

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

TERESA GRASTY, AS EXECUTRIX :
OF THE ESTATE OF LARRY D. :
LAMBERT, SR., DECEASED, :
LARRY D. LAMBERT, JR., :
LARAYEL LAMBERT AND :
CLAYTON E. JOYCE :

Plaintiffs, :

v. :

C.A. No. 02C-05-89 CLS

SOHAIR S. MICHAIL, M.D., :
MARGARET ANNE MOTL, M.D. :
WILLIAM JAYARAJ, C.R.N.A., :
GEO TSAI, M.D., :
KENIA MANSILLA, M.D., :
JERRY P. GLUCKMAN, M.D., :
PAUL C. PENNOCK, M.D., :
CARDIOLOGY CONSULTANTS, P.A. :
BRANDYWINE ANESTHESIA :
ASSOCIATES, P.C. :
ST. FRANCIS HOSPITAL, INC., :
ST. FRANCIS HEALTH CARE :
SERVICES, CATHOLIC HEALTH :
INITIATIVES, AND :
CATHOLIC HEALTH EAST :

Defendants. :

Submitted: November 10, 2003

Decided: February 24, 2004

On Defendant Catholic Health Initiatives'
Motion for Judgment on the Pleadings.

GRANTED.

MEMORANDUM OPINION

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Wilmington, Delaware, Attorneys for Plaintiffs.

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St. Francis Hospital, Inc., and Catholic Health Initiatives.

SCOTT, J.

I. INTRODUCTION

Defendant Catholic Health Initiatives (“CHI”) has filed a Motion for Judgment on the Pleadings. Upon consideration of the evidence presented at oral argument and a review of CHI’s motion and plaintiffs’ response, this court concludes CHI’s motion should be GRANTED.

II. BACKGROUND

This is a medical malpractice case brought on behalf of the Estate of Larry Lambert, Sr., Deceased (“decedent”). Decedent underwent surgery at St. Francis Hospital on December 1, 2000. Plaintiffs allege various acts of medical negligence prior to and during surgery. The original complaint named as defendants seven individual healthcare providers, and two physician groups in addition to St. Francis Hospital, St. Francis Health Care Services, CHI, and Catholic Health East. Kenia Mansilla, M.D., St. Francis Health Care Services, and Catholic Health East have been dismissed as defendants. On September 5, 2003, CHI filed a Motion for Judgment on the Pleadings. On October 16, 2003, plaintiffs filed their response. Oral argument on the motion was held November 10, 2003.

III. STANDARD OF REVIEW

As the parties have submitted material in addition to the pleadings, the court will analyze the motion as one for summary judgment. The court will grant summary judgment only if there are no genuine issues of material fact “and the

moving party must show he is entitled to judgment as a matter of law.”¹ In determining whether there is a genuine issue of material fact, the evidence must be viewed in the light most favorable to the non-moving party.² Summary judgment, therefore, is appropriate only if, after viewing the evidence in the light most favorable to the non-moving party, the court finds no genuine issue of material fact.³

IV. DISCUSSION

CHI acknowledges it was the sole corporate member of St. Francis Hospital, Inc. (“St. Francis”) at the time of decedent’s surgery. CHI denies it is a healthcare provider within the meaning of 18 Del. C. § 6801(5). Additionally, CHI argues it did not employ, control or direct any of the other defendants or anyone else involved in the alleged negligent healthcare at issue. Therefore, CHI argues it has no liability.

Plaintiffs counter that CHI has liability based on two theories. First, plaintiffs seek to “pierce the corporate veil” by showing that defendant St. Francis

¹ *Deakyne v. Selective Insurance Co.*, 728 A.2d 569, 570 (Del. Super. 1997) (internal citation omitted).

² *Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).

³ *Guy v. Judicial Nominating Com’n.*, 659 A.2d 777, 780 (Del. Super. 1995); *Figgs v. Bellevue Holding Co.*, 652 A.2d 1084, 1087 (Del. Super. 1994).

is the mere alter ego or instrument of CHI in that CHI exercises complete domination and control over its subsidiary, St. Francis. Second, plaintiffs argue that CHI is liable for the acts of St. Francis under an agency theory, also based on the domination of St. Francis by CHI.

A. “Piercing the corporate veil.”

“Courts in Delaware will ignore the separate corporate existence of a subsidiary and attribute its activities in Delaware only if the subsidiary is the alter ego or a mere instrumentality of the parent.”⁴ Generally, a corporate parent will only be held liable for the obligations of its subsidiaries “upon a showing of fraud or some inequity.”⁵ The underlying cause of action is not sufficient to “supply the necessary fraud or injustice.”⁶ A subsidiary corporation might be deemed the “alter ego” of the parent corporation “where a corporate parent exercises complete domination and control over the subsidiary.”⁷ The corporate veil may also be

⁴ *Red Sail Easter Limited Partners, L.P. v. Radio City Music Hall Productions*, 1991 WL 129174 at *4 (Del. Ch.) (internal citations omitted).

⁵ *J.E. Rhoads & Sons, Inc. v. Ammeraal, Inc.*, 1988 WL 32012 at **6 (Del. Super.) (internal citation omitted).

⁶ *Mobil Oil Corp. v. Linear Films, Inc.*, 718 F. Supp. 260, 268 (D. Del. 1989).

⁷ *Id.* at 266.

pierced “in the interest of justice” where there is some “public wrong, or where equitable consideration among members of the corporation . . . are involved.”⁸

Plaintiffs allege that CHI controlled the budgeting and funding of St. Francis. As a consequence, staffing and the number of available beds at St. Francis were under the direct control of CHI. Plaintiffs argue this limitation of available beds constitutes a public wrong and, therefore, the interests of justice require holding parent CHI liable.

The court finds this is insufficient to require this court to “pierce the corporate veil”. The court also finds the alleged financial control does not amount to complete domination by CHI of St. Francis required under the “alter ego” theory.

In addition, the court finds it is unclear, based on the facts presented, whether it would be appropriate to hold CHI liable under the “public wrong” theory. It is clear in this particular case that decedent refused to consider admission to any other hospital other than St. Francis.⁹ There is no clear public policy that a hospital is required at any given time to provide a bed to a particular patient. This court is reluctant to take the extreme measure of “piercing the

⁸ *Pauley Petroleum Inc. v. Continental Oil Co.*, 239 A.2d 629, 633 (Del. 1968) (internal citations omitted).

⁹ Deposition of defendant Dr. Jerry P. Gluckman, M.D.

corporate veil,” and it is unclear whether this court even has the jurisdiction necessary to do so.¹⁰

Therefore, CHI cannot be held liable for the alleged wrongs of St. Francis under a “piercing the corporate veil” or “alter ego” theory.

B. Agency theory.

In Delaware, a parent corporation can be held liable for its subsidiary’s actions when the subsidiary is acting as the agent for the principal parent corporation, even when there is no fraud or inequity.¹¹ “Under the agency theory, the issue of liability rests on the amount of control the parent corporation exercises over the actions of the subsidiary.”¹² “The parent corporation will be held liable for the activities of the subsidiary only if the parent dominates those activities.”¹³

Plaintiffs have alleged that CHI dominates the activities of St. Francis. Plaintiffs argue CHI asserts the requisite degree of financial and operational control over St. Francis to support a finding of an agency relationship. Plaintiffs

¹⁰ *Sonne v. Sacks*, 314 A.2d 194, 197 (Del. 1973) (holding that corporate veil may only be pierced in Court of Chancery).

¹¹ *Phoenix Canada Oil Co. Ltd. v. Texaco, Inc.*, 658 F. Supp. 1061, 1084 (D. Del. 1987) (internal citation omitted).

¹² *Id.*

¹³ *Id.*

have also alleged the existence of an agency relationship between CHI and St. Francis in their original complaint.

The court finds the alleged actions do not support the existence of an agency relationship between CHI and St. Francis. Looking at the facts in a light most favorable to plaintiffs, the court finds that mere stock ownership of St. Francis by CHI does not support the finding of an agency relationship. Therefore, CHI cannot be held liable for the alleged wrongs of St. Francis under an agency theory. In addition, the court finds CHI is not a healthcare provider within the meaning of 18 Del. C. § 6801(5) and therefore cannot be held liable for the alleged malpractice.

V. CONCLUSION

For the above reasons, the court finds that neither “piercing the corporate veil” nor agency theory supports holding CHI liable for any alleged wrongs committed by St. Francis. Therefore, CHI’s Motion for Judgment on the Pleadings is **GRANTED**.

Calvin L. Scott, Jr.
Superior Court Judge