

U.S. DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
RECEIVED LAFAYETTE

UNITED STATES DISTRICT COURT

APR 11 2014 WESTERN DISTRICT OF LOUISIANA

TONY R. MOORE, CLERK  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE, LOUISIANA

LAFAYETTE DIVISION

**MALCOLM KELSO, D/B/A IRONTREE  
GROUP, ET AL**

**CIVIL ACTION 12-2756**

**VERSUS**

**JUDGE HAIK**

**CHRISTINE BUTLER, ET AL**

**MAGISTRATE JUDGE HANNA**

---

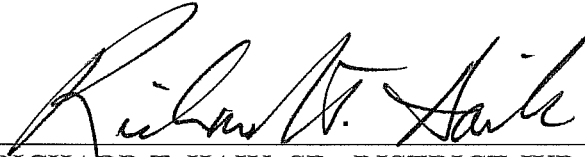
**RULING**

Before the Court is a Motion for Summary Partial Judgement filed by the defendants (Doc. #57). In their motion, defendants seek a ruling finding there are no genuine issues of material fact with respect to the prescription of plaintiffs' claim for consulting fees, as well as a finding that the purported mineral lease agreement is not a binding lease, so it could not give rise to a damages claim for breach.

A Motion for Summary Judgment should be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits show that "there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c), *Celotex Corp v. Catrett*, 477 U.S. 317 (1986). The moving party has the initial burden of establishing the absence of material fact issues; the non-moving party must then show there is a genuine issue for trial. The Court views the factual issues in a light most favorable to the non-moving party. *Tubacex, Inc. v. M/V. Risan*, 45 F.3d. 951 (5<sup>th</sup> Cir. 1995).

The Court finds there are genuine issues of material fact with respect to whether an open account existed and with respect to the alleged contract. These issues preclude the granting of summary judgment. Consequently, the Motion for Partial Summary Judgment is **DENIED**.

**THUS DONE** and **SIGNED** on this 8<sup>th</sup> day of April, 2014.

A handwritten signature in black ink, appearing to read "Richard T. Haik, Sr.", written over a horizontal line.

**RICHARD T. HAIK, SR., DISTRICT JUDGE  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA**