

OFECK & HEINZE, LLP
85 Main Street, Suite 204
Hackensack, New Jersey 07601
Tel No. (201) 488-9900
Fax No. (201) 488-4475
ATTORNEYS FOR DEFENDANTS

FILED

MAY 23 2008

**MENELAOS W. TOSKOS
J.S.C.**

BE THIN, LLC,

Plaintiff,

- against -

BALDEV SANDHU, 1800 DRS DIET LLC,
OFECK & HEINZE, LLP, and MARK F.
HEINZE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY: LAW DIVISION

Docket No.: **BER-L-1568-08**

Civil Action

ORDER

THIS MATTER having been opened to the Court by the defendants on their pre-Answer motion to dismiss the Complaint under Rule 4:6-2(e), and the Court having read and considered the papers submitted by the parties on the motion, and having heard the arguments of counsel, and good cause being shown,

IT IS on this 23rd day of May 2008

ORDERED as follows:

1. Defendants' motion is ~~granted~~ ^{to dismiss plaintiff's complaint denied.} and accordingly, the Complaint is dismissed in its entirety; and
2. Counsel for defendants shall serve a copy of the within Order on the plaintiff via first class mailing within seven (7) days after return from the Court.

3. Defendant shall have 20 days to file an Answer

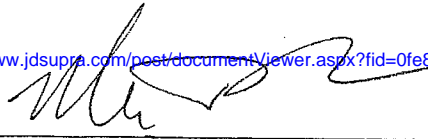
* See Rider Attached hereto.

4. P shall provide the following documents in defendant's
within 30 days:

Document hosted at JDSUPRA™

<http://www.jdsupra.com/post/documentViewer.aspx?fid=0fe8bcd0-7861-4cb9-9fff-7a294fc01e97>

(a) termination letter
from Tabitha



Fortt, MD

MENELAOS W. TOSKOS, J.S.C.

Opposed

Unopposed

(Complaint #15)

(b) contracts with which defendant's

purportedly interfered. (Complaint # 7, 15, 26)

OPPOSED

Rider for R. 4:6-2(e) Motion to Dismiss for Failure to State a Cause of Action

The Court approaches a motion to dismiss for failure to state a cause of action under R. 4:6-2(e) mindful of the test for determining the adequacy of a pleading. This standard, as explained by our Supreme Court in Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739 (N.J. 1989), is whether a cause of action is “suggested” by the facts. Id. at 746 (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). As further explained in Printing Mart, in ruling on the motion, a court’s inquiry:

is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. [The] court searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary. At this preliminary stage of the litigation the [c]ourt is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. The examination of a complaint’s allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.

116 N.J. at 746 (citations and internal quotation marks omitted).

Finally, the Printing Mart Court concluded with a direction to trial courts to approach motions to dismiss for failure to state a cause of action with caution and to grant such motions only in the rarest of instances. 116 N.J. at 771-72. “If a complaint must be dismissed after it has been accorded the kind of meticulous and indulgent examination counseled in this opinion, then, barring any other impediment such as a statute of limitations, the dismissal should be without prejudice to a plaintiff’s filing of an amended complaint.” Id.

In this case, Plaintiff’s Complaint has Three Counts. Count 1 alleges tortious interference with a contract, as Plaintiffs allege Defendant’s actions constitute deliberate interference with a contract. In addition, Plaintiff alleges that Defendant Sandhu’s use of co-Defendants Heinze and Ofeck & Heinze’s letter on behalf of another client is misleading and unethical. Count 2 alleges that Defendants engaged in a tortious conspiracy (the tort of the conspiracy being the 1st Count.) Count 3 alleges that Defendants Heinze and Ofeck & Heinze have aided the commission of a tort, by aiding and encouraging Defendant Sandhu and his company commit a tort (Count 1), and that this participation benefitted Heinze and Ofeck

& Heinze. In accordance with Printing Mart and R. 4:6-2(3), the court determines that Plaintiff has pled an actionable claim for tortious inference with contract and denies Defendant's motion to Plaintiff's Complaint.