

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ORIN R. KITZES IA Part 17  
Justice

	x	Index
MATTONE GROUP LLC, et al.		Number <u>27280</u> 2007
		Motion
		Date <u>February 6,</u> 2008
-against-		
		Motion
TELESECTOR RESOURCES GROUP, INC.,		Cal. Number <u>34</u>
et al.		
		Motion Seq. No. <u>4</u>
	x	

The following papers numbered 1 to 6 read on this motion by defendant United Parcel Service General Services, Inc. and defendant United Parcel Service, Inc. for an order pursuant to CPLR 3211(a)(7) dismissing the complaint against them.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits .....	1
Answering Affidavits - Exhibits .....	2
Reply Affidavits .....	3
Memoranda of Law .....	4-6

Upon the foregoing papers it is ordered that the motion is granted. (See the accompanying memorandum.)

Dated: April 15, 2008

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MEMORANDUM

J.S.C.

SUPREME COURT : QUEENS COUNTY  
IA PART 17

\_\_\_\_\_  
x  
MATSTONE GROUP LLC, et al.

-against-

TELESECTOR RESOURCES GROUP, INC.,  
et al.  
\_\_\_\_\_  
x

INDEX NO. 27280/07  
MOTION SEQ. NO. 4  
MOTION DATE: FEBRUARY 6, 2008  
MOTION CAL. NO. 34  
BY: KITZES, J.  
DATED: APRIL 15, 2008

Defendant United Parcel Service, Inc. and defendant United Parcel Service General Services, Inc. (collectively UPS) have moved for an order pursuant to CPLR 3211(a)(7) dismissing the complaint against them.

Defendant Telesector Resources Group, Inc. d/b/a Verizon Services Group owns a 9.8 acre parcel of real property known as both 135-02 Springfield Boulevard, Springfield Gardens, New York and 184-04 Merrick Boulevard, Springfield Gardens, New York. In 2007, defendant Telesector notified the public through defendant Newmark & Company Real Estate, Inc., a real estate broker, that the property was for sale and that prospective buyers had until June 20, 2007 to submit bids. Plaintiff Mattone Group LLC, a developer of commercial real estate properties, communicated its interest in the property to the seller

and on May 1, 2007 entered into a confidentiality agreement with defendant Newmark promising, inter alia, not to disclose information concerning the property not available to the general public. Plaintiff Mattone took steps toward the acquisition of the property, including organizing plaintiff JMM Verizon, LLC and plaintiff Mattone Group Verizon, LLC, and hiring lawyers, a mortgage banking firm, a title insurance company, and an architect. Plaintiff Mattone alleges that by October 15, 2007, it had reached an understanding with the Verizon defendants concerning the basic terms of a contract and that e-mail exchanged between the parties amount to writings confirming the existence of an agreement. Plaintiff Mattone allegedly communicated its assent to the contract by October 18, 2007. However, on October 25, 2007, Verizon entered into a contract for the sale of the property to UPS, and on October 26, 2007, Verizon informed Mattone that it had decided to sell the property to another buyer.

On or about November 1, 2007, the plaintiff brought this action asserting causes of action for breach of contract, specific performance, and promissory estoppel against the Verizon defendants and causes of action for tortious interference with contract, tortious interference with prospective economic advantage, quantum meruit and unjust enrichment against defendant UPS.

That branch of the motion by defendant UPS which is for an order pursuant to CPLR 3211(a)(7) dismissing the sixth cause of

action is granted. The sixth cause of action is for tortious interference with contract. The elements of a cause of action for tortious interference with contract include "the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom\*\*\*." (Lama Holding Co. v Smith Barney Inc., 88 NY2d 413, 424.) The court need not determine here whether a valid contract existed between Mattone and the Verizon defendants, an issue into which the court has allowed discovery. (See, decision and order dated January 29, 2008.) The plaintiff's conclusory allegations regarding UPS's knowledge of the existence of a contract and the defendant's intentional procurement of a breach of the contract are insufficient to support the sixth cause of action. (See, Black Car and Livery Ins., Inc. v H & W Brokerage, Inc., 28 AD3d 595; Bradbury v Woller Cope-Schwarz, 20 AD3d 657; Schuckman Realty, Inc. v Marine Midland Bank, N.A., 244 AD2d 400; M.J. & K. Co., Inc. v Matthew Bender and Co., Inc., 220 AD2d 488.)

That branch of the motion which is for an order pursuant to CPLR 3211(a)(7) dismissing the seventh cause of action is granted. The seventh cause of action is for tortious interference with a prospective business relationship. In order to establish a cause of action for tortious interference with prospective economic

advantage, a plaintiff must prove, inter alia, (1) that the defendant acted solely for the purpose of injuring the plaintiff or used "wrongful means" (see, Alexander & Alexander of New York, Inc. v Fritzen, 68 NY2d 968; Glen Cove Associates, L.P. v North Shore University Hosp., 240 AD2d 701) and (2) that the defendant's wrongful acts proximately caused the rejection of the plaintiff's proposed contractual relations. (See, Pacheco v United Medical Associates, P.C., 305 AD2d 711; Jabbour v Albany Med. Ctr., 237 AD2d 787.) "Conduct that is not criminal or tortious will generally be 'lawful' and thus insufficiently 'culpable' to create liability for interference with prospective contracts or other nonbinding economic relations." (Carvel Corp. v Noonan, 3 NY3d 182, 190.) Mattone alleged in a conclusory fashion that "UPS['s] interference was done by wrongful means," and the plaintiff did not allege any facts concerning criminal conduct or conduct tortious in itself.

That branch of the motion which is for an order pursuant to CPLR 3211(a)(7) dismissing the eighth cause of action is granted. The eighth cause of action alleges that Mattone provided information about the property to UPS with a reasonable expectation of receiving compensation for that service. The elements of a cause of action based on quantum meruit include "(1) the performance of the services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an

expectation of compensation therefor, and (4) the reasonable value of the services.” (Moors v Hall, 143 AD2d 336, 337-338; Landcom, Inc. v Galen-Lyons Joint Landfill Commn., 259 AD2d 967; Heller v Kurz, 228 AD2d 263.) In the case at bar, Mattone failed to adequately allege that it provided brokerage services to UPS and that it had a reasonable expectation of receiving compensation as a broker when it contacted UPS about the property. The complaint alleges that “UPS\*\*\*learned of the Property’s current availability\*\*\*as a result of negotiations they were having with Mattone about UPS becoming a long-term tenant of, or development partner with, Mattone in the Property.” Michael X. Mattone alleged in an affidavit: “In early September, we contacted UPS and its agent Cushman & Wakefield concerning whether UPS was interested in leasing part of the Property after our purchase\*\*\*.”

That branch of the motion which is for an order pursuant to CPLR 3211(a) (7) dismissing the ninth cause of action is granted. The ninth cause of action alleges that defendant UPS was unjustly enriched by the information it received from Mattone concerning the availability of the property. “To prevail on a claim of unjust enrichment, plaintiff must show that (1) defendant was enriched, (2) at plaintiff’s expense, and (3) that ‘it is against equity and good conscience to permit\*\*\*defendant to retain what is sought to be recovered\*\*\*.’” (Lake Minnewaska Mtn. Houses v Rekis, 259 AD2d 797, 798, quoting Paramount Film Distrib. Corp. v State of

New York, 30 NY2d 415, 421.) In the case at bar, the complaint does not allege that Mattone performed services for UPS at the latter's request. (See, Prestige Caterers v Kaufman, 290 AD2d 295; Kagan v K-Tel Entertainment, Inc., 172 AD2d 375.) Moreover, the complaint does not allege that Mattone provided information about the property for the benefit of UPS rather than for its own benefit. Instead, Michael X. Mattone alleges that "[i]n early September, we contacted UPS and its agent Cushman & Wakefield concerning whether UPS was interested in leasing part of the Property after our purchase\*\*\*." "[T]he mere fact that the plaintiff's activities bestowed a benefit on the defendant is insufficient to establish a cause of action for unjust enrichment." (Clark v Daby, 300 AD2d 732.) Mattone, looking for a tenant or co-developer, supplied this information to advance its own interests, and the benefit UPS received was only incidental. (See, Clark v Daby, *supra*; Lakeville Pace Mechanical, Inc. v Elmar Realty Corp., 276 AD2d 673.)

Short form order signed herewith.

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J.S.C.