

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Allcare Medical, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Ahava Hospice, Inc. f/k/a Ascension)
 Hospice Inc., Robert A. Williams, and)
 Lancelot D. Wright;)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 2011CP422597

JUN 19 2014 10:09 AM

**Order Granting
 Summary Judgment RECEIVED**

JUN 19 2014

SC Court of Appeals

This matter came before the Court upon Plaintiff Allcare Medical, LLC's ("Allcare") Motion for Summary Judgment against Defendant Ahava Hospice, Inc. ("Ahava") and Defendant Lancelot D. Wright ("Wright"). After reviewing the pleadings on file, the deposition testimony and documents presented to the Court, the arguments of counsel and the applicable case law, the Court makes the following findings of fact and conclusions of law:

1. Allcare is in the business of providing durable medical equipment to various health care providers in the southeast.
2. Ahava is a hospice provider located in the State of South Carolina.
3. Wright is a shareholder of Ahava and its CEO.
4. On March 12, 2008, Allcare entered into a valid written agreement with Ascension Hospice whereby Plaintiff agreed to provide medical equipment and Ascension agreed to pay for the equipment.
5. Pursuant to the terms of the contract, Ascension agreed to pay all fees due within thirty (30) days of receipt of an invoice from Allcare.

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6. Ascension failed to pay the invoices due and owing to Allcare.
7. It is undisputed that Ascension ceased operations and merged with Ahava in January 2011.
8. During the course of litigation, Allcare properly sent a Notice of Deposition to Ahava pursuant to Rule 30(b)(6) specifically requesting that Ahava designate a witness to testify, among other things, about the following topics: any payments made by Ahava to Ascension; the purchase of Ascension; and Ahava's financial accounts. Ahava appointed Glen Gray to testify about these topics on its behalf.
9. Ahava's 30(b)(6) designee testified, in pertinent part, that he is a former employee of Ascension and the current compliance officer for Ahava.
10. Ahava's 30(b)(6) designee testified that Ascension transferred employees, patients, and equipment to Ahava. In addition, he testified that Ahava operated out of the same office space as Ascension.
11. Ahava's 30(b)(6) designee testified that Ahava took over the care of 30 to 40 percent of Ascension's patient list.
12. During the course of discovery, Ahava produced bank statements and checks that showed Ascension and Ahava used the same checking account. When asked whether Ahava shared accounts with Ascension or ever paid the debts of Ascension, the 30(b)(6) designee denied that this happened.
13. When presented with checks and bank statements showing that in fact, on multiple occasions following Ascension's closure, checks were drawn from Ahava's bank account listing Ascension as the account holder, the 30(b)(6) designee

testified that he did not know why these checks were issued.

14. Ahava failed to submit any information to explain why its 30(b)(6) designee could not answer these questions. Ahava further failed to submit any information to contradict or otherwise explain why checks were drawn from its account to pay the debts of Ascension.

15. Based on the record before the Court it is undisputed that on multiple occasions following the merger, Ahava paid Ascension's debts.

16. Based on the record before the Court it is undisputed that Ahava and Ascension shared a checking account.

17. Based on the record before the Court it is undisputed that on multiple occasions following the merger, Ahava paid fees to third parties with which it had no business relationship, but with whom it shared common shareholders.

18. The facts and circumstances set forth above establish that Ahava was a mere continuation of Ascension.

19. The facts and circumstances set forth above establish that Ahava and Ascension merged.

20. Allcare presented a *prima facie* case establishing its right to summary judgment against Ahava.

21. Ahava failed to meet its burden to produce any evidence that created a genuine issue of material fact.

22. Failure by Ahava's 30(b)(6) designee to answer questions for which he was properly noticed to be prepared to testify about does not create a genuine issue of material fact.

23. As a result, no genuine issue of material fact exists and Allcare is entitled to judgment as a matter of law on its breach of contract claim against Ahava.

24. At deposition, Defendant Lancelot Wright admitted he entered into a valid written contract with Plaintiff whereby he agreed to personally guarantee \$200,000 of Ascension's debt, plus interest, costs and attorneys' fees.

25. At deposition, Defendant Lancelot Wright further admitted that he made no payments on the note and that the current principal balance owed exceeds \$200,000.

26. Defendant Wright claimed economic duress as a defense to his liability on the personal guarantee but failed to present any evidence that would give rise to a valid defense of economic duress.

27. By his own admission, Wright agreed to enter into the personal guarantee in order to help his friend Robert Williams; this does not give rise to a claim of economic duress.

28. Allcare submitted a *prima facie* case establishing its right to summary judgment against Lancelot Wright.

29. Lancelot Wright failed to meet his burden to produce any evidence that created a genuine issue of material fact.

30. As a result, no genuine issue of material fact exists and Allcare is entitled to judgment as a matter of law on its breach of contract claim against Lancelot Wright.

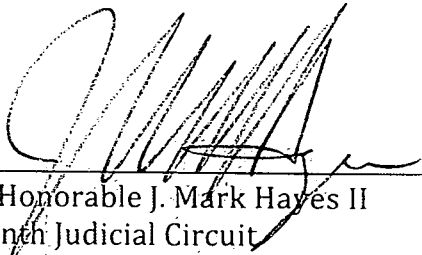
WHEREFORE, it is hereby **ORDERED, ADJUDGED** and **DECREED** that:

1. There is no genuine issue as to any material fact and Allcare is entitled to judgment as a matter of law against Ahava.

2. There is no genuine issue as to any material fact and Allcare is entitled to judgment as a matter of law against Lancelot Wright.

IT IS SO ORDERED.

This the 16th day of ^{May} ~~March~~, 2014.



The Honorable J. Mark Hayes II
Seventh Judicial Circuit

2014 MAY 21 PM 1:00