

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

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DVC PHILLY RORO PARTNERS, LLC,
PHILLY RORO PARTNERS, LLC,
and
DVR PHILLY, LLC

Plaintiffs

v.

GERARD J. MCHUGH

Defendant

: October Term, 2017
: Case No. 02782
:
:
:
: Commerce Program
:
: Control No. 18054077
:
:

GERARD J. MCHUGH, individually and as
managing member for Realty Partners of America,
LLC and
REALTY PARTNERS OF AMERICA, LLC

Plaintiffs

v.

CHARLES GALLUB *et al.*

Defendants

: February Term, 2018
: Case No. 01038
:
:
:
: Commerce Program
:
: Control Nos. 18051065,
: 18054062
:
:

ORDER

AND NOW, this 7th day of September, 2018, upon consideration of the preliminary objections of Glovis America, Inc. and Glenn Clift, which preliminary objections were filed in the above first-captioned case, No. 1710-02782, it is **ORDERED** that the preliminary objections are **SUSTAINED** and Counts I and IV of the counterclaims of defendant Mr. Gerard J. McHugh are **DISMISSED**.


McHugh Etal Vs Gallub E-ORDOP



Upon consideration of the preliminary objections filed in the above second-captioned case, No. 1802-01038, which preliminary objections were filed by defendants Charles Gallub, John Contrevo, DVC Philly RoRo Partners, LLC, Philly RoRo Partners, LLC, DVR Philly, LLC and DelVal Realty Group, LLC, as well as the preliminary objections of defendants Glovis America, Inc. and Glenn Clift, the responses in opposition of plaintiffs Gerard J. McHugh and Realty Partners of America, LLC, and the respective *memoranda* of law, it is **ORDERED** as follows:

- I. the preliminary objections to the claim of intentional interference with contractual relations, at Count I of the complaint, and against the claim of unjust enrichment, at Count VI of the complaint, are **SUSTAINED-IN-PART** and such claims are **DISMISSED** only as asserted by plaintiff Mr. Gerard J. McHugh in his individual capacity.
- II. The remainder of defendants' preliminary objections are **OVERRULED**.

BY THE COURT,



GLAZER, J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

DVC PHILLY RORO PARTNERS, LLC,	:	October Term, 2017
PHILLY RORO PARTNERS, LLC,	:	Case No. 02782
and	:	
DVR PHILLY, LLC	:	
	:	
<i>Plaintiffs</i>	:	
v.	:	Commerce Program
	:	
GERARD J. MCHUGH	:	Control No. 18054077
	:	
<i>Defendant</i>	:	

GERARD J. MCHUGH , individually and as	:	February Term, 2018
managing member for Realty Partners of America,	:	Case No. 01038
LLC and	:	
REALTY PARTNERS OF AMERICA, LLC	:	
	:	
<i>Plaintiffs</i>	:	
v.	:	Commerce Program
	:	
CHARLES GALLUB <i>et al.</i>	:	Control Nos.18051065,
	:	18054062
<i>Defendants</i>	:	

MEMORANDUM OPINION

BACKGROUND¹

Individual plaintiff is Gerard J. McHugh (“Mr. McHugh”), a resident of New

¹ Unless stated otherwise, the facts in this *Memorandum Opinion* are gleaned from the complaint filed in the action filed in 2018: Gerard McHugh *et al.* v. Charles Gallub *et al.*, case No. 1802-01308 (the “2018 Complaint”).

Jersey. Corporate plaintiff is Realty Partners of America, LLC (“Realty Partners”), a New Jersey real estate brokering firm. McHugh is the founder and managing member of Realty Partners.²

Corporate defendants are two Pennsylvania entities, DVC Philly RoRo Partners, LLC (“DVC Philly”) and Philly RoRo, Partners, LLC (“Philly RoRo”). Individual defendant Charles Gallub (Mr. Gallub), a New Jersey resident, is the managing member of DVC Philly and the co-manager of Philly RoRo.

Two other corporate defendants are DVR Philly, LLC (“DVR Philly”), a Pennsylvania company also co-managed by Gallub and by another individual defendant named John Contrevo (“Mr. Contrevo”), and DelVal Realty Group, LLC (“DelVal”), a Pennsylvania company owned/managed by Mr. Contrevo.

The last corporate defendant is Glovis America, Inc., a California corporation that imports foreign automobiles into the United States. Individual defendant Glenn Clift (“Mr. Clift”), is the CEO of Glovis.

It is alleged that Glovis was dissatisfied with its existing New Jersey and Maryland marine terminals and wished to lease a waterfront property along the Delaware River. In the past, Mr. McHugh and Glovis had been involved in separate waterfront real estate transactions; therefore, Mr. McHugh began to scout suitable waterfront properties on behalf of Glovis, and invited individual defendant Mr. Gallub to work on the Glovis project.³ Allegedly, Mr. McHugh sought-out Mr. Gallub because Mr. Gallub had prior dealings with a major landlord along the Delaware River: the Philadelphia Regional Port Authority (the “Port Authority”).⁴

² *Id.*, ¶ 45.

³ *Id.*, ¶¶ 24-27.

⁴ *Id.*, ¶¶ 24-27.

In 2008, the Port Authority issued a request for bids. Pursuant to this request, private entities were invited to bid for maintenance work to be performed upon certain waterfront properties, and, where feasible, to lease such properties from the Philadelphia Regional Port Authority and to ultimately sub-lease them to interested tenants.

In 2009, Mr. Gallub formed corporate defendant Philly RoRo to secure a “Master Lease Agreement” from the Philadelphia Regional Authority.⁵ Under the terms of Philly RoRo’s “Operating Agreement,” the founding members of Philly RoRo recognized that in the future, herein plaintiff Realty Partners would be entitled to receive commissions upon any rents received by Philly RoRo from its sub-lessees over a period of 120 months.⁶ The same Operating Agreement also recognized that upon certain occurrences, herein plaintiff Realty Partners would act as manager of the operations of Philly RoRo, and would receive compensation for its managerial work, equal to 2% of all rents collected under any sub-leases.⁷

On August 19, 2009, the Port Authority as the lessor, and herein defendant Philly RoRo as the lessee, entered into the afore-mentioned Master Lease Agreement. Pursuant to this agreement, Philly RoRo obtained a leasehold interest in certain waterfront properties along the Delaware River. On January 11, 2010, Philly RoRo sub-leased over 85 acres of the waterfront properties to Glovis.⁸

On April 19, 2010, Philly RoRo and plaintiff Realty Partners entered into an

⁵ *Id.*, ¶¶ 35, 41.

⁶ Amended and Restated Operating Agreement of Philly RoRo Partners, Exhibit B to the 2018 complaint, pp. 18-19; Real Estate Commissions.

⁷ *Id.*, p. 9 (paragraph captioned (g)).

⁸ Development and Lease Agreement, Exhibit A to the 2018 Complaint.

Industrial Commission and Management Agreement (the “Commission Agreement”).⁹ Pursuant to this agreement, Philly RoRo recognized the work of Realty Partners in securing the leased waterfront properties, and granted to Realty Partners the authority to collect specific commission fees from sub-lessee Glovis.¹⁰

On September 1, 2010, corporate defendant DVC Philly, a founding member of Philly RoRo, entered into a “Consulting Agreement” with Mr. McHugh individually.¹¹ Pursuant to this agreement, DVC Philly engaged Mr. McHugh to work on behalf of Philly RoRo, for a period of seven years, in exchange for payment of certain quarterly fees.¹² It is alleged that Mr. McHugh did perform on behalf of Philly RoRo some of the work required under the Consulting Agreement.¹³

On April 17, 2018, Mr. McHugh, individually and as a managing member of Realty Partners, filed the instant 2018 Complaint against Mr. Gallub, and all other defendants. In this complaint, Mr. McHugh alleges that individual defendant, Mr. Gallub, through the corporate defendants that he controls and manages, sidelined Mr. McHugh and Realty Partners. Specifically, the 2018 complaint alleges that Mr. Gallub and the other defendants have been using an entity created by Mr. Gallub, herein defendant DelVal, to usurp the brokering work from Mr. McHugh and Realty Partners, and to divert the resulting commissions from plaintiffs.¹⁴

⁹ Industrial Commission and Management Fee Agreement Commission Agreement (hereinafter, the “Commission Agreement”), Exhibit H to the 2018 Complaint.

¹⁰ Id.

¹¹ Consulting Agreement, Exhibit D to the 2018 Complaint.

¹² Id., items 1–3.

¹³ 2018 Complaint, ¶¶ 58-59.

¹⁴ On October 20, 2017, prior to the filing of the 2018 Complaint, herein defendant DVC RoRo commenced an action (the “2017 Declaratory Judgment Action”), in the Court of Common Pleas, Philadelphia County, against Mr. McHugh, DVC Philly RoRo Partners, LLC v. Gerard J. McHugh, case No. 1710-02782. Through the 2017 Declaratory Judgment Action, DVC RoRo asks the court to find that Mr. McHugh is not entitled to any compensation arising out of the sub-lease between Philly RoRo and Glovis. In response to the complaint filed in the 2017 Declaratory Judgment Action, Mr. McHugh filed an answer

On May 31, 2018, defendants Charles Gallub, John Contrevo, DVC Philly Roro Partners, LLC Philly Roro Partners, LLC, DVR Philly, LLC and DelVal Realty Group, LLC, filed preliminary objections to the 2018 Complaint.

DISCUSSION

I. Questions of fact exist as to whether Mr. McHugh lacks capacity to sue on behalf of Realty Partners.

In the preliminary objections, defendants Mr. Gallub *et al.* argue that Mr. McHugh lacks the capacity to assert the instant action on behalf of Realty Partners. Mr. Gallub argues that Mr. McHugh lacks capacity because the instant lawsuit was brought without the consent of the members of Realty Partners, in violation of Article VII of its Amended and Restated Operating Agreement.¹⁵ Specifically, Mr. Gallub avers that the consent of the members of Realty Partners is required where Mr. McHugh, as the managing member of Realty Partners, commits “any act which would make it impossible to carry on the business of ... [Realty Partners] in the ordinary course.”¹⁶ In other words, Mr. Gallub *et al.* appear to imply that the filing of the instant lawsuit by Mr. McHugh has made it impossible for Realty Property to carry on its business in the ordinary course. This conclusion is rejected because—

[p]reliminary objections ... should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of

with new matter and counterclaims, and on April 4, 2018, the plaintiff in the 2017 Declaratory Judgment Action, DVC RoRo, filed preliminary objections to the counterclaims of Mr. McHugh. On May 2, 2018, this court sustained the preliminary objections of DVC Philly RoRo on the grounds that Mr. McHugh had impermissibly counterclaimed. The Order explained that Mr. McHugh, as an individual, lacked the capacity to bring counterclaims because he was not a party to the commission agreement executed by Philly RoRo and Realty Partners. The Order dated May 2, 2018 also granted the plaintiffs’ motion to consolidate the 2017 and 2018 actions.

¹⁵ Amended and Restated Operating Agreement, Art. VII (1)(d)(iv), Exhibit B to the 2018 complaint.

¹⁶ Preliminary objections of Mr. Gallub *et al.* to the 2018 complaint, ¶ 50.

overruling the preliminary objections.¹⁷

In this case, the court is unable to determine whether the filing of the instant complaint has made it impossible for Realty Partners to carry-on its business in the ordinary course, and for this reason the portion of defendants' preliminary objections asserting lack of capacity to sue is overruled.

II. Mr. McHugh is not individually entitled to damages under the claims of intentional interference with contractual relations and unjust enrichment.

The preliminary objections of Mr. Gallub *et. al.* ask this court to dismiss the claims of intentional interference with contractual relations and unjust enrichment, both of which are asserted by Mr. McHugh on behalf of Realty Partners and in his own individual capacity. The elements for the tort of intentional interference with contractual relations are—

- (1) the existence of a contractual relationship;
- (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship;
- (3) the absence of a privilege or justification for such interference; and
- (4) damages resulting from the defendant's conduct.¹⁸

In this case, Mr. McHugh does not allege that he is a party to the 2010 sublease between Philly RoRo and Glovis, or a party to the Commission Agreement between Philly RoRo and Realty Partners. Indeed, Mr. McHugh admits in his response to the preliminary objections that the defendants intentionally interfered only with the business opportunities of Realty Partners, and recognizes that as a member of Realty

¹⁷ Feingold v. Hendrzak, 15 A.3d 937, 941 (Pa. Super. 2011).

¹⁸ Triffin v. Janssen, 626 A.2d 571, 574 (Pa. Super.1993).

Partners, he was only “indirectly damaged” by the alleged interference by defendants.¹⁹ Based upon such admissions, Mr. McHugh cannot show that he was individually involved in a contractual relationship under the sublease agreement between Philly RoRo and Glovis, nor that he was individually involved in a business relationship under the Commission Agreement between Philly RoRo and Realty Partners. For this reason, the claim of intentional interference with business relations, asserted by Mr. McHugh in his individual capacity at Count I of the instant complaint, is dismissed.

In addition—

[t]he elements of unjust enrichment are benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value.²⁰

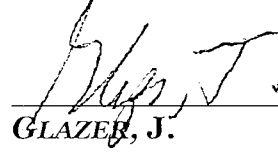
Here, although Mr. McHugh complains that he and Realty Partners conferred benefits to the defendants by procuring them with a sub-lessee, such benefits can only have been conferred to the defendants by Realty Partners, not by Mr. McHugh individually. The court reaches this conclusion after a careful reading of the Operating Agreement of Philly RoRo, the sublease agreement between Philly RoRo and sub-lessee Glovis, and the Commission Agreement between Philly RoRo and Realty Partners. Nowhere in these documents could this court find that Mr. McHugh was required in his individual capacity to provide services to the defendants, or to confer benefits upon them. For this reason, the claim of unjust enrichment, asserted by Mr. McHugh in his individual

¹⁹ Response to the preliminary objections of defendants Mr. Gallub *et al.* at ¶ 62; memorandum of law in support of the response to the preliminary objections of defendants Mr. Gallub *et al.* at p. 10, motion control No. 18051065.

²⁰ Metro Club Condo. Ass'n v. 201-59 N. Eighth St. Assocs., L.P., 47 A.3d 137, 148 (Pa. Super. 2012).

capacity at Count VI of the instant complaint, is dismissed.

BY THE COURT,



GLAZER, J.