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

MARK NAPLES,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
BEDROCK MANAGEMENT, INC.,	:	
MARK HANDWERGER, and	:	
GEOFF DAWSON,	:	
	:	
Defendants	:	
	:	NO. 04-CV-4056

MEMORANDUM

Plaintiff Mark Naples brought this suit against Defendants Bedrock Management, Inc., Mark Handwerger, and Geoff Dawson, alleging breach of contract in connection with a business venture. Defendants filed a Motion to Dismiss the complaint. Because Mr. Naples has failed to plead the essential terms of the contract, I will grant Defendants' motion.

I. FACTUAL BACKGROUND

Plaintiff alleges the following facts in support of his complaint. "Some time in 1991," Mark Naples and Geoff Dawson developed the idea of opening a pool hall in the Adams Morgan area of Washington, D.C. and they created Bedrock Billiards. Compl. ¶8. Naples introduced Defendants Dawson and Handwerger, and the two eventually formed a corporation, Bedrock Management, Inc. Id. ¶18. Bedrock Management now owns numerous billiard halls throughout the country, most of which operate under the name of "Buffalo Billiards." Id.

Upon forming their partnership and eventual corporation, Handwerger and Dawson acknowledged Naples' efforts in developing the business and promised to pay him "fair and just

compensation for his efforts." Ultimately, they failed to do so. Id. ¶¶19-21. In August 1998, Handwerger and Naples met to discuss the outstanding obligation and agreed that the Defendants owed Naples a "significant sum of money," and determined to settle the debt for "a figure they agreed would be between $80,000 and $100,000." Id. ¶¶23-24. Handwerger offered to give Naples stock, each with a then-current value of $10,000-$20,000, in the new Nashville Buffalo Billiards establishment. Naples agreed to this arrangement. Id. ¶¶25-29. Defendant Dawson "agreed to offer[]" Naples four shares of stock, and Naples received a letter "confirming the deal." Id. ¶30. Subsequently, however, he received a letter in which the Defendants offered him only two shares of stock. Id. ¶31. This letter did not indicate the value of each share. Id. Naples responded, explaining that he was "underwhelmed" by the amended offer. Id. ¶33. The Defendants did not respond to Naples' letter, nor did they pay him or otherwise issue stock. Id. ¶34.

In the fall of 2002, Dawson met with Naples in Philadelphia, where Naples then resided. Id. ¶37. He informed Naples that the two shares of stock in the Nashville establishment offered in1998 were actually valued at $40,000 per share. Id. ¶38. In December 2002, Handwerger again acknowledged the existence of the "outstanding" debt that he and Dawson owed Naples. Id. ¶40. In a meeting in Philadelphia in March 2003, Dawson promised to pay Naples, specifically referencing the debt they owed him for his role in creating Bedrock Billiards. Id. ¶42.

Naples filed suit on December 9, 2004 in the Eastern District of Pennsylvania, claiming breach of contract against each of the Defendants. He claims more than $250,000 in damages, the value of the stock he alleges that he should have received. Defendants filed this motion to dismiss.

II. STANDARD FOR MOTION TO DISMISS

The court may grant a motion to dismiss only where "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Carino v. Stefan, 376 F.3d 156, 159 (3d Cir. 2004) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In deciding a motion to dismiss, the court must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. Id.; see also D.P. Enters. v. Bucks County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984).

III. DISCUSSION

To state a claim for breach of contract, the plaintiff must plead: "(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract, and (3) resultant damages." Ware v. Rodale Press, Inc., 322 F.3d 218, 225 (3d Cir. 2003) (citations omitted).[1] "An enforceable contract exists where the parties reached mutual agreement, exchanged consideration, and set forth the terms of their bargain with sufficient clarity." Gilmour v. Bohmueller, 2005 U.S. Dist. LEXIS 1611, at *26 (E.D. Pa. Jan. 27, 2005). "An agreement is sufficiently definite if it indicates that the parties intended to make a contract and if there is an appropriate basis on which a court can fashion a remedy." First Home Savings Bank,

[1] The alleged contract in this case was negotiated and formed in the District of Columbia. The District of Columbia is also where Bedrock Management has its principal place of business, Defendant Dawson is domiciled, and where Naples performed his obligations. However, the Defendants renewed their promise to pay the debt to Naples in Pennsylvania, which is where Naples is domiciled. A federal court sitting in diversity applies the choice of law rules in which it sits. St. Paul Fire & Marine Ins. Co. v. Lewis, 935 F.2d 1428, 1431 n.3 (3d Cir. 1991). "Under Pennsylvania choice of law analysis, a court must first look to see whether an actual conflict exists between the laws of the competing jurisdictions. If there is no difference between the laws of the forum state and those of the foreign jurisdiction, the court may bypass the choice of law issue and rely interchangeably on the law of both states, although presumably the law of the forum state applies." Liebman v. Prudential Fin., Inc., 2003 U.S. Dist. LEXIS 21048, at *5-6 (E.D. Pa. Nov. 17, 2003) (citations omitted). As to the elements of a breach of contract claim, the parties agree that there is no conflict between the laws of the two jurisdictions, and therefore, I will apply Pennsylvania law. Because I dismiss the complaint for failure to state a claim, I do not address whether the claim is barred by the statute of limitations.

FSB v. Nernberg, 436 Pa. Super. 377, 387, 648 A.2d 9, 14 (1994). Naples' complaint fails to allege an enforceable agreement. With respect to the formation of the original contract, Naples specifically states:

> Immediately upon forming their partnership and eventual corporation, Handwerger and Dawson both acknowledged that Mr. Naples was due compensation for his tremendous efforts in creating the idea of Bedrock Billiards, initially backing the Adams Morgan establishment, and effectively marketing the concept such that the enterprise has become the multi-million dollar magnate it is today.
>
> Handwerger and Dawson, individually and on behalf of Bedrock Management, promised to pay Mr. Naples fair and just compensation for his efforts which brought them great success and wealth.

Compl. ¶¶19-20. These allegations are insufficient to state a claim. Not only does "fair and just compensation" lack sufficient clarity to constitute an essential term of the contract, "services rendered...prior to the execution of agreement furnish no basis for holding that there was a binding legal agreement." Cardamone v. University of Pittsburgh, 253 Pa. Super. 65, 72, 384 A.2d 1228, 1232 (Pa. Super. 1978). The actions that Naples took prior to the agreement constitute past consideration and therefore, are inadequate to support a contract claim as a matter of law. Id. All Plaintiff's claims regarding later acknowledgments of the debt hinge on the existence of the original contract. See Hazlett v. Stillwagen, 23 Pa. Super. 114, 116, 1903 Pa. Super. LEXIS 23, at *4 (Pa. Super. 1903) (citing Yaw v. Kerr, 47 Pa. 333, 1864 WL 4580, at *2 (1864)) ("A new promise...is of equal validity in giving a new starting point for the statutory limitation, but in Pennsylvania, the action is upon the original undertaking.") Therefore, because he has failed to state a claim on which relief can be granted, I will dismiss the Plaintiff's complaint.

An appropriate order follows.

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

MARK NAPLES,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
BEDROCK MANAGEMENT, INC.,	:	
MARK HANDWERGER, and	:	
GEOFF DAWSON,	:	
	:	
Defendants	:	
	:	NO. 04-CV-4056

ORDER

AND NOW, this day of March, 2005, upon consideration of Defendants' Motion to Dismiss and Plaintiff's response thereto, it is hereby ORDERED that Defendants' motion is GRANTED.

_____

LAWRENCE F. STENGEL, J.