

May 29, 2015

Via Email Donald.w.stephens@nccourts.org
and Via First Class Mail

The Honorable Donald W. Stephens
Senior Resident Superior Court Judge
Wake County Superior Court
P.O. Box 351
Raleigh, NC 27602-0351

Re: *County of Yadkin v. CAH Acquisition Company 10 LLC,*
Wake County File No. 15 CVS 6896

Dear Judge Stephens:

This firm and I represent the Defendant in the referenced matter. Your Honor set down for hearing Plaintiff's Motion for Preliminary Injunction for June 1, 2015, at 10 a.m., in Courtroom 10C.


Defendant has filed today a Notice of Removal of this action to the United States District Court for the Eastern District of North Carolina. A copy of that Notice is enclosed, together with a copy of the Notice of the federal court filing we are submitting to the Clerk of Superior Court for Wake County.

Please let me know if I may answer any questions.

The Honorable Donald W. Stephens
Senior Resident Superior Court Judge
May 29, 2015
Page 2

With kind regards, I am

Very truly yours,


J. Alexander S. Barrett

JASB/bab

Enclosures

c: Marcus C. Hewitt, Esq. (w/enc., via email marc.hewitt@smithmoorelaw.com)
Elizabeth Sims Hedrick, Esq. (w/enc., via email elizabeth.hedrick@smithmoorelaw.com)
Robert L. Wilson, Jr., Esq. (w/enc., via email bob.wilson@smithmoorelaw.com)
Ms. Kellie Myers, Wake County Trial Court Administrator
(w/enc., via email kellie.z.myers@nccourts.org)

NORTH CAROLINA

WAKE COUNTY

COUNTY OF YADKIN,

Plaintiff,

v.

CAH ACQUISITION COMPANY 10
LLC,

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 6896

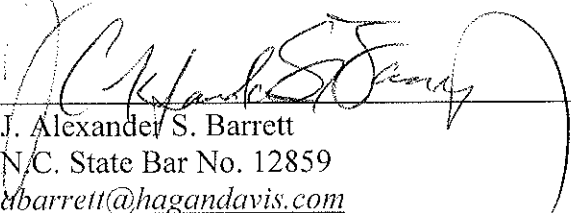
**NOTICE OF FILING
NOTICE OF REMOVAL**

To: Ms. Jennifer Knox
Wake County Clerk of Superior Court
316 Fayetteville Street Mall
P.O. Box 351
Raleigh, NC 27602-0351

PLEASE TAKE NOTICE that on the 29th day of May, 2015, Defendant CAH Acquisition Company 10 LLC, a Delaware Limited Liability Company, filed a Notice of Removal of the captioned action to the United States District Court for the Eastern District of North Carolina (Raleigh Division). A copy of the Notice of Removal is attached as Exhibit A.

In accordance with 28 U.S.C. § 1446(d), this Notice, together with the Notice of Removal filed in the United States District Court for the Eastern District of North Carolina, has effected a removal of this case from the Superior Court of Wake County, North Carolina, to the United States District Court for the Eastern District of North Carolina. This Court “shall proceed no further unless and until the case is remanded.” 28 U.S.C. § 1446(d).

This 29th day of May, 2015.


J. Alexander S. Barrett
N.C. State Bar No. 12859
jbarrett@hagandavis.com
Attorney for Defendant

OF COUNSEL:

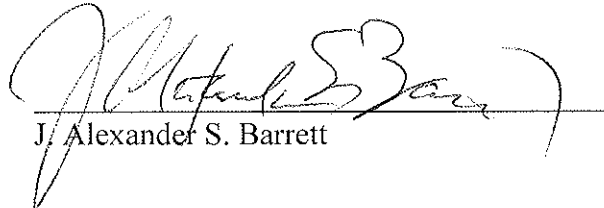
HAGAN DAVIS MANGUM BARRETT
& LANGLEY, PLLC
300 N. Greene Street, Suite 200
Greensboro, NC 27401
Telephone: (336) 232-0650
Facsimile: (336) 232-0651

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF FILING NOTICE OF REMOVAL** was duly served upon counsel for Plaintiff by depositing a copy of same in the United States Mail, postage prepaid, addressed to the following:

Marcus C. Hewitt, Esq.
N.C. Bar No. 23170
Marc.hewitt@smithmoorelaw.com
Elizabeth Sims Hedrick, Esq.
N.C. Bar No. 38513
Elizabeth.hedrick@smithmoorelaw.com
Smith Moore Leatherwood LLP
P.O. Box 27525
Raleigh, NC 27611

This the 29th day of May, 2015.


J. Alexander S. Barrett

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
Civil Action No.: 5:15-cv-229

COUNTY OF YADKIN,)	
)	
Plaintiff,)	
)	
v.)	
)	NOTICE OF REMOVAL
CAH ACQUISITION COMPANY 10)	
LLC,)	
)	
Defendant.)	

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant CAH Acquisition Company 10 LLC (“Defendant”) removes the action entitled *County of Yadkin v. CAH Acquisition Company 10 LLC*, No. 15 CVS 6896, from The General Court of Justice Superior Court Division, Wake County, North Carolina, to the United States District Court for the Eastern District of North Carolina at Raleigh. The removal of this action is based on the following:

1. On May 22, 2015, Plaintiff County of Yadkin (“Plaintiff”) filed an Application and Order Extending Time to File Complaint, which sets out the purpose of the action as being for breach of contract, temporary and permanent injunctive relief, and damages, including monetary loss. The Plaintiff’s Complaint must be filed on or before June 11, 2015. The time within which Defendant is required by North Carolina law to answer or otherwise plead has not yet expired.

2. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders that have been filed in the General Court of Justice Superior Court Division for Wake County, North Carolina, as of May 29, 2015 are attached as **Exhibit B**.

3. Venue is proper as this suit may be removed to this Court because any civil action for which a district court has original jurisdiction may be removed by the defendant to the district court for the district and division embracing the place where such action is pending. 28 U.S.C. § 1441(a).

4. Because this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, as will be discussed more fully below, and Defendant has satisfied the procedural requirements for removal pursuant to 28 U.S.C. §§ 1441 and 1446, this case is properly removed to this Court.

DIVERSITY JURISDICTION

5. This Court has original jurisdiction over this matter as “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.” 28 U.S.C. § 1332(a)(1).

6. Plaintiff is a county and political subdivision of the State of North Carolina. For the purposes of diversity, a county is a citizen of the state in which it is located and therefore, plaintiff is a citizen of North Carolina. (Application and Order Extending Time to File Complaint).

7. Defendant is a Delaware Limited Liability Company. The sole member of the Defendant LLC is HMC/CAH Consolidated, Inc., which is a Delaware corporation. See Affidavit of Trent Skaggs, attached hereto and made a part hereof as **Exhibit A**.

8. Because Plaintiff is a citizen of North Carolina and Defendant is a citizen of Delaware, there is complete diversity between Plaintiff and Defendant.

9. Where, as here, “federal jurisdiction is not plain from the face of a plaintiff’s complaint,” courts examine “pleadings, affidavits, or other matters in the record,” including the removal petition. *Hoffman v. Vulcan Materials Co.*, 19 F. Supp. 2d 475, 479 (M.D.N.C. 1998) (determining jurisdiction on record instead of face of complaint because plaintiff sought damages “in excess of \$30,000”). *Dash v. FirstPlus Home Loan Owner Trust 1996-2*, 248 F. Supp. 2d 489, 499 (M.D.N.C. 2003) (relying in part on defendant’s removal petition because amount sought was unclear and denying motion to remand).

10. Although Plaintiff’s Application and Order Extending Time to File Complaint fails to set forth an amount of monetary damages, it does request the injunctive relief of ordering the Defendant to keep the hospital open up to and including July 31, 2015.

11. In determining the amount in controversy, the court is to consider the value of the injunctive relief, including the injunction’s worth to the Plaintiff or the cost to the Defendant, whichever is greater. *JTH Tax v. Frashier*, 624 F.3d 635, 639 (4th Cir. 2010).

12. Although Defendant is limited in its ability to determine the injunction's worth to the Plaintiff, the cost of the injunction to the Defendant is in excess of \$75,000, exclusive of interests and costs.

13. Plaintiff's demand in its Application and Order Extending Time to File Complaint and its Motion for Temporary Restraining Order and Preliminary Injunction is that the Defendant be required to keep the hospital open and operational up through and including July 31, 2015.

14. For the month of May 2015 alone, Defendant lost approximately \$55,000 operating the hospital. *See* Affidavit of Trent Skaggs, attached hereto and made a part hereof as **Exhibit A**. Defendant anticipates that if it is forced to operate the hospital over the next two months, it will incur losses in excess of \$300,000 because it will have to pay a premium to doctors, nurses and other staff members to return to staff the hospital for only sixty days and it will likely earn less revenue because patients will likely decide to be treated at hospitals or clinics that are not subject to the uncertainty that faces Yadkin Valley Community Hospital. *See* **Exhibit A**.

15. Thus, the court has original jurisdiction over this matter because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and it is a matter between citizens of different states.

PROCEDURAL REQUIREMENTS

16. In compliance with 28 U.S.C. § 1446(a), a copy of the Notice of Filing Notice of Removal will be filed contemporaneously with the General Court of Justice Superior Court Division, and is attached as **Exhibit C**.

17. In compliance with 28 U.S.C. § 1446(d), Defendant has served Plaintiff with written notice of the removal of this action.

This 29th day of May, 2015.

/s/ J. Alexander S. Barrett

J. Alexander S. Barrett

N.C. State Bar No. 12859

abarrett@hagandavis.com

Attorney for Defendant

OF COUNSEL:

HAGAN DAVIS MANGUM BARRETT
& LANGLEY, PLLC

300 N. Greene Street, Suite 200

Greensboro, NC 27401

Telephone: (336) 232-0650

Facsimile: (336) 232-0651

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF REMOVAL** was duly served upon counsel for Plaintiff by depositing a copy of same in the United States Mail, postage prepaid, addressed to the following and using the CM/ECF system which will send notification of such filing to:

Marcus C. Hewitt, Esq.
N.C. Bar No. 23170
Marc.hewitt@smithmoorelaw.com
Elizabeth Sims Hedrick, Esq.
N.C. Bar No. 38513
Elizabeth.hedrick@smithmoorelaw.com
Smith Moore Leatherwood LLP
P.O. Box 27525
Raleigh, NC 27611

This the 29th day of May, 2015.

/s/ J. Alexander S. Barrett
J. Alexander S. Barrett

COUNTY OF YADKIN,)
)
Plaintiff,)
)
v.)
)
CAH ACQUISITION COMPANY 10)
LLC,)
)
Defendant.)

5. If it is required that Yadkin Hospital be operational through the end of July 2015, it will need to hire doctors, nurses, technicians and other staff members for a sixty day period.

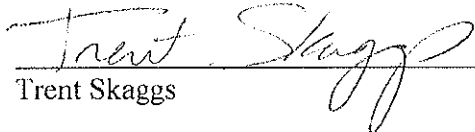
6. Because of the short period to retain the personnel (approximately sixty days) I anticipate that Yadkin Hospital will have to pay at least a 30% premium over and above prior personnel costs in order to hire the necessary staff.

7. After Yadkin Hospital issued its WARN notice in March 2015, patient visits to the hospital decreased significantly.

8. If Yadkin Hospital is operational for the months of June and July 2015, we anticipate the patient visits would decline even further because of the limited duration of the hospital's operations. The decrease in patient visits will result in an even greater decrease in revenue.

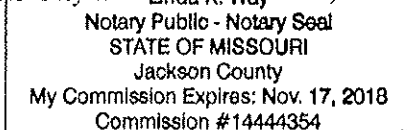
9. The combination of higher costs (including staff costs) and lower revenues will result in losses that exceed \$300,000.

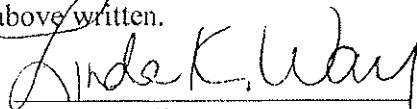
I declare under penalty of perjury that the foregoing is true and correct.


Trent Skaggs

On this 29th day of May, 2015, before me personally appeared Trent Skaggs, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.




Notary Public

My Commission Expires:

11-17-2018

STATE OF NORTH CAROLINA		File No. _____
YADKIN County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division
Name And Address Of Plaintiff 1 COUNTY OF YADKIN		GENERAL CIVIL ACTION COVER SHEET <input checked="" type="checkbox"/> INITIAL FILING <input type="checkbox"/> SUBSEQUENT FILING
Name And Address Of Plaintiff 2		Rule 5(b), General Rules of Practice For Superior and District Courts Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address) Marcus C. Hewitt P.O. Box 27525 Raleigh, NC 27611
VERSUS		Telephone No. 919-755-8700 Cellular Telephone No. NC Attorney Bar No. 23170 Attorney E-Mail Address marc.hewitt@smithmooreclaw.com
Name Of Defendant 1 CAH ACQUISITION COMPANY 10 LLC		<input checked="" type="checkbox"/> Initial Appearance in Case <input type="checkbox"/> Change of Address
Summons Submitted <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Name Of Firm Smith Moore Leatherwood LLP FAX No. 919-755-8800
Name Of Defendant 2		Counsel for <input checked="" type="checkbox"/> All Plaintiffs <input type="checkbox"/> All Defendants <input type="checkbox"/> Only (list party(ies) represented)
Summons Submitted <input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Amount in controversy does not exceed \$15,000 <input type="checkbox"/> Stipulate to arbitration
<input checked="" type="checkbox"/> Jury Demanded in Pleading <input type="checkbox"/> Complex Litigation		
TYPE OF PLEADING		
(check all that apply) <input type="checkbox"/> Amend (AMND) <input type="checkbox"/> Amended Answer/Reply (AMND-Response) <input type="checkbox"/> Amended Complaint (AMND) <input type="checkbox"/> Assess Costs (COST) <input type="checkbox"/> Answer/Reply (ANSW-Response) (see Note) <input type="checkbox"/> Change Venue (CHVN) <input type="checkbox"/> Complaint (COMP) <input type="checkbox"/> Confession Of Judgment (CNJF) <input type="checkbox"/> Consent Order (CONS) <input type="checkbox"/> Consolidate (CNLS) <input type="checkbox"/> Contempt (CNTP) <input type="checkbox"/> Continue (CNTN) <input type="checkbox"/> Compel (CMPL) <input type="checkbox"/> Counterclaim (CYCL) Assess Court Costs <input type="checkbox"/> Crossclaim (list on back) (CRSS) Assess Court Costs <input type="checkbox"/> Dismiss (DISM) Assess Court Costs <input type="checkbox"/> Exempt/Waive Mediation (EXMD) <input type="checkbox"/> Extend Statute Of Limitations, Rule 9 (ESOL) <input checked="" type="checkbox"/> Extend Time For Complaint (EXCO) <input type="checkbox"/> Failure To Join Necessary Party (FJNP)	(check all that apply) <input type="checkbox"/> Failure To State A Claim (FASC) <input type="checkbox"/> Implementation Of Wage Withholding In Non-IV-D Cases (OTHR) <input type="checkbox"/> Improper Venue/Division (IMVN) <input type="checkbox"/> Including Attorney's Fees (ATTY) <input type="checkbox"/> Intervene (INTR) <input type="checkbox"/> Interplead (OTHR) <input type="checkbox"/> Lack Of Jurisdiction (Person) (LJPN) <input type="checkbox"/> Lack Of Jurisdiction (Subject Matter) (LJSM) <input type="checkbox"/> Modification Of Child Support In IV-D Actions (MSUP) <input type="checkbox"/> Notice Of Dismissal With Or Without Prejudice (VOLD) <input type="checkbox"/> Petition To Sue As Indigent (OTHR) <input type="checkbox"/> Rule 12 Motion In Lieu Of Answer (MDLA) <input type="checkbox"/> Sanctions (SANC) <input type="checkbox"/> Set Aside (OTHR) <input type="checkbox"/> Show Cause (SHOW) <input type="checkbox"/> Transfer (TRFR) <input type="checkbox"/> Third Party Complaint (list Third Party Defendants on back) (TPCL) <input type="checkbox"/> Vacate/Modify Judgment (VCMO) <input type="checkbox"/> Withdraw As Counsel (WDCN) <input type="checkbox"/> Other (specify and list each separately)	
NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.		
AOC-CV-751, Rev. 1/14 (Over) © 2014 Administrative Office of the Courts		

STATE OF NORTH CAROLINA

File No. 15CV006896

YADKIN County

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff

COUNTY OF YADKIN

Address

City, State, Zip

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3, 4

VERSUS

Name Of Defendant(s)

CAH ACQUISITION COMPANY 10 LLC

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

CAH Acquisition Company 10 LLC

c/o Registered Agent: Corporation Service Company

327 Hillsborough Street

Raleigh, NC 27603

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

Marcus C. Hewitt

Smith Moore Leatherwood LLP

P.O. Box 27525

Raleigh, NC 27611

Date Issued

Time

☐ AM☒ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

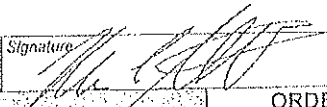
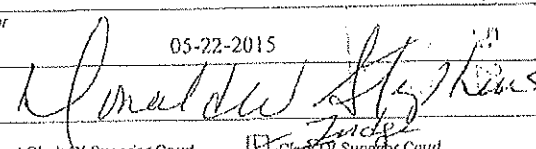
- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason.

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (Type Or Print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA		FILED	File No.
Wake	County	2015 MAY 22 PM 1:37	In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division
Name Of Plaintiff Yadkin County, North Carolina		APPLICATION AND ORDER EXTENDING TIME TO FILE COMPLAINT G.S. 1A-1, Rule 3	
VERSUS			
Name Of Defendant CAH Acquisition Company 10, LLC			
APPLICATION			
The undersigned requests permission to file a complaint in this action within twenty (20) days of any order granting this Application, as provided in Rule 3 of the Rules of Civil Procedure. The nature and purpose of the action are:			
Name And Purpose Of The Action Plaintiff is a county and a political subdivision of the State of North Carolina, which owns the real property constituting Yadkin Valley Community Hospital (the "Hospital"). Defendant is a Delaware LLC, which leases the Hospital premises from Plaintiff and operates the Hospital, which is the only licensed acute care hospital in Yadkin County. The agreement between the parties obligates Defendant to lease and operate the Hospital until July 31, 2015. However, Defendant has materially breached the agreement between the parties in multiple ways, and it has come to Plaintiff's attention that Defendant intends to cease operations and close the hospital prior to that date, leaving Yadkin County without a hospital. Plaintiff will allege claims for breach of contract, and for temporary and permanent injunctive relief to compel Defendant to honor its obligations to operate the hospital as agreed. Plaintiff also seeks damages flowing from Defendant's breach of the agreement, including monetary loss, and all other damages allowed by law and by the parties agreements.			
Date 05-22-2015	Signature 		<input type="checkbox"/> Applicant <input checked="" type="checkbox"/> Attorney For Applicant
ORDER			
The Court states that the nature and purpose of this action are as set forth above. Therefore, it is ORDERED that permission is granted to the applicant to file a complaint in this action up to and including the date shown below.			
File Complaint On Or Before 06-11-2015 <small>(Date must be within 20 days of date of Order.)</small>	Date Of Order 05-22-2015 Signature  <input type="checkbox"/> Assistant Clerk Of Superior Court <input checked="" type="checkbox"/> Clerk Of Superior Court		
NOTE: Under Rule 3 of the Rules of Civil Procedure, upon entry of this Order, a summons shall be issued and the summons and a copy of this Order must be served in accordance with the provisions of Rule 4. A complaint must be filed in this action within the period provided above and that complaint must be served in accordance with the provisions of Rule 4 or by registered mail if the plaintiff so elects. If a complaint is not filed within the above period, the action shall abate.			

STATE OF NORTH CAROLINA

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2015 MAY 22 P 4:58VS _____

COUNTY OF YADKIN,

) DEPT. OF HEALTH & HUMAN SERVICES

Plaintiff,

) BY _____

v.

AFFIDAVIT

CAH ACQUISITION COMPANY 10
LLC,)
)
)
)
)
)

Defendant.

I, Marcus C. Hewitt, being first duly sworn, state as follows:

1. I am over the age of eighteen (18) years and am a resident of North Carolina. My law firm represents Yadkin County, North Carolina.

2. Bob Wilson of my law firm and Lisa Hughes, County Manager for Yadkin County, learned in a telephone call this morning, May 22, 2015, with representatives of the State of North Carolina Department of Health and Human Services, Division of Health Service Regulation, that CAH Acquisition Company 10, LLC and/or its parent company HMC/CAH Consolidated, Inc. intends to close Yadkin Valley Community Hospital (the Hospital) in Yadkin County, which is under lease from Yadkin County. The County has been unsuccessful in efforts to prevent this action.

3. According to the NC DHHS representatives, they learned from hospital employees including but not limited to the current CEO, Shawn Bright, that the hospital would terminate all its employees and close tomorrow morning May 23rd, at approximately 7am.

4. The Hospital is the only hospital in Yadkin County and offers essential services to local residents, including provision of emergency medical treatment for patients with urgent

medical needs such as motor vehicle accidents, heart attacks, strokes, and traumatic injuries. Additionally, the hospital is the location for most women to deliver infants in Yadkin County.

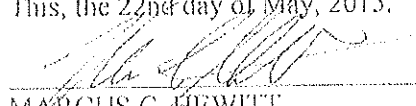
5. Closure of the Hospital will be a disaster for Yadkin County. Current patients would have no local options within Yadkin County and would need to be transferred elsewhere, literally overnight, which could have serious deleterious effects on their health. It is unclear whether reasonable accommodations could be made for the transfer of all patients currently receiving treatment in the Hospital.

6. Losing the local Hospital will result in the need to transfer patients with urgent and emergent medical needs and delay life-saving medical care. Such delay would have a negative effect on a variety of patients.

7. The above constitutes irreparable harm that will befall local residents and the County if this hospital is shut down by the current lessee.

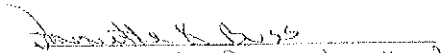
Further, the affiant sayeth not.

This, the 22nd day of May, 2015.



MARCUS C. HEWITT

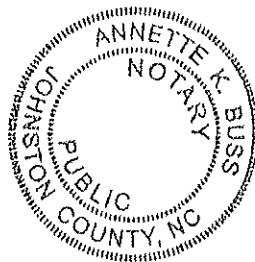
Sworn to and subscribed before me by Marcus C. Hewitt this the 22nd day of May, 2015.



Notary Public

My Commission expires:

7-26-2015
(Notarial stamp or seal)



CERTIFICATE OF SERVICE

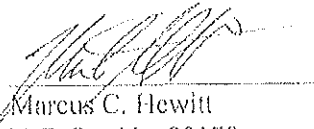
The undersigned does hereby certify that a copy of the foregoing Affidavit was served by hand delivery and Federal Express upon the following parties:

CAH Acquisition Company 10 LLC
c/o Registered Agent Corporation Service Company
327 Hillsborough Street
Raleigh, NC 27603

This, the 22nd day of May, 2015.

SMITH MOORE LEATHERWOOD LLP

By:



Marcus C. Hewitt
N.C. Bar No. 23170
434 Fayetteville Street, Suite 2800 (27601)
P.O. Box 27525
Raleigh, NC 27611
Email: marc.hewitt@smithmoorelaw.com
Tel: (919) 755-8700
Fax: (919) 755-8800
Attorneys for Plaintiff

STATE OF NORTH CAROLINA

15CV006896
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

15 CVS _____

COUNTY OF YADKIN,

Plaintiff,

v.

CAH ACQUISITION COMPANY 10
LLC,

Defendant.

MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

Pursuant to North Carolina Rule of Civil Procedure 65(b) and N.C. Gen. Stat. § 1-485, Plaintiff the County of Yadkin (the "County") respectfully requests that this Court enter a temporary restraining order and preliminary injunction against Defendant CAH Acquisition Company 10 LLC ("Defendant"). In support of its motion, the County states the following:

1. The County has obtained the issuance of a summons to Defendant by making application to the court requesting permission to file a complaint within 20 days pursuant to Rule 3 of the North Carolina Rules of Civil Procedure.

2. This action involves a breach of contract and lease agreement by Defendant to lease from the County and operate the Yadkin Valley Community Hospital (the "Hospital").

3. The County has been informed this afternoon by multiple sources, including the Director of the Division of Health Service Regulation of the Department of Health and Human Services that Defendant intends to close the Hospital tomorrow, Saturday, May 23, 2015, in breach of its agreements with the County which require Defendant to continue operations until July 31, 2015.

4. The County seeks a temporary restraining order requiring Defendant to continue operations of the Hospital until arrangements can be made for an orderly transition.

5. If the temporary restraining order is not granted, the County will suffer immediate and irreparable injury. The Hospital is the only hospital in Yadkin County, and provides a full range of services, including emergency services, to the residents of the County. Closure of the Hospital will result in delayed treatment for patients with urgent and emergent medical needs, including but not limited to patients suffering heart attacks and in labor.

6. In addition, closure of the Hospital could potentially result in the loss of continued licensure and regulatory rights to operate a hospital in Yadkin County.

7. Counsel for the undersigned learned of the grounds for this motion at 3:00 pm this afternoon, May 23, 2015, and therefore has not yet attempted to give notice to Defendant. Because this is the Friday before a holiday weekend, the County respectfully requests that notice not be required before the Court hears this motion.

WHEREFORE, Plaintiff County of Yadkin respectfully requests that the Court issue an order enjoining Defendant from ceasing operations at the Yadkin Valley Community Hospital until a hearing on Plaintiff's Motion for Preliminary Injunction.

This the 22nd day of May, 2015.

SMITH MOORE LEATHERWOOD LLP

By: 

Marcus C. Hewitt
N.C. State Bar No. 23170
Marc.Hewitt@smithmoorelaw.com
Smith Moore Leatherwood
P.O. Box 27525
Raleigh, NC 27611
Telephone: 919.755.8776
Facsimile: 919.280.9369
Counsel for County of Yadkin

CERTIFICATE OF SERVICE

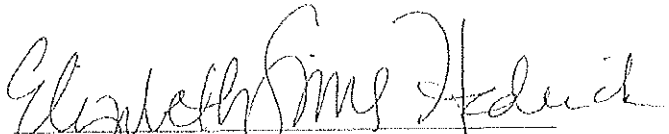
The undersigned does hereby certify that a copy of the foregoing Motion for Temporary Restraining Order and Preliminary Injunction was served by hand delivery and Federal Express upon the following parties:

CAH Acquisition Company 10 LLC
c/o Registered Agent Corporation Service Company
327 Hillsborough Street
Raleigh, NC 27603

This, the 22nd day of May, 2015.

SMITH MOORE LEATHERWOOD LLP

By:



Elizabeth Sims Hedrick

N.C. Bar No. 38513

434 Fayetteville Street, Suite 2800 (27601)

P.O. Box 27525

Raleigh, NC 27611

Email: elizabeth.hedrick@smithmoorelaw.com

Tel: (919) 755-8778

Fax: (919) 838-3110

Attorneys for Plaintiff

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

15 CVS

COUNTY OF YADKIN,

2015 4/7 22 10 5 22

Plaintiff,

Y.

ORDER GRANTING
TEMPORARY RESTRAINING ORDER

CAH ACQUISITION COMPANY 10
LLC,

Defendant.

NOW COMES the Undersigned, having heard the Motion of Plaintiff County of Yadkin and hereby enters an Order enjoining Defendant CAH Acquisition Company 10 LLC from ceasing operations at Yadkin Valley Community Hospital (the "Hospital"). Based on the Affidavit presented and the arguments of Counsel, it appears to this Court that entry of this Order without notice to Defendant was required because there was insufficient time to notify Defendant and failure to enter this Order would result in immediate and irreparable injury because: the Hospital is the only hospital in Yadkin County, and provides a full range of services, including emergency services, to the residents of the County; closure of the Hospital will result in delayed treatment for patients with urgent and emergent medical needs, including but not limited to patients suffering heart attacks and in labor; and closure of the Hospital could potentially result in the loss of continued licensure and regulatory rights to operate a hospital in Yadkin County. This Order is entered May 22, 2015 at 5:15 pm and shall expire at 5:15 pm on June 1, 2015 unless otherwise extended by Order of this Court.

This the 22nd day of May, 2015.

Donald W. Stephens
Judge Presiding

Judge Presiding

All parties to appear before the Court
Monday June 1, 2015 at 10:00 AM in Courtroom
10C Wake County Courthouse for hearing on Plaintiff's
Motion for Preliminary Injunction

Case 5:15-cv-00229-BO Document 1-2 Filed 05/29/15 Page 11 of 12

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing ORDER was served on the following parties:

By hand delivery on:

CAH Acquisition Company 10 LLC
Attention: Managing Agent
624 West Main Street
Yadkinville, NC 27055

-and-

CAH Acquisition Company 10 LLC
c/o Registered Agent: Corporate Service Company
327 Hillsborough Street
Raleigh, NC 27603

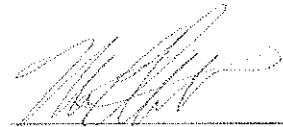
By Email on:

Dennis Davis
ddavis@ruralcommunityhospitals.com

This, the 22nd day of May, 2015.

SMITH MOORE LEATHERWOOD LLP

By:



Marcus C. Hewitt
N.C. Bar No. 23170
434 Fayetteville Street, Suite 2800 (27601)
P.O. Box 27525
Raleigh, NC 27611
Email: marc.hewitt@smithmoorelaw.com
Tel: (919) 755-8700
Fax: (919) 755-8800
Attorneys for Plaintiff

NORTH CAROLINA

WAKE COUNTY

COUNTY OF YADKIN,

Plaintiff,

v.

CAH ACQUISITION COMPANY 10
LLC,

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 6896

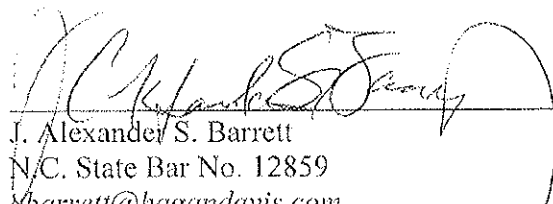
**NOTICE OF FILING
NOTICE OF REMOVAL**

To: Ms. Jennifer Knox
Wake County Clerk of Superior Court
316 Fayetteville Street Mall
P.O. Box 351
Raleigh, NC 27602-0351

PLEASE TAKE NOTICE that on the 29th day of May, 2015, Defendant CAH Acquisition Company 10 LLC, a Delaware Limited Liability Company, filed a Notice of Removal of the captioned action to the United States District Court for the Eastern District of North Carolina (Raleigh Division). A copy of the Notice of Removal is attached as Exhibit A.

In accordance with 28 U.S.C. § 1446(d), this Notice, together with the Notice of Removal filed in the United States District Court for the Eastern District of North Carolina, has effected a removal of this case from the Superior Court of Wake County, North Carolina, to the United States District Court for the Eastern District of North Carolina. This Court “shall proceed no further unless and until the case is remanded.” 28 U.S.C. § 1446(d).

This 29th day of May, 2015.


J. Alexander S. Barrett
N.C. State Bar No. 12859
jbarrett@hagandavis.com
Attorney for Defendant

OF COUNSEL:

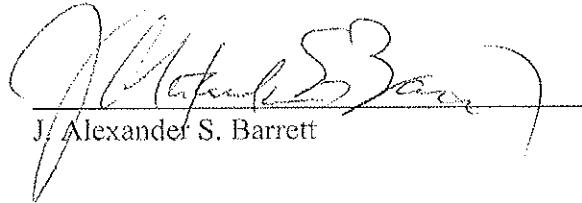
HAGAN DAVIS MANGUM BARRETT
& LANGLEY, PLLC
300 N. Greene Street, Suite 200
Greensboro, NC 27401
Telephone: (336) 232-0650
Facsimile: (336) 232-0651

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF FILING NOTICE OF REMOVAL** was duly served upon counsel for Plaintiff by depositing a copy of same in the United States Mail, postage prepaid, addressed to the following:

Marcus C. Hewitt, Esq.
N.C. Bar No. 23170
Marc.hewitt@smithmoorelaw.com
Elizabeth Sims Hedrick, Esq.
N.C. Bar No. 38513
Elizabeth.hedrick@smithmoorelaw.com
Smith Moore Leatherwood LLP
P.O. Box 27525
Raleigh, NC 27611

This the 29th day of May, 2015.


J. Alexander S. Barrett