

State of Minnesota
Carver County

District Court
First District

Court File Number: **10-CV-10-1172**

Case Type: Employment

JIGAR ASHWIN MADIA
333 WASHINGTON AVE N STE 345
MINNEAPOLIS MN 55401

Notice of:

<input checked="" type="checkbox"/>	Filing of Order
<input checked="" type="checkbox"/>	Entry of Judgment
<input type="checkbox"/>	Docketing of Judgment

Samuel Dewese vs LAKEVIEW CLINIC LTD

You are hereby notified that the following occurred regarding the above-entitled matter:

- | | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | An Order was filed on January 12, 2012. |
| <input checked="" type="checkbox"/> | Judgment was entered on January 12, 2012. |
| <input type="checkbox"/> | You are notified that judgment was docketed on
at in the amount of \$. Costs and interest will accrue on this amount from the
date of entry until the judgment is satisfied in full. |

Dated: January 12, 2012

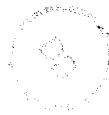
Vicky L. Carlson
Court Administrator
Carver County District Court
604 East Fourth Street Chaska Minnesota 55318
952-361-1420



cc: KATHRYN JEAN BERGSTROM

A true and correct copy of this Notice has been served by mail upon the parties named herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

FILED



JAN 12 2012

STATE OF MINNESOTA
COUNTY OF CARVER

CARVER COUNTY COURTS

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Samuel Deweese,
Plaintiff,
vs.

File No. 10-CV-10-1172

Lakeview Clinic, Ltd.,
Defendant.

ORDER DENYING
SUMMARY JUDGMENT

The above-captioned matter came on for hearing on the motion of Defendant for entry of Summary Judgment before the undersigned Judge of District Court, on December 13, 2011 at the Carver County Justice Center, Chaska, Minnesota.

Plaintiff appeared personally, along with counsel, Jigar A. Madia, Madia Law LLC, Minneapolis, Minnesota. Dr. Donald Somers, President, and Robert Wilcox, Administrator, appeared on behalf of Defendant, along with counsel, Kathryn J. Bergstrom, Gray, Plant, Mooty, Mooty & Bennett, P.A., Minneapolis, Minnesota.

Based upon all the evidence, affidavits, submissions and arguments of counsel, IT IS HEREBY ORDERED:

1. That Defendant's Motion for Entry of Summary Judgment on Counts I through VII of Plaintiff's Complaint IS DENIED;
2. That this matter will remain set for Jury Trial on the 3rd day of April, 2012, at 8:30 a.m. at the Carver County Justice Center, Chaska, Minnesota.
3. That the attached memorandum is incorporated herein.

Dated: January 12, 2012

BY THE COURT:

Richard C. Perkins
Richard C. Perkins
Judge of District Court

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT.

DATE 1-12-12
VICKY L. CARLSON
COURT ADMINISTRATOR, CARVER COUNTY, MINN

Debra A. Buehler
DEPUTY

MEMORANDUM

A. Summary Judgment Standard

Summary judgment is properly granted 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 either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. Summary judgment is not a substitute for trial and may be granted only if, based on the entire record, no issue of material fact exists. *Bixler v. J.C. Penney Co., Inc.*, 376 N.W.2d 209, 215 (Minn. 1985).

A fact is material if its resolution will affect the outcome of the case. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). That is, if the evidence would “permit reasonable persons to draw different conclusions.” *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002). The burden is on the moving party to show that there is no genuine issue of material fact. *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). If this is demonstrated, the burden shifts and the nonmoving party must “present specific facts showing that there is a genuine issue for trial.” Minn. R. Civ. P. 56.05. If the nonmoving party fails to meet this burden, then summary judgment is proper. *Erickson v. General United Life Ins. Co.*, 256 N.W.2d 255, 259 (Minn. 1977). When looking at the evidence, the court must view it in the light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). If there is any doubt about the existence of a genuine issue as to a material fact, the doubt must be resolved in favor of finding that the fact issue exists. *Rathbun v. W.T. Grant Co.*, 219 N.W.2d 641, 646 (Minn. 1974).

B. Counts I and II – Shareholder Claims

Plaintiff brought two shareholder-related claims against Defendant, alleging (1) that Defendant breached its fiduciary duties owed to Plaintiff and (2) that Defendant wrongfully terminated Plaintiff with the use of shareholder oppression.

Defendant asserts that neither of Plaintiff's shareholder claims can survive a summary judgment motion because (1) the claims are preempted by the Minnesota Human Rights Act (MHRA), (2) Plaintiff took all necessary action to sell his shares back to Defendant, (3) Defendant had every right to require the sale of the shares, and (4) Plaintiff ratified his actions by accepting all the money from Defendant for the shares.

As a matter of law, Plaintiff's shareholder claims are not preempted by the MHRA. The MHRA preempts a common law cause of action if: 1) the factual basis and injuries supporting the common law claim would also establish a violation of the MHRA, and 2) the obligations the defendant owes to the plaintiff, as a practical matter, are the same under both common law and the MHRA. *Pierce v. Rainbow Foods Group, Inc.*, 158 F. Supp. 2d 969, 975 (D. Minn. 2001). Although the supporting facts may be the same or similar under each claim, the obligations Defendant owes to Plaintiff are not the same. The MHRA merely prohibits Defendant from discriminating against its employees; it does not impose the fiduciary duties of loyalty and care on Defendant. Because of the difference in the obligations Defendant owes to Plaintiff under the MHRA compared to the common law, Plaintiff's shareholder claims cannot be preempted by his MHRA claims.

Plaintiff established that issues of material fact do exist as to the rest of the assertions Defendant raises regarding Plaintiff's shareholder claims. Plaintiff established that Defendant is a closely held corporation, and that as a result, Defendant's shareholders owed fiduciary duties to the other shareholders, including Plaintiff. There is a factual dispute as to whether Plaintiff voluntarily took all necessary action to sell his shares back to Defendant. This is so because Plaintiff points to several statements in affidavits that could lead a reasonable juror to believe that Defendant breached its fiduciary duties and used threats, coercion and/or misrepresentations to obtain Plaintiff's signature on the resignation documents. Plaintiff also raises a genuine factual dispute as to whether Defendant had a legal right to require Plaintiff's sale of his shares based upon Plaintiff's reasonable interpretation of the Senior Physician Agreement, Deferred Compensation Agreement and Stock Redemption Agreements that would not have given Defendant the right to require a sale.

C. Count III – Fraudulent Inducement Claim

Plaintiff brought a fraudulent inducement claim against Defendant, alleging that Defendant falsely and materially represented to Plaintiff that if he signed the new employment contract, that (1) Defendant intended to eventually increase Plaintiff's hours up to the number he had under his previous schedule (at the discretion of Plaintiff's psychiatrist), (2) Defendant intended to reasonably increase Plaintiff's compensation after

one year in order to be commensurate with that of other, non-disabled physicians, and (3) Defendant intended to allow Plaintiff to buy his shares back after returning to work.

Defendant asserts that Plaintiff's fraudulent inducement claim cannot survive a summary judgment motion because Defendant's allegedly false representations were not of past or present facts and because Defendant did not allegedly represent the facts knowing them to be false or without knowing whether they were true or false.

Plaintiff establishes a genuine issue of material fact with respect to this claim. Plaintiff points to several affidavits discussing the September 2007 meeting between Plaintiff and authorized agents of Defendant, which provide evidence of specific statements from Defendant to Plaintiff about increasing Plaintiff's hours as appropriate, increasing his pay, and allowing him to buy his shares back after returning to work. The affidavits Plaintiff presents also provide evidence that Plaintiff signed the document resigning all rights to his shares in January 2008 and then several weeks later was presented with an employment agreement that did not include any provisions regarding the increased pay, increased hours or opportunity to buy shares back. This evidence could lead a reasonable juror to believe that at the time Defendant's agent made the alleged representations, Defendant had no intent to follow through with them and therefore knew them to be false. Because a factual dispute does exist, the fraudulent inducement claim will be sent forward to trial.

D. Count IV - Breach of Contract Claim

Plaintiff brought a breach of contract claim against Defendant, alleging that Plaintiff and Defendant entered into an enforceable employment agreement that limited the reasons for which the agreement could be automatically terminated, and that all other reasons for termination required at least 90 days written notice. Plaintiff claims that alleged falsification of a document is not included among the limited reasons, and that Defendant therefore violated the 90 days written notice requirement.

Defendant asserts that Plaintiff's breach of contract claim cannot survive a summary judgment motion because the employment agreement provided for immediate termination when an employee failed to follow the requirements established by the Executive Committee. Defendant further asserts that the Executive Committee set forth requirements

in its Physician and Employee Manuals, which provide that falsification of records was grounds for termination.

Plaintiff raises a genuine factual dispute on this claim by calling into question the contract interpretation used by Defendant in arriving at the conclusion that falsification of records fits under the automatic termination portion of the contract (Paragraph 6.1 of Plaintiff's Exhibit 20, Defendant's Exhibit S). Paragraph 6.1(a) provides for automatic termination of an employee for failure to maintain the *qualifications* set forth in Paragraph 2.1, and the final subdivision under the Paragraph 2.1's "*Required Qualifications*" provides for any other requirements established by the Executive Committee. After piecing these contract provisions together, a reasonable juror may conclude that the falsification of records violation that the Executive Committee included in its manuals does not constitute a required qualification that fits into Paragraph 2.1 of the 2008 employment agreement. Thus, the breach of contract claim must also be sent forward to trial.

E. Counts V, VI & VII – MHRA Claims

Lastly, Plaintiff brought three claims under the Minnesota Human Rights Act (MHRA). Plaintiff alleged that Defendant violated the MHRA by (1) discriminating against Plaintiff in the terms, conditions and privileges of employment and by terminating Plaintiff because of his disability; (2) failing to accommodate Plaintiff's disability by refusing to increase Plaintiff's clinic hours to the schedule he had maintained before his disability leave; and (3) acting in retaliation and reprisal against Plaintiff by requiring him to undergo a fitness for duty evaluation, forcing him to discontinue his practice for extended periods of time, and ultimately discharging him as a result of Plaintiff's opposition to Defendant's discriminatory conduct.

Summary judgment motions brought with respect to MHRA claims are resolved with the use of the *McDonnell Douglas* three-part burden shifting standard. *Hubbard v. United Press Intern. Inc.*, 330 N.W.2d 428, 441 (Minn. 1983) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). Under this standard, Plaintiff bears the initial burden of establishing a prima facie case of discrimination or retaliation on each of the claims. *Id.* The burden of production then shifts to Defendant to articulate a legitimate non-discriminatory reason for any adverse employment action. *Id.* Finally, to avoid summary

judgment, Plaintiff must present specific evidence to raise a genuine issue of material fact as to the truth or falsity of the reason articulated by Defendant. *Id.*

Defendant asserted that Plaintiff's discrimination claims cannot survive a summary judgment motion because Plaintiff had not raised sufficient, specific evidence to raise a question of material fact in response to Defendant's legitimate, nondiscriminatory reasons for its actions. The reasons Defendant offered for its actions were essentially business reasons (it had hired two new physicians, its patient counts were a concern) and that it believed Plaintiff had falsified medical records from his psychiatrist.

However, issues of material fact do exist as to Plaintiff's discrimination claims under the MHRA. Plaintiff points to specific evidence which could lead a reasonable juror to believe that it was not, in fact, business reasons that led Defendant to take adverse action against Plaintiff. Specifically, Plaintiff points to affidavits of Defendant's administration and staff that indicate that there was no analysis of patient volumes, that several of the physicians believed the hospital was busier than ever, and that Defendant had recruited new physicians, increased salaries and expanded its infrastructure during the relevant time period. Plaintiff also points to evidence that Dr. Elftman, Dr. Richardson, Mr. Dubois and Dr. Hackett all reported that he was okay to return to work before Defendant made the decision to remove him from work upon his return from a family vacation to Florida. Lastly, in rebuttal to Defendant's assertion that it terminated Plaintiff's employment because Plaintiff falsified medical records, Plaintiff points to evidence that Defendant did not conduct a thorough investigation as to the falsity of the documents before terminating Plaintiff and to evidence that Dr. Richardson put Defendant on notice that there may have been a miscommunication between Plaintiff and Dr. Richardson's secretary regarding the documents in question. Accordingly, there are several factual disputes which make summary judgment inappropriate for this issue.

RCP