car for him.

Q Okay.

A If he wanted a Photon, I would have had to -- I would have either talked him out of it or figure out how to do that before the end of the year. I don't know if I could have done that.

There is record testimony that shortly before the launch of the 2012 Mosler RaptorGTR, Mr. Mosler sold off the 3 Finished cars that could have been made available to SEI; thus taking those potential purchases out of SEI's reach.

**Warren Mosler's Testimony on Day 4 pg 97 ln 24 – pg 98 ln 14**

Q Okay. Just to be clear, do you have any information about any of the assets of Mosler Automotive Center being sold off while negotiating with James Wagner at a million dollar sale price?

A Excuse me?

Q Do you have an understanding as to whether any of the assets of Mosler Auto Care Center were sold off after Mr. Wagner had agreed to a purchase price of a million dollars?

A I don't recall that.

Q Okay. Do you recall cars being sold during that time period?

A During -- I recall cars being sold but I can't recall time periods --

Q Okay.

A -- that they were sold.

**James Todd Wagner's Testimony on Day 6 pg 125 ln 19 – pg 126 ln 14**

Q Okay. Now Mr. Mosler testified that there were a lot of different negotiations and different permutations of the purchase attempts by you or your companies. Is that true?

A I think that's a bit misleading. It also tries to -- it tries to meld -- the agreement about the \$100,000 deposit was clear.

Q Okay.

A It was that. We agreed that I was going to buy it for \$1 million and it included X number of assets. If I wanted to pay 4 million, I'd have the building as well. So that was the deal: 1 million for the company, including several -- three finished cars and then the building. But then during my exclusivity period, he sold off three of the cars without telling me.

**James Todd Wagner's Testimony on Day 6 pg 129 ln 1 – 14**

So now I'm going to explain the progression of my attempts to buy the company.

Q Okay.

A So it was, first, \$1 million for three finished cars -- or used cars, but they were still finished cars; and a bunch of Consuliers, which were much older cars; and all of the jigs and the molds and all of the components we need to actually build a whole bunch more cars and, like, go for this.

Q Okay.

A Then he sold off the finished cars without telling me and then so I was like "Well, okay. So you sold off \$600,000 worth of used cars. I'll pay you 500,000."

**James Todd Wagner's Testimony on Day 8 pg 19 ln 16 – 20**

Q Did you send him the signed deal documents on your end?

A Obviously the document here, and a part of that includes three finished cars. Those three finished cars were sold off secretly.

The burden for striking Plaintiff's Count 3 is very high, and Defendants have not come close to meeting that burden. **In a light most favorable to Plaintiffs**, the mid-trial Motion for Directed Verdict on Count 3 of the Sixth Amended Complaint cannot be allowed.

WHEREFORE, we respectfully request this Court deny DEFENDANTS' Motion for Directed Verdict as to the Breach of Contract Count 3 regarding the Exclusive Distributorship in China and Thailand, Plaintiffs' Exhibit 290 in evidence as PL#74.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on this 24th day of May, 2023, a copy of this document is being hand delivered to the Court and opposing trial counsel (as directed by the Court) and pursuant to Fla. R. Jud. Admin. 2.516, a true copy of the foregoing document is being/ will be electronically filed and thereby e-served via Florida e-Portal on all counsel/parties affiliated with this case in the manner specified within the e-portal changes effective June 20, 2014. (Note: Alternate e-mail addresses on the e-portal will be "checked" for service, and anyone affiliated with this case but not registered on the e-portal will be served in the manner specified by the aforementioned Rule.) Persons served: Steve@weberlawpa.com; filings@weberlawpa.com.

**ZAPPOLO LAW, P.A.**  
Attorneys for WAGNER and SEI  
7108 Fairway Drive, Suite 322  
Palm Beach Gardens, FL 33418  
(561) 627-5000 (telephone)  
(561) 627-5600 (facsimile)  
Scott@ZappoloLaw.com  
Colleen@ZappoloLaw.com  
filings@ZappoloLaw.com

By: /S/ Scott W. Zappolo  
SCOTT W. ZAPPOLO  
Florida Bar No. 132438



Plaintiff's **Exhibit 966** Follows

**From:** "Todd Wagner" <[mt900supercar@gmail.com](mailto:mt900supercar@gmail.com)>  
**To:** "Warren Mosler" <[warren.mosler@gmail.com](mailto:warren.mosler@gmail.com)>  
**CC:** "Jill Wagner" <[jwagner@moslerauto.com](mailto:jwagner@moslerauto.com)>  
**Date:** 11/16/2010 5:01:25 PM  
**Subject:** Re: Distributorship Docs  
**Attachments:** China and Thailand exclusive distribution Agreement v4.doc  
Saudi Arabia and United Arab Emirates exclusive distribution Agreement v4.doc

Hi Warren,

Final, V4, docs attached.

Cheers,  
Todd

On Tue, Nov 16, 2010 at 3:42 PM, Warren Mosler <[warren.mosler@gmail.com](mailto:warren.mosler@gmail.com)> wrote:  
yes. anything can be changed with mutual agreement

standing by for docs.

On Tue, Nov 16, 2010 at 4:35 PM, Todd Wagner <[mt900supercar@gmail.com](mailto:mt900supercar@gmail.com)> wrote:  
Big :)

OK to set the prices at those levels through 2012, so we know what we're dealing with?

On Tue, Nov 16, 2010 at 3:24 PM, Warren Mosler <[warren.mosler@gmail.com](mailto:warren.mosler@gmail.com)> wrote:  
yes, and that they are subject to change.

higher prices give you more \$

:)

On Tue, Nov 16, 2010 at 4:09 PM, Todd Wagner <[mt900supercar@gmail.com](mailto:mt900supercar@gmail.com)> wrote:

Should we list the list prices in the doc:

\$329,000 + options for MT900s/Raptor-body with 6-speed trans.

\$389,000 + options for Photon-body with Hewland trans?

On Tue, Nov 16, 2010 at 3:06 PM, Todd Wagner <[mt900supercar@gmail.com](mailto:mt900supercar@gmail.com)> wrote:  
Yes, those are fine. V3 revision attached.

On Tue, Nov 16, 2010 at 2:58 PM, Warren Mosler <[warren.mosler@gmail.com](mailto:warren.mosler@gmail.com)> wrote:

On Tue, Nov 16, 2010 at 3:55 PM, Todd Wagner <[mt900supercar@gmail.com](mailto:mt900supercar@gmail.com)> wrote:  
Hi Warren,

The first car won't even land on the shores of China until mid-March. I can't buy another car for a market that hasn't been created yet, and not sure if another car will even be ready by then.

ok, didn't know that, sorry

I'm working hard and doing my best to create what could be huge markets for Mosler, I'm doing my best. I think the agreements are fair as-is.

ok, made a couple of other small wording changes you should be ok with?

On Tue, Nov 16, 2010 at 2:49 PM, Warren Mosler <[warren.mosler@gmail.com](mailto:warren.mosler@gmail.com)> wrote:  
with a few changes attached

—  
Cheers,

J. Todd Wagner

**'The 7 Deadly Innocent Frauds'**

<http://www.moslereconomics.com/2009/12/10/7-deadly-innocent-frauds/>

The 1997-2001 budget surplus was the longest surplus since the 1927-1930 surplus. Coincidence?

The financial sector is a lot more trouble than it's worth.

[www.moslereconomics.com](http://www.moslereconomics.com)

[www.moslerforsenate.com](http://www.moslerforsenate.com)

<http://twitter.com/wbmosler>

Facebook: Mosler for U.S. Senate

Home: 5000 Southgate, St. Croix, USVI 00820

Office phone: 340 718 7710, Fax 7715

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Cheers,  
J. Todd Wagner

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–  
  
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--  
Cheers,  
J. Todd Wagner

—  
The 7 Deadly Innocent Frauds'

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—  
Cheers,  
J. Todd Wagner



## EXCLUSIVE DISTRIBUTORSHIPS OF MOSLER PRODUCTS IN CHINA AND THAILAND

16 November 2010

This Agreement between Mosler Auto Care Center DBA Mosler Automotive ("MACC") and Supercar Engineering, Inc ("SEI") grants 25-year exclusive distribution rights in China and Thailand for all MACC-designed vehicles to SEI on the terms below.

### A. Terms of the Exclusive Distributorship

- 1) The Exclusive Distributorship Term is 25 years from the date of this Agreement.
- 2) SEI must purchase of Chassis 32 ("C32") for \$92,605 as previously agreed. Prior to the date of this Agreement, SEI has paid \$66,882.28 on C32. A contract is in place requiring SEI to pay for the remainder of price of C32 in equal payments over the next 15 months.
- 3) C32 must be exported to Thailand or China within 18 weeks after C32 has been completed by MACC. Expected completion date is Jan 15, 2011.
- 4) C32 must be presented to at least one press outlet in Thailand and China.
- 5) Beginning calendar year 2011, SEI must purchase at least three (3) MACC vehicles to be marketed (approximately 1 vehicle every 120 days), in the Thailand/China distribution territory in every calendar year of the Exclusive Distributorship Term.
- 6) Each vehicle must be paid for in full prior to export and delivery to SEI from MACC from the United States or any other location.

### B. Supply of MACC vehicles to SEI

- 1) Beginning calendar year 2011 until the end of the Exclusive Distributorship Term, MACC agrees to supply SEI with a minimum of three (3) MACC vehicles in every calendar year.
- 2) Vehicle list prices are \$329,000+options for MT900s/Raptor body vehicles with 7.0L V8 engine and 6-speed manual transmission. \$389,000+options for Photon (3.5" narrower) body vehicles with 7.0L V8 engine and Hewland sequential transmission. Prices are fixed for orders placed prior to Dec. 31, 2012. Prices subject to change thereafter.

2391 OLD DIXIE HIGHWAY • RIVIERA BEACH, FL 33404  
561-842-2492 • FAX-561-845-3237



**C. Forfeiture of Exclusive Distribution Rights**

- 1) SEI will forfeit its Exclusive Distribution Rights in China and Thailand immediately upon failure to perform any of Terms 2-6 in Paragraph A, provided that MACC has fulfilled its obligation to supply vehicles as described in Paragraph B.
- 2) If SEI forfeits its Exclusive Distribution Rights in China and Thailand, SEI will be allowed to sell any vehicles that are already completed and being offered for sale in China and Thailand on a non-exclusive basis.

**D. Distributor Discount**

- 1) While SEI has exclusive distributorship rights, SEI will purchase vehicles from MACC at a price that is 13% lower than the list price on each vehicle.
- 2) When SEI becomes a non-exclusive distributor, SEI will purchase vehicles from MACC with a discount off of list price on each vehicle that is the greatest of 13% or the discount that may be granted to other distributors of MACC-designed products in China or Thailand.

**E. Miscellaneous**

- 1) This Agreement is entered into in Florida and is governed by Florida law.
- 2) This Agreement will be binding upon all future MACC designs and future owners of MACC assets.

Warren Mosler	_____	Date	_____
Owner			
Mosler Automotive (Mosler Auto Care Center)			

J. Todd Wagner	_____	Date	_____
President			
Supercar Engineering, Inc.			





## EXCLUSIVE DISTRIBUTORSHIPS OF MOSLER PRODUCTS IN SAUDI ARABIA AND THE UNITED ARAB EMIRATES

16 November 2010

This Agreement between Mosler Auto Care Center DBA Mosler Automotive ("MACC") and Supercar Engineering, Inc ("SEI") grants 25-year exclusive distribution rights in Saudi Arabia and The United Arab Emirates for all MACC-designed vehicles to SEI on the terms below.

### A. Terms of the Exclusive Distributorship

- 1) The Exclusive Distributorship Term is 25 years from the date of this Agreement.
- 2) SEI must purchase of Chassis 64 ("C64") for \$208,974 as previously agreed. Prior to the date of this Agreement, SEI's partner has paid from MACC a \$35,000 deposit on C64.
- 3) C64 must be exported to Saudi Arabia or the United Arab Emirates within 18 weeks after C64 has been completed by MACC.
- 4) C64 must be presented to at least one press outlet in Saudi Arabia and one press outlet in the United Arab Emirates.
- 5) Beginning calendar year 2011, SEI must purchase at least three (3) MACC vehicles to be marketed in the Saudi Arabia/United Arab Emirates distribution territory in every calendar year of the Exclusive Distributorship Term.
- 6) Each vehicle must be paid for in full prior to export and delivery to SEI from MACC from the United States or any other location.

### B. Supply of MACC vehicles to SEI

- 1) Beginning calendar year 2011 until the end of the Exclusive Distributorship Term, MACC agrees to supply SEI with a minimum of three (3) MACC vehicles in every calendar year.
- 2) Vehicle list prices are \$329,000+options for MT900s/Raptor body vehicles with 7.0L V8 engine and 6-speed manual transmission. \$389,000+options for Photon (3.5" narrower) body vehicles with 7.0L V8 engine and Hewland sequential transmission. Prices are fixed for orders placed prior to Dec. 31, 2012. Prices subject to change thereafter

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Plaintiff's **Exhibit 290**  
(in evidence as **PL#74**) Follows



## **EXCLUSIVE DISTRIBUTORSHIPS OF MOSLER PRODUCTS IN CHINA AND THAILAND**

16 November 2010

This Agreement between Mosler Auto Care Center DBA Mosler Automotive ("MACC") and Supercar Engineering, Inc ("SEI") grants 25-year exclusive distribution rights in China and Thailand for all MACC-designed vehicles to SEI on the terms below.

### **A. Terms of the Exclusive Distributorship**

- 1) The Exclusive Distributorship Term is 25 years from the date of this Agreement.
- 2) SEI must purchase of Chassis 32 ("C32") for \$92,605 as previously agreed. Prior to the date of this Agreement, SEI has paid \$66,882.28 on C32. A contract is in place requiring SEI to pay for the remainder of price of C32 in equal payments over the next 15 months.
- 3) C32 must be exported to Thailand or China within 18 weeks after C32 has been completed by MACC. Expected completion date is Jan. 15, 2011.
- 4) C32 must be presented to at least one press outlet in Thailand and China.
- 5) Beginning calendar year 2011; SEI must purchase at least three (3) MACC vehicles to be marketed (approximately 1 vehicle every 120 days), in the Thailand/China distribution territory in every calendar year of the Exclusive Distributorship Term.
- 6) Each vehicle must be paid for in full prior to export and delivery to SEI from MACC from the United States or any other location.

### **B. Supply of MACC vehicles to SEI**

- 1) Beginning calendar year 2011 until the end of the Exclusive Distributorship Term, MACC agrees to supply SEI with a minimum of three (3) MACC vehicles in every calendar year.
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561 845-3237

# MOSLER

## AUTOMOTIVE

Page 1 of 2

### C. Forfeit of Exclusive Distribution Rights

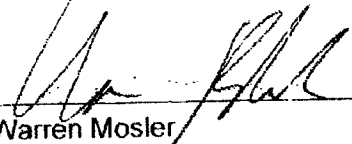
- 1) SEI will forfeit its Exclusive Distribution Rights in China and Thailand immediately upon failure to perform any of Terms 2-6 in Paragraph A, provided that MACC has fulfilled its obligation to supply vehicles as described in Paragraph B.
- 2) If SEI forfeits its Exclusive Distribution Rights in China and Thailand, SEI will be allowed to sell any vehicles that are already completed and being offered for sale in China and Thailand on a non-exclusive basis.

### D. Distributor Discount

- 1) While SEI has exclusive distributorship rights, SEI will purchase vehicles from MACC at a price that is 13% lower than the list price on each vehicle.
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### E. Miscellaneous

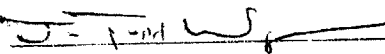
- 1) This Agreement is entered into in Florida and is governed by Florida law.
- 2) This Agreement will be binding upon all future MACC designs and future owners of MACC assets.

  
Warren Mosler

Owner

Mosler Automotive (Mosler Auto Care Center)

04/17/2010  
Date

  
J. Todd Wagner

President

Supercar Engineering, Inc.

11/18/2010  
Date

Page 2 of 2

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