UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

BAHMAN PAYMAN, M.D.,	)	
	)	
Plaintiff,	)	Case No. 2:02CV00023
	)	
v.	)	**OPINION**
	)	
ATIQUE MIRZA, M.D.,	)	By: James P. Jones
	)	United States District Judge
Defendant.	)	

Michael A. Bragg, Bragg & Associates, PLC, Abingdon, Virginia, for Plaintiff; Wm. W. Eskridge, Penn, Stuart & Eskridge, Abingdon, Virginia, for Defendant.

In this action for conspiracy and interference with contractual relationship and professional opportunities, brought by one physician against another, I grant summary judgment in favor of the defendant.

I

In his Amended Complaint, the plaintiff, a physician, claims that the defendant, another physician who now resides in Massachusetts, conspired with other physicians in 1999 and 2000 to interfere with the plaintiff's contractual relationship with Lee County Community Hospital, located in Pennington Gap, Virginia, and with the plaintiff's "reasonable professional opportunities with other hospitals" so as to injure

him "in his professional reputation and profession."[1] He asserts that the defendant is liable under the Virginia conspiracy statute[2] and common law principles.[3]

The defendant has moved for summary judgment.[4] In response, the plaintiff seeks leave to conduct discovery in order to respond to the Motion for Summary Judgment[5] and alternatively, opposes summary judgment based on his own affidavit. The motions are now ripe for decision.

Based on the summary judgment record, the essential facts of the case are as follows.

Bahman Payman, M.D., was employed by Lee County Community Hospital, Inc. (the "Hospital") beginning in 1992 pursuant to a written Employment Agreement.[6] According to the contract, Payman's employment was subject to termination for cause at any time or without cause upon 120 days notice.[7] Payman

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[1] Am. Compl ¶ 3.

[2] Va. Code Ann. §§ 18.2-499, 500 (Michie 1996).

[3] *See* Am. Compl. ¶¶ 6, 8. Jurisdiction of this court exists pursuant to diversity of citizenship and amount in controversy. *See* 28 U.S.C.A. § 1332(a) (West 1993 & Supp. 2002).

[4] *See* Fed. R. Civ. P. 56(b).

[5] *See* Fed. R. Civ. P. 56(f).

[6] *See* Payman Aff. Opp'n to Mot. Summ. J. (hereafter "Payman Aff.") Ex. B.

[7] Employment Agreement ¶¶ 13, 14.

specializes in obstetrics and gynecology[8] and apparently served as an employee without incident until October 27, 1999. On that day, according to him, a radiologist "misinterpreted a film" and diagnosed a severe birth defect in an unborn child.[9] The radiologist and a pediatrician advised the mother—a patient of Payman's— to transfer for delivery to another hospital that had a neonatal intensive care unit. Payman disagreed and four physicians went to the Hospital administration in an unsuccessful attempt to require Payman to transfer the patient. Payman in turn complained about the physicians interfering with his clinical judgment.[10]

A few days later, Payman had a dispute with another staff physician, Dr. Ghullam Joyo, an anesthesiologist, over the placement of a fetal monitor during an emergency cesarean section, which resulted in a complaint being filed by Payman against Joyo with the Hospital administration. Payman alleged that Joyo had called

[8] *See* Payman Aff. ¶ 1.

[9] Payman Aff. ¶ 10.

[10] *See* Mirza Decl. ¶ 9.

him a "stupid doctor" in front of the patient.[11] Both Payman and Joyo received written admonishments from the Hospital administrator.[12]

By letter dated February 10, 2000, the Hospital administrator gave Payman 120 days notice of termination without cause pursuant to the Employment Agreement. On March 1, 2000, the administrator notified Payman by letter that he was being terminated from employment for cause, although the cause was not specified.[13] Thereafter, Payman and the Hospital reached an agreement by which the Hospital would withdraw its notice of termination for cause; Payman would resign from his employment and his clinical privileges at the Hospital; and Payman would be paid for 120 days beginning from the earlier notice of termination without cause. Payman submitted his letter of resignation pursuant to this agreement on March 7, 2000.[14]

In his affidavit in opposition to the Motion for Summary Judgment, Payman claims that he was the victim of a conspiracy by Drs. Abdrabbo, Joyo, Ahsan, and Mirza. Dr. Ahsan, who is not an employee of the Hospital, is married to the

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[11] Payman Aff. ¶ 12. Payman sued Joyo for defamation over this incident, but the case was dismissed by this court because it was barred by the applicable state statute of limitations. *See Payman v. Joyo*, No. 2:01CV000128, 2002 WL 1821635, at *1 (W.D. Va. Aug. 8, 2002).

[12] *See* Payman Aff. ¶ 12.

[13] *See* Payman Aff. Ex. F.

[14] *See* Mirza Decl. Ex. B.

pediatrician who attempted to obtain the transfer of Payman's patient to another hospital, as described above. Payman alleges that all of these physicians are of the Moslem faith and he is of the Bahai'i faith and that "[t]here is a long history of persecution of the Bahai'i by Moslems."[15] He contends that Mirza and Abdrabbo drafted Payman's letter of resignation and that "important decisions" at the Hospital were made by Mirza and Ahsan and another physician, Dr. Laufer.[16]

Payman contends that at the time of his resignation Abdrabbo told him that "we will not give you good recommendation [sic] to get privileges at area hospitals,"[17] but he does not know whether any recommendations were given or not.[18] He has not been refused any such privileges although he contends that he has been advised by "various hospitals" that his applications could not be processed because the Hospital has not responded to requests for information.[19] He also claims that his application to reinstate his West Virginia medical license was delayed "for several months" because the Hospital failed to respond to a request for information.[20]

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[15] Payman Aff. ¶ 3.

[16] *Id*. at ¶ 18.

[17] Payman Aff. ¶ 19.

[18] *See id*. at ¶ 20.

[19] *Id*.

[20] *Id.* at ¶ 21 (misnumbered as 18).

The defendant Mirza is an internist who was employed by the Hospital from 1996 until December 31, 2000. He is now on staff of the Division of Cardiovascular Medicine at Brigham & Women's Hospital, affiliated with Harvard Medical School. From July 1, 1999, through June 30, 2000, he served as chair of the Medical Staff Executive Committee at the Hospital. The Medical Staff Executive Committee considered the complaints by and against Payman but Mirza asserts that it did not decide to terminate him from employment, since it was without that power. He denies that he conspired against Payman or that he had any "personal stake" or independent financial interest in Payman's employment with the Hospital.[21]

In support of his Motion for Summary Judgment, the defendant contends that Payman cannot make out a case of conspiracy because the Virginia conspiracy statute does not afford a cause of action based on a personal employment relationship and because of the intra corporate immunity doctrine. In addition, it is asserted that the defendant is immune from suit under the provisions of Virginia's medical immunity statute.[22]

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[21] *See* Mirza Decl. ¶ 22.

[22] *See* Va. Code Ann. § 8.01-581.16 (Michie Supp. 2002).

II

I first must consider the plaintiff's request for additional discovery.

Summary judgment is appropriate when there is "no genuine issue of material fact," given the parties' burdens of proof at trial.[23] In determining whether the moving party has shown that there is no genuine issue of material fact, a court must assess the factual evidence and all inferences to be drawn therefrom in the light most favorable to the nonmoving party.[24] Summary judgment is not "a disfavored procedural shortcut," but an important mechanism for weeding out "claims and defenses [that] have no factual basis."[25]

While a motion for summary judgment is often filed after discovery in a case is completed, Rule 56 permits a motion for summary judgment by a defendant "at any time."[26] However, the rule does provide protection for a party who is not prepared to oppose summary judgment. Rule 56(f) states as follows:

> Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by

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[23] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see* Fed. R. Civ. P. 56(c).

[24] *See Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985).

[25] *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

[26] *See* Fed. R. Civ. P. 56(b); *Banks v. Mannoia*, 890 F. Supp. 95, 98 (N.D.N.Y. 1995) (stating that "summary judgment can and often should be granted without discovery").

> affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.[27]

The party opposing summary judgment bears the burden of showing what specific facts he hopes to discover that will raise an issue of material fact.[28] "Vague assertions" that more discovery is needed are insufficient.[29]

The plaintiff has filed an affidavit pursuant to Rule 56(f). In it, he contends that additional discovery is required. The specifics of the information that he wishes to discover are "the scope of defendant's duties as an employee of [the Hospital]" and "whether the defendant's acts or omissions were in furtherance of any acts which . . . afforded immunity under the Virginia statute."[30]

I find the affidavit inadequate to allow discovery under Rule 56(f). There is no suggestion that the defendant was not a member of the Hospital's Medical Staff Executive Committee or that the committee did not consider complaints against Payman. The plaintiff's affidavit in essence simply indicates that he does not know

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[27] Fed. R. Civ. P. 56(f).

[28] *See Nguyen v. CNA Corp.*, 44 F.3d 234, 242 (4th Cir. 1995).

[29] *See id.*

[30] Payman Aff. Pursuant to Rule 56(f) ¶ 2

what, if anything, the defendant had to do with his difficulties with the Hospital. Indeed, the only specific act or omission alleged against the defendant in the plaintiff's affidavit in opposition to summary judgment—aside from the general claim of conspiracy—is that the defendant prepared the letter of resignation for the plaintiff.[31]

Particularly in view of the defense of immunity, these allegations are insufficient. If a plaintiff could subject an immune defendant to discovery on such slim factual claims, the immunity promised by the Virginia statute would have little practical value.

Accordingly, the plaintiff's motion under Rule 56(f) will be denied.

III

On the merits of the summary judgment motion, I find that judgment should be entered for the defendant. As pointed out by the defendant, the Virginia conspiracy statute does not cover personal employment relationships.[32] Moreover, the doctrine of intra corporate immunity bars any conspiracy cause of action involving the

[31] *See* Payman Aff. ¶ 18.

[32] *See Jordan v. Hudson*, 690 F. Supp. 502, 507-08 (E.D. Va. 1988), *aff'd*, 879 F.2d 98 (4th Cir. 1989).

Hospital and its agents, as alleged here.[33] Finally, the defendant is entitled to immunity under the Virginia statute, which affords protection to "[e]very member of . . . any committee, board, group, commission or other entity . . . for any act, decision, omission, or utterance done or made in the performance of his duties . . ." when such entity "functions primarily to review, evaluate, or make recommendations on . . . the adequacy or quality of professional services . . . ."[34]

The immunity afforded by the statute does not apply where the defendant acts "in bad faith or with malicious intent."[35] No facts have been asserted that would produce a genuine issue of material fact in this regard. The only malice or bad faith asserted by the plaintiff is his claim that Moslems have persecuted the Bahai'i in Iran. That bald claim, even if true, does not implicate the defendant in any such practices.

IV

For the foregoing reasons, summary judgment will be entered in favor of the defendant as to the plaintiff's claims. A separate judgment consistent with this opinion is being entered herewith.

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[33] *See Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 151 F. Supp. 2d 723, 731 (W.D. Va. 2001).

[34] Va. Code Ann. § 8.01-581.16.

[35] *Id.*

DATED: November 1, 2002

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United States District Judge