



await a hearing on an application for preliminary injunction, in due course; and (2) it appeared probable that plaintiff had an adequate remedy at law (a claim for damages) in any event.

Defendant has now filed a motion to dismiss plaintiff's complaint in its entirety, on the theory that equitable relief is not available and that the complaint does not actually assert a claim for damages. I agree that plaintiff has not established a basis for injunctive relief, since plaintiff has an adequate remedy at law for damages. I am also of the view, however, that plaintiff's pleadings can properly be interpreted as asserting a claim for damages, in the alternative. Accordingly, defendant's motion to dismiss will be denied.

An Order follows.

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

WSC WARMINSTER PLAZA  
ASSOCIATES, LP

v.

OFFICE DEPOT, INC.

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CIVIL ACTION

NO. 08-cv-03208-JF

ORDER

AND NOW, this 23<sup>rd</sup> day of February 2009, IT IS ORDERED:

1. Defendant's motion to dismiss plaintiff's complaint is DENIED.
2. Plaintiff may continue to pursue its claims for damages.

BY THE COURT:

/s/ John P. Fullam  
John P. Fullam, Sr. J.