

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

|                      |   |                  |
|----------------------|---|------------------|
| HC CONSULTING, INC., | : |                  |
| Plaintiff            | : |                  |
|                      | : | Civil Action No. |
| v.                   | : | 05-2249          |
|                      | : |                  |
| DAVID GOODMAN,       | : |                  |
| Defendant.           | : |                  |

**MEMORANDUM AND ORDER**

**Baylson, J.**

**February 2, 2006**

This is a breach of contract action. HC Consulting, Inc. (“Plaintiff”) and David Goodman (“Defendant”) executed a written consulting agreement (the “Agreement”). Plaintiff maintains that he has at all times complied with his obligations under the Agreement, but that Defendant nonetheless ceased paying Plaintiff his monthly fees due under the Agreement in December of 2004. Plaintiff brought this action to recover monies that it claims are owed under the terms of the Agreement. In response, Defendant contends that the Agreement is not an enforceable contract because it was secured through fraud, and that it is actually Plaintiff has breached the Agreement by failing to perform. Before the Court is Plaintiff’s Motion for Summary Judgment (Doc. No. 10). The Court held oral argument on the instant motion on February 1, 2006.

Summary judgment is appropriate “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). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby,

Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the moving party’s initial burden can be met simply by “pointing out to the district court that there is an absence of evidence to support the non-moving party’s case.” Id. at 325. After the moving party has met its initial burden, “the adverse party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). Summary judgment is appropriate if the non-moving party fails to rebut by making a factual 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.” Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255.

After the listening to the discussion at the hearing and carefully considering the pleadings, the Court finds that summary judgment in this case is not appropriate because there are fundamental disputes of fact which are plainly material to resolution of Plaintiff’s claims. These include:

1. Whether the parties reached a meeting of the minds and, therefore, formed a valid and enforceable contract;
2. Whether a confidential relationship existed between Plaintiff and Defendant;

3. Whether Plaintiff induced Defendant to sign the Agreement by virtue of fraud;
4. Assuming the parties formed a valid and enforceable contract, whether the Agreement was fully integrated;
5. Assuming the parties formed a valid and enforceable contract, what duties were imposed upon Plaintiff by the Agreement; and
6. Assuming the parties formed a valid and enforceable contract, whether, by their actions, either party breached the Agreement.

Accordingly, Plaintiff's Motion for Summary Judgment (Doc. No. 10) is DENIED. Trial is scheduled for February 8, 2006.

**BY THE COURT:**

/s/ MICHAEL M. BAYLSON

**MICHAEL M. BAYLSON, U.S.D.J.**