

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

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**FOOD LINE MANAGEMENT, INC.**  
**t/a PORT RICHMOND THRIFTWAY**

*Plaintiff*

v.

**DOLLAR TREE STORES, INC.**

and

**PORT RICHMOND LLC 1**

and

**CEDAR REALTY TRUST, INC.**

*Defendants*

March Term, 2012

Case No. 01629

Commerce Program

Control No. 12034352

DOCKETED

JUL 16 2012

C. HART  
CIVIL ADMINISTRATION

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**MEMORANDUM OPINION**

The Motion for Preliminary Injunctive Relief of Plaintiff Food Line Management, Inc., trading as “Thriftway,” asks this Court to enjoin Defendant, Dollar Tree Stores, Inc. (“Dollar Tree,”) “from advertising, offering for sale, and selling any food products” at the Port Richmond Village Shopping Center (the “Shopping Center.”)<sup>1</sup> Thriftway asks for injunctive relief pursuant to the terms of a lease agreement which states that lessor, Defendant Port Richmond, LLC 1 (“Port Richmond,”) “will not permit any person other than [tenant Thriftway] to operate a retail food store of any nature in the shopping center....”<sup>2</sup> Thriftway also asserts that Dollar Tree should be enjoined from selling food

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<sup>1</sup> Proposed Order Granting Preliminary Injunction and Other Equitable Relief, filed by Plaintiff Food Line, Control No. 12034352.

<sup>2</sup> Lease Agreement between Port Richmond as lessor and Food Line as tenant, §17.1, Exhibit A to the Complaint.

Food Line Management In-ORDOP



products at the Shopping Center pursuant to the terms of a subsequent lease agreement between Port Richmond, as lessor, and Dollar Tree as tenant. Under the terms of this lease, Dollar Tree is permitted to operate in the Shopping Center as a “general merchandise” retailer, and to engage in the sale of “food products ... subject to the limitations set forth ... in Exhibit E” to the lease agreement between Port Richmond and Dollar Tree, which restates *verbatim* the covenants contained in the senior lease between Port Richmond and Thriftway.<sup>3</sup>

In ruling on a preliminary injunction request, a trial court has reasonable grounds for its denial of relief where it finds that **any one** of the essential prerequisites for a preliminary injunction is not satisfied.<sup>4</sup> Under the first essential prerequisite for injunctive relief, “a party ... must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages...”<sup>5</sup> Specifically, “[w]ith regard to immediate and irreparable harm,” the party seeking injunctive relief may not rest on “speculation and hypothesis,” but must provide “concrete evidence” in support of its request.<sup>6</sup>

After extensive hearings conducted on July 6 and July 12, 2012, Thriftway has not substantiated through business records or other concrete evidence that it lost sales as a result of the activities of Dollar Tree. For example, Thriftway offered the testimony of its agent, Mr. Joseph Sheridan, who purported to testify about the adverse effects suffered by Thriftway as a result of Dollar Tree’s opening. However, when questioned on cross-examination as to whether he had any record showing a decline in customer traffic at his store, Mr. Sheridan merely replied: “it’s on my desk.” In addition, when asked whether he

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<sup>3</sup> Lease Agreement between Port Richmond and Dollar Tree, ¶ A.2, Exhibit C to the Complaint.

<sup>4</sup> Summit Towne Centre, Inc. v. The Shoe Show of Rocky Mount, Inc., 573 Pa. 637, 646; 828 A.2d 995, 1001 (Pa. 2003) (emphasis supplied).

<sup>5</sup> *Id.* at 646; 1001.

<sup>6</sup> *Id.* at 649; 1002.

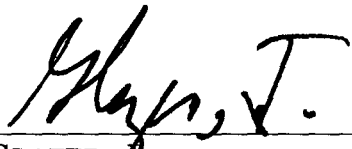
had any record showing an adverse impact on sales as a result of Dollar Tree's opening, Mr. Sheridan merely replied: "it's on my desk." Indeed, Mr. Sheridan could not testify to any degree of specificity about any amounts of losses suffered by Thriftway as a result of Dollar Tree's opening. This testimony clearly indicates that Thriftway has offered no concrete evidence showing it has suffered irreparable harm, other than speculating that its customers' good will is being eroded by the heavily discounted sale of food products from the premises of Dollar Tree. However, this speculation is plausibly countered by Dollar Tree's own hypothesis which contends that the sale of food products by Dollar Tree is attracting new customers not only into the Shopping Center, but also into the premises of Thriftway.<sup>7</sup>

For the reasons above, the Motion for Preliminary Injunctive Relief is denied.

**ORDER**

**AND NOW**, this 13<sup>th</sup> day of July, 2012, upon consideration of the motion for Preliminary Injunctive Relief of Plaintiff, Food Line Management, Inc., the Response in Opposition of Defendant, Dollar Tree Stores, Inc., the respective memoranda of law, and after a hearing on the matter held on July 6 and July 12, 2012, it is **ORDERED** that the Motion for Preliminary Injunctive Relief is **DENIED**.

**BY THE COURT,**

  
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**GLAZER, J.**

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<sup>7</sup> The evidence offered at the hearing shows that Dollar Tree is selling substantial amounts of food from its premises at the Shopping Center. Although the amount of such sales could not be quantified at the hearing, they appear to challenge Dollar Tree's contention that it is a "variety store selling food products," as opposed to being a "retail food store of some nature."