

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

STAR BAKERY, LLC., ET. AL.	:	December Term 2006
Plaintiffs,	:	
v.	:	No. 2556
PREIT SERVICES, LLC, ET. AL.	:	
Defendants.	:	Commerce Program
	:	
	:	Control Number 051491

ORDER

AND NOW, this 29th day of September 2008, upon consideration of Defendant Preit Services, LLC and PR Plymouth Meeting, LLC's motion for summary judgment and Plaintiff's response in opposition, it hereby is **Ordered** that defendants' Motion for Summary Judgment is **granted in part** and judgment is entered in favor of defendant and against plaintiff on count IV (fraudulent inducement) and counts III (tortious interference with contract) and VI (toritous interference with prospective contractual relations). All other aspects of the motion are denied.

BY THE COURT,

MARK I. BERNSTEIN, J.

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PREIT SERVICES, LLC, ET. AL.,	:	
Defendants.	:	Commerce Program
	:	
	:	Control Number 051491

OPINION

Presently before the court is defendants Preit Services, LLC and PR Plymouth Meeting, LLC's motion for summary judgment. Plaintiff Star Bakery, LLC t/a Atlanta Bread Company (hereafter "Star Bakery") was a commercial tenant at the Plymouth Meeting Mall. C.H. Hodges and Kevin C. Hodges are the owners of Star Bakery. PR Plymouth Meeting LLC t/a Plymouth Meeting Limited Partnership (hereinafter "Plymouth Meeting") is Star Bakery's landlord. Preit Services LLC (hereinafter "Preit") is Plymouth Meeting's agent.

On December 20, 2006 Star Bakery instituted suit against Preit Services LLC (hereinafter "Preit") for breach of contract, intentional interference with contractual and prospective relations, fraud in the inducement, promissory estoppel, declaratory relief and constructive eviction. Preit filed preliminary objections. On May 23, 2007, the court sustained Preit's objections to the claims for breach of the implied covenant of good faith and fair dealing and constructive eviction and struck the demand for interest in the counts alleging intentional interference with contractual and prospective relations and fraud in the inducement. All other objections were overruled.

On October 18, 2007, with leave of court, Star Bakery filed an amended complaint adding C. H. Hodges II and Kevin Hodges as plaintiffs, adding PR Plymouth Meeting LLC as a defendant and adding a count for constructive eviction. On June 23, 2008, the court sustained defendants' preliminary objections in part and dismissed the claims of the individual plaintiffs, C.H. Hodges, II and Kevin Hodges. All other preliminary objections were overruled.

On June 16, 2005, Plymouth Meeting consented to the assignment of the Lease for Atlantic Bakery to Star Bakery and executed an Assignment of Lease. By virtue of the Assignment, Star Bakery assumed the timely and true performance of all the terms and conditions of the Lease with the same force and effect as if it had executed the Lease originally. Prior to executing the Assignment, defendant never informed Star of its plans to redevelop the mall which included blocking the view of Star Bakery, limiting access to Star Bakery and removing parking spaces located in front of Star Bakery.

On May 4, 2006, Preit conveyed to Star Bakery the landlord's intention to redevelop the mall and requested that someone from Star Bakery contact it to discuss a buy out. After rejecting an initial offer of \$400,000.00, on May 16, 2006, the Hodges countered with \$844,000. The counter offer was rejected.

On June 7, 2006, the Hodges met with a representative of defendants to discuss the redevelopment of the mall. The Hodges were shown the renovation plans which did not include space for Star Bakery.

On June 9, 2006, in a telephone conversation, Hodges reduced the offer for Star Bakery's buy out to \$700,000 and defendants accepted. Defendants promised to send

Star Bakery a document memorializing the agreed upon buy out price and that the buy out would be completed by July 31, 2006 but no later than August 31, 2006.

On July 12, 2006, defendants confirmed the buy out price of \$700,000 in an e mail. On August 11, 2006, defendants claimed that the buyout was contingent on their finding a new tenant for the space and that they were unable to find a new tenant. Plaintiffs claim that as a result of the failed buy out it suffered damages.

DISCUSSION

I. The claim for fraudulent inducement is dismissed.

Count IV of the amended complaint purports to state a claim for fraud in the inducement. To state a claim of fraudulent inducement, a party must allege (1) a representation, (2) which is material to the transaction at hand, (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false, (4) with the intent of misleading another into relying on it, (5) justifiable reliance on the misrepresentation, and (6) the resulting injury was proximately caused by the reliance.¹ Plaintiff claims that but for defendants' representation that no renovations were planned for the Mall, they would not have entered into the Assignment for the Lease. The Lease Agreement,² however, specifically addresses the issue of renovations. Section 9.5 of the lease provides:

Changes and Additions to Shopping Center

¹ Bortz v. Noon, 556 Pa. 489, 499, 729 A.2d 555, 560 (1999); see also Blumenstock v. Gibson, 811 A.2d 1029, 1034 (Pa. Super. 2002).

² The Lease was amended on April 20, 2000 to change the definition of premises. All other terms of the lease remained unchanged and in full force and effect. See Exhibit "4" to Defendants' Motion for Summary Judgment.

Landlord reserves the right at any time and from time to time to (a) make or permit changes or revisions in the plan for the Shopping Center or the Shopping Center Arena including additions to, subtractions from, rearrangements of, alterations of, modifications of, or supplements to, the building areas, walkways, driveways, parking areas, or other Common Areas, (b) construct improvements in Landlord's Building and the Shopping Center Arena and to make alterations thereof or addition thereto and to build additional stories on or in any such building(s) and build adjoining same, including (without limitation) kiosks, pushcarts and other displays in the Common Areas, and (c) make or permit changes or revisions in the Shopping Center or the Shopping Center Area, including additions thereto, and to convey portions of the Shopping Center Area to others for the purpose of constructing thereon other buildings or improvements, including additions thereto and alterations thereof; provided, however that no such changes, rearrangements or other spaces required by law.

Additionally, the Rider³ to the Lease provides:

“Landlord agrees that it will not construct or permit construction of a permanent retail kiosk within the area extending out from the exterior storefront of the premises and bounded by the side leaselines of the exterior of the Premises extended outward. In addition, Landlord agrees not to construct a structure of any type within seventy (70) feet of the exterior of Tenant's Premises unless required to do so by any governmental authority having jurisdiction in the area in which the Shopping Center is located.

Plaintiff cannot bring a claim for fraud in the inducement based on defendant's oral representations as to no future renovations at the mall when the Lease Agreement allows renovations to occur. Where the parties to an agreement adopt a writing as the final and complete expression of their agreement, alleged prior or contemporaneous oral representations or agreements concerning subjects specifically covered by the written

³ The Rider is annexed to and forms part of the Lease dated April 14, 1999. See Exhibit “3” to Defendants' Motion for Summary Judgment.

contract are merged in or superseded by that contract.⁴ Since there is no evidence of any fraud, accident or mistake, plaintiff's claim lies in contract and not in fraud. Based on the foregoing, the claim for fraudulent inducement is dismissed.

II. Plaintiff's claim for Tortious Interference with Contract is Dismissed.

In counts III and VI of the amended complaint, plaintiff purports to state a claim for tortious interference with contract and tortious interference with prospective contractual relations with plaintiff's employees and customers. Tortious interference with contract relations and future contract relations is defined as inducing or otherwise causing a third person not to perform a contract with another, or not to enter into or continue a business relation with another, without a privilege to do so. When the evidence however only discloses that defendant breached his contracts with plaintiff and that as an incidental consequence thereof plaintiff's business relationships with third parties have been affected, an action lies only in contract for defendant's breaches, and the consequential damages recoverable, if any, may be adjudicated only in that action.⁵

Here, plaintiff's tortious interference claims are indistinguishable from its breach of contract claim. If defendants performed in accordance with their obligations under the alleged buy out agreement, there would be no basis for plaintiff's tortious interference claims. The tortious interference claims are incidental to the contract claim in this action. Based on the foregoing, plaintiff's claims for tortious interference are dismissed.

CONCLUSION

Based on the foregoing, defendants' motion for summary judgment is granted in part and judgment is entered in favor of defendant and against plaintiff on count IV

⁴Blumenstock v. Gibson, 811 A.2d 1029, 1037 (Pa. Super. 2002).

⁵ Glazer v. Chandler, 414 Pa. 304, 307, 200 A.2d 416, 418 (Pa. 1964).

(fraudulent inducement) and counts III (tortious interference with contractual relations) and VI (tortious interference with prospective contractual relations). All other aspects of the motion are denied.

BY THE COURT,

MARK I. BERNSTEIN, J.