

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2017-CP-40-03750

CAPITAL CITY OB GYN)
ASSOCIATES, P.A.,)
)
Plaintiff,)
)
vs.)
)
Medorizon, Inc.,)
)
Defendant.)
_____)

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SC Court of Appeals
ORDER

This matter initially came before the Court for hearing of Defendant’s Motion on January 8, 2018. This Court issued its Order on April 11, 2018, and Defendant filed a 59(e) Motion to Reconsider on April 23, 2018. The court allowed Defendant to orally present its arguments on June 26, 2018 seeking to have this Court reconsider the decisions previously made.

Having heard arguments from counsel and reviewed my previous Order and the arguments made in connection therewith, I conclude that Defendant’s Motion to Reconsider should be denied. I am not convinced that there is any error in the position of the Court.

First, I briefly addressed those matters which were decided in the April 11, 2018 Order which are not seemingly challenged by Defendant’s current motion. The Court there determined that a ninety day notice requirement was invalid under existing South Carolina law. The Court also determined that the venue selection clause which was included in paragraph 14 of the Service Agreement was unenforceable. Defendant’s current motion to reconsider is not directed at either of those determinations. In fact, my initial order from the beginning down through the last full paragraph on page 3 is reaffirmed.

It is significant to the Court in considering Defendant's motion that at no time within the Motion did defendant ever address the implications of Paragraph 21 of the Service Agreement in spite of the fact that the Court had on nine separate occasions mentioned that paragraph as significant in its Order of April 11, 2018. The Defendant's complete unwillingness to address that most significant finding in the Order raises questions about the merits of Defendant's current presentation to the court. The Court also finds it significant that during oral argument counsel for Defendant Medorizon acknowledged that paragraph 21 was operative in that it directed that South Carolina law was to be applied in considering this matter. Yet, Defendant repeatedly argued that paragraph 14 of the Service Agreement which was in absolute conflict with that paragraph 21 trumped all of Plaintiff's arguments. This Court is mindful that Defendant's initial Motion was one to dismiss the action before any discovery or development of operative the facts could be had.

In the Order of April 11, 2018, this Court recited the portion of the record which had been urged upon it to convince the Court that Federal Arbitration Act was operative under the facts of this case. This Court's determination that the facts were not sufficiently presented to this Court to make such a decision is the primary focus of Defendant's further arguments in this Rule 59(e) Motion. The Court's recitation of facts in its initial Order is not challenged. The Defendant simply argues that the Court overlooked the existence of the contract itself in determining whether there was sufficient implication of the interstate commerce to require enforcement of the Federal Arbitration Act. The eight page contract describes the duties of the two parties but does not address the logistics involved. The record before us indicates that all of the patients seen by the Plaintiff were in Columbia, South Carolina where Plaintiff's office was maintained. Any details about a procedure, personnel, location, or practices of the parties is

completely missing from the record before the Court, so this Court will not read into the contract sufficient interstate commerce connections to determine that the Federal Arbitration Act applies. This is particularly true in light of the fact that Paragraph 21, which is apparently a provision which was specifically negotiated between the parties, provides that this is to be treated as an INTRASTATE contract. While the Defendant does not agree with the Court's interpretation of that proviso, that is the only meaning which makes sense to this Court.

Therefore, having reconsidered the original arguments and those additionally made in connection with Defendant's current motion, this Court sees no reason to alter its decision. Defendant's motion is denied.

FIFTH JUDICIAL CIRCUIT

July _____, 2018.

L. Casey Manning, Judge



Richland Common Pleas

Case Caption: Capital City OB GYN Associates P A vs Medorizon Inc

Case Number: 2017CP4003750

Type: Order/Other

So Ordered

s/L. Casey Manning, 2061