

IN THE COUNTY COURT IN AND
FOR PALM BEACH COUNTY,
FLORIDA

CIVIL DIVISION RE

CASE NO. 502004CC006591XXXXMB

JODY GORRAN,
Plaintiff,

vs.

ATKINS NUTRITIONALS, INC.
and PAUL D. WOLFF, Solely in
his Representative Capacity as
Co-Executor of the Estate of
Robert C. Atkins, M.D.,
Defendants.

ORDER

THIS case came before the court on Defendants' Motion To Dismiss, with both counsel present. The court considered the Complaint, Defendants' Motion To Dismiss and argument of counsel and finds as follows:

1. Plaintiff has filed a Complaint against the Defendants for negligent misrepresentation, product liability, and violation of Florida's Deceptive And Unfair Trade Practices Act. Defendants move to dismiss the three counts with prejudice for failure to state a cause of action.

2. In ruling on a motion to dismiss for failure to state a cause of action, the court must examine the four corners of the Complaint and accept the allegations as true. A Complaint should not be dismissed unless the Defendant can establish beyond any doubt that the Plaintiff can prove no set of facts to support the claim. *Ingalsbe v. Stewart Agency, Inc.*, 869 So.2d 30 (Fla. 4th DCA 2004). In arguing for dismissal of the Complaint, Defendants rely on evidence extrinsic to the Complaint and ask the court to weigh the evidence, which is beyond the scope of review on a motion to dismiss.


Based on the foregoing, it is

ORDERED AND ADJUDGED that:

Page 2.
CIVIL DIVISION RE
CASE NO. 502004CC006591XXXXMB

1. Defendants' Motion To Dismiss is denied.
2. Defendants have ten days in which to file a responsive pleading to the Complaint.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida on
November 1, 2004.


SUSAN LUBITZ
COUNTY COURT JUDGE

Copies furnished:

James K. Green, Esq.
222 Lakeview Avenue, Ste. 1630
West Palm Beach, FL 33401

Daniel Kinburn
5100 Wisconsin Avenue, NW, Ste. 400
Washington, DC 20016

L. Martin Reeder, Jr., Esq.
Reeder & Reeder, P.A.
675 West Indiantown Road, Ste. 201
Jupiter, FL 33458

Helene D. Jaffee, Esq.
Jonathan Bloom, Esq.
Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, New York 10153