

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NUMBER 2021-CP-26-07488
 	)	
DR. SCOTT F. DUNCAN, M.D.,	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
ORTHOSC, LLC, a South Carolina limited	)	
liability company; DR. GENE M. MASSEY,	)	
M.D.; GRAND STRAND SURGICAL	)	
SPECIALISTS, LLC, a South Carolina limited	)	
liability company; HCA PHYSICIAN	)	
SERVICES, INC., a Tennessee corporation;	)	
GRAND STRAND REGIONAL MEDICAL	)	
CENTER, LLC, a Delaware limited liability	)	
company; and HCA HEALTHCARE, INC., a	)	
Delaware corporation,	)	
Defendants.	)	
_____	)	

**RECEIVED**  
**Oct 10 2023**  
**SC Court of Appeals**

This matter came before the Court on November 30, 2022 for a hearing conducted via WebEx involving (1) the Motion to Dismiss Amended Complaint filed by Defendants OrthoSC, LLC (“OrthoSC”) and Dr. Gene M. Massey, M.D. (“Massey”) on August 25, 2022, (2) the Motion for Protective Order and Stay of Discovery filed by Defendants OrthoSC and Massey on August 25, 2022, (3) the Motion to Compel Discovery Responses filed Plaintiff Dr. Scott F. Duncan, M.D. (“Plaintiff”) on August 26, 2022, and (4) the Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt filed by Plaintiff on September 8, 2022.

Participating at the hearing were Daniel F. Blanchard, III, Esquire of Rosen Hagood, LLC, as counsel for Plaintiff; Charles E. Ipock, Esquire of Haynsworth Sinkler Boyd, PA, as counsel for Defendants OrthoSC and Massey; and Katon E. Dawson, Jr., Esquire of Parker Poe Adams & Bernstein, LLP, as counsel for Defendant HCA Healthcare, Inc.

After careful consideration of the motions, pleadings, exhibits, and memoranda of the parties, the arguments of counsel, and the other matters of record, the Court hereby finds that the Motion to Dismiss Amended Complaint filed by Defendants OrthoSC and Massey on August 25, 2022 should be DENIED, the Motion for Protective Order and Stay of Discovery filed by Defendants OrthoSC and Massey on August 25, 2022 should be DENIED, the Motion to Compel Discovery Responses filed by Plaintiff on August 26, 2022 should be GRANTED, and the Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt filed by Plaintiff on September 8, 2022 should be left to the Arbitrator's determination for the reasons stated herein.

**1. OrthoSC/Massey's Motion to Dismiss Pursuant to S.C. R. CIV. PRO. 12(b)(6):**

Plaintiff's Amended Complaint filed on August 10, 2022, avers claims against OrthoSC and Massey for (1) Intentional Interference with Contract, (2) Intentional Interference with Prospective Economic Advantage, (3) Violation of South Carolina Unfair Trade Practices Act (SCUTPA), S.C. CODE ANN. § 39-5-10 *et seq.*, and (4) Civil Conspiracy. Defendants OrthoSC and Massey have moved to dismiss all of the causes of action pursuant to S.C. R. CIV. PRO. 12(b)(6).

In considering a Rule 12(b)(6) motion to dismiss, the trial court must base its ruling solely on "the allegations contained within the four corners of the complaint." Charleston Cnty. Sch. Dist. v. Harrell, 393 S.C. 552, 559, 713 S.E.2d 604, 608 (2011). "[A]t the pleadings stage, the factual allegations made by the plaintiff in regards to his claim are taken as true." Tanner v. Florence Cty. Treasurer, 336 S.C. 552, 560, 521 S.E.2d 153, 157 (1999). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-48 (2007). "[T]he court must regard all properly pleaded factual

allegations as admitted” and “any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment.” Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350, 353 (Ct. App. 2000). A complaint is sufficient if it states “*any* cause of action or it appears the plaintiff (or petitioner) is entitled to *any relief whatsoever*.” Baldwin v. Sanders, 266 S.C. 394, 223 S.E.2d 602 (1976) (emphasis added).

“The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” Id. (citing Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987)). ““At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice’ to withstand a motion to dismiss.” Town of Arcadia Lakes v. S.C. Dep’t of Health & Env’t Control, 404 S.C. 515, 745 S.E.2d 385, 392 (Ct. App. 2013).

Viewed in the light most favorable to the Plaintiff, Plaintiff’s Amended Complaint alleges sufficient facts to constitute causes of action against Defendants OrthoSC and Massey for (1) Intentional Interference with Contract, (2) Intentional Interference with Prospective Economic Advantage, (3) Violation of the SCUTPA, and (4) Civil Conspiracy. Accordingly, the Motion to Dismiss must be denied.

## **2. OrthoSC/Massey’s Motion for Protective Order and Stay of Discovery:**

Defendants OrthoSC and Massey moved for a protective order and a stay of discovery pending the resolution of their Motion to Dismiss. As discussed above, the Court has denied the Motion to Dismiss filed by Defendants OrthoSC and Massey, thus that motion has been resolved. Defendants OrthoSC and Massey have not shown good cause to grant a protective order or to stay discovery once their Motion to Dismiss is disposed of. Accordingly, the Motion for Protective Order and Stay of Discovery must be denied.

**3. Plaintiff's Motion to Compel Discovery Responses:**

Plaintiff served Interrogatories and Requests for Production of Documents upon Defendants OrthoSC and Massey on July 22, 2022. Under the rules, Defendants OrthoSC's and Massey's responses to these discovery requests became due on August 26, 2022. Defendants OrthoSC and Massey did not provide any of the information or documents sought by Plaintiff. Rather, on August 25, 2022, Defendants OrthoSC and Massey served objections to Plaintiff's discovery requests. Defendants OrthoSC and Massey objected and argued it would be premature and improper to require them to respond to Plaintiff's requests until their Motion to Dismiss is resolved.

As discussed above, the Court has denied the Motion to Dismiss filed by Defendants OrthoSC and Massey, thus that motion has been resolved. The objections made by Defendants OrthoSC and Massey to Plaintiff's Interrogatories and Requests for Production of Documents are overruled. Defendants OrthoSC and Massey shall provide full and complete responses to Plaintiff's Interrogatories and Requests for Production of Documents. Accordingly, Plaintiff's Motion to Compel Discovery Responses is granted.

**4. Plaintiff's Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt:**

In addition to serving Interrogatories and Requests for Production upon Defendants OrthoSC and Massey in this lawsuit, Plaintiff also issued subpoenas *duces tecum* to Defendants OrthoSC and Massey on August 3, 2022.

Defendants OrthoSC and Massey are not parties to the arbitration. Because the non-party subpoenas were issued in a pending arbitration, the Arbitrator should be the one with authority to enforce those subpoenas in the first instance. This Court finds that it does not have the authority to

compel Defendants OrthoSC and Massey to comply with the subpoenas at this time. S.C. CODE ANN. § 15-48-80(a). Accordingly, Plaintiff's Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt is left to the determination of the Arbitrator. Accordingly,

IT IS ORDERED that the Motion to Dismiss Amended Complaint pursuant to S.C. R. CIV. PRO. 12(b)(6) filed by Defendants OrthoSC, LLC and Dr. Gene M. Massey, M.D. on August 25, 2022, is hereby DENIED; and

IT IS FURTHER ORDERED that the Motion for Protective Order and Stay of Discovery filed by Defendants OrthoSC and Massey on August 25, 2022, is hereby DENIED; and

IT IS FURTHER ORDERED that the Motion to Compel Discovery Responses filed by Plaintiff Dr. Scott F. Duncan, M.D. on August 26, 2022 is hereby GRANTED and Defendants OrthoSC and Massey shall provide full and complete responses to Plaintiff's Interrogatories and produce the documents or things requested in Plaintiff's Requests for Production of Documents no later than thirty (30) days from entry of this Order; and

IT IS FURTHER ORDERED that the Motion to Compel Compliance with or Enforce Arbitration Subpoena and/or for Order of Contempt filed by Plaintiff on September 8, 2022 is hereby left to the determination of the Arbitrator; and

AND IT IS SO ORDERED!

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Kristi F. Curtis  
Presiding Circuit Court Judge  
Court of Common Pleas  
Fifteenth Judicial Circuit

This \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_, South Carolina.



## Horry Common Pleas

**Case Caption:** Scott F Duncan MD VS OrthoSC LLC , defendant, et al

**Case Number:** 2021CP2607488

**Type:** Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762