

**DUANE MORRIS, LLP, f/k/a
DUANE, MORRIS & HECKSCHER, LLP**

vs.

NAND TODI

: **COURT OF COMMON PLEAS**
: **PHILADELPHIA COUNTY**
:
: **COMMERCE PROGRAM**
:
: **OCTOBER TERM, 2001**
: **NO. 01980**
: Control # 111184

ORDER and MEMORANDUM

AND NOW, to wit, this 17TH day of JUNE, 2004, upon consideration of the Preliminary Objections filed by plaintiff, Duane Morris, LLP, to the New Matter and Counterclaim of the defendant, Nand Todi, and defendant's response thereto, it is hereby **ORDERED** and **DECREED** that said Preliminary Objections are **OVERRULED in part and SUSTAINED in part**. The aforesaid Preliminary Objections are **OVERRULED** with respect to Counts I, II and IV of the Counterclaim. The plaintiff's Preliminary Objections are **SUSTAINED** as to the defendant's New Matter.

The plaintiff's Preliminary Objections are **SUSTAINED** as to Count III of the Counterclaim. Count III is **DISMISSED with prejudice**.

The defendant may within ten (10) days of the date of this Order file an Amended Counterclaim setting forth the basis of New Matter. The plaintiff shall thereafter file an answer to any amended counterclaim within twenty (20) days of the filing of an amended counterclaim.

BY THE COURT:

GENE D. COHEN, J.

DUANE MORRIS, LLP, f/k/a : **COURT OF COMMON PLEAS**
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MEMORANDUM

COHEN, GENE D., J.

The Court finds that the arguments that the plaintiff advances for the preliminary objections sound more in summary judgment, *i.e.*, the plaintiff takes issue with the factual conclusions the defendant asserts in prosecuting his counterclaim. The Court finds, however, that the defendant has pleaded sufficient facts in a concise and sufficiently detailed form at least to survive the plaintiff's objections to the complaint.

The notable exception is the defendant's claim for damages pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). The Court finds that the defendant's effort to link the UTPCPL and the compensation it permits to the conduct of the plaintiff he hitherto pleaded is far fetched and devoid of sufficient examples of allegedly defective trade practices to survive dismissal at this stage. The defendant does not specifically call the Court's attention to those provisions of the UTPCPL he claims the plaintiff violated. To connect the language of the plaintiff law firm's letter agreement with deceptive conduct requires an elastic exercise of the imagination. The defendant, however, seeks to ease the Court's task by characterizing the letter agreement as a "contract of adhesion". And so it might be; however, as the plaintiff and counterclaim defendant point out, there is no blanket prohibition on the use of adhesion contracts under the UTPCPL or generally under Pennsylvania law. *See Hegel vs. Mifflin Construction Co.*, 796 A.2d 350 (Pa. Super. 2002). It takes much more in terms of operative fact and

effect for a contract to be an adhesion contract.

For this reason, and because this particular Count is very generally drawn, the Court will sustain the preliminary objections as to this Count only.

BY THE COURT:

GENE D. COHEN, J.