

# NYCASE LAW SHORTS

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Law Office of Johnny D. Hall  
Attorney at Law  
1532 Main Street  
Port Jefferson, NY 11778



## *Court of Appeals*

### **Broker Commission/Due Diligence Reports/Unjust**

**Enrichment:** Plaintiff, a real estate company, filed a lawsuit for breach of contract and unjust enrichment. Plaintiff alleged that it entered into a contract with a developer, defendant 1, wherein plaintiff was to prepare due diligence reports for unlisted properties and provide them to developer. In exchange for the reports, developer agreed to keep the reports confidential and to pay a commission to plaintiff. Plaintiff introduced developer to the owner of an apartment complex and a contract was executed, later however, developer terminated the contract. Developer sold the due diligence reports which wound up in the possession of another broker, defendant 2, who found another buyer for the apartment complex. Defendant 2 moved to dismiss the unjust enrichment cause against it and the Supreme Court granted. The Appellate Division modified and the Court of Appeals sustained the dismissal of the unjust enrichment cause. The Court found that plaintiff and defendant 2 did not have a “sufficiently close relationship”. Unjust enrichment does not require privity but “there must exist a relationship or connection between the parties that is not ‘too attenuated’”. The Court stated that the complaint “falls short of stating facts establishing a sufficient relationship to impose potential liability against” defendant 2. [Georgia Malone & Co., Inc. v Rieder, Court of Appeals, 2012 NY Slip Op 05200, June 28, 2012](#)

**Opinion**

### **Private Road/Public Use/Public Road/Village Maintenance**

**Required:** A dirt road traverses plaintiffs’ property. The public has access to the road and has used it for more than 10 years. Plaintiffs brought suit to quiet title and the Supreme Court found for the Village as did the Appellate Division. However, the Court of Appeals, acknowledging diverging caselaw, stated that a road cannot become a public road unless the road is used by the public AND repaired by the public. Here, the town acknowledged that it did not repair the road but that it took the road “in charge” - that it acquired the road by virtue of the services that the Village provides - snow plowing, inspecting fire hydrants, garbage collection and fire protection. The Court was not persuaded though - “The rule we endorsed in Sutherland and Impastato is a fair one: a road is not public unless the public takes responsibility for maintaining and repairing it. We reaffirm that rule today.” [Matter of Matter of Marchand v New York State Dept. of Env'tl. Conservation, Court of Appeals, 2012 NY Slip Op 05126, June 27, 2012](#)

**Opinion**

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New York Case Law Shorts by Johnny D. Hall. Questions or Comments? email: [johnny@hallesq.com](mailto:johnny@hallesq.com)