

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

MICHAEL F. BABIARZ,	:	AUGUST TERM, 2000
	:	
Plaintiff	:	No. 1863
	:	
v.	:	
	:	
BELL ATLANTIC-PENNSYLVANIA,	:	COMMERCE PROGRAM
INC., BELL-ATLANTIC COMMUNICATIONS	:	
AND CONSTRUCTION SERVICES, INC.,	:	
BELL ATLANTIC CORPORATION, and	:	
VERIZON COMMUNICATIONS, INC.,	:	
	:	
Defendants	:	Control No. 071389

OPINION

Presently before this court is Defendants’ Petition for Extraordinary Relief in the Nature of a Motion for Reconsideration, Sanctions, Protective Order and Stay of Discovery (“Petition”),¹ and Plaintiff’s response in opposition thereto. Defendants request that this court reconsider its 38-page Opinion and Order, dated July 10, 2001, which overruled certain Preliminary Objections and allowed certain claims to go forward because, in part, the record did not contain a fully executed contract and it was unclear that an enforceable agreement existed. See Babiarz v. Bell Atlantic-Pennsylvania, Inc., et al., August 2000, No. 1863, slip op. at 26-27 (C.P. Phila. July 10, 2001)(Herron, J.) (“Babiarz I”).

¹During oral argument on this Petition, this court noted that a “Motion for Extraordinary Relief has always been interpreted as limited to that one request for an extension or change of deadlines.” 10/25/01 N.T. 5. The court then concluded that despite the title of Defendants’ Petition, it had “the authority to reconsider the preliminary objections in light of document that was discovered subsequently,” especially in view of the fact that defendants were also seeking to change the deadlines. Id. See Pa.R.C.P. 126 (allowing for liberal construction of the rules “to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable.”).

Since an executed and unambiguous contract, which governs the terms of Plaintiff's submission of his marketing idea, does in fact exist and since the record shows that Plaintiff had a copy of his signed Idea Submission Form prior to filing the lawsuit but failed to attach it to any of his pleadings or disclose its existence during oral argument on the Preliminary Objections in spite of a duty to do so, this court is granting Defendants' Petition.

DISCUSSION

“Motions for reconsideration are discouraged unless the facts or law not previously brought to the attention of the court are raised.” S.A. Arbittier et al., Philadelphia Court of Common Pleas Civil Practice Manual, § 7-2.8 (10th ed. 2000). A court has inherent power to reconsider its own rulings. Moore v. Moore, 535 Pa. 18, 25, 634 A.2d 163, 167 (1993); Hutchison v. Luddy, 417 Pa.Super. 93, 108, 611 A.2d 1280, 1288 (1992). See 42 Pa.C.S.A. § 5505 (trial court may reconsider its own order within thirty days of entering the order). The statute limiting the time for reconsideration of orders to thirty (30) days applies only to final, appealable orders. Hutchison, 417 Pa.Super. at 108, 611 A.2d at 1288. “Where an order does not effectively place the litigant out of court or end the lawsuit, it is within the trial court’s discretion to entertain a motion to reconsider the interlocutory order outside the thirty day time limit set forth in 42 Pa.C.S.A. § 5505.” Id.²

In support of their Petition, Defendants argue that “Plaintiff and/or his counsel (1) failed to disclose the existence of an executed contract in the averments of the Amended Complaint in violation of Pa. R. Civ. P. 1019(h); (2) failed to attach this executed contract to the Amended Complaint in violation

²Here, Defendants’ motion for reconsideration is of an order which is interlocutory in nature, and, thus, the thirty-day time limit does not apply though the motion was filed within that time limit.

of Pa. R. Civ. P. 1019(i); and (3) most importantly, denied its existence to this Court during oral argument on Defendants' Preliminary Objections in violation of his clear ethical obligation to reveal it." Defs. Petition, at 1-2. In response, Plaintiff asserts that he has throughout acknowledged that he submitted the form in question pursuant to the Champion Program and that he received \$250.00 from Defendant Bell Atlantic in response to his submission, but that Plaintiff disputed that the (signed) form constituted a contract. Pl. Response to Defs. Petition, at 1-4.

In Babiarz I, this court overruled the Preliminary Objections to Count I (Civil Conspiracy), Count II (Accounting), Count VI (Breach of Fiduciary Duty), Count VII (Fraud), Count VIII (Quasi Contract and/or Implied Contract), Count IX (Unjust Enrichment) and Count XI (Constructive Trust). The remaining objections were sustained and the counts for conversion, misappropriation of trade secrets and misappropriation of invention were dismissed with prejudice. The primary rationale for overruling the other objections was that this court did not have a signed copy of the purported contract; i.e., the Champion Program brochure and Idea Submission Form which set forth the compensation rates to which employees and/or managers were entitled upon submission of an idea or marketing suggestion to the company. See Babiarz I, slip op. at 25-27, 31-33.

However, the original Opinion was based on a faulty premise, in that, it was unclear that the parties had an enforceable agreement, absent the plaintiff's signature. On that premise, this court found that Plaintiff may proceed with his breach of fiduciary duty claim because he alleged that he disclosed his idea in confidence. Slip op. at 21. This court also found that his claim for fraud was not necessarily barred by the parol evidence rule because of the uncertainty of the existence of an enforceable contract. Id. at 27. Additionally, this court found that plaintiff may proceed with a cause of action for rescission and/or unjust

enrichment based on this faulty premise. Id. at 28-29, 32-33. The other claims for civil conspiracy, accounting and constructive trust were also connected to the underlying substantive claims.

Now, contrary to Plaintiff's position, this court finds that Plaintiff has been less than candid about the existence of a signed contract and that Plaintiff and/or his counsel have confused the issue of whether an enforceable contract existed through tortured legal arguments. Therefore, this court finds that there are sufficient grounds to reconsider this court's original Opinion.

First, Plaintiff failed to attach the executed copy of the Champion Program Idea Submission Form to his Amended Complaint, despite the fact that Count VIII of the Amended Complaint was entitled "Breach of Contract and/or Quasi Contract and/or Implied Contract. Such failure would normally constitute a violation of Rule 1019(i) of the Pennsylvania Rules of Civil Procedure. However, in his Amended Complaint, Plaintiff explicitly alleged that the purported contract was based on oral representations, courses of conduct, and writing which are not fully in the possession of Plaintiff." Am.Compl., ¶ 58. This allegation, alone, implied that the contract consisted of more than the Champion Program and its terms, and that Plaintiff did not have the writings in his possession.

In turn, Defendants' counsel attached the Champion documents to their Preliminary Objections, which included an unsigned copy of the Champion Program Idea Submission Form. See Preliminary Objections, Exhibit B. In this court's original Opinion, the court found that it may review the Champion documents and that defendants' attachment of these documents did not create an impermissible "speaking demurrer" because Plaintiff had referred to these documents in his Complaint. Babiarz I, slip op. at 26. Further, at oral argument on the Preliminary Objections, Plaintiff's counsel waived an objection to the Defendants' inclusion of an unsigned copy of the Champion Program Idea Submission Form, but counsel

disputed that this document constituted a contract. 4/23/01 N.T. 39-40. Plaintiff also admitted that it had received the \$250.00 for submission of his idea, but Plaintiff continued to dispute that receipt of this money demonstrated an acceptance by Defendants. *Id.* at 41-42. However, at this time, Plaintiff did not come forward with a signed copy of the Submission Form, even though it would have been most appropriate for Plaintiff or his counsel to have done so.

Then, directly following this court's issuance of its Opinion, Plaintiff submitted a signed copy of the Submission Form to Defendants in response to a discovery request. At that point, Defendants came before this court to request a stay of the matter and for this court to reconsider its ruling on the Preliminary Objections. During oral argument on this request on July 18, 2001, the court engaged in the following inquiry with Plaintiff's Counsel:

The Court: When did you get the signed contract?

Mr. Jokelson: Before July 10th.

The Court: When?

Mr. Jokelson: I don't know the exact date of the submission when we had gotten it.

The Court: Who knows that?

Mr. Jokelson: I guess Derek or David Jokelson would know that.³

The Court: I want to know the date when you got that letter.

Mr. Jokelson: We had that document before we filed.

The Court: I would like the date you had the document before you filed.

³Derek and David Jokelson are both attorneys and co-counsel on this case with their father, Neil E. Jokelson, Esq. They were both in the courtroom on July 18, 2001.

Mr. Jokelson: Before we filed the Complaint and we didn't believe it was necessary and appropriate to attach the document to the Complaint.

The Court: I am very concerned at this juncture. When did you have that document?

Mr. Jokelson: Again, I would have to ask my sons that question. The answer is as we sit here now we don't know what that date was. We don't know if we could reconstruct it, but we can certainly do our best.

The Court: How far in advance of filing the Complaint did you have that document?

Mr. Jokelson: I'm told it would have been at least two months before.

7/18/01 N.T. 9-11. This court then granted a stay of discovery and allowed the parties to brief the issue. On October 25, 2001, this court again heard oral argument on the present Petition and plaintiff's opposition thereto.

The document in question, the Champion Program Idea Submission Form, provides in detail the concept of Plaintiff's idea for "Bell Atlantic Ready". Directly above Plaintiff's signature is the following writing:

I acknowledge that this idea is the sole property of Bell Atlantic and the CHAMPION Program. My claim to this idea is limited to any rewards instituted as part of the CHAMPION Program. I understand that submission of an idea does not guarantee acceptance to the CHAMPION Program.

Preliminary Objections, Exhibit B;Pet., Exhibit 1 at Bates No. 00255. This clear and unambiguous language negates Plaintiff's claims for conversion, misappropriation of trade secret and misappropriation of invention, which this court dismissed in its original Opinion because Plaintiff had admitted that he voluntarily submitted the idea to help defendant BA-PA compete in the marketplace. Babiarz I, slip op. at 14-19. Additionally, this language and Plaintiff's signature, acknowledging the limits in the Champion Program, which was in Plaintiff's counsel's possession prior to filing the Complaint, also demonstrate that

counsel may have been dilatory in bringing these claims in the first place. Moreover, Plaintiff's claim for breach of fiduciary duty, on the grounds that he submitted his idea in confidence, is also negated by this clear and unambiguous language, acknowledging that the idea belonged to Bell Atlantic, notwithstanding the allegations in the Amended Complaint that a confidential and/or fiduciary relationship existed between Plaintiff and Defendants Bell Atlantic and/or Ba-PA because Plaintiff disclosed his idea for "Bell Atlantic Ready" under the belief that his disclosures would be held in confidence. Am.Compl., ¶¶ 7, 9, 15, 16, 26, 27. However, merely alleging that something is disclosed in confidence is not sufficient to establish a confidential or fiduciary relationship, when the idea is really disclosed pursuant to an employer's solicitation for ideas from its employees. See Basile v. H. & R. Block, Inc., 2001 WL 460913, at *4-5 (Pa.Super.Ct. May 3, 2001)(setting forth the standard for a confidential relationship).

Additionally, Plaintiff's claims for fraud, rescission and unjust enrichment also appear to be without merit in light of this language and the documents which comprise of the Champion Program. First, clear instructions were attached to the Submission Form and brochure, which provided the following, in pertinent part:

4. All employees whose ideas are accepted for development will receive a cash award of at least \$259. There will also be the opportunity for at least one additional cash award if the product or service that results from your idea generates significant revenue.
5. Managers who submit ideas may also be asked to participate in its development, and will be compensated accordingly.

Pet., Exhibit 1 at Bates No. 00254. Further, the Champion Program's brochure explicitly provided that associates (or managers who submit ideas only) will receive compensation of \$250 for an idea that results in an approved Business Opportunity Assessment (BOA). Id. at Bates No. 00257. Associates would also

“be kept abreast of development of the idea and may receive additional compensation . . . [i]f an idea results in a product or service that generates \$10,000 in gross revenue, the employee will receive additional compensation of \$2,500 and recognition.” Id. Managers, in turn, could be eligible for \$50,000 in additional compensation if the product or service resulted in more than \$1,000,000 in revenue. Id.

In the Amended Complaint, Plaintiff alleged that he was assured that the full extent of Champion Program benefits would be available to him despite the fact that he was not a member of management, but that no such payments or recognition were ever made. Am.Compl., ¶ 18. In Babiarz I, this court previously stated that it “can reasonably infer that Plaintiff is alleging that Defendants’ assurances that Plaintiff would be adequately paid and protected to the maximum limits of the Champion Program were false when uttered in order to induce plaintiff to reveal his idea.” Slip op. at 25. This court also found that certain issues of fact existed regarding whether an enforceable contract was formed. Id. at 27. Now, in the face of the signed Idea Submission Form and the clear and unambiguous terms of the Champion Program, Plaintiff’s claim for fraud in the inducement must fail as a matter of law. The parole evidence rule bars admission of parole evidence to prove fraud in the inducement, when the prior oral representations relate to a subject specifically dealt with in the contract. See HCB Contractors v. Liberty Place Hotel Assocs., 539 Pa. 395, 398-99, 652 A.2d 1278, 1279-80 (1995); 1726 Cherry St. Partnership v. Bell Atl. Properties, Inc., 439 Pa.Super. 141, 154-55, 653 A.2d 663, 670 (1995). During oral argument on the Petition, Plaintiff’s counsel again conceded that his claim was one of fraud in the inducement. 10/25/01 N.T. 24-25. Since Plaintiff’s claim is for fraud in the inducement, it must fail under the parole evidence rule which prohibits introduction of evidence of prior oral representations which vary the terms of the written agreement. HCB Contractors, 539 Pa. at 398-99, 652 A.2d at 1279-80.

Additionally, Plaintiff cannot maintain his claim for rescission or unjust enrichment in the face of a fully executed agreement. Again, this court finds Schott v. Westinghouse Electric Corp., 436 Pa. 279, 259 A.2d 443 (1969) to be instructive but finds that it is distinguishable from the present case. In Schott, the plaintiff-employee submitted a suggestion on a standard form for certain panels to be used on circuit breakers pursuant to the employer's solicitation. Id. at 283, 259 A.2d at 445. The Suggestion Committee rejected the employee's suggestion when it was first submitted and, again, when it was submitted one year later. Id. at 283-84, 259 A.2d at 445. The company then adopted the suggestion and utilized it in a redesign without making any compensation to the plaintiff. Id. at 284, 259 A.2d at 446. The Pennsylvania Supreme Court affirmed the lower court's dismissal of the breach of contract count as it found that no contract was formed whether it was unilateral or bilateral in nature because there was no acceptance of the offer on its own terms. Id. at 289, 259 A.2d at 448. The court then allowed the employee to proceed on an unjust enrichment claim. Id. at 292, 259 A.2d at 449.

Here, unlike Schott and contrary to this court's original Opinion, it is clear that an enforceable contract was in fact formed. Even assuming as argued by the Plaintiff that the signed Idea Submission Form constituted an offer, this court cannot find that such offer was void for being induced by fraud since such evidence would be barred by the parol evidence rule as discussed above. Further, such offer was accepted when Defendants paid Plaintiff the \$250 pursuant to the Champion Program brochure, which is the initial payment for ideas which result in an approved Business Opportunity Assessment. Pet., Exhibit 1 at Bates No. 00257. Plaintiff begrudgingly admitted that he received the \$250 pursuant to the Champion Program, but he maintained that it was "clearly a prize that the plaintiff got for reaching level one consideration" and does not mean that an enforceable contract was formed which would preclude Plaintiff from additional

recovery of monies. 4/23/01 N.T. 42-43. See also, 10/25/01 N.T. 25. However, this court finds that a contract was in fact formed, since it had all the necessary elements of an offer, acceptance, consideration or mutual meeting of the minds. See Jenkins v. County of Schuylkill, 441 Pa.Super. 642, 648, 658 A.2d 380, 383 (1995)(setting forth the requirements for an enforceable contract).

The whole basis for rescinding the contract was based on the alleged misrepresentations that Plaintiff would be compensated appropriately for his idea or abuse of fiduciary relationship. Am.Compl., ¶¶ 58-59. As noted above, Plaintiff cannot make out a claim for fraudulent misrepresentation on account of the parol evidence rule. Similarly, his count for abuse of fiduciary relationship falls by the wayside on account of the fact that he clearly disclosed his idea pursuant to the Champion Program and acknowledged that his claim was limited to the Program's rewards. Now, in the face of a valid and enforceable contract, Plaintiff has not established legitimate grounds for rescission of the contract. Additionally, with a valid and binding contract, Plaintiff is not entitled to proceed on his cause of action for unjust enrichment since his claim appears to be based on a written contract. See Birchwood Lakes Community Ass'n v. Comis, 296 Pa.Super. 77, 86, 442 A.2d 304, 308 (1982); Hershey Foods Corp. v. Ralph Chapek, Inc., 828 F.2d 989, 999 (3d Cir. 1987). However, if, as alleged, the idea did in fact generate \$10,000 (or more) in gross revenue, then Plaintiff may have been entitled to additional compensation of \$2,500 and recognition pursuant to the Champion Program.⁴ If, so, then Plaintiff appears to have a cause of action for breach of contract. However, it would be more appropriate for Municipal Court to hear the matter since that court

⁴Plaintiff alleged that he was assured that he would be eligible for the full extent of the Champion Program benefits, which could have amounted to \$50,000 in additional compensation, even though he was not a manager. However, evidence of this alleged promise would be barred by the parol evidence rule.

handles all matters with controversies in the amount of \$10,000 or less. 42 Pa.C.S.A. § 1123(a)(4).

The circumstances of this case also demonstrate that Defendants are entitled to attorney fees, incurred in bringing the present Petition, in accordance with 42 Pa.C.S.A. § 2503 (6).

CONCLUSION

For the reasons stated above, this court is granting Defendants' Petition for Reconsideration of this court's Order and Opinion, dated July 10, 2001. Plaintiff's remaining counts for Civil Conspiracy, Accounting, Breach of Fiduciary Duty, Fraud, Unjust Enrichment and Constructive Trust are hereby dismissed. Plaintiff may proceed on his breach of contract claim. Defendants' Request for a Stay of Discovery is also granted. Defendants are also entitled to attorney fees, incurred in bringing the present Petition.

BY THE COURT,

JOHN W. HERRON, J.

Dated: November 20, 2001

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

CIVIL TRIAL DIVISION

MICHAEL F. BABIARZ,	:	AUGUST TERM, 2000
Plaintiff	:	No. 1863
v.	:	
BELL ATLANTIC-PENNSYLVANIA, INC., BELL-ATLANTIC COMMUNICATIONS AND CONSTRUCTION SERVICES, INC.,	:	COMMERCE PROGRAM
BELL ATLANTIC CORPORATION, and VERIZON COMMUNICATIONS, INC.,	:	
Defendants	:	Control No. 071389

ORDER

AND NOW, this 20th day of November, 2001, upon consideration of defendants' Petition for Extraordinary Relief in the Nature of a Motion for Reconsideration, Sanctions, Protective Order and Stay of Discovery ("Petition"), plaintiff's opposition thereto, all other matters of record and having heard oral argument on this matter, and in accord with the contemporaneously-filed Opinion, it is hereby **ORDERED** that:

1. Defendants' Petition for Reconsideration of this Court's Order and Opinion of July 10, 2001 is **Granted**;
2. The Counts for Civil Conspiracy, Accounting, Breach of Fiduciary Duty, Fraud, Unjust Enrichment and Constructive Trust are hereby **Dismissed**;
3. Defendants' request for sanctions is **Granted** such that Plaintiff's counsel, in failing to disclose or attach the signed Champion Program Idea Submission Form, owes Defendants the attorney fees incurred in bringing the present Petition; and

4. This matter is transferred to Municipal Court of Philadelphia County as the amount in controversy appears to be less than \$10,000, pursuant to 42 Pa.C.S.A. § 1123(a)(4).

BY THE COURT,

JOHN W. HERRON, J.