UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

KNOX COUNTY HOSPITAL d/b/a GOOD SAMARITAN HOSPITAL, Plaintiff/Counter-Defendant,	)	
vs.	)	2:07-cv-0073-LJM-WGH
JOSEPH RICHARDSON, Defendant/Counter-Plaintiff.	)	

ORDER ON PLAINTIFF/COUNTER-DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This cause is now before the Court on Plaintiff/Counter-Defendant's, Knox County Hospital, doing business as Good Samaritan Hospital ("Good Samaritan"), Motion for Summary Judgment on its own claims against defendant/counter-plaintiff, Joseph Richardson, M.D. ("Dr. Richardson"), and on Dr. Richardson's claims against it. Good Samaritan argues that there is no genuine issue of material fact that Dr. Richardson breached the employment contract between the parties and that, pursuant to the contract and a promissory note executed at the same time, that Dr. Richardson owes Good Samaritan damages. Good Samaritan also contends that summary judgment in its favor is proper on Dr. Richardson's counterclaim that Good Samaritan breached the contract by terminating his employment without cause.

I. BACKGROUND

Good Samaritan and Dr. Richardson entered into an Employment Agreement ("Contract") on June 24, 2005, in which Dr. Richardson was to be employed as an anesthesiologist for a period

of two years beginning on August 1, 2005. Richardson Aff. ¶ 4. As part of the Contract, Dr. Richardson executed a Promissory Note in the amount $30,000.00 or the unforgiven balance of the loan made. Waldroup Aff. ¶ 6. Pursuant to paragraph 5.1 of the Contract, Dr. Richardson received a check in the amount of $15,000.00 Waldroup Aff. Ex. A, Richardson Aff. ¶ 6. Pursuant to paragraph 5.1 of the Contract, interest on the Promissary Note was to run at seven percent per annum beginning as of the date of the loan, as well as attorney fees and costs incurred in collecting the Note. Pl.'s Compl. Ex. A.

In order to accept employment at Good Samaritan under the Contract, Dr. Richardson had to move from Los Angeles, California, to Vincennes, Indiana. Richardson Aff. ¶ 6. In order to fulfill his contractual obligations, Dr. Richardson prepared to move to Vincennes, Indiana. Richardson Aff. ¶ 6.

Pursuant to Paragraph 2.2 of the Contract, Dr. Richardson was to remain a member in good standing of the active medical staff of the hospital. Pl.'s Compl. Ex. A. A medical staff application with privileges in anesthesiology was sent to Dr. Richardson on or about June 7, 2005. Waldroup Aff. ¶ 9. Good Samaritan also sent Dr. Richardson a copy of the Service Credentialing Criteria and Policy for Good Samaritan and the Medical and Dental Staff Bylaws and Rules and Regulations. Waldroup Aff. ¶ 10 & Exs. C & D.

Dr. Richardson submitted his application on or about July 11, 2005. Waldroup Aff. ¶ 9. Dr. Richardson indicated on the application that he received B.S. and M.D. degrees from Indiana University in Bloomington, Indiana; completed his internship at Waterbury Hospital in Waterbury, Connecticut; and was in residency at King/Drew Medical Center in Los Angeles, California, from July 8, 2002, through June 30, 2005. Waldroup Aff. Ex. B, at 4. Dr. Richardson also submitted a

resume indicating that the internship at Waterbury Hospital and the residency at King/Drew Medical Center were the extent of his post-graduate training. Waldroup Aff. Ex. E. The application indicated that it was Dr. Richardson's duty to provide all relevant information required to evaluate his competence, character, ethics, and other qualifications, and that failure to do so could be grounds for refusal of the application or summary dismissal from the medical staff.[1] Waldroup Aff. Ex. B, at 8.

Good Samaritan sought to verify the information contained in Dr. Richardson's application and learned that he participated in a residency program at the University of South Florida ("USF") from July, 2001, through February 2002, but that he did not complete the program. Hedde Aff. ¶¶ 5-6. Good Samaritan obtained a report from the American Board of Anesthesiology that indicated that Dr. Richardson received an unsatisfactory grade in the residency with the following explanation: "late to work, questions of honesty, did not follow directions regarding clinical care of patients." *Id.* ¶ 7.

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[1] The relevant portion of the application reads:

> I acknowledge and agree that I have the burden of producing all of the information set forth in this application and in the Medical and Dental Staff Bylaws and of producing adequate information for the compete evaluation of my competence, character, ethics and other qualifications, and of resolving any doubts about such qualifications. I also have the burden of providing evidence that all the statements made and information given in this application are factual and true and that if any significant misstatements have been made by me or any significant omissions made from this application, said misstatements or omissions can constitute cause for refusal of this application or summary dismissal from the Medical and Dental Staff or of Allied Health Professional privileges.

Waldroup Aff. Ex. B, at 8.

In July 2005, Charles Hedde, M.D. ("Dr. Hedde"), the Vice President for Medical Affairs at Good Samaritan, called Dr. Richardson to inquire about the USF residency program. Dr. Richardson advised Dr. Hedde that he inadvertently omitted the USF residency information from his application and submitted a letter as an addendum to the medical staff application adding the USF anesthesiology training to his post-graduate education. Richardson Aff. ¶ 7, Hedde Aff. Ex. B.

Dr. Richardson was scheduled to interview with the Good Samaritan Credentials and Audit Committee[2] on August 8, 2005. Hedde Aff. ¶ 9. Dr. Richardson requested that his interview be placed on hold until the Credentials and Audit Committee's next scheduled meeting in September, 2005, because he had surgery on his foot. Richardson Aff. ¶ 8. On September 1, 2005, the Credentials and Audit Committee met and interviewed Dr. Richardson. *Id.* ¶ 9. The Credentials and Audit Committee asked Dr. Richardson about the USF report, and Dr. Richardson submitted copies of all of his performance evaluations from USF. *Id.* Dr. Richardson's evaluations prior to December 2001 were positive. *Id.*

Following the Credentials and Audit Committee meeting, the Committee reviewed all of the information available, and unanimously passed a motion not to recommend Dr. Richardson to membership on the medical staff. Turner Aff. ¶ 6. On or about September 20, 2005, T. Michael Turner, M.D., ("Dr. Turner"), who was Chairman of the Credentials Committee, called Dr. Richardson to advise him of the Credentials and Audit Committee's vote. Richardson Aff. ¶ 9, Turner Aff. ¶ 7. Dr. Turner advised Dr. Richardson that it would be best for him to withdraw his

[2] The Credentials and Audit Committee was, at the time, made up of eight physician members who served as a requirement of having staff privileges at Good Samaritan. Waldroup Aff. ¶ 13. At the time, only one member of the Committee was a member of Good Samaritan. *Id.*

application for employment rather than having Good Samaritan report to the National Practitioner Data Bank that he had been denied medical staff privileges.[3] Richardson Aff. ¶ 10. Such a report could have a negative effect on Dr. Richardson's future credentialing applications. *Id.* On September 21, 2005, Dr. Richardson withdrew his application for medical staff privileges. Waldroup Aff. Ex. G. Dr. Richardson never worked at Good Samaritan. Waldroup Aff. ¶ 15.

II. SUMMARY JUDGMENT STANDARD

As stated by the Supreme Court, summary judgment is not a disfavored procedural shortcut, but rather is an integral part of the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). *See also United Ass'n of Black Landscapers v. City of Milwaukee*, 916 F.2d 1261, 1267-68 (7th Cir. 1990), *cert. denied*, 499 U.S. 923 (1991). Motions for summary judgment are governed by Rule 56(c) of the Federal Rules of Civil Procedure, which provides in relevant part:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). Summary judgment is the "put up or shut up" moment in a lawsuit. *Johnson v. Cambridge Indus., Inc.*, 325 F.3d 892, 901 (7th Cir. 2003), *reh'g denied*. Once a party has made a properly-supported motion for summary judgment, the opposing party may not simply rest upon the pleadings but must instead submit evidentiary materials that "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). A genuine issue of material fact exists

[3] Good Samaritan would be obligated to report an adverse action taken with respect to a physician's clinical privileges pursuant to 42 U.S.C. § 11133.

whenever "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The nonmoving party bears the burden of demonstrating that such a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Oliver v. Oshkosh Truck Corp.*, 96 F.3d 992, 997 (7th Cir. 1996), *cert. denied*, 520 U.S. 1116 (1997). It is not the duty of the Court to scour the record in search of evidence to defeat a motion for summary judgment; rather, the nonmoving party bears the responsibility of identifying the evidence upon which he relies. *See Bombard v. Fort Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996). When the moving party has met the standard of Rule 56, summary judgment is mandatory. *Celotex*, 477 U.S. at 322-23; *Shields Enters., Inc. v. First Chi. Corp.*, 975 F.2d 1290, 1294 (7th Cir. 1992).

In evaluating a motion for summary judgment, a court should draw all reasonable inferences from undisputed facts in favor of the nonmoving party and should view the disputed evidence in the light most favorable to the nonmoving party. *See Estate of Cole v. Fromm*, 94 F.3d 254, 257 (7th Cir. 1996), *cert. denied*, 519 U.S. 1109 (1997). The mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. Only factual disputes that might affect the outcome of the suit in light of the substantive law will preclude summary judgment. *See Anderson*, 477 U.S. at 248; *JPM Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270, 273 (7th Cir. 1996). Irrelevant or unnecessary facts do not deter summary judgment, even when in dispute. *See Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992). "If the nonmoving party fails to establish the existence of an element essential to his case, one on which he would bear the burden of proof at trial, summary judgment must be granted to the moving party." *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996), *cert. denied*, 519 U.S. 1115 (1997).

III. DISCUSSION

Where a case is brought under the Court's diversity jurisdiction, the Court must apply the substantive law of the forum in which it sits, including the forum's choice of law rules. *See Nucor Corp. v. Aceros y Maquillas de Occidente*, 28 F.3d 572, 581 (7th Cir. 1994) (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938)). The Court and both parties agree that Indiana law applies. Under Indiana law, the elements of a breach of contract claim are: "(1) the existence of a contract; (2) defendant's breach thereof; and (3) damages." *Wilson v. Lincoln Fed. Sav. Bank*, 790 N.E.2d 1042, 1048 (Ind. Ct. App. 2003).

Both parties allege the other has breached the Contract. Good Samaritan claims that Dr. Richardson failed to perform his obligations under the Contract by failing to become, much less remain, a member in good standing of the active medical staff of Good Samaritan as required by Paragraph 2.2 of the Contract, and by subsequently withdrawing his application. Dr. Richardson alleges that Good Samaritan breached the Contract by failing to act reasonably and in good faith in an effort to make sure that Dr. Richardson became a member in good standing of the active medical staff and that Dr. Turner acted in bad faith by advising Dr. Richardson to withdraw his application. Dr. Richardson does not dispute that if Good Samaritan acted in good faith that he would be in breach of the Contract, so the only issue before the Court is whether Good Samaritan acted in bad faith in failing to recommend Dr. Richardson for membership on the medical staff and subsequently advising him to withdraw his application.

Paragraph 2.2 of the Contract requires that Dr. Richardson "remain a member in good standing of the active medical staff of Good Samaritan Hospital." Pl.'s Compl. Ex. A. Dr. Richardson argues that his becoming a member of the medical staff is a condition precedent to his

being obligated under the Contract. Good Samaritan frames the issue slightly differently, stating that Dr. Richardson's obtaining medical staff privileges was a condition precedent to his beginning employment. These differences are immaterial. The issue essentially boils down to which party was at fault in Dr. Richardson's failure to obtain medical staff privileges.

Under Indiana law, "a party may not rely on a failure of a condition precedent to excuse that party's nonperformance where the party's inaction caused the failure." *AquaSource, Inc. v. Wind Dance Farm, Inc.,* 833 N.E.2d 535, 537 (Ind. Ct. App. 2005) (citing *Ind. Highway Comm'n v. Curtis*, 704 N.E.2d 1015, 1019 (Ind. 1998)). Under the so-called *Hamlin* doctrine, a party has "an implied obligation to make a reasonable and good faith effort to satisfy the condition." *Id.* (citing *Hamlin v. Steward*, 622 N.E.2d 535, 540 (Ind. Ct. App. 1993)). "Where the condition is itself the approval by some division or component of the party, [] the obligation [] is to consider that approval in good faith." *Id.* Dr. Richardson contends that there is an issue of material fact as to whether the Credentials and Audit Committee's vote to deny his membership was in bad faith.

Good Samaritan argues that the *Hamlin* doctrine should not apply to the Committee's decision because it is comprised of physicians having staff privileges at Good Samaritan, who are not acting as employees of Good Samaritan and are not controlled by Good Samaritan. This argument misses the point. Good Samaritan cannot avoid the obligation to act in good faith by delegating the decision to an independent board. *Cf. Curtis*, 704 N.E.2d at 1019 (discussing the liability of the State of Indiana for breach of contract that was premised on the failure of one of its divisions, the Indiana Department of Transportation, to approve an easement).

Application of the *Hamlin* doctrine does not help Dr. Richardson, however, because he presents no evidence that the Committee acted in bad faith or that Good Samaritan caused the

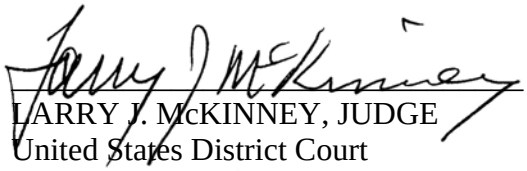
Committee to act in bad faith. Rather, the undisputed facts show that the Committee concluded that Dr. Richardson was not suited for admission to the staff of Good Samaritan because he failed to disclose on his application that he participated in the USF residency program for a short period of time and received an unfavorable rating. Hedde Aff. ¶¶ 5-7; Turner Aff. ¶ 6. Dr. Richardson's claim that a material question of fact is created by this decision alone asks the Court to allow a jury to decide whether the Committee's decision was correct. But, that is not the question before the Court. The question before the Court is whether Good Samaritan prevented Dr. Richardson from performing his obligation under the contract. The Committee's arms-length decision alone is insufficient to evidence such bad faith.

Dr. Richardson also argues that evidence of Good Samaritan's bad faith is found in Dr. Turner's recommendation that Dr. Richardson withdraw his application rather than have the Committee and Good Samaritan report an adverse privileges decision. The Court cannot agree that this creates an issue of fact for a jury. Good Samaritan would be obligated to report an adverse action taken with respect to Dr. Richardson's clinical privileges pursuant to 42 U.S.C. § 11133. Under that circumstance, no reasonable jury could conclude that Dr. Turner's suggestion, and Dr. Richardson's subsequent action upon that suggestion, was made in bad faith. Rather, Dr. Turner's suggestion allowed Dr. Richardson to proceed with finding alternative employment without any blemishes on his professional record.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiff/Counter-Defendant's, Knox County Hospital, doing business as Good Samaritan Hospital, Motion for Summary Judgment on its own claims against defendant/counter-plaintiff, Joseph Richardson, M.D., and on Dr. Richardson's claims against it. This cause is hereby **SET** for a hearing on **DAMAGES** on **Thursday, May 22, 2008, at 3:00 p.m., in Courtroom 202**, Birch Bayh Federal Building and United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana.

IT IS SO ORDERED this 22nd day of April, 2008.



LARRY J. McKINNEY, JUDGE
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