IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CHRISTIANA MEDICAL GROUP, P.A., a Delaware Professional Service Corporation,	)	
Plaintiff,	)	C.A. No. 06C-07-033 PLA
v.	)	
E. RUSSELL FORD, M.D.,	)	
Defendant.	)	

ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
GRANTED in part; DENIED in part
(Corrected Cover Page January 17, 2008)

Submitted: December 14, 2007
Decided: January 16, 2008

This 16th day of January, 2008, upon consideration of the Motion for Summary Judgment filed by Plaintiff Christiana Medical Group, P.A. ("Christiana"),[1] it appears to the Court that:

1. Christiana executed an Employment Agreement (the "Agreement") with Defendant E. Russell Ford, M.D. ("Ford") on or about May 1, 1999, beginning on January 1, 1999 and expiring on December 31, 1999. The Agreement was automatically renewable from year to year with

[1] This motion was withdrawn without prejudice on January 29, 2007, after both parties agreed to undergo arbitration. After arbitration was unsuccessful, Christiana re-noticed the motion.

the same terms and conditions applying to both parties. Either party could terminate the Agreement with ninety days advance written notice before the end of each one year term.

2. Paragraph 14 of the Agreement is a Financial Damages Provision (the "Provision") which states:

> 14. Financial Damages Provision. The parties further agree that, although there will be no restrictive covenant prohibiting Employee [Ford] from engaging in a competitive medical practice upon termination of his employment with the Employer [Christiana], the Employer has and will spend significant amounts in order to establish Employee's practice within the community, to introduce Employee to Employer's patients and referral sources, and to enhance Employee's professional reputation within the community. The parties agree that if the Employee directly or indirectly engages in the full-time practice of inpatient medical care, or owns, manages, operates, controls, is employed by or is connected in any manner with the ownership, management, operation or control of any profession, trade or business, engaging in the full-time practice of inpatient care, directly or indirectly, at either the Wilmington Hospital or Christiana Hospital facilities of The Medical Center of Delaware (now known as 'Christiana Care Health System') during the term of this Agreement and/or for a period of twelve (12) months after the termination of this Agreement for whatever reason, the Employer would be significantly damaged financially. In such event, Employee agrees to pay Employer the sum of One Hundred Thousand Dollars ($100,000) as liquidated damages. For purposes of this Agreement, engaging in 'full-time practice of inpatient medical care' shall be defined as providing more than twenty percent (20%) of his medical services on an inpatient basis.
>
> Anything to the contrary notwithstanding, nothing in this provision shall be deemed to restrict Employee's right to engage in the practice of medicine outside of the Wilmington

> Hospital and Christiana Hospital facilities of The Medical Center of Delaware (now known as 'Christiana Care Health System').[2]

Thus, the Provision explicitly requires Ford to pay Christiana $100,000.00 in liquidated damages if Ford provides more than twenty percent of his medical services on an inpatient basis, directly or indirectly, to another hospital affiliated with the Wilmington Hospital or Christiana Care Health System.[3]

3. Ford terminated his employment with Christiana effective March 19, 2006, after providing Christiana with written notice dated December 16, 2005. Christiana then sent Ford a letter dated March 29, 2006 reiterating that, pursuant to the Agreement, he could not provide more than twenty percent of his medical services on an inpatient basis at either hospital for a year.

4. On or after March 20, 2006, Ford began employment with Hospitalists of Delaware, LLC ("HOD"). It is undisputed that HOD provides more than twenty percent of its medical services on an inpatient basis for at least one of the two hospitals.[4]

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[2] Docket 23, Ex. A (Employment Agreement), ¶ 14.

[3] *Id.* The Court notes that both parties assume that HOD is associated with Wilmington Hospital or Christiana Care Health System. As a result, the Court assumes the same.

[4] Docket 29, ¶ 2. Counsel for Ford also conceded this point at oral argument.

5. Christiana has filed the instant motion for summary judgment asserting that Ford must pay Christiana $100,000.00 plus pre- and post-judgment interest under 6 *Del. C.* § 2301 and reasonable counsel fees and court costs for breaching the contract.

6. In response, Ford argues that the language of the Provision does not apply if he performs more than twenty percent of his medical services in a non-executive capacity with HOD. In the alternative, Ford argues that any damages to Christiana are reasonably ascertainable, so that the liquidated damages clause fails as a matter of law.

7. On January 10, 2008, the Court heard oral argument. At oral argument, counsel for Ford disputed whether Ford had performed twenty percent of his medical services on an inpatient basis as an employee of HOD, but admitted that HOD performed more than twenty percent of its services on an inpatient basis. Counsel for Christiana also conceded that the reasonableness of the amount of $100,000.00 in liquidated damages is a factual issue that must be determined at trial.

8. When considering a motion for summary judgment, the Court's function is to examine the record to ascertain whether genuine issues of material fact exist and to determine whether the moving party is entitled to

judgment as a matter of law.[5] The court must "view the evidence in the light most favorable to the non-moving party."[6] "The moving party bears the initial burden of demonstrating that the undisputed facts support his legal claims."[7] If the proponent properly supports his claims, the burden "shifts to the non-moving party to demonstrate that there are material issues of fact for resolution by the ultimate fact-finder."[8] Summary judgment will not be granted if, after viewing the record in a light most favorable to the non-moving party, there are material facts in dispute or if judgment as a matter of law is not appropriate.[9] If, however, the record reveals that there are no material facts in dispute and judgment as a matter of law is appropriate, then summary judgment will be granted.[10] Where there are no material facts at issue, and the dispute focuses on a question of law, summary judgment is appropriate.[11]

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[5] Super Ct. Civ. R. 56(c).

[6] *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 880 (Del. Super. Ct. 2005).

[7] *Id.* at 879.

[8] *Id.* at 880.

[9] *Id.* at 879.

[10] *Id.*

[11] *Sierra Club v. Del. Dep't of Natural Res. and Envtl. Control*, 919 A.2d 547, 555 (Del. Mar. 9, 2007) (App. II), *aff'g Sierra Club v. DNREC*, C.A. No. 1724-N (Del. Ch. Jun. 19, 2006).

9. Because construction of a contract is question of law for the Court,[12] the Court may grant summary judgment at this stage. When interpreting a contract, "[a]bsent some ambiguity, Delaware courts will not destroy or twist [contract] language under the guise of construing it."[13] A contract is only ambiguous "when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings."[14] In this case, the Provision clearly explains that Ford cannot provide more than twenty percent of his medical services on an inpatient basis, "*directly or indirectly*," with a hospital affiliated with Christiana Care Health System or the Wilmington Hospital.[15] As conceded at oral argument by Ford's counsel, HOD provides more than twenty percent of its medical services on an inpatient basis.

10. Based upon the plain language of the contract, and the facts that are undisputed, the Court finds that summary judgment is appropriate as to whether Ford breached the Agreement. Ford was employed by HOD, a

[12] *Rhone-Poulenc Basic Chem. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992).

[13] *Id.* (citing *Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 926 (Del. 1982)).

[14] *Id.* at 1196.

[15] *See* Docket 23, Ex. A (Employment Agreement), ¶ 14 (emphasis added).

business that provides more than twenty percent of its medical services on an inpatient basis, in violation of the language of the Provision. Moreover, Christiana and Ford explicitly acknowledged in the Agreement – which Ford signed every year for six years without objection – that Christiana would sustain damages should Ford become employed with another hospital because of the money, time, and effort Christiana spent to establish Ford's reputation and practice. Under these circumstances, adopting Ford's interpretation – that the Provision limits only *him* from providing twenty percent of his medical services on an inpatient basis – would force the Court to interpret the Agreement beyond its four corners and would be contrary to the parties' intent.[16] The Court will not "destroy or twist" the Provision's language to permit Ford "to create a new contract with rights, liabilities and duties to which the parties had not assented."[17] As a result, the Court finds Ford's interpretation to be a distortion of the plain contract language and not

[16] *See Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 546 (Del. Super. Ct. 2005) ("Upon concluding that the contract clearly and unambiguously reflects the parties' intent, the Court's interpretation of the contract must be confined to the document's 'four corners.'").

[17] *Rhone-Poulenc Basic Chemicals Co.*, 616 A.2d at 1196 (citing *Hallowell*, 443 A.2d at 926).

what a reasonable person would have considered it to mean.[18] Irrespective of whether Ford himself offered more than twenty percent of his medical services, Ford's status as an employee of HOD, an organization that does meet that criterion, breaches the Provision.

11. The issue of whether the liquidated damages clause is valid, however, requires further discussion. Initially, the Court determines that a liquidated damages clause in an employment contract is generally valid. Although 6 *Del. C.* § 2707 ("Section 2707") voids any restriction on a physician from practicing medicine as a violation of public policy, Section 2707 does permit the parties to fix an amount for liquidated damages.[19] In this case, the Provision – titled "Financial Damages Provision" – only addresses damages. In fact, the Provision explicitly states that "there will be no restrictive covenant prohibiting [Ford] from engaging in a competitive medical practice upon termination of his employment" and that "nothing in this provision shall be deemed to restrict [Ford's] right to engage in the practice of medicine . . . ." Thus, the Agreement does not restrict Ford's practice of medicine. Since Section 2707 explicitly permits a damages provision, the Agreement is not void on its face.

[18] *Id.* (citing *Steigler v. Ins. Co. of N. Am.*, 384 A.2d 398, 401 (Del. 1978) ("The true test is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.").

[19] *See* 6 *Del. C.* § 2707.

12. Although Section 2707 permits liquidated damage provisions, the Court must next determine whether the provision in the Agreement is valid. "Liquidated damages are a sum to which the parties to a contract have agreed, at the time of entering into the contract, as being payable to satisfy any loss or injury flowing from a breach of their contract."[20] In contrast, if the damages serve to punish, rather than to compensate, a party, the Court will construe the liquidated damages provision as a penalty.[21]

13. To determine whether the amount is a penalty or liquidated damages, the Court applies a two-part test: "a stipulated sum is for liquidated damages when (1) the damages which the parties might reasonably anticipate are difficult to ascertain (at the time of contracting) because of their indefiniteness or uncertainty, and (2) the amount stipulated is either a reasonable estimate of the damages which would probably be caused by the breach or is reasonably proportionate to the damages which have actually been caused by the breach."[22] If the amount is a reasonable estimate of the damages which would be suffered, the provision is valid, even if the liquidated damages are substantially larger than the actual damages

[20] *S.H. Deliveries, Inc. v. TriState Courier & Carriage, Inc.*, 1997 WL 817883, at *2 (Del. Super. Ct. May 21, 1997) (citing 22 AM. JUR. 2D *Damages* § 683).

[21] *Id.*

[22] *Id.* (citing 22 AM. JUR. 2D *Damages* § 690).

sustained.[23] Moreover, since a liquidated damages provision is presumptively valid, it is the duty of the opposing party to establish that the provision is void.[24]

14. At this stage, the Court cannot determine, as a matter of law, whether the liquidated damages provision is valid. Counsel for CMG conceded that there is insufficient evidence in the record to determine whether $100,000.00 was a reasonable amount under the circumstances. Thus, a trial is required to determine the reasonableness of the amount.

15. Based on all the foregoing, the Court finds no genuine issue of material fact about whether Ford breached the Agreement. The Court cannot, however, determine as a matter of law whether the Provision provides a reasonable estimate of Christiana's liquidated damages. Accordingly, Plaintiff's Motion for Summary Judgment is **GRANTED in part** and **DENIED in part**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

[23] *Id.*; 6 *Del. C.* § 2707.

[24] *S.H. Deliveries, Inc.*, 1997 WL 817883 at *3.