

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2457

BRANDYWINE VILLAGE ASSOCIATES,

Appellant

v.

CARLINO EAST BRANDYWINE, LP; EAST BRANDYWINE TOWNSHIP;
CHRISTINA B. WATTERS; KATHERINE M. KETTLETY, IN THEIR INDIVIDUAL
CAPACITIES AND AS CO-ADMINISTRATORS OF THE ESTATE OF FRANK AND
BEATRICE WATTERS; FRANK E. WATTERS, JR.; THOMAS R. WATTERS;
GIANT COMPANY, LLC

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D. C. No. 5-16-cv-05209)
District Judge: Honorable Jeffrey L. Schmehl

Argued on May 7, 2024

Before: MATEY, MONTGOMERY-REEVES and ROTH, Circuit Judges
(Opinion filed: August 5, 2024)

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(Argued)

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Christina B. Watters, Katherine M. Kettlety, In their
Individual Capacities and as Co-Administrators of the
Estates of Frank and Beatrice Watters, Frank E. Watters, Jr.
and Thomas R. Watters

Warren E. Kampf **(Argued)**
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Counsel for Appellee Giant Company, LLC

OPINION*

ROTH, Circuit Judge

Brandywine Village Associates (BVA) sued several Defendants¹ for actions relating to the development of a supermarket in Brandywine Township, Pennsylvania. The District Court dismissed all claims and entered final judgment against BVA.² We will affirm the order of the District Court and put an end to this federal litigation.³

The District Court had jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367. We have jurisdiction under 28 U.S.C. § 1291. We exercise de novo review of an appeal of a motion to dismiss, and we take as true all well-pleaded allegations.⁴

BVA's Sherman Act claims were properly dismissed because BVA failed to allege antitrust injury and therefore lacks standing. Likewise, BVA's pendant unfair competition claims were properly dismissed for failure to state an injury, and its abuse of process claims

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

¹ Defendants include Carlino East Brandywine, L.P. (Carlino); East Brandywine Township (Town); The Giant Company, LLC (Giant); and Christina B. Watters, Frank E. Watters, Jr., Thomas R. Watters, and Katherine M. Kettlety (Individual Landowners).

² The District Court granted the Town's Motion to Dismiss on March 26, 2018. The District Court granted Carlino's Second Motion to Dismiss, which it construed as a Motion for Reconsideration, on August 1, 2023. BVA appeals the District Court's orders dismissing all claims against Defendants.

³ We write only for the parties and will therefore limit our discussion to our holding.

⁴ *In re NAHC, Inc. Sec. Litig.*, 306 F.3d 1314, 1322 (3d Cir. 2002). We need not accept as true "unsupported conclusions and unwarranted inferences." *Maio v. Aetna, Inc.*, 221 F.3d 472, 481 (3d Cir. 2000) (citations omitted).

were properly dismissed for the same reason. BVA's claims for specific performance of the Cross Easement Agreement are moot and were properly dismissed. Finally, BVA's claims for breach of contract of the Cross Easement Agreement are estopped and were properly dismissed.⁵

We will affirm the order of the District Court dismissing all claims against Defendants with prejudice and enter final judgment against BVA.

⁵ See *Carlino E. Brandywine, L.P. v. Brandywine Vill. Ass'n*, 197 A.3d 1189, 1201–02 (Pa. Super. Ct. 2018); see also *Condemnation of Fee Simple Title to 0.069 Acres*, 2018 WL 3213113, *9-10 (Pa. Commw. Ct. July 2, 2018), *app. den.*, 202 A.3d 684 (Pa. 2018).