

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PRINTING IMAGES CORPORATION,	:	
	:	CIVIL ACTION
Plaintiff,	:	
v.	:	
	:	NO. 01-CV-5103
ALLIED SERVICES, LLC,	:	
Defendant.	:	

MEMORANDUM-ORDER

Green, S.J.

March _____, 2002

Presently before the Court is Defendant Allied Services, LLC's Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim Pursuant to Fed.R.Civ.P. 12(b)(6), Plaintiff's Response in opposition thereto and Defendant's Reply. For the reasons set forth below, Defendant's motion will be denied.

A motion to dismiss a complaint for failure to state a cause of action may be granted only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Although "a court need not credit a complaint's 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss," Morse v. Lower Merion School District, 132 F.3d 902, 906 (3d Cir. 1997) (citations omitted), because granting such a motion results in a determination on the merits at an early stage of the plaintiffs' case, the court "must . . . construe the complaint in the light most favorable to the [plaintiff], and determine whether, under any reasonable reading of the pleadings, the [plaintiff] may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 664-65 (3d Cir. 1988), *cert. denied*, 489 U.S. 1065 (1989).

Plaintiff and Defendant are two business entities that offer programs to credit unions and

other financial institutions that have entered into balloon note financing arrangements with automobile owners. Balloon note financing requires these financial institutions to base the loan amortization on an estimated end of term balloon payment. However, with many balloon note financing arrangements, the financial institution waives the borrower's obligation to make the final balloon payment and secures insurance which guarantees that upon termination of the financing term, the residual value of the vehicle is equal to the final balloon payment. Plaintiff's program, "MAPS", and Defendant's program, "Payment Shaver", are two competitive programs which provide such insurance to protect financial institutions from losses that may occur if those institutions have improperly estimated the residual value of the vehicle. (See Compl. ¶¶ 7-9.)

According to the Complaint¹, filed on or about October 9, 2001, Plaintiff avers that in an effort to market its Payment Shaver program, Defendant provided credit unions and other financial institutions with a marketing piece that compared Plaintiff's MAPS program to Defendant's Payment Shaver Program. (See Compl. ¶ 10.) Plaintiff alleges that the marketing piece is defamatory in that it contains erroneous and misleading statements which prejudice Plaintiff in the conduct of its business and deters others from dealing with it. Plaintiff seeks injunctive relief, damages in excess of \$75,000, a retraction, and attorney's fees and costs.

Pursuant to Fed.R.Civ.P. 12(b)(6), Defendant moves to dismiss Plaintiff's Complaint in its entirety, claiming that its marketing piece only encourages financial institutions to ask a series of straightforward questions about Plaintiff's MAPS program and therefore, makes no false statements of fact regarding Plaintiff's program. (See Def.'s Mot. to Dismiss ¶¶ 3-4.)

Essentially, Defendant contends that Plaintiff's Complaint fails to satisfy the elements required

¹This Court has jurisdiction pursuant to 28 U.S.C. § 1332.

for a defamation action.² (See Def.'s Mot. to Dismiss ¶ 6.)

Accepting all of Plaintiff's allegations as true, this Court finds that Plaintiff has alleged facts sufficient to withstand Defendant's motion to dismiss. Defendant's arguments, that as a matter of law, the marketing piece is not defamatory and Plaintiff is unable to establish a cause of action for defamation because all representations made in the marketing piece are true, are unavailing. Under the standard for a motion to dismiss, I must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff and may grant such a motion only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. At this time, I cannot conclude that no cause of action for defamation could arise out of the Complaint. Accordingly, I will deny Defendant's motion.

AND NOW, this _____ day of March, 2002, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss is **DENIED** .

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J

²Under Pennsylvania law, in order to establish a claim for defamation, the plaintiff has the burden of proving: (1) the defamatory character of the communication; (2) its publication by the defendant; (3) its application to the plaintiff; (4) the understanding by the recipient of its defamatory meaning; (5) the understanding by the recipient that the communication was intended to be applied to plaintiff; (6) special harm resulting to the plaintiff from its publication; and (7) abuse of a conditionally privileged occasion. 42 Pa. Cons. Stat. § 8343.