

STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT

Docket No. CV-99-116

AMN-100-053-100

**FILED AND ENTERED
SUPERIOR COURT**
OCT 23 2001
PENOBSCOT COUNTY

PAUL A. DYER,
Plaintiff,

v.

GEORGE HOBART, et al.,
Defendants.

**ORDER ON MOTION
FOR SUMMARY JUDGMENT**

The facts are not in dispute. Defendants move for summary judgment based upon the doctrines of accord and satisfaction and statute of frauds. They have abandoned their arguments regarding the statute of limitations for the time being.

Plaintiff styles the first count of the Amended Complaint as promissory estoppel. In essence, he argues that Defendant George Hobart is estopped from avoiding obligations created under an oral agreement alleged to be created at the inception of their relationship. The parties agree that no written agreement or contract was ever created. Under these circumstances, the court is satisfied that the statute of frauds does apply and renders unenforceable the agreement which is alleged to be the motivation for the Plaintiff's actions and/ or forbearance. Daigle Commercial Group, Inc. v. St. Laurent, 734 A.2d 667 (Me. 1999). Further, court finds that Plaintiff would have other remedies at law, thus rendering promissory estoppel not the only means by which injustice could be avoided upon these facts. Stearns v. Emery-Waterhouse Co., 596 A.2d 72 (Me. 1991). The facts as presented in the context of this motion are insufficient to establish fraud upon the part of the Defendants. Summary judgment is rendered in favor of the Defendants on Count I.

The facts also conclusively establish that the Plaintiff negotiated a check which had been tendered to him upon the condition that it constituted "...full satisfaction of all claims you have against the [Hobart Insurance Associates, Inc.] corporation...". As such, summary judgment is granted to Defendant Hobart Insurance Associates, Inc., on the Amended Complaint.

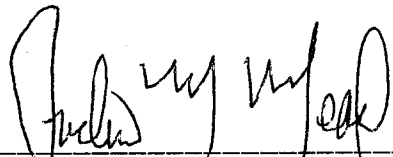
As Count IV alleges a statutory cause of action on behalf of an employee against an employer, and the facts presented on the pending motion establish an independent contractor status, summary judgment must be rendered in favor of the Defendants on this count.

The docket entry shall be: Summary judgment granted in favor of the Defendant Hobart Insurance Associates, Inc., on all counts of the Amended Complaint, and summary judgment granted in favor of George Hobart on Counts I and IV.

So Ordered

The Clerk may incorporate this Order into the docket by reference pursuant to M.R.Civ.P Rule 79 (a).

Dated: October 23, 2001



JUSTICE, SUPERIOR COURT

County 10/23/01 Summary Judgment entered for
Hobart Ins. & George Hobart

Action CIVIL - CONTRACT

ASSIGNED TO JUSTICE MARSANO
RE-ASSIGNED TO JUSTICE ANDREW M. MEAD

COUNTERCLAIM

PAUL A. DYER

GEORGE HOBART
Added vs. 7/18/00- HOBART INSURANCE ASSOCIATES, INC.

Plaintiff's Attorney PETER A ANDERSON ESQ w/d 202 EXCHANGE STREET, SUITE 200 BANGOR ME 04401 Paul Dyer Legacy Associates, Inc. 15 Phillips Road Bangor, ME 04401		Defendant's Attorney J. BRADFORD COFFEY, ESQ. w/d 9/26/01 FARRELL, ROSENBLATT & RUSSELL 61 MAIN STREET P O BOX 738 BANGOR, ME 04402-0738 BY: Jon A. Haddow, Esq. - 8/31/01	
Date of Entry	Christopher R. Largay, Esq. (a/o 7/5/00) Joseph M. Pickering, Esq. 293 State Street, Bangor, Maine 04401	<div style="border: 1px solid black; padding: 5px; text-align: center;"> CV 99-116 10/23/01 Counterclaim Pending </div>	
6/1/99	Complaint filed.		
6/1/99	Officer's Return of Service filed (s.d. 5/26/99)		
6/2/99	Case File Notice postcard forwarded to Plaintiff's counsel.		
6/2/99	Copy of Complaint together with copy of the Docket Entries forwarded to Office of the Attorney General, Augusta, ME (Fraud Count)		
6/14/99	Answer, Affirmative Defenses and Counterclaim of Defendant George Hobart filed by J. Bradford Coffey, Esq. (Coversheet filed.)		