

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

<b>BRIAN ELLIS</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>STECK MANUFACTURING CO., INC.</b>	:	
	:	
<b>Defendant.</b>	:	<b>NO. 00-3761</b>

**Reed, S.J.**

**December 18 , 2001**

**MEMORANDUM**

Plaintiff Brian Ellis (“Ellis”) filed suit against defendant Steck Manufacturing Co., Inc. (“Steck”) for allegedly using his idea for a “Clip Grip” tool without paying him royalties. He brings forth six state law claims. Jurisdiction is proper pursuant to 28 U.S.C. § 1332, as there is complete diversity among the parties and the amount in controversy exceeds \$75,000, exclusive of costs and interest. Presently before the Court is the motion of Steck for summary judgment, (Document No. 17), pursuant to Federal Rule of Civil Procedure 56, the response, reply, a supplemental brief by plaintiff and a reply by defendant to the supplemental brief. For the reasons which follow, the motion of Steck will be granted.

**I. Background<sup>1</sup>**

Steck is an Ohio corporation which manufactures and sells autobody repair tools. In 1985, Ellis, a Pennsylvania resident, created a hand tool which he named the “Clip Grip,” (Ellis Dep. at 12), designed to prevent the plastic clips, screws, and anchors used in automative trim

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<sup>1</sup> The facts laid out in this opinion are based on the evidence of record viewed in the light most favorable to the plaintiff Timothy D. Morris, the nonmoving party, as required when considering a motion for summary judgment. See Carnegie Mellon Univ. v. Schwartz, 105 F.3d 863, 865 (3d Cir. 1997).

and seals from breaking when surfaces are being prepared for painting or body work. (Compl. ¶ 5.) Ellis never applied for a patent for his tool.<sup>2</sup> (Ellis Dep. at 17.) In an effort to manufacture his invention, it appears plaintiff contacted a number of companies, in part with the help of Invention Submission Corporation, an outfit that told Ellis it would help market his product in the industry. (Id. at 25-33, 40-46.)

In or around October 1994, Ellis contacted Raymond E. Steck (“Mr. Steck”), the President of defendant Steck, apparently by telephone, to see if Steck would be interested in manufacturing the tool. (Id. at 59.) By letter dated October 6, 1994, Mr. Steck responded, in relevant part, as follows:

Thank you for contacting us about your new product idea. We are always on the lookout for new product ideas and *we will pay royalties for original ideas that we decide to manufacture and market.*

.....

*If you would like us to take a look at your idea, please send us drawings, photos or other materials describing your product idea. We will review it and let you know if it is something that we think we can manufacture and market profitably. If the idea is original and we decide to pursue the development of the idea, we will agree to a royalty percentage before we start to manufacture the product.*

(Pl.’s Ex. C) (emphasis added) (“October 6 letter”).

On February 22, 1995, Mr. Steck sent Ellis another letter which reads in relevant part:

Thank you for sending us your idea for a Clip Grip Tool to remove the plastic trim fasteners. The bodyman in our R & D body shop has a pair of curved needle nose pliers that have the tips ground thin for this same purpose. He showed them to us some time ago but we decided that the tool was too easy for any bodyman to copy and make their own rather than buy them from us. *Your design would be harder*

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<sup>2</sup> It appears that Ellis contacted an attorney and attempted to receive a patent, but was not successful. (Ellis Dep. at 17-19.) The attorney apparently told Ellis that his invention was not patentable after conducting a preliminary search. (Id.)

*to copy but I am not sure if we can make it inexpensive enough to compete with our Trim Pad Tool or the Clip-Zip that is on the market.*

We are currently working on several unrelated new products so it will be some time before we will get around to really evaluating this product idea. . . .

In the mean time, if you have any questions or if you just want to callus [sic] up to see where we stand on it, please feel free to call us. . . .

(Pl.'s Ex. F) (emphasis added) ("February 22 letter"). In response, Ellis sent Mr. Steck information on the tool, including one drawing and two sketches, (Def.'s Ex. 5), as well as pages from a catalogue which showed different clips on which his tool could work. (Mr. Steck Dep. at 6.) The drawing specifies design advantages, design features, development, target markets, and marketing outlets. (Def.'s Ex. 5) The sketches provide dimensions. (Id.)

According to plaintiff, the February 22 letter was the last contact that he had with defendant. Steck submits, however, that it sent Ellis another letter on March 8, 1995, which explained that Steck would not be manufacturing and marketing his tool because it felt it could not manufacture and market the tool at a low enough price. (Def.'s Ex. 7.) Because plaintiff denies receiving this letter, and because this motion is one for summary judgment, I will rule on the motion without reference to this letter. Ellis did not follow-up with Mr. Steck after receiving the February 22 letter. (Ellis Dep. at 70.) In August 1999, Ellis was notified by Mark Jesse, a salesman for Mack Tools, that Steck was manufacturing and marketing a tool called the Sure Grip Trim Clip Pliers ("Sure Grip"). (Ellis Dep. at 67-68.) This tool performs the same function as the Clip Grip. (Steck Dep. at 17.)

According to defendant, Rodolfo Garcia ("Garcia"), a resident of California, invented the Sure Grip. Garcia testified at his deposition that on or about November 2, 1994, he met with an

attorney in order to receive a patent for the tool. (Garcia Dep. at 13.) It is not clear when he invented the tool, but he received the patent on March 18, 1997. (United States Patent Number 5,611,519, Def.'s Ex. 10.)

On December 6, 1997, at a trade show in Las Vegas (the "NACE show"), Garcia approached Steck about the possibility of the company manufacturing and selling his tool. (Garcia Dep. at 17-18.) Prior to that meeting, Garcia may have contacted defendant by telephone in November of that year, but could not specifically recall at his deposition whether such contact had been made. (*Id.*) These initial conversations in either November or December of 1997 were the first contact Garcia ever had with defendant. (*Id.* at 18.) Mr. Steck similarly testified at his deposition that he had no contact with Garcia prior to Garcia receiving a patent for the tool. (Steck Dep. at 20.) On December 18, 1997, Mr. Steck sent Garcia a letter by facsimile which provides: "Thanks for taking the time to show me your new product at NACE. We are still very interested in being involved with it." (Def.'s Ex. 12.) In August 1998, Garcia and defendant entered into a royalty agreement whereby Steck would produce Garcia's clip remover tool. (Def.'s Ex. 13.)

## **II. Legal Standard**

In deciding a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, the "test is whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999). "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc.,

477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Furthermore, “summary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id. at 250.

On a motion for summary judgment, the facts should be reviewed in the light most favorable to the non-moving party. See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (quoting United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 176 (1962)). The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts,” Matsushita, 475 U.S. at 586, and must produce more than a “mere scintilla” of evidence to demonstrate a genuine issue of material fact and avoid summary judgment. See Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

### **III. Analysis<sup>3</sup>**

#### *A. Breach of an Implied Contract*

Plaintiff’s first cause of action is for breach of an implied contract. Ellis claims that the letter dated October 6, 1994 constituted an offer to pay royalties for the idea of his product which was accepted when Ellis submitted his drawing and sketches. He contends that defendant promised to pay royalties not for his specific design, but for the “idea” of a product to perform that function. In support, he turns, *inter alia*, to the following language from the October 6th letter: “we will pay royalties for original ideas that we decide to manufacture and market.” Ellis argues his idea was original and is being used in the Sure Grip. Steck counters that plaintiff’s

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<sup>3</sup> Parties agree that Pennsylvania law applies in this action, and I will therefore not address the potential conflict of laws questions in this adjudication.

rights are limited to the specific tool described in the drawing and sketches submitted by Ellis. Defendant contends that under the terms of its October 6 letter any obligation to pay a royalty to Ellis arises only if Steck used Ellis' particular tool; Steck is instead manufacturing and selling Garcia's tool, which was independently created.

Assuming that an implied contract<sup>4</sup> existed between Ellis and Steck, I find Thomas v. R. J. Reynolds Tobacco Co., 350 Pa. 262, 266-67, 38 A.2d 61, 63 (1944), very instructive on the issue of whether that implied agreement was breached. In Thomas, the plaintiff had written a letter to defendant explaining that Camel cigarettes were not only better, but also more economical. See id. at 263, 38 A.2d at 62. He included in the letter an experiment he had conducted among different cigarette brands and gave defendant permission to use his letter for advertising purposes as long as he was compensated for his idea. See id. at 264, 38 A.2d at 62.

The Pennsylvania Supreme Court held that in order to recover on his claim for breach of a contract implied by law,<sup>5</sup> he would need to have property rights in his idea. See id. at 266-67, 38 A.2d at 63. The Court further held that only those ideas which are "novel" and "new" and which have been "reduced to a concrete form" are protectable. See id. at 267, 38 A.2d at 63 (cited in Riese v. QVC, Inc., No. Civ. A. 97-40068, 1999 WL 178545, at \*3 (E.D. Pa. Mar. 30,

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<sup>4</sup> There are two types of implied contracts. A contract implied in fact is one "which arises where an agreement, although not expressed in words, is inferred from the conduct of the parties in light of the surrounding circumstances." See, e.g., In re Labrum & Doak, Nos. Civ. A. 98-4780, 98-4913, 2000 WL 1204646, at \*6 (E.D. Pa. Aug. 22, 2000) (collecting cases). A contract implied in law, on the other hand, occurs when one party is unjustly enriched at the expense of another. See, e.g., Schenk v. K.E. David, Ltd., 446 Pa. Super. 94, 98, 666 A.2d 327, 328-29 (1995). See also Schott v. Westinghouse Elec. Corp., 436 Pa. 279, 290-91, 259 A.2d 443, 449 (1969) (explaining difference between contracts implied in law and those implied in fact); Central Storage & Transfer Co. v. Kaplan, 37 Pa. Commw. 105, 113-14, 389 A.2d 711, 715 (1978), aff'd, 487 Pa. 485, 410 A.2d 292 (1979) (same). Plaintiff does not appear to specify under which theory he is advancing his claim. As Ellis has brought a separate claim for unjust enrichment, it appears the implied contract to which Ellis refers here is one implied in fact.

<sup>5</sup> I conclude that the Thomas case, despite the fact that the Court was discussing an allegedly breached contract implied in law, and not in fact, is still applicable to the case before me.

1999; Sorbee Int'l Ltd. v. Chubb Custom Ins. Co., 735 A.2d 712, 714 (Pa. Super. 1999)). The Court determined that the idea in the letter sent by the plaintiff was not new nor novel, nor did it contain a “concrete proposition.” See id. Thus, under the dictates of Thomas, the issue here becomes whether Ellis has raised a genuine issue of material fact as to whether Steck appropriated his idea as reduced to a *concrete form*, thereby breaching the implied contract between the parties.

Giving all inferences to plaintiff, the record before me indicates that Mr. Steck sent a letter to Ellis on October 6, 1994 which provides: “we will pay royalties for original ideas that we decide to manufacture and market. . . . If you would like us to take a look at your idea, please send us drawings, photos or other materials *describing your product idea*. We will review it and let you know if it is something that we think we can manufacture and market profitably.” (Pl.’s Ex. C) (emphasis added). Ellis responded by sending in materials that described his precise product idea.

On March 18, 1997, Garcia obtained a patent for the Sure Grip. Defendant lists differences between the Ellis’ Clip Grip and Garcia’s Sure Grip, (Def.’s Mem. at 14), which plaintiff does not dispute. Rather, Ellis contends that these disparities “relate to either [a] method of manufacturing or [an] expense, neither of which go to the question of originality of [the] idea.” (Pl.’s Resp. at 14.) The differences are as follows. Ellis made his tool by taking needle-nosed pliers and reshaping the end, while Garcia stamped flat pieces of metal. Ellis used a wire cutter while Garcia did not. Ellis used one circular hole drilled in the end, while Garcia used three non-round holes. Ellis testified that he had determined that round holes worked best. The Ellis tool has a friction fit hinge, while the Garcia tool has a nut and bolt hinge which holds the

two halves together. What is most important, is that these distinguishing marks make the Ellis tool more expensive to manufacture. As Ellis stated at his deposition, “[The Sure Grip is] just made cheaper.” (Ellis Dep. at 48.) As stated in the February 22 letter from Mr. Steck to plaintiff, defendant’s concern with Ellis’ tool was that it would not be cost efficient: “I am not sure if we can make it inexpensive enough to compete with our Trim Pad Tool or the Clip-Zip that is on the market.” (Pl.’s Ex. F.)

Under the law of Thomas, the subject of the implied contract could only legally consist of plaintiff’s particular tool as described in the submissions made by Ellis. In other words, an idea to create a tool to accomplish a particular purpose is not a protectable idea because it is not reduced to a definitive and concrete form. Rather, the specific tool would be the concrete and therefore protectable idea. Having so concluded, I further conclude that the record, even when viewed in the light most favorable to Ellis, does not permit an inference that Steck breached an implied contract because plaintiff’s Clip Grip was not the tool manufactured and marketed by Steck.<sup>6</sup> Rather, Steck has produced the Sure Grip, and the record demonstrates that this tool is different and less expensive.

Even if this Court were not to rely on the Pennsylvania Supreme Court decision in Thomas, the general rules of contract law under Pennsylvania law would prescribe the same result. As noted above, a contract implied in fact “arises where an agreement, although not

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<sup>6</sup> Ellis submits affidavits of two auto body mechanics, Douglas Klein, (Pl.’s Ex. D), and Mark Jesse, (Pl.’s Ex. E), both of whom attest to the fact that before Mr. Ellis created his tool, there was no tool on the market that could perform that same function. It appears that Ellis presents these affidavits in an attempt to demonstrate that his tool was a new invention and the fact that Garcia may have independently created a tool does not obviate Steck’s contractual obligations. The problem with plaintiff’s argument is that it seems to miss the legal point. The fact that Ellis may have created the first tool which performs this particular function does not mean that Steck must pay royalties if it produces a different, yet functionally equivalent, tool which was independently created.

expressed in words, is inferred from the conduct of the parties in light of the surrounding circumstances.” In re Labrum & Doak, 2000 WL 1204646, at \*6. The elements necessary to form an implied-in-fact contract are the same as those required for an express agreement. See Matter of Penn Cent. Transp. Co., 831 F.2d 1221, 1228 (3d Cir. 1987) (citing 1 S. Williston on Contracts § 3 (3d ed. 1957)).

The “test for enforceability of an agreement is whether both parties have manifested an intention to be bound by its terms and whether the terms are *sufficiently definite* to be specifically enforced.” ATACS Corp. v. Trans World Communications, Inc., 155 F.3d 659, 665 (3d Cir.1998) (emphasis added) (citing Channel Home Ctrs. v. Grossman, 795 F.2d 291, 298-99 (3d Cir.1986) (citing Lombardo v. Gasparini Excavating Co., 385 Pa. 388, 123 A.2d 663, 666 (1956); Linnet v. Hitchcock, 324 Pa. Super. 209, 471 A.2d 537, 540 (1984))). See also Mazzella v. Koken, 559 Pa. 216, 739 A.2d 531 (1999) (“it is essential to the enforceability of a [contract] that ‘the minds of the parties should meet upon all the terms’”) (quoting Onyx Oils & Resins, Inc. v. Moss, 367 Pa. 416, 420, 80 A.2d 815, 817 (1951)). A duty to perform under a contract lays dormant where a condition to that contract has not been fulfilled.. See Shovel Transfer and Storage, Inc. v. Pennsylvania Liquor Control Bd., 559 Pa. 56, 67, 739 A.2d 133, 139 (1999). Condition is defined as “‘an event, not certain to occur, which must occur, unless its nonoccurrence is excused, before performance under a contract becomes due.’” Id. (quoting Restatement (Second) of Contracts § 224). I conclude that in applying these general rules to this case, the alleged implied contract here is only enforceable if the parties assented to sufficiently definitive terms and all conditions precedent were met.

The record, even when viewed in the light most favorable to Ellis, indicates that the

parties could only have assented to making the subject of the implied contract be that which was exemplified in the drawing and sketches submitted by Ellis to Steck. The letter of October 6 provides: “If you would like us to take a look at your idea, please send us drawings, photos or other materials *describing your product idea.*” The idea was then embodied in those submissions. Offering to pay royalties for plaintiff’s general idea could not be considered a sufficiently definitive term. Ellis has not disputed that his tool is different and more expensively made than Garcia’s Sure Grip. The only permissible inference is that parties intended that a condition precedent to Steck being obligated to pay royalties to Ellis, was that Steck actually manufacture and market the Ellis invented Clip Grip, which never happened.

Accordingly, I conclude as a matter of law that Steck is entitled to summary judgment on the claim brought for breach of an implied contract.

B. *Good Faith and Fair Dealing*

Plaintiff alleges in the same count for his breach of an implied contract, that Steck breached the covenant of good faith and fair dealing. (Compl. ¶ 21.) The issue in this sub-claim is whether Steck breached an implied contract by failing to pay royalties. Therefore the bad faith claim adds nothing to the breach of contract claim. The Court of Appeals for the Third Circuit has concluded that under Pennsylvania law where a party can seek relief under an established cause of action, there is no need to imply a separate tort for breach of the duty of good faith. See Parkway Garage, Inc. v. Philadelphia, 5 F.3d 685, 701 (3d Cir. 1993) (because allegations of bad faith were identical to allegations under 42 U.S.C. § 1983, there was no reason to imply a separate cause of action) (relying on Creeger Brick & Building Supply Inc. v. Mid-State Bank and Trust Co., 385 Pa. Super. 30, 33-36, 560 A.2d 151, 153-54 (1989)). See also Northview

Motors, Inc. v. Chrysler Motors Corp., 227 F.3d 78, 92 (3d Cir. 2000) (predicting that Pennsylvania Supreme Court would not extend cause of action for breach of good faith to situation where plaintiff also filed claim for fraud which relied on identical facts to the claim brought for breach of good faith).

Even if a separate cause of action were permitted, as detailed above and below, the record fails to support an inference that Steck acted in bad faith. Rather, it is uncontradicted that Steck eventually produced a tool which is different from plaintiff's tool and which was independently created by Garcia.<sup>7</sup>

C. *Conversion*

Plaintiff alleged in his complaint a cause of action for conversion of an idea. Plaintiff now asserts, without amending his complaint, that he is bringing forth a claim for conversion of a trade secret. Under Pennsylvania law, "conversion is the 'deprivation of another's right in property, or use or possession of chattel, or other interference therewith, without the owner's consent and without legal justification.'" Universal Premium Acceptance Corp. v. York Bank & Trust Co., 69 F.3d 695, 704 (3d Cir. 1995) (quoting Cenna v. United States, 402 F.2d 168, 170 (3d Cir. 1968)). See also L.B. Foster Co v. Charles Caracciolo Steel & Metal Yard, Inc., 777 A.2d 1090 (Pa. Super. 2001); Northcraft v. Edward C. Michener Assoc., Inc., 319 Pa. Super. 432, 439, 466 A.2d 620, 624 (1983).

I will assume for the purposes of this motion that a claim for conversion can lie for an

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<sup>7</sup> I analyze the record with respect to the issue of independent creation in greater detail in my discussion of plaintiff's claim for conversion.

idea,<sup>8</sup> and that despite the possible pleading defects, plaintiff can bring forth a claim for conversion of a trade secret. Eliminating these legal hurdles, the real problem with plaintiff's conversion claim is that the record does not provide a permissible inference that the Clip Grip was stolen because defendant has brought forth uncontroverted evidence of the independent creation of the Sure Grip, which, as discussed above, is a different tool from the Ellis Clip Grip. Garcia testified that the earliest date at which he contacted defendant was November, 1997, approximately eight months after Garcia received his patent. (Garcia Dep. at 17-18). Mr. Steck testified that defendant had no contact with Garcia before Garcia invented and received a patent for the Sure Grip. (Mr. Steck Dep. at 20). Steck did not take steps to manufacture and market the Garcia tool until after making contact with Garcia at the trade show in December, 1997. (Garcia Dep. at 17-18; December 18, 1997 letter from Mr. Steck to Garcia, Def.'s Ex. 12.)

In order for Ellis to succeed at trial, a reasonable fact finder would need to believe that solely because Steck was in possession of the documents that Ellis sent to Mr. Steck, defendant colluded with Garcia and had Garcia invent a different and less expensive version of the Clip Grip. No reasonable factfinder could make this inference, without guess or conjecture, and thus I cannot allow plaintiff to survive this motion for summary judgment. Such circumstantial evidence does not even constitute a "mere scintilla" of evidence which nonetheless by law is not sufficient to satisfy plaintiff's burden on this motion.

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<sup>8</sup> I note however, that as discussed previously, the court in Thomas determined that in order to recover for an implied breach of contract, the plaintiff needed to have property rights in his idea, and that in order to have property rights in an idea, that idea needed to be novel, new and reduced to concrete form. See Thomas, 350 Pa. at 266-67, 38 A.2d at 63.

D. *Breach of Fiduciary Duty*

Under Pennsylvania law, a fiduciary duty arises from a special relationship of trust in which there is “confidence reposed by one side [and] domination and influence exercised by the other.” Polymer Dynamics, Inc. v. Bayer Corp., No. Civ. A. 99-4040, 2000 WL 1146622, at \*7 (E.D. Pa. Aug. 14, 2000) (citation omitted). This confidential relationship exists when “one person has reposed a special confidence in another to the extent that the parties do not deal with each other on equal terms, either because of an overmastering dominance on one side, or weakness, dependence or justifiable trust, on the other.” Commonwealth of Pa. Dep’t of Transp. v. E-Z Parks, Inc., 153 Pa. Commw. 258, 268, 620 A.2d 712, 717 (1993) (quoting Estate of Clark, 467 Pa. 628, 635, 359 A.2d 777, 781 (1976)). See also Basile v. H & R Block, Inc., 777 A.2d 95, 103 (Pa. Super. 2001) (“So long as the requisite disparity is established between the parties' positions in the relationship, and the inferior party places primary trust in the other's counsel, a confidential relationship may be established.”) A business relationship may only serve as the basis for a fiduciary relationship “if one party surrenders substantial control over some portion of his affairs to the other.” Polymer Dynamics, 2000 WL 1146622, at \*7; E-Z Parks, 153 Pa. Commw. at 268, 620 A.2d at 717 (quoting In Re: Estate of Scott, 455 Pa. 429, 433, 316 A.2d 883, 886 (1974)).

The record here establishes that plaintiff submitted his idea for the Clip Grip to a number of establishments. While he arguably had less business experience than those he was dealing with at Steck, there is no evidence that he gave Steck “substantial control” over a part of his business affairs. For instance, the facts in the record do not establish any kind of counselor or advisor relationship between the parties. I therefore conclude that as a matter of law no fiduciary

relationship arose in this case.

I further observe that even if such a relationship existed, the record does not provide a reasonable inference that such a duty was breached. Rather, as detailed above, the record provides that defendant did not use plaintiff's tool and therefore did not take advantage of nor unduly influence Ellis.

E. *Deceptive Trade Practices*

Plaintiff also brings suit under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201, et seq., which provides for a private cause of action for unfair competition and unfair or deceptive acts. Under section 201-9.2(a):

Any person who purchases or leases goods or services *primarily for personal, family or household purposes* and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater.

(emphasis added). While the Act clearly is to be construed liberally, the plaintiff must nonetheless “purchase” or “lease” goods or services which are primarily for “personal, family or household” needs. See Valley Forge Towers South Condo. v. Ron-Ike Foam Insulators, Inc., 393 Pa. Super. 339, 346-47, 574 A.2d 641, 644-45 (1990), aff'd, 529 Pa. 512, 605 A.2d 798 (1992)

Two key elements required by statute are missing in this record. First, there is no evidence that Ellis either purchased or leased anything from Steck. Plaintiff appears to argue without citation that this element is satisfied because “he exchanged his idea for goods or services.” (Pl.’s Resp. at 20.) This Court is not persuaded that such an “exchange” qualifies as a purchase or a lease of a good or a service. Second, the record does not show that the alleged

wrongdoings were connected to plaintiff's personal, family or household purposes. Ellis argues that because he exchanged his idea for personal financial gain, this element is satisfied. This Court disagrees. People engage in business transactions to ultimately make profits which will be used for personal satisfaction; this does not mean that the transaction could qualify for protection under the Pennsylvania Act. Rather, the facts in the record clearly show that the parties engaged in, or began to engage in, a business transaction. I therefore conclude that as a matter of law, plaintiff is not entitled to proceed with the claim alleged under the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

F. *Unjust Enrichment*

Plaintiff also brings a count for unjust enrichment, a quasi-contractual doctrine. Under Pennsylvania law, the elements for this cause of action include: "a benefit conferred on the defendant by plaintiff; appreciation of such benefit by defendant; and, acceptance and retention of such benefit under circumstances making it inequitable for defendant to retain the benefit without payment of value." F.T. Int'l, Ltd. v. Mason, No. Civ. A. 00-5004, 2000 WL 1514881, at \*1 (E.D. Pa. Oct. 11, 2000); Ameripro Search, Inc. v. Fleming Steel Co., -- A.2d --, Nos. 213 WDA 2001, 2001 WL 1450629, at \* 2 (Pa. Super. Nov. 16, 2001); Wiernik v. PHH U.S. Mortgage Corp., 736 A.2d 616, 622 (Pa. Super. 1999).

As explained above, the evidence here indicates that Steck did not use the Clip Grip invented by Ellis, but rather, the Sure Grip invented by Garcia. The uncontradicted record indicates that the tool being produced by Steck was independently created by Garcia, and Ellis has not raised a triable dispute as to these facts. I therefore conclude that plaintiff cannot meet his burden of demonstrating that there was "a benefit conferred on defendant by plaintiff," and

this claim will be dismissed as a matter of law.

G. *Fraud and Misrepresentation*

Plaintiff's final claim is for fraud and misrepresentation. Under Pennsylvania law, this cause of action contains the following elements: "(1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance." Gibbs v. Ernst, 538 Pa. 193, 207-08, 647 A.2d 882, 889 (1994) (citing W. Page Keaton, Prosser and Keaton on the Law of Torts § 105 (5th ed. 1984)). The tort of intentional non-disclosure only varies in that the party intentionally conceals a material fact as opposed to making an affirmative misrepresentation. See id., 538 Pa. at 208 n.12, 647 A.2d at 889 n.12.

Ellis alleges that Steck concealed its true purpose for evaluating plaintiff's idea, and it produced his tool without his knowledge and without payment. (Compl. § 43.) Ellis faces similar problems in surviving summary judgment on this claim as in the aforementioned claims. The record does not support a claim for either failure to disclose or a representation made with falsity because the permissible inference, viewed in the light most favorable to Ellis, is not that Steck failed to honor the statements made in the October 6 letter, but rather that Steck never had the occasion to pay plaintiff royalties because defendant never produced the Ellis Clip Grip. In order to proceed on this claim, Ellis would need to produce evidence that defendant made statements in order to look at his drawings so that it could copy them or produce the Clip Grip. Steck has instead produced uncontroverted evidence indicating that the tool which it produces was independently created by Garcia.

H. *Prayer for Punitive Damages*

Plaintiff seeks punitive damages and filed a supplemental brief, (Document No. 21), in support. Defendant submitted a reply to this supplement to my Chambers, but did not file such reply with the Clerk of Court. As this Court has concluded that the motion of defendant for summary judgment will be granted, I therefore also conclude that plaintiff's prayer for punitive damages will not survive summary judgment. Because this Court need not address the particular merits of the argument presented by plaintiff, I do not find it necessary to file defendant's reply with the Clerk of Court.

**IV. Conclusion**

Ellis clearly expended much time and energy in creating and attempting to market his Clip Grip. Unfortunately, the only reasonable inference a jury could reach from the record before the Court is that Steck was not able to produce the Ellis tool because it was not cost efficient, and that Steck was able to produce Garcia's independently created tool, the Sure Grip, because its design differences made the tool cheaper. Ellis, in fact, concedes that the two tools are different and was further not able to raise a dispute that the Garcia tool was not independently created. This Court can sympathize with plaintiff's misfortune; however, plaintiff has failed to raise a genuine issue of material fact for any of the causes of action which he alleged. Accordingly, this Court will grant the motion of defendant for summary judgment.

An appropriate Order follows.

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

<b>BRIAN ELLIS</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>STECK MANUFACTURING CO., INC.</b>	:	
	:	
<b>Defendant.</b>	:	<b>NO. 00-3761</b>

**ORDER**

**AND NOW**, this 18<sup>th</sup> day of December, 2001, upon consideration of the motion of defendant Steck Manufacturing Co., Inc., for summary judgment (Document No. 17), pursuant to Rule 56 of the Federal Rules of Civil Procedure, as well as the response and reply, and having concluded for the reasons set forth in the foregoing memorandum that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law, it is hereby **ORDERED** that the motion is **GRANTED**.

**JUDGEMENT** is hereby **ENTERED** in favor of Steck Manufacturing Co., Inc., and against Brian Ellis.

This is a final order.

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**LOWELL A. REED, JR., S.J.**