

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Jian-Yun (John) Dong, M.D., Ph.D.,)
)
)
Plaintiff,)
)
v.)
)
The Medical University of South)
Carolina,)
)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

**ORDER DENYING
PLAINTIFF’S SECOND
MOTION TO COMPEL AND
GRANTING EXPANDED TIME
TO COMPLETE DISCOVERY**

RECEIVED

Oct 17 2022

SC Court of Appeals

This case came before the Court for hearing on Monday, December 13, 2021, regarding Plaintiff’s pending motions. For the reasons stated below, the Court denies Plaintiff’s Second Motion to Compel. Additionally, the Court grants, in part, Plaintiff’s Motion to Expand Discovery Schedule Due to COVID-19 Pandemics, and approves a schedule for the case as to the completion of discovery, mediation, filing dispositive motions, and, if necessary, trial. All Plaintiff’s other pending motions were moot at the time of the hearing.

BACKGROUND

Plaintiff Jian-Yun Dong, M.D, Ph.D. (“Dr. Dong”) and Defendant Medical University of South Carolina (“MUSC”) entered into a separation agreement on or about May 3, 2010. In his Complaint, Dr. Dong alleges MUSC breached the separation agreement. Dr. Dong’s sole cause of action in his Complaint is for breach of contract – the separation agreement.

Dr. Dong filed his Complaint on September 2, 2014. Subsequently, on October 22, 2015, Dr. Dong dismissed the lawsuit under Rule 40(j), SCRCF. Thereafter, on December 14, 2016, Dr. Dong’s lawsuit was restored to the general docket, under Rule 40(j), SCRCF. Although Dr. Dong

was previously represented by counsel, Dr. Dong's counsel withdrew in January 2017. Dr. Dong remains a pro se litigant. (Dr. Dong appeared pro se at the hearing on December 13, 2021.)

In April 2011, before Dr. Dong filed his Complaint, Dr. Dong was indicted for various federal felonies in federal district court. In April 2013, a Third Superseding Indictment was entered as to Dr. Dong. Thereafter, on August 4, 2015, before Dr. Dong's Complaint was dismissed under Rule 40(j), SCRPC, Dr. Dong was convicted in the federal district court.

On or about October 3, 2017, approximately ten months after Dr. Dong restored the case to the active roster, Dr. Dong was sentenced and committed to the custody of the Federal Bureau of Prisons for a term of seventy months. Based upon Dr. Dong's statements at the hearing on December 13, 2021, it is understood Dr. Dong is now residing at his home in Charleston, South Carolina, and he is available to participate in discovery, mediation and, if necessary, a trial.

MUSC and Dr. Dong proceeded with discovery after the case was restored, including the exchange of written discovery requests and associated responses. In March 2019, Dr. Dong filed a motion to compel ("First Motion to Compel"). The First Motion to Compel was subsequently heard by the Honorable D. Craig Brown. Dr. Dong appeared for the hearing by telephone. As a result of the hearing, Judge Brown issued an order on June 20, 2019, granting, in part, the First Motion to Compel. Judge Brown's order also stayed the case pending Dr. Dong's release from federal confinement.

Subsequently, on July 3, 2019, MUSC filed its Motion to Alter or Amend as to Judge Brown's June 20, 2019, order. Thereafter, Judge Brown held a hearing regarding MUSC's Motion to Alter or Amend. Dr. Dong appeared for the hearing by telephone. As a result of the hearing, Judge Brown issued an order on October 4, 2019, granting MUSC's Motion to Alter or Amend.

The order issued by Judge Brown on October 4, 2019, became the controlling order in this matter as to the First Motion to Compel and further discovery.¹ Judge Brown's October 4, 2019, order also contains a "scheduling order" establishing various deadlines.

In compliance with Judge Brown's October 4, 2019, order, MUSC provided discovery responses to Dr. Dong on October 14, 2019. Additionally, on November 18, 2019, counsel for MUSC sent Dr. Dong a letter inquiring about scheduling his deposition for the week of January 13, 2020.

On January 16, 2020, counsel for MUSC served Dr. Dong with a Notice of Taking Deposition, scheduling Dr. Dong's deposition for February 14, 2020, before the February 28, 2020, discovery deadline set by Judge Brown in his October 4, 2019, order. However, on January 27, 2020, Dr. Dong filed his Response to Taking Deposition, requesting, in general, his deposition be delayed until after March 15, 2020. Consequently, Dr. Dong's deposition did not go forward as noticed for February 14, 2020.

On January 29, 2020, Dr. Dong filed his Motion to Expand Discovery. On the same date, Dr. Dong served counsel for MUSC with Plaintiff's Second Requests for Production to Defendant. Thereafter, and in response, MUSC served its responses to Dr. Dong's Second Requests for Production on March 18, 2020.

By late February and early March 2020, the COVID-19 pandemic was ongoing and evolving. On or about March 4, 2020, the South Carolina Supreme Court issued an initial memorandum regarding the pandemic. By March 12, 2020, the operations of certain circuits courts in South Carolina began to close or otherwise alter operations due to the pandemic.

¹ This Order incorporates by reference Judge Brown's October 4, 2019, order.

On or about September 2, 2020, Dr. Dong filed a Notice of Change of Address indicating he is now residing on Daniel Island, South Carolina, not in a Federal Bureau of Prisons facility. On January 11, 2021, Dr. Dong filed Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics. Subsequently, and finally, on January 20, 2021, Dr. Dong filed Plaintiff's Second Motion to Compel Production ("Second Motion to Compel").

FINDINGS

The Court, at the hearing on December 13, 2021, understood the following motions of Dr. Dong were pending resolution: 1) Response to Taking Deposition filed January 27, 2020; 2) Motion to Expand Discovery filed January 29, 2020; 3) Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemic filed January 11, 2021; and 4) Plaintiff's Second Motion to Compel Production filed January 20, 2021. From a practical standpoint, Dr. Dong's motions filed in January 2021 are the motions requiring resolution because the Response to Taking Deposition is moot as of March 15, 2020, because the date Dr. Dong requested his deposition not be taken before in his Response to Taking Deposition is now in the past. Further, Dr. Dong's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics appears to be a resubmission/reassertion of Dr. Dong's previous Motion to Expand Discovery.

MUSC, within this framework, responded to Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics, and Plaintiff's Second Motion to Compel Production. MUSC asserted, and the Court finds, the resolution of these two motions resolves all pending motions and places this matter on course to complete discovery and trial, if necessary.

A. Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics.

Based upon the submissions of MUSC and Dr. Dong, and considering their respective arguments and representations at the hearing on December 13, 2021, the Court concludes an amended scheduling order allowing for the orderly progress and resolution of this matter is necessary and appropriate, particularly given the circumstances created by the COVID-19 pandemic since February/March 2020 and Dr. Dong's related incarceration. To that end, the Court concludes an amended scheduling order containing the following deadlines is appropriate: 1) June 30, 2022, complete discovery; 2) July 29, 2022, engage in mediation or request a party or the parties be relieved from the obligation to participate in mediation; 3) August 31, 2022, file dispositive motions; and 4) case not eligible for trial until on or after September 30, 2022.²

The remaining discovery is limited to taking and concluding depositions only. No further written discovery is allowed unless approved by the Court.

B. Plaintiff's Second Motion to Compel Production.

Judge Brown, in his October 4, 2019, order, limited Dr. Dong's First Requests for Production as follows:

3. In responding to Dr. Dong's discovery requests, the scope of discoverable materials shall be limited to relevant documents generated or created no earlier than April 1, 2010. The parties may at any time prior to the discovery deadline, and for good cause, petition the circuit court to expand this limitation as discovery progresses.

² Attached as Exhibit A to this Order is an Amended Scheduling Order that contains the noted deadlines. Upon entry of this Order, the Court will forward this Order and Exhibit A to the Chief Administrative Judge for the Ninth Judicial Circuit, so the Chief Administrative Judge can sign and approve the Amended Scheduling Order. Doing so is in keeping with Judge Brown's October 4, 2019, order, and its requirement that the schedule established by Judge Brown "shall only be modified, if necessary, by the Ninth Circuit Chief Administrative Judge."

4. In responding to Dr. Dong's discovery requests, the scope of discoverable materials shall further be limited to relevant documents generated by, created by, sent to, or received from Dr. Dong, Mark Sothman, Ph.D. or Stephen Lanier, Ph.D. The parties may at any time prior to the discovery deadline, and for good cause, petition the circuit court to expand this limitation as discovery progresses.

On October 14, 2019, consistent with Judge Brown's orders, MUSC produced documents to Dr. Dong. Dr. Dong did not subsequently move to further compel production under Judge Brown's October 4, 2019, order or otherwise assert MUSC failed to comply with Judge Brown's October 4, 2019, order concerning the documents produced. Instead, Dr. Dong, in January 2020, filed his Motion to Expand Discovery and served Plaintiff's Second Requests for Production. On March 18, 2020, MUSC served its responses to Plaintiff's Second Requests for Production.

As noted in MUSC's responses to Plaintiff's Second Requests for Production, Plaintiff's Second Requests for Production are subject to objection, and rejection by the Court, for two particular reasons. First, Dr. Dong did not obtain leave of the Court to request materials beyond those expressly required by Judge Brown's prior orders. However, even if Dr. Dong's Second Requests for Production can be viewed as impliedly requesting the Court's permission to request materials beyond the express parameters in Judge Brown's October 4, 2019, order, the Court denies Dr. Dong's request. Dr. Dong, neither in his submissions to the Court nor his arguments at the December 13, 2021, hearing provided sufficient basis, reason, or "good cause" for expanding the scope of discovery.

Moreover, and more importantly, the requests contained in Plaintiff's Second Requests for Production are the very same (i.e. identical or virtually identical) requests contained in Plaintiff's First Requests for Production – being the requests previously ruled upon by Judge Brown in his

October 4, 2019, order. In particular, requests for production 1 and 16 through 40 in Plaintiff's Second Requests for Production are also in Plaintiff's First Requests for Production. In other words, twenty-six of the forty requests contained in Plaintiff's Second Requests for Production, and that Dr. Dong moves to compel MUSC to respond to, were previously reviewed and limited by Judge Brown in his October 4, 2019, order. Finally, even in respect to the remaining fourteen requests, being requests 2 – 15, that do not appear to be identical to those requests contained in Plaintiff's First Requests for Production, the noted requests seek the very same, broad materials sought by Dr. Dong in Plaintiff's First Requests for Production.

For the reasons stated, and based upon the submissions of the parties and the arguments presented at the hearing on December 13, 2021, Dr. Dong's Second Motion to Compel is denied.

CONCLUSION

For the reasons discussed, the Court grants an expanded period for the parties to complete discovery, conduct mediation, file dispositive motions, and, if necessary, prepare for trial. However, the Court denies Dr. Dong's Second Motion to Compel.

Honorable R. Ferrell Cothran, Jr.
Circuit Court Judge
Third Judicial Circuit

_____, 2022



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144