PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

_____

No. 20-2848

_____

HOST INTERNATIONAL, INC.,
Appellant

v.

MARKETPLACE, PHL, LLC,

_____

On Appeal from United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:19-cv-02036)
District Judge: Honorable John M. Gallagher

_____

Argued September 24, 2021

Before: CHAGARES, *Chief Judge*, HARDIMAN, and
MATEY, *Circuit Judges*.

(Filed: April 27, 2022)

Thomas C. Goldstein [ARGUED]
Eric F. Citron
Goldstein & Russell, PC
7475 Wisconsin Avenue, Suite 850
Bethesda, MD 20814

Howard I. Langer
Edward Diver
Peter E. Leckman
Langer Grogan & Diver, PC
1717 Arch Street, Suite 4130
Philadelphia, PA 19103

R. Paul Yetter
Bryce L. Callahan
Yetter Coleman LLP
811 Main Street, Suite 4100
Houston, TX 77002
Counsel for Appellant

Angelo I. Amador
Restaurant Law Center
2055 L Street, NW, 7th Floor
Washington, DC 20036

Gabriel K. Gillett
Kelsey L. Stimple
Jenner & Block LLP
353 North Clark Street, Suite 4500
Chicago, IL 60654
Counsel for Restaurant Law Center, Amicus Curiae in Support of Appellant

Leslie E. John [ARGUED]
Jason A. Leckerman
Elizabeth P. Weissert
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
Counsel for Appellee

OPINION

MATEY, *Circuit Judge*.

After winning a bid for retail concession space at Philadelphia International Airport ("PHL"), Host International, Inc. ("Host") heard a common question: "Is Pepsi okay?" Host decided that it was not and, eager to pour what it pleased, filed an antitrust action. From that most ordinary origin bubbles up the novel question of whether an exclusive beverage agreement at an airport can be challenged under the federal antitrust laws. We conclude that it cannot, because Host lacks antitrust standing and has not adequately pled a violation of Section 1 of the Sherman Act. So we will affirm the District Court's judgment.

I.

Host is a familiar face to travelers, operating food, beverage, and merchandise concessions at over 120 airports globally, including PHL. The City of Philadelphia owns PHL and uses a private firm, MarketPlace, PHL, LLC ("MarketPlace"), as landlord. PHL is a big operation, serving

more than thirty million passengers each year, and producing equally big food and beverage sales, more than $100M in 2016.

After a competitive bidding process, Host won two concession spots at PHL, planning to open a coffee shop in one, and a restaurant in the other. But negotiations between Host and MarketPlace for a lease hit a wall when MarketPlace insisted on a term allowing it to "enter into agreements . . . granting . . . third-parties exclusive or semi-exclusive rights to be sole providers of certain foods, beverages or other types of products." (App at 24.) That included a "pouring-rights agreement" ("PRA"), "granting a beverage manufacturer, bottler, distributor or other company (e.g., Pepsi or Coca-Cola) the exclusive control over beverage products advertised, sold and served at [PHL]." (App. at 24 (alteration in original)). Host balked and demanded that the PRA be left out. MarketPlace refused, and Host walked away from the deal and into federal court.

Host's Complaint sketches a "scheme to gain control over the sale of beverages at PHL" by tying the PRA to leases for commercial space. (App. at 14.) If successful, Host alleges, MarketPlace would enjoy outsized profits "at the expense of PHL consumers, competing beverage suppliers, and lessees of concession and retail space at PHL." (App. at 15.) Host also alleges that MarketPlace would receive payoffs from a "big soda company" courtesy of an exclusive pouring-rights agreement. (App. at 16.)[1] Host grounds those allegations in two

[1] The company's identity has since been publicly revealed as PepsiCo. While PepsiCo is not a party here, MarketPlace alleged "an exclusive third-party beverage company" as one co-conspirator for the Section 1 conspiracy claim.

theories: 1) an unlawful tying arrangement in violation of Section 1 of the Sherman Act; and 2) an illegal conspiracy and agreement in restraint of trade, another Section 1 violation.[2]

MarketPlace moved to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6). The District Court held that Host had standing to bring its antitrust claims but granted the motion with prejudice, finding Host failed to adequately plead a relevant geographic market. Host timely appealed, and we will affirm the District Court's judgment.[3]

II.

Surviving a motion to dismiss requires "only enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Further, "[w]e accept as true the factual allegations in the complaint, and draw all reasonable inferences in the plaintiff's favor." *Phila. Taxi*, 886 F.3d at 338. But "we are not compelled to

---

[2] Host does not appeal the District Court's decision to decline supplemental jurisdiction over a third claim for tortious interference.

[3] The District Court had jurisdiction under 28 U.S.C. § 1331 and 15 U.S.C. § 4. We have jurisdiction under 28 U.S.C. § 1291. "We exercise plenary review of the District Court's dismissal of the [Complaint]," *Phila. Taxi Ass'n, Inc. v. Uber Techs., Inc.*, 886 F.3d 332, 338 (3d Cir. 2018) (citation omitted), and "may affirm on any basis supported by the record, even if it departs from the District Court's rationale," *TD Bank N.A. v. Hill*, 928 F.3d 259, 270 (3d Cir. 2019) (citation omitted). Host also moved for an injunction, (ECF No. 50), but because we will affirm the dismissal of Host's Complaint, that motion is moot.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.