

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

VISUAL SOFTWARE
SOLUTIONS, et al.

CIVIL ACTION

V.

MANAGED HEALTHCARE
ASSOCIATES, et al.

NO.00-CV-1401

MEMORANDUM AND ORDER

McLaughlin, J.

August 8, 2001

This dispute arises out of the acquisition of Visual Software Solutions (VSS), a software company, by Managed Health Care (MHA) in March of 1999. The plaintiffs, Visual Software Solutions and its former principals, Michael and Judi Brachman, are suing Managed Healthcare and its principals, Robert and Laurence Irene, for payment under an Asset Purchase Agreement, Promissory Note, and Warrant entered into by the parties. The plaintiffs also claim they are owed post-termination salary under their employment agreements.

Managed Health Care and the Irenes assert that they do not owe the Brachmans any payments under the agreements due to breaches of representations and warranties by the Brachmans prior to the acquisition and due to the Brachmans' failure to satisfy

conditions precedent to payment. In addition, MHA asserts numerous counterclaims against the Brachmans, Vega Applications, the new company owned by the Brachmans, and two former MHA employees who now work for Vega, Neal Colvard and Brian Kinkel.

Presently before the Court are the plaintiffs' motion for summary judgment and the defendants' motion for partial summary judgment. The plaintiffs move for summary judgment on all three counts of the complaint and on all fourteen of the defendants' counterclaims. The defendants move for summary judgment on Count One of the complaint with respect to the payments due under the promissory note, but not the warrant. The defendants move for summary judgment on the remaining counts of the complaint in their entirety. The Court grants the motions in part and denies the motions in part.

I. Background

Prior to March 11, 1999, Michael and Judi Brachman were the principals of Visual Software Solutions (VSS), a company which wrote software programs for clients, among them Managed Health Care Associates (MHA). In 1997 and 1998, MHA was one of VSS' largest clients. (Def. Opp. Ex, A).

In late 1998, MHA offered to purchase VSS. MHA's Vice President of Finance, James Slack, and Nick DelSordi, an outside accountant, were given access to VSS' financial documentation prior to the acquisition. (Pl. Ex. A, 24). On March 11, 1999, the parties entered into an Asset Purchase Agreement as well as the following collateral agreements: (1) employment contracts with the Brachmans; (2) a promissory note in favor of VSS in the amount of \$750,000; and (3) a warrant for 25,000 shares of MHA redeemable for \$250,000 one year after closing. Pursuant to the Asset Purchase Agreement and the Promissory Note, MHA paid an initial installment at closing and agreed to pay three annual installments of \$250,000 on March 11, 2000, March 11, 2001, and March 11, 2002 respectively. (Pl. Ex. E, G, and H). MHA Software Solutions, Inc. (MHASS), a wholly owned subsidiary of MHA, was created for the purpose of purchasing VSS.

After MHA's acquisition, the working relationship between MHA and MHASS deteriorated. The Brachmans and the Irene disagreed about the amount of time MHASS was expected to spend on internal MHA projects as opposed to external projects, the financial targets of the company, and the hiring and firing of MHASS staff. (Def. Opp. Ex. E2, 9-11, 18-22; Pl. Ex. B, Sept. 13, 1999 letter). MHA also alleges that Michael Brachman

sabotaged MHA's business ties with a client, Silverlake Technologies, as well as a potential client, Toll Brothers. (Def. Opp. Ex. J, 131-135).

By September 13, 1999, the relations between the two companies had deteriorated to the extent that Michael Brachman sent Lawrence Irene a letter, suggesting that the acquisition be rescinded. (Pl. Ex. B, Sept. 13, 1999 letter). On January 4, 2000, Robert Irene sent Michael Brachman a letter outlining MHA's many complaints and concluding: "Notwithstanding all of the foregoing, we are not going to terminate your employment for 'cause' at this time, even though we believe that your conduct since the closing constitutes 'cause'..." (Pl. Ex. B, Jan. 4, 1999 letter).

On March 7, 2000, MHA sent Michael Brachman a letter stating that it would not make further payments pursuant to the note or the warrant. (Pl. Ex. C, March 7, 2000 letter). MHA failed to make the payments on the installment due date of March 11, 2000. Michael Brachman resigned from his position on March 13, 2000. Judi Brachman, who had been out on disability leave since September 1999, resigned shortly thereafter. The Brachmans are now running a new company, Vega Applications, with several former

employees including Neal Colvard and Bryan Kinkel. (Def. Opp. Ex. E1, 148).

The reasons for MHA's decision not to make further payments are disputed. MHA claims that VSS made false representations and warranties in the Asset Purchase Agreement, thereby invalidating the agreement and releasing MHA from its obligation to pay. In addition, MHA alleges that the Brachmans failed to satisfy a condition precedent to payment, because they did not submit a Certificate of Compliance regarding their compliance with the terms and conditions of their employment agreements on the installment due date, as required by the Asset Purchase Agreement. Finally, MHA claims that the Brachmans were not in compliance with their employment agreements when the payment became due, as required by the Asset Purchase Agreement. The Brachmans, on the other hand, allege that MHA was looking for excuses to get out of an agreement that had not proven as financially successful as expected.

11. Standard of Review

A motion for summary judgment shall be granted where all of the evidence demonstrates "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. Pro. 56(c).

The moving party has the initial burden of demonstrating that no genuine issue of material fact exists. Once the moving party has satisfied this requirement, the non-moving party must present evidence that there is a genuine issue of material fact. The non-moving party may not simply rest on the pleadings, but must go beyond the pleadings in presenting evidence of a dispute of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323-324 (1986). In deciding a motion for summary judgment, the Court must view the facts and "any inference to be drawn from the facts contained in depositions and exhibits" in the light most favorable to the non-moving party. Josey v. John R. Hollingsworth Corp., 996 F.2d 632, 637 (3rd Cir. 1993).

111. Discussion

A. Asset Purchase Agreement, Promissory Note, and Warrant

The defendants move for summary judgment with respect to payment under the promissory note. The plaintiffs move for summary judgment with respect to payment under both the promissory note and the warrant. There are three main issues presented in the motions. First, did the Brachmans fail to fulfill a condition precedent to the payment by not presenting

MHA with the Certificate of Compliance? Second, were the Brachmans **not** in compliance with the employment agreements on the payment date, as required by the Asset Purchase Agreement? Third, did the Brachmans make false representations and warranties in the Asset Purchase Agreement, thereby invalidating the agreement and releasing MHA from its obligation to pay? The Court rejects the defendants' argument with regard to the Certificate of Compliance, but finds that there remain disputed issues of fact with regard to the other two arguments. Therefore, the Court denies the cross motions for summary judgment on Count One of the complaint.

1. Condition Precedent
(Count 1 of Complaint)

The defendants move for partial summary judgment on the grounds that the Brachmans' failed to fulfill a condition precedent to payment under the promissory note.' According to Section 3.3 of the Asset Purchase Agreement, the Brachmans were required to deliver the Certificate of Compliance to MHA on each installment payment due date. (Pl. Ex. E, 10). Both parties agree that the Brachmans did not deliver the Certificate of

¹ This argument does not apply to payment under the warrant, because the only condition precedent in the warrant is employment one **year** after the acquisition. The Brachmans did fulfill this condition.

Compliance to MHA.

The Court finds that the Brachmans' failure to deliver the Certificate of Compliance to MHA did not release MHA from its obligation to pay. "Under Pennsylvania law, a condition must be expressed in clear language or it will be construed as a promise. Since the failure to comply with a condition precedent works a forfeiture, such conditions are disfavored." Castle v. Cohen, 840 F.2d 173, 177 (3d Cir. 1988) (citations omitted). Although no specific words are required to create a condition precedent, "that must clearly appear to have been the parties' intention." Acme Markets v. Federal Armored Express, 648 A.2d 1218, 1220 (Pa.Super. 1994). The language of the asset purchase agreement does not clearly state that delivery of the certificate *is* a condition precedent. In addition, the promissory note does not require delivery of the certificate at all. It requires only that the Brachmans still be employed by MHA and in compliance with the terms and conditions of the employment agreement.

Even if delivery were a condition precedent, the Brachman's failure to deliver the certificate would not justify non-payment. A court may excuse a condition to avoid "disproportionate forfeiture." Id. at 1221, quoting Restatement (Second) of

Contracts, Section 229. In deciding whether forfeiture would be disproportionate the court must "weigh the extent of the forfeiture by the obligee against the importance to the obligor of the risk from which he sought to be protected and the degree to which that protection will be lost if the nonoccurrence of the condition is excused." Id. at 1221-2. Excusing payment in this case due to the Brachmans' failure to deliver the certificate would result in a disproportionate forfeiture. The Court, therefore, rejects MHA's argument that the Brachman's failure to present a Certificate of Compliance released MHA from an obligation **to** pay.

2. Compliance with the Employment Asreements
(Count 1 of Complaint, Counterclaims 6 and 7)

According to MHA, the Brachmans were not in compliance with their employment agreements, because they were not using their best efforts in furtherance of their job duties, as required by their employment agreements, and were not honoring their fiduciary duties.

MHA claims: (1) that Michael Brachman sabotaged MHA's relations with a major potential client, Toll Brothers; (2) that Michael Brachman attempted to influence a client, Silverlake

Technologies, to work with Brachman's new company, rather than MHA; and (3) that Micheal Brachman violated his employment agreement by attempting to influence Colvard and Kinkel to leave their employment with MHA. The Court finds that there are disputed issues of material fact regarding the Brachmans' compliance with their employment agreements.

3. Breach of Representations and Warranties
(Count 1 of Complaint, Counterclaims 2, 3, and 4)

The plaintiffs move for summary judgment on payment under both the promissory note and the warrant. In opposing this motion, MHA claims that the Brachmans made misrepresentations in violation of Section 5.25 of the Asset Purchase Agreement prior to MHA's acquisition, thereby invalidating the entire purchase agreement and releasing MHA from its obligation to pay under both the promissory note and the warrant. Section 5.25 states:

Substantial Customers and Suppliers. ... Except as disclosed in Schedule 5.25, since December 31, 1998, none of the customers or suppliers listed on Schedule 5.25 has ceased, or threatened to cease, to use or to supply the products, good or services made available by or for the Seller in its business, or has substantially reduced the use or supply of such products, goods or services, nor does the Seller have any reason to believe that any Person will **do** so.

(Pl. Ex. E, 23).

This dispute between the parties centers on the pre-acquisition relationship between VSS and one of its major clients, Softerware. Softerware is listed as one of VSS' "significant customers and suppliers" in 1997 and 1998, according to Schedule 5.25 attached to the Asset Purchase Agreement. (Def. Opp. Ex. A). In 1997, Softerware accounted for \$137,974.50 of VSS' revenue out of a total of \$730,329.33, or 19 percent of total revenue, and in 1998, Softerware accounted for \$347,687.97 in revenue out of a total of \$1,035,514.97, or 34 percent of total revenue. Id.

In late 1998 and early 1999, Nathan Relles, the President of Softerware sent a number of e-mails to Michael Brachman, indicating his dissatisfaction with VSS' services. In an e-mail dated October 3, 1998, Relles wrote:

I won't repeat myself regarding how much we've paid in total to **VSS**, the assurances I was given by you and Judy and Brian, how much VSS' delays and workmanship have damaged my credibility and my company's reputation and hampered our ability to deliver a product, and how insulting it is to hear excuses and rationalizations rather than actions that represent a genuine concern for us as a satisfied client.

(Def. Opp. Ex. L). On December 4, 1998, Relles wrote: "As I've said a number of times, we have an incredible amount of work

ahead of us, and I am not ruling out VSS' participation in our continuing development." (Def. Opp. **Ex.** L). In an e-mail dated January 9, Relles wrote:

We've had the discussions before, and I have come to recognize that nothing will make VSS' efforts or your efforts more effective or more productive. I don't say that pejoratively - I'm just stating what I believe to be an observable fact... As you know, I have been trying for some time to find additional programming resources - mostly to bring more of the development in house, but also since my last conversation with Judy revealed to me that 'no one at VSS wants to work on EZ-CARE2" (her exact words).²

(Def. Opp. Ex. L). The content of these e-mails was not revealed to MHA prior to its acquisition of VSS. MHA claims that this failure to notify MHA of Softerware's dissatisfaction constituted a breach of representations and warranties.

The Brachmans have submitted an affidavit from Nathan Relles, however, in which he states:

The decision of Softerware not to continue contracting work with VSS was strictly an internal business decision. In March of 1999, Mr. Brachman would not have been able to predict that SofterWare would not have continued with its development programs through his company. SofterWare itself had not reached that

² EZCare2 was one of Softerware's products, a data base management system. VSS had been retained by Softerware to write the EZCare2 program.

decision. As of March 1999 and thereafter, I did not communicate to Mr. Brachman, in any way, an intention to terminate our relationship.

(Pl. Ex. J, ¶ 12). On the basis of the evidence submitted by the parties, the Court finds that there are disputed issues of material fact and therefore denies the motions for summary judgment on Count One of the complaint.

4. Counterclaims Related to the Three Agreements
(Counterclaims 2, 3, 4, 5, 7, and 8)

The Court denies the plaintiffs' motion for summary judgment on the defendants' Counterclaims Two, Three, and Four. In these counterclaims, the defendants allege breach of representations and warranties as well as fraudulent inducement. In addition, the defendants seek indemnification for damages arising out of the breach of representations and warranties. These counterclaims rely on the same arguments regarding VSS' communications with Softerware. The plaintiffs' motion is therefore denied due to the remaining disputed issues of fact.

The Court also denies plaintiffs' motion for summary judgment on Counterclaims Five and Eight with respect to Michael Brachman. In those counterclaims, the defendants allege that the Brachmans breached their fiduciary duties to MHA and tortiously

interfered with MHA's contractual relations and prospective economic advantage. These claims rely on the defendants' allegations concerning Michael Brachman's conduct in sabotaging the Toll Brothers' account and convincing Kinkel and Colvard to leave MHA's employment. As discussed above, the Court finds that there remain disputed factual issues.

The Court grants the plaintiffs' motion on these counterclaims with respect to Judi Brachman, because there is no evidence that Judi Brachman played any role in Michael Brachman's communications with Toll Brothers or with Kinkel and Colvard.

The Court grants summary judgment on Counterclaim Seven (other breach of employment agreement), because the defendants have been unable to articulate how this counterclaim differs from Counterclaim Five and have not tied the alleged breaches to any specific provision of the employment agreements.

B. The Employment Agreements

1. Post-termination salary (Count 2 of Complaint)

The parties' have both moved for summary judgment on Count Two of the complaint, which alleges that MHA owes the Brachmans

two years of post-termination salary under the terms of the employment agreement. The Court finds that the language of the contract is clear and does not require these payments. Accordingly, the Court grants the defendants' motion and denies the plaintiffs' motion.

The Brachmans were terminated without cause. Therefore, under the terms of the agreement, MHA owed the Brachmans payment of accrued and unpaid salary and benefits through the date of termination as well as payment of annual salary for the "restricted period." (Def. Ex. E and F, Employment Agreement, § 6.3). The "restricted period" for terminations without cause is defined as follows:

a period, not to exceed two years, during which the Company is currently paying Annual Salary, at the rate in effect as of the date of termination, to Employee. At such time as the Company ceases to pay Employee ... the Restricted Period shall end.

(Def. Ex. E and F, Employment Agreement §5.1(d)). A plain reading of this contract therefore leads to the conclusion that, in the case of a termination without cause, MHA had the option to purchase the Brachmans' non-competition by continuing to pay their salary, but was under no obligation to pay their salary if the restrictive covenants were not enforced.

The plaintiffs argue that this reading should not be accepted, because it renders the distinction between a 'termination for cause' and 'not for cause' meaningless. The Court disagrees. A termination with cause and a termination without cause lead to distinct results under the Employment Agreement. In the case of a termination with cause, the plaintiffs would be bound by a three year restrictive covenant of non-competition without receiving any salary. According to the unambiguous language of the employment agreements, MHA does not owe the Brachmans any post-termination salary.

2. Salary during Disability Leave
(Count 3 of Complaint)

Both parties have moved for summary judgment on Count Three of the complaint, in which the Brachmans allege that MHA owes Judi Brachman salary for the period during which she was claiming disability benefits.³ In addition, the Brachmans claim liquidated damages under the Pennsylvania Wage Payment and Collections Law. 43 Pa.C.S. 260.10.

³ In their opposition to this same argument in the defendants' motion for judgment on the pleadings, the plaintiffs also raised a procedural argument. They argued that the Honorable Norma Shapiro, to whom this case was previously assigned, had already denied a motion to dismiss this claim. As revealed by the transcript of the hearing on the motion to dismiss, Judge Shapiro specifically stated that these arguments could be raised in a different motion at a later stage in the proceeding. This Court therefore rejects the plaintiffs' procedural argument.

The Court finds that the language of the agreement itself is not clear with regard to the payment of salary during periods of disability. The only reference to benefits in the employment agreement is as follows: "[The] employee shall be entitled to benefits and stock options, if any..., substantially similar to those enjoyed by other executives holding similar positions in, and performing similar duties for, the Company..." (Def. Ex. E and F, Employment Agreement, p.1, ¶2).

The defendants argue that they cannot be required to pay salary for the period of Judi Brachman's disability leave, because Judi Brachman was unable to "devote [her] best efforts and substantially all [her] business time to the Company" during this time, as required by her employment agreement. The general language of the employment agreement, however, does not seem to relate to periods of leave. Because neither party has produced any evidence other than the ambiguous agreement, the Court is unable to grant summary judgment on either motion.⁴

The Court grants the defendants' motion for summary judgment

⁴At oral argument, counsel for the plaintiffs conceded that Judi Brachman was not entitled to both disability payments and salary. The disability payments received by Judi Brachman would therefore have to be deducted from any payment of salary for that period, if any such payment is found to have been due. (Tr. 40).

with respect to the plaintiffs' claim for liquidated damages under the Pennsylvania Wage Payment and Collections Law. Liquidated damages are not due where there is a "good faith contest or dispute of any wage claim including the good faith assertion of a right of set-off or counterclaim." 43 Pa.C.S. 260.10. The Court finds that, in light of the unclear contract language, there is a good faith dispute in this case. Liquidated damages are therefore not appropriate.

3. Related Counterclaim (Counterclaim 6)

In view of the Courts decision to grant MHA's motion for summary judgment regarding post-termination salary, the Court grants plaintiffs' motion for summary judgment on Counterclaim Six, which alleges breach of the restrictive covenants. At oral argument, counsel for the defendants stated that she did not object to the Court's granting summary judgment on this counterclaim on the grounds that MHA had chosen not to pay post-termination salary and could, therefore, not enforce the restrictive covenants. (Tr. 61).

C. Remaining Counterclaims

For the reasons that follow, the Court grants the

plaintiffs' motion for summary judgment on all of the remaining counterclaims with the exception of Counterclaim One, alleging breach of a standard fee agreement between VSS and MHA, and Counterclaim Eleven, alleging conversion on the part of Michael Brachman.

1. Breach of the Standard Fee Agreement
(Counterclaim1)

The defendants allege that VSS breached a pre-acquisition standard fee agreement by providing MHA's proprietary information to a competitor, Neuman. More specifically, MHA claims, first, that VSS used an MHA program, whose screens displayed confidential customer and pricing information, during a presentation at Neuman, and second, that **VSS** copied the MHA program for Neuman.

In their answers to interrogatories, the defendants have listed the names of former Neuman employees who would confirm that VSS' presentation revealed "confidential and customer pricing information." (Def. **Opp.** Ex. M, 9).

In his deposition, Michael Brachman did not contradict this allegation, but stated only that he could not recall whether he

had shown Neuman the MHA program. Brachman did state, however, that the software codes of the MHA and Neuman programs were different: "...it was guaranteed to be written from the ground up. It uses completely different technology. **So**, no, it could - it is not possible to have copied this from MHA." (Def. Ex. E1, 21, 27).

Despite Brachman's claim that the code could not have been copied, the Court is unable to grant the plaintiffs' motion for summary judgment on this counterclaim, given the lack of clarity regarding the alleged presentation of confidential MHA information to Neuman employees.⁵

2. Constructive Trust (Counterclaim 9)

At oral argument, counsel for the defendants stated that she was not pursuing this counterclaim. (Tr. 69). Therefore, the plaintiffs' summary judgment motion on this counterclaim will be granted.

⁵ The plaintiffs also argue that the defendants have not produced sufficient evidence to overcome the motion for summary judgment on this counterclaim, because they only submitted lists of names in response to interrogatories, but did not depose these individuals or submit affidavits **from** them. If Michael Brachman had clearly denied the allegation in his deposition or if the plaintiffs had presented any other information contradicting the allegation, the Court would be inclined to agree with this argument. But given the troubling lack of clarity in both the plaintiffs' and the defendants' evidence, the Court cannot grant summary judgment,

3. The Lanham Act
(Counterclaim 10)

Section 43(a) of the Lanham Act states:

Any person who ... uses in commerce any work, term, name, symbol, or devise, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which ... is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person...shall be liable in a civil action...

15 U.S.C. §1125(a). The defendants have failed to produce any evidence showing that the Brachmans or VSS have in any way caused confusion as to the affiliation of their goods and services either during their employment with MHA or thereafter. The plaintiffs' motion for summary judgment on this counterclaim **will** therefore be granted.

4. Conversion
(Counterclaim 11)

The defendants allege that Michael Brachman removed computer equipment and back-up tapes belonging to MHA after his resignation from the company. In addition, the defendants allege that Colvard and Kinkel aided Brachman in removing the computer equipment.

There is no evidence in the record that Brachman removed any computer equipment from the MHA or MHASS offices. Defendants have produced only the following statement of an MHA employee to Pennsylvania police: "As I entered the hallway I saw Michael Brachman coming out of the office pulling a handtruck with lots of stuff on it. Neal Colvard had the door open while he was pulling the stuff out." (Def. Opp. Ex. 0). Brachman has testified that he was only removing his and Judi Brachman's belongings. (Def. Opp. Ex. E1, 147). The Court grants the plaintiffs' motion for summary judgment on the conversion claim insofar as it relates to the alleged conversion of computer equipment.

The defendants also allege, however, that Brachman removed back-up tapes from MHASS' offices on a weekly basis during his employment. (Def. Opp. ex. E1, 142-3). Brachman has stated that he destroyed these tapes, although he knew they were MHASS property. (Def. Ex. E1, 142-3). The Court will therefore deny the motion for summary judgment on the conversion claim only with respect to Michael Brachman's removal and destruction of the tapes.

5. Claims against Kinkel and Colvard
(Counterclaims 12 and 13)

The defendants have alleged that Kinkel and Colvard violated their fiduciary duties and their duties of good faith and fair dealing by aiding Michael Brachman in removing computer equipment belonging to MHA from the MHA offices. As stated above, there is no evidence in the record to suggest that Michael Brachman took computer equipment from MHA or that Colvard or Kinkel aided him. The plaintiffs' motion for summary judgment on these counterclaims is therefore granted.

6. Wiretapping
(Counterclaim 14)

MHA has alleged that VSS intercepted or endeavored to intercept the communications of MHA employees in violation of 18 U.S.C. 2510 et seq. In support of this allegation they have produced only an inconclusive report from an investigator, which stated that an electronic sweep of the office produced no evidence of wiretapping, but noted some suspicious cut wires. (Def. Opp. Ex. J). This report is not sufficient evidence to survive a summary judgment motion. Therefore, the plaintiffs' motion for summary judgment on the wiretapping counterclaim is granted.

An appropriate order follows.

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

VISUAL SOFTWARE	:	CIVIL ACTION
SOLUTIONS, et al.	:	
	:	
V.	:	
	:	
MANAGED HEALTHCARE	:	NO.00-CV-1401
ASSOCIATES, et al.	:	

ORDER

AND NOW, this 8th day of August, 2001, upon consideration of the **Plaintiffs'** Motion for Summary Judgment (Docket #35), the Defendants' Motion for Partial Summary Judgment (Docket #36), the responses and replies thereto, and after oral argument, it is hereby ORDERED and DECREED that said Motions are GRANTED in part and DENIED in part as follows for the reasons set forth in a Memorandum of this date:

(1) the Court denies the motions for summary judgment on Count One of the complaint;

(2) grants the defendants' motion and denies the plaintiffs' motion on Count Two of the complaint;

(3) denies the motions for summary judgment on Count Three of the complaint, except that the Court grants the defendants' motion with regard to liquidated damages under the Pennsylvania Wage Payment and Collections Law;

(4) denies the plaintiffs' motion for summary judgment with respect to Counterclaims One, Two, Three, and Four;

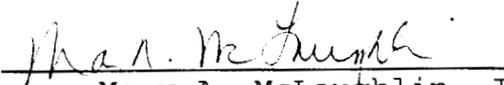
(5) **denies** the plaintiffs' motion for summary **judgment** with respect to Counterclaims Five and Eight with respect to Michael Brachman;

(6) grants the plaintiffs' motion for summary judgment with respect to Counterclaims Five and Eight with respect to Judi Brachman;

(7) denies the plaintiffs' motion for summary judgment with respect to Michael Brachman under Counterclaim Eleven, but grants the motion with respect to Neal Colvard and Brian Kinkel;

(8) grants the plaintiffs' motion for summary judgment on the remaining counterclaims.

BY THE COURT:


Mary A. McLaughlin, J.