

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALLAN NOWICKI et al.	:	
	:	CIVIL ACTION
v.	:	No. 99-257
	:	
UNITED TIMBER CO. et al.	:	

**MEMORANDUM AND ORDER**

YOHN, J.

August 31, 2000

The plaintiffs, Allan and Dianne Nowicki (“plaintiffs” or “Nowickis”), have sued the defendants, Paul Pomeroy and United Timber Corporation (“United Timber”; collectively the “defendants”) for claims arising out of the alleged breach of a contract for the purchase of timber by United Timber from a tract of land located in Wayne County, Pennsylvania, owned by the Nowickis. In their complaint, the plaintiffs allege that United Timber and Pomeroy are liable for breach of contract and fraud for their failure to follow through with the agreement to purchase the timber from the plaintiffs. See Compl. ¶¶ 24-35.

Currently pending before the court are the summary judgment motions of United Timber and Pomeroy (collectively the “defendants”). See Motion for Summary Judgment of Defendant United Timber Company (Doc. No. 31) (“United Timber’s Mot.”); Motion for Summary Judgment of Defendant Paul Pomeroy (Doc. No. 32) (“Pomeroy’s Mot.”).

For the reasons that follow, I will deny United Timber’s motion for summary judgment. I will grant in part and deny in part the motion for summary judgment of Paul Pomeroy.

## FACTUAL BACKGROUND

The plaintiffs were the principals in a partnership known as Stockport Associates (“Stockport”), which purchased a tract of land in 1986 in Wayne County, Pennsylvania (the “property”). Stockport owned this property from the time of purchase until it was sold at a sheriff’s sale in July, 1999.

The facts with reference to liens and encumbrances on the property, as stated by United Timber, and undisputed by the plaintiffs, are as follows: In October, 1998, First Union Bank (or its predecessor CoreStates Bank) held a perfected mortgage on the property in the principal amount of \$360,000. In addition, in October, 1998, Allen Green held two mortgages on the land. One mortgage was for \$260,000 and the other was for \$772,000. Both were disputed by the Nowickis. Also as of October, 1998, the unpaid property taxes on the property had accrued to approximately \$130,000. In addition, Commonwealth Bank had filed mortgage foreclosure actions against the plaintiffs on the land at issue and judgments were entered in the amount of \$111,000 and \$301,000 against the plaintiffs. Nowicki contends that he avoided liability for those judgments by filing for personal bankruptcy in November, 1997. First Union Bank, which is the successor in interest to several intermediate banks, succeeded to Commonwealth Bank’s rights under the mortgage and the judgments. First Union then sold its rights to Stockport Forest Preservation, Inc. in 1999, which executed on the judgments. Accordingly, the property was sold at a sheriff’s sale in July, 1999.

Other relevant undisputed facts are as follows: In the summer of 1998, Allan Nowicki (“Nowicki”)<sup>1</sup> and Pomeroy began discussing the possibility of having United Timber purchase

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<sup>1</sup>Any reference to Nowicki in the singular refers to Alan Nowicki.

timber from the Nowicki's property. Pomeroy and Nowicki entered into negotiations which culminated in the signing of a contract on October 23, 1998, for the sale of timber on the property (the "October contract"). After Pomeroy signed the contract on behalf of United Timber, he began to feel concerned about the deal he had reached with Nowicki. On October 26, 1998, Pomeroy spoke with his lawyer, Jeffrey M. Fetter, Esquire, and told him his concerns about the contract with Nowicki. On October 28, 1998, Fetter sent a letter to the plaintiff's attorney, Bruce Marks, Esquire, in which Fetter requested confirmation that Nowicki had full right to enter into the October 23, 1998, contract and that the property was free from all liens and encumbrances. On January 4, 1999, Pomeroy signed a handwritten agreement, in which he stated that United Timber agreed to a specified payment schedule for timber on Nowicki's land, "subject to bank acceptance and clear title of lands." Nowicki accepted this proposal. See Brief of Plaintiffs, Allan Nowicki and Diane Nowicki, d/b/a Stockport Associates, in Opposition to Defendant, United Timber Company's Motion for Summary Judgment ("Pls.' Opp.") ¶ 139. On the same date, Nowicki and Pomeroy signed a handwritten statement that read: "Prior to any other money being paid, other than the first 100,000, contract between United Timber Corp. and Allen Nowicki will be renegotiated. Highlights of renegotiation will be . . . price change on soft maple & chestnut oak. As well as other details." Over the next couple of weeks, attorneys for Nowicki and United Timber corresponded concerning, among other things, the issue of back taxes owed on the property. On January 14, 1999, the plaintiff made the following proposal concerning the tax delinquency on the land: "The Owner [Nowicki] will use his best efforts to enter into a contract with the Wayne County Taxing Authority in regard to the outstanding real estate taxes on the Property in order to prevent a sheriff's sale of the Property during the time period of this

Agreement.” The next day, January 15, 1999, Fetter wrote a letter to Marks informing him that United Timber would not be able to perform under the contract.

On January 19, 1999, the plaintiffs filed suit against United Timber and Pomeroy alleging breach of contract and fraud. United Timber and Pomeroy have both filed motions for summary judgment. This memorandum and order addresses those summary judgment motions.

### **STANDARD OF REVIEW**

Either party to a lawsuit may file a motion for summary judgment, and it will be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party bears the initial burden of showing that there is no genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Where the movant bears the burden of persuasion at trial, the movant satisfies this initial burden by “identifying [the evidence] which it believes demonstrate[s] the absence of a genuine issue of material fact.” Id. at 323. Where the nonmovant bears the burden of persuasion at trial, the moving party may meet its initial burden and shift the burden of production to the nonmoving party “by ‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case.” Id. at 325. Thus, summary judgment will be entered “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.” Id. at 322.

When a court evaluates a motion for summary judgment, “[t]he evidence of the nonmovant is to be believed.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

Additionally, “all justifiable inferences are to be drawn in [the nonmovant’s] favor.” Id. At the same time, “an inference based upon a speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment.” Robertson v. Allied Signal, Inc., 914 F.2d 360, 382 n.12 (3d Cir. 1990). The nonmovant must show more than “[t]he mere existence of a scintilla of evidence” for elements on which he bears the burden of production. Anderson, 477 U.S. at 252. Thus, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citations omitted).

## DISCUSSION<sup>2</sup>

### A. United Timber’s Motion for Summary Judgment

United Timber sets forth three main arguments that it is not required to perform under the October 23, 1998, contract. First, it contends that the parties rescinded the contract. See Brief of Defendant United Timber Company in Support of Motion for Summary Judgment (“United Timber’s Brief”) at 11-12. Second, it argues that the plaintiffs breached a warranty of clear title to the timber in the October contract and therefore, United Timber’s obligation to perform under the contract was discharged. See id. at 13-21. Finally, it asserts that the plaintiffs repudiated the October contract by failing to provide adequate assurance that the timber would be free from all liens and encumbrances throughout the term of the contract. See id. at 23-24. United Timber then addresses the January writings, arguing that these writings did not constitute a binding obligation on United Timber because they did not satisfy the statute of frauds, and because the plaintiffs failed to satisfy a condition precedent under these writings. See id. at 26-29. Finally,

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<sup>2</sup>Both parties agree that the court is to apply Pennsylvania law in this case.

United Timber addresses the plaintiff's fraud claim, arguing that it should be dismissed because there is no evidence of United Timber's fraudulent intent at the time of signing of the contract. See id. at 29-34. I will address each of these separate arguments in turn.

1. Rescission of the October Contract

According to United Timber, it had no duty to perform under the October contract and plaintiffs' claims based on that contract must be dismissed because the parties mutually agreed to abandon that contract. See id. at 11-12. United Timber argues that the January 4, 1999, handwritten agreement to "renegotiate" the contract was an express rescission of the October contract. See id. at 12. The plaintiffs respond that the January writings do not constitute a rescission of the contract, but rather, an amendment of the October contract. See Pls.' Opp. at 31. Because the documents are handwritten by the parties, they are subject to substantial ambiguities. In addition, due to the conditions placed in the documents there is a very significant issue as to whether they even became effective. There is, therefore, a genuine issue of material fact as to whether the January writings constituted an amendment of the October contract, a rescission of the contract and an agreement to renegotiate a new contract, or nothing at all. Because a genuine issue of material fact remains as to these questions, I will deny the defendants' motion for summary judgment on this ground.

2. Breach of the October Contract

United Timber next argues that the plaintiffs breached the October contract and therefore, the defendants were relieved of any obligation to perform under the contract. See United Timber's Brief at 13-21. United Timber contends that the plaintiffs were unable to transfer clear title to the timber and thus, breached the October contract. According to United Timber, the

plaintiff breached the following two separate warranties: (1) the implied warranty of clean title made pursuant to Pa.C.S.A. § 2312; and (2) an express warranty of clear title stated in the October contract. Because I find that there is a genuine issue of material fact as to whether the plaintiffs breached either of these warranties, I will deny the motion of United Timber for summary judgment on this ground.

United Timber first argues that the plaintiffs breached an implied warranty of title. See United Timber's Brief at 13-18. According to 13 Pa.C.S.A. § 2312, in any contract for the sale of goods,<sup>3</sup> the seller provides an implied warranty that the title is good and the transfer rightful and the goods are delivered free from liens and encumbrances of which the buyer at the time of the contracting has no knowledge. See 13 Pa.C.S.A. § 2312(a). The statute also provides, however, that the warranty of title will be excluded or modified only "by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have." 13 Pa.C.S.A. §2312(b). In this case, there is a clear dispute as to whether United Timber had knowledge of the liens and encumbrances that could have affected the timber. Accordingly,

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<sup>3</sup>The plaintiffs argue that this contract for the sale of uncut timber was not an agreement for the sale of goods and therefore is not governed by the Uniform Commercial Code. See Pls.' Opp. at 32. The statute clearly provides, however, that a "contract for the sale apart from the land of . . . timber to be cut is a contract for the sale of goods within this division whether the subject matter is to be severed by the buyer or the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance." 13 Pa.C.S.A. § 2107. Therefore, the provisions of the U.C.C. do apply to the contract for the sale of timber from the plaintiffs to United Timber. The parties do not address at all the questions of whether the liens against the real estate, which arise from the mortgages, judgments, and unpaid taxes, are lost as to the timber when it becomes personalty under the U.C.C. and whether the enactment of the U.C.C. in any way changed the law of Pennsylvania as set forth in Havens v. Pearson, 6 A.2d 84 (Pa. 1939).

summary judgment is not proper on this ground because the issue of United Timber's knowledge is material and is in dispute. I will therefore deny United Timber's motion for summary judgment on this ground.

Second, United Timber argues that the plaintiffs breached an express warranty of title in the October contract and therefore, United Timber's performance under the contract is excused. See United Timber's Brief at 18-19. In the October contract, the plaintiffs promised that they had the "full right to enter into [the] agreement [and that] the said premises are free from all liens and encumbrances that would prohibit the sale of the timber herein specified." See id. at 19. According to United Timber, therefore, the plaintiffs failed to provide the timber "free from all liens and encumbrances" and thus, such failure constituted a breach of the October contract and relieved United Timber from its duty to perform. See id. United Timber, however, focuses only on part of the language in the contract. As noted above, the clause in the October contract provided that the premises was "free from all liens and encumbrances that would prohibit the sale of the timber herein specified." See id. (emphasis added). According to the plaintiffs, they had carefully structured the deal with United Timber so as to eliminate encumbrances and liens on the property that would threaten the sale of the timber. See Pls.' Opp. at 37. In fact, the plaintiffs contend that the January writings and discussions concerning renegotiations involved an adjustment of the payment schedule to ensure that the payments from United Timber corresponded with the payment schedule established by the bank. See id. Thus, the plaintiffs maintain that if United Timber had gone forward with their payments there would not have been any lien or encumbrance on the property that would have prohibited the sale of the timber

specified in the October contract.<sup>4</sup> For that reason, it is unclear from the present record whether there was any breach of the express warranties included in the October contract and I will deny United Timber's motion for summary judgment.<sup>5</sup>

### 3. Repudiation of the October Contract

United Timber also contends that it was discharged of its obligation to perform under the October contract because the plaintiffs repudiated the contract. See United Timber's Brief at 23-24. United Timber argues that it had reasonable grounds for insecurity, it demanded adequate assurance of due performance, and the plaintiffs did not provide adequate assurance. See id. at 24. Hence, United Timber contends that the plaintiffs repudiated the October contract. See id.

The plaintiffs respond, among other things, that they did provide adequate assurances to United Timber concerning their ability to go through with the deal and that United Timber's financial interest in the timber was secure. See Pls.' Opp. at 39. Whether the plaintiffs did provide adequate assurances so as to avoid repudiating the contract is a question of disputed material fact that is better left for the jury to decide. For that reason, I will also deny United Timber's motion for summary judgment on this ground.<sup>6</sup>

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<sup>4</sup>Again, the parties do not address the issue of whether liens resulting from mortgages, judgments, and back taxes, subsequent to the enactment of the U.C.C., would have prohibited the sale of the timber.

<sup>5</sup>United Timber also argues that the plaintiffs breached the October contract by failing to notify United Timber about the judgment lien and tax lien on the property. See United Timber's Brief at 22. The plaintiffs maintain, however, that they did, in fact, inform the defendants of the liens on the property. See Pls.' Opp. at 38. There is a genuine issue of material fact as to this issue, therefore, and I will deny United Timber's motion for summary judgment on this ground.

<sup>6</sup>Next, United Timber argues that it was excused from performance under the October contract because the plaintiffs failed to tender delivery of the timber. See United Timber's Brief at 25. The plaintiffs, however, contend that they were willing and able to perform under the

#### 4. The January Writings Do Not Satisfy the Statute of Frauds

After addressing the October contract, United Timber next argues that the January writings were invalid, and thus, did not create binding obligations. See United Timber's Brief at 26-29. United Timber contends that the January writings are invalid because they do not satisfy the statute of frauds. See United Timber's Brief at 26-27. Pursuant to 13 Pa.C.S.A. § 2201, any contract for the sale of goods for a price of \$500 or greater must be in writing to be enforceable. See 13 Pa.C.S.A. § 2201. To embody an enforceable agreement, the writing need not include all material terms, but must, at a minimum, include the quantity of the goods to be sold. See id. In this case, United Timber argues that the January writings do not satisfy the statute of frauds because there is no information in the writings as to the quantity or the price of the timber by the plaintiffs to United Timber. See United Timber's Brief at 27. The plaintiffs respond, however, that the defendants misunderstand the meaning of the January writings. See Pls.' Opp. at 40-41. The plaintiffs contend that these writings were intended to be amendments to the October contract and they were merely establishing a payment schedule for the goods identified in the original October contract. See id. at 41. Accordingly, the plaintiffs assert that the October and January writings considered together satisfy the requirements of the statute of frauds. See id. Again, the court is faced with an issue that can not be determined at the summary judgment stage as a matter of law. Whether the parties intended to form an independent contract, or merely an

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contract by providing access to the land so that United Timber could harvest the timber. See Pls.' Opp. at 28, 40. I also conclude that this issue—of whether the plaintiffs were able to perform under the October contract—is an issue of material fact that is not appropriate for disposition at the summary judgment stage, but rather, is better left for the jury to decide. I will deny United Timber's motion for summary judgment on this ground as well.

amendment to the original agreement, is a genuine issue of material fact that must be decided by the jury. I will therefore deny United Timber's motion for summary judgment on this ground.

#### 5. Failure to Satisfy a Condition Precedent

Next, United Timber argues that the January writings did not require it to perform because its obligation to make payments was expressly conditioned on the plaintiffs having bank acceptance of the parties' agreement and the plaintiffs having clear title to the timber. See United Timber's Brief at 28-29. According to United Timber, the plaintiffs never demonstrated that they had obtained bank acceptance of the parties' agreement and that they had clear title to the timber. See id. As a result, United Timber asserts that it was not required to perform because none of the conditions precedent occurred. See id. The plaintiffs, however, argue that they had obtained bank acceptance of the parties' payment schedule and therefore, there was no issue as to the title of the property because the payments would satisfy the liens and encumbrances on the land. See Pls.' Opp. at 41-42. The plaintiffs further contend that they informed United Timber of the bank's acceptance of the payment schedule and thus, the conditions precedent were satisfied and United Timber was not excused from performance. See id. Again, this is a disputed genuine issue of material fact and therefore, I will deny United Timber's motion for summary judgment on this ground.

#### 6. Insufficient Evidence of Fraud

United Timber next argues that the court should grant summary judgment on the plaintiffs' fraud claim. See United Timber's Brief at 29-34. In essence, the plaintiffs' fraud claim (Count II of the complaint) alleges that United Timber and Pomeroy represented that they

would honor the October contract and any amendments to it, when in fact they did not intend to honor the agreements. See Compl. ¶¶ 28, 31-32. The plaintiffs allege that they reasonably relied on these misrepresentations and incurred damages as a result. See id. ¶ 30, 35.

In its motion, United Timber argues that summary judgment is appropriate on this claim because the plaintiffs have failed to produce more than a mere scintilla of evidence as to this claim. See United Timber's Brief at 32. Specifically, United Timber contends that the plaintiffs have failed to demonstrate any facts that establish that the defendants did not intend to honor the October contract or its amendments at the time that the agreements were executed. See id. at 32. Instead, United Timber argues that the evidence demonstrates that United Timber did intend to perform its obligations under the contract when the agreement was formed. See id.

In response, the plaintiffs contend that between December and January 15, 1999, the defendants misrepresented their intention to go forward with the deal. See Pls.' Opp. at 43. Specifically, the plaintiffs argue that they have presented evidence that between the signing of the October contract and December, 1998, the defendants began questioning the wisdom of entering the deal with the plaintiffs. See id. at 42-43. In December, 1998, the defendants began negotiating a deal with another company for the harvesting of timber similar in quantity to the plaintiffs' property (the "Raja" deal). See id. at 43. The defendants were aware that they were not in a financial position to go forward with the October contract and the Raja deal. See id. Nonetheless, the defendants continued to represent that they were going forward with the October contract and indeed, on January 4, 1999, signed an amendment to the contract that established an amended payment schedule. See id. The plaintiffs further claim that the parties continued to discuss the agreement between January 4, 1999, and January 15, 1999, and that the

defendants relied to their detriment on misrepresentations made by the defendants during this time. See id. The plaintiffs contend that this is sufficient evidence that the defendants misrepresented their intention to perform under the October contract and therefore, the claim survives summary judgment. See id. at 42-43. There is no evidence of fraud at the time of the October 23, 1998, contract. There is some evidence, however, from which a jury might infer fraud in connection with the January 4, 1999, amendments. Although this evidence is clearly a thin reed, it is sufficient to survive the defendants' motion for summary judgment. Accordingly, I will deny United Timber's motion for summary judgment on the claim of fraud.

### **B. Pomeroy's Motion for Summary Judgment**

The plaintiffs' complaint also alleges that Pomeroy is individually liable for breach of the contract and for fraud. In his motion, Pomeroy argues that the court should grant summary judgment on these claims. I will address each of the claims against Pomeroy in turn.

#### **1. Breach of Contract Claim Against Pomeroy**

In his motion for summary judgment, Pomeroy argues that he is entitled to summary judgment because he can not be held personally liable as a corporate officer for the alleged breach of contract committed by United Timber. See Memo. of Law in Support of Defendant Paul Pomeroy's Motion for Summary Judgment ("Pomeroy's Brief") at 11-14. In essence, Pomeroy argues that he is not liable for the breach of contract by United Timber because he executed the contract on behalf of the corporation and not on behalf of himself individually. See id.

In response, the plaintiffs argue that individual liability may be imposed on Pomeroy because it is unclear from the face of one of the January writings whether Pomeroy was acting in

a corporate or an individual capacity when he signed the agreement. See Plaintiff’s Brief in Opp. to Motion for Summary Judgment of Defendant Paul Pomeroy (“Pls.’ Opp. to Pomeroy’s Mot.”) at 2-3. The plaintiffs, however, maintain that the writing signed by Pomeroy on January 4, 1999, was an amendment to the October contract, which they concede was executed by Pomeroy solely in his corporate capacity as the President of United Timber. See id. at 3. As noted above, throughout their response briefs, the plaintiffs argue that the October contract was still in force and the January writing was merely an amendment to the original agreement. See, e.g., id. This contention is inconsistent with the argument that Pomeroy should be individually liable for the entire agreement simply because he signed only his name, without a title, on the amendment to the contract. Moreover, the other January document, relating to a proposed new payment schedule, was clearly signed in his corporate capacity. Because the plaintiffs contend that the January writings supplemented the October agreement, and did not negate the agreement, then the designation of Pomeroy as the President of United Timber is also incorporated into the January writing. For that reason, I reject the plaintiffs’ argument that Pomeroy executed the agreement in his individual capacity and I conclude that this basis does not permit the plaintiffs to hold Pomeroy individually liable for breach of contract.

The plaintiffs also argue that Pomeroy may be held personally liable for the alleged breach of contract committed by United Timber because “he is the sole owner of the stock and personally did the acts complained of and the circumstances of the case are that justice and public policy demand disregarding the corporate fiction.” See Pls.’ Opp. to Pomeroy’s Mot. at 4. For this reason, the plaintiffs ask that the court pierce the corporate veil and impose liability on

Pomeroy, a corporate officer, for the acts of the corporation. I decline to do so for the following reasons.

Under Pennsylvania law, “there is a strong presumption . . . against piercing the corporate veil.” Lumax Indus., Inc. v. Aultman, 669 A.2d 893, 895 (Pa.1995). “[T]he general rule is that a corporation shall be regarded as an independent entity even if its stock is owned entirely by one person.” Lumax Indus., Inc., 669 A.2d at 895. The factors to be considered when deciding whether to pierce the corporate veil are: 1) undercapitalization; 2) failing to observe corporate formalities; 3) substantial intermingling of affairs; 4) using the corporate form for fraudulent purposes. See id. “Piercing the corporate veil is admittedly an extraordinary remedy preserved for cases involving exceptional circumstances.” Village at Camelback Property Owners Assn. Inc. v. Carr, 538 A.2d 528, 533 (Pa. Super. Ct. 1988).

In this case, the plaintiffs point only to the fact that Pomeroy was the sole shareholder in United Timber and he communicated directly with Nowicki concerning the agreement with United Timber. See Pls.’ Opp. to Pomeroy’s Mot. at 4. The plaintiffs do not point to any evidence that United Timber was undercapitalized or that Pomeroy did not observe corporate formalities. The plaintiffs also fail to demonstrate in any way that the corporate form was established for a fraudulent purpose. I will not disregard the corporate form of United Timber merely because Pomeroy was United Timber’s sole shareholder. Thus, I will grant Pomeroy’s motion for summary judgment as to the breach of contract claim against him.

## 2. Fraud Claim Against Pomeroy

Pomeroy also contends that the plaintiffs have failed to produce sufficient evidence to support the fraud claim and therefore, Pomeroy urges the court to grant his motion for summary

judgment on this claim. See Pomeroy's Brief at 14-19. Pomeroy makes essentially the same arguments as set forth by United Timber in its motion for summary judgment on the fraud claim. See id. For the reasons outlined above, I conclude that the plaintiffs have produced sufficient evidence of fraud to survive the Pomeroy's motion for summary judgment on the fraud claim. Thus, I will deny Pomeroy's motion for summary judgment on the claim of fraud.

### **CONCLUSION**

Based on the foregoing reasons, I will deny in its entirety the motion for summary judgment of United Timber. I will grant the motion for summary judgment of Paul Pomeroy as to the breach of contract claim, but will deny Pomeroy's motion for summary judgment as to the fraud claim.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALLAN NOWICKI et al.	:	
	:	CIVIL ACTION
v.	:	No. 99-257
	:	
UNITED TIMBER CO. et al.	:	

**ORDER**

AND NOW, this                    day of August, 2000, upon consideration of the motion for summary judgment of the defendant United Timber Company (Doc. No. 31) and the brief in support of the motion, the plaintiffs' original and supplemental briefs in opposition, and United Timber's reply brief, as well as the motion for summary judgment of the defendant Paul Pomeroy (Doc. No. 32) and the brief in support of the motion, and the plaintiffs' original and supplemental briefs in opposition thereto, IT IS HEREBY ORDERED:

1.     the motion for summary judgment of United Timber is DENIED IN ITS ENTIRETY;
2.     the motion for summary judgment of Paul Pomeroy is GRANTED AS TO THE BREACH OF CONTRACT CLAIM, AND DENIED AS TO THE FRAUD CLAIM.

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William H. Yohn, Jr., J.