

STATE OF SOUTH CAROLINA

COUNTY OF YORK

MELISSA SCOTT

Plaintiff,

v.

PALMETTO MEDICAL GROUP, NIMISH PATEL, MD, KISHOR PATEL, PA-C, SHEPALI PATEL, MD, MAGAN GRIGG, PA, PIEDMONT HEALTHSOUTH REHABILITATION, LLC D/B/A HEALTHSOUTH REHABILITATION HOSPITAL OF ROCK HILL, CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY D/B/A CAROLINAS HEALTHCARE SYSTEM, CAROLINAS PHYSICIAN NETWORK, INC. D/B/A ID CONSULTANTS AND INFUSION CARE SPECIALISTS,

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case No: 2017-CP-46-00291

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CLERK OF COURT
YORK COUNTY, S.C.

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**ORDER DENYING DEFENDANTS
CHARLOTTE-MECKLENBURG
HOSPITAL AUTHORITY D/B/A
CAROLINAS HEALTHCARE SYSTEM,
CAROLINAS PHYSICIAN NETWORK,
INC. D/B/A ID CONSULTANTS AND
INFUSION CARE SPECIALISTS'
MOTIONS TO DISMISS**

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SC Court of Appeals

This matter came before me on May 18, 2017, upon the Motions To Dismiss of Defendants Charlotte-Mecklenburg Hospital Authority ("CMHA") d/b/a Carolinas Healthcare System ("CHS"), Carolinas Physician Network, Inc. ("CPN") d/b/a Id Consultants and Infusion Care Specialists' ("ID Consultants") (collectively "these Defendants"). Chad A. McGowan appeared on behalf of Plaintiff, and Scott S. Addison appeared on behalf of Defendants CMHA d/b/a CHS, CPN d/b/a ID Consultants. Based on the record presented, I make the following findings and conclusions.

FACTUAL/PROCEDURAL BACKGROUND

This is a medical malpractice action wherein Plaintiff alleges injury due to Defendants' mistreatment of a bone infection, which allowed the infection to spread to Plaintiff's spine, and resulted in Plaintiff's paralysis from the waist down. Plaintiff was initially hospitalized in June, 2015, at Defendant Piedmont Medical Center ("PMC") for a bone infection in her foot. She was then admitted to Defendant HealthSouth for approximately two weeks, where she came to be treated by Defendant Dr. N. Patel and his practice, Defendant Palmetto Medical Group. While at HealthSouth, Plaintiff alleges she developed new and severe back pain that she alleges was not

investigated by HealthSouth, Dr. Patel, nor any members of his practice. Although Plaintiff had continued complaints of back pain at the time, she was sent home from Healthsouth on July 13, 2015. She was still able to walk.

Plaintiff presented to Defendant ID Consultants in Charlotte, N.C., on August 27, 2015, as recommended for follow-up care of her bone infection. ID Consultants is allegedly a d/b/a of CPN, a subsidiary of CMHA. Plaintiff treated with Dr. Christopher Polk of ID Consultants, who noted in the medical records that at the time of Plaintiff's appointment on August 27, 2015, she was in a wheelchair. Plaintiff alleges ID Consultants failed to order any diagnostic testing to investigate Plaintiff's back pain or manifest immobility.

Plaintiff alleges that on September 9, 2015, she returned to PMC's emergency room for severe low back pain and loss of all feeling below the waist. Plaintiff was diagnosed with a severe bone infection in her spine that has resulted in her permanent bi-lateral paralysis below the waist.

Plaintiff filed a Summons and Complaint on February 6, 2017, alleging the care she received from these Defendants fell below the standard of care, and that such deviation proximately resulted in or proximately contributed to her permanent paralysis and other injuries.

Defendants' current Motions contend that this Court lacks jurisdiction over ID Consultants; that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against CMHA; and that Plaintiff's Complaint should be dismissed for improper venue.

LEGAL STANDARD

A. Motion to Dismiss pursuant to Rule 12(b)(2), SCRPC

Personal jurisdiction over out-of-state defendants is governed by the South Carolina Long-Arm Statute (S.C. Code Ann. § 36-2-803), and the constitutional boundary of due process. The long-arm statute is bifurcated into two categories: (1) general personal jurisdiction under S.C. Code Ann. § 36-2-802, through which an out-of-state defendant may be hailed into South Carolina courts for any claim (including claims unrelated to the defendant's contacts with the state); and (2) specific personal jurisdiction under § 36-2-803 through which a defendant may be hailed into South Carolina courts for claims arising out of the contacts with South Carolina articulated in the statute. *Coggeshall v. Reproductive Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

South Carolina Courts acquire general personal jurisdiction of an out-of-state defendant when the defendant is "doing business" in South Carolina. S.C. Code Ann. § 36-2-802. As

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dictated by § 36-2-802, these defendants have established an “enduring relationship” with South Carolina which is “substantial, continuous, and systematic.” *Cockrell v. Hillerick & Bradsby Co.*, 363 S.C. 485, 495, 611 S.E.2d 505, 510 (2005).

Specific personal jurisdiction under § 36-2-803 is established if the defendant has one of the eight types of contacts with South Carolina listed in the statute, and the plaintiff’s claims are “arising from” the defendant’s contacts with the state. *Coggeshall*, 376 S.C. at 19, 655 S.E.2d at 480.

The Long-Arm Statute, as it has been interpreted, places no restriction on personal jurisdiction over nonresidents other than those established by federal due process concerns. *Meyer v. Paschal*, 330 S.C. 175, 181, 498 S.E.2d 635, 638 (1998). Thus, while traditionally courts have conducted a two-step analysis on personal jurisdiction, “. . . a more recent trend compresses the analysis into a due process assessment only.” *Cribb v. Spatholt*, 382 S.C. 490, 499, 676 S.E.2d 714, 719 (Ct.App. 2009). Due process mandates that a state only has jurisdiction over an out-of-state defendant if there are “. . . minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Moosally v. WW Norton & Co., Inc.*, 358 S.C. 320, 330, 594 S.E.2d 878, 883 (Ct. App. 2004) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)).

The Due Process analysis contains two prongs: (1) power prong in which the court looks to the contacts of the defendant with the forum state to determine whether the courts of the state have the power to exercise jurisdiction; and, (2) fairness prong in which the court determines whether exercising personal jurisdiction would be reasonable or fair to the defendant. *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). The power prong considers whether a “. . . defendant purposefully avail[ed] itself of the privilege of conducting activities in the forum State, thus invoking the benefits and protections of its laws.” *Moosally*, 358 S.C. at 332, 594 S.E.2d at 884 (citing *Hanson v. Denckla*, 357 U.S. 235 (1958)). The fairness prong considers the burden on the defendant, the extent of the plaintiff’s interest, South Carolina’s interest, and the efficiency of adjudication. *Moosally*, 358 S.C. at 332, 594 S.E.2d at 885.

B. Motion to dismiss pursuant to Rule 12(b)(6), SCRPC

A defending party may assert in its answer, or in a pre-answer motion, a defense alleging that the complaint against the defending party fails to state facts sufficient to constitute a cause of

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action. Rule 12(b)(6), SCRCF. When reviewing a 12(b)(6) motion, a Court must view a complaint in the light most favorable to the plaintiff, and every doubt must be resolved in the plaintiff's favor. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the "... facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case," then the Court may not grant a 12(b)(6) motion. *Sloan Constr. Co. v. Southco Grassing Co.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008). A Court may not dismiss a complaint merely because the Court doubts the plaintiff will prevail. *Plyler*, 373 S.C. at 645, 647 S.E.2d at 192.

DISCUSSION

I. Motion to Dismiss pursuant to Rule 12(b)(2), SCRCF.

These Defendants argue that this Court lacks personal jurisdiction over Defendant ID Consultants, and therefore, the claims against these Defendants should be dismissed. They contend that even if this Court has general personal jurisdiction over CMHA and CPN, ID Consultants is sufficiently distanced from CMHA and CPN to avoid personal jurisdiction of this Court. CMHA d/b/a CHS is a North Carolina corporation with extensive business interests, medical practices, and other continuous and systemic contacts within South Carolina, including businesses and facilities located in Anderson, Pickens, Indian Land, Rock Hill, Fort Mill, and Lancaster. See Complaint at ¶ 4. The Complaint states that CMHA controls CPN, and uses it as its agent to provide physician services at CMHA facilities. See Complaint at ¶ 4. CPN is a subsidiary of CMHA that owns and operates physician practices in North and South Carolina, including ID Consultants. See Def. Memo in Support of MTD Exhibit 2 at p.2. CPN has continuous and systematic contacts within South Carolina, as it owns and operates sixteen medical practices in York County. ID Consultants is an unincorporated association of CPN, clearly a d/b/a of CPN¹. ID Consultants' employees are therefore direct employees of CPN. In support of this motion, these Defendants submitted an affidavit of CMHA's Deputy General Counsel, which further evidences the close connection between ID Consultants to CMHA and CPN, as it states the following: " 'CPN is an integral part and instrumentality of the Charlotte-Mecklenburg Hospital Authority'. See Restated Articles of Incorporation of CPN... ID Consultants & Infusion Care Specialists, therefore, is an integral part of the Authority." See Def. Memo in Support of MTD Exhibit 2 at p.2. CMHA and CPN clearly have continuous and

¹ In December 2016, Articles of Dissolution were filed with the North Carolina Secretary of State dissolving ID Consultants as a corporation

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systematic connections to South Carolina. In light of the close connection between CMHA and CPN, and given that ID Consultants is a d/b/a of CPN, ID Consultants may not claim surprise at being named as a defendant in a South Carolina suit. As stated above, general jurisdiction is determined under S.C. Code Ann. §36-2-802, which provides in pertinent part: "Personal jurisdiction is based upon enduring relationship. A court may exercise personal jurisdiction over a person... doing business...[in] this State as to any cause of action." In this case, Defendants have admitted in their answer that "CMHA conducts business activities in the State of South Carolina, including York County". Def. CMHA Amend. Answer ¶ 4. Considering this admission along with the foregoing discussion of the relationships of these Defendants, the Court finds these Defendants all have contacts with South Carolina sufficient to create the "enduring relationship" required for general jurisdiction. The Court further finds that it would not offend traditional notions of fair play and substantial justice for ID Consultants to defend itself in South Carolina. Accordingly, Plaintiff has made the required showing to support her Complaint's jurisdictional allegations and Defendants' Motion to Dismiss pursuant to 12(b)(2) is denied.

II. Motion to Dismiss pursuant to Rule 12(b)(6), SCRC.P.

CMHA argues Plaintiff cannot state a cause of action against CMHA because the Complaint does not establish a principal-agent relationship between CMHA and ID Consultants. Under South Carolina law, a principal is liable for the negligent acts or omissions of its agent that occur in the scope of the agent's employment. *Spence v. Spence*, 368 S.C. 106, 126, 628 S.E.2d. 869, 879 (2006). Agency is a question of fact and is determined by "... the relation, the situation, the conduct, and the declarations of the party sought to be charged as principal." *Langdale v. Carpets*, 395 S.C. 194, 201, 717 S.E.2d 80, 83 (Ct. App. 2011) (citing *Am. Fed. Bank, FSB v. No. One Main Joint Venture*, 321 S.C. 169, 173-74, 467 S.E.2d 439, 442 (1996)). Even in the absence of an express agreement to create an agency relationship, a purported principal's actions may indicate that an agency relationship exists. *Langdale*, 395 S.C. at 202, 717 S.E.2d at 84; *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 597 S.E.2d 165, 168 (Ct. App. 2004) ("the relationship of agency need not depend upon express appointment and acceptance thereof"). Ultimately, "[t]he test to determine agency is whether or not the purported principal has the right to control the conduct of the alleged agent." *Newell v. Trident Med. Ctr.*, 359 S.C. 4, 12, 597 S.E.2d 776, 780 (2004) (quoting *Fernander v. Thigpen*, 278 S.C. 140, 293 S.E.2d 424 (1982)).

These Defendants assert that Plaintiff failed to allege any employment or agency

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relationship between ID Consultants and CMHA d/b/a CHS or CPN. However, the Complaint states that ID Consultants is a subsidiary of CMHA d/b/a CHS, and is so because ID Consultants is a d/b/a of CPN. The Complaint additionally alleges the physician at ID Consultants breached a duty of care to Plaintiff while she was a patient of ID Consultants. The Complaint, in fact, refers to ID Consultants as "CHS' ID Consultants". See Complaint at ¶ 10.

Plaintiff asserts that the medical providers of ID Consultants, and specifically Dr. Polk, were acting as CMHA's agents and/or employees for all medical care described in the Complaint provided by ID Consultants. A complaint must contain only a "... short and plain statement of the facts showing that the pleader is entitled to relief." Rule 8(a)(2), SCRCF. This requires a litigant to plead the ultimate facts which will be proved at trial, not the evidence which will be used to prove those facts. *Stroud v. Riddle*, 260 S.C. 99, 194 S.E.2d 235 (1973). Plaintiff's complaint properly states facts sufficient to satisfy the pleading standards of Rule 8.

Thus, I find and conclude that Plaintiff's claim against CMHA is proper, as there are sufficient facts alleged in the Complaint to establish at minimum a principal-agent relationship between CMHA and ID Consultants. Accordingly, Defendants' Motion to Dismiss pursuant to 12(b)(6) is denied.

III. Motion to Dismiss pursuant to Rule 12(b)(3), SCRCF.

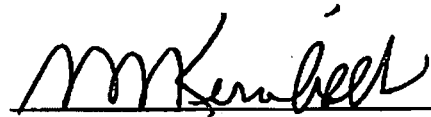
Because I conclude that there is personal jurisdiction over CMHA, I need not address the merits of these Defendants' argument that venue is improper. Defendants' Motion to Dismiss pursuant to 12(b)(3) is therefore denied.

CONCLUSION

Based on the findings and conclusions herein, these Defendants' Motions to Dismiss are denied.

AND IT IS SO ORDERED.

JUNE 14, 2017


S. JACKSON KIMBALL
SPECIAL CIRCUIT COURT JUDGE
YORK COUNTY

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