

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COMMUNITY PRESCHOOL & NURSERY
OF EAST LIBERTY,

Plaintiff,

09cv0979

ELECTRONICALLY FILED

v.

TRI-STATE REALTY, INC.,

Defendant.

**MEMORANDUM AND ORDER DENYING DEFENDANT'S
SECOND PARTIAL MOTION TO DISMISS (DOC. NO. 31)**

Before the Court is defendant Tri-State Realty, Inc.'s ("Tri-State") "Partial Motion to Dismiss" (Doc. No. 31) plaintiff's Amended Complaint (Doc. No. 24) pursuant to Fed.R.Civ.P. 12(b)(6) and 12(f). After careful consideration of said motion and the briefs in support and in opposition thereto, the Court will deny Tri-State's Partial Motion to Dismiss.

Plaintiff, Community Preschool & Nursery of East Liberty, LLC, filed its Amended Complaint following this Court's Memorandum and Order of October 6, 2009 (Doc. No. 20), granting defendant's Partial Motion to Dismiss in part, and dismissing Counts II and III of plaintiff's initial complaint. The Amended Complaint adds a Breach of Contract claim, the main target of the Partial Motion to Dismiss, which also seeks to dismiss plaintiff's claim for prejudgment interest arising from the alleged breach of contract.

Applying the standards set forth in the Memorandum and Order of October 6, 2009 (Doc. No. 20), the Court finds that plaintiff has adequately pleaded the breach of contract claim and its entitlement to prejudgment interest under Pennsylvania law to survive the motion to dismiss at this preliminary stage of the proceedings.

For the foregoing reasons,

IT IS HEREBY ORDERED that Tri-State Reality, Inc.'s Partial Motion to Dismiss (Doc. No. 31) is DENIED, without prejudice to raise the issues set forth therein at the appropriate time following discovery.

SO ORDERED this 9th day of November, 2009.

s/Arthur J. Schwab

Arthur J. Schwab

United States District Judge

cc: All counsel of record