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October 2, 2023

RECEIVED

Jian-Yun (John) Dong, M.D., Ph. D.
71 Delahow Street
Charleston, South Carolina 29492

SC Court of Appeals

Re: *Jian-Yun (John) Dong, M.D., Ph. D., v. The Medical University of South Carolina*
Case No.: 2016-CP-10-06683


Nov 03 2023

Dear Dr. Dong:

In connection to the above-named matter, enclosed please find the Order Denying Plaintiff's Motion for Amendment of Order Granting Defendant's Motion for Summary Judgment, filed by the court Friday, September 22, 2023.

Sincerely,

CLEVELAND & CONLEY, LLC



Bob J. Conley

BJC/mad

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Jian-Yun (John) Dong, M.D., Ph.D.,)
)
)
Plaintiff,)
)
vs.)
)
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
MOTION FOR AMENDMENT OF
ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendant Medical University of South Carolina's ("MUSC" or "Defendant") Motion for Summary Judgment (the "Motion"). In its Motion, MUSC asserted: 1) Plaintiff Jian-Yun (John) Dong, M.D., Ph.D. ("Dr. Dong") could not show MUSC breached a contract with him, 2) even if Dr. Dong could provide evidence of a breach, Dr. Dong could not present evidence of damages, and 3) Dr. Dong did not file his Complaint before the expiration of the applicable statute of limitations. Therefore, MUSC contended summary judgment was appropriate under Rule 56, SCRPC. This Court granted MUSC's Motion for Summary Judgment and entered an Order on July 17, 2023.

On July 28, 2023, Dr. Dong filed a Motion for Amendment of Order Granting Defendant's Summary Judgment. In his motion, Dr. Dong argues this Court should amend its Order Granting Summary Judgment in favor of MUSC for various reasons, including misinterpretation of the law and violation of due process, and requested a rehearing. MUSC filed their response on August 16, 2023 and Dr. Dong emailed a reply September 6, 2023.

For the reasons set forth below, the Court denies Dr. Dong's Motion for Amendment of Order Granting Defendant's Summary Judgment and his request for a rehearing.

RELEVANT FACTS

The relevant facts are stated in the Court’s Order Granting Summary Judgment in favor of MUSC entered on July 17, 2023.

LEGAL STANDARD

Rule 52(b) of the South Carolina Rules of Civil Procedure allows a party to file a motion for a court to “amend its findings or make additional findings and [] amend the judgment. . . .” Further, the rule states the party must make the motion “not later than 10 days after receipt of written notice of entry of judgment” and “provide a copy of the motion to the judge within ten (10) days after filing the motion.”

LAW AND ANALYSIS

First, Rule 52(b) clearly provides the motion for amendment must be filed not later than 10 days after entry of written notice of judgment. This Court entered its Order Granting Summary of Judgment on June 17, 2023. Dr. Dong filed his Motion for Amendment of Order Granting Summary Judgment under Rule 52(b) on July 28, 2023. Dr. Dong’s Motion was filed a day late, given the deadline under the rules.

Regardless, the Court denies Dr. Dong’s Motion for Amendment based on the merits of his argument. In short, Dr. Dong fails to provide any new findings or evidence to persuade this Court to Amend its Order Granting Summary Judgment.

As the Court stated in its findings granting summary judgment in favor of MUSC, the Defendant met the burden imposed on it by Rule 56, SCRCP, and explained by Baughman v. Am. Tel. & Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Specifically, Baughman, states:

With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility “may be discharged by ‘showing’—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party’s case.” *Celotex*

477 U.S. at 325, 106 S.Ct. at 2554, 91 L.Ed.2d at 275. The moving party need not “support its motion with affidavits or other similar materials negating the opponent's claim.” *Id.* at 323, 106 S.Ct. at 2553, 91 L.Ed.2d at 274. (Emphasis in original).

Id. at 306 S.C. at 115, 410 S.E.2d at 545. Dr. Dong failed to oppose MUSC’s Motion in any meaningful, sufficient manner, and Dr. Dong failed to meet the well-recognized requirements of Baughman and Rule 56, SCRPC. Notably, as already explained in the Court’s Order Granting Summary Judgment, Dr. Dong provided no deposition transcripts, affidavits, documents or other admissible, material evidence in opposition to MUSC’s Motion.

“It is a fundamental rule that ‘if the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the [trial] court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he [it] was entitled to judgment as a matter of law.’” Higgins v. Medical University of South Carolina, 326 S.C. 592, 598, 486 S.E.2d 269, 272 (Ct. App. 1997) (*quoting Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991)). As a pro se litigant, Dr. Dong’s statements and argument at the hearing are not evidence in opposition to MUSC’s Motion. *See e.g.*, South Carolina Dept. of Transp. v. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (recognizing “[a]rguments made by counsel are not evidence” and collecting other, similar cases).

Further, the Court directs the parties to its Order Granting Summary Judgment which states the findings of the Court and details how Dr. Dong failed to provide evidence and oppose MUSC’s Motion for Summary Judgment.

Last, the Court addresses Dr. Dong’s contention the Court violated his due process rights. When this Court was assigned jurisdiction of this matter, the only remaining discovery task was

the scheduling of depositions. The Court issued a detailed Scheduling Order¹ with deadlines for depositions, dispositive motions, mediation, and a trial date. Dr. Dong then noticed 13 depositions and then proceeded to cancel all of the depositions. Dr. Dong never rescheduled any depositions or offered any affidavit by his potential witnesses or himself addressing the facts of this matter as the Plaintiff. The only factual evidence was the deposition of Dr. Dong taken by the Defendant. Therefore, Dr. Dong failed to meet his obligation under Rule 56 for two main reasons. First, Dr. Dong failed to provide any factual evidence to oppose summary judgment as provided under Rule 56 and Baughman. Second, Dr. Dong failed to file his Complaint before the expiration of the applicable statute of limitations. Specifically, South Carolina law is clear the statute of limitations for a contract breach begins when the alleged breach first occurred. *See Poly-Med, Inc. v. Novus Scientific PTE. LTD.*, 437 S.C. 343, 347, 878 S.E.2d 896, 898 (2022) (“The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist”). Further Poly-Med concludes South Carolina does not recognize the continuing breach theory in applying the statute of limitations to breach of contract claims.

The parties entered into the agreement on May 3, 2010. Dr. Dong testified under oath in his deposition that MUSC first breached its agreement with him by failing to meet a contractual term of the agreement within a specified forty-five days after the parties had signed the contract. This would set the date of the first breach as June 17, 2010.² Three years from this date would be June 17, 2013. Dr. Dong of course contends that there were many other breaches that followed. But clearly his testimony under oath demonstrates that the first breach claimed, as reflected above, is June 17, 2010. Dr. Dong filed his complaint on September 2, 2014, which is well after the running of the 3-year statute of limitations.

¹ The Court entered the Scheduling Order on October 7, 2022.

² *See* Dong’s Dep. 94: 4-95:11.

Last, the Court has provided proper notice to Dr. Dong at all times. The Court has provided Dr. Dong with much leeway with his filings, requests for extensions of time, and scheduling hearings. At all times, Dr. Dong has been provided with the opportunity to be heard and has been provided sufficient notice.

CONCLUSION

For these reasons, the Court denies Dr. Dong's Motion for Amendment of Order Granting Defendant's Summary Judgment.

IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



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

Jean H. Toal

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