

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
No. 21-CV-171

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UTOPIAN WIRELESS CORPORATION,  
Plaintiff,

v.

CASTLETON STATE COLLEGE et al.,  
Defendants.

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RULING ON UTOPIAN'S MOTION TO DISMISS

In 2007, Plaintiff Utopian Wireless Corporation leased three Educational Broadband Spectrum (EBS) licenses, for an aggregate 30-year lease term, from Vermont State Colleges (VSC). In its amended complaint, Utopian alleged that VSC breached the agreements in 2020 by unilaterally terminating them following interactions with Defendants Michael C. Alcamo and his business, M.C. Alcamo & Co., Inc. (collectively, Mr. Alcamo), which specializes in the sale of EBS licenses. According to the complaint, Mr. Alcamo induced VSC to hire him to sell the licenses under lease to Utopian, prompting VSC to terminate those leases. At this point, Utopian has settled with VSC, and its only remaining claim is tortious interference against Mr. Alcamo. After the court denied Mr. Alcamo's motion to dismiss that claim, he asserted a counterclaim against Utopian for unjust enrichment. Utopian now seeks dismissal of that claim.

*Mr. Alcamo's counterclaim*

The essence of Mr. Alcamo's claim is as follows. At the time he learned of VSC's licenses, he believed that they were not in use, and in fact neither VSC nor Utopian were using them. He believed that they had not been leased to anyone, or if they ever had been leased to anyone, any such leases had terminated. He knew that under a recent FCC rule change, VSC was at risk of losing the licenses altogether for lack of use. He thus began reaching out to VSC and eventually developed some relationship with VSC by which he worked many hours over many months providing the expertise needed for VSC to begin using the licenses and avoid their forfeiture. He had some agreement with VSC by which he anticipated marketing the licenses for sale. The complaint is extremely vague as to the nature of that agreement, but he clearly anticipated that VSC would compensate him both for his work putting the licenses into use and for eventually brokering their sale.

After the licenses were in use but before any such sale, VSC notified Utopian that its leases were terminated. Utopian filed suit claiming breach of contract against VSC and tortious interference against Mr. Alcamo. Mr. Alcamo and VSC then "terminated their engagement, without [VSC] having paid . . . [Mr. Alcamo]." Counterclaim ¶ 32. Utopian

and VSC then settled, agreeing that Utopian's leases are valid and that Utopian would broker the sale of the licenses.

Despite the failure of VSC to compensate Mr. Alcamo, he has not asserted any claim against VSC. Instead, he claims unjust enrichment against Utopian. In his view, he provided a benefit, Utopian received it, and it is unjust for Utopian to not compensate him for it. The alleged benefit is either the ability to use VSC's EBS licenses pursuant to the leases or the opportunity to profit from their eventual sale pursuant to its new arrangement with VSC, neither of which would have been possible if they had been forfeited to the FCC. To be clear, the alleged benefits arise from Mr. Alcamo's services. He does not allege that Utopian has possession or use of any materials or equipment belonging to him.

### *Analysis*

Utopian argues that the allegations show that there is no purported benefit to it and, even if there were, it was unrequested, voluntarily conferred, and Utopian cannot properly be compelled to compensate Mr. Alcamo for what would amount to a "forced exchange."<sup>1</sup>

Unjust enrichment sounds in equity. "To support a claim for unjust enrichment, plaintiff must show that: '(1) a benefit was conferred on defendant; (2) defendant accepted that benefit; and (3) it would be inequitable for defendant not to compensate' plaintiff for the value of the benefit." *Pettersen v. Monaghan Safar Ducham PLLC*, 2021 VT 16, ¶ 16. "The most significant requirement . . . is that the enrichment to the defendant be unjust." *Ray Reilly's Tire Mart, Inc. v. F.P. Elnicki, Inc.*, 149 Vt. 37, 40 (1987). The court assumes for purposes of this decision that Mr. Alcamo's allegations satisfy the first two elements for Rule 12(b)(6) purposes.

Vermont has one reported decision addressing the circumstance of unrequested benefits in the context of an unjust enrichment claim, *Birchwood Land Co., Inc. v. Krizan*, 2015 VT 37, 198 Vt. 420. The facts are not particularly on point. However, the Court employed the Restatement approach to that matter, and the court will do the same here.

The Restatement addresses the issue of unrequested benefits in detail. As it explains, "A private party normally cannot compel another to pay for benefits conferred without request, no matter how appropriate the transaction or how reasonable the terms of the compensation demanded, if the effect of payment would be to complete an exchange that—had it been proposed as a contract—the recipient would have been free to reject." Restatement (Third) of Restitution and Unjust Enrichment § 30 cmt. b. Utopian argues that this is exactly what Mr. Alcamo is trying to do here.

There are exceptions to the general rule. They encompass the following scenarios: protection of another's life or health; protection of another's property; performance of another's duty; performance of a joint obligation; performance of an independent obligation;

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<sup>1</sup> Utopian urges the court to apply New York law to Mr. Alcamo's claim. It fails to make the threshold showing of any material conflict between Vermont and New York without which there is no need to ponder the matter. Beyond that, its analysis favoring New York over Vermont law is murky at best. The court will stick with Vermont law in these circumstances.

uncompensated performance under contract with third person; protection of claimant's property; claimant's expectation of ownership; unmarried cohabitants; and common fund. Restatement §§ 20–29.

Section 30 supplies the “residual rule,” which allows exceptions beyond those described in §§ 20–29. However, the residual rule may apply “only if restitution may be achieved in a manner that avoids any forced exchange.” Restatement § 30 cmt. a; see *id.* § 2(4) (“Liability in restitution may not subject an innocent recipient to a forced exchange: in other words, an obligation to pay for a benefit that the recipient should have been free to refuse.”).

Mr. Alcamo cites to the exceptions generally to demonstrate that the nonliability rule for unrequested benefits is not impenetrable, but he does not explain how the claim he asserts here could possibly have any viability under any of them, including the residual rule.

There is no allegation in the counterclaim that Utopian requested Mr. Alcamo's intervention or did anything to induce it. Nor is there any allegation of collusion, fraud, coercion, misrepresentation, or mistake, or that Utopian was aware that Mr. Alcamo was providing services to VSC and sat by silently only to take advantage later. Rather, Mr. Alcamo plainly alleges that he was unilaterally pursuing his own business interests in the course of which he was providing services to VSC—not Utopian. By his characterization, he anticipated compensation from VSC. Whether he had a contract with VSC as to the provision of those services and has voluntarily waived its enforcement or was, in effect, working for VSC gratuitously is not fully clear in the counterclaim.

However, Mr. Alcamo nowhere explains the inequity that would support his claim against Utopian. He presumably either got the benefit of his bargain with VSC, he waived it, or he otherwise voluntarily chose to seek no redress from VSC. See, e.g., Restatement (Third) of Restitution and Unjust Enrichment § 25 cmt. b (no liability “where A attempts to recover from B in restitution instead of pursuing a viable contract claim against C.”). Requiring Utopian to step into VSC's shoes to satisfy VSC's obligation to compensate Mr. Alcamo would simply be a “forced exchange,” liability for an unrequested benefit without any equitable basis to warrant it. Surely Utopian would have been free to say no if Mr. Alcamo had offered his services to it.

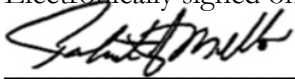
Mr. Alcamo's principal objection to dismissal is the Rule 12(b)(6) standard itself. But some equitable basis for relief is an essential element of an unjust enrichment claim, and none is reasonably inferable from the allegations. If there was a benefit to Utopian, it was an innocent recipient, and Mr. Alcamo is attempting an inequitable forced exchange. As the Vermont Supreme Court said in a different case, “We find no inequity here because plaintiff has alleged none.” *DJ Painting, Inc. v. Baraw Enterprises, Inc.*, 172 Vt. 239, 245 (2001).

Order

For the foregoing reasons, Utopian's motion to dismiss is granted.

SO ORDERED this 27<sup>th</sup> day of September, 2022.

Electronically signed on 9/27/2022 4:40 PM, pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "Robert A. Mello", written over a horizontal line.

Robert A. Mello  
Superior Judge