

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Jeremy Greene,)	C/A No. 13-CP-10-444
)	
)	ORDER OF DISMISSAL
)	
Versus)	BREACH OF CONTRACT CAUSE OF
)	ACTION
Medical University of South Carolina,)	
)	
Defendant.)	

This matter came before the court for a hearing on August 8, 2013 on the Defendant, Medical University of South Carolina (hereinafter "the Defendant" or "MUSC") Motion to Dismiss filed contemporaneously with its Answer pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Plaintiff filed his Complaint asserting causes of action for breach of contract and defamation due to his alleged wrongful removal from the kidney transplant program at MUSC. The Plaintiff alleges on the face of his Complaint at Paragraph 4 that this matter involves "treatment of patients suffering from renal conditions and the treatment of patients ultimately requiring kidney transplants." On the following grounds the Motion is granted in part pursuant to SCRCP 12(b)(6) as to the breach of contract claim with the Court denying judgment on the pleadings as to the defamation claim.

I. South Carolina Does Not Recognize a Cause of Action for Breach of Contract for Failure to Provide Medical Care.

In Banks v. MUSC, 314 S.C. 376, 444 S.E.2d 519 (1994), the South Carolina Supreme Court specifically held that within the context of a tort concerning medical care a cause of action for breach of contract is not recognized. Banks filed suit against various doctors and the Medical University, alleging wrongful death and survival actions, as well as actions for battery, deprivation of liberty interests, breach of duty, and breach of contract related to the care of a 9 year old child who ultimately died following the development of a pulmonary embolus associated with treatment and surgery for a variety of medical conditions. Judgment was

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summarily granted on the causes of action for battery, deprivation of liberty interests pursuant to 42 U.S.C.A. §1983, and breach of contract.


On appeal the South Carolina Supreme Court specifically held that “[w]e now decline to recognize a cause of action for breach of implied contract arising from an alleged failure to provide adequate medical treatment.” Banks, 314 S.C. 376, 379-80. The Court acknowledged that there is a recognized recovery for breach of an express pre-treatment warranty to effect a particular result, Burns v. Wannamaker, 281 S.C. 352, 315 S.E.2d 179 (Ct.App. 1984), affirmed as modified 288 S.C. 398, 343 S.E.2d 27 (1985), but the Court declined to recognize a cause of action for breach of implied contract arising from an alleged failure to provide adequate medical treatment holding that such an allegation clearly sounds in medical malpractice, not in contract. The Court held that “absent an express contract by the physician to render a definite result, an action for medical malpractice rests in tort, not contract.” Banks, 314 S.C. 376, 380. The Banks court further noted that, “South Carolina has followed the established tenet that a physician is not an insurer or guarantor of a beneficial result.” citing Starnes v. Taylor, 272 N.C. 386, 158 S.E.2d 339 (1968).

In the instant action, Plaintiff asserts on the face of his Complaint that there was no specific pre-treatment warranty to effect a particular result noting at Paragraph 10, “MUSC did not have or did not provide to the Plaintiff a written policy setting forth specifically what was required of the Plaintiff in order to remain in the program and/or what the Plaintiff’s rights were in the event that he allegedly deviated from any program requirement.” Plainly, this asserts that the action rests on an implied contract related to medical care, and the Banks holding mandates that this alleged cause of action rests in medical malpractice, not contract. .

The Court declines to dismiss the Plaintiff’s defamation action solely on the pleadings.

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THEREFORE, it is hereby ORDERED, that Judgment be entered on the first cause of action for breach of contract in accordance with Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for Plaintiff's failure to state sufficient facts to constitute this cause of action.


Honorable R. Markley Dennis
Presiding Judge

August 8, 2013
Charleston, South Carolina

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