No. COA14-185 TWENTY-TWO A DISTRICT

NORTH CAROLINA COURT OF APPEALS

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Beverage Systems of the Carolinas, LLC,	)	
Plaintiff-Appellant	)	
vs.	)	FROM IREDELL COUNTY
Associated Beverage Repair, LLC, Ludine Dotoli and Cheryl Dotoli,	)	
Defendants-Appellees	)	

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DEFENDANTS-APPELLEES' BRIEF

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No. COA14-185 TWENTY-TWO A DISTRICT

NORTH CAROLINA COURT OF APPEALS

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Beverage Systems of the Carolinas, LLC, Plaintiff-Appellant vs. Associated Beverage Repair, LLC, Ludine Dotoli and Cheryl Dotoli, Defendants-Appellees	)	FROM IREDELL COUNTY

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DEFENDANTS-APPELLEES' BRIEF

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CLARIFICATION OF FACTS ENUMERATED BY APPELLANT

Appellees agree generally that the Statement of Facts set out in Appellant's Brief are consistent with the facts set out in the Record. However, certain critical statements made in Appellants' Brief are not supported by the Record, which statements Appellees clarify as follows:

Imperial Unlimited Services, Inc. ("Imperial") and Elegant Beverage Products, Inc. ("Elegant"), did not operate "throughout North Carolina and South Carolina', as stated on page 4 of Appellant's Brief. Rather, as appears on page 74 of the Record,

> "Throughout their history, the deepest penetration by either Elegant or Imperial for the conduct of their business into South Carolina was Rock Hill, just to the south of Charlotte, North Carolina, and to Spartanburg,

> which lies to the southwest of Charlotte, North Carolina. Neither of the companies provided any sales or service in South Carolina east of Rock Hill, or to the south or southwest of Spartanburg. In North Carolina, Imperial's activities did not extend to the east of Stanly County; Elegant's eastern-most account was in Wake County. Neither company had any business within the large Piedmont, Sandhills or eastern portions of South Carolina or in the Sandhills or eastern part of North Carolina. Their western-most penetration was Morganton in North Carolina and Gaffney in South Carolina. Neither company was involved in the vast western-most sections of either state."

The Record at page 7 (a portion of Appellant's verified Complaint beginning at Record page 6) recites that "Beverage Systems [the Appellant] is a company which supplies, installs, and services beverage products and beverage dispensing equipment in North Carolina". There is nothing in the Complaint alleging the Appellant at any time operated in South Carolina; there is nothing in the verified Complaint (R pp 6-13) identifying where in North Carolina or anywhere else the Appellant served customers in the course of Appellant's work. Specifically, while the verified Complaint alleges that Appellant "supplies, installs, and services beverage products and beverage dispensing equipment in North Carolina" (R p 7) there is nothing in the Record to identify <u>where</u> in North Carolina these services were provided.

Appellant's Brief page 14 recites that Appellee Lou Dotoli "received additional, separate compensation for the 'goodwill' of his business" . . . (R pp 98, 141). The Record establishes that Lou Dotoli had an ownership interest in <u>Elegant</u>, but not in

Imperial (R pp 71-72). Pages 98 and 141 of the Record document that the only payment for "goodwill" involved in Appellants' purchase of the assets of Elegant and Imperial was a payment made to Imperial, in which Appellee Lou Dotoli had no interest. The sole payments to Elegant, in which Lou Dotoli did have an interest, were $10,000 for equipment and $35,000 for inventory. (R pp 98, 141).

The Non-Competition Agreement which Appellee Ludine Dotoli is alleged to have violated in this cause provides in pertinent part that Ludine Dotoli shall not, in the states of North Carolina or South Carolina, during the period ending October 1, 2014,

> ". . . without the prior written consent of Purchaser, directly or indirectly, for himself or on behalf of or in conjunction with any person, partnership, corporation or other entity, compete, own, operate, control, or participate or engage in the ownership, management, operation or control of, or be connected with as an officer, employee, partner, director, shareholder, representative, consultant, independent contractor, guarantor, advisor or in any other manner or otherwise, directly or indirectly, have a financial interest in, a proprietorship, partnership, joint venture, association, firm, corporation or other business organization or enterprise that is engaged in the business of the Purchaser or any of its respective affiliates or subsidiaries on behalf of clients (the "Business"). . ." (R pp 15-16)

There is no reference in the Asset Purchase Agreement (R pp 77-97) nor in the Non-Competition Agreement (R pp 15-23), to any customer of either Elegant or Imperial that Appellant was acquiring in connection with the purchase of the assets of Elegant and Imperial. There were no written contracts which obligated any

customer or supplier of either Imperial or Elegant to continue a business relationship with those firms. (R p 76).

ARGUMENT

I. THE NON-COMPETITION AGREEMENT IS INVALID UNDER NORTH CAROLINA LAW, BECAUSE ITS SCOPE (ALL OF NORTH CAROLINA AND ALL OF SOUTH CAROLINA) EMBRACES AN AREA FAR GREATER THAN IS NECESSARY TO SECURE THE BUSINESS OR GOOD WILL OF THE PLAINTIFF.

The pleadings establish that Plaintiff was not organized until May 27, 2009. There is no pleading or proof that it operated anywhere in North Carolina or South Carolina prior to concluding purchase of the assets of Imperial and Elegant on September 30, 2009. At that time, the business of Imperial and Elegant was confined to an area generally within a 50 - 75 mile radius of Statesville. Neither company had ever operated in the remaining vast areas of the Piedmont, the Sandhills, the Coastal Plain or the Mountains of either state.

In Hejl v. Hood Hargett & Associates, 196 N.C. App. 299, 674 S.E. 2d 425 (2009), the Plaintiff had executed a Non-Compete Agreement with Defendant which prohibited Plaintiff from dealing in insurance products in competition with the Defendant anywhere in North Carolina or South Carolina where Defendant was engaged in rendering its services for two years after Plaintiff terminated his employment with Defendant. The Defendant conducted its operations out of Charlotte. Noting that the Non-Compete Agreement "reaches not only clients, but potential clients, and extends to areas where

Plaintiff had no connection or personal knowledge of clients", the Court said:

> ". . . we hold the Agreement is invalid and unenforceable because the territory and customers encompassed by the Agreement are overly broad and not reasonably restricted to protect Defendant's legitimate business interests." 674 S.E. 2d 425, 430.

The Court commented in Hejl that

> "A restriction as to territory is reasonable only to the extent it protects the legitimate interests of the employer in maintaining its customers." (Emphasis Ours) . . . "To prove that a geographic restriction in a covenant not to compete is reasonable an employer must first show where its customers are located and that the geographic scope of the covenant is necessary to maintain those customer relationships. (Citing cases). The territory embraced [by the covenant] shall be no greater than is reasonably necessary to secure the protection of the business or good will of the employer. (Citing cases)." 674 S.E. 2d 425, 430.

Just prior to Hejl, our Court had stated in another non-compete case that (1) the reasonableness of a Non-Competition agreement is a matter of law for the Court to decide, and that (2) the party who seeks enforcement of the Covenant has the burden of proving the reasonableness of the agreement. Medical Staffing Network, Inc. v. Ridgeway, 194 N.C. App. 649, 670 S.E. 2d 321 (2009).

In a much earlier case, Noe, et al v. McDevitt, et al, 228 N.C. 242, 45 S.E. 2d 121 (1947), the Plaintiff was involved in the sale and distribution of equipment and supplies used in the business of beauty salons. The Defendant McDevitt went to work for Plaintiff as a salesman, pursuant to an Employment Agreement and

Non-Competition Agreement that prevented Defendant, upon terminating his employment, from competing against Plaintiff anywhere in the States of North Carolina and South Carolina. The evidence showed that Defendant's services for Plaintiff during the employment were confined to "eastern" North Carolina.

On appeal from the Trial Court holding that the Non-Competition Agreement was invalid because of its scope, our Supreme Court affirmed, saying:

> ". . . We concur in this conclusion. Giving the Plaintiff the benefit of very generous inferences, while he may have shown the conduct of business to some extent in eastern North Carolina, he has not definitely shown any clientele throughout the much broader territory here involved such as would correlate the protection sought with any need of his business . . ." 45 S.E. 2d 121, 123.

These cases and others are consistent in their holding that the person who seeks to enforce a non-competition agreement must first show where its customers are located and that the geographic scope of the covenant is necessary to maintain those customer relationships. Hejl v. Hood, supra; Kinesis Advertising, Inc. v. Hill, 187 N.C. App 1, 652 S.E. 2d 284 (2007); Okuma America Comp. v. Bowers, 181 N.C. App. 85, 638 S.E. 2d 617 (2007); Farr Associates v. Baskin, 138 N.C. App. 276, 530 S.E. 2d 878 (2000); Hartman v. W. H. Odell and Associates, Inc., 117 N.C. App. 307, 450 S.E. 2d 912 (1994). Plaintiff has presented no forecast of evidence to show the location of the customers within its geographic scope of business. It has therefore failed to show that

the geographic scope covered by the covenant is necessary to maintain any customer relations. Indeed, Plaintiff has not even alleged that its business activities extend into South Carolina.

Even when the Covenant Not to Compete is given in connection with the sale of a business, our Supreme Court has adhered to the rule that limitations on time and territory must both be considered in determining the reasonableness of each of the limitations. See, e.g., Jewel Box Stores Corporation v. Morrow, 272 N.C. 659, 158 S.E. 2d 840 (1968). There, the Court enforced against the seller of a jewelry business in Morganton a covenant that prohibited the Defendant from owning or operating a competing store for a period of ten (10) years within ten (10) miles of the City or Morganton. Jewel Box cites a series of cases involving Covenants Not to Compete given in connection with the sale of a business.

One of the cited cases is Thompson v. Turner, 245 N.C. 478, 96 S.E. 2d 263 (1957). In that case, the Defendant (much like Elegant here) sold to the Plaintiff a wholesale coffee and specialty business located in Lenoir. The seller gave the buyer a Covenant Not to Compete either within the City of Lenoir "nor the territory now covered" by the seller in his business. The Defendant contended that the Covenant Not to Compete was invalid because it did not define "the territory" in which Defendant was prevented from competing. However, the evidence at trial established that the "territory" was comprised of the counties of Alexander, Ashe,

Avery, Burke, Caldwell, McDowell, Mitchell, Watauga, Wilkes and Yancey. The Trial Court and the Supreme Court held that parole evidence was admissible to establish those counties as "the territory", thus rendering the contract valid.

Apropos this case, the following language in Thompson supports Defendants' argument that the Non-Competition Agreement involved here is unenforceable because of its application to the entirety of two states as to which Plaintiff has no evidence that it ever conducted business:

> "Contracts for the sale of a business containing as an incident to the sale a covenant not to engage in business in competition with the vendee in the area served by the business (emphasis ours) are recognized as valid when reasonable. The test of a covenant is its reasonableness in protecting the purchaser from competition from his vendor without detriment to the public." 96 S.E. 2d 263, 266.

There is nothing in the record here, except for the Affidavit of Lou Dotoli, to establish the specific areas in North and South Carolina where Imperial and Elegant conducted their operations. This is but a small portion of the much larger areas of all of North Carolina and all of South Carolina. Plaintiff has not adduced and cannot adduce any evidence that it had (or acquired from Imperial or Elegant) any business interest in any of that much broader area of the two Carolinas which it is necessary for Plaintiff to protect. The Non-Competition Agreement is therefore invalid as being too broad in its scope, and should be stricken as the basis for any claim in this case.

Plaintiff argues, citing Welcome Wagon International v. Pender, 255 N.C. 244, 120 S.E. 2d 739 (1961), that this Court has the right to redraw the agreement so as to render the territory covered by the agreement reasonable and therefore enforceable against the Defendants. Plaintiffs overlook the fact that the parties in Welcome Wagon had, by their contract, defined four separate territories to which the covenant could apply. The Court agreed that one of the four territories (Fayetteville, NC) was reasonable, and therefore enforced the contract. Suffice it to say that under North Carolina's "blue pencil" rule, the Trial Court will not amend an invalid Non-Competition Agreement for the purpose of making it enforceable under North Carolina law. Noe, et al v. McDevitt, et al, 228 N.C. 242, 45 S.E. 2d 121 (1947); Hartman vs. W.H. Odell and Associates, Inc., 117 N.C. App. 307, 450 S.E. 2d 912 (1994); American Hot Rod Assoc., Inc. v. Carrier, 500 F. 2d 1269 (1974).

II. THERE IS NO BASIS IN FACT OR LAW FOR THE ENTRY OF INJUNCTIVE RELIEF AGAINST DEFENDANT LOU DOTOLI OR FOR THE IMPOSITION OF DAMAGES AGAINST HIM BASED ON BREACH OF THE NON-COMPETITION AGREEMENT.

Defendant Lou Dotoli has established in the first portion of this Brief that the Non-Competition Agreement upon which Plaintiff relies is too broad in its geographic scope to be determined a valid agreement under North Carolina law. Therefore, the agreement is void and cannot be the basis of a breach by Lou Dotoli of the Non-Competition Agreement.

Because there is no valid Non-Competition Agreement, there exists no basis for the granting of injunctive relief against Lou Dotoli or for the recovery of damages by Plaintiff against him based on a breach of the Non-Competition Agreement. This claim should therefore be dismissed.

III. THERE IS NO PLEADING OR EVIDENCE TO SUPPORT PLAINTIFF'S CLAIM AGAINST ANY OF THE DEFENDANTS FOR THE ALLEGED TORTIOUS INTERFERENCE WITH ANY CONTRACT OF THE PLAINTIFF.

The law in North Carolina has for many years been that

> "To establish a claim for tortious interference with contract, a Plaintiff must show: (1) a valid contract between the Plaintiff and a third person which confers upon the Plaintiff a contractual right against a third person; (2) the Defendant knows of the contract; (3) the Defendant intentionally induces the third person not to perform the contract; (4) and in doing so acts without justification; (5) resulting in damage to Plaintiff." Williams v. American Eagle Airlines, Inc., 208 N.C. App. 250, 702 S.E. 2d 541 (2010); Combs v. City Elec. Supply Co., 203 N.C. App. 75, 690 S.E. 2d 719 (2010); Sellers v. Morton, 191 N.C. App. 75, 661 S.E. 2d 915 (2008); Combs & Associates, Inc. vs. Kennedy, 147 N.C. App. 362, 555 S.E. 2d 634 (2001).

In this case, Lou Dotoli says in his Affidavit that neither Imperial nor Elegant had any contract with any of their customers or suppliers, either for the performance by Imperial of services or for the sale by Elegant of commodities. Therefore, when Plaintiff purchased the assets of Imperial and Elegant, there were no contracts which either of those entities could sell to Plaintiff. Indeed, the schedule of assets purchased by Plaintiff that

Plaintiff attached as an exhibit to the Asset Purchase Agreement makes no reference to any such contracts. Plaintiff has not identified in the Complaint any contracts it had or has with third parties with which Defendants allegedly interfered.

Plaintiff's responses to Defendants' Request for Production of Documents are instructive on this issue. Beginning at Record page 110, the Requests and the Plaintiff's Responses establish that "there were no written agreements that were specifically transferred, but Plaintiff did purchase all of the accounts and customers of Elegant Beverage Products, LLC, as part of the Asset Purchase Agreement dated July 20, 2009". (Rule 34 Request No. 1, Response No. 1, R p 111).

As to Imperial, Plaintiff says that "To Plaintiff's knowledge, there were no written agreements that were specifically transferred, but Plaintiff did purchase all of the accounts and customers of Elegant Beverage Products, LLC (sic) as part of the Asset Purchase Agreement dated July 20, 2009". (Rule 34 Request No. 2, Response No. 2, R p 111).

When asked (Rule 34 Request No. 4, Response No. 4, R p 112) to produce any document containing a representation by either Elegant or Imperial that any customer being served by either of said entities would remain a customer of Plaintiff after closing, Plaintiff refers to pages "BSC 6 through BSC 42" attached to its response. There is nothing in those pages constituting a

representation that any customer of Imperial or Elegant would remain a customer of Plaintiff after the closing.

Plaintiff further says that after September 30, 2009 (the day of closing) it never entered into a written contract for the provision of services by Plaintiff to any customer (Plaintiff's Response to Request No. 5, R p 112) and that Plaintiff never gave notice to Defendants of the existence of any contract entered into between Plaintiff and a customer after September 30, 2009. (Plaintiff's Response to Request No. 6, R p 112).

Lou Dotoli says in his Affidavit that Defendants had no knowledge of any contracts between Plaintiff and any third party. He says he doesn't even know who the customers of Plaintiff are. Finally, he says that he never induced any customer of Plaintiff not to perform its contract with Plaintiff (R p 75). Plaintiff's response to Defendants' discovery presents no facts that are in conflict with Lou Dotoli's Affidavit on the tortious interference issue, and Plaintiff can produce no other contradicting evidence.

It is well established that the unenforceable Non-Competition Agreement addressed in Section I of this Brief cannot be used as a basis to support Plaintiff's tortious interference with contract claim. Whittaker General Medical Corp. v. Daniel, 87 N.C. App. 659, 362 S.E. 2d 302 (1987).

As to the tortious interference claim, Plaintiff has failed to identify any contract between Plaintiff and a third party which

confers a contractual right upon Plaintiff; he has failed to allege or offer any proof that Defendants had any knowledge of any such contract; he has failed to allege or offer proof that Defendants intentionally induced any third party not to perform its contract with Plaintiff; and he has failed to allege any damage resulting to Plaintiff because of such interference.

On these facts, Plaintiff has failed to allege and can offer no evidence sufficient to raise a genuine issue of fact to support the claim for tortious interference. This claim was therefore properly dismissed.

IV. PLAINTIFF'S CLAIM AGAINST LOU DOTOLI FOR DAMAGES AND ATTORNEY FEES UNDER CHAPTER 75 SHOULD BE DISMISSED BECAUSE THERE IS NO SHOWING THAT HE VIOLATED A VALID NON-COMPETITION AGREEMENT; THE CHAPTER 75 CLAIM AGAINST ALL DEFENDANTS BASED ON THE THEORY OF TORTIOUS INTERFERENCE WITH A CONTRACT SHOULD BE DISMISSED BECAUSE THERE IS NO EVIDENCE TO ESTABLISH TORTIOUS INTERFERENCE.

Plaintiff's Chapter 75 claim (identified as Plaintiff's Fourth Cause of Action) relies upon Plaintiff's claims alleged in paragraphs 1 - 64 of the Complaint, which involve (1) Lou Dotoli's alleged violation of a Non-Competition Agreement, and (2) tortious interference by all of the Defendants "with the business of Beverage Systems" (Emphasis Ours), as distinguished from tortious interference with the contracts of Plaintiff. (Emphasis Ours).

Any Chapter 75 claim against Lou Dotoli based on breach of a Non-Competition Agreement should be dismissed because there is no evidence of a valid Non-Competition Agreement which he could have

violated. Without the existence of an unfair or deceptive trade practice to generate the underlying violation of Chapter 75, this failed claim (breach of a Non-Competition Agreement) will not support a claim under Chapter 75.

Plaintiff's next effort is to find a violation of Chapter 75 in the alleged conduct of the Defendants described in the paragraphs of the Complaint (paragraphs 1 - 69, R p 6-12) which precede the Chapter 75 claim (beginning at paragraph 70, R p 12). The only other specific Cause of Action embraced in those preceding paragraphs (except for the unfounded claim for injunctive relief and damages against Lou Dotoli on the claim for breach of a Non-Competition Agreement) is for tortious interference with Plaintiff's contracts. There is not alleged, and in fact North Carolina has not recognized, a claim denominated "tortious interference with {the Plaintiff's} business". Thus, the gravamen of Plaintiff's claim under Chapter 75 against all Defendants is necessarily the Third Cause of Action for Tortious Interference with Contract.

Defendants have addressed the tortious interference claim in Section III of this Brief. Since, as appears from that argument, there has been no tortious interference with any contract of the Plaintiff, this basis for a Chapter 75 claim must lapse along with the claim against Lou Dotoli for breach of the Non-Competition Agreement. There simply is no underlying wrong for Chapter 75 to

attach to as support for the Fourth Cause of Action. This claim should therefore be dismissed.

V. PLAINTIFF'S CLAIM AGAINST ALL DEFENDANTS FOR TORTIOUS INTERFERENCE WITH FUTURE ECONOMIC ADVANTAGE SHOULD BE DISMISSED BECAUSE (1) THERE ARE NO ALLEGATIONS OF FACT TO SUPPORT THIS CLAIM, AND (2) THERE IS NO EVIDENCE TO SHOW THAT DEFENDANTS INDUCED A THIRD PARTY TO REFRAIN FROM ENTERING INTO A CONTRACT WITH PLAINTIFF WITHOUT JUSTIFICATION AND THAT THE CONTRACT WOULD HAVE ENSUED BUT FOR DEFENDANTS' INTERFERENCE.

The elements to support a claim for tortious interference with future economic advantage are that (1) the Defendants induced a third party to refrain from entering into a contract with Plaintiff without justification, and (2) the contract would have ensued but for Defendants' interference. S.N.R. Management Corp. v. Danube Partners 141, LLC, 189 N.C. App. 601, 659 S.E. 2d 442 (2008); Walker v. Sloan, 137 N.C. App. 387, 529 S.E. 2d 236 (2000).

It is clear from Walker v. Sloan, supra, that to make out a case for tortious interference with prospective economic advantage "the Plaintiffs must allege facts (emphasis ours) to show that the Defendants acted without justification in inducing a third party to refrain from entering into a contract with them which contract would have ensued but for the interference". See for the same pleadings requirement Guypton v. Son-Lan Development Co., Inc., 205 N.C. App. 133, 695 S.E. 2d 763 (2010). It also is a requirement that Plaintiffs "assert some measurable damages resulting from Defendant's allegedly tortious activities, i.e., what 'economic

advantage' was lost to Plaintiff as a consequence of Defendant's conduct". Walker v. Sloan, supra.

Here, there is not a single allegation of fact to identify what third party the Defendants induced to refrain from entering into a contract with the Plaintiff, or what the contract was about. There is not a single allegation that, except for such inducement, the contract would have ensued. And except for alleging a monetary claim "in the minimal amount of $10,000", there is not a word alleged about what economic advantage the Plaintiff suffered because of Defendants' alleged inducement. (Compare this allegation with the allegation in Walker v. Sloan that "Defendant's actions resulted in actual damages to the Plaintiff", which the Court said was an insufficient allegation of damages justifying the dismissal of Plaintiff's action). Citing Thacker v. Ward, 263 N.C. 594, 599, 140 S.E. 2d 23, 28 (1965), the Sloan Court said:

> "Our Supreme Court has stated that "{'a'} Defendant is entitled to know from the Complaint the character of the injury for which he must answer."

The Affidavit of Lou Dotoli makes clear why Plaintiff has not identified in its Complaint the name or names of any third parties whom any of the Defendants induced to refrain from entering into a contract with Plaintiff. The reason, as Lou Dotoli says, is that none of the Defendants ever did what they are alleged to have done, i.e., they never induced or sought to induce any third party to refrain from entering into a contract with Plaintiff.

On both the facts and the law, the Plaintiff's claim for tortious interference with a prospective business advantage should therefore be dismissed.

VI. **THE CLAIM FOR PUNITIVE DAMAGES SHOULD BE DISMISSED BECAUSE ON THE FACTS AND THE LAW THE PLAINTIFF IS NOT ENTITLED TO RECOVER ACTUAL DAMAGES ON ANY THEORY ALLEGED IN THE COMPLAINT.**

A Plaintiff may be awarded punitive damages if the proper basis therefore exists under the provisions of Chapter 1D of the General Statutes, but only if the Plaintiff establishes a right to compensatory (or actual) damages. Sellers v. Morton, 191 N.C. App. 75, 661 S.E. 2d 915 (2008). Since Plaintiff can prove no basis for compensatory damages, there is no underlying basis for the award of punitive damages.

CONCLUSION

The Non-Competition Agreement is void as a matter of law because it relates to two entire states, in only small portions of which had Ludine Dotoli or the other parties to the Agreement ever conducted any business. Plaintiff has failed to allege or offer evidence to show that the Covenant was necessary to protect Plaintiff's business interests in the entirety of the described territory. The Non-Competition Agreement being void, it will not support injunctive relief against Loudine Dotoli. There is neither allegation nor projected evidence sufficient to support Plaintiff's claims for (1) tortious interference with contract or for (2)

tortious interference with future economic advantage against either Loudine Dotoli or the other Defendants, with the result that these claims should be dismissed as a matter of law. There being no basis for actual damages, the claim for punitive damages becomes unenforceable. The Trial Court for all of these reasons properly dismissed Plaintiff's claims. This Court should therefore affirm the Trial Court's dismissal of this action in its entirety.

This 3 day of March, 2014.

EISELE, ASHBURN, GREENE & CHAPMAN, PA

By: _____

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CERTIFICATE OF SERVICE

The attached Defendants-Appellees' Brief was served upon Plaintiff by mailing a copy thereof to its attorneys of record as follows:

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This 3 day of March, 2014.

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