

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

COUNTY OF YADKIN,

Plaintiff,

v.

CAH ACQUISITION COMPANY 10
LLC; HMC/CAH CONSOLIDATED,
INC.; and RURAL COMMUNITY
HOSPITALS OF AMERICA LLC,

Defendants.

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO APPEAR
AND SHOW CAUSE**

Pursuant to LR 7.2, Defendants respectfully submit this Memorandum in
Opposition to Plaintiff's Motion to Appear and Show Cause.

PROCEDURAL HISTORY

This action was commenced in the Superior Court for Wake County, North Carolina, on Friday, May 22, 2015, just before 5:00 p.m. with the Plaintiff's filing of an Application and Order Extending Time to File Complaint. Plaintiff filed an Amended Application and Order Extending Time to File Complaint on May 26, 2015, which filing added HMC/CAH Consolidated, Inc. and Rural Community Hospitals of America LLC, as parties to this action. With the original Application and Order, Plaintiff filed a Motion for Temporary Restraining Order and Preliminary Injunction and, *ex parte*, presented their Motion for Temporary Restraining Order to the Honorable Donald W. Stephens who entered a Temporary Restraining Order at 5:15 p.m. on May 22, 2015. Plaintiff made no effort to contact Defendant CAH10 or its counsel, notwithstanding the fact that

counsel for Defendants was known to Plaintiff at the time they filed the Application and Order and sought and obtained the Temporary Restraining Order.

On Friday, May 29, 2015, Defendant CAH10 removed this case from Wake County Superior Court to the United States District Court for the Eastern District of North Carolina.

On June 1, 2015, Plaintiff filed its Motion to Appear and Show Cause and Other Appropriate Relief (“Motion to Show Cause”) in which the Plaintiff seeks an award of civil contempt and to have this Court institute criminal contempt proceedings. Pursuant to Local Civil Rule 7.1(e)(1), Defendants’ response to Plaintiff’s Motion is due on June 22, 2015.

On June 3, 2015, Plaintiff filed its Complaint which purports to include claims for breach of contract, unfair trade and tortious interference with contract. The time within which Defendants may answer or otherwise plead has not expired.

On June 5, 2015, this Court scheduled for hearing Plaintiff’s Motion to Show Cause on June 16, 2015 at 10:30 a.m. in Edenton, North Carolina, prior to the due date of June 22, 2015 for Defendants’ response to the Motion to Show Cause. On June 10, 2015, Defendants filed their Motion for Status Conference and to Continue Hearing¹ which was denied on June 15, 2015.

¹ Defendants’ Motion referenced a conflict between the scheduled hearing of Plaintiff’s Motion to Show Cause and a matter in Guilford County Superior Court. The presiding Judge in the State Superior Court case has taken that matter off the calendar, having recused himself from the hearing.

STATEMENT OF FACTS

In September or 2014, CAH10 met with the County regarding the status of its lease of the Hospital premises. After the meeting, the Yadkin County Commission began an effort to solicit a different hospital company to lease the county-owned hospital premises and to purchase the hospital business from CAH10. Over the next eight months, CAH10 tried many times to meet with the County to discuss how best to coordinate the termination of the lease between CAH10 and the County and the transfer of CAH10's business to a new entity. Despite CAH10's efforts, the County refused to meet with CAH10 to discuss these issues. (¶¶ 3, 4 Affidavit of Dennis Davis ("Davis Affidavit")) (copy attached as **Exhibit A** hereto).

In late December 2014, CAH10 was approached by representatives of Hugh Chatham Memorial Hospital (HCMH) to discuss its possible interest in the Hospital premises. The HCMH representatives stated that they had been asked by Commissioner Austin (a member of the HCMH Board of Directors), to negotiate the purchase of the hospital business from CAH10. (Id. at ¶ 6).

On January 2, 2015, the parties (CAH10, HCMH and the County) signed a confidentiality agreement. Although the negotiations commenced thereafter, the County continued its position to refuse to meet with CAH10 and HCMH for the purpose of coordinating the County's lease of hospital facility to HCMH and HCMH's purchase of the hospital business from CAH10. (Id. at ¶ 6).

On February 16, 2015, the County, (without any notice to CAH10) by resolution, initiated a request for proposal (RFP) for the purpose of soliciting bids or proposals from

other third parties for lease of the hospital facility. CAH10 was concerned with the County's decision to initiate an RFP after it had been dealing with HCMH for six weeks because an RFP at this stage would necessarily complicate and prolong the process and, therefore, make it very difficult to finalize and close the sale of the hospital business before CAH10's lease expired on April 30, 2015. (Id. at ¶ 7).

More specifically, the County's decision to re-start the negotiation process created significant problems for CAH10 under the Worker Adjustment and Retraining Notification Act (WARN). CAH10 is subject to the Provisions of the WARN. The WARN provides protection to employees, their families and communities, by requiring an employer (e.g. CAH10) to provide notice 60 days in advance of the shutdown of its business. The WARN notice must be given to the affected employees and to the appropriate unit of local government (e.g. Yadkin County). The employees at the Yadkin Valley Community Hospital entitled to the WARN notice included all hourly and salaried workers, as well as managerial and supervisory employees. (Id. at ¶¶ 8, 9).

Despite the County's ongoing negotiations with HCMH, the County continued in its refusal to negotiate, or even discuss, an extension of the hospital lease with CAH10 to accommodate the County's negotiations with HCMH. Because the term of the hospital lease was due to expire on April 30, 2015, CAH10 was obligated to give the WARN notice no later than February 27, 2015. Throughout this process, CAH10 repeatedly warned the County that the giving of the WARN notice would, in all likelihood, have a material adverse effect on the hospital's clinical operations and financial viability. Nonetheless, the County persisted in its decision not to negotiate with CAH10.

Consequently, on February 27th, CAH10 delivered the WARN notice to the County and all hospital employees. (Id. at ¶¶ 10-13).

As a result of the February 16, 2015, RFP, three entities responded to the County's inquiry: HCMH (again); Wake Forest Baptist Medical Center; and Community Hospital Corporation. At the County's request, CAH10 expanded its negotiations so as to include all three entities. CAH10 first contacted Wake Forest Baptist Medical Center but it never received a response from it. Thereafter, CAH10 contacted Community Hospital Corporation ("CHC"). Although CHC provided CAH10 with an initial response and due diligence information, it (CHC) provided nothing else to CAH10. County Manager Hughes shortly thereafter notified CAH10 that both Wake forest Baptist Medical Center and CHC had withdrawn their lease proposals. The County did, however, continue to negotiate with HCMH. (Id. at ¶¶ 14-15).

CAH10 continued its negotiations with HCMH. On March 26, 2015, the parties signed a non-binding term sheet. Pursuant to the term sheet, the closing of CAH10's sale of the hospital business to HCMH was to occur no later than August 1, 2015. Among other terms and conditions, the term sheet was made expressly contingent upon HCMH entering into a hospital facility lease with the County prior to its signing of an asset purchase agreement with CAH10. (Id. at ¶ 16).

After the County and HCMH signed the March 26th term sheet, the County finally agreed to negotiate a Third Lease Amendment with CAH10. On April 2, 2015, CAH10 and the County entered into a Third Amendment To Hospital Lease (the "Third Amendment"). Under the terms of the Third Amendment, the term of the lease was to

extend to July 31, 2015. Additionally, under the Third Amendment, CAH10 agreed to transfer the operating licenses and provider numbers to the County in the event the sale of the hospital business to HCMCM did not occur prior to July 31, 2015. (Id. at ¶ 17).

Shortly after the Third Amendment was signed, HCMH, without notice or explanation, stopped communicating with CAH10. After making numerous inquiries to HCMH, CAH10 was finally provided with a copy of an April 16th letter from Paul Hammes (CEO) to County Manager Hughes informing the County that the HCMH Board of Trustees had decided to withdraw from RFP process. The only reason given for the withdrawal was that the Trustees “have concerns with respect to our ability to fully meet the County’s expectations, both in the near and longer term, in operating the critical access hospital in Yadkinville.” (Id. at ¶ 18).

Thus, as of April 16, 2015, the County had no viable purchaser of the hospital operations and lessee of the hospital facility. Notwithstanding the County’s previous refusal to negotiate with CAH10, it (CAH10) decided to make one more effort to negotiate a new deal with the County. (Id. at ¶ 19).

On May 4, 2015, CAH10 wrote to the County stating its opinion that the manner in which the RFP process was handled was more and more destructive to the hospital. CAH10 reminded the County that the hospital had lost the services of key personnel, including its Physician Assistant (PA), its Certified Registered Nurse Practitioner (CRNP), its PFS Director, and one of its Clinic Managers. CAH10 also stated that one physician was looking for another practice situation and another had opened an additional practice location and would probably not remain at the hospital. CAH10 told the County

that the hospital had also lost the services of other essential ancillary staff and almost every remaining staff member is looking for other employment, and because of the uncertainty surrounding the hospital's future it was very difficult to recruit replacement staff. CAH10 put "the County on notice that if clinical and patient support operations deteriorate further, there is a reasonable likelihood that the hospital will not be able to remain open for business until July 31st." CAH10 concluded its email by suggesting that the County and CAH10 should attempt to negotiate a long-term lease of the hospital facility "coupled with the same package of economic incentives that the County was offering to Hugh Chatham." (Id. at ¶ 20).

In response to CAH10's May 4 email, the County tendered "a take-it-or-leave-it" already signed fourth lease amendment. Moreover, the County conditioned its offer on CAH10's immediate acceptance. (Id. at ¶ 21).

The following day, CAH10 sent its response to the County. CAH10's email outlined a logical basis to start lease negotiations with the County. CAH10 also told the County that if the lease negotiations were not successful, it would be willing to sell the hospital business to the County on the economic terms that were stated in the March 26th term sheet with HCMH. (Id. at ¶ 22).

The County rejected CAH10's offer to start negotiations out of hand. It was especially adamant in its rejection of CAH10's suggestion that rent be determined using mutually agreed appraisal process. CAH10 explained that the rationale for this "fair market value" approach to rent was based on the fact that as a Critical Access Hospital, the hospital can only receive reimbursement from Centers for Medicare and Medicaid

(CMS) for its “allowable costs” which must be determined based on the marketplace where it is located. (Id. at ¶ 23).

Following the County’s rejection of its offer to start negotiations, CAH10 was at a loss as to how to engage the County in negotiations. CAH10 did, however, inform the County that the hospital’s financial operations were continuing to deteriorate and because of the magnitude of the losses, it was becoming more and more likely that the hospital would not be able to remain open until July 31. The County did not respond to CAH10’s statements. (Id. at ¶ 24).

On May 14, 2015, CAH10, pursuant to section 3(e) of the Third Amendment, provided to County Manager Hughes all the documents required “to effectuate the transfer of all licenses and provider numbers” of the hospital to the County. Those documents included the so-called “CHOW” application applicable to the CMS provider number. CAH10 told the County that it would be best if the CHOW application was signed and ready to file with CMS no later than the close of business on Friday, May 22, 2015. To assist in the matter, CAH10 offered to make its representatives available to provide assistance to the County’s hospital consultant. (Id. at ¶ 25).

On May 21, 2015, the Yadkin County Attorney, Edward Powell, advised CAH10 that “[i]t is not Yadkin County’s intention to accept the existing provider agreement.” Thereafter, CAH10 proceeded forward with the closure of the hospital scheduled for the morning of May 23rd. On May 22, 2015 at about 5:00 p.m., the Hospital was surrounded by Yadkin County Sheriff’s officers. One informed Shawn Bright, the Regional Vice President of RCHA, that the Hospital staff was being evicted. Word of the eviction

spread through the staff of the Hospital who promptly gathered their personal belongings and left in compliance with the eviction order. Signs giving notice of the Hospital's closure were placed on the doors and the doors were locked. There were then two patients in the Emergency Department, who were cared for and discharged. (Id. at ¶¶ 26-28; ¶¶ 7-11 Shawn Bright Affidavit ("Bright Affidavit") (copy attached as **Exhibit B** hereto).

After the staff had dispersed, and at about 6 p.m., Dennis Davis, the Chief Legal Officer of RCHA (which is separate and distinct from CAH10, which controls and directs the operation of the Hospital) received an email from Marcus Hewitt, an attorney with the Smith Moore Leatherwood law firm. The email stated: "Attached are copies of a Temporary Restraining Order executed this afternoon by a Superior Court Judge enjoining CAH Acquisition Company 10 LLC from ceasing operations at Yadkin Valley Community Hospital and related filings." Mr. Davis was travelling at the time an unable to open the attached order and related filings, but Mr. Davis did respond to Mr. Hewitt and informed him that the hospital had already been closed. (Davis Affidavit at ¶ 29).

On the following day, May 23rd, the chief of the Hospital's medical staff was at the Hospital, first to dictate patient progress notes and later to attempt to leave a message on the answering machine regarding the closure so patients would be informed. A Sheriff's officer told the doctor that he was to leave immediately and if he was "caught" there again, "there are going to be problems." (¶ 6 Dr. James McGrath Affidavit ("McGrath Affidavit") (copy attached as **Exhibit C** hereto).

ARGUMENT

This Court Should Not Entertain Contempt Proceedings Because Plaintiff Evicted Defendant CAH10 from the Hospital and CAH10 Did Not Receive Notice of the Temporary Restraining Order Until After the Hospital Had Closed.

Inexplicably, while its lawyers were filing the Wake County Action and seeking a temporary restraining order, *ex parte*, uniformed and armed Sheriff's officers from the Yadkin County Sheriff's Department were dispatched by Yadkin County manager Lisa Hughes to surround the Hospital and evict the Hospital staff. The eviction order was given by a Sheriff's Officer to Shawn Bright, the senior most Hospital administrator, at approximately 5 p.m. Word of the eviction spread through the Hospital staff who gathered their belongings and left. With patient care paramount, Mr. Bright directed the Emergency Room staff to finish treatment of the only two patients in the Hospital and then to leave.

The Wake County Temporary Restraining Order did not issue until 5:15 p.m. and no notice of it was received by any of the Defendants until approximately 6:00 p.m. At that time, Sheriff's officers still surrounded the Hospital, and no communication had been given by the Sheriff's Officers, County Manager Lisa Hughes or the Yadkin County Commissioner David Moxley (who was on site at the Hospital at approximately 5:00 p.m.) that the Sheriff's eviction order was a mistake or should not be complied with. By the time any notice of the TRO was provided to CAH10 of the TRO, signs had been posted on the doors of the Hospital giving notice of the closure, the doors had been locked, and the Hospital staff had either left or was leaving in order to comply with the Sheriff's eviction order. Without the requisite staff, the Hospital could not operate and

was at that point closed. All of this had transpired before any notice of the TRO had been received by CAH10, hence Mr. Davis' emailed response at 6:04 p.m. that the Hospital was already closed.

Civil contempt proceedings may be instituted either to coerce a party into compliance with a court's order or to compensate for losses or damages sustained as a result of disobedience and noncompliance with a court order. *Cottman Transmission Systems, Inc. v. Melody*, 851 F. Supp. 675, 676, citing *McDonald's Corp. v. Victory Investments*, 727 F.2d 82, 87 (3rd Cir.1984); *Roe v. Operation Rescue*, 730 F.Supp. 656, 657 (E.D.Pa.1989), aff'd, 920 F.2d 213 (3rd Cir.1990); *Halderman v. Pennhurst State School and Hospital*, 533 F.Supp. 631, 636 (E.D.Pa.1981), aff'd, 673 F.2d 628 (3rd Cir.1982), cert. denied, 465 U.S. 1038, 104 S.Ct. 1315, 79 L.Ed.2d 712 (1984). See Also: *Quinter v. Volkswagen of America*, 676 F.2d 969, 975 (3rd Cir.1982); *Latrobe Steel Co. v. United Steelworkers of America*, 545 F.2d 1336, 1343 (3rd Cir.1976). Recognizing the impossibility of unscrambling an egg and reopening the Hospital after the departure of the Hospital staff precipitated by its own conduct, Plaintiff does not seek in these proceedings to coerce Defendant CAH10 into compliance with the Temporary Restraining Order, which has also expired by its terms. Tellingly, Plaintiff has not sought to bring on for hearing its Motion for Preliminary Injunction filed in Wake County Superior Court to attempt to force Defendants to reopen the Hospital, again recognizing the futility of any such effort in light of the fact that staffing of the Hospital now would be impossible. Instead, Plaintiff wishes to invoke civil and criminal contempt proceedings for alleged violation of the Temporary Restraining Order and to be

compensated for alleged, but unspecified losses or damages sustained as a result of alleged disobedience by CAH10. But the Court need not consider such a request because it was the Plaintiff, which sent its armed officers to the Hospital, who told Hospital management that CAH10 was being evicted, that caused closure of the Hospital late on the afternoon of May 22, 2015. Surely Plaintiff does not wish to be heard in argument that the Hospital staff should have defied the Sheriff's eviction order.

A movant in a civil contempt proceeding bears the burden of establishing by clear and convincing evidence: (1) that a valid court order existed; (2) that the defendants had knowledge of the order; (3) that the order required certain conduct by the respondent; and (4) that the respondent failed to comply with the court's order. *Cottman at 676, citing Martin v. Trinity Industries, Inc.*, 959 F.2d 45, 46 (5th Cir.1992); *AMF, Inc. v. Jewett*, 711 F.2d 1096, 1100 (1st Cir.1983); *Roe v. Operation Rescue, supra*, 730 F.Supp. at 657. Here, there is no evidence that CAH10 had knowledge of the Order prior to the closure (which took place before 6 p.m. and when it did because of the eviction order of the Sheriff), and there is no evidence that CAH10 failed to comply with the court's order because the Hospital had already closed at the time (approximately 6 p.m.) when notice of the TRO was first given to CAH10.

Even if the stringent standards for civil contempt are met, and they cannot be met here, civil contempt is not to be used as some strategic weapon or litigation strategy. As the court in *Cottman* said,

...it should be recognized that the court's civil contempt power is a potent weapon to be used with caution and in the court's discretion. It should not be utilized if the order upon which the contempt charge was founded is

vague or ambiguous or where there is ground to doubt the wrongfulness of the defendant's conduct. *[citation omitted]*; See Also: *Littlejohn v. Bic Corp.*, 697 F.Supp. 192 (E.D.Pa.1988). Indeed, it has been held that if there is a fair ground of doubt as to the wrongfulness of the defendant's actions said to be in contempt, the District Court should not entertain the contempt proceeding or find contempt. *Preemption Devices, Inc. v. Minnesota Mining & Manufacturing Co.*, 803 F.2d 1170, 1173 (Fed.Cir.1986).

Cottman, 857 F.Supp. at 676.

Given the County's conduct of sending its armed, uniformed Sheriff's officers to the Hospital on the afternoon of May 22nd and again on May 23rd, and the order of eviction issued by the Sheriff's officers with which the Hospital staff complied promptly while assuring proper patient care, there is no basis for the assertion now made by the Plaintiff of wrongful conduct by CAH10. It simply obeyed the County's officers who told CAH10 that it was being evicted. Because CAH10 did not have knowledge of the TRO before it closed and because the closure was as an immediate and direct result of the Plaintiff's eviction order and not some willful disobedience by CAH10 of the TRO, no contempt proceedings should be entertained by this Court.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Appear and Show Cause should be denied.

Respectfully submitted, this 15th day of June, 2015.

/s/ J. Alexander S. Barrett

J. Alexander S. Barrett

N.C. State Bar No. 12859

abarrett@hagandavis.com

Attorney for Defendants

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 I electronically filed the foregoing **MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO APPEAR AND SHOW CAUSE** 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
William R. Forstner, Esq.
N.C. Bar No. 32675
Bill.forstner@smithmoorelaw.com
Stephen W. Petersen, Esq.
N.C. Bar No. 23462
Steve.petersen@smithmoorelaw.com
Smith Moore Leatherwood LLP
434 Fayetteville Street, Suite 2800 (27601)
P.O. Box 27525
Raleigh, NC 27611

This the 15th day of June, 2015.

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

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

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

AFFIDAVIT OF DENNIS DAVIS

STATE OF)
) SS.
COUNTY OF)

Dennis Davis, having first been duly sworn, states as follows:

1. My name is Dennis Davis. I am over 21 years of age, have personal knowledge of the facts and matters stated herein and am competent to testify to the matters herein.

2. I hold the position of Chief Legal Officer for Rural Community Hospitals of America, LLC ("RCHA"). RCHA is in the business of managing rural community hospitals, such as CAH10, for a fee. Part of my job duties includes assisting the managed hospitals with matters and other related issues, and I was involved the negotiations between CAH10 and Yadkin County. However, under the express terms of its management agreement, RCHA is not authorized to act as the legal representative of CAH10. CAH10 retains that the sole right and responsibility to control and direct the operations of the hospital. RCHA and CAH10 are not related to one another and have no overlapping members on their respective governing bodies,

and no voting power or control over each other's governing body or officers, directors, shareholders and members.

3. In September of 2014, CAH10 met with the County regarding the status of its lease of the Hospital premises. After the meeting, the Yadkin County Commission began an effort to solicit a different hospital company to lease the county-owned hospital premises and to purchase the hospital business from CAH10.

4. Over the next eight months, CAH10 tried many times to meet with the County to discuss how best to coordinate the termination of the lease between CAH10 and the County and the transfer of CAH10's business to a new entity. Despite CAH10's efforts, the County refused to meet with CAH10 to discuss these issues.

5. In late December 2014, CAH10 was approached by representatives of Hugh Chatham Memorial Hospital (HCMH) to discuss its possible interest in the Hospital premises. The HCMH representatives stated that they had been asked by Commissioner Austin (a member of the HCMH Board of Directors), to negotiate the purchase of the hospital business from CAH10.

6. On January 2, 2015, the parties (CAH10, HCMH and the County) signed a confidentiality agreement. Although the negotiations commenced thereafter, the County continued its position to refuse to meet with CAH10 and HCMH for the purpose of coordinating the County's lease of hospital facility to HCMH and HCMH's purchase of the hospital business from CAH10.

7. On February 16, 2015, the County, (without any notice to CAH10) by resolution, initiated a request for proposal (RFP) for the purpose of soliciting bids or proposals from other third parties for lease of the hospital facility. CAH10 was concerned with the County's decision

to initiate an RFP after it had been dealing with HCMH for six weeks because an RFP at this stage would necessarily complicate and prolong the process and, therefore, make it very difficult to finalize and close the sale of the hospital business before CAH10's lease expired on April 30, 2015.

8. More specifically, the County's decision to re-start the negotiation process created significant problems for CAH under the Worker Adjustment and Retraining Notification Act (WARN).

9. CAH10 is subject to the Provisions of the WARN. The WARN provides protection to employees, their families and communities, by requiring an employer (e.g. CAH10) to provide notice 60 days in advance of the shutdown of its business. The WARN notice must be given to the affected employees and to the appropriate unit of local government (e.g. Yadkin County). The employees at the Yadkin Valley Community Hospital entitled to the WARN notice included all hourly and salaried workers, as well as managerial and supervisory employees.

10. Despite the County's ongoing negotiations with HCMH, the County continued in its refusal to negotiate, or even discuss, an extension of the hospital lease with CAH10 to accommodate the County's negotiations with HCMH.

11. Because the term of the hospital lease was due to expire on April 30, 2015, CAH10 was obligated to give the WARN notice no later than February 27, 2015.

12. Throughout this process, CAH10 repeatedly warned the County that the giving of the WARN notice would, in all likelihood, have a material adverse effect on the hospital's clinical operations and financial viability. Nonetheless, the County persisted in its decision not to negotiate with CAH10.

13. Consequently, on February 27th, CAH10 delivered the WARN notice to the County and all hospital employees.

14. As a result of the February 16, 2015, RFP, three entities responded to the County's inquiry: HCMH (again); Wake Forest Baptist Medical Center; and Community Hospital Corporation. At the County's request, CAH10 expanded its negotiations so as to include all three entities.

15. CAH10 first contacted Wake Forest Baptist Medical Center but it never received a response from it. Thereafter, CAH10 contacted Community Hospital Corporation ("CHC"). Although CHC provided CAH10 with an initial response and due diligence information, it (CHC) provided nothing else to CAH10. County manager Hughes shortly thereafter notified CAH10 that both Wake forest Baptist Medical Center and CHC had withdrawn their lease proposals. The County did, however continue to negotiate with HCMH.

16. CAH10's continued its negotiations with HCMH. On March 26, 2015, the parties signed a non-binding term sheet. Pursuant to the term sheet, the closing of CAH10's sale of the hospital business to HCMH was to occur no later than August 1, 2015. Among other terms and conditions, the term sheet was made expressly contingent upon HCMH entering into a hospital facility lease with the County prior to its signing of an asset purchase agreement with CAH10.

17. After the County and HCMH signed the March 26th term sheet, the County finally agreed to negotiate a Third Lease Amendment with CAH10. On April 2, 2015, CAH10 and the County entered into a Third Amendment To Hospital Lease (the "Third Amendment"). Under the terms of the Third Amendment, the term of the lease was to extend to July 31, 2015. Additionally, under the Third Amendment, CAH10 agreed to transfer the operating licenses and

provider numbers to the County in the event the sale of the hospital business to HMCM did not occur prior to July 31, 2015.

18. Shortly after the Third Amendment was signed, HCMH, without notice or explanation, stopped communicating with CAH10. After making numerous inquiries to HCMH, CAH10 was finally provided with a copy of an April 16th letter from Paul Hammes (CEO) to County Manager Hughes informing the County that the HCMH Board of Trustees had decided to withdraw from RFP process. The only reason given for the withdrawal was that the Trustees "have concerns with respect to our ability to fully meet the County's expectations, both in the near and longer term, in operating the critical access hospital in Yadkinville."

19. Thus, as of April 16, 2015, the County had no viable purchaser of the hospital operations and lessee of the hospital facility. Notwithstanding the County's previous refusal to negotiate with CAH10, it (CAH10) decided to make one more effort to negotiate a new deal with the County.

20. On May 4, 2015, CAH10 wrote to the County stating its opinion that the manner in which the RFP process was handled was more and more destructive to the hospital. CAH10 reminded the County that the hospital had lost the services of the key personnel, including its Physician Assistant (PA), its Certified Registered Nurse Practitioner (CRNP), its PFS Director, and one of its Clinic Managers. CAH10 also stated that one physician was looking for another practice situation and another had opened an additional practice location and would probably not remain at the hospital. CAH10 told the County that the hospital had also lost the services of other essential ancillary staff and almost every remaining staff member is looking for other employment, and because of the uncertainty surrounding the hospital's future it was very difficult to recruit replacement staff. CAH10 put "the County on notice that if clinical and

patient support operations deteriorate further, there is a reasonable likelihood that the hospital will not be able to remain open for business until July 31st.” CAH10 concluded its email by suggesting that the County and CAH10 should attempt to negotiate a long-term lease of the hospital facility “coupled with the same package of economic incentives that the County was offering to Hugh Chatham.”

21. In response to CAH10’s May 4 email, the County tendered “a take-it-or-leave-it” already signed fourth lease amendment. Moreover, the County conditioned its offer on CAH10’s immediate acceptance.

22. The following day, CAH10 sent its response to the County. CAH10’s email outlined a logical basis to start lease negotiations with the County. CAH10 also told the County that if the lease negotiations were not successful, it would be willing to sell the hospital business to the County on the economic terms that were stated in March 26th term sheet with HCMH.

23. The County rejected CAH10’s offer to start negotiations out of hand. It was especially adamant in its rejection of CAH10’s suggestion that rent be determined using mutually agreed appraisal process. CAH10 explained that the rationale for this “fair market value” approach to rent was based on the fact that as a Critical Access Hospital, the hospital can only receive reimbursement from Centers for Medicare and Medicaid (CMS) for its “allowable costs” which must be determined based on the marketplace where it is located.

24. Following the County’s rejection of its offer to start negotiations, CAH10 was at a loss as to how to engage the County in negotiations. CAH10 did, however, inform the County that the hospital’s financial operations were continuing to deteriorate and because of the magnitude of the losses, it was becoming more and more likely that the hospital would not be able to remain open until July 31. The County did not respond to CAH10’s statements.

25. On May 14, 2015, CAH10, pursuant to section 3(e) of the Third Amendment, provided to County Manger Hughes all the documents required "to effectuate the transfer of all licenses and provider numbers" of the hospital to the County. Those documents included the so-called "CHOW" application applicable to the CMS provider number. CAH10 told the County that it would be best if the CHOW application was signed and ready to file with CMS no later than the close of business on Friday, May 22, 2015. To assist in the matter, CAH10 offered to make its representatives available to provide assistance to the County's hospital consultant.

26. On May 21, 2015, the Yadkin County attorney, Edward Powell, advised CAH10 that "[i]t is not Yadkin County's intention to accept the existing provider agreement."

27. Thereafter, CAH10 proceeded forward with the closure of the hospital scheduled for the morning of May 23rd.

28. On May 22, 2015 at around 4:00 cst, I received a call from Trent Skaggs, the Vice-President and Chief Operating Officer of RCHA. Mr. Skaggs had Shawn Bright, the Regional Vice President of RCHA, on the call. As I recall, Mr. Bright informed me that the hospital was surrounded by members of the Sheriff's department and that the sheriffs were there to evict the staff from the hospital. I told Mr. Bright that he should do as the sheriffs had instructed him. Mr. Bright informed me that administrative staff, the clinic staff and the in-patient staff had already left or were leaving the building. I asked Mr. Bright if there were patients in the emergency room and, if so, what the patient's condition was. Mr. Bright informed me that there were two patients in the ER and that they were receiving non-emergent care. I told them that as soon as the two patients received proper and appropriate medical care, the ER was to be closed and the ER staff should then leave the hospital.

29. About an hour later, I received an email from Marcus Hewitt, an attorney with the Smith Moore Leatherwood law firm. The email stated: "Attached are copies of a Temporary Restraining Order executed this afternoon by a Superior Court Judge enjoining CAH Acquisition Company 10 LLC from ceasing operations at Yadkin Valley Community Hospital and related filings." However, because I was at this time traveling by automobile from Oklahoma, I was unable to open the attachments order and related filings. I responded immediately to Mr. Hewitt's email and informed him that the hospital had already been closed.

30. The following day I was informed that a physician employed by CAH10 had reentered the hospital premises on May 23rd to complete some patient medical records. The doctor was told by a sheriff's deputy that he was to leave the hospital premises and that there would be "problems" for him if he returned. I understood that this was a threat to arrest him if he tried to reenter the hospital premises.

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



Dennis Davis

On this 15 day of June, 2015, before me personally appeared Dennis Davis, 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:

My Commission Expires May 26, 2019



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

COUNTY OF YADKIN,

Plaintiff,

v.

CAH ACQUISITION COMPANY 10
LLC; HMC/CAH CONSOLIDATED,
INC.; and RURAL COMMUNITY
HOSPITALS OF AMERICA LLC,

Defendants.

**AFFIDAVIT OF
SHAWN BRIGHT**

Shawn Bright, first being duly sworn, deposes and says as follows:

1. I served as the Chief Executive Officer of the Yadkin Valley Community Hospital (the "Hospital") from November, 2012 until February, 2015, when I became a Regional Vice President of Rural Community Hospitals of America, LLC ("RCHA"). RCHA assisted CAH Acquisition Company 10 LLC ("CAH") in the management of the Hospital. I was in this role with RCHA, and working at the Hospital when it closed on May 22, 2015.

2. On the morning of May 22, 2015, I received a call at home informing me that three surveyors from the Centers for Medicare & Medicaid Services ("CMS") had come on site for a survey. CMS is an agency responsible for administration of federal health care programs. I was informed that they were there to investigate three allegations: That the Hospital did not have enough food for patients, did not have sufficient supplies,

and was not properly staffed. The CMS surveyors did not disclose to me who had made these allegations.

3. The CMS surveyors reviewed Hospital records and inspected Hospital facilities. At about noon that day, and before the surveyors broke for lunch, I told the lead surveyor, Azzie Conley, Section Chair of the Office of Licensure with the North Carolina Department of Health and Human Services, that the Hospital planned to cease operations and close. I had previously attempted to reach Ms. Conley to discuss closure procedures with her, but had not been able to reach her. I told her that if CAH owned the building in which the Hospital is located, we would not be forced to shut down, but because the County had not agreed to renew our lease which was expiring, and because the County had not found another operator to run the Hospital, we found it necessary to close. I further explained to her that, in our view, patients come first, and with the County having failed to renew our lease or find another provider to run the facility, many employees had already left and virtually all were seeking other jobs. I explained that with so much uncertainty about having the staffing and other resources to be able to continue, CAH had reached the decision that it needed to cease operations and close the Hospital in a safe and orderly way because we could not maintain required staffing levels to be able to deliver safe and quality care. I told her that we then planned to cease all operations and close as of 7:00 a.m. the next morning, Saturday, May 23rd. This

would allow the Emergency Department to remain open through the evening of May 22nd. I told her that the closure could come earlier if there was an appropriate window of time during which we had no patients who needed immediate care. Ms. Conley said she would call her supervisor and inform him of the pending closure. She made a call, which I did not hear.

4. After breaking for lunch, the surveyors returned and conducted an exit conference with me. They informed me that the complaints they were there to investigate were unsubstantiated. I then discussed with them our plan for closure of the Hospital which included giving proper notice of the closure, posting signage about the closure, covering signage that might indicate the Hospital was open, and making arrangements for patient records to be available. The surveyors left at about 4 p.m.

5. A short time later, just before 5 p.m., I was informed that Sheriff's officers were surrounding the Hospital. My immediate thought was that there was a security threat. Shortly thereafter and also just before 5 p.m., Jeanna Simmons, the Head Emergency Room Nurse, approached me and said that a Sheriff's officer she knew by the name of Scotty was in the front of the Hospital and had notified her we were being evicted. Ms. Simmons and I then went outside the front of the Hospital. I introduced myself to the Sheriff's Officer identified by Ms. Simmons as Scotty and asked if we were being evicted. He said, "Yes." I asked him who had sent him and the other Sheriff's officers to the Hospital. He replied that Lisa Hughes, the Yadkin County Manager, had sent him. Moments later, the Sheriff's officer's cell phone rang and he answered it. He

then told me that he had “been ordered to shut the f up. I’ve just been told to shut the f up.” Though I tried to engage with the Sheriff’s officer further about our eviction, he would not speak to me.

6. Shortly after I had been told by the Sheriff’s Officer that we were being evicted, Yadkin County Commissioner David Moxley drove in his vehicle into the Hospital parking lot right beside the vehicle of the Sheriff’s Officer with whom I had been speaking. It was very unusual to see one of the County Commissioners on the Hospital campus. To my knowledge, none of them had been on Hospital grounds in many months. I spoke to Commissioner Moxley, and asked him what was going on. I told him that the Sheriff’s Officer had just told me that we were being evicted by the County. Commissioner Moxley replied that he didn’t know what was going on. Commissioner Moxley never got out of his vehicle and as I spoke with him actually began to drive away which he eventually did by retracing the route he had followed on the way in. He did not speak with the Sheriff’s Officer before driving away. At no point in my brief conversation with him did he tell me that there had been a mistake in what the Sheriff’s Officer had told me, or that County Manager Lisa Hughes was not authorized by the Commissioners to order the Sheriff’s Department to evict us from the Hospital. At no time did he offer to look into the matter and get back in touch with me. He simply drove away after I told him that the Sheriff’s Officer had told me we were being evicted from the Hospital. I saw Commissioner Moxley later that evening in a television interview. He had changed into a suit and tie from the clothes he had been wearing when he was on Hospital grounds earlier. I heard him say in the interview that he did not know why we

had closed. This surprised me because I had specifically told him that the Sheriff's Officer had informed me that we were being evicted.

7. Immediately after my conversations with the Sheriff's Officer and Commissioner Moxley at the front of the Hospital, I went back inside the building. Word had spread already among the staff about the eviction and staff were gathering their personal belongings and leaving. I called my immediate supervisor, Trent Skaggs, the Vice-President and Chief Operating Officer of RCHA. Also on the call was Dennis Davis, the Chief Legal Officer for RCHA. I told them there were Sheriff's officers around the Hospital and that one had just told me that we were being evicted. I knew that we did not have any inpatients at that time, and found out there were only two patients then in the Emergency Room and neither was in serious condition or would need to be admitted. Mr. Davis told me that I was to comply with the Sheriff's instructions, that the patients in the ER were to be treated and when that had been done, the ER was to be closed and the ER staff was to leave. I gave these instructions to the Emergency Room staff.

8. As I returned to the Administration area of the Hospital from the Emergency Room, employees, without being informed by me or to my knowledge by any other Hospital administrator to do so, were continuing to gather their belongings and leave. Many expressed concern that they would not be allowed back in to get their personal things. I felt, and others expressed to me, that we were being treated like criminals and kicked out of the Hospital. We had only two patients in the Emergency Room and the time and the care of those patients was never at risk, but there was

something of a chaotic scene as employees rushed around, trying to get their things and leave as quickly as possible. The actions of the County in having the Sheriff's officers come to the Hospital and tell us we were being evicted caused a great deal of anxiety among the Hospital staff.

9. The Hospital, like any other, is completely dependent upon its staff of doctors, nurses, therapists, technicians and others to deliver proper and safe care. At the point the Sheriff's Officer informed us that we were being evicted, we could no longer deliver proper and safe comprehensive care. The Hospital ceased any ability to operate because the Hospital staff responded to the eviction order of a uniformed, armed Sheriff's officer and vacated the Hospital. We did what was appropriate after we were told we were being evicted to treat the two patients who were in the Emergency Department. But there was no ability thereafter to do anything else because the staff had either left or was in the process of leaving.

10. Because we knew we no longer had the ability to provide comprehensive hospital care because of our eviction, I and others posted hand written signs on Hospital doors at approximately 5:10 p.m. that the Hospital was closed. We did so in order to inform anyone who came to the Hospital looking for care that we were not able to provide it. We then proceeded to lock doors.

11. I did not receive any legal papers or any order of any kind before I left the Hospital. I received a call at my home from someone I did not know at approximately 9:30 p.m. I understood that he was calling from the Hospital grounds. The person said

he had papers he wanted to give me. I did not return to the Hospital because the Sheriff's Officer had told me that we were evicted and I was not going to risk being arrested.

12. I understand now that a Temporary Restraining Order was entered against CAH. I did not see and did not know about any such order on May 22nd. I first learned of it after the Hospital was closed.

Further Affiant sayeth not, this the 15th day of June, 2015.


Shawn Bright

STATE OF ALABAMA

Chilton COUNTY

Sworn to (or affirmed) and subscribed before me
this day by Shawn Bright.

Date: 6-15-2015


Signature of Notary

Jonathan Barick
Printed/Typed Name of Notary

My Commission Expires: Aug. 18, 2018

(SEAL)



4. On the morning of Saturday, May 23, 2015, I went to the Hospital at about 7:00 a.m. in order to dictate patient progress notes for inclusion in those patients' medical records. I was at the Hospital for about an hour and then left.

5. Later that morning, it occurred to me that patients would be better served if I left a voice mail notification on the answering machine giving notice to patients that the Hospital had closed. I went back to the Hospital at about 11 a.m. in order to try to record a message to leave on the answering machine. I was not able leave such a message because I did not have a required password.

6. While I was at the Hospital attempting to leave the voice mail notification to patients, I saw a Yackin County Sheriff's Department car pull up the driveway of the Hospital. The occupant appeared to notice my car. The Sheriff's Department vehicle pulled directly behind my car, blocking it in. I went outside and spoke with the uniformed Sheriff's officer. I identified myself and explained I was one of the doctors at the Hospital and what I was doing. The officer spoke to me sternly, saying words to the effect, "There is not supposed to be anybody here. You need to leave now. If I catch you back here again, there are going to be problems." I obeyed the officer and left immediately.

Further Affiant sayeth not, this the 10th day of June, 2015.


James McGrath, M.D.

STATE OF NORTH CAROLINA

Yadkin COUNTY

Sworn to (or affirmed) and subscribed before me
this day by James McGrath, M.D.

Date: 6-10-15

Katherine M Arnold
Signature of Notary

Katherine M Arnold
Printed/Typed Name of Notary

My Commission Expires: 4-25-19

(SEAL)

