STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 11, 2013)

PRECISION PAYMENTS, INC. and JOEL KING,	:	
Plaintiffs,	:	**C.A. No. PB 11-2249**
v.	:	
EAST COMMERCE SOLUTIONS, INC.,	:	
Defendant.	:	

DECISION

SILVERSTEIN, J. Precision Payments, Inc. (Precision Payments) and Joel King (King) brought this action against East Commerce Solutions, Inc. (East Commerce/Defendant) based upon the alleged failure of East Commerce to pay King monies due and owing. In response to the complaint that was filed, East Commerce filed an Amended Answer and Counterclaim (Counterclaim) against Precision Payments and King. Before the Court are Plaintiffs' and Defendant's cross-motions for summary judgment as to the Counterclaim. Defendant contends that King has tortiously interfered with its business through the establishment of Precision Payments.

I

Facts & Travel

East Commerce is a Rhode Island corporation, located in East Providence and is in the business of providing credit card transaction processing services. Precision Payments is a

Florida corporation with its principal place of business in Bradenton, Florida. King, a Florida resident, solicited clients for East Commerce before founding Precision Payments.[1]

East Commerce was a sales agent, or member service provider as it is referred to in the industry, for credit card processors, including Elavon, Inc. (Elavon). The two companies had a contract with each other. East Commerce would solicit merchants and set the merchants up so that they had the capability of accepting payment by credit card. Elavon would then be the processor of the credit card payments made to these merchants. Elavon handled the electronic transfer of data, the transfer of funds between the clearinghouses (VISA, MasterCard, etc.), and other day-to-day activity.

In 2008, Merchant Alliance was an independent sales agent for East Commerce which secured merchant accounts for it.[2] King worked for Merchant Alliance in 2008 as an agent. At a conference in November 2009, King approached East Commerce's Chief Executive Officer, Edward Medeiros (Medeiros). The two agreed to terms whereby King would work directly for East Commerce.

King was responsible for generating new business by soliciting merchant applications and agreements for credit card transaction processing. King used the prior business relationships that he had established in Florida while an agent with Merchant Alliance to obtain clients for East Commerce. When King obtained clients for East Commerce, the clients would then sign merchant receipts, internal documents with East Commerce containing various information and rates, and merchant applications. The merchant application, which was between the client and Elavon (the credit card processor), provided a three year term. The arrangement between East

[1] Precision Payments and King are referred to collectively as Plaintiffs.

[2] Merchant accounts refer to the relationship that existed between the businesses that accepted payment from consumers in the form of credit cards, i.e., the merchants and East Commerce.

Commerce and the client merchants did not provide for a specific term, but if a merchant terminated the relationship with it, East Commerce could charge a cancellation fee per the clause contained within the merchant receipt, which stated "Cancellation of your account may result in a cancellation fee."

During discussions between King and Medeiros, King expressed concerns about working without a written independent contractor agreement. In response to this concern, East Commerce emailed King a proposed Independent Sales Agent Agreement (Proposed Agreement) in January 2010.[3] The Proposed Agreement contained both a non-compete clause and a clause stating King would be an independent contractor as opposed to an employee. King never signed the Proposed Agreement.[4] Nevertheless, East Commerce continued to pay King for commissions and residuals for accounts he brought to East Commerce.

In early 2010, King gave thought to forming his own business. In August 2010, he formed Precision Payments, a company similar in nature to East Commerce. By late 2010, King stopped submitting client merchants to East Commerce and instead began soliciting merchants for Precision Payments, including merchants whom he had previously secured as clients for East Commerce. In all, fifty-six merchants that King had procured for East Commerce terminated their relationship with East Commerce and engaged the services of Precision Payments. Once East Commerce discovered the conduct of King, they stopped paying King commissions and residuals owed to him.

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[3] The Proposed Agreement was sent to King nearly two months after King had already allegedly signed an agreement. See infra note 4.

[4]East Commerce alleges that King signed an agreement (Alleged Signed Agreement) on November 30, 2009, the purported signed agreement being materially different than the Proposed Agreement, but not different with respect to the ultimate outcome. King denies ever signing the Alleged Signed Agreement. King introduced an expert analysis of the supposed Alleged Signed Agreement, which concluded that the November 30th agreement was a forgery; specifically, that King's signature was cut and pasted onto the contract.

Plaintiffs brought this suit based on East Commerce's failure to pay King fees owed to him as well as overcharging "termination fees" of former East Commerce, and now Precision Payments, clients. East Commerce's Counterclaim alleges Tortious Interference with Prospective and Existing Contractual Relationships (Count I), Breach of Contract (Count II), and Unjust Enrichment (Count III). East Commerce moved for summary judgment as to Counts I and II, and Plaintiffs cross-moved for summary judgment as to all three counts of the Counterclaim.

II

Standard of Review

"Summary judgment is a proceeding in which the proponent must demonstrate by affidavits, depositions, pleadings and other documentary matter . . . that he or she is entitled to judgment as a matter of law and that there are no genuine issues of material fact." Palmisciano v. Burrillville Racing Association, 603 A.2d 317, 320 (R.I. 1992) (citing Steinberg v. State, 427 A.2d 338 (R.I. 1981)). The court, during a summary judgment proceeding, "does not pass upon the weight or the credibility of the evidence but must consider the affidavits and other pleadings in a light most favorable to the party opposing the motion." Id. (citing Lennon v. MacGregor, 423 A.2d 820 (R.I. 1980)). Moreover, "the justice's only function is to determine whether there are any issues involving material facts." Steinberg, 427 A.2d at 340. The court's purpose during the summary judgment procedure is issue finding, not issue determination. O'Connor v. McKanna, 116 R.I. 627, 359 A.2d 350 (1976). Therefore, the only task for the judge in ruling on a summary judgment motion is to determine whether there is a genuine issue concerning any material fact. Id.

"When an examination of the pleadings, affidavits, admissions, answers to interrogatories and other similar matters, viewed in the light most favorable to the party opposing the motion, reveals no such issue, the suit is ripe for summary judgment." Id. "[T]he opposing parties will not be allowed to rely upon mere allegations or denials in their pleadings. Rather, by affidavits or otherwise they have an affirmative duty to set forth specific facts showing that there is a genuine issue of material fact." Bourg v. Bristol Boat Co., 705 A.2d 969 (R.I. 1998). However, it is not an absolute requirement that the nonmoving party file an affidavit in opposition to the motion. Steinberg, 427 A.2d at 338. If the affidavit of the moving party does not establish the absence of a material factual issue, the trial justice should deny the motion despite the failure of the nonmoving party to file a counter-affidavit.

III

Discussion

A

Tortious Interference

Defendant contends that Plaintiffs interfered with the contracts that East Commerce had with merchant clients that King originally obtained for East Commerce and later brought with him as clients when he established Precision Payments. Defendant asserts that because King took the clients from East Commerce, he should be deemed to have tortiously interfered with the contractual relationships that existed between East Commerce and the merchant clients.

Plaintiffs respond in two ways. First, Plaintiffs argue that there were no contracts with which they could have interfered because the only contracts that the merchant signed were with Elavon. Plaintiffs therefore maintain that the merchants were free to cancel their service agreement with East Commerce at any point and only be subject to a potential cancellation fee,

as detailed in the merchant receipt. Second, Plaintiffs argue that the fact that merchants frequently change providers—as evidenced by the fact that East Commerce often solicits new businesses and in doing so will pay termination fees owed by its new clients, a "standard operating procedure in the industry" according to Medeiros—means that East Commerce cannot show that the soliciting of the merchant clients caused East Commerce to lose a right under a contract or made the contract less valuable. See Medeiros Dep. 54:2 – 54:9, Jan. 26, 2012. Plaintiffs argue that East Commerce cannot claim that the practice of soliciting someone else's existing clients is the cause of tortious interference when it engaged in the very same conduct. If East Commerce were to prevail then, according to Plaintiffs, it would chill the industry norm and practice that are required for competition to exist among credit card processing companies: for example, no merchant would leave his or her current processing servicer because of the threat of having to pay a termination fee.

A prima facie case of tortious interference with prospective and existing contractual relationships requires proof of: (1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract; (3) his intentional interference; and (4) damages resulting therefrom. Jolicoeur Furniture Co., Inc. v. Baldelli, 653 A.2d 740 (R.I. 1995). Additionally, it must be shown that there was no recognized privilege or other justification for the alleged tortfeasor's actions. Belliveau Bldg. Corp. v. O'Coin, 763 A.2d 622, 627 (R.I. 2000). To determine whether the interference was unjustified, courts rely on seven factors set forth in the Restatement (Second) Torts: "(1) the nature of the actor's conduct; (2) the actor's motive; (3) the contractual interests with which the conduct interferes; (4) the interests sought to be advanced by the actor; (5) the balance of social interests in protecting freedom of action of the actor and the contractual

freedom of the putative plaintiff; (6) the proximity of the actor's conduct to the interference complained of; and (7) the parties' relationship." Belliveau Bldg. Corp., 763 A.2d at 628 n.3.

While there may not have been any contracts per se between East Commerce and the merchant clients, it is difficult to dispute that a business relationship existed. The existence of such a relationship is sufficient to establish the first prong of an interference claim. See Mesolella v. City of Providence, 508 A.2d 661, 669 (R.I. 1986) (stating that in interference for prospective contractual relationships claims, a "business relationship or expectancy" will substitute for the need of an actual contract). King, as the solicitor of business for East Commerce, clearly had some knowledge of the relationship that existed between East Commerce and the merchants he solicited.

To determine if an alleged tortfeasor's conduct is intentional, the Court must also determine whether the conduct was also unjustified. See Belliveau Bldg. Corp., 763 A.2d at 627 ("[T]o establish a prima facie case of intentional interference with contract, aggrieved parties must allege and prove not only that the putative tortfeasors intended to do harm to the contract but that they did so without the benefit of any legally recognized privilege or other justification."). Defendant argues that soliciting merchants to switch credit card processing servicers and then paying their termination fees was an accepted norm in the industry. See Medeiros Dep. 53:15 – 54:20, Jan. 26, 2012. East Commerce allowed its own employees to solicit other accounts and offered to pay any early termination fees associated with the pursuit of these accounts. East Commerce argues it would be allowed to engage in such activities but that Plaintiffs are prevented because of a potential duty of loyalty owed by King to East Commerce. However, whether King owed a duty of loyalty or not is irrelevant to this analysis. To punish a competitor business for trying to solicit clients, and thereby advancing its own self-interest,

would go against the weight of the factors laid out in the Restatement. See Dan B. Dobbs et al., The Law of Torts § 630 (2d ed. 2011) ("Economic competition does not justify improper interference with a valid existing contract. At the same time, it is privileged, or not improper, to compete by lawful means for economic prospects not represented by such a contract, for example, to compete for customers who are not bound to the plaintiff by contract."); see also White Plains Coat & Apron Co., Inc. v. Cintas Corp., 867 N.E.2d 381 (N.Y. 2007); Wal-Mart Stores, Inc. v. Sturges, 52 S.W.3d 711, 716-17 (Tex. 2001) (holding that competitors are free to use lawful means in economic competition).

In particular, the fifth Restatement factor, which seeks to balance the social interests of the parties, would be offended should the Court find that this type of conduct amounts to intentional and unjustified interference. As found above, this course of conduct is common in the credit card processing industry, and a practice that Defendant engages in regularly. See Medeiros Dep. 53:15 – 54:20, Jan. 26, 2012 (stating that it is "industry standard" to pay the early termination fees of new clients when they switch to a new processor). A finding that Plaintiffs tortiously interfered would upset the balance in the industry. Here, East Commerce's claim rests on the breach of the purported restrictive covenant, not on a tortious interference claim. See Hilb, Rogal & Hamilton Co. of Atlanta, Inc. v. Holley, 644 S.E.2d 862, 867 (Ga. Ct. App. 2007) ("An employee is permitted to solicit his former customers on behalf of a new employer. Fair competition is always legal, and absent a valid non-compete or non-solicit covenant a former employee may go to customers whom he procured for the old employer and endeavor to try to persuade them to change their trade to his advantage."). Therefore, Plaintiffs' motion for summary judgment is granted with respect to Count I.

B

Breach of Contract

1

Restrictive Covenant

The Defendant asserts that King violated the restrictive covenant in the Alleged Signed Agreement. Medeiros, in his affidavit, states that King signed the Alleged Signed Agreement, which specifically included a restrictive covenant. See Medeiros Aff. ¶ 4. Medeiros claims that he would not have signed the agreement without King's signature already on the document. Defendant contends that the result of this solicitation by King was the loss of accounts and business on the part of East Commerce.

Plaintiffs argue that King cannot be bound by the terms of the restrictive covenant because King never signed the contract. King asserts that the contract is a forgery and contains a cut and pasted copy of his signature.[5] Plaintiffs argue that King cannot be in breach of a contract to which King never assented. Rather, King states that he was operating under the belief that he was bound by an oral contract to serve as an independent contractor for East Commerce.

In order to succeed on a breach of contract claim, a party must prove by a fair preponderance of the evidence that the party has complied with his or her portion of the contract and that the other party wrongfully breached the contract. DelFarno v. Aetna Casualty and Surety Co., 673 A.2d 71, 72 (R.I. 1996). "It is a fundamental principle of contract law that a bilateral contract requires mutuality of obligation." Centerville Builders, Inc. v. Wynne, 683 A.2d 1340, 1341 (R.I. 1996). Moreover, a contract may exist through writing or some other expression of assent, including oral assent. See J. Koury Steel Erectors, Inc. of Mass. v. San-Vel

[5] See supra note 4.

Concrete Corp., 120 R.I. 360, 365, 387 A.2d 694, 697 (1978) ("In an expressed contract the terms and conditions of the contract are assented to orally or in writing by the parties."). Oral agreements may constitute enforceable contracts as long as other contract prerequisites are also met, such as "competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation." DeAngelis v. DeAngelis, 923 A.2d 1274, 1279 (R.I. 2007). However, oral contract terms also must be definite enough for the court to be able to judicially enforce the contract. Id. (citing Soar v. National Football League Players' Association, 550 F.2d 1287, 1289-90 (1st Cir. 1977) (holding that terms of purported oral contract were too indefinite to enforce).

The restrictive covenant in the Alleged Signed Agreement prevents King from soliciting "business or patronage of any clients, customers or accounts of [East Commerce]" or "solicit[ing] any prospective clients, customers or accounts that were initially solicited by [King] using [East Commerce] resources or referral relationships" for a period of sixty months following King's termination. Whether this contract is validly enforceable is disputed by the parties. Plaintiffs submitted an expert report which finds that the signature of King was forged. Defendant contends that the signature is valid because Medeiros would not have signed without King's signature already on the contract. Clearly, if the document is authentic, then King would be in violation of the restrictive covenant.[6] However, because the issue of whether the contract is authentic is a question of fact, the issue is not appropriate for summary judgment either for Plaintiffs or for Defendant as to the breach of the restrictive covenant.

[6] King states that he was operating under an oral contract at the time. The Court is unable to ascertain whether any such oral contract existed, and the contents of any such contract, as there was no evidence submitted by either side.

2

Duty of Loyalty

Defendant argues that King violated his duty of loyalty to East Commerce by soliciting merchants away from East Commerce while still in the employ of East Commerce. Defendant contends that King was an agent of East Commerce, and accordingly, a duty of loyalty attached to King. Defendant asserts that King competed with his former principal, East Commerce, by soliciting merchants away from East Commerce and to Precision Payments.

Plaintiffs counter that King did not owe Defendant any such duty of loyalty because he was neither an employee nor an agent of East Commerce but rather was simply an independent contractor to whom no such duty attached. King contends that as an independent contractor, operating without a restrictive covenant, he owed East Commerce no duties whatsoever and was free at any time to compete directly or indirectly with East Commerce.

A duty of loyalty does not attach to every category of employee. While an independent contractor may not always owe a duty of loyalty, he or she will when he or she is also considered an agent. See National Legal Research Group, Inc. v. Lathan, 42 F.3d 1386 (4th Cir. 1984) (upholding finding that sales representative violated duty of loyalty to company "whether we treat [sales representative] as an employee or an independent contractor . . . . Whatever his position's label, [sales representative] violated his duty of loyalty as an agent."); ACT Group Inc. v. Hamlin, No. CV–12–567–PHX–GMSS, 2012 WL 2976724 at *5 (D. Ariz. July 20, 2012) ("[I]t is not always the case that an independent contractor is not an agent . . . . An agent may owe a duty of loyalty to his employer . . . ."). Therefore, for an independent contractor to owe a duty of loyalty, he or she must also be considered an agent.

With respect to King's status with East Commerce, both King and Medeiros considered King an independent contractor. See Medeiros Aff. ¶ 4. If King is also considered an agent of East Commerce, then he would owe East Commerce a duty of loyalty. Defendant asserts that King was an agent of East Commerce. Factors that evidence an agency status according to East Commerce are that it provided training to its agents, familiarized them with equipment they were selling, supplied leads to its agents, approved all applications sent in by its agents, and registered its agents with Elavon. However, Defendant does not explain how these facts apply to its relationship with King, or whether King ever participated in any of these activities.

However, Plaintiffs contend that King was merely an independent contractor, and he never became an agent of East Commerce. King asserts that East Commerce never provided training to him, and that East Commerce never actually registered him as an agent with Elavon. King asserts that East Commerce had no control over King, and that King controlled his own hours, days worked, routes traveled, did not submit timecards, did not have to check in with East Commerce. King also states that East Commerce was not bound by King's actions, and King could not incur expenses for East Commerce. Additionally, in the Alleged Signed Agreement (which Defendant contends is valid), there is specific language which states that "[King] shall be considered as an independent contractor of ECS and nothing in this Agreement shall be construed or deemed to create any other relationship, including one of employment, agency or join venture."[7]

[7] East Commerce argues for the validity of the Alleged Signed Agreement in order that the restrictive covenant is enforceable. Yet, they also curiously argue that King should be considered an agent of East Commerce so that a duty of loyalty attaches to King. It argues this even though the Alleged Signed Agreement specifically sets out that under no circumstances would King be considered anything but an independent contractor.

"Agency" has been defined as "the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." Restatement (Second) Agency § 1(1) (1958). An agency relationship is established under Rhode Island law when there exists: "(1) a manifestation by the principal that the agent will act for him, (2) acceptance by the agent of the undertaking, and (3) an agreement between the parties that the principal will be in control of the undertaking." Norton v. Boyle, 767 A.2d 668, 672 (R.I. 2001).

No agency relationship existed between King and East Commerce. King was an independent contractor to whom no duty of loyalty attached, absent a valid signed agreement. See Barber v. Actknowledge, Inc., 890 N.Y.S.2d 368 (N.Y. Sup. Ct. 2009) ("Courts have extended [a duty of loyalty] to independent contractors in cases where the agreement between the principal and the independent contractor established an agent-principal relationship."). While East Commerce asserts a number of factors—including providing training and supplying leads—that it contends created an agency relationship, it fails to substantiate how these factors relate to King. See Bourg, 705 A.2d at 971 ("Something more than conclusory statements must be offered by the party opposing the entry of a summary judgment."). Plaintiffs also counter Defendant's conclusory statements by stating they either do not apply to King because he did not receive the services alleged, or how the services are immaterial to establishing an agency relationship. For example, East Commerce states that it provided support teams, start-up kits and equipment to its clients, all of which King alleges is immaterial to an agency analysis. King also asserts that no evidence was presented as to leads East Commerce specifically gave to King. See Northern v. McGraw-Edison Co., 542 F.2d 1336, 1344 (8th Cir. 1976) (mentioning supplying of sales leads as one factor in determining an agency relationship existed). Moreover, King states

that the fact that East Commerce had to approve applications shows that King had no authority to bind East Commerce and therefore, was not an agent. See Norton, 767 A.2d at 671-72 (holding that principal has to consent to the agent acting on principal's behalf).

Additionally, when determining whether someone should be considered an agent or independent contractor, other factors that should be considered are: "(1) the right to control the conduct of the work, (2) the right of termination, (3) the method of payment, (4) the freedom to select and hire helpers, (5) the furnishing of tools and equipment, (6) self-scheduling of work hours, and (7) being free to render services to other entities." Beare Co. v. State, 814 S.W.2d 715, 718 (Tenn. 1991). Considering these factors, King should not be considered an agent of East Commerce. King worked free of oversight from East Commerce, was paid by commissions earned, was not provided office space, and scheduled his own hours. See id. All of this, combined with the fact that the Alleged Signed Agreement (the validity of which is contested) stated that an agency relationship was not established, clearly indicates that King was an independent contractor of East Commerce and not an agent. Therefore, King owed no duty of loyalty to East Commerce by virtue of his relationship to East Commerce. However, summary judgment must be denied as to this count because a determination as to the validity of the Alleged Signed Agreement and its restrictive covenant is a disputed question of fact.

C

Unjust Enrichment

Plaintiffs argue that they were not unjustly enriched by soliciting former East Commerce clients for Precision Payments. Specifically, they argue that the merchant clients did not belong to East Commerce, that soliciting merchants is the industry norm, that King owed no duty of loyalty, that there was no non-compete agreement, and that the Alleged Signed Agreement is a

forgery and thus unenforceable. Additionally, Plaintiffs argue that East Commerce cannot satisfy the third prong of an unjust enrichment claim—that the recipient, in this case, the Plaintiffs, accepted a benefit under circumstances that would make it inequitable for them to retain such benefit—because any benefit King derived was from conducting business with his own merchants, and therefore, it would neither be inequitable nor improperly at the expense of East Commerce. Defendant fails to address the issue of unjust enrichment in their moving papers submitted to the Court. Defendant's failure is a sufficient basis for this Court to grant summary judgment as to Count III. Nevertheless, the Court will analyze the issue of unjust enrichment, as it finds that summary judgment would have been appropriate.

"The doctrine of unjust enrichment is equitable in nature, and generally it is applied to permit a recovery where one person has received a benefit from another and the retention thereof would be unjust under some legal principles recognized in equity." Rhode Island Hosp. Trust Co. vs. Rhode Island Covering Co., 96 R.I. 178 (1963). To recover for unjust enrichment, a claimant must prove: "(1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances 'that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof.'" Dellagrotta v. Dellagrotta, 873 A.2d 101, 113 (R.I. 2005) (quoting Bouchard v. Price, 694 A.2d 670, 673 (R.I. 1997)). Our Supreme Court has said that "'[t]he most significant requirement . . . is that the enrichment to the defendant be unjust.'" R & B Elec. Co., Inc. v. Amco Const. Co., Inc., 471 A.2d 1351, 1356 (R.I. 1984).

Here, the merchant clients terminated their relationship with East Commerce and employed the services of Precision Payments. The clients therefore, as Plaintiffs argue, belonged to Plaintiffs at that point. There was no benefit that was conveyed by East Commerce to either

Precision Payments or King. Rather, Precision Payments obtained former East Commerce clients, who utilized Precision Payments for the services previously rendered by East Commerce. See Doe v. Burkland, 808 A.2d 1090, 1095 (R.I. 2002); Sovereign Bank v. Fowlkes, No. PB 08-4330, 2010 WL 331965 (R.I. Super. Jan. 25, 2010) ("Unjust enrichment is an equitable doctrine that in the absence of an enforceable contract allows a plaintiff to recover a benefit conveyed to a defendant if that defendant's ongoing possession would be unjust."). Because no benefit was conveyed by Defendant to Plaintiffs, there was no benefit for the Plaintiffs to appreciate.

Finally, the most important factor in consideration of unjust enrichment claims is whether it would be inequitable for the benefiting party to retain the benefit conferred. See R & B Elec. Co., 471 A.2d at 1356. Even assuming that Defendant could prove that it conferred a benefit upon Plaintiffs, Defendant could not prove that the retention of that benefit would be inequitable in view of the standard practice in the industry. "Whether there exists unjust enrichment may not be determined from a limited inquiry confined to an isolated transaction; it must be a realistic determination based on a broad view of the human setting involved." Harrisville Fire Dist. v. Oakland-Mapleville Fire Dist., No. 07-4565, 2011 WL 6470556 (R.I. Super. Dec. 16, 2011) (citing McGrath v. Hilding, 363 N.E.2d 328 (N.Y. 1977)). Here, upon review of Plaintiffs' moving papers and without the benefit of opposing argument, the factual circumstances, and a balancing of the equities, this Court finds that it would not be unjust for Plaintiffs to retain the benefit of the solicited merchant clients without payment of the value thereof. See id. As discussed above, this solicitation is common industry practice, engaged in by Defendants on a regular basis, and as such it cannot be considered inequitable for Plaintiffs to retain the benefit of such solicitation. Summary judgment may enter for Plaintiffs on this count.

IV

Conclusion

Based on the foregoing analysis, the Court grants summary judgment in favor of Plaintiffs as to Counts I (Tortious Interference) and III (Unjust Enrichment). With respect to Count II (Breach of Contract), the Court finds that an issue of material fact exists, and therefore, summary judgment is denied. Counsel for the Plaintiffs may present an order consistent herewith.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Precision Payments, Inc. and Joel King v. East Commerce Solutions, Inc.
CASE NO:	PB 11-2249
COURT:	Providence County Superior Court
DATE DECISION FILED:	December 11, 2013
JUSTICE/MAGISTRATE:	Silverstein, J.
ATTORNEYS:	
For Plaintiff:	Brian LaPlante, Esq.; Michael J. Jacobs, Esq.
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