

THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

DOCKETED

NW DELIVERY SERVICES, INC., et al. : MAY TERM, 2019

SEP - 5 2019

Plaintiffs

NO. 01808

R. POSTELL
COMMERCE PROGRAM

v.

COMMERCE PROGRAM

TASTY BAKING COMPANY

Defendant

CONTROL NO. 19081175 Nw Delivery Services, I-ORDER

ORDER



19050180800023

AND NOW, this 5th day of September, 2019, upon consideration of defendant Tasty

Baking Company's preliminary objections, and any response thereto, it is hereby

ORDERED

that the preliminary objections **SUSTAINED, in part** and plaintiffs' unjust enrichment claim is **DISMISSED**.¹ All other remaining preliminary objections are **OVERRULED**.

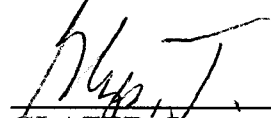
¹ As noted in plaintiffs' memorandum in opposition to defendant's preliminary objections, plaintiffs do not oppose the portion of defendant's preliminary objections seeking to dismiss plaintiffs' unjust enrichment claim.

Pursuant to Pa. R.C.P. 1028(a)(4), a party may raise a preliminary objection due to legal insufficiency of a pleading (demurrer). When considering preliminary objections, all material facts and reasonable inferences set forth in the challenged complaint must be admitted as true. Haun v. Cmty. Health Sys, Inc., 14 A.3d 120, 123 (Pa. Super. 2011) (citation omitted). A court may not consider facts that are not contained within the challenged pleading. See Detweiler v. School Dist. Of Borough of Hatfield, et al., 104 A.2d 110, 113 (Pa. 1954). Additionally, a court need not accept conclusions of law. See Dominski v. Garrett, 419 A.2d 73, 75 (Pa. Super. 1980).

This litigation arises from a dispute between plaintiffs and defendant allegedly stemming from defendant's breach of written distributor agreements. Plaintiffs are independent distributors of snack cakes and sweet baked goods sold under the brand name Tastycake. Defendant is a corporation that manufactures, sells, and distributes pies, cakes and other food products to grocery stores, restaurants, and other customers. In its complaint, plaintiffs allege, inter alia, that defendant breached the distributor agreements by making changes to the distributorship program by implementing a new distribution plan called "scan-based trading" and altered programs by which distributors could take time off.

At this stage of litigation, accepting as true all allegations set forth in the complaint, as this court must, it is too early to decide the merits of whether or not defendant was or was not in

BY THE COURT:



GLAZER, J.

breach of the agreements, especially regarding compliance with the “best efforts” provision. The factual determination as to whether or not defendant was in breach is premature. As such, plaintiffs have sufficiently pled claims for breach of contract to survive this stage of the proceedings and defendant’s objections are overruled.