

OCT 17 2003

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CIVIL ACTION NO. 02-CVS-21304

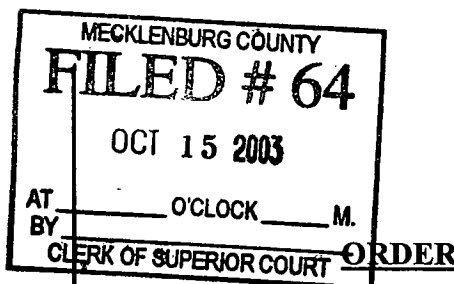
MARK W. CARROLL, M.D., *et al.*,

Plaintiffs,

v.

CAROLINAS PHYSICIANS NETWORK,
INC., *et al.*,

Defendants.



This matter came on to be heard before the undersigned Superior Court Judge on October 1, 2003 upon Defendants' Motion to Dismiss.

1. The Plaintiffs¹ are ten emergency medicine physicians, each of whom was employed previously by Defendant Carolinas Physicians Network, Inc. ("CPN") pursuant to a Professional Services Agreement. CPN notified Plaintiffs on April 19, 2002 that CPN was terminating the Professional Services Agreements effective October 18, 2002.

2. Plaintiffs commenced this action on November 25, 2002 alleging, among other things, breaches of the Professional Services Agreements. CPN and the Hospital Authority deny liability to Plaintiffs, and CPN has asserted counterclaims against Plaintiffs claiming that Plaintiffs have failed to reimburse amounts owed to CPN under the terms of the Professional Services Agreements. Plaintiffs deny liability to CPN.

¹ Plaintiffs include Mark W. Carroll, M.D., Susan C. Echterling, M.D., Robert R. Farquharson, M.D., Stacey R. Gouzenne, M.D., Jeanea Renee Hundley, M.D., Jordan D. Lipton, M.D., Edward R. Mogabgab, M.D., Stephen W. Orville, M.D., Richard C. Stuntz, M.D., and Otto C. Susec, Jr., M.D. (collectively, "Plaintiffs").

X

3. Defendants moved to dismiss non-contract claims asserted in Plaintiffs' Amended Complaint for failure to state a claim on which relief can be granted, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. The Plaintiffs' claims arise from the parties' rights and obligations under the Plaintiffs' Professional Services Agreements with CPN, as do the damages Plaintiffs claim.

4. The law of North Carolina establishes that "a tort action does not lie against a party to a contract who simply fails to properly perform the terms of the contract, even if that failure to properly perform was due to the negligent or intentional conduct of that party, when the injury resulting from the breach is damage to subject matter of the contract. It is the law of contract ... which defines the obligations and remedies of the parties in such a situation." *Nudelman v. J. A. Booe Building Contractor, Inc.*, 156 N.C. App. 427, 577 S.E.2d 717 (N.C. App. 2003).

THE COURT, having considered the pleadings, briefs filed of record, Affidavit of Frank Ford with the attached Professional Services Agreement and arguments of counsel, enters the following Order.

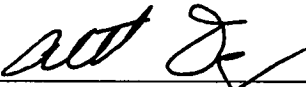
The Amended Complaint fails to state a claim upon which relief can be granted as to Plaintiffs' Fourth (negligence), Fifth (willful, wanton and intentional conduct), Sixth (unfair trade practices), Tenth (breach of fiduciary duties), Eleventh (civil conversion) and Twelfth (civil conspiracy) Claims for Relief. The Court, therefore, **GRANTS** Defendants' Motion to Dismiss on said Claims for Relief, as to both Defendants. This dismissal shall not prejudice the right of any party to seek leave to amend the pleadings in the future. In particular, this Order does not preclude Plaintiffs from seeking leave to reassert any of the claims dismissed herein based on additional facts acquired through discovery or otherwise.

The Court **DENIES** Defendant the Charlotte-Mecklenburg Hospital Authority's Motion to Dismiss Plaintiffs' First (breach of contract), Second (accounting), Third (breach of contract) and Eighth (piercing the corporate veil) claims for relief for failure to state a claim upon which relief can be granted.

The Court **DENIES** Defendants' Motion to Dismiss for failure to comply with the applicable statutes of limitation.

The Court **DENIES** Defendants' request to recover attorneys' fees.

This 15th day of October, 2003.



JUDGE ALBERT DIAZ
MECKLENBURG COUNTY, NORTH CAROLINA
SUPERIOR COURT