

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ASCOM HASLER MAILING SYSTEMS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 00-1401 (PLF)
)	
UNITED STATES POSTAL SERVICE,)	
)	
Defendant.)	
_____)	
NEOPOST, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 00-2089 (PLF)
)	
UNITED STATES POSTAL SERVICE,)	
)	
Defendant.)	
_____)	

MEMORANDUM OPINION AND ORDER

These matters were referred to Magistrate Judge John Facciola for management of all pretrial matters, including reports and recommendations on dispositive motions. On February 3, 2011, Magistrate Judge Facciola issued a Report and Recommendation recommending that plaintiffs' motion for summary judgment be granted on its contract claim and that defendant's motion to dismiss and motion for summary judgment on that claim be denied. He further recommended that these motions be denied as moot as to the unjust enrichment, equal protection and takings claims. Finally, he recommended that defendant's motion to strike

plaintiffs' affidavits in support of their motion for summary judgment be denied.¹ Both sides have filed objections to Magistrate Judge Facciola's Report and Recommendation. Plaintiffs believe, as did Magistrate Judge Facciola, that there was a contract between the parties but disagree with his conclusions with respect to the duration of the contract; they also believe their claim for unjust enrichment survives. Defendant disputes Magistrate Judge Facciola's legal conclusion that there was a contract and specifically argues that even if there was a contract with Neopost, there is no evidence in the record that there is a similar contract with Ascom.

In order to expedite a resolution of the matters raised in the cross-motions for summary judgment and in Magistrate Judge Facciola's Report and Recommendation, the Court hereby notifies the parties, pursuant to Rule 73 of the Federal Rules of Civil Procedure, Local Civil Rule 73.1 and 28 U.S.C. § 636(c), of their voluntary right to consent to assignment of this case to Magistrate Judge Facciola to conduct any and all proceedings (short of trial), including the final decision on motions for summary judgment or other dispositive motions. If the parties so consented, Magistrate Judge Facciola could convert his Report into a final decision and his Recommendation into a final judgment. Appeal from such a judgment entered by the magistrate judge under these Rules, and with the parties' consent, would lie directly to the court of appeals as it would from a judgment of the District Court. See FED. R. CIV. P. 73(c); LCvR 73.1(c). The right to so consent is a voluntary right, and the parties are free to withhold consent without adverse substantive consequences. FED. R. CIV. P. 73(b); LCvR 73.1(b).

If the parties wish to give this consent and avoid the delay inherent in this Court's

¹ These motions are respectively Docket Nos. 195, 196, 199 and 201 in Civil Action No. 00-1401, and Docket Nos. 158, 159, 162 and 164 in Civil Action No. 00-2089. There are four docket numbers covering these three motions because of a Clerk's Office error.

first considering their objections, they must execute and file a joint form of consent or separate forms of consent setting forth such election. FED. R. CIV. P. 73(b). A form of consent may be found as Form 34 in the Appendix to the Federal Rules of Civil Procedure or may be obtained from the Clerk's Office. Any notice of consent, joint or separate, should be filed with the Clerk of the Court and only once all parties have consented to the referral of the matter *nunc pro tunc* to a magistrate judge. FED. R. CIV. P. 73(b); LCvR 73.1(b). Accordingly, it is hereby

ORDERED that counsel for the parties shall jointly notify the Court in writing if they desire to take these matters directly to the court of appeals in order to expedite a resolution of these important matters by filing a joint written report with the Court and the appropriate consent form with the Clerk on or before March 25, 2010.

SO ORDERED.

/s/ _____
PAUL L. FRIEDMAN
United States District Judge

DATE: March 17, 2011