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Representing Defendants Relentless, Inc. and Sean Kelly

IN THE COURT OF COMMON PLEAS FOR LANCASTER COUNTY

DONUTNV FRANCHISING, INC.,
Plaintiff

Case No. CI-25-00737

v.

RELENTLESS, INC. AND SEAN KELLY,
Defendants

**REPLY BRIEF IN SUPPORT OF
DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS
UNDER [42 PA.C.S.A. § 8320.1](#)**

Defendants Relentless, Inc. (“Relentless”) and Sean Kelly, through their legal counsel, submit this Reply Brief supporting their Motion for Judgment on the Pleadings under [42 Pa.C.S.A. § 8320.1](#).

I. ARGUMENT

A. DONUTNV HAS FAILED TO SUFFICIENTLY PLEAD THE EXISTENCE OF EXISTING OR PROSPECTIVE CONTRACTUAL RELATIONSHIPS

DonutNV argues that Defendants’ challenge to its tortious interference claims was made only in their brief, not in the Motion for Judgment on the Pleadings. (Pl.’s Br. at 16). This statement is objectively wrong. The Motion for Judgment on the Pleadings states “DonutNV’s **claims for tortious interference** and defamation cannot state a basis for which relief can be granted because Defendants are immune from claims arising

from protected public expression through the Website.” (Defs.’ Mot. ¶ 8). The challenge to the tortious interference claims is properly before the Court.

Knowing that its Complaint lacks any detail as to what contractual relationship or relationships were interfered with, DonutNV falls back on generic arguments about pleadings needing to “convince the Court that its averments are not merely subterfuge.” (Pl.’s Br. at 18). In doing so, DonutNV ignores that for the specific claim of tortious interference, identify the contract or contracts involved **is required**. *Foster v. UPMC South Side Hosp.*, 2 A.3d 655 (Pa. Super. Ct. 2010).

DonutNV’s Complaint does not meet the standards stated in *Foster* for tortious interference, whether prospective or existing. *Foster*, 2 A.3d at 666. Instead, DonutNV dismisses this precedent because it “was decided on summary judgment.” (Pl.’s Br. at 18). DonutNV incorrectly states the procedural posture in *Foster*. There, the plaintiff’s claims for tortious interference were dismissed **at the preliminary objection stage**. *Foster*, 2 A.3d at 659. The case moved forward until all claims were resolved. So while the case was only appealed to the Superior Court after all claims has been disposed of, the dismissal of the tortious interference claim came at the some procedural stage as this action; a ruling based on the pleadings themselves.

DonutNV’s last argument is that “the proper course would be to allow DonutNV to amend its Complaint.” It suggests this alternative knowing it has not properly plead the existence of prospective or actual contractual relationships that were disrupted. DonutNV should not be allowed to escape the pleading requirements merely by saying it

could amend. It should actually ask for leave of the Court or Defendants with a substantive amendment.

B. NO FACTUAL DISPUTES ARE MATERIAL TO DETERMINING THAT DEFENDANTS' SPEECH IS PROTECTED PUBLIC EXPRESSION

DonutNV asks the Court to ignore statutory law and well-established pleading standards because otherwise their meritorious claims would be "dismissed without any discovery whatsoever." (Pl.'s Br. at 1). The Rules of Civil Procedure allowing for preliminary objections and motions for judgment on the pleadings contemplate that certain cases, or at least certain claims, can be resolved at the outset without the need for discovery. If the necessary facts are stated in the pleadings, it is appropriate for the Court to act before waiting for discovery. Similarly, the relative newness of the UPEPA does not mean its provisions can be ignored. There is no basis in the Pennsylvania Constitution, Pennsylvania statutory law, or case law for a court to ignore a properly adopted statute merely because it is new.

DonutNV's tries to create confusion about the meaning of the UPEPA have no support. DonutNV first argues that the UPEPA is ineffective without rules by the Pennsylvania Supreme Court. (Pl.'s Br. at 1). Then it contradicts itself by trying to hold Defendants to the time requirements under the UPEPA. (Pl.'s Br. at 13). Finally, DonutNV concedes that "Section 8340.16(c) of the UPEPA does allow Defendants to raise the statutory immunity issue via motions filed under other Rules of Civil Procedure – such as Rule 1034 allowing motions for judgment on the pleadings...." (Pl.'s Br. at 13). DonutNV's circuitous arguments do nothing to advance the disposition

of the pending Motion for Judgment on the Pleadings. The procedural parts of the UPEPA are not in effect yet. The substantive parts of the UPEPA are in effect.

DonutNV also argues “[u]nder Section 8314(b)(3), the UPEPA does not apply against a person or entity primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to a person’s sale or lease of the goods or services.” (Pl.’s Br. at 14).¹ However, “DonutNV is a **franchisor** with franchisees operating at over 100 locations in the United States.” (Pl.’s Br. at 3; Compl. ¶ 13). While its franchisees may engage in the sale of goods, DonutNV itself does not do so.

There are no factual disputes about what Defendants said. They are listed in DonutNV’s Complaint (¶ 22) and shown in the Complaint’s attachments (Ex. 1). No amount of discovery will change what these statements say. Defendants’ argument is that the UPEPA and pre-existing case law about public expression are enough to determine that the Website’s statements are “protected public expression.” (*See* Defs.’ Br. at 4-9).

C. THERE IS NO BASIS FOR DONUTNV’S REQUESTED DISCOVERY AND ATTORNEY’S FEES RELIEF

In their proposed order, DonutNV asks the court to compel discovery responses to certain discovery requests within 10 days. This request duplicates paragraph 3 of the Court’s Protective Order dated July 18, 2025. DonutNV also asks for an award of

¹ The cited section, 42 Pa.C.S.A. § 8314, is inapposite as it relates not to the UPEPA but to assault with a biological agent on an animal. DonutNV appears to be referencing 42 Pa.C.S.A. § 8340.14(b)(3).

attorney's fees and costs without filing a motion requesting this relief. DonutNV's argument is that it is premature to rule on the UPEPA defense until discovery can be conducted. If DonutNV's argument is correct, then it would similarly be premature to award attorney's fees to DonutNV. Therefore, these requests should be stricken from any order issued to resolve Defendants' Motion for Judgment on the Pleadings.

II. CONCLUSION

For the reasons set forth above, Defendants request the relief stated in their Motion for Judgment on the Pleadings, including dismissal of DonutNV's claims, along with an award of attorney's fees and costs, plus such other relief as the Court considers appropriate.

Date: 8/11/25

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CERTIFICATE OF COMPLIANCE

I certify this filing complies with the provisions of the *Public Access Policy of the United Judicial Systems of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 8/11/25

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CERTIFICATE OF SERVICE

I certify that I am this day serving the Reply Brief in Support of Defendants'

Motion for Judgment on the Pleadings under [42 Pa.C.S.A. § 8320.1](#) by email sent to:

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