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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
) CASE NO.: 2006-CP-42-0108

Laurens County Healthcare System,
Plaintiff,


v.

M. Dubose Medlock, Jr., M.D.,
Defendants.

) ORDER DENYING RECONSIDERATION
) OF FINAL JUDGMENT

After careful consideration of Defendant M. Dubose Medlock, Jr., M.D.'s Motion to Reconsider the Order of Final Judgment entered on June 14, 2012 in the above captioned case, the Court finds that no material fact or principle of law has been either overlooked or disregarded, and therefore, there is no basis to reconsider the Order of Final Judgment. Accordingly, the Defendant's Motion to Reconsider is hereby DENIED.

IT IS SO ORDERED!

By: 
The Honorable Roger L. Couch
Presiding Judge, Seventh Judicial Circuit

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SPARTANBURG COUNTY
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MICHELE OLIVIERI

This 21st day of August, 2013
Spartanburg, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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) FOR THE SEVENTH JUDICIAL CIRCUIT
) CASE NO.: 2006-CP-42-0108

Laurens County Healthcare System,
Plaintiff,

v.

M. Dubose Medlock, Jr., M.D.,
Defendant.

FINAL JUDGMENT

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PROCEDURAL BACKGROUND

This is an action for breach of contract. Plaintiff Laurens County Healthcare System (hereinafter referred to as "Hospital") sued the Defendant M. Dubose Medlock, Jr., M.D. (hereinafter referred to as "Medlock") pursuant to a Summons and Complaint filed on or about January 11, 2006. Defendant Medlock answered denying liability and asserting several counterclaims. Each party moved for summary judgment during the course of the proceedings. After evaluating the case and facts summary judgment was denied and the case was set for a trial. The parties waived the right to a jury trial and the matter proceeded to a bench trial before the Court which was conducted on April 4, 2012. Both parties appeared and were represented by counsel. As a result of the trial and after a review of the court's record in this case and based upon the testimony and evidence received the Court hereby makes the following findings of fact and conclusions of law set forth herein.

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STATEMENT OF FACTS

This matter arises out of a subsidy agreement between the Plaintiff, Laurens County Healthcare System and the Defendant, M. Dubose Medlock, Jr., M.D., for the



purpose of recruiting Medlock to open a practice in Laurens County. The parties entered into an agreement entitled "Not for Profit Net Income Guaranty Agreement" (hereinafter referred to as "Agreement"), effective May 28, 1997, which set forth the parties' intentions that Medlock would open a practice in Laurens County and the Hospital would subsidize Medlock's income up to \$14,583.33 per month, not to exceed \$350,000.00 over a twenty-four (24) month subsidy period.

Medlock began operating a medical practice in Laurens County in June of 1997. The Agreement provided for a twenty-four (24) month subsidy period, which was subsequently extended by the First Addendum to the Agreement, effective May 28, 1999. The First Addendum provided that the subsidy period would be extended until January 31, 1999, for a total subsidy period of thirty (30) months. Additionally, the first Addendum provided that Medlock would have the option to have the subsidy be forgiven at the rate of 1/60th per month if he maintained a medical practice in Laurens County for a period of five (5) years following the termination of the subsidy period.

The parties further amended the Agreement, effective January 1, 2002, by way of a Second Addendum which essentially modified the terms of repayment and forgiveness of the subsidy and extended the forgiveness period. The Second Addendum provided that all payments made by the Hospital from the time Medlock opened his practice until the end of the subsidy period, December 31, 1999, constituted a "subsidy loan." The subsidy loan would accrue interest at the rate of Wall Street Journal Prime Rate as of December 31, 1999, plus two percent (2%). As consideration for Medlock keeping his practice open, the hospital provided that if Medlock maintained his practice after the end of the subsidy period, the hospital would forgive repayment of

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the principal amount and accrued interest at a rate of 1/60th per month. Upon the effective date of the Second Addendum, January 1, 2002, the forgiveness rate would be 1/96th of the subsidy loan (principal plus interest) over a period of 120 consecutive months. Finally, the Second Addendum provided that if Medlock failed to maintain his practice in Laurens County for 120 months, any remaining portion of the subsidy loan that had not been forgiven would be immediately due and payable.

Medlock resigned from the Hospital effective June 7, 2004. The Plaintiff subsequently filed this lawsuit alleging breach of contract, breach of contract accompanied by a fraudulent act, fraud/misrepresentation, unfair trade practice, and unjust enrichment based upon Defendant's alleged material breach of the Agreement. Defendant answered and asserted the following Counterclaims: breach of the implied covenant of good faith and fair dealing; fraudulent inducement; prevention of performance; impossibility of performance; frustration of purpose; failure to state a claim upon which relief can be granted and equitable estoppel. The Hospital denied all the allegations asserted in the Defendant's Counterclaim.

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On April 4, 2012, a bench trial was conducted at which the parties were present with their attorneys. Prior to the call of the case, Defendant filed a Motion in Limine to dismiss for lack of subject matter jurisdiction. Defendant's Motion and argument were premised upon the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b and the safe harbor conditions of 42 CFR §1001.952(n). Both the Plaintiff and Defendant presented witnesses and submitted evidence at trial. Having weighed the credibility of the witnesses, the weight of the evidence, and having reviewed the Court's records and

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files, the Pleadings and Motions in the case, and all other matters of record in this action, this Court makes the following findings of fact and conclusions of law.

LAW AND ANALYSIS

Defendant argued that the contract out of which Plaintiff's claims arise is a "practitioner recruitment" agreement governed by the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b and subject to the safe harbor conditions of 42 CFR § 1001.952(n). Upon review of Defendant's Motion and exhibits, as well as Plaintiff's reply and multiple sur-replies, I find that the contract did not violate the Anti-Kickback Statute and, as such, it was a legally enforceable contract.

In order to recover for a breach of contract, the Plaintiff must prove: (1) A binding contract entered into by the parties; (2) A breach or unjustifiable failure to perform the contract; and (3) Damage suffered by the Plaintiff as a direct and proximate result of the breach. *Tomlinson v. Mixon*, 367 S.C. 467, 479, 626 S.E.2nd 43, 49 (Ct. App. 2006). "The general rule is that for a breach of contract the Defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach. *Fuller v. Eastern Fire & Casualty Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2nd 602, 610 (1982).

Medlock breached the parties' agreement when he ceased to maintain a medical practice in Laurens County and then failed to pay any portion of the subsidy loan that had not been forgiven. Pursuant to the Second Addendum, "[i]f [Medlock] fails to maintain his private medical practice and office in the community for a total of 120 consecutive months following the subsidy period, any portion of the subsidy loan that has not been forgiven shall be immediately due and payable." By his own testimony Medlock failed to maintain a practice for 120 months by resigning on June 7, 2004. On

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July 6, 2004, Richard D'Alberto, CEO of Plaintiff Hospital, wrote a letter to Medlock demanding immediate payment of the remainder of the subsidy loan, which amounted to \$146,548.00. To date, Medlock has failed to make any payments to the Hospital.

I find that the Defendant materially breached the contract by terminating his practice in Laurens County before the expiration of the contract and failing to pay the outstanding amount due pursuant to the above-referenced Agreement and its addenda. I further find that the Defendant was unjustly enriched by his breach of contract. As to Plaintiff's claims for breach of contract accompanied by a fraudulent act, fraudulent misrepresentation, and unfair trade practices, I find that the Plaintiff did not meet its burdens of proof with regard to those claims. With regard to Defendant's Counterclaims, I find that the Defendant failed to meet the respective burdens of proof on all of his Counterclaims.

Based upon the testimony and evidence presented at trial, I find that the Plaintiff is entitled to \$146,548.50 in actual damages plus \$188,792.48 in interest, which represents Wall Street Journal Prime at the time of the breach of contract, which was 8.5%, plus two percent (2%) as contemplated by the parties' Agreement. I further find that the Plaintiff is entitled to consequential damages in the amount of \$10,300.00, \$5,300.00 of which represents moving expenses for a physician to replace Defendant Medlock and \$5,000.00 of which represents marketing for Defendant Medlock's vacant position. The total award in favor of the Plaintiff is \$345,640.98.

WHEREFORE, having made the foregoing findings of fact and conclusions of law, this Court orders AS FOLLOWS:


- a. That final judgment is hereby ordered against Medlock and in favor of Hospital in the sum total amount of \$345,640.98 representing \$146,548.50

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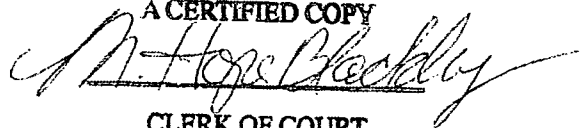

in actual damages plus \$188,792.48 in interest plus \$10,300.00 in consequential damages, all of which are due and owing to Plaintiff.

IT IS SO ORDERED.


The Honorable Roger L. Couch
Presiding Judge, Seventh Judicial Circuit

This 14~~th~~ day of June, 2012
Spartanburg, South Carolina

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