

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

RAPID FREIGHT SYSTEMS, INC.	:	October Term, 2001
	:	
Plaintiff,	:	No. 03304
v.	:	
	:	Commerce Program
OFER EXPRESS LLC	:	
	:	Control No. 111490
	:	
Defendant.	:	

ORDER and MEMORANDUM

AND NOW, this 28th day of February 2003, upon consideration of the Motion for Summary Judgment of Plaintiff/Counterclaim Defendant Rapid Freight Systems Inc., all responses in opposition, the respective memoranda, all matters of record, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it hereby is **ORDERED** and **DECREED** that said Motion is **GRANTED** and that the Counterclaim of Offer Express LLC hereby is **DISMISSED**.

BY THE COURT:

C. DARNELL JONES, J.

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	:	Control No. 111490
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MEMORANDUM OPINION

C. DARNELL JONES, J.

Before the Court is the Motion for Summary Judgment of Plaintiff/Counterclaim Defendant Rapid Freight Systems Inc. (“Rapid”). For the reasons fully set forth below, Rapid’s Motion is **granted**.

BACKGROUND

On or about October 23, 2001, Rapid instituted this action by filing a civil action complaint (the “Complaint”) against Ofer Express LLC (“Ofer”). Rapid is seeking, *inter alia*, a declaration that the non-compete provision contained within an agreement between the parties (“Non-Compete Agreement”) is unenforceable. On or about November 30, 2001, Ofer filed an Answer, New Matter and Counterclaim against Rapid (the “Counterclaim”). Ofer’s Counterclaim contains claims for breach of the Non-Compete Agreement (Count I), tortious interference with contractual relations (Count II) and punitive damages (Count III). Rapid has moved for summary judgment as to all counts of the Counterclaim. Each will be addressed in turn.

DISCUSSION

A. Count I Fails Because Ofer Has Failed To Establish A Causal Connection Between Rapid's Alleged Breach and Its Purported Loss

Rapid has moved for summary judgment as to Count I of the Counterclaim, arguing that Ofer has failed to proffer any evidence that Rapid breached the Non-Compete Agreement or that such breach was the cause of Ofer's alleged damages. (Rapid Mem. 21-25). To sustain a claim for breach of contract, a plaintiff must prove: (1) the existence of a contract, including its essential terms; (2) a breach of a duty imposed by the contract; and (3) resultant damages. CoreStates Bank, Nat'l Assn. v. Cutillo, 723 A.2d 1053 (Pa. Super. 1999). In order to recover damages pursuant to a breach of contract, the plaintiff must also show a causal connection between the breach and the claimed loss. Exton Drive-In, Inc. v. Home Indemnity Co., 436 Pa. 480, 261 A.2d 319 (1969); Logan v. Mirror Printing Co. of Altoona, Pa., 410 Pa. Super. 446, 600 A.2d 225 (1991). It is in this regard that Ofer's claim fails.

Ofer has failed to set forth reasonable proof that it has suffered any damages as a result of Rapid's alleged conduct. A party seeking damages for breach of contract must be able to prove such damages with reasonable certainty. Wilcox v. Regester, 417 Pa. 475, 484, 207 A.2d 817 (1965); Logan, 410 Pa. Super. at 446, 600 A.2d 225. Here, Ofer has failed to demonstrate that its client E. Robinson Group ("Robinson") would have continued to do business with Ofer absent Rapid's alleged conduct. The facts of record clearly belie such a contention, particularly the testimony of Edward Robinson, President of Robinson, and Michelle Struble, Office Manager for Robinson (Rapid Mtn., Ex. E., pp. 18-21, 22-5, 51-2; Ex. F, pp. 8-12, 15-20, 37-8, 51, 55).

The collective testimony of Mr. Robinson and Ms. Struble makes it clear that Robinson was dissatisfied with the service it was receiving from Ofer, prior to the dispute at issue. Id. Ofer has failed to present sufficient evidence from which a reasonable jury could find otherwise.¹

A court must grant a motion for summary judgment when a non-moving party fails to "adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor." Ertel v. Patriot-News Co., 544 Pa. 93, 101-02, 674 A.2d 1038, 1042 (1996). Such is the case with respect to Count I of the Counterclaim. Accordingly, Count I hereby is dismissed.

B. Ofer's Claim For Intentional Interference With Existing Contractual Relations (Count II) Fails As A Matter of Law

In Count II of the Counterclaim, Ofer alleges that Rapid's alleged breach of the Non-Compete Agreement caused the loss of "...the benefit of its business relationship with its clients, including but not limited to [Robinson].² (Countercl. ¶ 64). The elements of a cause of action for interference with contractual relations are as follows:

- (1) the existence of a contractual relation between the complainant and a third party;
- (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation;
- (3) the absence of privilege or justification on the part of the defendant; and

¹While the record does demonstrate that Ofer's dispute with Rapid was also a factor Robinson's decision to cease doing business with Ofer, the testimony of the Robinson employees makes it clear that it was Ofer's seemingly counterintuitive decision to threaten litigation against its own client, rather than the dispute itself, which was the "proverbial straw that broke the camel's back".

²Robinson is the only client identified by Ofer which as the subject of Rapid's interference claim. As such, this court's inquiry will be limited solely to whether Ofer has established a valid tortious interference claim against Rapid as respects Robinson.

(4) the occasioning of actual legal damage as a result of the defendant's conduct.

Al Hamilton Contracting Co. v. Cowder, 644 A.2d 188, 191 (Pa. Super. 1994); Strickland v. Univ. of Scranton, 700 A.2d 979 (Pa. Super. 1997).

In order to succeed on its claim, Ofer must first demonstrate the existence of a contractual relationship between itself and a third party, in this case Robinson. Al Hamilton, 644 A.2d at 191. Ofer is unable to do so, as the record clearly demonstrates that no contract existed between Ofer and Robinson. The absence of an express contract between Ofer and Robinson is fact which has been established beyond dispute through the testimony of Ofer's own principal, Thomas Moran, (Rapid Mtn, Ex. B., pp. 268-9) and through the representatives of Robinson (Rapid Mtn, Ex. E., pp. 20; Ex. F, pp. 32, 36, 52-54). Thus, even when viewing the record in a light most favorable to Ofer, it can not prove any set of facts supporting its interference claim which will entitle it to relief. Accordingly, Count II of the Counterclaim is dismissed.

C. Ofer Is Not Entitled To Punitive Damages

Rapid has also moved for summary judgment as to Ofer's claim for punitive damages, which is set forth as a separate cause of action in Count III of the Counterclaim. Because Ofer's tort claim has been dismissed, its punitive damages claim must also necessarily fail. Thus, Moreover, a request for punitive damages cannot stand as an independent cause of action. Nix v. Temple Univ. of the Commw. Sys. of Higher Educ., 408 Pa. Super. 369, 596 A.2d 1132, 1138 (1991)(dismissing claim for punitive damages contained in a separate count); Hilbert v. Roth, 395 Pa. 270, 149 A.2d 648, 652 (1959)(stating that "[t]he right to punitive damages is a mere incident to a cause of action ... and not the subject of an action in itself."). Accordingly, Rapid's Motion for Summary Judgment as to Count III is granted and the claim dismissed.

CONCLUSION

For the above-stated reasons, Rapid's Motion for Summary Judgment is granted and Ofer's Counterclaim is hereby dismissed.

This Court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

C. DARNELL JONES, J.

Dated: February 28, 2003