

COURT INITIATED

PLAINTIFFS,

Dianna M. Trujillo

VS

DEFENDANTS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY

DOCKET NO. ATL-L-1322-17

Baker Boys LLC; Ginsburg Bakery, Inc.;
John Galt LLC; 151 Foods LLC; Omni
Bakery; Mulloy Family LLC

ORDER

THIS MATTER having been brought before the Court by Stephen E. Gertler, Esquire, attorney for Defendant, Baker Boys LLC ("Defendant"), for an Order granting Summary Judgment on the First and Second Counts of Plaintiff's Complaint, and the Court having considered Defendant's application, and any opposition thereto, and for good cause shown;

IT IS ON THIS 6th day of November, 2017, ORDERED that:

1. Based upon the colloquy between the Court and Counsel, the track assignment of this matter is now Track 3.
2. Summary Judgment is GRANTED on the First Count.
3. Summary Judgment is DENIED, without prejudice, on the Second Count.
4. The parties shall have 60 days from the date hereof to conduct discovery on the issue of whether Defendant maintained a dual persona with respect to Plaintiff.
5. Plaintiff shall proffer to this Court within 21 days from the date hereof an explanation as to why the non-answering defendants have yet to be served with legal process and why they have potential exposure to liability for Plaintiff's injuries.

6. All crossclaims for contribution against Defendant under the Joint Tortfeasor's Contribution Act, *N.J.S.A. § 2A:53A-1* are barred, unless it is later shown that Defendant committed an "intentional wrong."
7. All common law indemnification claims against Defendant are also barred, unless it is later shown that Defendant committed an "intentional wrong," or was in a "special relationship" with another defendant.
8. Discovery shall be conducted according to the following schedule:
 - a. Interrogatories and document requests shall be served and answered by February 16, 2018.
 - b. Depositions of all parties and fact witnesses shall be completed by May 2, 2018.
 - c. Plaintiff's experts' reports shall be provided by June 4, 2018.
 - d. Independent Medical Examinations shall be completed by June 15, 2018.
 - e. Defendants' experts' reports shall be provided by August 1, 2018.
 - f. Depositions of expert witnesses shall be completed by October 1, 2018.
 - g. Motions to amend pleadings or add new parties shall be filed by March 31, 2018.
 - h. The discovery end date is November 5, 2018.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all parties within seven (7) days of its receipt.


NELSON C. JOHNSON, J.S.C.



SUPERIOR COURT OF NEW JERSEY

NELSON C. JOHNSON, J.S.C.

1201 Bacharach Boulevard
Atlantic City, NJ 08401-4527
(609) 594-3384

MEMORANDUM OF DECISION ON MOTION
Pursuant to Rule 1:6-2(f)

TO: Stephen E. Gertler, Esquire
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(732) 919-1110
Attorney for Defendant, Baker Boys LLC

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Attorney for Plaintiff

Michael P. Rausch, Esquire
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Attorney for Defendant Ginsburg Bakery, Inc.

RE: Trujillo v. Baker Boys, LLC, et al.

DOCKET NO. ATL-L-1322-17

NATURE OF MOTION(S): Defendant's Motion for Partial Summary Judgment

HAVING CAREFULLY REVIEWED THE MOVING PAPERS AND ANY RESPONSE FILED, I HAVE RULED ON THE ABOVE CAPTIONED MOTION(S) AS FOLLOWS:

Nature of Motion

This matter comes before the Court via Motion for Partial Summary Judgment, filed by Defendant Baker Boys, LLC ("Defendant"), based upon the contention that the First and Second Count of Plaintiff's Complaint are barred by the Workers' Compensation Act, *N.J.S.A.* 34:15-8. Said Motion is Opposed by Plaintiff, Diana M. Trujillo ("Plaintiff"), and by Defendant Ginsburg Bakery, Inc. ("Ginsburg Defendant").

Findings of Fact

Based upon the Court's review of the parties' submissions, and in consideration of oral argument received on November 3, 2017, the Court makes the following findings of fact:

1. Plaintiff was employed by Baker Boys LLC.
2. Part of Plaintiff's job duties included removing dough from a mobile conveyor and placing it in a pan.
3. On May 3, 2016, Plaintiff attempted to retrieve a piece of dough that had fallen between the two conveyor belts when her right arm was caught in the machine, which led to her arm being amputated below the elbow.
4. Plaintiff filed a claim for workers' compensation benefits with Harleysville Insurance Company, now known as Nationwide, the workers' compensation carrier for Baker Boys. Nationwide paid substantial medical and indemnity benefits in connection with Plaintiff's claim.
5. On or about August 30, 2016, Plaintiff filed her original Complaint in the Court of Common Pleas in Philadelphia County, Pennsylvania. Said Complaint was ultimately dismissed for lack of jurisdiction.
6. On June 28, 2017, Plaintiff filed a Complaint in Superior Court of New Jersey, Law Division, Atlantic County.
7. Plaintiff's Complaint prays for relief in three counts. The First Count is for negligence and is pled against all defendants. The Second Count is in strict liability/products liability against all defendants. The Third Count is against Baker Boys LLC only and alleges a claim under the intentional wrong exception to the Workers' Compensation Act, *N.J.S.A.* 34:15-8.

Parties' Arguments

Defendant's Arguments in Support of Summary Judgment

First, Defendant argues that the First and Second Count are barred by the Workers' Compensation Act because Plaintiff was an employee of Defendant at the time of the incident, and was acting in the scope of her employment. Moreover, Plaintiff applied for and received Workers' Compensation benefits.

Second, Defendant argues that any crossclaims for contribution under the Joint Tortfeasors' Act, *N.J.S.A.* § 2A:53A-1, and Common Law Indemnification are barred by the Workers' Compensation Act. Defendant argues that under the Workers' Compensation Act, an employer cannot be a "tortfeasor," and therefore cannot be subject to the tortfeasors contribution law. *See Ramos v. Browning Ferris Ind. of South Jersey, Inc.*, 103 N.J. 177, 185 (1986) ("Because the employer cannot be a joint tortfeasor, it is not subject to the provisions of the joint tortfeasors contribution law, and a third party tortfeasor may not obtain contribution from an employer, no matter what may be the comparative negligence of the third party and the employer.").

As to common law indemnification, Defendant again cites *Ramos*, which held that "a third party may recover on a theory of implied (common law) indemnity from an employer only when a special legal relationship exists between the employer and the third party, and the liability of the third party is vicarious." 103 N.J. at 188–89. This special legal relationship includes that of principal and agent, *Hagen v. Koerner*, 64 N.J. Super. 580, 586–87 (App. Div. 1960); bailer and bailee, 2A Larson, Workmen's Compensation Law § 76.51 (1982); and lessor and lessee, *Ruvolo v. United States Steel Co.*, 139 N.J. Super. 578, 584 (Law Div. 1976). Here, Defendant argues there is no special relationship, and therefore it cannot be liable for indemnification.

Plaintiff's Arguments in Opposition to Summary Judgment

First, Plaintiff *does not* oppose Summary Judgment on the First Count, as against Defendant Baker Boys.

Second, Plaintiff argues that Summary Judgment should be denied as to the Second Count because discovery has yet to be conducted in the matter, and it is unknown the extent of Defendant's role in the manufacture, design, or maintenance of the faulty equipment that caused Plaintiff's injury. Plaintiff cites the dissenting opinion of Justice Stein in *Stephenson v. R.A. Jones & Co.*, 103 N.J. 194, 201 (1986), wherein Justice Stein argued that workers' compensation immunity should not extend to protect an employer where the employer has an independent duty extricable from the tortious conduct that caused the injury. *Id.* at 207. Here, Plaintiff argues that if Defendant manufactured or designed the defective product, this would impose duties independent from its status as an employer, and Defendant could therefore be liable.

Ginsburg Defendant's Arguments in Opposition to Summary Judgment

Ginsburg Defendant argues that there has been no discovery in this matter, and therefore Summary Judgment is inappropriate. They argue that without discovery, it cannot be known the extent to which Defendant may be liable. Ginsburg Defendant argues that discovery might show that Defendant is liable under the intentional wrong exception to the Workers' Compensation Act, or that Defendant may be liable under the "Dual Persona Doctrine." See *Anderson v. A.J. Friedman Supply Co., Inc.*, 416 N.J. Super. 46, 66 (App. Div. 2010). Ginsburg Defendant argues that the Dual Persona Doctrine applies "in situations where the employer has undertaken a completely separate and independent role with respect to the employee." *Id.* at 67 ("An employer may become a third person, vulnerable to tort suit by an employee, if--and only if--it possesses a second persona so completely independent from and unrelated to its status as employer that by established standards the law recognizes that persona as a separate legal person.") (citing *Larson Workers' Compensation Law*, Vol. 6 § 113.01[1], p. 113-2 (2009)). Without discovery, however, Ginsburg Defendant argues that it cannot know if Defendant maintains an alternate persona which would render it liable.

Standard

R. 4:46-2(a) provides,

The motion for summary judgment shall be served with briefs, a statement of material facts and with or without supporting affidavits. The statement of material facts shall set forth in separately numbered paragraphs a concise statement of each material fact as to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation shall identify the document and shall specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on. A motion for summary judgment may be denied without prejudice for failure to file the required statement of material facts.

Additionally, R. 4:46-2(c) provides that summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." All inferences of doubt are drawn against the movant in favor of the non-movant. *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520 (1985). "[A] determination whether there exists a 'genuine issue' of material fact that

precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” *Id.* at 540. Accordingly, “when the evidence is ‘so one-sided that one-party must prevail as a matter of law,’ the trial court should not hesitate to grant summary judgment.” *Id.* (citation omitted). Where a motion under this rule is not rendered upon the whole action and a trial is necessary, the court when hearing the motion will “make an order specifying those facts and directing such further proceedings in the action as are appropriate.” *R.* 4:46-3(a).

Discussion

The Court finds that the First Count is barred by the Workers’ Compensation Act, and will grant Summary Judgment. As to the Second Count, the Court will allow the parties 60 days of discovery, from the date of this Ruling, to explore the dual persona issue. If nothing is produced in discovery showing that Defendant Baker Boys may be liable via a dual persona, then the Court will reconsider the Motion for Summary Judgment on the Second Count upon Defendant’s request to this Court.

The Workers’ Compensation Act provides in relevant part:

Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this article and an acceptance of all the provisions of this article, and shall bind the employee and for compensation for the employee’s death shall bind the employee’s personal representatives, surviving spouse and next of kin, as well as the employer, and those conducting the employer’s business during bankruptcy or insolvency.

If an injury or death is compensable under this article, a person shall not be liable to anyone at common law or otherwise on account of such injury or death for any act or omission occurring while such person was in the same employ as the person injured or killed, **except for intentional wrong.**

N.J.S.A. 34:15-8 (emphasis added)

At least one New Jersey Court has recognized an exception to this rule, known as the “Dual Persona” or “Dual Capacity” Doctrine. *See Anderson v. A.J. Friedman Supply Co., Inc.*, 416 N.J. Super. 46, 67 (App. Div. 2010) (“An employer may become a third person, vulnerable to tort suit by an employee, if--and only if--it possesses a second persona so completely independent from and unrelated to its status as employer that by established standards the law recognizes that persona as a separate legal person.”) (citing *Larson Workers’ Compensation Law*, Vol. 6 § 113.01[1], p. 113-2 (2009)).

However, the majority of New Jersey courts to address the issue have explicitly rejected the “Dual Persona” or “Dual Capacity” Doctrine’s application in New Jersey. *See, e.g., Doe v. St. Michael’s Med. Ctr.*, 184 N.J. Super 1 (App. Div. 1982) (rejecting the Doctrine’s application in New Jersey); *Kaczorowska v. Nat’l Envelope Corp.*, 342 N.J. Super. 580, 592 (App. Div. 2001) (“This doctrine as it may apply to employers in their capacities as property owners or manufacturers of plant equipment has been described as “fundamentally unsound” and rejected in a majority of jurisdictions because of the circumvention of the clear legislative mandate of workers’ compensation law In New Jersey it is disfavored, if not outright disapproved.”); *Boyle v. Breme*, 187 N.J. Super. 129 (App. Div. 1982) (“the dual capacity doctrine has not thrived in New Jersey”); *De Figueiredo v. U.S. Metals Refining Co.*, 235 N.J. Super. 458 (dismissing Plaintiff’s Complaint which was based on the Dual Capacity Doctrine).

Here, no party disputes that the Workers’ Compensation Act is applicable to the injury at issue. Plaintiff was an employee of Defendant and was injured in the course of her employment. And indeed, Plaintiff filed for and received Workers’ Compensation benefits. Therefore, to circumvent the Workers’ Compensation Act, Plaintiff must show that Defendant committed an “intentional wrong.”

The First Count negligence claim is clearly barred by the Workers’ Compensation Act because there is no “intent” element in a negligence claim. To get around the Workers’ Compensation Act, Plaintiff must show that the employer committed an “intentional wrong.” Negligence, by definition, does not include an intent element, and therefore the Court will GRANT Summary Judgment on the First Count.

As to the Second Count for strict liability/products liability, as explained above, the Court will allow the parties 60 days of discovery to explore the dual persona issue. If at the end

of 60 days the parties come to the conclusion that Defendant did not maintain a dual persona, then the Court will consider a renewed Motion for Summary Judgment on the Second Count.

Additionally, because the Court finds that the First Count is barred by the Workers' Compensation Act, all crossclaims for contribution against Defendant under the Joint Tortfeasors Contribution Act, *N.J.S.A.* § 2A:53A-1, are also barred, unless it is later shown that Defendant committed an "intentional wrong." See *Ramos v. Browning Ferris Ind. of South Jersey, Inc.*, 103 N.J. 177, 185 (1986). Any common law indemnification claims are barred as well, unless it can be shown that Defendant committed an "intentional wrong," or was in a "special relationship" with one of the other defendants in the matter. As alluded to previously, such special relationship includes that of principal and agent, *Hagen v. Koerner*, 64 N.J. Super. 580, 586-87 (App. Div. 1960); bailer and bailee, 2A Larson Workmen's Compensation Law § 76.51 (1982); and lessor and lessee, *Ruvolo v. United States Steel Co.*, 139 N.J. Super. 578, 584 (Law Div. 1976).

Finally, the Court requests an explanation from Plaintiff's Counsel as to the theory of liability, and the lack of service of process as to Defendants John Galt LLC, 151 Foods LLC, Omni Bakery, and Mallow Family LLC.

Accordingly, Defendant's Motion for Partial Summary Judgment is GRANTED IN PART. An appropriate order has been entered. Conformed copies accompany this Memorandum of Decision.



NELSON C. JOHNSON, J.S.C.

Date of Decision: 11-6-17

#74892-D2

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Attorneys for Defendant, Baker Boys LLC, as to Counts One and Two

SUPERIOR COURT
OF NEW JERSEY

2017 SEP 13 AM 10:48

RECEIVED and
FILED

SEP 13 2017

ATLANTIC COUNTY
LAW DIVISION

Plaintiff
DIANA M. TRUJILLO

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO. L-1322-17

vs.

CIVIL ACTION

Defendants
BAKER BOYS LLC; GINSBURG BAKERY,
INC.; JOHN GALT LLC; 151 FOODS LLC;
OMNI BAKERY; MULLOY FAMILY LLC

NOTICE OF MOTION FOR SUMMARY
JUDGMENT AS TO COUNTS ONE
AND TWO ONLY

TO: Susan B. Ayres, Esq.
Hill & Associates
123 S. Broad Street, Suite 1100
Philadelphia, PA 19102
Attorney for Plaintiff

COUNSEL:

PLEASE TAKE NOTICE that on Friday, October 13, 2017 in the forenoon or as soon thereafter as counsel may be heard, the undersigned will apply to the Superior Court of New Jersey, Law Division, Atlantic County in Atlantic City, New Jersey, for an Order granting summary judgment as to Counts One and Two of the Complaint only as to defendant, Baker Boys LLC.

Movant will rely upon the annexed Brief in support of this motion.

Oral argument is requested.

The original of this motion has been filed with the Clerk of the Superior Court, Atlantic County. In addition, the undersigned certifies that all attorneys in the within Civil Action appearing

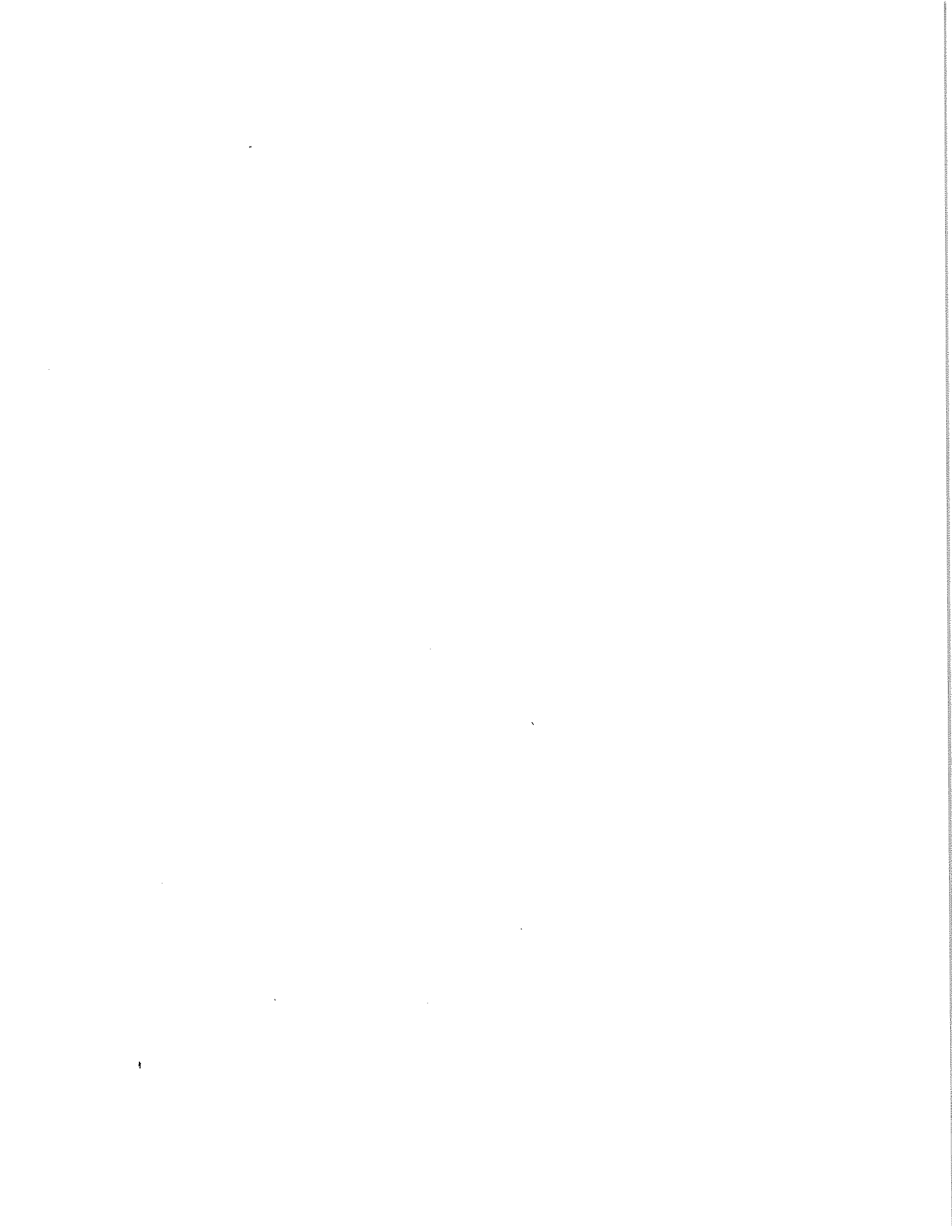
of record are receiving copies of this pleading under Rule 1:5 as follows:

Susan B. Ayres, Esq.
Hill & Associates
123 S. Broad Street, Suite 1100
Philadelphia, PA 19102

LAW OFFICE OF STEPHEN E. GERTLER
Attorney for Defendant, Baker Boys LLC

By: 
STEPHEN E. GERTLER

DATED: September 11, 2017



#74892-D2

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Attorneys for Defendant, Baker Boys LLC, as to Counts One and Two Only

Plaintiff
DIANA M. TRUJILLO

vs.

Defendants
BAKER BOYS LLC; GINSBURG BAKERY,
INC.; JOHN GALT LLC; 151 FOODS LLC;
OMNI BAKERY; MULLOY FAMILY LLC

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO. L-1322-17

CIVIL ACTION

CERTIFICATION OF SERVICE

STEPHEN E. GERTLER, of full age, being duly sworn, upon his oath, deposes and says:

1. I am an attorney at law of the State of New Jersey and a partner in the Law Offices of Stephen E. Gertler. In that capacity, I represent the Defendant, Baker Boys LLC, in the within matter.

2. I hereby certify that on September 11, 2017 an original and copy of the Notice of Motion for summary judgment, Brief in support and proposed Order were sent via Lawyer's Service to the Clerk of the Superior Court, Atlantic County at 1201 Bacharach Boulevard, Atlantic City, NJ 08401 and a copy of same was forwarded via Lawyer's Service to plaintiff's counsel,

Susan Ayres, Esq., Hill & Associates, 123 S. Broad Street, Suite 1100, Philadelphia, PA 19102.

LAW OFFICES OF STEPHEN E. GERTLER,
Attorneys for Defendant, Baker Boys LLC

By: 

STEPHEN E. GERTLER

DATED: September 11, 2017



RECEIVED

OCT 10 2017

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JAMES P. SAVIO, J.S.C.

Email: Sue@Hilljustice.com
Facsimile: 215-525-4311

October 10, 2017

Via Facsimile 609-343-2155

Honorable James P. Savio
Atlantic County Civil Courts Building
1201 Bacharach Boulevard, 3rd Floor
Atlantic City, NJ 08401

Re: Trujillo v. Baker Boys, et al., No. L-001322-17

Dear Judge Savio:


We represent Plaintiff, Diana Trujillo, in the above matter. Defendant Baker Boys filed a Motion for Summary Judgment as to Counts I and II of the Complaint, which is returnable before Your Honor on Friday, October 13, 2017.

The purpose of this letter is to respectfully request that this Motion be carried to Friday, November 3, 2017. This is the first such request. We contacted opposing counsel and they are not opposed this request.

The reason for the request is that Plaintiff would like to file a brief response to the Motion; however, the undersigned calendared the response date for the October 13, 2017, listing inaccurately. Alternatively, the undersigned requests permission to submit the opposition to the Motion by October 11, 2017.

Thank you for your consideration.

Respectfully,


Susan B. Ayres, Esquire

10/27
#3

Cc: Kristin Vizzone, Esquire (via email)

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 MARK S. HOCHMAN
 Certified Civil Trial Attorney
 TIMOTHY E. HAGGERTY
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October 10, 2017

RECEIVED

OCT 10 2017

JAMES P. SAVIO, J.S.C.

Via Fax (609) 343-2155
 Honorable James P. Savio
 Atlantic County Superior Court
 Civil Courthouse
 1201 Bacharach Blvd.
 Atlantic City, New Jersey 08401

RE: Trujillo, Diana v Baker Boys, LLC, et al
 Docket No. : L-1322-17
 Our File No. : 74892-D2

Dear Judge Savio:

This office represents the defendant, Baker Boys, LLC, with respect to Counts One and Two of the Complaint.

We currently have pending before Your honor on October 13, 2017 a motion for summary judgment.

I am in receipt of plaintiff's counsel's letter faxed to you this date wherein she requests that the motion be carried to November 3, 2017 with our consent.

While we did consent to carrying the motion, we only agreed to carry it for one cycle which would be October 27, 2017. Accordingly, we object to the motion being carried to November 3, 2017.

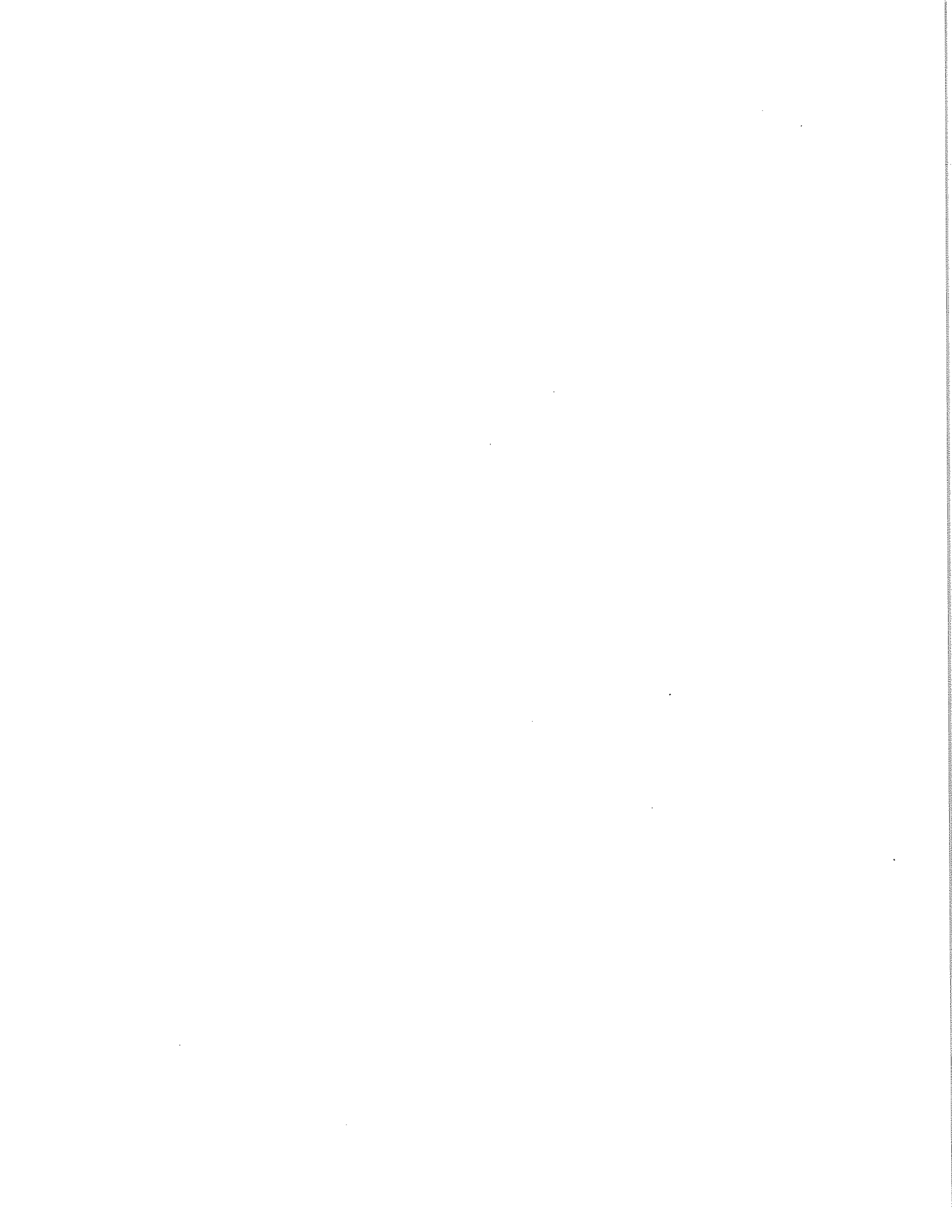
Respectfully yours,

STEPHEN E. GERTLER

SEG/mm

cc: Susan B. Ayres, Esq.
 Mitchell Waldman, Esq.
 Michael P. Rausch, Esq.

10/27



#74892-D2

Plaintiff

DIANA M. TRUJILLO

vs.

Defendants

BAKER BOYS LLC; GINSBURG BAKERY,
INC.; JOHN GALT LLC; 151 FOODS LLC;
OMNI BAKERY; MULLOY FAMILY LLC

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO. L-1322-17

CIVIL ACTION

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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Attorneys for Defendant, Baker Boys LLC, as to Counts
One and Two Only

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STATEMENT OF FACTS

1. This matter arises from a work related accident which occurred on May 3, 2016 at Baker Boys LLC's facility located at 900 Mill Road, Pleasantville, NJ. (See Complaint attached hereto as Exhibit A).

2. At that time plaintiff, Diana M. Trujillo a/k/a Maribel Trujillo, was employed by Baker Boys LLC. (Exhibit A, ¶18; see also, W2 attached hereto as Exhibit B).

3. Part of plaintiff's job duties included removing dough from a mobile conveyor and placing it in a pan. (Exhibit A, ¶25).

4. Plaintiff attempted to retrieve a piece of dough which had fallen between two conveyor belts when her right arm became caught in the machine and her arm was amputated below the elbow. (Exhibit A, ¶¶32-33).

5. Plaintiff filed a claim for worker's compensation benefits with Harleysville Insurance Company, now known as Nationwide, the worker's compensation carrier for Baker Boys. Nationwide paid out \$428,158.35 in medical benefits and \$7,728.60 in indemnity benefits as of December 7, 2016. (See plaintiff's answer to Interrogatories attached hereto as Exhibit C).

6. On or about August 30, 2016, Plaintiff filed a Complaint with regard to this incident in the Court of Common Pleas in Philadelphia County, Pennsylvania. (See Pennsylvania Complaint attached hereto as Exhibit D).

7. Defendants filed Preliminary Objections as to the Court of Common Pleas, Philadelphia County's exercise of personal jurisdiction over the defendants including Baker

Boys. (See Preliminary Objections filed by counsel for Baker Boys LLC attached hereto as Exhibit E).

8. On March 23, 2017, Frank Formica, President of Baker Boys was deposed as to jurisdictional issues only. Mr. Formica confirmed that Trujillo was an employee of Baker Boys at the time of the incident. (See excerpts from transcript of deposition of Frank Formica attached hereto as Exhibit F, T45:2-4).

9. On June 20, 2017, Judge Denis Cohen ultimately dismissed the action finding that Pennsylvania lacked personal jurisdiction over the defendants including Baker Boys. (See Order attached hereto as Exhibit G).

10. Plaintiff's thereafter filed a Complaint in Superior Court of New Jersey, Law Division, Atlantic County on June 28, 2017 against defendants, Baker Boys LLC; Ginsburg Bakery; John Galt LLC; 151 Foods LLC; Omni Bakery and Mulloy Family LLC. (Exhibit A).

11. Plaintiff's Complaint consists of three counts. The first count sounds in negligence and is directed to all defendants. The second count is for strict liability/products liability once again as to all defendants. The third and final count is against Baker Boys LLC only and alleges a claim under the intentional wrong exception to the worker's compensation statute, N.J.S.A. 34:15-8. (Exhibit A).

12. This office filed an Answer on behalf of Baker Boys LLC as to the first and second counts of the Complaint only. (See Answer attached hereto as Exhibit H).

13. As of the filing of this motion, no Answers have been filed on behalf of Defendants, Ginsburg Bakery, John Galt LLC, 151 Foods LLC, Omni Bakery and Mulloy Family, LLC.

LEGAL ARGUMENT

POINT I

COUNTS ONE AND TWO OF PLAINTIFF'S COMPLAINT AGAINST BAKER BOYS, LLC, HER EMPLOYER, ARE BARRED BY THE WORKER'S COMPENSATION ACT.

The Worker's Compensation Act, N.J.S.A. 34:15-8, provides in pertinent part,

Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this article and in acceptance of all the provisions of this article, and shall bind the employee . . . as well as the employer, and those conducting the employer's business during bankruptcy or insolvency.

If an injury or death is compensable under this article, a person shall not be liable to anyone at common law or otherwise on account of such injury or death or any act or omission occurring while such person was in the same employ as the person injured or killed, **except for intentional wrong.** (emphasis added).

Here, counts one and two of plaintiff's Complaint allege only ordinary negligence and strict liability/products liability against all defendants, including Baker Boys. However, since the plaintiff was an employee of Baker Boys and was in the course of her employment when the accident occurred, the claims for ordinary negligence and strict liability/products liability are barred.

There is no dispute that the injured plaintiff was employed by the movant at the time the incident occurred and was acting in the course of her employment. Plaintiff alleged that employment in her Complaint at ¶¶18, 25, 26 and 32. (See Exhibit A). Specifically, Plaintiff admits, in ¶18 of her Complaint that "[a]t all relevant times hereto, Plaintiff was working for Baker Boys, LLC". Plaintiff tacitly acknowledges that her claims for ordinary negligence and products liability against Baker Boys, LLC are barred by the Workers Compensation Act

because ¶18 includes a footnote which provides, “[p]laintiff asserts liability against her employer under the intentional wrong exception to the workers compensation statute”. N.J.S.A. 34:34:15-8; Laidlow v. Hariton Machinery Co., Inc., 790 N.J. 602 (2002).

In addition to the plain language of the Complaint, the record is also full of documentary evidence which establishes that the plaintiff was an employee of Baker Boys at the time of the subject accident. The plaintiff applied for and collected temporary disability benefits from Nationwide Insurance Company, the workers compensation carrier for Baker Boys, pursuant to the Worker’s Compensation Act. (See Exhibit C). In addition, plaintiff’s W2 clearly indicates that Baker Boys was her employer. (See Exhibit B).

Baker Boys’ President, Frank Formica, also confirmed that the plaintiff was employed by Baker Boys at the time the incident occurred.

Q. Was Ms. Trujillo an employee of Baker Boys at the time of the incident?

A. She was.

(Exhibit F, T45:2-4)

As it is clear that the plaintiff was employed by Baker Boys at the time the accident occurred and she was injured during the course of her employment, plaintiff is barred from any recovery in tort from her employer, Baker Boys, and counts one and two of the plaintiff’s Complaint must be dismissed as to Baker Boys.

POINT II

ANY CROSSCLAIMS FOR CONTRIBUTION UNDER THE JOINT TORTFEASORS ACT AND COMMON LAW INDEMNIFICATION ARE ALSO BARRED BY THE WORKERS COMPENSATION ACT.

As of the filing of the within motion, no other defendant has filed an Answer to the plaintiff's Complaint. However, even if the remaining defendants file an Answer prior to the return date of this motion, which includes crossclaims for contribution under the Joint Tortfeasors Contribution Act and common law indemnification, those claims are also barred by the Workers Compensation Act.

"It is evident that contribution is enforceable under the statute only against a joint tortfeasor as therein defined". Sattelberger v. Telep, 14 N.J. 353, 367 (1954). However, New Jersey law is clear that the Worker's Compensation Act "shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation of determination of that as provided in this article". Ramos v. Browning Ferris Ind. of South Jersey, Inc., 103 N.J. 177, 185 (1986). Therefore, the employer is removed from the operation of the joint tortfeasors contribution law. Ibid.

Courts have found the "unmistakable intention of the New Jersey Legislature was that the sole liability of an employer for a work-related injury of an employee was that provided in the Act". Id. at 188. "Because the employer cannot be a joint tortfeasor, it is not subject to the provisions of the joint tortfeasors contribution law, and a third party tortfeasor may not obtain contribution from an employer, no matter what may be the comparative negligence of the third party and the employer." Id.

Here, the uncontroverted evidence establishes that the plaintiff was an employee of Baker Boys and was in the course of her employment at the time the accident giving rise to

this lawsuit occurred. Accordingly, based upon the holding in Ramos, which confirmed the removal of an employer from the operation of the joint tortfeasors contribution law, any crossclaims for contribution must also be dismissed.

Similar to the crossclaims for contribution under the Joint Tortfeasors Act, any crossclaims for common law indemnification are also barred by the Worker's Compensation Act and must be dismissed as a matter of law.

In general, "a third party may recover on a theory of implied (common) indemnity from an employer only when a special legal relationship exists between the employer and the third party, and the liability of the third party is vicarious". Ramos, 103 N.J. at 188-189. Courts have determined such special relationships to include that of principal and agent, Hagen v. Koerner, 64 N.J. Super 580, 586-587 (App. Div. 1960); bailer and bailee, 2A Larson, Workmen's Compensation Law §76.51 (1982); and lessor and lessee, Ruvolo v. United States Steel Co., 139 N.J. Super 578, 584. In the absence of a special relationship, or independent duty, allowing a third party the right to indemnification against an employer would, according to the Court, "be inconsistent with the employer's statutory right of indemnification from a third party tortfeasor", Ramos, 103 N.J. at 90, and "undermines the exclusive-remedy provision of the Worker's Compensation Act. Id.

Here, no special relationship exists which would support a claim for common law indemnification from Baker Boys and, therefore, any crossclaims for common law indemnification would fail as a matter of law.

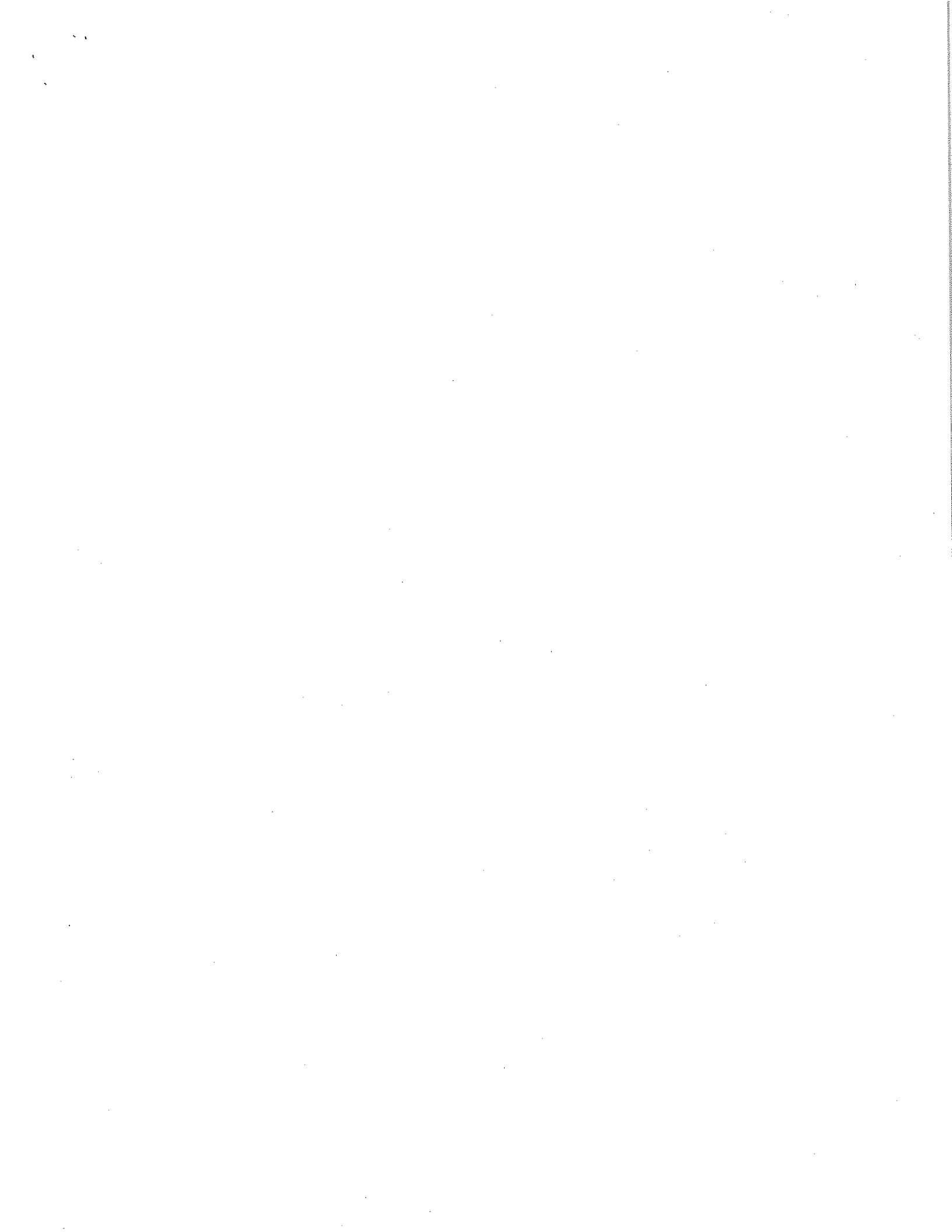
CONCLUSION

For the reasons expressed herein, the defendant, Baker Boys LLC, request that summary judgment as to counts one and two of the Complaint and any crossclaims for contribution common law indemnification be entered in its favor against the plaintiff.

Respectfully submitted,


STEPHEN E. GERTLER

DATED: September 11, 2017



HILL & ASSOCIATES, P.C.
BY: SUSAN B. AYRES, ESQ.
Identification No. 87562
Suite 1100, 123 S. Broad Street
Philadelphia, PA 19102
(215) 567-7600

INVESTIGATIVE

ON 28 MAY

VINELAND, NJ

Diana M. Trujillo	:	SUPERIOR COURT OF NEW JERSEY
400 N. Franklin Boulevard	:	
Pleasantville, NJ 08232	:	ATLANTIC COUNTY
	:	
Plaintiff	:	LAW DIVISION
	:	
vs.	:	No.: L-1322-17
	:	
Baker Boys, LLC	:	
900 Mill Road	:	
Pleasantville, NJ 08232	:	
	:	
Ginsburg Bakery, Inc.	:	
300 N. Tennessee Avenue	:	
Atlantic City, NJ 08401	:	
	:	
John Galt, LLC	:	
2310 Arctic Avenue	:	
Atlantic City, NJ 08401	:	
	:	
151 Foods, LLC	:	
151 Beningo Blvd.	:	
Bellmar, NJ 08031	:	
	:	
Omni Bakery	:	
2621 Freddy Lane	:	
Vineland, NJ 08360	:	
	:	
Mulloy Family, LLC	:	
2621 Freddy Lane	:	
Vineland, NJ 08360	:	
	:	
Defendants	:	

EWA

CIVIL ACTION- COMPLAINT

Plaintiff, Diana Trujillo, by and through her counsel, Hill & Associates, P.C., hereby avers the following:

1. Plaintiff, Diana Trujillo, is an adult individual, who resides at 400 N. Franklin Blvd., Pleasantville, NJ 08232.
2. Defendant Baker Boys, LLC, is a baking business, with a place of business located at 900 Mill Road, Pleasantville NJ 08232.
3. Defendant Ginsburg Bakery, Inc., is a baking business, with a place of business located at 300 Tennessee Avenue, Atlantic City, NJ 08401.
4. Defendant Ginsburg also designs, manufactures, supplies, services, and/or distributes commercial equipment, including but not limited to mobile conveyors, for use in bakeries.
5. Defendant Ginsburg sold, leased, and/or otherwise supplied baking equipment, including the mobile conveyor at issue in this litigation, to Defendants Baker Boys, LLC, John Galt, LLC, 151 Foods, LLC, and/or the Mulloy Family, LLC.
6. Defendant John Galt, LLC, is a bakery business, with a place of business located 2310 Arctic Avenue, Atlantic City, NJ 08401.
7. Defendant John Galt, LLC, also designs, manufactures, supplies, services, and/or distributes commercial equipment, including but not limited to mobile conveyors, for use in bakeries.
8. Defendant John Galt, LLC, sold, leased, and/or otherwise supplied baking equipment, including the mobile conveyor at issue in this litigation, to Defendants Baker Boys, LLC, 151 Foods, LLC, and/or the Mulloy Family, LLC.

9. Defendant 151 Food, LLC, is a baking business, with a place of business located at 151 Beningo Boulevard, Bellmar, NJ 08031.
10. Defendant 151 Foods, LLC also designs, manufactures, supplies, services, and/or distributes commercial equipment, including but not limited to mobile conveyors, for use in bakeries.
11. Defendant 151 Foods, LLC sold, leased, and/or otherwise supplied baking equipment, including the mobile conveyor at issue in this litigation, to Defendants Baker Boys, LLC, John Galt, LLC, and/or the Mulloy Family, LLC.
12. Defendant Omni Bakery, is a baking business, with a place of business located at 2621 Freddy Lane, Vineland, NJ 08360.
13. Defendant Omni Bakery also designs, manufactures, supplies, services, and/or distributes commercial equipment, including but not limited to mobile conveyors, for use in bakeries.
14. Defendant Omni Bakery sold, leased, and/or otherwise supplied baking equipment, including the mobile conveyor at issue in this litigation, to Defendants Baker Boys, LLC, John Galt, LLC, and/or the Mulloy Family, LLC.
15. Defendant Mulloy Family, LLC, is a baking business, with a place of business located at 2621 Freddy Lane, Vineland, NJ 08360.
16. Defendant Mulloy Family, LLC also designs, manufactures, supplies, services, and/or distributes commercial equipment, including but not limited to mobile conveyors, for use in bakeries.

17. Defendant Mulloy Family, LLC sold, leased, and/or otherwise supplied baking equipment, including the mobile conveyor at issue in this litigation, to Defendants Baker Boys, LLC, and/or John Galt, LLC.
18. At all relevant times hereto, Plaintiff was working for Baker Boys, LLC.¹
19. Plaintiff is Spanish speaking, only.
20. This lawsuit involves a serious and permanent injury to Plaintiff, namely, amputation of her right, dominant, arm, as a result of defect in a mobile conveyor, including but not limited to an unguarded chain.
21. The mobile conveyor was manufactured, designed, supplied, serviced, and distributed by Defendants. A photograph of the mobile conveyor are attached as Exhibit "A".²
22. The mobile conveyor was defective because it lacked necessary guards, alarms, or other protections for the operators working near the conveyor and the chain and sprocket underneath the conveyor. A photograph of the area where the operator worked are attached as Exhibit "B".
23. At the time of Plaintiff's incident, the mobile conveyor depicted in Exhibit A, was in the location where the white trash can is seen in Exhibit B.
24. Based on prior incidents of serious, permanent, and disfiguring injuries involving the same or similar pieces of equipment, as well as based on their experience and knowledge/education in the baking industry and with these types of commercial machines, all of the Defendants had actual knowledge, with substantial certainty, that

¹ Plaintiff asserts liability against her employer under the intentional wrong exception to the workers compensation statute. N.J.S.A. 34:15-8; Laidlow v. Hariton Machinery Co., Inc., 790 N.J. 602 (N.J. 2002).

² Importantly, the conveyor is not pictured in the same location it was in when the incident occurred. Also, the machine has been altered since the incident, specifically, warning labels seen in the photograph were placed on the machine after the incident. Exhibit A.

without the necessary guards, alarms or other protections for operators working at the conveyor, serious, permanent, and disfiguring injuries to operators, such as Plaintiff, would result.

25. On or about May 3, 2016, Plaintiff was assigned to the mobile conveyor, specifically assigned the task to remove dough from the conveyor and place it into pans.
26. The mobile conveyor where Plaintiff was assigned, Exhibit A, was placed by Defendants up against, but not secured to, another conveyor. Exhibit B.
27. Previous to May 3, 2016, Plaintiff (as well as her coworkers) had been ordered by her supervisor that while working at the mobile conveyor in this location, Plaintiff could not allow any dough to fall to the floor.
28. Plaintiff's supervisor, an employee of Defendants Baker Boys, LLC, knew that to prevent the dough from falling to the floor, the operators, such as Plaintiff, would have to reach below the machine where there were moving parts with no guards.
29. For weeks prior to May 3, 2016, dough was continually falling between the two conveyors, dozens of times per shift, requiring operators, such as Plaintiff, to reach below and catch the dough, as instructed by their supervisor:
30. Operators of the machine, including Plaintiff, complained about the machine to their supervisors, expressing their concern about the dough falling below and the need to reach below the conveyor.
31. Defendant Baker Boys, LLC knowingly and intentionally placed laborers in harm's way, beyond those simply associated with the facts of industrial life.
32. On May 3, 2016, while working at this mobile conveyor, dough fell requiring Plaintiff to reach below the mobile conveyor; however, when she did so, her arm

became caught in the unguarded chain and sprocket, which was a part of the mobile conveyor.

33. As a result of coming into contact with the unguarded chain and sprocket, Plaintiff's right arm was amputated below the elbow.

34. As a result of her arm being severed by the unguarded chain, Plaintiff sustained serious and permanent injuries, requiring multiple surgeries, leaving significant scarring, and resulting in a loss of her lower right arm.

35. On or about May 3, 2016, and for time leading up to that date that the mobile conveyor was in use at the Baker Boys' facility, maintenance and/or repair of the conveyor equipment in the bakery located at 900 Mill Road, Pleasantville, NJ location, was the responsibility of the Defendants, as the owners, servicers and/or suppliers of the equipment.

36. Throughout that day, and every day for weeks preceding May 3, 2016, the mobile conveyer machine which caused Plaintiff's injuries was having problems of which Defendant Baker Boys was aware.

37. Defendant Baker Boys was aware of the problems of the conveyer not only because of the machine itself, but also because laborers working on the machine, including the Plaintiff, would have difficulty with loss of product due to the dough falling.

38. Notwithstanding Defendant Baker Boys' knowledge of the malfunctioning, and all of the Defendants' knowledge of the defectively maintained equipment, and the risk that serious, permanent, and disfiguring bodily injury was substantially certain to occur known to all Defendants, and for the sole purposes of saving costs associated with

repair and/or replacement of the machinery and/or avoiding a decline in production while the industrial machine was taken out of service for repairs, Defendants:

- a. failed to remedy the industrial machinery;
- b. allowed the industrial machinery to continue in operation in a defective state;
- c. placed laborers at the defective machinery with instructions to operate the position in such a way where it was substantially certain that they would suffer serious, permanent, and disfiguring injuries;
- d. failed to employ adequate hand protections; and
- e. failed to properly educate, train, or otherwise empower the laborers with sufficient knowledge and/or information to prevent injury to themselves.

39. Defendants knowingly and intentionally placed laborers in harm's way, beyond those simply associated with the facts of industrial life.

FIRST COUNT -- NEGLIGENCE
PLAINTIFF V. ALL DEFENDANTS

40. Plaintiff incorporates by reference hereto the foregoing paragraphs, inclusively, as if the same were fully set forth herein at length.

41. The aforementioned incident was caused solely by the negligence and carelessness of the Defendants, which consisted of the following:

- a. failed to remedy the industrial machinery;
- b. allowed the industrial machinery to continue in operation in a defective state;
- c. failed to employ adequate hand protections; and
- d. failed to properly educate, train, or otherwise empower the laborers with sufficient knowledge and/or information to prevent injury to themselves.

42. At all times mentioned herein, Plaintiff acted with due care and was not contributorily negligent.
43. As a result of the aforementioned incident, Plaintiff was caused to sustain serious and permanent injuries, including amputation of her right arm.
44. As a result of the aforementioned incident and resulting injuries, Plaintiff has been caused to expend various sums of money for medicine and medical attention for treatment and/or cure of these injuries and to have essential services performed during the duration of the physical impairment, all to great financial detriment and loss and expects to pay additional sums of money for medicine and medical attention in the future all to Plaintiff's great financial detriment and loss.
45. As a further result of the aforementioned incident and resulting injuries, Plaintiff was prevented from attending to usual and customary duties, vocation and occupations, thereby sustaining a loss of earnings and/or earning capacity, all to her great financial detriment and loss.

WHEREFORE, Plaintiff hereby demands judgment against Defendants, for damages, together with attorney's fees, if applicable, costs of suit, punitive damages, and any other relief as the court may deem proper.

SECOND COUNT – STRICT LIABILITY/PRODUCTS LIABILITY
PLAINTIFF V. ALL DEFENDANTS

46. Plaintiff incorporates by reference hereto all preceding paragraphs as if the same were fully set forth herein at length.
47. Plaintiff avers that Defendants, by and through their agents, servants, workers, contractors, designers, assemblers, manufacturers, sellers, suppliers and distributors are strictly liable under the theory of products liability pursuant to New Jersey Law:

- a. Defendants are engaged in the business of designing, manufacturing, assembling, distributing, selling and/or supplying conveyors, including the one used by Plaintiff;
- b. The conveyor involved in Plaintiff's amputation was marketed and placed in the general stream of commerce by Defendants;
- c. The conveyor involved in Plaintiff's amputation was expected to and did reach users, including the Plaintiff, without substantial change in the condition in which it was designed, manufactured, assembled, distributed and/or sold;
- d. The conveyor involved in Plaintiff's amputation was designed, manufactured, assembled, distributed and/or sold in the defective condition described above.

48. Plaintiff avers that Defendants, by and through their agents, servants, workers, contractors, designers, assemblers, manufacturers, sellers, suppliers and distributors are strictly liable by:

- e. Designing, assembling, manufacturing, selling, supplying, and distributing a product in a defective condition;
- f. Designing, assembling, manufacturing, selling, supplying, and distributing a product that was unreasonably dangerous to its intended and foreseeable users;
- g. Designing, assembling, manufacturing, selling, supplying, and distributing a product that was not safe for all of its intended and represented purposes;
- h. Failing to provide adequate warnings on the product;
- i. Failing to provide adequate warnings to the ultimate users of the product;

- j. Designing, assembling, manufacturing, selling, supplying, and distributing a product that lacked all the necessary safety features to protect users of said products;
- k. Failing to either know of prior accidents and injuries with the product and/or failing to correct and prevent the same accidents and injuries from reoccurring;
- l. Designing, assembling, manufacturing, selling, supplying, and distributing a product with parts/components that could cause serious injury;
- m. Violating applicable State, local and/or industry standards;
- n. Designing, assembling, manufacturing, selling, supplying, and distributing a product that could accommodate components that were unsafe;
- o. Failing to adequately and properly test said product after its design and/or assembly;
- p. Failing to investigate, retain, and analyze prior accident information;
- q. Failing to ensure that the ultimate users were advised of the dangers of said product and how to use the product safely and to avoid injury;
- r. Failing to properly instruct the users of product; and
- s. Failing to supply the product with adequate instructions.

49. By reason of the breach of duties of the Defendants, by and through their agents, servants, workmen, contractors, suppliers, distributors, assemblers, and/or employers, as aforesaid, Plaintiff suffered the serious and permanent and disfiguring personal injuries set forth above.

50. By reason of the breach of duties of the Defendants, by and through its agents, servants, workmen, contractors, suppliers, distributors, assemblers, and/or employers, as aforesaid, Plaintiff was caused to sustain serious and permanent injuries set forth above and will continue to cause her

a great deal of embarrassment, humiliation, pain, suffering, agony, inconvenience, and which may be permanent in nature and character.

51. By reason of the breach of duties of the Defendants, by and through their agents, servants, workmen, contractors, suppliers, distributors, assemblers, and/or employers, as aforesaid, Plaintiff has been caused to expend various sums of money for medicine and medical attention for treatment and/or cure of these injuries and to have essential services performed during the duration of the physical impairment, all to great financial detriment and loss and expects to pay additional sums of money for medicine and medical attention in the future all to Plaintiff's great financial detriment and loss.

52. By reason of the breach of duties of the Defendants, by and through their agents, servants, workmen, contractors, suppliers, distributors, assemblers, and/or employers, as aforesaid, Plaintiff may have been prevented from attending to usual and customary duties, vocation and occupations.

Wherefore, Plaintiff hereby demands judgment against Defendants in an amount in excess of Fifty Thousand (\$50,000) Dollars.

THIRD COUNT - NEGLIGENCE, INTENTIONAL WRONG
PLAINTIFF V. BAKER BOYS, LLC, ONLY

53. Plaintiff incorporates by reference hereto the foregoing paragraphs, inclusively, as if the same were fully set forth herein at length.

54. The aforementioned incident was caused solely by the following intentional wrongs by Defendant Baker Boys, LLC, which were "intentional wrongs" given this Defendant's knowledge of the malfunctioning equipment, knowledge of laborers complaints about the mobile conveyer machine, knowledge that the malfunctioning equipment was substantially certain to result in serious, permanent, and disfiguring injury to laborers working with that piece of industrial equipment and for the purpose of saving costs associated with repair and/or

replacement of the machinery and/or avoiding a decline in production while the industrial machine was taken out of service:

- a. failed to remedy the industrial machinery;
- b. allowed the industrial machinery to continue in operation in a defective state;
- c. placed laborers at the defective machinery where they were likely to sustain serious injury;
- d. failed to employ adequate hand protections; and
- e. failed to properly educate, train, or otherwise empower the laborers with sufficient knowledge and/or information to prevent injury to themselves.

55. At all times mentioned herein, Plaintiff acted with due care and was not contributorily negligent.

56. As a result of the aforementioned incident, Plaintiff was caused to sustain serious and permanent and disfiguring injuries.

57. As a result of the aforementioned incident and resulting injuries, Plaintiff has been caused to expend various sums of money for medicine and medical attention for treatment and/or cure of these injuries and to have essential services performed during the duration of the physical impairment, all to great financial detriment and loss and expects to pay additional sums of money for medicine and medical attention in the future all to Plaintiff's great financial detriment and loss.

58. As a further result of the aforementioned incident and resulting injuries, Plaintiff was prevented from attending to usual and customary duties, vocation and occupations, thereby sustaining a loss of earnings and/or earning capacity, all to her great financial detriment and loss.

WHEREFORE, Plaintiff, hereby demands judgment against Defendant Baker Boys, LLC, for damages, together with attorney's fees, if applicable, costs of suit, punitive damages, and any other relief as the court may deem proper.

Certification of No-Other Actions

I certify that the dispute about which Plaintiff is suing is not the subject of any other action pending in any other court of the State of New Jersey to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated in the State of New Jersey. Further, other than the parties to this Complaint, I know of no other parties that should be made a part of this lawsuit at this time. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Jury Demand

Plaintiff demands trial by a jury on all of the triable issues of this Complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

Certification of Compliance with Rule 1:38-7(c)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Designation of Trial Counsel

In accordance with R. 4:25-4, Susan B. Ayres, Esquire, and Leonard K. Hill, Esquire, are hereby designated as trial counsel for Plaintiff in this matter.

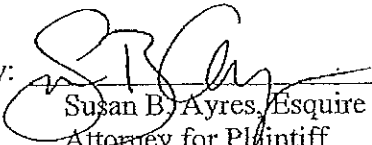
Demand for Insurance Coverage Information

Pursuant to R. 4:10-2, Plaintiff hereby demands that Defendants identify the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

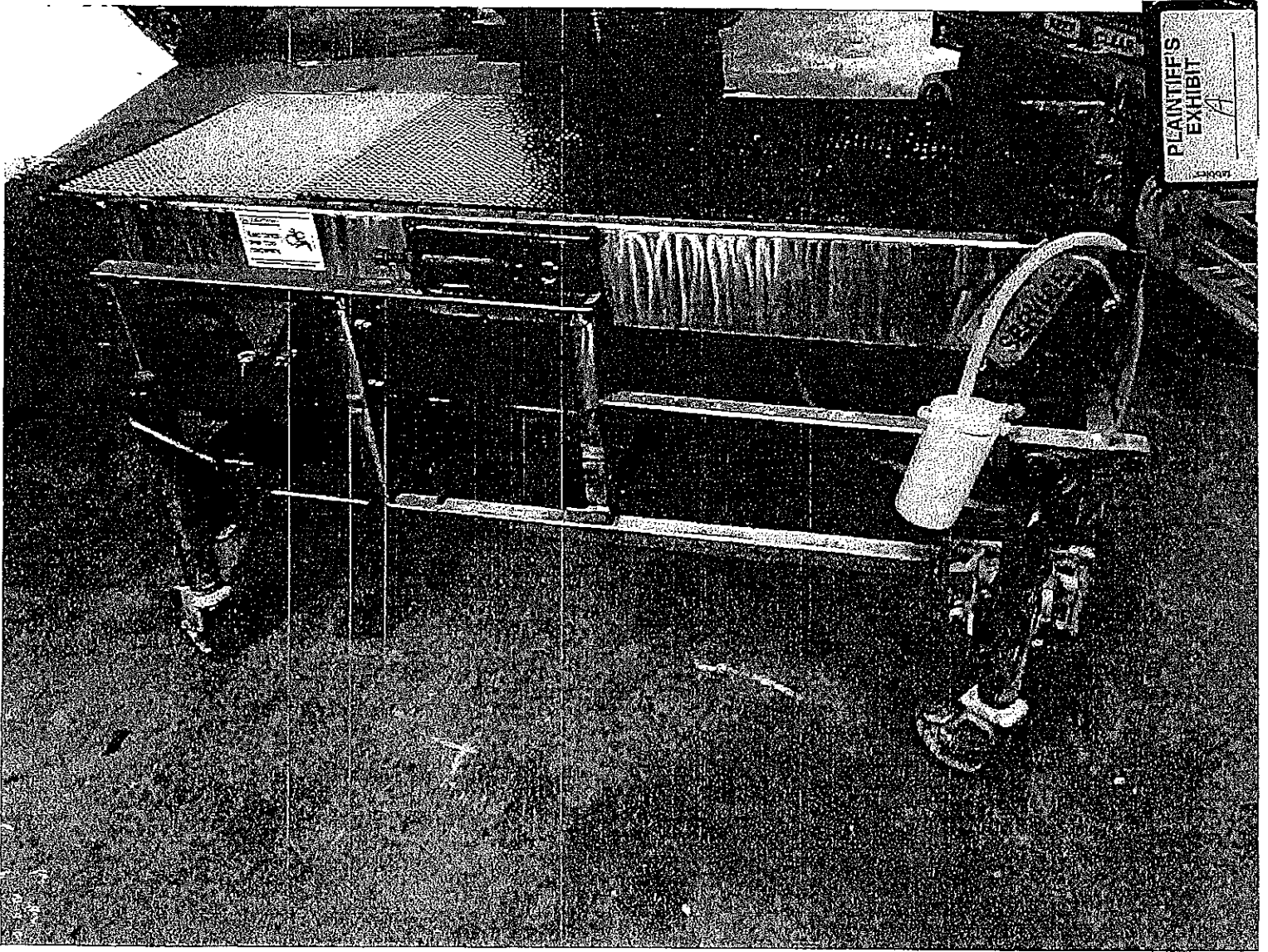
Demand for Defendants to Respond to Uniform Interrogatories Form C and C(2)

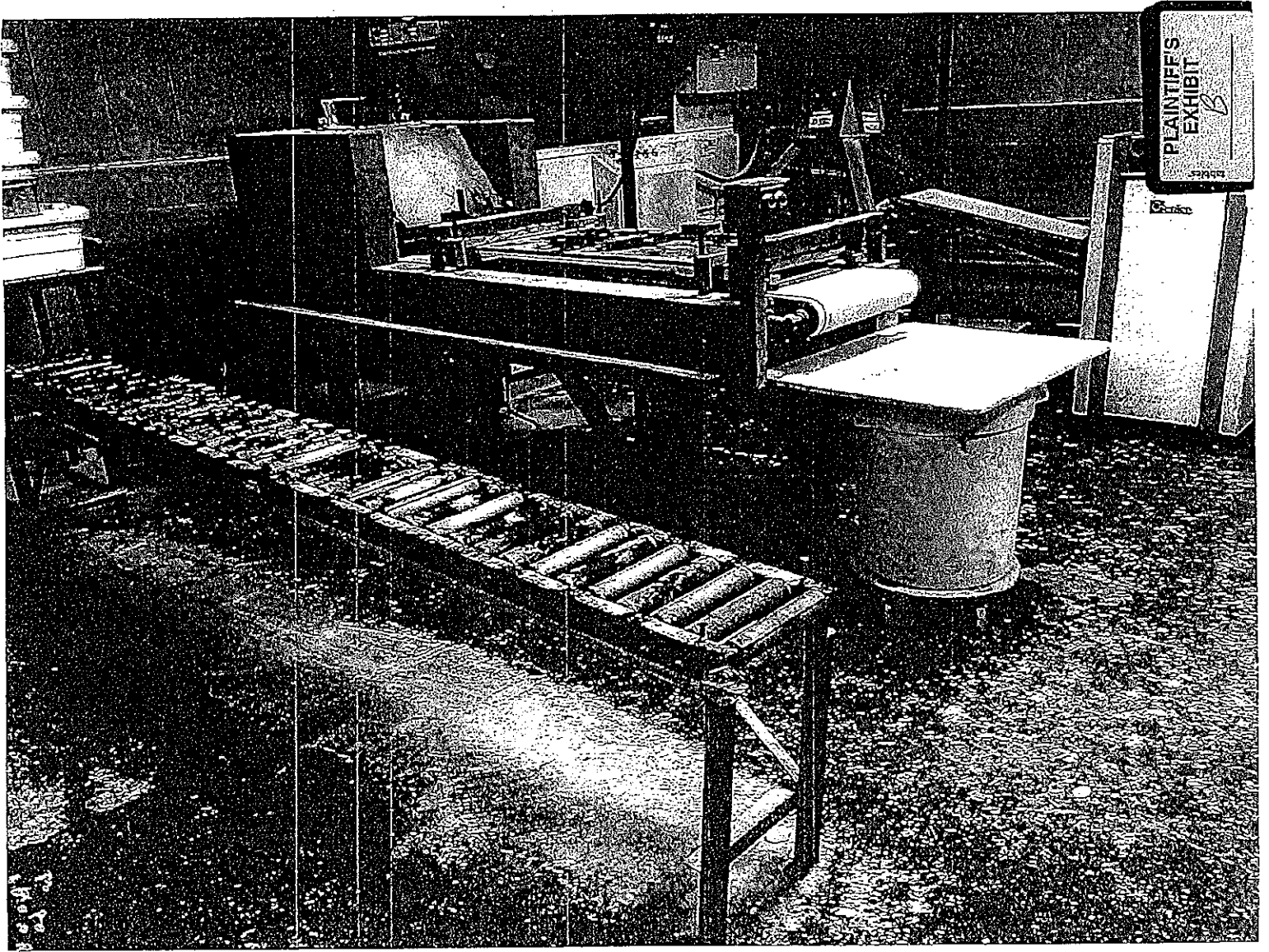
Pursuant to R. 4:17-2, Plaintiffs hereby demand that Defendants respond to Uniform Interrogatories Form C and C (2) within the time required by the New Jersey Rules of Court.

Respectfully submitted,

By: 
Susan B. Ayres, Esquire
Attorney for Plaintiff

Date: 6-27-17







Form W-2 Wage and Tax Statement 2016

EMPLOYER REFERENCE COPY - DO NOT FILE

Department of the Treasury - Internal Revenue Service
OMB No. 1545-0048

f Control number 0426-X077		g Employer's name, address, and ZIP code SAKER BOYS LLC 900 HILL ROAD PLEASANTVILLE NJ 08232	
h Employer identification number 000000185-000400		i Employee's name, address, and ZIP code MARIBEL TRUJILLO 28 W. BAYVIEW AVE PLEASANTVILLE NJ 08232	
j Employer's social security number 56-2570215		k State wages, tips, etc. 6691.69	
l Retirement plan 369-52-7105		m State income tax 88.82	
m See instrs. for Box 12 UI/BC/WD 26.42		n Local wages, tips, etc. 5.38	
DI 13.39		o Local income tax 5.38	
DI PP# 562-570-21		p Local wages, tips, etc. 6691.69	
n Other		q State income tax 88.82	
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Philadelphia, PA 19109
215-567-7600
215-525-4311 (fax)

Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PENNSYLVANIA

Diana M. Trujillo : No.: 160804078
: :
v. : Jury Trial Demanded
: :
Gemini Bakery Equipment Company, :
Baker Boys, LLC, Ginsburg Bakery, :
G&F Systems, Inc. and Formica :
Bros. Bakery :

**PLAINTIFF'S ANSWERS TO INTERROGATORIES OF DEFENDANT, G&F SYSTEMS, INC.
ADDRESSED TO PLAINTIFF, DIANA M. TRUJILLO**

INTERROGATORIES

A. Personal Information

A-1. What is your full name?

ANSWER: Diana Maribel Trujillo

A-2. Have you ever used or been known by any other names? _____ If so, what are those other names?

ANSWER: No.

A-3. On what date were you born?

ANSWER: July 30, 1993

A-4. Where were you born?

ANSWER: El Salvador

A-5. What is your Social Security number?

ANSWER: N/A

A-6. At what address were you living at the time of the accident?

ANSWER: 16 W. Reading Avenue, Pleasantville, New Jersey

EHC

A-7. Did you live at that address during the five years preceding the **accident**? ____ If not, at what addresses did you live during the five years preceding the **accident**?

ANSWER: No. I lived there for about three years before the injury and before that I lived in El Salvadore.

A-8. At what address are you presently living?

ANSWER: 400 N. Franklin Blvd., Pleasantville, New Jersey.

A-9. What is your business telephone number?

ANSWER: I have not been able to work since the injury.

A-10. Did you graduate from high school?

____ If so:

ANSWER: Yes.

a. What was the name of the high school?

ANSWER: Manuala Vinero

b. Where was the high school located?

ANSWER: El Salvador

A-11. Did you attend college? ____ If so:

ANSWER: No.

a. What college did you attend?

b. Where was the college located?

c. What course of study did you major in?

d. Did you receive a degree from the college? ____ If so:

i. What degree did you receive?

ii. In what year did you receive the degree?

A-12. Were you married at the time of the accident? ____ If so:

ANSWER: No.

a. What was your spouse's name?

b. When and where were you married?

c. Are you still married to that person?

____ If not:

- i. When and where were you divorced?
- ii. Have you remarried? ____ If so:
 - (a) What is the name of your present spouse?
 - (b) When did you marry your present spouse?

d. If you are still married to the **person** to whom you were married at the time of your **accident**, are you living together? ____ If not:

- i. Where is your spouse living?
- ii. Are you providing financial support for your spouse? ____ If not, why

not?

A-13. Did you have any children at the time of the **accident**? ____ If so:

ANSWER: Yes.

- a. What were their names and ages?

ANSWER: Miriam Lisette Reales, D.O.B. October 3, 2014

- b. Were they living with you? ____ If not:

ANSWER: Yes.

- i. **Identify the person** with whom they were living.
- ii. Were you providing financial support for them? _____ If not, why

not?

- c. Are they living with you now?

If not:

ANSWER: Yes.

- i. **Identify the person** with whom they are living.
- ii. Are you providing financial support for them? ____ If not, why not?

A-14. Have you had any children since the **accident**? ____ If so, what are their names and birthdates?

ANSWER: No.

A-15. Have you ever filed a lawsuit for personal injuries? ____ If so, identify the court, term and number of each such lawsuit and the date each lawsuit was filed.

ANSWER: No.

A-16. Did you sustain any injuries or suffer any disease or impairment, physical or mental, before the **accident** which in any way affected those parts of your body which you claim were injured in the **accident**? ____ If so, separately with respect to each such injury, disease or impairment:

ANSWER: No.

- a. Describe the nature of the injury, disease or impairment.
- b. **Identify every medical practitioner and medical institution** who treated or examined you in connection with the injury, disease or impairment.
- c. State the dates of treatment or examination received.

A-17. Did you have a family or personal **medical practitioner** at the time of the **accident**?

If so:

ANSWER: No.

- a. State the **medical practitioner's** name and address.
- b. State when the **medical practitioner** last examined or treated you prior to the **accident**?
- c. State the reason you consulted the **medical practitioner** on that occasion?

A-18. Did you consult any other **medical practitioners** during the five years preceding the **accident**? ____ If so, separately as to each such other **medical practitioner**:

ANSWER: Only in connection with the birth of my daughter.

a. State the name and address of the **medical practitioner** who you consulted.

ANSWER: She was born at **Atlanticare Regional Medical Center - Pamona, NJ**

b. Describe the condition(s) for which you consulted the **medical practitioner.**

ANSWER: **Childbirth. Prenatal consults with clinic associates with that hospital.**

c. Describe the treatment which the **medical practitioner** prescribed.

d. Describe the medication(s) which the **medical practitioner** prescribed.

A-19. At the time of the **accident**, or immediately before, did you have any temporary or permanent impairment or restriction of vision, hearing, muscle control or other bodily function? ____ If so, describe each such impairment or restriction in detail.

ANSWER: No.

A-20. At the time of the **accident**, or within twenty-four (24) hours prior thereto, did you ingest, inject, inhale or otherwise use any medication, alcoholic beverage or controlled-substance? ____ If so, describe each such ingestion or inhalation in detail and at what time each occurred.

ANSWER: No.

B. Employment History

B-1. **Identify** each **person** who employed you during the ten (10) years preceding the **accident** and during the period since the **accident**, and, separately as to each such employer:

ANSWER: **This was my first employment in my life, and I have not worked since the injury.**

a. State the period of your employment.

b. As to each position you held with the employer:

i. State the title of the position.

ii. **Identify** the **person** who was your immediate supervisor.

iii. Describe the duties of the position.

iv. State the address at or from which you performed your duties.

v. State your gross wages or salary per pay period at the time you left the position.

B-2. What is your present occupation?

ANSWER: I am not employed now.

B-3. Have you been self-employed during all or any portion of the period beginning ten (10) years prior to the **accident** and continuing to the present? ____ If so: a. State the years during which you have been self-employed.

ANSWER: No.

b. State the address(es) at or from which you have conducted your business.

c. Describe the facilities and equipment which you have used and/or presently use in your business.

d. State whether you own those facilities and equipment. ____ If not, who owns them?

e. State the annual gross income and net income which your business received during each of the years of your self-employment.

B-5. What was your annual gross income from all sources in each of the five years prior to the **accident**, in the year of the **accident**, and in each year since the **accident**?

ANSWER: This was my first employment. Since the incident I receive worker's compensation benefits.

B-6. Did you file Federal income tax returns for each of the five years before the **accident**, for the year of the **accident**, and for each year since the **accident**? ____ If so, attach copies of those returns to your answers to these Interrogatories. If not, why not?

ANSWER: I filed one tax return, I do not have a copy of it.

B-7. If you do not have copies of your Federal income tax returns for each of the five years before the **accident**, for the year of the **accident**, and for each year since the **accident**, is there any **person** who does have copies of those returns? ____ If so, **identify** that **person**.

ANSWER: I do not believe so.

C. Description of Accident.

C-1. Please describe, in your own words, how you contend the **accident** happened?

ANSWER: My right arm got caught in the machine.

C-2. If you contend that you slipped and fell, **identify** any substance present which you contend contributed to the **accident**?

ANSWER: N/A

D. Witnesses To Accident

D-1. Do you know of any **persons** who you believe were eyewitnesses to the **accident** or to the events leading up to the **accident**? ____ If so, **identify** each such **person** and describe the **person's** exact location at the time of the **accident**.

ANSWER: I do not know who saw the actual incident. However, here are the people I know were there that day or have information leading up to the events:

John Sweeney – was present

Julia Herrera – was present

Melya (last name unknown) – was present

Mark Carmen (last name uncertain) – was present

Josepha Herrera – not present that day, but was supervisor, gave instruction, knew about machine and complaints by employees about the machine

Salvador (last name unknown) – worked on machine, tried to repair Plaintiff's investigation is ongoing. Also, even captured by video, which is being produced with the Response to Request for Production of Documents.

D-2. Do you know of any **persons** who you believe have or may have any knowledge of the conditions at the scene of the **accident** existing before, during or immediately after the **accident** other than eyewitnesses? ____ If so, **identify** each such **person** and describe the **person's** exact location at the time of the **accident**.

ANSWER: See Response above.

D-3. If not previously identified, do you know of any **persons** who you believe have knowledge of events leading up to the **accident**, facts pertaining to this lawsuit, or facts of any investigation after the **accident**? ____ If so, **identify** each such **person** and describe the knowledge you believe the **person** has or may have.

ANSWER: See Response above.

D-4. At the time of the **accident** or immediately thereafter, did you have any spoken communications with any **person** at or near the scene of the **accident**, or did any **person** speak with you or in your presence concerning the **accident** or the injuries you claim you sustained? ____ If so, separately as to each such spoken communication:

ANSWER: Not other than screaming in pain and getting medical assistance.

a. **Identify** each **person** who spoke.

b. State the words or substance of the words spoken.

c. **Identify** each **person** who you know or believe was within hearing distance or the spoken communication.

E. Investigation of Accident

E-1. Have you or has anyone acting on your behalf obtained from any **person** any report, statement, recording, memorandum or testimony, whether signed or not, and whether prepared by someone else, concerning the **accident**? ____ If so, attach copies of all such reports, statements, etc. to your answer to these Interrogatories, and, separately as to each such report, statement, etc.:

ANSWER: No.

a. **Identify** the **person(s)** from whom the report, statement, etc. was obtained.

b. State the date the report, statement, etc. was taken or made.

c. **Identify** the **person** who obtained the report, statement, etc.

d. **Identify** the **person** who has possession or custody of the report, statement, etc. if it is not in your possession or under the control of you or your attorney.

E-2. Have you made any report, statement, memorandum or recording or given testimony in writing, whether prepared by you or someone else, concerning the **accident** or this lawsuit? ____ If so, attach copies to your answers to these Interrogatories, and, separately as to each such report, statement, etc.:

ANSWER: No.

a. State the nature of the report, statement, etc., and the date it was prepared or taken.

b. **Identify** the **person** who has possession or custody of the report, statement, etc. if it is not in your possession or under the control of you or your attorney.

ANSWER: See medical records attached in response to the Request for Production of Documents from Cooper Hospital, TriCare Ambulance. Plaintiff has requested additional outpatient records, home healthcare records, and therapy records and will provide them upon receipt.

d. State the amount charged.

ANSWER: Some medical bills have been received and are attached in response to the Request for Production of Documents. In addition, we received an email from David Benson of Nationwide, Ref. No. 074700-GD, indicating that Nationwide has paid \$428,158.35 in medical benefits and \$7,728.60 in indemnity benefits as of December 7, 2016. This information will be supplemented as additional bills and/or updated lien information from the worker's compensation carrier is received.

F-3. Identify each **medical practitioner** or **medical institution** who x-rayed any part of your body, the date each x-ray was taken, and the amounts charged for the x-rays.

ANSWER: See medical records attached in response to the Request for Production of Documents from Cooper Hospital, TriCare Ambulance. Plaintiff has requested additional outpatient records and therapy records and will provide them upon receipt.

F-4. As to each **medical practitioner** who examined or treated you since your **accident**, separately as to each such **person**:

ANSWER: See medical records attached in response to the Request for Production of Documents from Cooper Hospital, TriCare Ambulance. Plaintiff has requested additional outpatient records and therapy records and will provide them upon receipt.

a. State the **medical practitioner's** name and address.

b. Describe the **medical practitioner's** practice specialty.

- c. State the date(s) on which the **medical practitioner** examined or treated you.
- d. Describe the nature of the examination or treatment in detail.
- e. State the amount(s) the **medical practitioner** charged you.
- f. Describe the **medical practitioner's** findings.

F-5. Has any **person** other than you paid charges for examination(s) and/or treatment(s) which you have received since the **accident**. ____ If so, separately as to each such payment:

ANSWER: Yes.

- a. **Identify the person** making the payment.

ANSWER: Some medical bills have been received and are attached in response to the Request for Production of Documents. In addition, we received an email from David Benson of Nationwide, Ref. No. 074700-GD, indicating that Nationwide has paid \$428,158.35 in medical benefits and \$7,728.60 in indemnity benefits as of December 7, 2016. This information will be supplemented as additional bills and/or updated lien information from the worker's compensation carrier is received.

- b. **Identify the person** to whom the payment was made.
- c. State the amount of the payment.

F-6. As a result of the injuries you have described above, were you confined to bed or your home? ____ If so, state the dates you were confined to each.

ANSWER: Yes.

F-7. Have you received any reports or records from any **medical practitioner** or **medical institution** by whom or where you were x-rayed, examined or treated? ____ If so, attach copies of the reports to your answers to these Interrogatories. If you have not received any reports or records from a **medical practitioner** or **medical institution** by whom or where you were x-rayed, examined or treated for such injuries, please sign the attached "Medical Consent" form so that defendants can obtain these reports and

records. Defendants will make available to you (at your cost) copies of all reports and records obtained by use of this Consent.

ANSWER: See medical records attached in response to the Request for Production of Documents from Cooper Hospital, TriCare Ambulance. Plaintiff has requested additional outpatient records, home healthcare, and therapy records and will provide them upon receipt.

F-8. Have you employed any nursing services since the accident? ____ If so, separately as to each such nursing service:

ANSWER: Bayada Nursing did some Home healthcare. Plaintiff has requested those records and will provide them upon receipt.

- a. Identify the person providing the nursing service.
- b. State the period when nursing service was provided.
- c. State the rate of payment made to the person providing the nursing service.
- d. State the total amount paid for the nursing service.

F-9. As to each injury from which you have fully recovered:

ANSWER: N/A

- a. Describe the injury.
- b. State the approximate date of such recovery.

F-10. Describe with particularity any pain, ailment, complaint, injury, scarring, disfigurement or disability you presently have which you claim is a result of the accident.

ANSWER: I have daily pain and depression. I am disfigured. I am disabled without my dominant arm. My life is completely different. I have difficulty dressing, cooking, and caring for my daughter. I am unable to work.

F-11. Are you still under treatment for injuries which you claim you sustained in the accident? ____ If so:

ANSWER: Yes. I go to therapy three times a week and I see the surgeon's office about once a month or once every two months.

a. State the name and address of the **medical practitioner(s)** and/or **medical institution(s)** who are still treating you.

b. State the date or the last visit to each such **medical practitioner** or **medical institution**.

F-12. Are you able to perform your normal daily activities? ____ If not, describe in detail the particular respects in which you are not able to perform those activities.

ANSWER: No. I have daily pain and depression. I am disfigured. I am disabled without my dominant arm. My life is completely different. I have difficulty dressing, cooking, and caring for my daughter. I am unable to work.

G. Damage Claim - Alleged Lost Income/Reduced Earning Capacity

G-1. Are you claiming any loss of earnings or income in this lawsuit? ____ If so:

ANSWER: To be determined.

a. State the total amount you are claiming.

b. Specify in detail how that total amount was calculated.

c. State whether it is the total amount claimed or only the total to date.

G-2. What was the nature of your employment at the time of the **accident**?

ANSWER: Bakery Floor

G-3. **Identify** your employer at the time of the **accident**?

Request for Production of Documents. In addition, we received an email from David Benson of Nationwide, Ref. No. 074700-GD, indicating that Nationwide has paid \$428,158.35 in medical benefits and \$7,728.60 in indemnity benefits as of December 7, 2016. This information will be supplemented as additional bills and/or updated lien information from the worker's compensation carrier is received.

G-9. Since the **accident**, have you received workers' compensation benefits? _____ If

SO:

ANSWER: Yes

a. **Identify** the person who has paid worker's compensation benefits to you or for your benefit.

ANSWER: I do not know exactly but my worker's compensation checks say Baker Boys on them. In addition, we received an email from David Benson of Nationwide, Ref. No. 074700-GD, indicating that Nationwide has paid \$428,158.35 in medical benefits and \$7,728.60 in indemnity benefits as of December 7, 2016.

b. State the claim or other number which the **person** making the payments has assigned to you.

ANSWER: Nationwide, Ref. No. 074700-GD

c. Describe in detail and itemize the amounts of the payments which have been made to you or for your benefit.

d. State whether the **person** making the payments has given notice or otherwise asserted a subrogation claim with respect to the payments which it has made to date or may make in the future.

e. State whether your attorney in this lawsuit has been engaged by the **person** making the payments to represent it in connection with such subrogation claim.

H. Summarization of Special Damages:

H-1. List all expenses (special damages) which you claim resulted from the incident and/or accident (answer even if duplicated in other answers).

ANSWER: Some medical bills have been received and are attached in response to the

Request for Production of Documents. In addition, we received an email from David Benson of Nationwide, Ref. No. 074700-GD, indicating that Nationwide has paid \$428,158.35 in medical benefits and \$7,728.60 in indemnity benefits as of December 7, 2016. This information will be supplemented as additional bills and/or updated lien information from the worker's compensation carrier is received. Plaintiff reserves the right to supplement this information with medical and/or wage loss details.

I. Experts

I-1. Do you intend to call any **persons** as expert witnesses at trial? ____ If so, separately as to each such **person**:

ANSWER: Yes.

a. **Identify the person.**

ANSWER: With regard to liability, Plaintiff identifies Thomas Cochiola, P.E. Plaintiff has not yet determined what other experts will be utilized in this matter. Plaintiff reserves the right to supplement this response in accordance with the Court's Scheduling Order and the Rules of Civil Procedure.

b. State the subject matter as to which the **person** is expected to testify.

c. State the substance of the facts and opinions to which the **person** is expected to testify and a summary of the grounds for each opinion, and attach a copy of the **person's** report to your answers to these Interrogatories.

d. Describe in detail the **person's** educational background, claimed field(s) of expertise, professional experience, publications, membership in professional societies, employment experience and court appearances (including citations).

I-2. If any tests or procedures have been or will be performed by any **person** retained by you, your attorney, consultant, surety, indemnitor, insurer or agent in connection with this lawsuit, whether or not you intend to call that **person** as an expert witness at trial, separately as to each such **person** and test or procedure:

ANSWER: An inspection of the equipment involved in the incident occurred on July 29, 2016. The inspection was at the facility located at 900 Mill Road, Pleasantville, NJ. Counsel for Baker Boys from White and Williams, Plaintiff, Plaintiff's counsel, and Thomas Cochiola were present. Mr. Cochiola took measurements and photographs, as did counsel for Plaintiff. Those photographs are attached in response to the Request for Production of Documents. The equipment was not "turned on" or operated during this July 2016 inspection. An additional inspection with the machine in operation is still required.

- a. **Identify the person** conducting the test or procedure, including the name of the **person's** employer.
- b. Describe in detail in **person's** educational background, claimed field(s) of expertise, professional experience, publications, membership in professional societies, employment experience and court appearances (including citations).
- c. Describe the nature and purpose(s) of the test or procedure.
- d. State the location where each test or procedure was or is scheduled to be conducted.
- e. State the date when the test or procedure was or is scheduled to be conducted.
- f. Describe in detail the results of the test or procedure if completed.
- g. **Identify all documents** which refer to or relate to the test or procedure.
- h. **Identify the person** who presently has custody of the object tested.
- i. Attach a copy of the **person's** report to your answers to the Interrogatories.

J. Non-Expert Trial Witnesses

J-1. **Identify** each **person** who you expect to call as a witness at the trial of this lawsuit (other than expert witnesses) and state the substance of the testimony you expect the **person** to give.

ANSWER: All fact witnesses identified in these Answers to Interrogatories, former and current employees who have suffered injuries while working at the Bakery to be identified, designees of Defendants, all medical providers, OSHA representatives, Plaintiff's relatives including her Aunt Dorleen Trujillo, Uncle Luis Concepcion, brother Jose Manuel Trujillo, and niece Juleesa. Plaintiff's investigation is ongoing, Plaintiff reserves the right to supplement this response.

K. Prior Injuries

K-1. Prior to the accident what is the subject of this suit and had you ever been involved in an automobile accident?

ANSWER: No.

K-2. How many times?

K-3. List the dates of the all prior accidents.

K-4. Were you injured in any of these accidents?

K-5. List each and every injury for each and every accident?

K-6. List each and every medical provider you treated with.

K-7. Prior to this Worker's Compensation Claim what is the subject of this suit and have you ever had a Worker's Compensation Claim?

ANSWER: No.

K-8. How many times?

K-9. List the dates of all prior Worker's Compensation Claims?

K-10. Where you injured in any of these Worker's Compensation Claims?

K-11. List each and every injury for each and every claim?

K-12. List each and every medical provider you treated with in regard to this Worker's Compensation Claim.

K-13. Prior to this slip and fall what is the subject of this suit and had you ever been involved in a slip and fall?

ANSWER: No.

K-14. How many times?

K-15. List the dates of the all prior slip and falls.

K-16. Were you injured in any of these slip and falls?

K-17. List each and every injury for each and every slip and fall?

K-18. List each and every medical provider you treated with.

L. Subsequent, Automobile Accident, Worker's Compensation Claim and/or Slip and Fall.

L-1. Had you ever been involved in any subsequent automobile accident, Worker's Compensation Claim and/or slip and fall?

ANSWER: No.

L-2. How many times?


L-3. List the dates of the all prior accidents, Worker's Compensation Claims and/or slip an falls.

L-4. Were you injured in any of these accidents Worker's Compensation Claims and/or slip an falls?

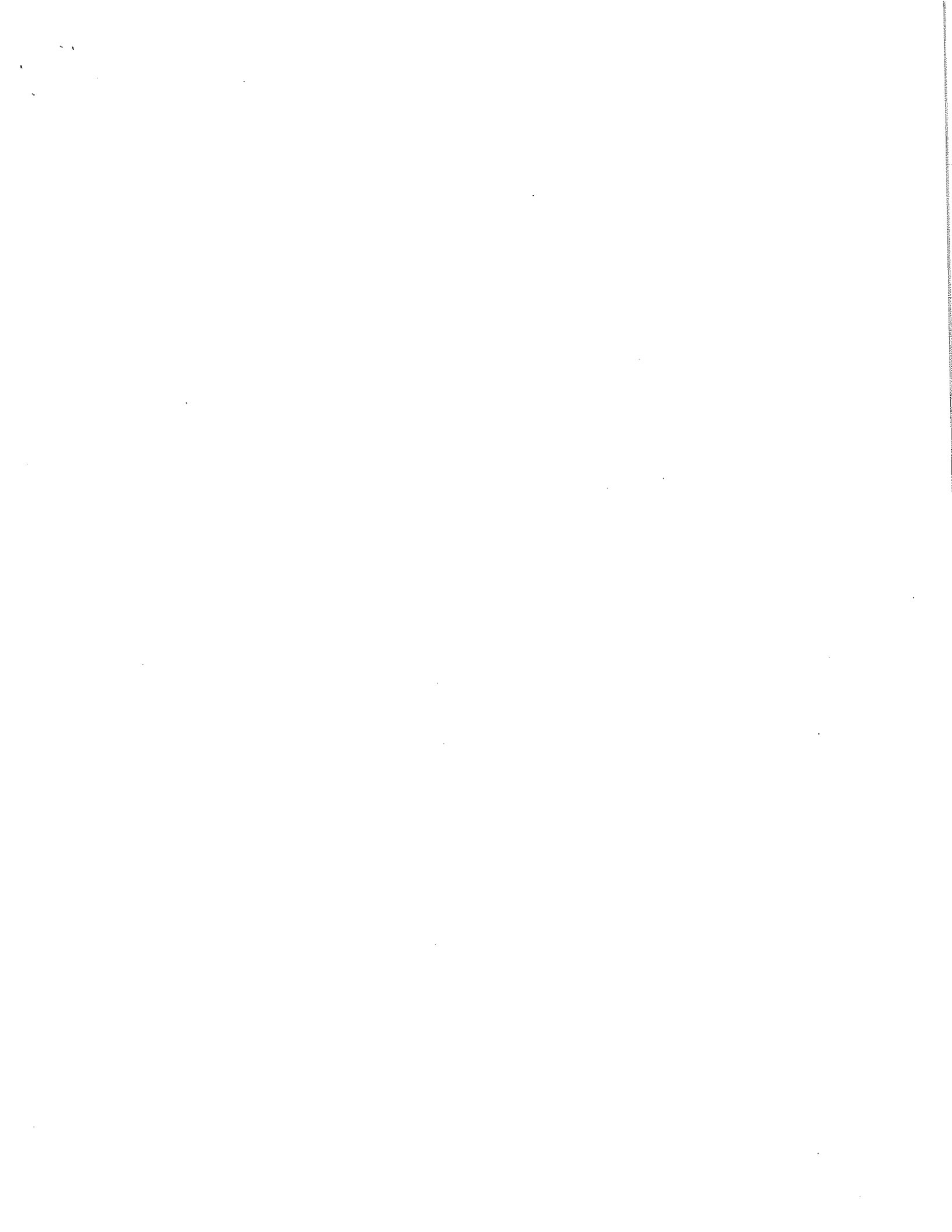
L-5. List each and every injury for each and every accident Worker's Compensation Claims and/or slip and falls.

VERIFICATION

The undersigned states that he/she is the plaintiff herein and verifies that the statements made in the foregoing Interrogatories is true and correct to the best of his/her knowledge, information and belief; ad that this statement is made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

Signature  _____

Print Name Diana Maribel Trujillo



HILL & ASSOCIATES, P.C.
BY: LEONARD K. HILL
Identification No. 81849
Suite 1100, 123 S. Broad Street
Philadelphia, PA 19102
(215) 567-7600

MAJOR JURY
Attorney for Plaintiff

Diana Trujillo
16 W. Reading Avenue
Pleasantville, NJ 08232

Plaintiff

vs.

Gemini Bakery Equipment Company
9900 Gentry Road
Philadelphia, PA 19115

Baker Boys, LLC
900 Mill Road
Pleasantville, NJ 08232

Ginsburg Bakery
300 N. Tennessee Avenue
Atlantic City, NJ 08401

G&F Systems, Inc.
208 Babylon Turnpike
Roosevelt, NY 11575

Formica Bros. Bakery
2310 Arctic Avenue
Atlantic City, NJ 08401

Defendants

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

August Term, 2016

No.

CIVIL ACTION-COMPLAINT

Plaintiff, Diana Trujillo, by and through her counsel, Hill & Associates, P.C., hereby
avers the following:

Case ID: 160804078

E.M.D

1. Plaintiff, Diana Trujillo, is an adult individual, who resides at 16 W. Reading Avenue, Pleasantville, NJ 08232.
2. Defendant Gemini Bakery Equipment Company, is a designer, manufacturer, distributor, supplier and servicer of commercial baking equipment and systems, including conveyors, with a place of business located at 9990 Gentry Road, Philadelphia, PA 08520.
3. Defendant Baker Boys, LLC, is a baking business, with a place of business located at 900 Mill Road, Pleasantville NJ 08232, which also operates and does business in the County of Philadelphia, Commonwealth of Pennsylvania.
4. Defendant Ginsburg Bakery is a baking business, with a place of business located at 300 Tennessee Avenue, Atlantic City, NJ 08401, which also operates and does business in the County of Philadelphia, Commonwealth of Pennsylvania.
5. Defendant Ginsburg Bakery also designs, manufactures, supplies, services, and distributes commercial equipment for use in bakeries, including conveyors.
6. Defendant G&F Systems, Inc., is a designer, manufacturer, distributor, supplier and servicer of commercial equipment for use in bakeries, including conveyor systems, with a place of business located 208 Babylon Turnpike Roosevelt, NY 11575, which also operates and does business in the County of Philadelphia, Commonwealth of Pennsylvania.
7. Defendant Formica Bros. Bakery, is a bakery business, with a place of business located 2310 Arctic Avenue, Atlantic City, NJ 08401, which also operates and does business in the County of Philadelphia, Commonwealth of Pennsylvania.

8. At all relevant times hereto, Plaintiff was working for Baker Boys, LLC and/or Defendant Formica Bros. Bakery, as the former was/is a subsidiary of the latter.¹
9. Plaintiff is Spanish speaking, only.
10. This lawsuit involves a serious and permanent injury to Plaintiff, namely, amputation of her right, dominant, arm, as a result of defect in a mobile conveyor, including but not limited to an unguarded chain.
11. The mobile conveyor was manufactured, designed, supplied, serviced, and distributed by Defendants Ginsburg, G & F Systems, Inc., Gemini Bakery Equipment Company, Formica Bros. Bakery and/or Baker Boys, LLC.
12. The mobile conveyor was defective because it lacked necessary guards, alarms, or other protections for the operators working near the conveyor and the chain and sprocket underneath the conveyor.
13. Based on prior incidents of injuries involving the same or similar pieces of equipment, as well as based on their experience and knowledge/education in the industry and with these types of machines, Defendants knew with substantial certainty that without the necessary guards, alarms or other protections for operators working at the conveyor, injuries to operators, such as Plaintiff, would result.
14. On or about May 3, 2016, Plaintiff was assigned to a mobile conveyor, specifically assigned the task to remove dough from the conveyor and place it into pans.
15. The mobile conveyor where Plaintiff was assigned was placed by Defendants Ginsburg, G & F Systems, Inc., Gemini Bakery Equipment Company, Formica Bros. Bakery and/or Baker Boys, LLC, up against, but not secured to, another conveyor.

¹ Plaintiff asserts liability against her employer under the intentional wrong exception to the workers compensation statute. N.J.S.A. 34:15-8; Laidlow v. Haddon Machinery Co., Inc., 790 N.J. 602 (N.J. 2002).

16. Previous to May 3, 2016, Plaintiff (as well as her coworkers) had been ordered by her supervisor that while working at the mobile conveyor in this location, Plaintiff could not allow any dough to fall to the floor.
17. For weeks prior to May 3, 2016, dough was continually falling between the two conveyors, dozens of times per shift, requiring operators, such as Plaintiff, to reach below and catch the dough, as instructed by their supervisor.
18. Operators of the machine, including Plaintiff, complained about the machine to their supervisors, expressing their concern about the dough falling below and the need to reach below the conveyor.
19. Defendants knowingly and intentionally placed laborers in harm's way, beyond those simply associated with the facts of industrial life.
20. On May 3, 2016, while working at this mobile conveyor, dough fell requiring Plaintiff to reach below the mobile conveyor; however, when she did so, her arm became caught in the unguarded chain and sprocket, which was a part of the mobile conveyor.
21. As a result of coming into contact with the unguarded chain and sprocket, Plaintiff's right arm was amputated below the elbow.
22. As a result of her arm being severed by the unguarded chain, Plaintiff sustained serious and permanent injuries, requiring multiple surgeries, leaving significant scarring, and resulting in a loss of her lower right arm.
23. On or about May 3, 2016, maintenance and/or repair of the conveyor equipment in the bakery located at 900 Mill Road, Pleasantville, NJ location, was the sole and exclusive responsibility of the Defendants.

24. Throughout that day, and every day for weeks preceding May 3, 2016, the mobile conveyer machine which caused Plaintiff's injuries was having problems of which Defendants were aware.
25. Defendants were aware of the problems of the conveyer not only because of the machine itself, but also because laborers working on the machine, including the Plaintiff, would have difficulty with loss of product due to the dough falling.
26. Notwithstanding Defendants' knowledge of the malfunctioning equipment and for the purpose of saving costs associated with repair and/or replacement of the machinery and/or avoiding a decline in production while the industrial machine was taken out of service, Defendants:
- a. failed to remedy the industrial machinery;
 - b. allowed the industrial machinery to continue in operation in a defective state;
 - c. placed laborers at the defective machinery where they were likely to sustain serious injury;
 - d. failed to employ adequate hand protections; and
 - e. failed to properly educate, train, or otherwise empower the laborers with sufficient knowledge and/or information to prevent injury to themselves.
27. Defendants knowingly and intentionally placed laborers in harm's way, beyond those simply associated with the facts of industrial life.

FIRST COUNT - NEGLIGENCE

28. Plaintiff incorporates by reference hereto the foregoing paragraphs, inclusively, as if the same were fully set forth herein at length.

29. The aforementioned incident was caused solely by the negligence and carelessness of the Defendants, which consisted of the following:
- a. failed to remedy the industrial machinery;
 - b. allowed the industrial machinery to continue in operation in a defective state;
 - c. placed laborers at the defective machinery where they were likely to sustain serious injury;
 - d. failed to employ adequate hand protections; and
 - e. failed to properly educate, train, or otherwise empower the laborers with sufficient knowledge and/or information to prevent injury to themselves.
30. At all times mentioned herein, Plaintiff acted with due care and was not contributorily negligent.
31. As a result of the aforementioned incident, Plaintiff was caused to sustain serious and permanent injuries, including amputation of her right arm.
32. As a result of the aforementioned incident and resulting injuries, Plaintiff has been caused to expend various sums of money for medicine and medical attention for treatment and/or cure of these injuries and to have essential services performed during the duration of the physical impairment, all to great financial detriment and loss and expects to pay additional sums of money for medicine and medical attention in the future all to Plaintiff's great financial detriment and loss.
33. As a further result of the aforementioned incident and resulting injuries, Plaintiff was prevented from attending to usual and customary duties, vocation and occupations, thereby sustaining a loss of earnings and/or earning capacity, all to great financial detriment and loss.

WHEREFORE, Plaintiff, hereby demands judgment against Defendants for damages, well in excess of \$50,000.00, together with attorney's fees, if applicable, costs of suit, punitive damages, and any other relief as the court may deem proper.

SECOND COUNT - NEGLIGENCE, INTENTIONAL WRONG

34. Plaintiff incorporates by reference hereto the foregoing paragraphs, inclusively, as if the same were fully set forth herein at length.

35. The aforementioned incident was caused solely by the following intentional wrongs by Defendants, which were "intentional wrongs" given Defendants' knowledge of the malfunctioning equipment, knowledge of laborers complaints about the mobile conveyer machine, knowledge that the malfunctioning equipment was substantially certain to result in injury to laborers working with that piece of industrial equipment and for the purpose of saving costs associated with repair and/or replacement of the machinery and/or avoiding a decline in production while the industrial machine was taken out of service:

- a. failed to remedy the industrial machinery;
- b. allowed the industrial machinery to continue in operation in a defective state;
- c. placed laborers at the defective machinery where they were likely to sustain serious injury;
- d. failed to employ adequate hand protections; and
- e. failed to properly educate, train, or otherwise empower the laborers with sufficient knowledge and/or information to prevent injury to themselves.

36. At all times mentioned herein, Plaintiff acted with due care and was not contributorily negligent.

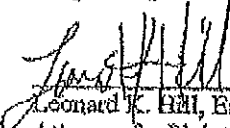
37. As a result of the aforementioned incident, Plaintiff was caused to sustain serious and permanent injuries.

38. As a result of the aforementioned incident and resulting injuries, Plaintiff has been caused to expend various sums of money for medicine and medical attention for treatment and/or cure of these injuries and to have essential services performed during the duration of the physical impairment, all to great financial detriment and loss and expects to pay additional sums of money for medicine and medical attention in the future all to Plaintiff's great financial detriment and loss.

39. As a further result of the aforementioned incident and resulting injuries, Plaintiff was prevented from attending to usual and customary duties, vocation and occupations, thereby sustaining a loss of earnings and/or earning capacity, all to her great financial detriment and loss.

WHEREFORE, Plaintiff, hereby demands judgment against Defendants for damages, well in excess of \$50,000.00, together with attorney's fees, if applicable, costs of suit, punitive damages, and any other relief as the court may deem proper.

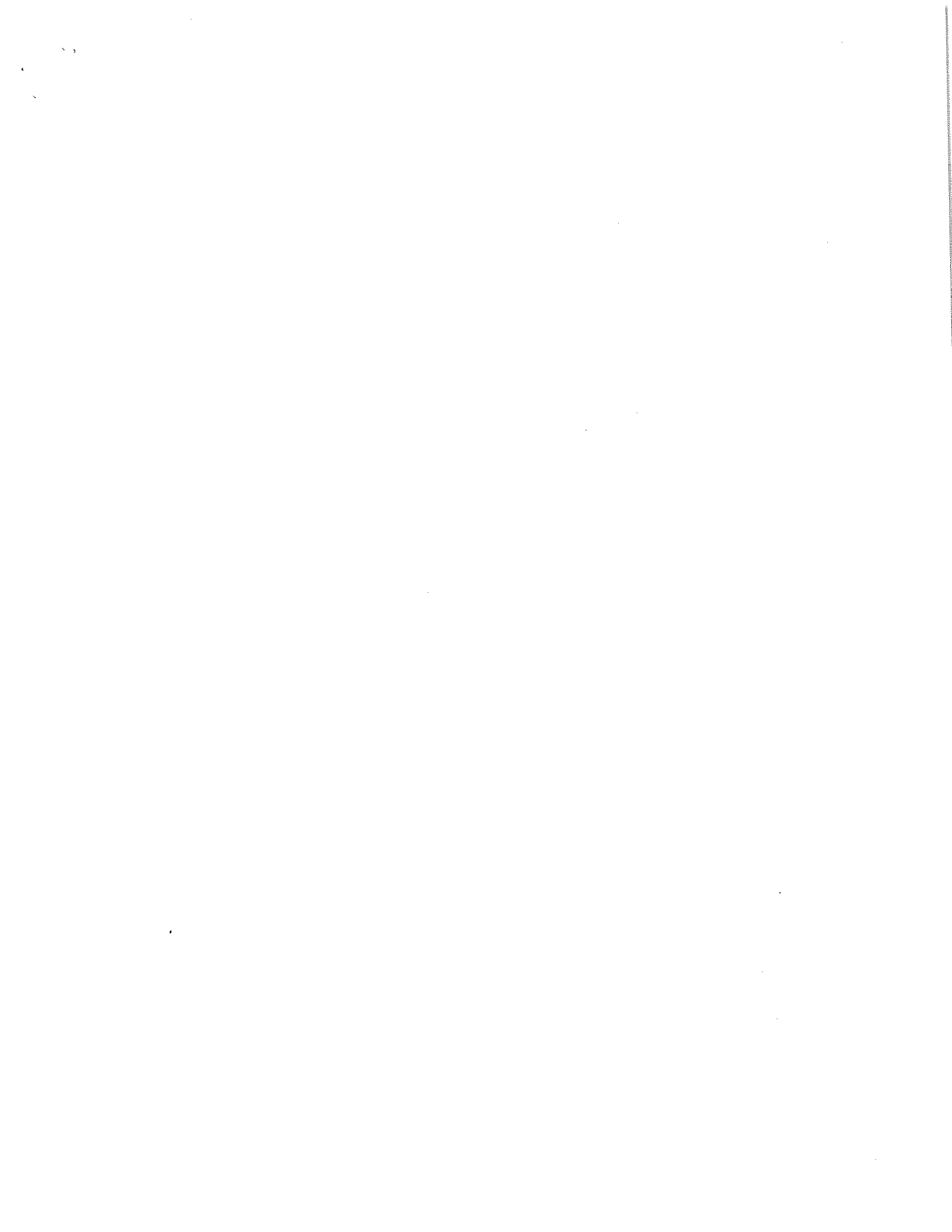
Respectfully submitted,



Leonard K. Hill, Esquire
Attorney for Plaintiff

Date:

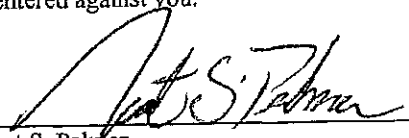
8/30/16



NOTICE TO PLEAD

TO: Plaintiff

You are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days from service hereof or a judgment may be entered against you.



Grant S. Palmer
Attorney for Defendant, Baker Boys, LLC.

BLANK ROME LLP
BY: Grant S. Palmer, Esquire
Identification No. 57686
Justina L. Byers, Esquire
Identification No. 76773
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
Tel.: (215) 569-5500

*Attorneys for Defendant,
Baker Boys, LLC*

Diana Trujillo

Plaintiff,

vs.

Gemini Bakery Equipment Company, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

August Term, 2016

Civil Action No.: 004078

**PRELIMINARY OBJECTIONS OF DEFENDANT BAKER BOYS, LLC
TO PLAINTIFFS' AMENDED COMPLAINT**

Defendant Baker Boys, LLC ("Baker Boys"), pursuant to Pa. R. Civ. P. 1028(a)(1), 1028(a)(3) and 1028(a)(4), hereby files the following Preliminary Objections to Plaintiff's Amended Complaint. Because the court lacks jurisdiction over Baker Boys and because Plaintiff's claims against Baker Boys are not legally sustainable for multiple reasons, the Amended Complaint against Baker Boys should be dismissed.

I. BACKGROUND

1. This is a personal injury action that arises from a workplace accident that took place in Atlantic County, New Jersey. Plaintiff's Amended Complaint, which is attached hereto as Exhibit A, alleges that Plaintiff Diana Trujillo ("Plaintiff" or "Trujillo"), suffered a critical injury to her right arm when she reached beneath a conveyor belt during the course of her work at the Baker Boys facility in Pleasantville, New Jersey. Plaintiff named five defendants, asserting negligence and strict liability against all five, in addition to a third count against Baker Boys and defendant Formica Bros. Bakery ("Formica") for "negligence/intentional tort."

2. Plaintiff resides at 16 W. Reading Avenue in Pleasantville, Atlantic County, New Jersey. Exhibit A, Amended Complaint at ¶ 1. Plaintiff alleges that she was injured in the course and performance of her work at Baker Boys and/or Formica. *Id.* at ¶¶ 8, 10. Specifically, according to Plaintiff's Amended Complaint, she alleges that her injuries were caused by a defect in a mobile conveyor that was "designed, supplied, serviced, and distributed by Defendants Ginsburg, G&F Systems, Inc., Gemini Bakery Equipment Company, Formica Bros. Bakery and/or Baker Boys, LLC." *Id.* at ¶ 11.

3. Plaintiff filed her initial Complaint in Philadelphia County in August 2016 and an Amended Complaint on October 27, 2016. *Id.*

4. Plaintiff alleges that on May 3, 2016, she was assigned to work around a mobile conveyor, placing dough from the conveyor into pans. *Id.* at ¶ 15.

5. According to Plaintiff's Amended Complaint, one or all of defendant corporate entities placed the "mobile conveyor where Plaintiff was assigned . . . up against, but not secured to, another conveyor." *Id.* at ¶ 16.

6. Plaintiff alleges that her injury occurred when she reached down below the conveyor to retrieve dough that had fallen. *Id.* at ¶ 22.

7. Plaintiff alleges that the conveyor was defective because it "lacked necessary guards, alarms, or other protections for the operators working near the conveyor and the chain and sprocket underneath the conveyor." *Id.* at ¶ 12.

8. According to Plaintiff's Amended Complaint, one or all of defendant corporate entities were "solely" and "exclusively" responsible for maintenance and/or repair of the conveyor equipment in the bakery located at 900 Mill Road, Pleasantville, New Jersey. *Id.* at ¶ 25.

9. Objecting defendant Baker Boys is located at 900 Mill Road, Pleasantville, New Jersey. Contrary to assertions made in Plaintiff's Amended Complaint, Baker Boys operates solely in New Jersey; it does not "regularly operate" in Philadelphia County or anywhere in Pennsylvania. See Exhibit B, Declaration of Frank Formica, at ¶¶ 2-5, 9.

10. Plaintiff's Amended Complaint charges all defendants — without differentiation or distinction -- with negligence and strict liability. Plaintiff alleges a third count, "negligence/intentional wrong" against Baker Boys and Formica.

11. This Court has no personal jurisdiction over Objecting Defendant Baker Boys, which does no meaningful business in Pennsylvania.

12. The Amended Complaint does not state legally sufficient negligence and strict liability claims against Baker Boys because such claims are barred by the New Jersey Workers' Compensation Act, N.J.S.A. § 34:15-1 *et seq.* At the time of her accident, Plaintiff was an employee of Baker Boys, LLC. See Exhibit B, Declaration of Frank Formica, at ¶ 11.

13. Plaintiff's claim for intentional wrong against Baker Boys is not legally sufficient because Plaintiff's allegations do not meet the standard for the intentional wrong exception to the New Jersey Workers' Compensation Act.

14. In addition, Plaintiff's allegations are not sufficiently specific and do not conform to the pleading requirements of this court.

15. The allegations in Plaintiff's Amended Complaint do not sufficiently allege strict liability.

16. The allegations in Plaintiff's Amended Complaint do not meet the legal standards to seek punitive damages.

II. LEGAL STANDARD

17. In determining whether to sustain preliminary objections, "all well-pleaded material, factual averments and all inferences fairly deducible therefrom are presumed to be true." *Thompson v. The Glenmede Trust Co.*, 2003 Phila. Ct. Com. Pl. LEXIS 76, *1 (Phila. Cty. Feb. 18, 2003) (internal quotation marks omitted).

18. The pleaders' conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion should not be considered to be admitted as true. *Id.*; *Marks v. Nationwide Ins. Co.*, 762 A.2d 1098, 1099 (Pa. Super. 2000), *appeal denied*, 788 A.2d 381 (2001).

III. PRELIMINARY OBJECTION I: LACK OF PERSONAL JURISDICTION

19. The Due Process Clause of the Fourteenth Amendment limits the authority of a state to exercise *in personam* jurisdiction over non-resident defendants. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985). The extent to which jurisdiction is proscribed by the Due Process Clause is dependent upon the nature and quality of the defendant's contacts with the forum state. *Id.* at 474-76; *Kubik v. Letteri*, 614 A.2d 1110, 1114 (Pa. 1992).

20. Where a defendant “has established no meaningful contacts, ties or relations” with the forum, the Due Process Clause prohibits the exercise of personal jurisdiction. *Burger King*, 471 U.S. at 472. However, where a defendant has “purposefully directed” his activities at the residents of the forum, he is presumed to have “fair warning” that he may be called to suit there. *Id.*

21. A defendant's activities in the forum state may give rise to either specific jurisdiction or general jurisdiction. See *Kubik*, 614 A.2d at 1113.

22. “Specific jurisdiction ... depends on an 'affiliatio[n] between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011).

23. Because due process may permit specific jurisdiction based solely on “single or occasional” acts purposefully directed at the forum, it is narrow in scope, limiting a cause of action to the extent that it “arises out of or relates to” the very activity that establishes jurisdiction. *Id.* at 2851, 2854; *Burger King*, 471 U.S. at 472.

24. Alternatively, general jurisdiction involves “circumstances, or a course of conduct, from which it is proper to infer an intention to benefit from and thus an intention to

submit to the laws of the forum State.” *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 2787 (2011). “For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.” *Goodyear*, 131 S. Ct. at 2853-54.

25. Thus, general jurisdiction may be exercised against foreign corporations “when their affiliations with the [forum] State are so ‘continuous and systematic’ as to render them essentially at home [there].” *Goodyear*, 131 S. Ct. at 2851 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)).

26. In contrast to specific jurisdiction, a state that has general jurisdiction may adjudicate “both matters that originate within the State and those based on activities and events elsewhere.” *J. McIntyre*, 131 S. Ct. at 2787.

27. Courts in Pennsylvania can exercise general jurisdiction over a foreign corporation that carries on a “continuous and systematic part of its general business within” Pennsylvania. 42 Pa.C.S.A. § 5301(a)(2)(iii). Where a court has general jurisdiction over a defendant under section 5301(a), any cause of action can be asserted against the defendant, regardless of whether that cause of action arises from the defendant’s conduct in Pennsylvania. 42 Pa.C.S.A. § 5301(b). However, the propriety of such exercise must be tested against the Due Process Clause. See *Mendel v. Williams*, 2012 Pa. Super. LEXIS 2060, *10-11 (Pa. Super. August 20, 2012) (citing *Haas v. Four Seasons Campground, Inc.*, 952 A.2d 688, 692 (Pa. Super. 2008)).

28. Pennsylvania courts may determine whether a non-resident defendant has conducted a “continuous and systematic” part of its business in Pennsylvania by reference to the principles espoused in the United States Supreme Court’s jurisprudence on general jurisdiction,

and Pennsylvania cases interpreting section 5301(a)(2)(iii). See *Mendel*, 2012 Pa. Super. LEXIS 2060, *11-12 (citing *Derman v. Wilair Services, Inc.*, 590 A.2d 317, 323 (Pa. Super. 1991)).

29. The United States Supreme Court in *Goodyear* stated that its decision in *Perkins v. Benguet Consul. Mining Co.*, 342 U.S. 437 (1952) “remains the textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum.” *Goodyear*, 131 S. Ct. at 2856 (quoting *Donahue v. Far Eastern Air Transport Corp.*, 652 F.2d 1031, 1037 (D.C. Cir. 1981)).

30. This Court lacks personal jurisdiction over Baker Boys. In *Mendel*, 2012 Pa. Super. LEXIS 2060 at *16-19, the Pennsylvania Superior Court held that Pennsylvania courts could not assert personal jurisdiction over a hospital located in New Jersey. The court acknowledged that the hospital made representations to the public through its signage, stationary, and website, that it was affiliated with a Pennsylvania based hospital system. *Id.* The Court further noted that the hospital entered into a contract with the Pennsylvania based hospital system, whereby the hospital would retain responsibility for patients *en route* to Pennsylvania. *Id.* Nonetheless, the Superior Court held that the exercise of personal jurisdiction over the hospital by Pennsylvania courts would be inappropriate because the hospital “maintains no real property in Pennsylvania, has no offices in Pennsylvania, and does not provide any service in Pennsylvania.” *Id.* at *17.

31. Pennsylvania courts have refused to assert personal jurisdiction over foreign corporations where the corporations did not maintain offices in Pennsylvania, were not qualified to do business in Pennsylvania, had no real or personal property in Pennsylvania and did not maintain bank accounts in Pennsylvania. *McCall v. Formu-3 Intern., Inc.*, 650 A.2d 903, 906-907 (Pa. Super. 1994); see also *Slota v. The Moorings, Ltd.*, 494 A.2d 1, 6-7 (Pa. Super. 1985).

32. In this case, objecting defendant Baker Boys is a New Jersey limited liability corporation, with a New Jersey address and headquarters, and which operates in New Jersey only. Baker Boys does not conduct operations in Pennsylvania or anywhere else outside of New Jersey. Exhibit B, Frank Formica Declaration, at ¶¶ 2-5, 9.

33. None of Baker Boys' employees are Pennsylvania residents. *Id.* at ¶ 10.

34. Baker Boys does not maintain an office or place of business in Pennsylvania or anywhere else outside of New Jersey. *Id.* at ¶ 4.

35. Baker Boys has never been registered or licensed to do business in Pennsylvania. *Id.* at ¶ 5.

36. Baker Boys does not maintain any bank accounts in Pennsylvania. *Id.* at ¶ 7.

37. Baker Boys has never been assessed by, or paid taxes to, the Commonwealth of Pennsylvania or any municipality in the Commonwealth. *Id.* at ¶ 8.

38. Baker Boys has never entered into a contract requiring total or partial performance by Baker Boys in Pennsylvania. *Id.* at ¶ 8.

39. In short, Baker Boys has had no meaningful contact with Pennsylvania and, therefore, should not be subject to the jurisdiction of Pennsylvania's courts.

40. The only allegation in Plaintiff's Amended Complaint that draws any connection between Baker Boys and Pennsylvania is Plaintiff's general assertion that Baker Boys "regularly operates and does business in the County of Philadelphia, Commonwealth of Pennsylvania." Exhibit A, Amended Complaint, at ¶ 3. This bald and unsubstantiated conclusion of law falls far short of providing evidence that Pennsylvania courts can exercise general jurisdiction over Baker Boys. This Court should summarily conclude the exercise of general jurisdiction over Baker Boys is barred as a matter of law.

41. This Court should conclude that Baker Boys is not subject to specific jurisdiction in Pennsylvania.

IV. PRELIMINARY OBJECTION II: LEGAL INSUFFICIENCY OF PLAINTIFF'S CLAIMS FOR NEGLIGENCE AND STRICT LIABILITY AGAINST BAKER BOYS

42. New Jersey's worker compensation statute, N.J.S.A. 34:15-1 *et seq.*, provides the exclusive remedy for an employee's claims of negligence against the employer:

When personal injury is caused to an employee by accident arising out of and in the course of his employment, of which the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employee was himself not willfully negligent at the time of receiving such injury.

N.J.S.A. § 34:15-1.

43. The exclusivity provision of the workers' compensation statute provides:

Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this article and an acceptance of all the provisions of this article, and shall bind the employee and for compensation for the employee's death shall bind the employee's personal representatives, surviving spouse and next of kin, as well as the employer, and those conducting the employer's business during bankruptcy or insolvency.

If an injury or death is compensable under this article, a person shall not be liable to anyone at common law or otherwise on account of such injury or death for any act or omission occurring while such person was in the same employ as the person injured or killed, except for intentional wrong.

N.J.S.A. § 34:15-8.

44. There is no dispute that Defendant Bakery Boys was Plaintiff's employer.

45. Accordingly, Plaintiff's claims for negligence and strict liability against Baker Boys are barred by the New Jersey Workers' Compensation Statute.

V. **PRELIMINARY OBJECTION III: LEGAL INSUFFICIENT OF PLAINTIFF'S CLAIM FOR INTENTIONAL WRONG AGAINST BAKER BOYS**

46. New Jersey's worker compensation statute, N.J.S.A. 34:15-1 *et seq.*, provides the exclusive remedy for an employee's claims of negligence against the employer:

When personal injury is caused to an employee by accident arising out of and in the course of his employment, of which the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employee was himself not willfully negligent at the time of receiving such injury.

N.J.S.A. § 34:15-1.

47. The exclusivity provision of the workers' compensation statute provides:

Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this article and an acceptance of all the provisions of this article, and shall bind the employee and for compensation for the employee's death shall bind the employee's personal representatives, surviving spouse and next of kin, as well as the employer, and those conducting the employer's business during bankruptcy or insolvency.

If an injury or death is compensable under this article, a person shall not be liable to anyone at common law or otherwise on account of such injury or death for any act or omission occurring while such person was in the same employ as the person injured or killed, except for intentional wrong.

N.J.S.A. § 34:15-8.

48. Plaintiff's Amended Complaint argues that Plaintiff's claims against Baker Boys are not barred by the New Jersey's workers compensation statute because they fall into the "intentional wrong" exception. Exhibit A, Amended Complaint, at ¶ 8 n.1.

49. Plaintiff's claim for intentional wrong is legally insufficient. The allegations in Plaintiff's Amended Complaint do not suffice to state a claim for "intentional wrong."

50. The New Jersey Supreme Court, in *Van Dunk v. Reckson Assocs. Realty Corp.*, 45 A.3d 965, 966 (N.J. 2012), addressed the “formidable standard” the New Jersey legislature established that permits a worker to bring a common law tort action against his employer as an exception to the exclusive remedies provided under the Workers Compensation Act. The *Van Dunk* court held that the mere act of an employer, in exposing a worker to the risk of injury or death, does not establish a *per se* intentional wrong. *Id.* Rather, proof of intentional conduct requires an injured person to demonstrate either that there was a deliberate intent to injure, *Mabee v. Borden, Inc.*, 720 A.2d 342, 346-47 (App. Div. 1998), or that the employer knew an injury to the employee was substantially certain to result, *Laidlow v. Hariton Machinery Co., Inc.*, 790 A.2d 884, 896-97 (2002).

51. The *Van Dunk* court reaffirmed that *Millison v. E.I. Du Pont de Nemours & Co.*, 501 A.2d 505 (1985) remains the landmark case on defining the meaning of intentional wrong under the Act:

[T]he mere knowledge and appreciation of a risk - - something short of substantial certainty - - is not intent. The defendant who acts in the belief or consciousness that the act is causing an appreciable risk of harm to another may be negligent, and if the risk is great the conduct may be characterized as reckless or wanton, but is not an intentional wrong.

Van Dunk, 45 A.3d at 972 (quoting *Millison*, 501 A.2d at 514 (quoting *Prosser and Keeton on Torts* § 8 at 36 (5th ed. 1984)).

52. *Van Dunk* reiterated the substantial certainty standard upon which the *Millison's* elaborated, namely, “that it is not enough that ‘a known risk later blossoms into reality’ Rather, the standard ‘demand[s] a virtual certainty.’” *Id.* at 972. To allege an intentional wrong, a plaintiff must establish that the evidence could lead a jury to conclude that the employer acted with knowledge that it was substantially certain that he would be harmed and that the employer’s

alleged conduct is outside the purview of conditions the Legislature intended to immunize under the Workers' Compensation bar. *Charles Beseler Co. v. O'Gorman & Young, Inc.*, 881 A.2d 770, 773 (N.J. Super. App. Div. 2005), *affirmed*, 911 A.2d 47 (N.J. 2006).

53. New Jersey courts recognize the strong legislative preference for the workers' compensation remedy. That preference is overcome only when it separately can be shown to the court, as the gatekeeper policing the Act's exclusivity requirement, that as a matter of law, an employee's injury and the circumstances in which the injury is inflicted are "plainly beyond anything the legislature could have contemplated as entitling the employee to recover only under the Compensation Act." *Van Dunk*, 45 A.3d at 979-980 (citing *Millison*, 501 A.2d at 514).

54. Mere knowledge and appreciation of a risk -- something short of substantial certainty -- does not rise to the level of intent for purposes of the "intentional wrong" exception to the Workers Compensation Act. *Crippen v. Cent. Jersey Concrete Pipe Co.*, 823 A.2d 789, 795 (2003). An employer that acts under the belief that its conduct is causing an appreciable risk of harm to an employee may be negligent, or reckless if the risk is great, but it is not an intentional wrong. *Millison*, 501 A.2d at 514.

55. Plaintiff's Amended Complaint contains allegations of the Baker Boys mere knowledge and appreciation of a risk. Under the standards discussed above, Plaintiff's allegations do not suffice to state an "intentional wrong" claim upon which relief would be granted.

56. Plaintiff's intentional wrong claim against Baker Boys should be dismissed.

VI. PRELIMINARY OBJECTION IV: LEGAL INSUFFICIENCY OF PLAINTIFF'S STRICT LIABILITY CLAIM

57. Plaintiff's Amended Complaint alleges that all defendants, without differentiation, "are engaged in the business of designing, manufacturing, assembling, distributing, selling

and/or supplying conveyors, including the one used by Plaintiff.” Exhibit A, Amended Complaint, at ¶ 37. Plaintiff further alleges that “Defendants” collectively marketed and placed the conveyor into the stream of commerce. *Id.* Plaintiff alleges that the conveyor was “designed, manufactured, assembled, distributed and/or sold” in a defective condition. *Id.* Plaintiffs allege that all defendants are strictly liable, pursuant to section 402A of the Restatement of Torts (Second).

58. In *Tincher v. Omega Flex*, 2014 Pa. LEXIS 3031 (Nov. 19, 2014), the Pennsylvania Supreme Court outlined the *prima facie* elements that a plaintiff must prove and plead when asserting a strict product liability claim.

59. The *Tincher* court held that a plaintiff must “articulate his strict liability claim by alleging sufficient facts to make a *prima facie* case premised upon either a ‘consumer expectations’ or a ‘risk utility’ theory, or both.” *Id.* at *51.

60. A plaintiff asserting strict product liability must prove that the product was in a defective condition and may so do by demonstrating that the danger was unknowable and unacceptable to the average or ordinary consumer” or that a “reasonable person would conclude that the probability and seriousness of harm caused by the product outweigh the burden or costs of taking precautions.” *Id.*

61. Here, Plaintiff has failed to allege whether she is proceeding under the “consumer expectation” theory or a “risk utility” theory, or both. Moreover, Plaintiff has failed to plead a *prima facie* case under either theory.

62. Since Plaintiff has failed to plead the required elements of a strict product liability claim, Count II of Plaintiff’s Amended Complaint should be dismissed.

VII. PRELIMINARY OBJECTION V: LEGAL INSUFFICIENCY OF PLAINTIFF'S CLAIM FOR PUNITIVE DAMAGES

63. Pursuant to Pa. R. Civ. P. 1028(a)(4), a party may object to a pleading on the grounds that it is legally insufficient or fails to state a claim upon which relief may be granted.

64. A preliminary objection in the nature of a demurrer is resolved solely on the pleadings, without resort to evidence outside of the complaint. *Erdely v. Hinchcliffe & Keener, Inc.*, 875 A.2d 1078, 1081 (Pa. Super.), *appeal denied*, 890 A.2d 1059 (Pa. 2005).

65. A demurrer may be entered here, on the facts alleged, "the law says with certainty that no recovery is possible." *Morley v. Gory*, 814 A.2d 762, 764 (Pa. Super. 2002) (quoting *Mistick, Inc. v. Northwestern Nat'l Cas. Co.*, 806 A.2d 39, 42 (Pa. Super. 2002)).

66. Plaintiff's claim for punitive damages is legally insufficient because Plaintiff's factual allegations do not support such a claim. Accordingly, Plaintiff's claim for punitive damages against Baker Boys should be stricken.

67. Punitive damages are an "extreme remedy" available in only the most exceptional matters." *Phillips v. Cricket Lighters*, 883 A.2d 439, 445 (Pa. 2005) (quoting *Martin v. Johns-Manville Corp.*, 494 A.2d 1088, 1098 n.14 (Pa. 1985) (plurality), *rev'd on other grounds sub nom.*, *Kirkbride v. Lisbon Contractors, Inc.*, 555 A.2d 800 (Pa. 1989)).

68. Punitive damages are penal in nature; they are awarded to punish the tortfeasor and deter him from engaging in similar conduct in the future. *Snead v. SPCA*, 929 A.2d 1169, 1184 (Pa. Super. 2007) (citing *Hutchinson v. Luddy*, 896 A.2d 1260, 1265 (Pa. Super. 2006)). Punitive damages may be awarded only where a defendant's actions are so outrageous as to demonstrate willful, wanton or reckless conduct. *Id.*; Restatement (Second) of Torts § 500.¹ Acts warranting the imposition of punitive damages are those done with a "bad motive or with

¹ Pennsylvania adopted the Restatement (Second) of Torts in *Chambers v. Montgomery*, 192 A.2d 355 (Pa. 1963).

reckless indifference to the interests of others.” *Sears Roebuck & Co. v. 69th Street Retail Mall, L.P.*, 126 A.3d 959, 983 (Pa. Super. 2015) (citing *Judge Technical Services, Inc. v. Clancy*, 813 A.2d 879, 889 (Pa. 2002)).

69. While Plaintiff’s Amended Complaint includes words such as “intentional” and “knowingly,” the Amended Complaint includes no fact or allegation against Baker Boys that rises above a theory of negligence. Punitive damages are not awarded for “mere inadvertence, mistake, errors of judgment and the like, which constitute ordinary negligence.” Restatement (Second) of Torts, § 908, cmt. (b). Even conduct that amounts to gross negligence does not warrant punitive damages. *Phillips v. Cricket*, 883 A.2d at 188-89.

70. Allegations of recklessness or gross negligence, without any supporting detail that would elevate allegations of ordinary negligent conduct to recklessness or gross negligence, must be stricken. *Sevin v. Kelshaw*, 611 A.2d 1232, 1235 (Pa. 1992); *Valentino v. Phila. Triathlon, LLC*, 2015 Pa. Super. LEXIS 862, *5-6 (Pa. Super. 2015); *Lerner v. Lerner*, 954 A.2d 1229, 1236 (Pa. Super. 2008).

71. Pennsylvania courts routinely strike allegations of recklessness or gross negligence from pleadings that describe ordinary negligence. *Valentino*, 2015 Pa. Super. LEXIS 862 at *5-6.

72. Plaintiff’s allegations are insufficient to allow a claim for punitive damages to survive the pleadings. Accordingly, Plaintiff’s claim for punitive damages should be stricken.

VIII. PRELIMINARY OBJECTION VI: LACK OF SUFFICIENT SPECIFICITY

73. A complaint that contains allegations so insufficient or indefinite that a defendant does not understand the allegations against it may be attacked by preliminary objection. *Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600, 602 n.3 (Pa. 1983).

74. The purpose of the pleading rules “would be thwarted if courts, rather than the parties, were burdened with the responsibility of deciphering the causes of action from a pleading of facts which obscurely support the claim.” *Id.* (citing *Estate of Swift v. Northwestern Hospital of Philadelphia*, 690 A.2d 719, 723 (Pa. Super. 1996)).

75. A complaint “should inform the targeted defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense.” *Grudis v. Roaring Brook Township*, 16 Pa. D. & C. 5th 468, 478 (Lackawanna Cty. 2010) (citing *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa Super. 2006)).

76. Counts I and II of Plaintiff’s Amended Complaint fall far short of meeting these standards, as these counts against all defendants are indefinite, non-specific and insufficient. Counts I and II, for negligence and strict liability, contain no particularized factual averments regarding what conduct is attributable to which defendant. Instead, Plaintiff assigns all of the wrongful conduct to one “and/or” all defendants. These non-particularized allegations do not put defendants on notice as to against what theories it must defend, and the factual bases for the theories.

WHEREFORE, Defendant Baker Boys, LLC respectfully requests that the Court sustain its Preliminary Objections and dismiss this action against Baker Boys for lack of personal jurisdiction. Alternatively, Baker Boys, LLC respectfully requests that it dismiss Plaintiff’s claims against Baker Boys for negligence, strict liability, intentional wrong and for punitive damages as legally insufficient.

Respectfully submitted,

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Diana Trujillo

Plaintiff,

vs.

Gemini Bakery Equipment Company, et al.,

Defendants.

:
: IN THE COURT OF COMMON PLEAS
: PHILADELPHIA COUNTY
:

: August Term, 2016
:

: Civil Action No.: 004078
:
:

**MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY
OBJECTIONS OF DEFENDANT BAKER BOYS LLC
TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant Baker Boys, LLC ("Baker Boys") through its undersigned counsel, hereby files this Memorandum of Law in support of its Preliminary Objections to Plaintiff's Amended Complaint, pursuant to Pennsylvania Rules of Civil Procedure 1028(a)(1), 1028(a)(3) and 1028(a)(4). As discussed more fully below, the court lacks personal jurisdiction over Baker Boys and on that basis, Plaintiff's Amended Complaint against Baker Boys should be dismissed. Moreover, Plaintiff's claims against Baker Boys are legally insufficient. Her claims of negligence and strict liability are barred as a matter of law by the New Jersey Workers Compensation Act (the "Act") and the allegations do not meet the formidable standard necessary to proceed under the "intentional wrong" exception to the Act. In addition, Plaintiff has not stated a legally sufficient claim for strict product liability or for punitive damages under

Pennsylvania law. Lastly, Plaintiff's allegations against "all defendants" are not sufficiently specific so as to notify defendants of the claims against them.

I. STATEMENT OF QUESTIONS INVOLVED

1. Should Plaintiff's Amended Complaint be dismissed against Baker Boys because this Court lacks personal jurisdiction over Baker Boys?

Suggested Answer: Yes.

Baker Boys does not maintain an office or place of business in Pennsylvania or anywhere else outside of New Jersey. It has never been registered to do business in Pennsylvania, does not own property in Pennsylvania nor does it have any customers in Pennsylvania. In short, Baker Boys has had no contact with Pennsylvania and, therefore, should not be subject to the jurisdiction of Pennsylvania's courts.

2. Should Plaintiff's Amended Complaint be dismissed against Baker Boys because it is barred by the New Jersey Workers Compensation Act?

Suggested Answer: Yes

The New Jersey Workers Compensation Act is the exclusive remedy for claims of negligence and strict liability by an employee against an employer, and effectively bars such claims outside of that statutory scheme.

3. Should Plaintiff's claim for intentional wrong as an exception to the New Jersey Workers Compensation Act be dismissed as legally insufficient?

Suggested Answer: Yes

Plaintiff's claims for an "intentional wrong" do not meet the legal requirements for such a claim. It is not sustainable as pled and should be dismissed.

4. Should Plaintiff's claim for strict product liability be dismissed?

Suggested Answer: Yes.

Plaintiff's claim for strict product liability fails to conform to the requirements of *Tincher v. Omega Flex*, and as pled, fails to state a claim upon which relief can be granted.

5. Should Plaintiff's demand for punitive damages be dismissed as legally insufficient?

Suggested Answer: Yes

Plaintiff's Complaint does not include facts or detail that would elevate allegations of ordinary negligence so as to warrant the imposition of punitive damages against Baker Boys. Her claim for punitive damages should be dismissed as legally insufficient.

6. Should Plaintiff's allegations against one "and/or" all defendants be stricken for lack of specificity?

Suggested Answer: Yes

Plaintiff's claims of negligence and strict liability against all defendants or one "and/or" all defendants without differentiation lack sufficient specificity and fail to inform each defendant of the precise claims against it.

II. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from a workplace accident that took place on May 3, 2016 in Pleasantville, New Jersey. Plaintiff's Amended Complaint, which is attached hereto as Exhibit A, alleges that plaintiff Diana Trujillo, while in the course of her work for Baker Boys and/or Formica Bros. Bakery ("Formica") seriously injured her arm on a mobile conveyor. The accident occurred in in Pleasantville, New Jersey at the premises of Baker Boys, a New Jersey limited liability corporation that operates solely in New Jersey. Exhibit A, Amended Complaint, at ¶¶ 3, 25. See also Exhibit B, Declaration of Frank Formica ("Formica Declaration").

Plaintiff's Amended Complaint asserts one count of negligence and one count of strict product liability against, collectively, Baker Boys, Gemini Bakery Equipment Company, Ginsburg Bakery, Inc. G&F Systems, Inc. and Formica. The Amended Complaint includes a third count, for "intentional wrong," against Baker Boys and Formica.

Plaintiff, an employee of Baker Boys, was injured in the course of her work on May 3, 2016 when her arm was caught in a conveyor. Exhibit A, Amended Complaint, at ¶¶ 8, 10, 22. See Exhibit B, Declaration of Frank Formica, at ¶ 11. She alleges that her injuries were caused by the absence of a guard or alarm on the conveyor. *Id.* at ¶ 12.

As discussed more fully below, Baker Boys is not a resident of Pennsylvania and performs no meaningful business activities in Pennsylvania. Accordingly, it is not subject to personal jurisdiction in Pennsylvania courts. Moreover, Plaintiff's Amended Complaint against Baker Boys should be dismissed in its entirety, because pursuant to Pa. R. Civ. P. 1028(a)(3) and 1028(a)(4), it fails to set forth any legally sustainable upon which relief could be granted to Plaintiff claims and because the Amended Complaint is not sufficiently specific.

A. Baker Boys Is Not Subject to Personal Jurisdiction in Pennsylvania

Baker Boys, a New Jersey limited liability corporation, is not subject to personal jurisdiction in Pennsylvania. Baker Boys, located in Pleasantville, Atlantic County, New Jersey, has never been registered or licensed in Pennsylvania. Exhibit B, Formica Declaration, at ¶ 5. Baker Boys owns no property in Pennsylvania, has no offices in Pennsylvania and has no employees who are Pennsylvania residents. *Id.* at ¶¶ 4, 6, 10. Moreover, Baker Boys maintains no bank accounts in Pennsylvania and it has never been assessed by, or paid taxes to, the Commonwealth of Pennsylvania or any municipality in the Commonwealth. *Id.* at ¶¶ 7, 8. Baker Boys has never entered into a contract requiring total or partial performance by Baker

Boys in Pennsylvania. *Id.* at ¶ 9. In sum, Baker Boys has had no meaningful contact with Pennsylvania and, therefore, should not be subject to the jurisdiction of Pennsylvania's courts. The only allegation in Plaintiff's Amended Complaint that draws any connection between Baker Boys and Pennsylvania is Plaintiff's general assertion that Baker Boys "regularly operates and does business in the County of Philadelphia, Commonwealth of Pennsylvania." Exhibit A, Amended Complaint, at ¶ 3. This bald and unsubstantiated conclusion of law falls far short of the standards necessary for Pennsylvania courts to exercise jurisdiction over Baker Boys.

B. Plaintiff's Amended Complaint Lacks Sufficient Specificity

Counts I and II of Plaintiff's Amended Complaint lack sufficient specificity under Pennsylvania's pleading requirements. Count I, asserting a claim for negligence, and Count II, a claim for strict product liability, allege that one "and/or" all defendants are responsible for Plaintiff's injuries, which, as Plaintiff alleges were caused by an absence of a guard on a piece of bakery equipment, specifically, a mobile conveyor. According to Plaintiff's Amended Complaint, one and/or all defendants "manufactured, designed, supplied, serviced and distributed" the mobile conveyor at issue and defendants collectively had "sole" and "exclusive" responsibility for maintenance and/or repair of the conveyor. Exhibit A, Amended Complaint, at ¶¶ 11, 25. In addition, one and/or all defendants placed the conveyor in its location at the time of Plaintiff's accident. *Id.*, at ¶ 16.

Plaintiff's allegations contain no particularized factual averments regarding what conduct is attributable to which defendant. Instead, Plaintiff assigns all of the wrongful conduct to one "and/or" all defendants. These non-particularized allegations do not put defendants on notice as to against what theories it must defend, and what the factual bases for the theories might be.

III. ARGUMENT

A. Legal Standard for Preliminary Objections.

In determining whether to sustain preliminary objections, “all well-pleaded material, factual averments and all inferences fairly deducible therefrom are presumed to be true.” *Thompson v. The Glenmede Trust Co.*, 2003 Phila. Ct. Com. Pl. LEXIS 76, *1 (Phila. Cty. Feb. 18, 2003) (internal quotation marks omitted). However, the pleaders’ conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion should not be considered to be admitted as true. *Id.*; *Marks v. Nationwide Ins. Co.*, 762 A.2d 1098, 1099 (Pa. Super. 2000), *appeal denied*, 788 A.2d 381 (2001).

B. Plaintiff’s Amended Complaint Against Baker Boys Should Be Dismissed as the Court Lacks Personal Jurisdiction Over Baker Boys

The Amended Complaint should be dismissed in its entirety because Pennsylvania courts cannot assert personal jurisdiction over Baker Boys.

The Due Process Clause of the Fourteenth Amendment limits the authority of a state to exercise *in personam* jurisdiction over non-resident defendants. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985). The extent to which jurisdiction is proscribed by the Due Process Clause is dependent upon the nature and quality of the defendant’s contacts with the forum state. *See Id.* at 474-76; *Kubik v. Letteri*, 614 A.2d 1110, 1114 (Pa. 1992). Where a defendant “has established no meaningful contacts, ties or relations” with the forum, the Due Process Clause prohibits the exercise of personal jurisdiction. *Burger King*, 471 U.S. at 472. However, where a defendant has “purposefully directed” his activities at the residents of the forum, he is presumed to have “fair warning” that he may be called to suit there. *Id.*

A defendant’s activities in the forum State may give rise to either specific jurisdiction or general jurisdiction. *See Kubik*, 614 A.2d at 1113. “Specific jurisdiction ... depends on an

'affiliatio[n] between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011). Because due process may permit specific jurisdiction based solely on "single or occasional" acts purposefully directed at the forum, it is narrow in scope, limiting a cause of action to the extent that it "arises out of or relates to" the very activity that establishes jurisdiction. *See Id.* at 2851, 2854; *Burger King*, 471 U.S. at 472.

Alternatively, general jurisdiction involves "circumstances, or a course of conduct, from which it is proper to infer an intention to benefit from and thus an intention to submit to the laws of the forum State." *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 2787 (2011). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." *Goodyear*, 131 S. Ct. at 2853-54. Thus, general jurisdiction may be exercised against foreign corporations "when their affiliations with the [forum] State are so 'continuous and systematic' as to render them essentially at home [there]." *Goodyear*, 131 S. Ct. at 2851 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)). In contrast to specific jurisdiction, a state that has general jurisdiction may adjudicate "both matters that originate within the State and those based on activities and events elsewhere." *J. McIntyre*, 131 S. Ct. at 2787.

There is no basis for a Pennsylvania court to assert general jurisdiction over Baker Boys. Courts in Pennsylvania can exercise general jurisdiction over a foreign corporation that carries on a "continuous and systematic part of its general business within" Pennsylvania. 42 Pa.C.S.A. § 5301(a)(2)(iii). Where a court has general jurisdiction over a defendant under section 5301(a),

any cause of action can be asserted against the defendant, regardless of whether that cause of action arise from the defendant's conduct in Pennsylvania. 42 Pa.C.S.A. § 5301(b). However, the propriety of such exercise must be tested against the Due Process Clause. *See Mendel v. Williams*, 2012 Pa. Super. LEXIS 2060, *10-11 (Pa. Super. August 20, 2012) (citing *Haas v. Four Seasons Campground, Inc.*, 952 A.2d 688, 692 (Pa. Super. 2008) (holding that specific and general jurisdiction are both subject to limitations of Due Process Clause)).

Pennsylvania Courts may determine whether a non-resident defendant, such as Baker Boys has conducted a "continuous and systematic" part of its business in Pennsylvania by reference to the principles espoused in the United States Supreme Court's jurisprudence on general jurisdiction, and Pennsylvania cases interpreting section 5301(a)(2)(iii). *See Mendel*, 2012 Pa. Super. LEXIS 2060 at *11-12 (citing *Derman v. Wilair Services, Inc.*, 590 A.2d 317, 323 (Pa. Super. 1991)).

In *Goodyear*, the United States Supreme Court stated that its decision in *Perkins v. Benguet Consul. Mining Co.*, 342 U.S. 437 (1952) "remains the textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum." *Goodyear*, 131 S. Ct. at 2856 (quoting *Donahue v. Far Eastern Air Transport Corp.*, 652 F.2d 1031, 1037 (D.C. Cir. 1981)). In *Goodyear*, 131 S. Ct. at 2852-57, the Supreme Court held that courts in North Carolina could not assert general jurisdiction over foreign subsidiaries from Luxembourg, Turkey, and France. Although the subsidiaries manufactured tires, some of which were distributed by other entities in North Carolina, the Court held North Carolina's courts could not assert jurisdiction over the subsidiaries because, unlike the defendant in *Perkins*, the subsidiaries had "no place of business, employees, or bank accounts in North Carolina" and had not engaged in any regular or substantial business activities there. *Id.* at 2852.

The Pennsylvania Superior Court performed a similar analysis in *Mendel*, 2012 Pa. Super. LEXIS 2060 at *16-19, which held that Pennsylvania Courts could not assert personal jurisdiction over a hospital located in New Jersey. Although the hospital made representations to the public through its signage, stationary, and website that it was affiliated with a Pennsylvania based hospital system, and had entered into a contract with the Pennsylvania based hospital system, the court held that nonetheless, the exercise of personal jurisdiction over the hospital by Pennsylvania courts would be inappropriate because the New Jersey hospital maintained no real property in Pennsylvania, had no offices in Pennsylvania, and provided no services in Pennsylvania. *Id.* at *17.

Similarly, in *McCall v. Formu-3 Intern., Inc.*, 650 A.2d 903 (Pa. Super. 1994), the Superior Court held Pennsylvania could not assert jurisdiction over a foreign corporate defendant, which manufactured a product that caused harm to a Pennsylvania resident, despite the fact that defendant was involved in a joint venture with a Pennsylvania company and “engaged in a series of on-going contacts, meetings, and opportunities to exchange information with Pennsylvania companies.” *Id.* at 906-07. The court held that jurisdiction was inappropriate because the defendant did not maintain an office in Pennsylvania, was not qualified to do business in Pennsylvania, had no real or personal property in Pennsylvania, and did not maintain a bank account in Pennsylvania. *Id.* at 907; *see also Slota v. The Moorings, Ltd.*, 494 A.2d 1, 6-7 (Pa. Super. 1985).

In the case at bar, Baker Boys is a New Jersey LLC with no authorization to perform business in Pennsylvania. Baker Boys owns no property and maintains no offices in Pennsylvania. It maintains no bank accounts and does not pay taxes to any Pennsylvania government entity. Exhibit B, Formica Declaration, at ¶¶ 7, 8. It is clear that Baker Boys has

not conducted the type of “systematic and continuous” business activities in Pennsylvania that would allow this court to exercise personal jurisdiction over it. Accordingly, Plaintiff’s Amended Complaint against Baker Boys should be dismissed for lack of personal jurisdiction.

C. Plaintiff’s Amended Complaint Fails to State Claims for Which Relief Can Be Granted

Pursuant to Pa. R. Civ. P. 1028(a)(4), Plaintiff’s Amended Complaint should be dismissed because it is legally insufficient. A preliminary objection raised on this basis, in the nature of a demurrer, is resolved solely on the pleadings, without resort to evidence outside of the complaint. *Erdely v. Hinchcliffe & Keener, Inc.*, 875 A.2d 1078, 1081 (Pa. Super.), *appeal denied*, 890 A.2d 1059 (Pa. 2005). A demurrer may be entered where, on the facts alleged, “the law says with certainty that no recovery is possible.” *Morley v. Gory*, 814 A.2d 762, 764 (Pa. Super. 2002) (quoting *Mistick, Inc. v. Northwestern Nat’l Cas. Co.*, 806 A.2d 39, 42 (Pa. Super. 2002)). As discussed below, Plaintiff’s claims against Baker Boys for negligence, strict liability and intentional wrong are all legally insufficient and should be dismissed.

1. Plaintiff’s Negligence and Strict Liability Claims are Barred by the New Jersey Workers Compensation Act

Plaintiff’s claims for negligence and strict liability against Baker Boys, her employer, are barred by the New Jersey’s worker compensation statute, N.J.S.A. 34:15-1 *et seq.*, which provides the exclusive remedy for an employee’s claims of negligence against the employer:

When personal injury is caused to an employee by accident arising out of and in the course of his employment, of which the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employee was himself not willfully negligent at the time of receiving such injury.

N.J.S.A. § 34:15-1. The exclusivity provision of the workers’ compensation statute provides:

Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or

determination thereof than as provided in this article and an acceptance of all the provisions of this article, and shall bind the employee and for compensation for the employee's death shall bind the employee's personal representatives, surviving spouse and next of kin, as well as the employer, and those conducting the employer's business during bankruptcy or insolvency.

If an injury or death is compensable under this article, a person shall not be liable to anyone at common law or otherwise on account of such injury or death for any act or omission occurring while such person was in the same employ as the person injured or killed, except for intentional wrong.

N.J.S.A. § 34:15-8.

Plaintiff avers in her Amended Complaint that Baker Boys is her employer. Exhibit A, Amended Complaint, at ¶ 8. Accordingly, her exclusive remedy for negligence and strict liability claims against Baker Boys is through the Act. See *Van Dunk v. Reckson Assocs. Realty Corp.*, 45 A.3d 965, 980 (N.J. 2012); *Kristiansen v. Robert W. Morgan*, 708 A.2d 1173, 1180 (N.J. 1998); *Millison v. E.I. du Pont de Nemours & Co.*, 501 A.2d 505, 517 (N.J. 1985). See also *Vega v. Standard Machinery Co.*, 675 A.2d 1194, 1197 (N.J. Super. App.Div. 1996) (holding employer not liable under a product liability theory for injuries sustained by its employee); *Defigueiredo, v. U.S. Metals Refining Co.*, 563 A.2d 76, 77 (N.J. Super. 1988), *affirmed*, 563 A.2d 50 (N.J. Super. App. 1989) (same).

The Act allows for an exception to the exclusivity provision in only three discreet circumstances. In the first two exceptions, the Act provides an election of whether to file a common-law tort action or a claim for benefits under the Act to injured employees who are under the age of eighteen without proper employment certificates; and to workers employed in violation of child labor laws. N.J.S.A. 34:15-10. The third exception, discussed below, permits employees to file common-law tort claims against the employer under the "intentional wrong" exception to the Act's exclusivity rule.

While Plaintiff purports to state a claim for intentional wrong, her claims for negligence and strict liability do not fall within an exception to the act and are therefore, banned by the Act.

2. Plaintiff Has Not Sufficiently Pled an Intentional Wrong

The allegations in Plaintiff's Amended Complaint do not state a legally cognizable claim under which the "intentional wrong" exception to the New Jersey Workers Compensation Act (the "Act") standard is met. Plaintiff includes a claim for "intentional wrong" with reference to the last phrase of the exclusivity provision of the New Jersey workers compensation statute:

Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this article and an acceptance of all the provisions of this article, and shall bind the employee and for compensation for the employee's death shall bind the employee's personal representatives, surviving spouse and next of kin, as well as the employer, and those conducting the employer's business during bankruptcy or insolvency.

If an injury or death is compensable under this article, a person shall not be liable to anyone at common law or otherwise on account of such injury or death for any act or omission occurring while such person was in the same employ as the person injured or killed, except for intentional wrong.

N.J.S.A. § 34:15-8.

Exhibit A, Amended Complaint, at ¶ 8 n.1. The allegations in Plaintiff's Amended Complaint, however, do not meet the standard required to assert such a claim.

In *Van Dunk*, 45 A.3d at 966, the New Jersey Supreme Court described the "formidable standard" the New Jersey legislature established that would permit an employee to bring a common law tort action against her employer as an exception to the exclusive remedies provided under the Workers Compensation Act. The *Van Dunk* court held that the mere act of an employer, in exposing an employee to the risk of injury or death, does not establish a *per se* intentional wrong. *Id.* Rather, to overcome the exclusivity provision, a plaintiff must

demonstrate either that there was a deliberate intent to injure, *Mabee v. Borden, Inc.*, 720 A.2d 342, 346-47 (App. Div. 1998), or that the employer knew an injury to the employee was *substantially certain* to result. *Laidlow v. Hariton Machinery Co., Inc.*, 790 A.2d 884, 896-97 (2002) (emphasis added). The *Van Dunk* court reaffirmed that the landmark case on defining the meaning of “intentional wrong” under the Act continued to be *Millison v. E.I. Du Pont de Nemours & Co.*, 501 A.2d 505 (1985), which held:

[T]he mere knowledge and appreciation of a risk - - something short of substantial certainty - - is not intent. The defendant who acts in the belief or consciousness that the act is causing an appreciable risk of harm to another may be negligent, and if the risk is great the conduct may be characterized as reckless or wanton, but is not an intentional wrong.

Van Dunk, 45 A.3d at 972 (quoting *Millison*, 501 A.2d at 514 (quoting Prosser and Keeton on Torts § 8 at 36 (5th ed. 1984))). The *Van Dunk* court reiterated the substantial certainty standard upon which the *Millison* court elaborated, namely, “that it is not enough that ‘a known risk later blossoms into reality’ . . . Rather, the standard ‘demand[s] a virtual certainty.’” *Id.* at 972. To allege an intentional wrong, a plaintiff must establish that the evidence could lead a jury to conclude that the employer acted with knowledge that it was *substantially certain* that the employee would be harmed and that the employer’s alleged conduct is outside the purview of conditions the legislature intended to immunize under the statutory scheme of the Act. *Charles Beseler Co. v. O’Gorman & Young, Inc.*, 881 A.2d 770, 773 (N.J. Super. App. Div. 2005), *affirmed*, 911 A.2d 47 (N.J. 2006).

New Jersey courts have recognized the strong legislative preference for the exclusive workers’ compensation remedies, a preference that can be overcome only when it can be shown that as a matter of law, an employee’s injury and the circumstances in which the injury occurred are “plainly beyond anything the legislature could have contemplated as entitling the employee

to recover only under the Compensation Act.” *Van Dunk*, 45 A.3d at 979-980 (citing *Millison*, 501 A.2d at 514). Mere knowledge and appreciation of a risk -- something short of substantial certainty -- does not rise to the level of intent for purposes of the “intentional wrong” exception to the Workers Compensation Act. *Crippen v. Cent. Jersey Concrete Pipe Co.*, 823 A.2d 789, 795 (N.J. 2003). An employer that acts under the belief that its conduct is causing an appreciable risk of harm to an employee may be negligent, or reckless if the risk is great, but it is not an intentional wrong. *Millison*, 501 A.2d at 514.

Plaintiff’s Amended Complaint contains allegations that the Baker Boys had knowledge and appreciation of a risk. Plaintiff alleges that Baker Boys was aware that there was no guard, alarm or other protection on the conveyor and was aware that dough was falling off the conveyor belt. Exhibit A, Amended Complaint, at ¶¶ 18, 20, 26, 27. Plaintiff also alleges, however, that the conveyor used in the Baker Boys facility, was used by Baker Boys in the same condition in which it was designed, manufactured, assembled and sold. *Id.* at ¶ 37. In other words, Plaintiff has not alleged that Baker Boys altered the machine, removed any guards or protections or otherwise acted in any way to render the machine unsafe for employees. Under these standards set forth in *Van Dunk* and *Millison*, discussed above, Plaintiff’s allegations do not suffice to state an “intentional wrong” claim upon which relief would be granted. Plaintiff’s intentional wrong claim against Baker Boys should be dismissed.

3. Plaintiff Has Not Sufficiently Pled Strict Product Liability

Count II of Plaintiff’s Amended Complaint, for strict liability, does not satisfy the pleading requirements of a strict product liability claim under Pennsylvania law. In Count II, Plaintiff alleges that all defendants, without differentiation, are strictly liable, pursuant to section 402A of the Restatement of Torts (Second). Specifically, she alleges that all defendants “are

engaged in the business of designing, manufacturing, assembling, distributing, selling and/or supplying conveyors, including the one used by Plaintiff,” and that “Defendants” collectively marketed and placed the conveyor into the stream of commerce. Exhibit A, Amended Complaint, at ¶ 37. Plaintiff alleges that the conveyor was “designed, manufactured, assembled, distributed and/or sold” in a defective condition because it did not have “guards, alarms or other protections.” *Id.* at ¶¶ 14, 37. Plaintiff’s pleading, however, fails to provide facts necessary to identify whether her claim is made upon a “consumer expectations” theory or a “risk utility” theory, or both, which Pennsylvania law requires.

The Pennsylvania Supreme Court, in *Tincher v. Omega Flex*, 2014 Pa. LEXIS 3031 (Nov. 19, 2014), outlined the *prima facie* elements that a plaintiff must prove and plead when asserting a strict product liability claim. The *Tincher* court held that a plaintiff asserting a strict liability must “articulate his claim by alleging sufficient facts to make a *prima facie* case premised upon either a ‘consumer expectations’ or a ‘risk utility’ theory, or both.” *Id.* at *51. A plaintiff asserting strict product liability must prove that the product was in a defective condition by demonstrating that the danger was “unknowable and unacceptable to the average or ordinary consumer” or that a “reasonable person would conclude that the probability and seriousness of harm caused by the product outweigh the burden or costs of taking precautions.” *Id.* In her Amended Complaint, Plaintiff does not articulate whether she is proceeding under the “consumer expectation” theory or a “risk utility” theory, or both. Moreover, Plaintiff has failed to plead a *prima facie* case under either theory.

Since Plaintiff has failed to plead the required elements of a strict product liability claim, in accordance with *Tincher*, Count II of Plaintiff’s Amended Complaint should be dismissed.

4. Plaintiff Has Not Sufficiently Stated a Claim for Punitive Damages

Plaintiff's claim for punitive damages is legally insufficient because Plaintiff's factual allegations do not support such a claim. Plaintiff includes a claim for punitive damages in both Count I and Count III of her Amended Complaint but fails to meet the pleading standards for such a claim.

Punitive damages are an "extreme remedy" available in only the most exceptional matters." *Phillips v. Cricket Lighters*, 883 A.2d 439, 445 (Pa. 2005) (quoting *Martin v. Johns-Marville Corp.*, 494 A.2d 1088, 1098 n.14 (Pa. 1985) (plurality), *rev'd on other grounds sub nom.*, *Kirkbride v. Lisbon Contractors, Inc.*, 555 A.2d 800 (Pa. 1989)). Punitive damages are penal in nature; they are awarded to punish the tortfeasor and deter him from engaging in similar conduct in the future. *Snead v. SPCA*, 929 A.2d 1169, 1184 (Pa. Super. 2007) (citing *Hutchinson v. Luddy*, 896 A.2d 1260, 1265 (Pa. Super. 2006)). Punitive damages may be awarded only where a defendant's actions are so outrageous as to demonstrate willful, wanton or reckless conduct. *Id.*; Restatement (Second) of Torts § 500.

While Plaintiff's Amended Complaint includes words such as "intentional" and "knowingly," the Amended Complaint includes no fact or allegation against Baker Boys that rises above a theory of negligence. For example, Plaintiff does not allege that Baker Boys intentionally removed a guard from a piece of equipment thereby placing its employees at risk. Rather, according to Plaintiff's allegations, Baker Boys used a piece of equipment despite an awareness that, from the time of its design and manufacture, the machine lacked guards or other protective devices. Acts warranting the imposition of punitive damages are those done with a "bad motive or with reckless indifference to the interests of others." *Sears Roebuck & Co. v. 69th Street Retail Mall, L.P.*, 126 A.3d 959, 983 (Pa. Super. 2015) (citing *Judge Technical*

Services, Inc. v. Clancy, 813 A.2d 879, 889 (Pa. 2002)). The awareness Plaintiff assigns to Baker Boys is not the bad motive required for the imposition of punitive damages.

Punitive damages are not awarded for “mere inadvertence, mistake, errors of judgment and the like, which constitute ordinary negligence.” Restatement (Second) of Torts, § 908, cmt. (b). Even conduct that amounts to gross negligence does not warrant punitive damages. *Phillips v. Cricket*, 883 A.2d at 188-89. Allegations of recklessness or gross negligence, without any supporting detail that would elevate allegations of ordinary negligent conduct to recklessness or gross negligence, must be stricken. *Sevin v. Kelshaw*, 611 A.2d 1232, 1235 (Pa. 1992); *Valentino v. Phila. Triathlon, LLC*, 2015 Pa. Super. LEXIS 862, *5-6 (Pa. Super. 2015); *Lerner v. Lerner*, 954 A.2d 1229, 1236 (Pa. Super. 2008).

Because Plaintiff’s claims for punitive damages are not supported by legally sufficient theories of liability, such claims should be stricken from her Amended Complaint.

D. Plaintiff’s Amended Complaint Is Not Sufficiently Specific

Counts I and II of Plaintiff’s Amended Complaint are impermissibly vague and should be stricken. A complaint “should inform the targeted defendant with accuracy and completeness of the specific basis on which recovery is sought.” *Grudis v. Roaring Brook Township*, 16 Pa. D. & C. 5th 468, 478 (Lackawanna Cty. 2010) (citing *Rambo v. Greene*, 906 A2d 1232, 1236 (Pa Super. 2006)). Count I, a claim for negligence against all defendants, and Count II, a claim for strict product liability against all defendants, allege that one “and/or” all defendants are responsible for Plaintiff’s injuries, allegedly caused by the absence of a guard or alarm on a piece of bakery equipment, specifically, a mobile conveyor. According to Plaintiff’s pleadings, one and/or all defendants “manufactured, designed, supplied, serviced and distributed” the mobile conveyor at issue and “defendants” collectively had “sole” and “exclusive” responsibility for

maintenance and/or repair of the conveyor. Exhibit A, Amended Complaint, at ¶¶ 11, 25. In addition, one and/or all defendants placed the conveyor in its location at the time of Plaintiff's accident. *Id.* at ¶ 16. The defendants are, as acknowledged by Plaintiff's Amended Complaint, not engaged in the same business. Baker Boys, Formica and Ginsburg Bakery, Inc. ("Ginsburg") are in the "baking business." *Id.* at ¶¶ 3, 4, 7. Gemini Bakery Equipment Company ("Gemini"), Ginsburg and G&F Systems, Inc. ("G&F") "design, manufacture, supply, service and distribute" commercial baking equipment. *Id.* at ¶¶ 2, 5, 6. Despite that the defendants are divergently positioned by industry, Plaintiff's allegations contain no particularized factual averments regarding what conduct is attributable to which defendant. Instead, Plaintiff assigns all of the wrongful conduct to one "and/or" all defendants. These non-particularized allegations do not put defendants on notice as to against what theories it must defend, and what the factual bases for the theories might be. Accordingly, Counts I and II of Plaintiff's Amended Complaint should be dismissed.

IV. CONCLUSION

Baker Boys should be dismissed from this action because Pennsylvania courts cannot exercise jurisdiction over Baker Boys. Alternatively, Plaintiff's Amended Complaint against Baker Boys should be dismissed in its entirety because it fails to state any legally cognizable claims against Baker Boys and because its Plaintiff's allegations lack the specificity required by the rules of this Court.

Respectfully submitted,

BLANK ROME LLP

/s/ Grant S. Palmer

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Attorney ID No. 57686
Justina L. Byers, Esquire
Attorney ID No. 76773
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
Tel.: (215) 569-5500

*Attorneys for Defendant,
Baker Boys, LLC*

Dated: December 12, 2016

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PENNSYLVANIA

DIANA M. TRUJILLO,	:	AUGUST TERM, 2016
	:	
Plaintiff	:	
	:	
v.	:	
	:	
GEMINI BAKERY EQUIPMENT	:	
COMPANY, BAKER BOYS, LLC,	:	
GINSBURG BAKERY, INC., G&F	:	NO. 04078
SYSTEMS, INC., FORMICA	:	
BROS. BAKERY,	:	
	:	
Defendants.	:	

Thursday, March 23rd, 2017

Oral deposition of FRANK FORMICA, taken pursuant to notice, was held at the law offices of HILL AND ASSOCIATES, 123 South Broad Street, Suite 1100, Philadelphia, Pennsylvania, commencing at 2:10 p.m., on the above date, before Krista M. Morici, a Professional Court Reporter and Notary Public there being present.

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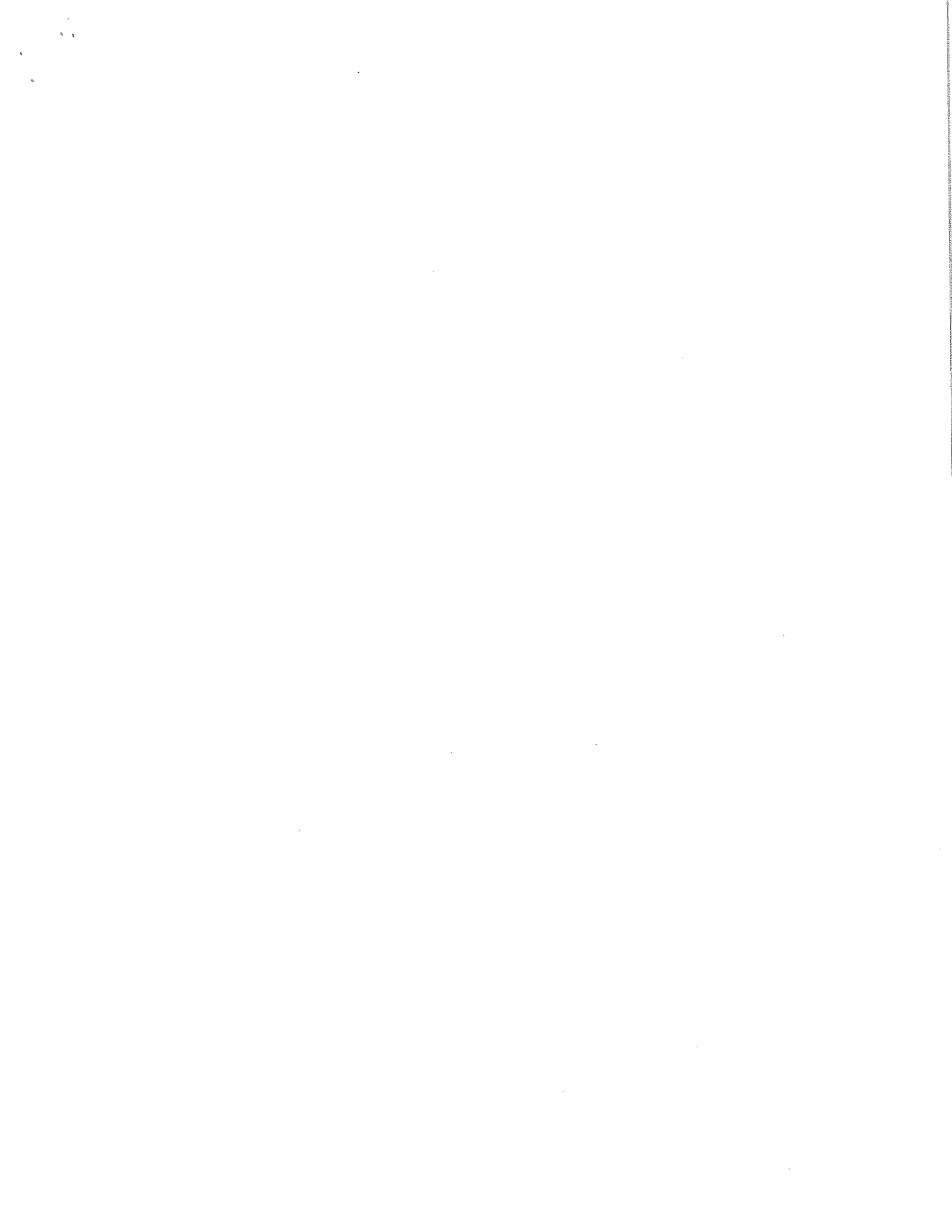
Erin F

1 that is between John Galt, LLC, and the Mulloy
 2 Family, LLC, is John Galt, LLC, the one -- the
 3 lessee or the lessor?
 4 A. The lessee.
 5 Q. For what purpose did John Galt, LLC, lease
 6 equipment from Mulloy Family, LLC?
 7 A. To manufacturer product for 151.
 8 Q. Does John Galt, LLC, own any real property
 9 other than 2310 Arctic Avenue?
 10 A. Yes, it does.
 11 Q. How many other pieces of real property
 12 does that LLC own?
 13 A. I'm not sure, probably five contiguous
 14 pieces to 2310 through, they are all in that
 15 location.
 16 Q. Okay. They are all in Atlantic City?
 17 A. All in Atlantic City.
 18 Q. All right. So earlier when you said about
 19 having -- you would have to check the equipment
 20 agreement with 151, you're talking about the
 21 equipment agreement with the Mulloy Family, LLC?
 22 A. That's correct.
 23 Q. And you referred to it as the 151 Foods
 24 because the Mulloy Family are the owners of 151 to

1 do you mean?
 2 A. We had a settlement -- you're specifically
 3 speaking about an OSHA violation from the Department
 4 of Labor, and we finally settled with them recently,
 5 and they corrected the record to Baker Boys.
 6 Q. Baker Boys, LLC, does not do business as
 7 Formica Brothers Bakery; is that correct?
 8 A. That's absolutely correct.
 9 Q. Okay. How many employees does Baker Boys,
 10 LLC, have?
 11 A. About 70.
 12 Q. And is that approximately the same number
 13 of employees it's had for the last five years?
 14 A. No, I would say -- I would say, that it
 15 varies, it's not too far off, but, you know,
 16 business has been very unstable in the area so --
 17 Q. Would you say it's been somewhat of a
 18 downward trend in the number of employees for that
 19 company then?
 20 A. I would say that it just erratic, I would
 21 not say that it's a downward trend. We keep trying
 22 to stay in business.
 23 Q. By the way, does Baker Boys lease any of
 24 its equipment to anyone else?

1 the best of your understanding?
 2 A. To the best of my understanding.
 3 Q. And the Mulloy Family is also the owners
 4 of the Ginsburg's business when it was in operation,
 5 to the best of your understanding, correct?
 6 A. To the best of my understanding.
 7 Q. That's correct?
 8 A. To the best of my understanding, that's
 9 correct.
 10 Q. You're nodding, but I was just making sure
 11 that we're clear.
 12 Have you seen a Citation and Notification
 13 of Penalty from the US Department of Labor, dated
 14 October 27th of 2016, directed to Baker Boys, LLC,
 15 d/b/a Formica Brothers Bakery and its successors?
 16 A. That record has been corrected, I am aware
 17 of that.
 18 Q. Okay. Do you know why it was addressed to
 19 Baker Boys, LLC, d/b/a Formica Brothers Bakery?
 20 A. I presume it was an error.
 21 Q. Right. Do you know why it was addressed
 22 that way?
 23 A. I have no idea.
 24 Q. And when you say it's been corrected, what

1 A. Absolutely not.
 2 Q. Was Ms. Trujillo an employee of Baker Boys
 3 at the time of the incident?
 4 A. She was.
 5 Q. Are all Baker Boys' employees staffed at
 6 the -- or placed, I should say, at the 900 Mill Road
 7 address?
 8 A. They are.
 9 Q. Does Baker Boys, LLC, have any employees
 10 at any other address other than you, who's at 2310
 11 Arctic Avenue?
 12 A. Not really.
 13 Q. What do you mean "not really"?
 14 A. Not, meaning, no.
 15 Q. Are there other officers to Baker Boys,
 16 LLC, besides you?
 17 A. There are not.
 18 Q. Do you have any other family members who
 19 are members of the Baker Boys LLC?
 20 A. I do not.
 21 Q. Mr. Formica, do you recall making a
 22 supplemental declaration in support of preliminary
 23 objections relative to this matter?
 24 I'm not going to mark it as an exhibit,



IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

Filed and Attested by the
Office of Judicial Records
12:30pm 10/16/16 50 am
IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
DISTRICT

Diana Trujillo

Plaintiff,

vs.

Gemini Bakery Equipment Company, et al.,

Defendants.

August Term, 2016

Civil Action No.: 004078

ORDER

AND NOW, this 14th day of June, 2017, upon consideration of the

Preliminary Objections of defendant Baker Boys, LLC to Plaintiff's Amended Complaint and any response thereto, it is hereby ORDERED that the Preliminary Objections are SUSTAINED, and Plaintiff's Amended Complaint against Baker Boys, LLC is DISMISSED, for lack of personal jurisdiction.

Dennis P. Cahill

J.

Trujillo Vs Gemini Bake-ORDER



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FILED
SUPERIOR COURT
OF NEW JERSEY

2017 AUG -7 PM 3:19

#74892-D2

STEPHEN E. GERTLER, ESQ. – ID #002781973
THE LAW OFFICES OF STEPHEN E. GERTLER
A Professional Corporation
Monmouth Shores Corporate Park
1340 Campus Parkway, Suite B4
P.O. Box 1447
Wall Township, New Jersey 07719
(732) 919-1110
Attorneys for Defendant, Baker Boys LLC

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

Plaintiff

DIANA M. TRUJILLO

DOCKET NO. L-1322-17

vs.

CIVIL ACTION

Defendants

BAKER BOYS LLC; GINSBURG BAKERY,
INC.; JOHN GALT LLC; 151 FOODS LLC;
OMNI BAKERY; MULLOY FAMILY LLC

ANSWER, SEPARATE DEFENSES,
CROSSCLAIMS, ANSWERS TO
CROSSCLAIMS, DEMAND FOR DAMAGES,
DEMAND FOR JURY, DESIGNATION OF
TRIAL COUNSEL AND CERTIFICATIONS

The Defendant, Baker Boys LLC, by way of Answer to the Complaint filed herein says that:

1. This Defendant has insufficient information with which to form a belief as to the truth of the allegations contained in paragraph one of the Complaint.
2. This Defendant admits the allegations contained in paragraph two of the Complaint.
- 3-19. This Defendant has insufficient information with which to form a belief as to the truth of the allegations contained in paragraphs three through nineteen of the Complaint.
- 20-22. This Defendant denies the allegations contained in paragraphs twenty through twenty-two of the Complaint.

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23. This Defendant has insufficient information with which to form a belief as to the truth of the allegations contained in paragraph twenty-three of the Complaint.

24-39. This Defendant denies the allegations contained in paragraphs twenty-four through thirty-nine of the Complaint.

FIRST COUNT

40. The Defendant repeats and realleges its answers to the allegations contained in the preceding paragraphs as if the same were set forth more fully at length herein.

41-45. This Defendant denies the allegations contained in paragraphs forty-one through forty-five of the Complaint.

WHEREFORE, the Defendant, Baker Boys LLC, demands dismissal of the Plaintiff's Complaint, together with costs and reasonable attorney's fees.

SECOND COUNT

46. The Defendant repeats and realleges its answers to the allegations contained in the preceding paragraphs as if the same were set forth more fully at length herein.

47-52. This Defendant denies the allegations contained in paragraphs forty-seven through fifty-two of the Complaint.

WHEREFORE, the Defendant, Baker Boys LLC, demands dismissal of the Plaintiff's Complaint, together with costs and reasonable attorney's fees.

THIRD COUNT

53. The Defendant repeats and realleges its answers to the allegations contained in the First and Second Counts as if the same were set forth more fully at length herein.

54-58. This law firm was not retained to file an answer to the Third Count of the Complaint on behalf of defendant, Baker Boys LLC, therefore, this firm does not respond.

SEPARATE DEFENSES

1. This Defendant was not negligent.
2. The negligence and/or contributory negligence of the Plaintiff was the sole and/or proximate cause of the alleged accident.

3. The damages, if any, sustained by the Plaintiff, were the result of the negligence of third persons, not parties to this action.
4. The negligence and/or contributory negligence of the Plaintiff was greater than the negligence of this Defendant, although this Defendant denies negligence.
5. The negligence and/or comparative negligence of the co-defendants was the sole and/or proximate cause of the alleged accident.
6. This Defendant asserts improper service of process.
7. This Defendant hereby reserves the right to interpose such other defenses and objections as a continuing investigation may disclose.
8. The Complaint of the Plaintiff fails to state a cause of action upon which relief can be granted.
9. The Plaintiff has failed to mitigate his/her damages and is, thereby, barred from recovery.
10. The plaintiffs have failed to comply with the applicable two year Statute of Limitations pursuant to 2A:14-2.
11. The plaintiff was an employee of Baker Boys LLC at the time of the May 3, 2016 incident and, therefore, Baker Boys LLC is immune from liability pursuant to the Workers' Compensation Statute of the State of New Jersey, N.J.S.A. 34:15-1 et seq.
12. The Defendant, Baker Boys LLC is not a manufacturer, seller, distributor or designer of the machine and, therefore, is not strictly liable.
13. This Defendant asserts the defenses codified at N.J.S.A. 2A:58C-1 et seq.

CROSSCLAIM FOR CONTRIBUTION

The Defendant, Baker Boys LLC, demands contribution from the Co-Defendants for a prorata share of any verdict entered in favor of the Plaintiff and against this Defendant under the New Jersey Tortfeasors Act.

CROSSCLAIM FOR INDEMNIFICATION

By way of Crossclaim for Indemnification against the Co-Defendants the Defendant, Baker Boys LLC, says that:

1. The Defendant, while denying negligence, asserts that the negligence was that of the Co-Defendants and that the liability of this Defendant, if any, was of a derivative or secondary nature and the liability of the Co-Defendants was of a primary character, thus giving rise to a duty on the part of the Co-Defendants to hold this Defendant harmless and indemnify this Defendant from any and all losses sustained herein.

WHEREFORE, the Defendant, Baker Boys LLC, demands judgment against the Co-Defendants, for full indemnification of any and all sums awarded to the Plaintiff as against this Defendant.

CROSSCLAIMS FOR CONTRACTUAL INDEMNIFICATION

By way of Crossclaim for Contractual Indemnification against the Co-Defendants, the Defendant, Baker Boys LLC, says that:

1. There is an indemnification agreement existing between the Co-Defendants and this Defendant, wherein the Co-Defendants contractually agreed to protect, indemnify and hold harmless the Defendant, Baker Boys LLC, from any damage, liability or loss, resulting from injuries or property damage.

WHEREFORE, the Defendant, Baker Boys LLC, demands judgment from the Co-Defendants for any and all sums awarded to the Plaintiff and against this Defendant.

ANSWER TO ALL CROSSCLAIMS

The Defendant, Baker Boys LLC, by way of Answer to all crossclaims filed against it herein says that:

It denies that it is liable to any crossclaimant under the provisions of N.J.S.A. 2A:53A-1, et seq., N.J.S.A. 2A:15-5.3, or any theory of indemnification, and further this Defendant denies that any crossclaimant is entitled to any relief sought from this Defendant.

JURY DEMAND

The Defendant, Baker Boys LLC, demands a trial by jury on all issues by a jury panel consisting of six (6) persons.

DEMAND FOR SPECIFICATION OF DAMAGES

This Defendant hereby demands that Plaintiff submit a written specification of damages within five (5) days, pursuant to R. 4:5-2 and R.R. 4:5-8(f).

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Stephen E. Gertler is hereby designated trial counsel on behalf of the Defendant, Baker Boys LLC.

CERTIFICATION

I hereby certify that a copy of the within Answer has been filed and was served within the time prescribed by Rule 4:6.

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned, certifies on behalf of the Defendant as follows:

1. The matter and controversy in this case is not, to my knowledge, the subject of any other action pending in any court or pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.
2. At the present time, we are unaware of any other parties who should be joined in this action.

LAW OFFICES OF STEPHEN E. GERTLER
Attorneys for Defendant, Baker Boys LLC

BY: _____
STEPHEN E. GERTLER

DATED: August 2, 2017



123 S. Broad St., Suite 1100
Philadelphia, PA 19109
+1 215 567 7600 Main
215 525 4453 Fax

Superior Court
OF NEW JERSEY

2017 OCT 12 AM 10:10

October 11, 2017

Clerk of the Court, Law Division
Atlantic County Superior Court
1201 Bacharach Blvd
Atlantic City, New Jersey 08401

Re: Diana Trujillo v. Bakers Boys, LLC, et al.
ATL-L-1322-17

Dear Sir/Madam:

Enclosed is the original and one copy of Plaintiff's Response to Defendant, Baker Boys, LLC's, Motion for Summary Judgment returnable October 13, 2017, Certification of Service and proposed form of Order.

Kindly file the originals and return a timed-stamped copy of each item in the self-addressed, stamped envelope provided for your convenience.

Should you have any questions, please telephone me.

Very truly yours,

HILL & ASSOCIATES, P.C.

By: /s/ Susan B. Ayres
Susan B. Ayres, Esquire

Enclosures

TZ

SUPERIOR COURT
OF NEW JERSEY

2017 OCT 12 AM 10: 10

HILL & ASSOCIATES, P.C.
BY: SUSAN B. AYRES, ESQ.
Identification No. 87562
Suite 1100, 123 S. Broad Street
Philadelphia, PA 19102
(215) 567-7600

Diana M. Trujillo
400 N. Franklin Boulevard
Pleasantville, NJ 08232

Plaintiff

vs.

Baker Boys, LLC
900 Mill Road
Pleasantville, NJ 08232

Ginsburg Bakery, Inc.
300 N. Tennessee Avenue
Atlantic City, NJ 08401

John Galt, LLC
2310 Arctic Avenue
Atlantic City, NJ 08401

151 Foods, LLC
151 Beningo Blvd.
Bellmar, NJ 08031

Omni Bakery
2621 Freddy Lane
Vineland, NJ 08360

Mulloy Family, LLC
2621 Freddy Lane
Vineland, NJ 08360

Defendants

: SUPERIOR COURT OF NEW JERSEY

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ATLANTIC COUNTY

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No.: L-1322-17

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**RESPONSE TO MOVING DEFENDANT'S STATEMENT OF THE
FACTS/COUNTERSTATEMENT OF FACTS**

1. Admitted in part, denied in part. It is admitted that this lawsuit arises from an incident that occurred on May 3, 2016, at the property located at 900 Mill Road in Pleasantville, NJ. It is further admitted that the incident occurred while Plaintiff was working. However, in addition to claims for deliberate intent, Plaintiff has plead counts for negligence and strict liability/products liability. A true and correct copy of the Complaint is attached to the Motion as Exhibit A. Defendant Baker Boys does not seek dismissal of Count III.

2. Admitted. By way of further response, however, no discovery has been conducted in this matter to determine whether Defendant Baker Boys, LLC had a role in the manufacture, design, or maintenance of the faulty equipment that caused the amputation of this woman's arm. To the extent that Defendant Baker Boys did have a role in the manufacturing, designing, or maintaining of this equipment, it may be held strictly liable. As such, this Motion is premature as to Count II. See Dissenting opinion of Stein, J., set forth in Stephenson v. R.A. Jones & Co. 103 N.J. 194, 201, 510 A.2d 1161, 1164 (N.J. 1986)(arguing that the workers compensation immunity should not extend to protect an employer where the employer has an independent duty extricable from the tortious conduct that caused the injury). It is worth noting that this dissent pertains to a third party seeking indemnity from an employer. Nevertheless, the argument is identical. If Defendant Baker Boys manufactured or designed the defective product, this would impose duties independent from its status as an employer. Moreover, Answers have not been filed by all parties and, therefore, it is possible that there will be Crossclaims

asserted against the Moving Defendant that have not yet been plead. Again, the Motion is premature.

3. Admitted.
4. Denied as stated. Defendant has overly simplified the event. Plaintiff incorporates by reference her Complaint attached as Exhibit A to the Motion.
5. Admitted that a worker's compensation claim was filed and that benefits have been paid. The remainder of the averments are denied as discovery has not yet been conducted to ascertain the exact amounts.
6. Admitted.
7. Admitted.
8. Admitted. By way of further response, however, no discovery has been conducted in this matter and Ms. Trujillo's status was not at issue in that deposition, which was very limited in scope to venue concerns.
9. Admitted.
10. Admitted.
11. Admitted. The Complaint is a document that speaks for itself.
12. Admitted. Defendant Baker Boys does not seek dismissal of Count III.
13. Admitted. Answers have not been filed by all parties and, therefore, it is possible that there will be Crossclaims asserted against the Moving Defendant that have not yet been plead. This Motion is premature.

Legal Argument

Plaintiff does not oppose the dismissal of Defendant Baker Boys, LLC as to Count I, Negligence based on worker's compensation immunity. Plaintiff does oppose the dismissal of

Defendant Baker Boys, LLC, from Count II, Strict Liability/Products Liability. The basis for this opposition is that the Motion is premature. No discovery has been conducted in this matter to determine whether Defendant Baker Boys, LLC had a role in the manufacture, design, or maintenance of the faulty equipment that caused the amputation of this woman's arm. To the extent that Defendant Baker Boys did have a role in the manufacturing, designing, or maintaining of this equipment, it may be held strictly liable. As such, this Motion is premature as to Count II. See Dissenting opinion of Stein, J., set forth in Stephenson v. R.A. Jones & Co. 103 N.J. 194, 201, 510 A.2d 1161, 1164 (N.J. 1986)(arguing that the workers compensation immunity should not extend to protect an employer where the employer has an independent duty extricable from the tortious conduct that caused the injury). It is worth noting that this dissent pertains to a third party seeking indemnity from an employer. Nevertheless, the argument is identical. If Defendant Baker Boys manufactured or designed the defective product, this would impose duties independent from its status as an employer.

In addition, Answers have not been filed by all parties and, therefore, it is possible that there will be Crossclaims asserted against the Moving Defendant that have not yet been plead. Again, the Motion is premature. The relationships among the Defendants have not yet been sorted out. We do not know whether there were lease agreements for this equipment, or not. Some discovery should be permitted on the issue of ownership, design, manufacture and maintenance of the product, as well as the relationship among the Defendants, before Defendant Baker Boys is entitled to a dismissal of Count II.

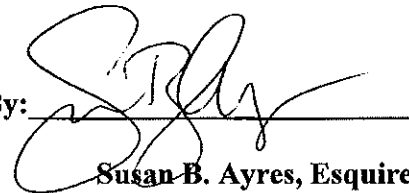
Defendant Baker Boys does not seek dismissal of Count III.

Conclusion

Plaintiff requests the Motion for Summary Judgment as to Count II be denied, without prejudice.

HILL & ASSOCIATES, P.C.

By: _____


Susan B. Ayres, Esquire

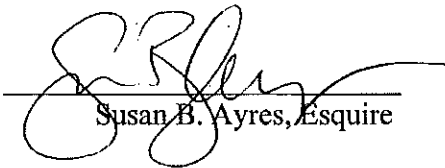
Date:

10/11/17

Certificate of Service

I, Susan B. Ayres, Esquire, hereby certify that a true and correct copy of the Response to the Defendant's Motion for Summary Judgment was served on all counsel of record via e-filing.

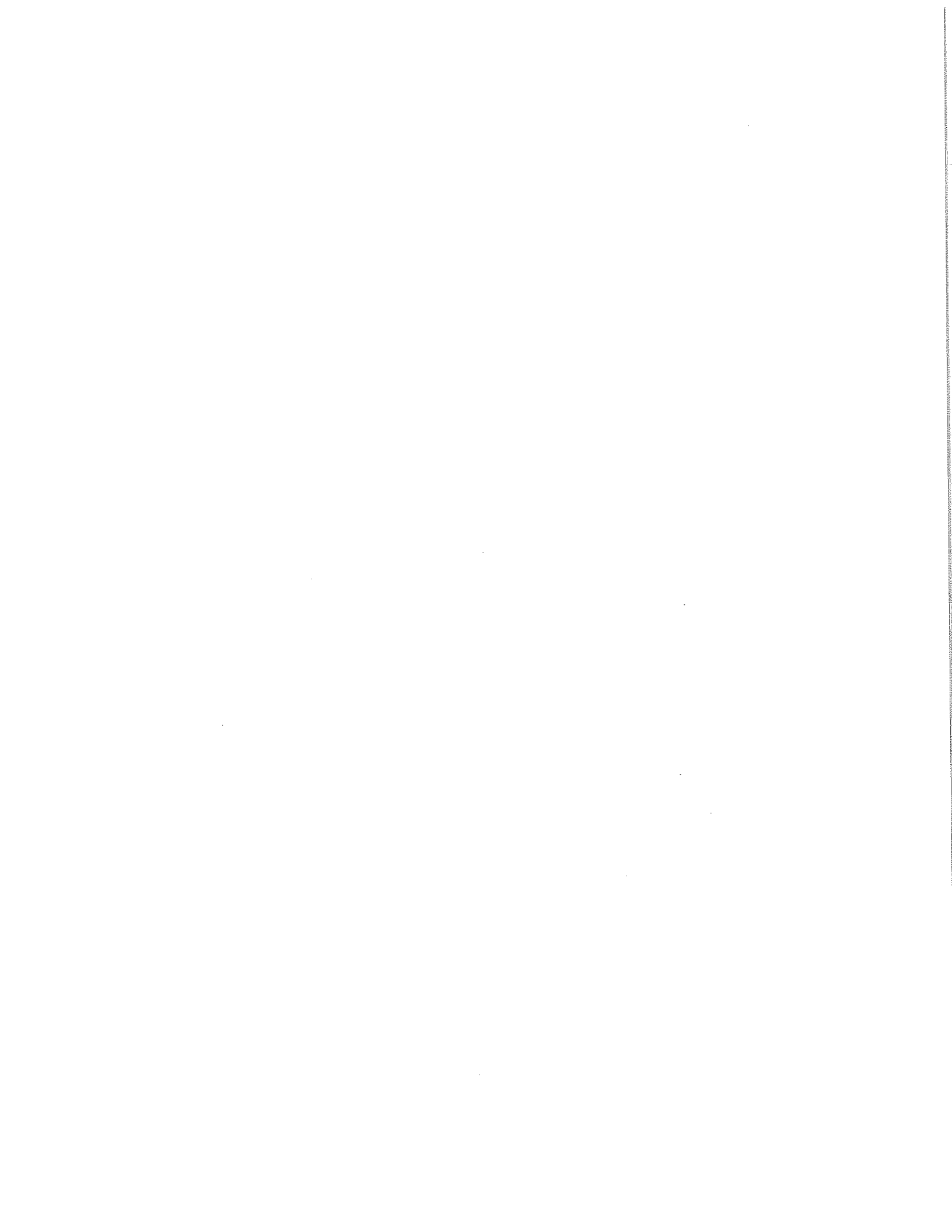
Hill & Associates, P.C.



Susan B. Ayres, Esquire

Date:

10/11/17



RECEIVED 7

OCT 17 2017



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October 17, 2017

VIA ELECTRONIC FILING

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FACSIMILE: 610-892-2926

The Honorable James P. Savio, J.S.C.
Atlantic County Civil Courts Building
1201 Bacharach Boulevard
Atlantic City, NJ 08401

Re: **Trujillo v. Ginsburg Bakery, Inc., et al.**
Superior Court of NJ, Atlantic County, No. ATL-L-1322-17
Our File No. 730.26328

Dear Judge Savio:

This office represents Defendant, Ginsburg Bakery, Inc. (hereinafter "Ginsburg"), in the above-referenced matter. Pending before Your Honor is the motion of Defendant, Baker Boys, LLC (hereinafter "Baker Boys"), for summary judgment on Count I and Count II of Plaintiff's Complaint. Baker Boys' Motion for Partial Summary Judgment is presently returnable before Your Honor on October 27, 2017. In addition, Plaintiff's counsel filed a proposed form of Order under the 5-Day Rule that would grant summary judgment as to Count I, but deny summary judgment without prejudice as to Count II. Please accept this letter brief in lieu of a more formal opposition to both the proposed Order as well the Baker Boys' Motion for Summary Judgment.

Baker Boys' motion should be denied because it is premature at the very least. No discovery has been exchanged nor have any depositions been taken. There are a number of Defendants who have not yet filed answers or in any other way entered an appearance in this matter. Ginsburg and Baker Boys are the only Defendants that have answered Plaintiff's Complaint and Ginsburg has asserted crossclaims for contribution and indemnification against Baker Boys. See Answer of Ginsburg Bakery, Inc., at Exhibit "A." In the absence of any discovery in this matter, there is no factual basis to grant partial summary judgment to Baker Boys either on Plaintiff's claims or on Ginsburg's crossclaims in spite of the argument that Baker Boys was Plaintiff's employer at the time of the subject accident.

PAGE NO. 2

to Honorable James P. Savio
Trujillo v. Ginsburg Bakery, Inc., et al.
October 17, 2017

Even if Baker Boys was Plaintiff's employer, there is no factual or legal basis for the proposed Order or for partial summary judgment in favor of Baker Boys. Plaintiff's claims against all Defendants arise out of an accident that Plaintiff claims was caused by a defective bakery conveyor machine and/or intentional acts on the part of Baker Boys. Although Plaintiff did not specifically plead New Jersey's Product Liability Act ("PLA") in her Complaint, the Act controls this case. See N.J.S.A. 2A:58C-1, et. seq. Under the PLA, a product liability action is a defined term that encompasses "any claim or action brought by a claimant for harm caused by a product, irrespective of the theory underlying the claim, except actions for harm caused by breach of an expressed warranty." N.J.S.A. 2A:58C-1b(3). Pursuant to the PLA, Counts I and II of Plaintiff's Complaint are part and parcel of the unified theory of strict liability under the Act. Tyrrell v. Navistar Inter'l. Inc., 248 N.J. Super. 390, 398 (App. Div.), certif. den. 126 N.J. 390 (1991) (negligence claims are generally subsumed within the Product Liability Act statutory cause of action). Pursuant to this statutory framework, partial summary judgment on Plaintiff's negligence and strict liability claims is premature at this time as is summary judgment on Ginsburg's crossclaims.

Notably, Baker Boys does not seek summary judgment on Count III of Plaintiff's Complaint that seeks recovery for alleged intentional acts pursuant to the Laidlow v. Hariton Mach. Co., 170 N.J. 602 (2002), line of cases. Discovery may also disclose that Baker Boys is liable to Plaintiff under the "dual persona doctrine" with respect to the subject bakery conveyor at issue in this case. See Anderson v. A.J. Friedman Supply Co., Inc., 416 N.J. Super. 46, 66 (App. Div. 2010). Should this prove to be the case, all of Ginsburg's crossclaims against Baker Boys would be legally viable.

Although claims for contractual and implied indemnification against a plaintiff's employer may be difficult to prevail upon, they are not barred outright under New Jersey law. Stephenson v. R.A. Jones and Co., Inc., 103 N.J. 194 (1986), Ramos v. Browning-Ferris Ind. of South Jersey, Inc., 103 N.J. 177 (1987). Therefore, at this stage of the litigation, Ginsburg should be afforded an opportunity to develop both a legal and factual basis for its crossclaims against Baker Boys.


For the above reasons, Baker Boys' request for summary judgment as to Count I and Count II should be denied in its entirety as should Plaintiff's proposed Order submitted under the 5-Day Rule.

Thank you for your consideration of the above.

Respectfully submitted,

DEASEY, MAHONEY & VALENTINI, LTD.

BY:



MICHAEL P. RAUSCH, ESQUIRE

/acj
Enclosure


PAGE NO. 3

TO Honorable James P. Savio
Trujillo v. Ginsburg Bakery, Inc., et al.
October 17, 2017

cc: Honorable James P. Savio (Courtesy Copy via Facsimile: 609-343-2232)
Susan B. Ayres, Esquire (Via eFiling)
Mitchell Waldman, Esquire (Via eFiling)
Kristin J. Vizzone, Esquire (Via eFiling)

Exhibit "A"

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS) Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1 Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO.: AMOUNT: OVERPAYMENT: BATCH NUMBER:	
	ATTORNEY / PRO SE NAME Michael P. Rausch, Esquire		TELEPHONE NUMBER (856) 428-8331	
	FIRM NAME (if applicable) Deasey, Mahoney & Valentini, Ltd.		COUNTY OF VENUE Atlantic	
	OFFICE ADDRESS 923 Haddonfield Road, Suite 300 Cherry Hill, NJ 08002		DOCKET NUMBER (when available) ATL-L-1322-17	
		ATLANTIC COUNTY LAW DIVISION		DOCUMENT TYPE Answer, Defenses, and Crossclaim
NAME OF PARTY (e.g., John Doe, Plaintiff) Ginsburg Bakery, Inc.		CAPTION DIANA M. TRUJILLO v. BAKER BOYS, LLC; GINSBURG BAKERY, INC.; JOHN GALT, LLC; 151 FOODS, LLC; OMNI BAKERY; MULLOY FAMILY, LLC		
CASE TYPE NUMBER (See reverse side for listing) 606	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) Maxum Indemnity Co. <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.				
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION				
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION				
DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, FOR WHAT LANGUAGE?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).				
ATTORNEY SIGNATURE: <i>Michael P. Rausch</i>				

Side 2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 309 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| <ul style="list-style-type: none"> 271 ACCUTANE/ISOTRETINOIN 274 RISPERDAL/SEROQUEL/ZYPREXA 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL 282 FOSAMAX 285 STRYKER TRIDENT HIP IMPLANTS 286 LEVAQUIN 287 YAZ/YASMIN/OCELLA 289 RELGLAN 290 POMPTON LAKES ENVIRONMENTAL LITIGATION 291 PELVIC MESH/GYNECARE | <ul style="list-style-type: none"> 292 PELVIC MESH/BARD 293 DEPUY ASR HIP IMPLANT LITIGATION 295 ALLODERM REGENERATIVE TISSUE MATRIX 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS 297 MIRENA CONTRACEPTIVE DEVICE 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BCNICAR 300 TALC-BASED BODY POWDERS 601 ASBESTOS 823 PROPECIA 624 STRYKER LFIT CoCr V40 FEMORAL HEADS |
|--|---|

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59

DEASEY, MAHONEY & VALENTINI, LTD.
BY: Michael P. Rausch, Esquire (N.J. Bar ID: 053251994)
923 Haddonfield Road
Suite 300
Cherry Hill, NJ 08002
856.429.6331
Attorneys for Defendant,
Ginsburg Bakery, Inc.

RECEIVED and
FILED

SEP 11 2017

ATLANTIC COUNTY
LAW DIVISION

DIANA M. TRUJILLO,

Plaintiff,

v.

BAKER BOYS, LLC; GINSBURG BAKERY,
INC.; JOHN GALT, LLC; 151 FOODS, LLC;
OMNI BAKERY; MULLOY FAMILY, LLC.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION -- ATLANTIC COUNTY

DOCKET NO.: ATL-L-1322-17

CIVIL ACTION

**ANSWER OF DEFENDANT,
GINSBURG BAKERY, INC., TO THE
COMPLAINT OF PLAINTIFF WITH
AFFIRMATIVE DEFENSES, CROSS-
CLAIMS, DEMAND FOR JURY TRIAL,
DEMAND FOR STATEMENT OF
DAMAGES CLAIMED, DEMAND FOR
DOCUMENTS, NOTICE OF
ALLOCATION, AND DESIGNATION
OF TRIAL COUNSEL**

Defendant, Ginsburg Bakery, Inc., (hereinafter "Answering Defendant") hereby generally enters its appearance by and through its attorneys, Deasey, Mahoney & Valentini, Ltd., Michael P. Rausch, Esquire appearing, denies each and every allegation of liability producing conduct, denies each and every allegation of injury, loss, and/or damage made by Plaintiff herein, and more fully responds to Plaintiff's Complaint as follows:

1. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

2. Admitted.

3. Denied as stated. To the extent that the allegations in this paragraph constitute conclusions of law, no response is required. To the extent a responsive pleading is required, Answering Defendant had ceased all baking operations at any time relevant to the allegations in Plaintiff's Complaint and specifically as of May 3, 2016.

4. Denied. To the extent that the allegations in this paragraph constitute conclusions of law, no response is required. To the extent a responsive pleading is required, Answering Defendant specifically denies that it designed, manufactured, supplied, serviced, and/or distributed the mobile conveyor belt and/or mobile conveyor system referenced in Plaintiff's Complaint and at issue in this case.

5. Denied as stated. To the extent that the allegations in this paragraph constitute conclusions of law, no response is required. To the extent a responsive pleading is required, Answering Defendant specifically denies that it sold, leased, and/or otherwise supplied to any entity the mobile conveyor belt and/or mobile conveyor system referenced in Plaintiff's Complaint and at issue in this case.

6. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

7. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

8. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

9. Admitted.

10. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

11. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

12. Denied as stated. It is admitted only that Omni Baking Co., LLC is a baking business with its principal place of business as indicated.

13. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

14. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

15. Denied.

16. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

17. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

18. Denied. To the extent that the allegations in this paragraph constitute conclusions of law, no response is required. Should a responsive pleading be required, Answering Defendant lacks

sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

19. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, accordingly, Plaintiff is left to her proofs in this regard.

20. Denied. The allegations in this paragraph are conclusions of law to which no response is required. By way of further response, Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, therefore, they are denied and Plaintiff is left to her proofs in this regard. Answering Defendant specifically denies all allegations of injuries, losses, and/or damages.

21. Denied. To the extent the allegations in this paragraph are conclusions of law, no response is required. To the extent, the allegations in this paragraph referred to parties other than Answering Defendant, no response is required from Answering Defendant. Should a responsive pleading be required, Answering Defendant specifically denies that it manufactured, designed, supplied, serviced, and/or distributed the mobile conveyor belt and/or mobile conveyor system referenced in Plaintiff's Complaint and at issue in this case.

22. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent that the averments contained in this paragraph seek to construe and/or characterize the contents of photographs or other documents, such construction and/or characterization is denied.

23. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, therefore, they are denied and Plaintiff is left to her proofs in this regard. To the extent the averments contained in this paragraph seek to

construe and/or characterize the contents of photographs or other documents, such construction and/or characterization is denied.

24. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent the allegations in this paragraph refer to parties other than Answering Defendant, no response is required from Answering Defendant. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of knowledge either as alleged in this paragraph of Plaintiff's Complaint or in any other manner whatsoever.

25. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, therefore, they are denied and Plaintiff is left to her proofs in this regard.

26. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, therefore, they are denied and Plaintiff is left to her proofs in this regard. To the extent the allegations in this paragraph refer to parties other than Answering Defendant, no response is required from Answering Defendant. To the extent the allegations in this paragraph seek to construe and/or characterized the contents of photographs or other written documents, such construction and/or characterization is denied.

27. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, therefore, they are denied and Plaintiff is left to her proofs in this regard.

28. Denied. To the extent the allegations in this paragraph are conclusions of law, no response is required. By way of further response, Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph and, therefore, they are denied and Plaintiff is left to her proofs in this regard.

29. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph, and, therefore, they are denied and Plaintiff is left to her proofs in this regard.

30. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph, and, therefore, they are denied and Plaintiff is left to her proofs in this regard.

31. Denied. The allegations in this paragraph are conclusions of law to which no response is required. By way of further response, the allegations in this paragraph refer to parties other than Answering Defendant and, therefore, no response is required from Answering Defendant.

32. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph, and, therefore, they are denied and Plaintiff is left to her proofs in this regard.

33. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph, and, therefore, they are denied and Plaintiff is left to her proofs in this regard. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of injuries, losses, and/or damages.

34. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph, and, therefore, they are denied and Plaintiff is left to her proofs in this regard. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of injuries, losses, and/or damages.

35. Denied. To the extent the allegations in this paragraph are conclusions of law, no response is required. To the extent the allegations in this paragraph refer to parties other than Answering Defendant, no response is required from Answering Defendant. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of ownership,

servicing, and/or supply either as alleged in this paragraph of Plaintiff's Complaint or in any other manner whatsoever.

36. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph, and, therefore, they are denied and Plaintiff is left to her proofs in this regard.

37. Denied. Answering Defendant lacks sufficient information to form a belief with respect to the factual allegations made in this paragraph, and, therefore, they are denied and Plaintiff is left to her proofs in this regard.

38. Denied. To the extent the allegations in this paragraph are conclusions of law, no response is required. To the extent the allegations in this paragraph refer to parties other than Answering Defendant, no response is required from Answering Defendant. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of ownership, servicing, and/or supply either as alleged in this paragraph of Plaintiff's Complaint or in any other manner whatsoever.

39. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent the allegations in this paragraph refer to parties other than Answering Defendant, no response is required from Answering Defendant.

FIRST COUNT -- NEGLIGENCE
PLAINTIFF v. BAKER BOYS, LLC, GINSBURG BAKERY, INC., JOHN GALT, LLC,
151 FOODS, LLC, OMNI BAKERY AND MULLOY FAMILY, LLC

40. Answering Defendant incorporates by reference its responses to paragraphs 1 through 39 as if fully set forth at length herein.

41. Denied. The allegations in this paragraph and its sub-paragraphs are conclusions of law to which no response is required. To the extent the allegations in this paragraph and its sub-paragraph refer to parties other than Answering Defendant, no response is required from Answering

Defendant. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of negligence and/or carelessness either as alleged in this paragraph of Plaintiff's Complaint or in any other manner whatsoever.

42. Denied. The allegations in this paragraph are conclusions of law to which no response is required.

43. Denied. The allegations in this paragraph are conclusions of law to which no response is required. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of injury, losses and/or damages.

44. Denied. The allegations in this paragraph are conclusions of law to which no response is required. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of injury, losses and/or damages.

45. Denied. The allegations in this paragraph are conclusions of law to which no response is required. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of injury, losses and/or damages.

WHEREFORE, Answering Defendant, Ginsburg Bakery, Inc., demands judgment in its favor together with attorney's fees and cost of suit.

SECOND COUNT -- STRICT LIABILITY/PRODUCTS LIABILITY
PLAINTIFF v. BAKER BOYS, LLC, GINSBURG BAKERY, INC., JOHN GALT, LLC,
151 FOODS, LLC, OMNI BAKERY AND MULLOY FAMILY, LLC

46. Answering Defendant incorporates by reference its responses to paragraphs 1 through 45 as if fully set forth at length herein.

47. Denied. The allegations in this paragraph and sub-paragraphs of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent the allegations in this paragraph refer to parties other than Answering Defendant, no response is required from Answering Defendant. Should a responsive pleading be required, Answering Defendant specifically

denies all allegations of liability producing conduct either as alleged in this paragraph of Plaintiff's Complaint or in any other manner whatsoever.

48. Denied. The allegations in this paragraph and sub-paragraphs of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent the allegations in this paragraph refer to parties other than Answering Defendant, no response is required from Answering Defendant. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of liability producing conduct either as alleged in this paragraph of Plaintiff's Complaint or in any other manner whatsoever.

49. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent the allegations in this paragraph refer to parties other than Answering Defendant, no response is required from Answering Defendant. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of breach of duty either as alleged in this paragraph of Plaintiff's Complaint or in any other manner whatsoever. Answering Defendant specifically denies all allegations of injuries, losses and/or damages.

50. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent the allegations in this paragraph refer to parties other than Answering Defendant, no response is required from Answering Defendant. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of breach of duty either as alleged in this paragraph of Plaintiff's Complaint or in any other manner whatsoever. Answering Defendant specifically denies all allegations of injuries, losses and/or damages.

51. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent the allegations in this paragraph refer to parties other than Answering Defendant, no response is required from Answering Defendant. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of breach of duty

either as alleged in this paragraph of Plaintiff's Complaint or in any other manner whatsoever.

Answering Defendant specifically denies all allegations of injuries, losses and/or damages.

52. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent the allegations in this paragraph refer to parties other than Answering Defendant, no response is required from Answering Defendant. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of breach of duty either as alleged in this paragraph of Plaintiff's Complaint or in any other manner whatsoever. Answering Defendant specifically denies all allegations of injuries, losses and/or damages.

WHEREFORE, Answering Defendant, Ginsburg Bakery, Inc., demands judgment in its favor together with attorney's fees and cost of suit.

**THIRD COUNT – NEGLIGENCE, INTENTIONAL WRONG
PLAINTIFF v. BAKER BOYS, LLC, ONLY**

53. Answering Defendant hereby incorporates its responses to paragraphs 1 through 52 as though the same were fully set forth at length herein.

54. Denied. The allegations in this paragraph are conclusions of law to which no response is required. By way of further response, the allegations in this paragraph refer to parties other than Answering Defendant and, therefore, no response is required from Answering Defendant.

55. Denied. The allegations in this paragraph are conclusions of law to which no response is required.

56. Denied. The allegations in this paragraph are conclusions of law to which no response is required. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of injuries, damages, and/or losses.

57. Denied. The allegations in this paragraph are conclusions of law to which no response is required. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of injuries, damages, and/or losses.

58. Denied. The allegations in this paragraph are conclusions of law to which no response is required. Should a responsive pleading be required, Answering Defendant specifically denies all allegations of injuries, damages, and/or losses.

WHEREFORE, Answering Defendant, Ginsburg Bakery, Inc., demands judgment in its favor together with attorney's fees and cost of suit.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a cause of action against Answering Defendant.
2. Plaintiff's Complaint, and the causes of action set forth therein, are barred by the applicable statutes of limitations and/or by the substantive law of the State of New Jersey.
3. The injuries, damages, and/or losses complained of in Plaintiff's Complaint were proximately caused by the acts or omissions of Plaintiff and/or other parties, persons, or entities over whom Answering Defendant had no legal responsibility nor control and for whom Answering Defendant cannot be held liable.
4. Plaintiff assumed full risk of the consequences of her actions and omissions thereby precluding any recovery by Plaintiff based upon the doctrine of assumption of the risk.
5. If Answering Defendant is found to be liable, which liability is specifically denied, it is asserted that Plaintiff's own liability was greater than the liability of Answering Defendant and, accordingly, Plaintiff is barred from recovery.
6. If Answering Defendant is found to be liable, which liability is specifically denied, it is asserted that Plaintiff's own liability must be subtracted from any eventual verdict in this matter.
7. Answering Defendant pleads the Comparative Negligence Statute of the State of New Jersey and all available defenses contained therein.
8. Answering Defendant in no way breached any duty owed to Plaintiff.
9. Answering Defendant performed each and every duty owed to Plaintiff.

10. In the event that liability is proven against Answering Defendant, such liability was not the proximate cause or foreseeable consequences of any injuries or damages that Plaintiff may have sustained.

11. Plaintiff's claims against Answering Defendant are barred by collateral estoppel and/or res judicata.

12. Plaintiff's claims against Answering Defendant are barred, in whole or in part, by the doctrine of waiver and estoppel.

13. Plaintiff's claims against Answering Defendant are barred, in whole or in part, by their consent to, or waiver of, the actions complained of and/or the relief requested.

14. Plaintiff's claims against Answering Defendant are barred in whole or in part by her failure to mitigate the alleged damages, if any.

15. Plaintiff's claims against Answering Defendant are barred, in whole or in part, because the alleged harm to it, if any, was caused by persons other than Answering Defendant and over whom Answering Defendant had no control and/or no duty to control.

16. Plaintiff's alleged damages, if any, were not proximately caused by any actions, omissions, or other conduct of Answering Defendant.

17. Answering Defendant breached no duty, contractual or otherwise, owed to Plaintiff.

18. Any sums found to be due and owing to Plaintiff, if any, are not due from Answering Defendant.

19. Plaintiff's claims against Answering Defendant are barred in whole or in part because Plaintiff's alleged damages, if any, are too remote to assess or are too speculative or are otherwise not recoverable.

20. Plaintiff's claims against Answering Defendant are barred in whole or in part to the extent that the alleged harm to them, if any, was proximately caused by the negligence or other

wrongful conduct of Plaintiff and/or other parties and/or their employees, agents, servants, or workmen.

21. Plaintiff's claims against Answering Defendant are barred in whole or in part to the extent that the alleged harm to her, if any, was caused by the intervening and/or superseding acts of Plaintiff and/or other parties and/or their employees, agents, servants, or workmen and/or other entities.

22. Plaintiff's claims against Answering Defendant for her alleged damages, if any, should be offset or reduced to the extent such damages are attributable to the negligence or other wrongful conduct of Plaintiff and/or other parties and/or their employees, agents, servants, or workmen and/or other entities.

23. Plaintiff had knowledge, or upon the exercise of reasonable care should have had knowledge, of the alleged deficiencies, inadequacies, defects, errors, omissions, and/or improprieties as alleged in Plaintiff's Complaint.

24. Plaintiff's alleged losses and/or damages, if any, were caused by her own comparative negligence and, therefore, are barred and/or limited.

25. Plaintiff failed to join all necessary and indispensable parties.

26. This Court lacks jurisdiction over the subject matter of this action.

27. This Court lacks personal jurisdiction over Answering Defendant.

28. Any act or omission on the part of Answering Defendant that is alleged to constitute liability producing conduct was not a substantial cause or factor that led to the alleged harm, loss, and/or damage.

29. Answering Defendant pleads as a defense any and all waivers and/or releases entered into by Plaintiff or to be entered into by Plaintiff, and states that any such waivers and/or releases

eliminate and/or diminish the liability and/or damages of Answering Defendant in this action and/or may bar Plaintiff's recovery.

30. Plaintiff's Complaint, and the causes of action set forth therein, are barred by Plaintiff's failure to comply with the terms of one or more contractual alternative dispute resolution and/or mandatory arbitration clauses in one or more contracts between Plaintiff and other parties to this litigation.

31. Plaintiff and/or persons or entities other than Answering Defendant subjected the product at issue to abuse, misuse, alteration, modification, and/or may have been negligent relative to the use, maintenance, and/or servicing of the product at issue, thus causing the condition(s) identified in the Plaintiff's Complaint.

32. The product at issue was modified and/or altered by third parties and this acts as a superseding cause to any claim against Answering Defendant.

33. Answering Defendant cannot be held vicariously liable to the Plaintiff for acts of third-parties who were not the agents, servants, ostensible agents, and/or employees of this Answering Defendant.

34. If any product that was designed, manufactured, and/or sold by Answering Defendant was involved in the events in which this action is based, then any damages which may have been sustained in connection with the product are not due to any defect in the product itself, but were caused by the substantial change, modification, or alteration of the product which change(s), modification(s) or alteration(s) were not performed by Answering Defendant or by any other party for whose conduct Answering Defendant is responsible.

35. If it should be proved at the trial of this action that any product that was designed, manufactured, and/or sold by Answering Defendant was involved in the events upon which this action is based, then any injury and/or damages which may have been sustained in connection with

that product were not due to any defect in the product itself, but were caused by the abnormal, improper, unintended, and unforeseeable use of the product by Plaintiff or by some other party or parties for whom Answering Defendant is not responsible.

36. Answering Defendant did not make any express or implied warranties to Plaintiff.

37. Plaintiff's alleged injuries and/or damages were caused in whole, or in part, by the misuse and/or abuse of the product in question which was not foreseeable to Answering Defendant.

38. The product in question was altered, abused, damaged, or used in a manner not consistent with its intended use and/or by an intended user and, as a result, any claims under the Products Liability Act, N.J.S.A. 2A:58C-1, et seq., are barred together with any claims asserting breach of warranty.

39. The product alleged to be sold and/or supplied by Answering Defendant was not defective and if a defect is proven to exist, it was created after the product left the control of Answering Defendant.

40. The product alleged to be sold and/or supplied was safe for its intended and normal use and the condition giving rise to the alleged defect was caused by the improper or abnormal use, maintenance, or handling of the product by persons over whom Answering Defendant had no control after it left the control of Answering Defendant.

41. Any alleged culpable conduct of Answering Defendant, none being admitted, was so insubstantial as to be insufficient to be a proximate or substantial contributing cause of Plaintiff's alleged injuries.

42. Answering Defendant pleads all defenses available to it under the New Jersey Product Liability Act, N.J.S.A. 2A:58C-1, et seq., including, but not limited to, the "state of the art" defense, N.J.S.A. 2A:58C-3a(1), and the "consumer expectation/obvious danger" defense, N.J.S.A. 2A:58C-3a(2).

43. Plaintiff's claims against Answering Defendant do not justify an award of punitive damages against Answering Defendant.

44. Plaintiff's demand for punitive damages fails to state a claim upon which relief can be granted under the substantive law of the State of New Jersey.

45. The award of punitive damages alleged and demanded in Plaintiff's Complaint when based upon the evidence in this case would violate Answering Defendant's rights under the common law of the State of New Jersey, is penal in nature, and is tantamount to the imposition of a criminal fine in violation of the Constitution, statutes, and laws of the State of New Jersey and the Constitution of the United States.

46. The guidelines, standards, and/or instructions for the imposition of punitive damages are vague, indefinite, and uncertain such that they violate the Constitution, statutes, and laws of the State of New Jersey and the Constitution of the United States.

47. The guidelines, standards, and/or instructions for the imposition of punitive damages do not apprise Answering Defendant of the conduct that would be subject to criminal penalties and, thus, exposes Answering Defendant to multiple punishments and fines for the same acts in violation of the Constitution, statutes, and laws of the State of New Jersey and the Constitution of the United States.

48. Answering Defendant requires Plaintiff to prove her demand for punitive damages, if permissible by law, by clear and convincing evidence or beyond a reasonable doubt.

49. Answering Defendant pleads as a defense the Punitive Damages Act, N.J.S.A. 2A:15-5.9, et seq., and any and all defenses available therein.

WHEREFORE, Answering Defendant, Ginsburg Bakery, Inc., demands judgment in its favor together with attorney's fees and costs of suit.

CROSSCLAIMS FOR CONTRIBUTION

While denying any and all liability on its part, Answering Defendant demands contribution against Defendants, Baker Boys, LLC and John Galt, LLC, pursuant to the Joint Tortfeasor Contribution Law, N.J.S.A. 2A: 53-1 et seq., and the Comparative Negligence Act of New Jersey, N.J.S.A. 2A: 15-5.3.

CROSSCLAIMS FOR EXPRESS AND/OR IMPLIED INDEMNIFICATION

1. Defendant, Ginsburg Bakery, Inc., hereby demands judgment of indemnity pursuant to contract, whether express or implied, providing a right of indemnity in favor of Ginsburg Bakery, Inc., whether directly or as third-party beneficiary to said contract(s), and/or at common law, against Baker Boys, LLC and John Galt, LLC with respect to attorney's fees, costs of suit, and any and all sums potentially owed to any party as well as any and all other indemnification payments made by way of settlement or judgment against Ginsburg Bakery, Inc.

2. Defendant, Ginsburg Bakery, Inc., seeks not only contractual indemnification from Baker Boys, LLC and John Galt, LLC pursuant to indemnification language in any contract available to it, either directly or as third-party beneficiary, for all costs including but not limited to, attorney's fees, etc., as well as all sums paid by way of settlement or judgment, but also seeks damages for the failure of Baker Boys, LLC and John Galt, LLC to name Ginsburg Bakery, Inc. as an additional insured on a policy of insurance such that the insurance provides a defense and indemnification obligation, either express or implied, on the part of the insurance carrier in favor of Ginsburg Bakery, Inc. on this cause of action.

3. Ginsburg Bakery, Inc. makes such claim of breach of contract against Baker Boys, LLC and John Galt, LLC regarding the failure to place the appropriate additional insured coverage in favor of Ginsburg Bakery, Inc.

ANSWER TO ALL CROSSCLAIMS

Answering Defendant denies each and every allegation attempting to place responsibility on it made by any other parties crossclaim for contribution and/or indemnity.

DEMAND FOR STATEMENT OF DAMAGES

Answering Defendant demands that Plaintiff, through counsel, serve a statement of damages claimed within five (5) days pursuant to R. 4:5-2.

NOTICE PURSUANT TO R. 1:5-1(a) and R. 4:17-4(c)

Take note that the undersigned attorney, counsel for Answering Defendant, does hereby demand pursuant to R. 1:5-1(a) and R. 4:17-4(c), that each party herein serving pleadings and interrogatories and receiving answers thereto, serve copies of all such pleadings and answered interrogatories received by any and all parties, including any documents, papers, and other materials referred to therein, upon the undersigned attorneys and take notice that this is a continuing demand.

NOTICE OF ALLOCATION

Pursuant to R. 4:7-5(c) and Young v. Latta, 120 N.J. 584 (1991), this Answering Defendant hereby advises that if any Defendant settles the within matter with Plaintiff at any time prior to the conclusion of trial, the liability of any settling party shall remain at issue and this Answering Defendant shall seek an allocation and/or percentage of fault by the finder of fact against any such settling party and/or a credit in favor of this Answering Defendant consistent with such allocation.

JURY DEMAND

Trial by jury of twelve is hereby demanded as to all issues set forth herein.

DESIGNATION OF TRIAL COUNSEL

Please be advised that pursuant to R. 4:25-4 and R. 4:5-1(c), Gerald J. Valentini, Esquire and Michael P. Rausch, Esquire are hereby designated as trial counsel in the above captioned litigation on behalf of Ginsburg Bakery, Inc.

CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)

I hereby certify, pursuant to R. 4:5-1(b)(2), that the matter in controversy is not the subject of any other action in any other Court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated. I further certify that, to the best of my knowledge, no other parties should be joined in this action at this time.

CERTIFICATION PURSUANT TO R. 1:38-7(c)

I hereby certify, pursuant to R. 4:5-1(b)(3), that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

DEASEY, MAHONEY & VALENTINI, LTD.
Attorneys for Defendant,
Ginsburg Bakery, Inc.

BY: Michael P. Rausch
Michael P. Rausch, Esquire

Dated: 9/6/17

DEASEY, MAHONEY & VALENTINI, LTD.

BY: Michael P. Rausch, Esquire (N.J. Bar ID: 053251994)

923 Haddonfield Road

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Cherry Hill, NJ 08002

856.429.6331

Attorneys for Defendant,

Ginsburg Bakery, Inc.

DIANA M. TRUJILLO,

Plaintiff,

v.

BAKER BOYS, LLC; GINSBURG BAKERY,
INC.; JOHN GALT, LLC; 151 FOODS, LLC;
OMNI BAKERY; MULLOY FAMILY, LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – ATLANTIC COUNTY

DOCKET NO.: ATL-L-1322-17

CIVIL ACTION

PROOF OF MAILING

I hereby certify that a true and correct copy of the foregoing Answer of Defendant, Ginsburg Bakery, Inc., to Plaintiffs' Complaint with Affirmative Defenses, Crossclaims, Answer to Crossclaims, Demand for Jury Trial, Demand for Statement of Damages Claimed, Demand for Documents, Notice of Allocation, and Designation of Trial Counsel was served by First-Class mail upon the following counsel of record:

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Attorney for Defendant Formica Bros. Bakery

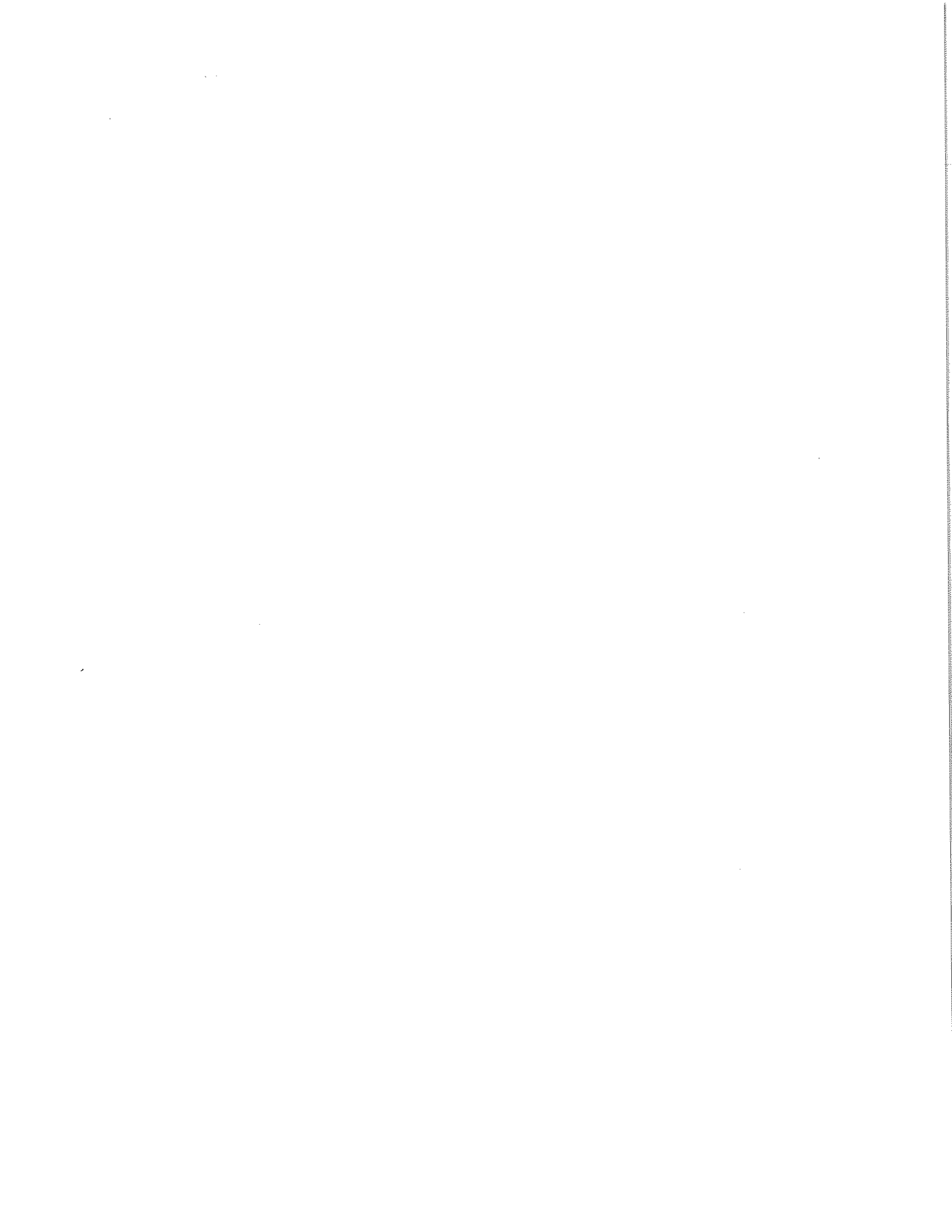
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DEASEY, MAHONEY & VALENTINI, LTD.
Attorneys for Defendants,
Ginsburg Bakery, Inc.

BY: Michael P. Rausch
Michael P. Rausch, Esquire

Dated: 9/6/17



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WILLIAM M. DAVIS

October 20, 2017

Honorable James P. Savio
Atlantic County Superior Court
Civil Courthouse
1201 Bacharach Blvd.
Atlantic City, NJ 08401

RE: Trujillo, Diana v Baker Boys, LLC, et al
Date of Loss : May 3, 2016
Docket No. : L-1322-17
Our File No. : 74892-D2

Dear Judge Savio:

This office represents defendant, Baker Boys, LLC (hereinafter "Baker Boys") with regard to the above captioned matter. Currently returnable before Your Honor on October 27, 2017 is Baker Boys' motion for summary judgment as to Count I and Count II of plaintiff's Complaint. I am in receipt of opposition from both plaintiff and co-defendant, Ginsburg Bakery, Inc. (hereinafter "Ginsburg Bakery"), and take this opportunity to reply.

Plaintiff only opposes the portion of Baker Boys' motion granting summary judgment as to Count II of plaintiff's Complaint, while defendant, Ginsburg Bakery, requests the Court deny summary judgment in its entirety based upon incomplete

discovery. It is noteworthy that neither plaintiff nor co-defendant dispute the fact that Baker Boys was, in fact, the plaintiff's employer at the time the incident occurred and that she was in the course of her employment when she was injured. In addition, neither plaintiff nor co-defendant dispute the fact that plaintiff applied for and was given workers' compensation benefits under Baker Boys' workers' compensation policy with Nationwide Insurance Company.

Pursuant to N.J.S.A. 34:15-8 of the workers' compensation statute, such agreement shall be "a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this article and an acceptance of all the provisions of this article, and shall bind the employee and for compensation for the employee's death shall bind the employee's personal representatives, surviving spouse and next of kin, as well as the employer, and those conducting the employer's business during bankruptcy or insolvency." [Emphasis added.] N.J.S.A. 34:15-8 unequivocally compels the surrender of any other right of recovery against an employer beyond the workers' compensation benefits. Taylor v. Pfaudler Sybron Corp., 150 NJ Super. 48 (App. Div. 1977). Only when the employer committed an intentional wrong which requires actual intent or a "substantial certainty" that injury will occur as a result of its actions. See, DeLane ex rel. Delane v. City of Newark, 343 N.J. Super. 225 (App. Div. 2001).

The statute is clear. The unambiguous language of the statute confirms that the plaintiff, by electing to file a claim with Baker Boys' workers' compensation carrier, is foreclosed from pursuing any other method of recovery against her employer, Baker Boys.

Plaintiff contends that there are issues of fact as to whether Baker Boys', a bakery engaged in the business of baking and packaging bread, played a role in the manufacturing, designing or maintaining of a mobile conveyor and therefore Baker Boys may have had an independent duty outside of its status as an employer.

Co-defendant likewise relies upon the Dual Persona Doctrine a/k/a the Dual Capacity Doctrine in support of its opposition. However, defendant's reliance on this doctrine is misplaced. The Dual Persona Doctrine stands for the proposition that an employer normally shielded from tort liability by the exclusive remedy principle in workers' compensation may be liable in tort to its own employee if it occupies, in addition to its capacity as an employer, a second capacity that confers on it obligations independent of those imposed upon it as an employer. Kaczorowska v. National Envelope Corp., 342 NJ Super. 580 (App. Div. 2001). In order for the Dual Persona Doctrine to apply, it must be "possible to say that the duty arose *solely* from the *non-employer* persona, rather than the other way around". Anderson v. A.J. Friedman

Supply Co., 416 N.J. Super. 46, 67 (App. Div. 2010). "For only in such a case can the second persona be really distinct from the employer persona." Ibid.

The Appellate Division made clear in Kaczorowska that although the Dual Persona Doctrine may have viability in some circumstances, it is clearly inapplicable where the employee is injured during the course of his employment on the premises of his employer. Id. at 593. In fact, in New Jersey, the Dual Persona Doctrine is disfavored, if not outright disapproved. DeFigueiredo v. US Metals Refining Company, 235 NJ Super. 458, 459 (Law Div. 1988) aff'd. 235 NJ Super. 407 (App. Div. 1989). More importantly, the Dual Persona Doctrine is not applicable where **workers were injured during the course of employment on the premises of the employer.** Id. at 458.

In Taylor, the plaintiff was injured in an industrial accident during the course of his employment with Ionac Chemical Company, a division of Sybron Corporation. Plaintiff filed a workers' compensation petition and received an award for his work-related injuries. Id. at 49. Nevertheless, he instituted an action for injuries resulting from the same accident against defendant Pfaudler Company, a division of Sybron, which was engaged in the manufacture and sale of equipment in the field of chemical manufacturing on which he was injured. Ibid.

The trial court granted defendant's motion for summary judgment based upon the workers' compensation bar. In affirming the trial court's dismissal of plaintiff's claims, the Appellate Division agreed that Pfaudler was only "a division of plaintiff's employer and that plaintiff's right to worker's compensation benefits constitutes his exclusive remedy against that employer or any of its divisions." *Id.* at 50. According to the court, N.J.S.A. 34:15-8 "unequivocally compels a surrender of any other right of recovery against any employer beyond the worker's compensation benefits". *Ibid.* The mere use of divisions or departments, or the labeling of these divisions, does not warrant a deviation from the express legislative policy which holds. *Id.* at 51.

With regard to co-defendant's crossclaims, as set forth more fully in our moving papers, any crossclaims for contribution and/or implied indemnification are also barred by the Workers' Compensation Statute. The case relied upon by both plaintiff and co-defendant, Stephenson v. RA Jones & Company, 103 NJ 194 (1986), actually supports this defendant's position. The plaintiff and defendant rely upon the dissent in the Stephenson decision which, of course, is not good law. The court's actual opinion held that the third party Jones' claim for contribution and implied indemnity against the employer would not override the exclusive remedy provisions of the Workers' Compensation Act. *Id.* at 196.

In Stephenson, the plaintiff was injured in the course of her employment with Sunshine Biscuits, Inc. ("Sunshine"), while operating a cartooning machine manufactured by R.A. Jones & Co., Inc. ("Jones"). Plaintiff recovered workers compensation benefits from Sunshine and filed suit against Jones. Jones in turn filed a Third Party Complaint against Sunshine seeking contribution and implied indemnification. Id. at 196. Sunshine moved for summary judgment on the third party claim which was granted by the trial court and affirmed by the Appellate Division. The New Jersey Supreme Court affirmed the judgment of the Appellate Division and determined that Jones' claim for contribution and implied indemnification does not override the exclusive-remedy provision of the Workers Compensation Act. Ibid.

With regard to Ginsburg Bakery's claims of contractual indemnification, although a third party can pursue a claim for contractual indemnification from an employer, Ginsburg has not provided any documentation in support of that argument. As the Court is well aware, bare conclusions in the pleadings without factual support and affidavits will not defeat a motion for summary judgment. Miller v. Bank of America Home Loan, 439 NJ Super. 540, 551 (App. Div. 2015). Furthermore, summary judgment cannot be resisted by speculation or fanciful arguments ... Memo v. Sun National Bank, 374 NJ Super. 556, 563 (App. Div. 2005).

Clearly, if there was a contract which required Baker Boys to indemnify Ginsburg Bakery, Ginsburg would have produced that contract in response to this motion. It would not need to engage in discovery to produce a copy of its own agreement.

In fact, this matter was previously filed in the Court of Common Pleas, Philadelphia County, Pennsylvania in 2016. Answers were filed and depositions on jurisdictional issues were conducted. Ultimately, the claim was dismissed for lack of jurisdiction. However, it is important to note that the same firm defending Ginsburg Bakery in this matter, Deasey Mahoney & Valentini also defended Ginsburg Bakery in that Pennsylvania action. Counsel would undoubtedly be in possession of any contract between Ginsburg and Baker Boys now, over a year and a half after the Pennsylvania action was instituted. In the absence of such a contract, this argument cannot prevent the granting of summary judgment.

For the foregoing reasons, Baker Boys requests that summary judgment be granted in its entirety as to Counts I and II of the Complaint.

Respectfully submitted,


STEPHEN E. GERTLER

SEG/mm

cc: Mitchell Waldman, Esq.
Michael P. Rausch, Esq.
Susan B. Ayres, Esq.