

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

LAWRENCE ELLIOT HIRSCH	: DECEMBER TERM, 2004
Plaintiff	
	: No. 3181
v.	
	: (Commerce Program)
MACE NEUFELD and	
MACE NEUFELD PRODUCTIONS	: Control No. 020065
Defendants.	

**ORDER**

**AND NOW**, this 4<sup>th</sup> day of April 2006, upon consideration of defendants' Motion for Summary Judgment, the response in opposition, the respective memoranda, all other matters of record, and in accord with the Opinion being filed contemporaneously with this Order, it is **ORDERED** that said Motion is **GRANTED** and that judgment is entered in favor of defendants and against plaintiff.

**BY THE COURT:**

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**ALBERT W. SHEPPARD, JR., J.**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**  
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LAWRENCE ELLIOT HIRSCH Plaintiff	: DECEMBER TERM, 2004
v.	: No. 3181
MACE NEUFELD and MACE NEUFELD PRODUCTIONS Defendants.	: (Commerce Program) : Control No. 020065

.....  
**OPINION**

**ALBERT W. SHEPPARD, JR., J. .... April 4, 2006**

Before the Court is defendants' Motion for Summary Judgment. For the reasons discussed, the Motion is granted.

**I. Discussion**

Plaintiff Lawrence Elliot Hirsch ("Hirsh") has brought the instant action against Mace Neufeld and Mace Neufeld Productions, former clients, for legal fees. According to the Amended Complaint, plaintiff is seeking payment for "past services" and also 50% of the net proceeds of any settlement obtained by defendants from "various opposing parties." The Amended Complaint contains claims for breach of contract (Count I), *quantum meruit* (Count II) and fraud (Count III). Defendants have moved for summary judgment as to all claims; each will be addressed in turn.

## **I Plaintiff's Claim For A Percentage of Settlement Proceeds**

A portion of each count relates to plaintiff's claim of entitlement to 50% of the net proceeds of any settlement obtained by defendants from various opposing parties, based upon an alleged oral agreement between the parties dated November 27, 2002. Such a claim is problematic on many levels and fails under each of the asserted causes of action.

First, plaintiff has failed to produce evidence to support such an agreement between the parties. Under Pennsylvania law, in order to have a contract – oral or written - there must be an agreement on the essential terms of the contract, in particular, offer, acceptance, consideration and/or a mutual meeting of the minds. Jenkins v. County of Schuylkill, 441 Pa. Super. 642, 658 A.2d 380, 383 (1995). Plaintiff has produced no such evidence here. The uncontroverted evidence demonstrate that Hirsh prepared a written contingent fee proposal dated December 20, 2002, which purported to memorialize the alleged November 27, 2002 oral agreement, and that this proposal was specifically rejected by Defendants on January 6 and 20, 2003. *See* Def. Exhs. 1, 3 and 5. Moreover, in Pennsylvania, contingency fee agreements are required to be in writing to be enforceable. Feingold v. Pucello, 439 Pa. Super. 509, 654 A.2d 1093 (1995).

Further, plaintiff cannot demonstrate damages in tort, contract or equity. The uncontroverted evidence demonstrates that defendants never received a settlement or any other money in connection with the litigation which is the subject of the alleged oral agreement between the parties. In fact, defendants actually paid money in the underlying matter. Consequently, there is no settlement fund for plaintiff to get a portion of, even if he was entitled to it. Plaintiff has produced no evidence to the contrary and, in fact, concedes this fact in the Amended Complaint. Am. Compl. ¶ 21. Clearly, there is no basis in law or equity to justify an award of damages for the breach of an alleged oral contingency fee agreement where the client

did not recover any money. Accordingly, summary judgment is granted in favor of defendants with respect to all claims relating to the alleged oral contingency fee agreement.

**B. Plaintiff's Claim for Past Legal Services**

The remainder of plaintiff's claims relate to defendants' alleged oral agreement to pay for "past legal fees". However, plaintiff has failed to produce any evidence to support such a claim.

The simple fact that defendants bear the burden as the moving party does not mean that plaintiff is entitled to a trial simply based on the allegations of his Amended Complaint. To withstand summary judgment, plaintiff must actually produce evidence of facts which would entitle him to a trial; he may not just claim that such evidence exists in opposition to summary judgment and expect his claims to survive. Once the moving party has met its burden, the adverse party may not rest upon the mere allegations or denials of his pleading, but his response must set forth specific facts showing that there is a genuine issue for trial. Pa.R.C.P. 1035.2(2); *see also* Fennell v. Nationwide Mut. Fire Ins. Co., 412 Pa. Super. 534, 540, 603 A.2d 1064, 1067 (1992); Aimco Imports, Ltd. v. Industrial Valley Bank & Trust Co., 291 Pa. Super. 233, 236, 435 A.2d 884 (1981); Amabile v. Auto Kleen Car Wash, 249 Pa. Super. 240, 376 A.2d 247 (1977).

Plaintiff has failed to do so here.

As stated by the Superior Court, "[o]ur rules of civil procedure are designed to eliminate the poker game aspect of litigation and compel the players to put their cards face up on the table before trial begins." Paparelli v. GAF Corp., 379 Pa. Super. 62, 549 A.2d 597 (1988); Roland v. Kravco, Inc., 355 Pa. Super. 493, 513 A.2d 1029 (1986). This court subscribes to this statement and requires it here. Because plaintiff has set forth no evidence – such as legal bills, time records or any other documentation - to support his claims in either contract or *quantum meruit*, summary judgment is granted in favor of defendants.

**II. Conclusion**

Based on the forgoing, defendants' Motion for Summary Judgment is granted and judgment is entered in favor of defendants and against plaintiff.

**BY THE COURT:**

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**ALBERT W. SHEPPARD, JR., J.**