

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURTS OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-_____

QUEEN CITY BREAD, INC.,)
)
 Plaintiff,)
)
 v.)
)
 BIMBO FOODS BAKERIES)
 DISTRIBUTION, LLC,)
)
 Defendant.)

**VERIFIED COMPLAINT
AND MOTION FOR INJUNCTIVE RELIEF**

MOTION FOR INJUNCTIVE RELIEF

Pursuant to N.C. Gen. Stat. § 1-485, *et seq.* and Rule 65 of the North Carolina Rules of Civil Procedure, Plaintiff Queen City Bread, Inc. respectfully moves the Court for entry of a temporary restraining order and preliminary and permanent injunctions enjoining Defendant Bimbo Foods Bakeries Distribution, LLC from refusing Plaintiff and Mr. Kriependorf access to the depot; interfering with Plaintiff’s ability to operate its route pursuant to the Distribution Agreement; interfering with Plaintiff’s right to operate its route as an independent contractor free from Defendant’s interference; forcing Plaintiff to sell its route, and that Plaintiff get its route back. The facts that give rise to this Motion are more fully described below in Plaintiff’s Verified Complaint.

VERIFIED COMPLAINT

Plaintiff Queen City Bread, Inc., complaining of Defendant Bimbo Foods Bakeries Distribution, LLC, alleges and says as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Queen City Bread, Inc. (hereinafter “Plaintiff”) is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Mecklenburg County, North Carolina.
2. Upon information and belief, Defendant Bimbo Foods Bakeries Distribution, LLC (hereinafter “Defendant”) is a limited liability company organized and existing under the laws of the state of Delaware. Upon further information and belief, Defendant is licensed to conduct business in North Carolina and conducts substantial business in Mecklenburg County, North Carolina.
3. This Court has jurisdiction over the parties and the subject matter of this dispute.

4. Venue is proper in Mecklenburg County.
5. The amount in controversy exceeds \$25,000.00.

FACTUAL ALLEGATIONS

6. This is an action seeking injunctive relief and damages resulting from Defendant's unilateral breach of contract, tortious conduct, and interference with Plaintiff's rights as an independent contractor and distributor of Defendant's goods.

7. Upon information and belief, Defendant's business activities include the production, sale, and distribution of various baked products. Defendant is the successor-in-interest to George Weston Bakeries Distribution, Inc. (George Weston Bakeries Distribution, Inc. and Defendant are hereinafter collectively and individually referred to as "Defendant").

8. On or about August 25, 2008, Tim Kriependorf (hereinafter "Mr. Kriependorf") purchased from Defendant certain Distribution Rights to deliver Defendant's baked goods to a particular area in and around Charlotte, North Carolina. The purchase price was \$113,000, and at the time, the route was generating approximately \$6,300 per week after returns and discounts. Currently, the route generates approximately \$11,000 per week after returns and discounts.

9. In conjunction with that sale, on or about August 25, 2008, Mr. Kriependorf and Defendant executed a Distribution Agreement (hereinafter the "Distribution Agreement").

10. On or about May 6, 2010, Mr. Kriependorf formed Plaintiff by filing Articles of Incorporation with the North Carolina Secretary of State. Mr. Kriependorf serves as Plaintiff's President.

11. Thereafter, Mr. Kriependorf and Defendant entered into an agreement allowing Mr. Kriependorf to transfer his distribution rights to Plaintiff. Upon that assignment, Plaintiff assumed all of the rights, duties, and obligations as "Distributor" under the Distribution Agreement.

12. Between the date Mr. Kriependorf acquired Plaintiff's distribution route to the present, Plaintiff grew the route substantially. Beginning in or around 2019 Defendant began approaching Plaintiff, attempting to get Plaintiff to sell or split its distribution route. Plaintiff refused, and continued to operate and grow its route.

13. After Plaintiff refused to sell or split its route, Defendant began a campaign of issuing Plaintiff breach letters, improperly suggesting that Plaintiff breached the Distribution Agreement for various, unjustified reasons. Upon information and belief, one reason that Defendant began issuing breach letters to Plaintiff was to improperly seize Plaintiff's distributorship route so that Defendant can split the route and generate more income from the sale of a new route.

14. The Distribution Agreement explicitly identifies Mr. Kriependorf as an independent contractor and the owner of the Distribution Rights, and permits him to operate its route as he chooses.

15. Pursuant to the Distribution Agreement, *inter alia*, Defendant agreed to sell and deliver to Plaintiff certain baked products, and Plaintiff agreed to purchase those baked goods and deliver them to Plaintiff's customers, which include grocery stores.

16. Plaintiff, as an independent contractor, has relationships with each of its stores. Defendant does not have a direct relationship with Plaintiff's stores.

17. The Distribution Agreement also requires Plaintiff to purchase enough product so that its stores are adequately supplied and do not experience product shortages.

18. In the past, Defendant has informed Plaintiff that he breached the Distribution Agreement by failing to order sufficient product, despite the fact that Plaintiff actually ordered and delivered more product than Defendant recommended.

19. As such, and consistent with its obligations under the Distribution Agreement, Plaintiff orders and purchases enough product from Defendant so that its stores do not run out of Defendant's products.

20. In addition, Plaintiff is aware that some or all of the stores to which distributors deliver Defendant's products require that the stores are sufficiently stocked and do not run out of products.

21. On January 20, 2021, Defendant delivered to Plaintiff a Notice of Breach of Distribution Agreement letter (hereinafter the "Breach Letter").

22. In the Breach Letter, Defendant asserted that Plaintiff breached the Distribution Agreement by ordering excessive product, thereby resulting in excessive returns.

23. However, ordering excessive product does not constitute a breach of the Distribution Agreement, and Defendant had no right to declare Plaintiff in breach for that reason.

24. Defendant also states in the Breach Letter that Plaintiff's return percentages are higher than other independent contractor distributors who operate from the same depot (Defendant's depot in Concord, North Carolina) as Plaintiff.

25. While Plaintiff does not know the exact average return percentages for other independent contractor distributors in the Concord depot, and disputes Defendant's assertions and conclusions, he does know that, while all the other distributors purchase and deliver cheap, high volume baked products (private label bread), Plaintiff purchases and delivers more expensive, brand label baked products. Thus, Plaintiff's return percentages are not fairly compared to the return percentages of other distributors in the Concord depot.

26. Finally, the Breach Letter states that, should Plaintiff not cure its alleged breach within three (3) days, then Defendant “will take appropriate action under the Distribution Agreement.”

27. Defendant does not state how Plaintiff can cure the alleged breach and provides no benchmark for compliance with Defendant’s claim of breach.

28. Pursuant to the Distribution Agreement, should Plaintiff actually breach and fail to cure following written notice of such breach, then Defendant may terminate the Distribution Agreement.

29. If Defendant properly terminates the Distribution Agreement, then Plaintiff is required to sell its Distribution Rights (i.e., its route) within 90 days after termination. Should Plaintiff not sell its Distribution Rights within that time period, then Defendant is authorized to sell Plaintiff’s Distribution Rights for Plaintiff.

30. In addition, upon proper termination, Defendant is entitled to operate Plaintiff’s route, and charge Plaintiff for all expenses associated with such operation.

31. Despite the fact that Defendant was not entitled to declare Plaintiff in breach based on ordering excessive product, on January 26, 2021, Defendant delivered to Plaintiff a letter purporting to terminate the Distribution Agreement (hereinafter the “Termination Letter”).

32. The Termination Letter also states that Plaintiff’s representatives, including Mr. Kriependorf, are banned from Defendant’s depot.

33. Since January 26, 2021, Defendant has been operating Plaintiff’s route and charging Plaintiff for doing so.

34. Not only is Plaintiff financially harmed by Defendant’s conduct, but its relationships with its stores and goodwill is also being damaged. Further, Plaintiff is not able to make sure its route is being operated as it chooses.

35. Defendant’s actions constitute an improper seizure of Plaintiff’s Distribution Rights for its own financial gain.

36. Plaintiff remains ready, willing, and able to fulfill its contractual obligations under the Distribution Agreement.

37. Approximately two years ago, Defendant revised its standard distribution agreement. Since that time, all new independent contractor distributors, as well as existing distributors that agree, execute the revised distribution agreement instead of the prior form executed by Plaintiff.

38. Upon information and belief, that new distribution agreement differs from Plaintiff’s Distribution Agreement in several material ways and is significantly more favorable to

Defendant. For example, under Defendant's new distribution agreement, the independent contractor distributors are required to arbitrate any disputes with Defendant, the independent contractor distributors no longer own the routes, but only lease them from Defendant, and Defendant is entitled to terminate the distribution agreement at any time and for any reason with 30 days' notice.

39. Plaintiff believes that approximately three-quarters of the independent contractor distributors who operate out of Defendant's Concord, North Carolina depot and Defendant's Charlotte, North Carolina depot are party to the revised version of Defendant's distribution agreement.

40. Upon information and belief, Defendant is actively trying to convert all distributors to the new distribution agreement, and is specifically and improperly targeting Plaintiff because he will not voluntarily agree to Defendant's demands to execute the new distribution agreement.

FIRST CLAIM FOR RELIEF
[Breach of Contract]

41. Plaintiff restates and realleges the allegations contained above as if fully set forth herein.

42. As described above, the Plaintiff and Defendant entered into a valid and enforceable Distribution Agreement.

43. The Distribution Agreement was entered into for good and valuable consideration and the parties mutually assented to the contract terms through offer and acceptance so as to establish a meeting of the minds.

44. Plaintiff (and Mr. Kriependorf) fulfilled all of its material obligations under the Distribution Agreement, and remains ready, willing, and able to continue to do so.

45. Defendant breached the Distribution Agreement at least by improperly taking Plaintiff's route, preventing Plaintiff from operating its route, operating Plaintiff's route at Plaintiff's expense, and in all other ways that will be shown at trial.

46. As a direct and proximate result of Defendant's breach, Plaintiff has been damaged in an amount to be determined at trial, but believed to exceed \$25,000, plus interest and attorneys' fees.

SECOND CLAIM FOR RELIEF
[Conversion]

47. Plaintiff restates and realleges the allegations contained above as if fully set forth herein.

48. As described more fully above, Defendant wrongfully exercised, and is exercising, dominion and control over funds belonging to Plaintiff, namely funds received by the operation of Plaintiff's route. Defendant's conduct constitutes a wrongful interference with Plaintiff's ownership and possessory rights in the same.

49. Plaintiff demanded that Defendant return their money and property, but Defendant refused.

50. Defendant converted Plaintiff's money and property wrongfully and without Plaintiff's consent.

51. As a direct and proximate result of Defendant's conversion, Plaintiff has been damaged in an amount to be determined at trial.

52. Moreover, Defendant's conversion is malicious, intentional, willful, and done with a reckless and wanton disregard for Plaintiff's rights. Plaintiff is therefore entitled to recover punitive damages from Defendant pursuant to N.C. Gen. Stat. §§ 1D-1, *et seq.*

THIRD CLAIM FOR RELIEF
[Tortious Interference With Contract]

53. Plaintiff restates and realleges the allegations contained above as if fully set forth herein.

54. Valid and enforceable agreements exist between Plaintiff and numerous retailers of baked goods to which Plaintiff delivers, including one or more of the following: Food Lion, Walmart, Harris Teeter, Publix, Target, and Circle K convenience store.

55. At all times relevant, Defendant has known about those various agreements.

56. By improperly seizing Plaintiff's route, and by unjustifiably refusing to allow Plaintiff to pick up product from the depot and deliver that product, Defendant has prevented Plaintiff from performing under its agreements with the retailers.

57. Defendant's interference is intentional, done for an improper business purpose, and done without justification.

58. Defendant has wrongfully interfered with Plaintiff's prospective business opportunities and has diverted potential business opportunities for its benefit and to the detriment of Plaintiff.

59. As a direct and proximate result of Defendant's tortious interference, Plaintiff has been damaged in an amount to be determined at trial.

60. Moreover, Defendant's tortious interference is malicious, intentional, willful, and done with a reckless and wanton disregard for Plaintiff's rights. Plaintiff is therefore entitled to recover punitive damages from Defendant pursuant to N.C. Gen. Stat. §§ 1D-1, *et seq.*

FOURTH CLAIM FOR RELIEF
[Unfair or Deceptive Acts or Practices]

61. Plaintiff restates and realleges the allegations contained above as if fully set forth herein.

62. Defendant's conduct described above, including but not limited to Defendant's conversion, attempts to force Plaintiff to sell or split its route, numerous improper breach notifications, denying Plaintiff access to the depot, interfering with Plaintiff's contractual rights, and trying to improperly take Plaintiff's route because Defendant is no longer satisfied with the Distribution Agreement, constitute unfair and/or deceptive acts or practices as those terms are used in N.C. Gen Stat. § 75-1, *et seq.*

63. Defendant's actions are in and affecting commerce, as that term is used in N.C. Gen Stat. §§ 75-1, *et seq.*

64. Defendant's unfair and/or deceptive acts or practices are the direct and proximate cause of Plaintiff's injury.

65. Plaintiff has been damaged by Defendant's unfair and/or deceptive acts or practices in an amount to be determined at trial.

66. Plaintiff's damages should be trebled pursuant to N.C. Gen. Stat. § 75-16, and Plaintiff should be awarded its costs and attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1.

FIFTH CLAIM FOR RELIEF
[Injunctive Relief]

67. Plaintiff restates and realleges the allegations contained above as if fully set forth herein.

68. Absent issuance of a temporary restraining order, immediate and irreparable injury, loss, and damage will result to Plaintiff before Plaintiff's motion for preliminary injunction can be heard. As such, Plaintiff is entitled to a temporary restraining order, as described herein.

69. Plaintiff is likely to succeed on the merits in this case.

70. Absent issuance of a preliminary injunction, Plaintiff will suffer irreparable harm, and an injunction is necessary to protect Plaintiff's rights during the pendency of this litigation.

71. A balancing of the equities favors the issuance of injunctive relief.

72. Plaintiff requests that the Court issue a temporary restraining order and preliminary injunction enjoining Defendant from:

- a. Refusing Plaintiff and Mr. Kriependorf access to the depot;
- b. Interfering with Plaintiff's ability to operate its route pursuant to the Distribution Agreement;
- c. Interfering with Plaintiff's right to operate its route as an independent contractor free from Defendant's interference;
- d. Forcing Plaintiff to sell its route; and
- e. That Plaintiff get its Distribution Rights and route back.

73. Plaintiff's legal remedy is inadequate because he will suffer irreparable harm absent entry of the requested injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the Court for the following relief:

1. An award for Plaintiff for Defendant's breach of contract, conversion, tortious interference with contract, and violations of the Unfair or Deceptive Acts or Practice Act in an amount to be determined at trial, plus interest;

2. That the Court enter a temporary restraining order, and preliminary and permanent injunctions, preventing Defendant from:

- a. Refusing Plaintiff and Mr. Kriependorf access to the depot;
- b. Interfering with Plaintiff's ability to operate its route pursuant to the Distribution Agreement;
- c. Interfering with Plaintiff's right to operate its route as an independent contractor free from Defendant's interference;
- d. Forcing Plaintiff to sell its route; and
- e. That Plaintiff get its Distribution Rights and route back.

3. That the Court award Plaintiff its reasonable attorneys' fees and costs pursuant to N.C. Gen. Stat. § 75-16.1 and other applicable law;

4. That the Court award Plaintiff treble damages pursuant to N.C. Gen. Stat. § 75-16;

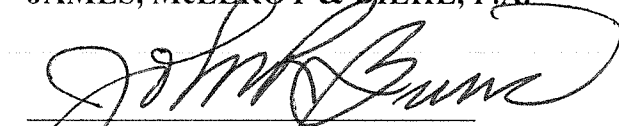
5. That the Court award Plaintiff punitive damages pursuant to N.C. Gen. Stat. §§ 1D-1, *et seq.*;

6. That the Court tax the costs of this action against Defendant;

7. That all issues triable by a jury be so tried; and
8. For all other relief, both legal and equitable, which the Court deems just and proper.

This the 28th day of January, 2021.

JAMES, McELROY & DIEHL, P.A.



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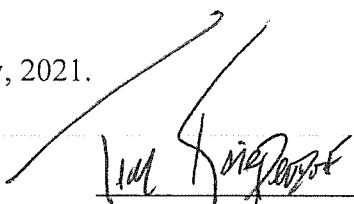
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Attorneys for Plaintiff

VERIFICATION

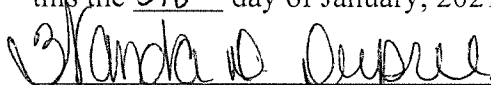
Tim Kriependorf, individually and as President of Plaintiff Queen City Bread, Inc., being first duly sworn, deposes and says that he has read the foregoing **VERIFIED COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF**, that the statements of fact contained therein are true to the best of his knowledge, except those matters and things stated upon information and belief, and as to those matters and things, he believes them to be true.

This the 28 day of January, 2021.



Tim Kriependorf
Queen City Bread, Inc.

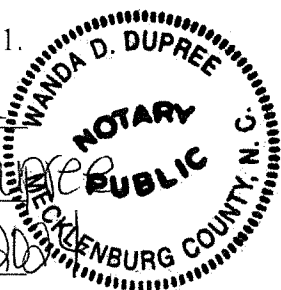
Sworn to and subscribed before me
this the 28 day of January, 2021.



Notary Public

Printed Name: Wanda D. Dupree

My commission expires: 8/20/2021



STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

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21-CVS-_____

QUEEN CITY BREAD, INC.)
)
 Plaintiff,)
)
 vs.)
)
 BIMBO FOODS BAKERIES)
 DISTRIBUTION, INC.,)
)
 Defendant.)
 _____)

**TEMPORARY RESTRAINING
ORDER**

Plaintiff's Motion for a Temporary Restraining Order came on for hearing before the undersigned Superior Court Judge presiding over the January 25, 2021 term of Superior Court for Mecklenburg County. Plaintiff was represented by John R. Buric

Having reviewed Plaintiff's Verified Complaint and after hearing oral argument, the Court finds and concludes as follows:

1. Plaintiff Queen City Bread, Inc. (hereinafter Plaintiff or "Queen City") is an independent contractor and owns the rights to deliver Defendant's baked goods within a prescribed Distribution Area. Plaintiff and Defendant are parties to a written Distribution Agreement.

2. Queen City is in need of a Temporary Restraining Order to preserve the status quo pending a trial on the merits of its claims.

3. By virtue of the allegations contained in its Verified Complaint, Queen City has established a likelihood of success on the merits.

4. Specifically, Queen City has shown that it is likely to succeed on the merits that it has not committed a "non-curable" breach through any of its actions or the actions of Mr. Kriependorf. For purposes of this Order, the Court concludes that Plaintiff's act of loading product onto its truck that was set there by Defendant's representatives and selling that product for Defendant's benefit is not a crime, fraud, a threat to public health or safety, or threat to cause significant harm to Defendant.

5. Queen City will be irreparably harmed if it is not allowed to deliver baked goods to its Distribution Area during the pendency of this litigation.

6. Furthermore, Queen City has shown that allowing Defendant to force Plaintiff to sell its route or to allow Defendant to sell Plaintiff's route will result in irreparable harm to Queen City.

7. Queen City has shown that Defendant's interference with its ability to deliver baked goods, being required to sell its distribution rights within 90 days, and/or Defendant's sale of Queen City's distribution rights would result in incalculable and irreparable harm to Queen City.

8. The threatened harm is immediate in the absence of an injunction to preserve the status quo.

9. Queen City is, therefore, entitled to a Temporary Restraining Order to allow Queen City to access the depot to pickup product, to continue delivery of baked goods to its Distribution Area and prohibiting Defendant from forcing Queen City to sell its distribution route or Defendant acquiring the route and selling it.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that:

1. Defendant is prohibited from requiring Plaintiff to sell its distribution rights to deliver Defendant's baked goods.

2. Defendant is prohibited from acquiring Plaintiff's distribution rights to deliver Defendant's baked goods and/or from selling Plaintiff's rights.

3. Defendant is prohibited from preventing Plaintiff access to the distribution depot.

3. The provisions of Article 8, Section 4 of the Contract which require that Plaintiff sell its distribution rights within 90 days of termination or Defendant shall be authorized to sell said rights is hereby tolled.

4. Defendant is required to make available for pick up or deliver to Plaintiff quantities of Defendant's baked goods, sufficient for Plaintiff to service its customers, in a reasonable and timely fashion.

5. All other terms and conditions of the Distribution Agreement shall remain in full force and effect.

6. Plaintiff shall post a bond in the amount of \$_____.

SIGNATURE ON THE FOLLOWING PAGE

This the 28th day of January, 2021.

The Honorable Eric L. Levinson
Superior Court Judge Presiding