

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

COUNTY OF YADKIN,)
)
Plaintiff,)
)
v.)
)
CAH ACQUISITIONS COMPANY 10)
LLC, HMC/CAH CONSOLIDATED, INC.,)
and RURAL COMMUNITY HOSPITALS)
OF AMERICA, LLC,)
)
Defendants.)

ORDER

This cause comes before the Court on plaintiff's motion for order to appear and show cause and other appropriate relief. A hearing was held on the matter before the undersigned on June 16, 2015, at Edenton, North Carolina. At the hearing, the Court heard argument by counsel and considered the testimony of two witnesses. For the reasons discussed below, plaintiff's motion is granted in part and the Court finds defendants to be in civil contempt.

BACKGROUND

In May 2010, plaintiff, Yadkin County, North Carolina, leased hospital premises to defendant CAH to operate a licensed critical access hospital, offering emergency services and select other in-patient and outpatient services. This hospital served as the sole hospital in Yadkin County. The lease terms were subsequently modified to include an expiration date of July 31, 2015.

On Friday May, 22, 2015, state regulators from the North Carolina Department of Health and Human Services (DHHS) were conducting a routine regulatory survey at the hospital when

they were informed that the hospital would be closed and no longer operating as of 7:00 a.m.¹ on Saturday May 23, 2015. The state regulators informed the County of the hospital's imminent closure, of which the County had no knowledge, and the County filed suit in Wake County Superior Court the afternoon of May 22, 2015, seeking an ex parte temporary restraining order. The temporary restraining order was issued by the Honorable Donald Stephens, Senior Resident Judge of the Wake County Superior Court on May 22, 2015, at 5:15 p.m., enjoining defendants from closing the hospital. The County served a copy of the temporary restraining order on Dennis Davis, the current or former executive vice president of HMC/CAH Consolidated, the sole member and manager of defendant CAH, and Chief Legal Officer of Rural Community Hospitals of America, by email at 5:59 p.m. on May 22nd.

At 6:03 p.m., Linda Way of Rural Community Hospitals sent a letter by email to DHHS informing them that due to failed negotiations between the County and defendants regarding the lease terms, defendants were "reluctantly announcing the closure of the hospital, effective immediately." [DE 27-7]. Mr. Davis confirmed receipt of the temporary restraining order by response to the County's email at 6:04 p.m. The last patients at the hospital were discharged at approximately 6:40 p.m. on Friday, May 22, 2015, the doors were locked, and the hospital was closed.

The temporary restraining order set a hearing in Wake County Superior Court on Monday June 1, 2015, at 10:00 a.m. on the County's request for a preliminary injunction. On Friday May 29, 2015, defendants filed their notice of removal of the County's action to this Court pursuant to its diversity jurisdiction. 28 U.S.C. §§1332, 1441. The County filed the instant motion in this Court on June 1st.

¹ All times referred to herein are Eastern Standard Time unless otherwise indicated.

DISCUSSION

The County seeks a finding of civil contempt against defendants as well as a referral of this matter to the United States Attorney for an investigation of criminal contempt.

To establish that a finding of civil contempt is appropriate, a party must demonstrate by clear and convincing evidence:

(1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) ... that the decree was in the movant's "favor"; (3) ... that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and (4) ... that [the] movant suffered harm as a result.

Ashcraft v. Conoco, Inc., 218 F.3d 288, 301 (4th Cir. 2000) (alterations in original, citation omitted). Here, there is a valid decree by the Wake County Superior Court of which defendants do not dispute that they received actual notice at 5:59 p.m. on May 22, 2015. The temporary restraining order, which prohibited defendants from closing the hospital, was in the County's favor, and by moving ahead with closure of the hospital defendants have plainly violated the Judge Stephens' order.² Finally, the County has established that it has suffered harm as a result of defendants' non-compliance with the temporary restraining order. As noted in the restraining order itself, closure of the hospital would result in injury because it was the only hospital in Yadkin County, it provided a range of services including emergency services to the residents of the County, and closure of the hospital could result in the loss of continued licensure and regulatory permits.

²This Court has jurisdiction over this action pursuant to defendants' notice of removal, and because the orders and injunctions of the state court remain in effect upon removal, this Court has jurisdiction to consider whether defendants should be held in contempt of the temporary restraining order issued by the Wake County Superior Court. *See Demoss v. Kelly Services, Inc.*, 355 F. Supp. 1111, 1113 (D.P.R. 1972) (citing 28 U.S.C. § 1450).

There is no real dispute that defendants had knowledge that their actions were in violation of Judge Stephens' order, and defendants have proffered no evidence which would support that they mistakenly believed they were either in compliance or were not required to comply with the temporary restraining order. Defendants instead have offered two bases of justification for violating the temporary restraining order. First, defendants contend that at approximately 5:00 p.m. on May 22, 2015, Sheriff's deputies were surrounding the hospital and Shawn Bright, the Regional Vice President of Rural Community Hospitals of America who was helping to manage the hospital during this time, was informed by the deputies that defendants were being evicted from the hospital, effective immediately. Bright Aff. [DE 24-1]. Mr. Davis testified at the hearing that at approximately 3:00 or 3:30 p.m. Central Standard Time he received a telephone call from Mr. Bright and Trent Skaggs informing him that Sheriff's deputies were at the hospital and had informed Mr. Bright that they were there to evict defendants. Mr. Davis testified that he instructed Mr. Bright to treat the last two patients and to follow the Sheriff's instructions and leave the premises. At no time were any papers purporting to effect eviction provided to defendants.

The County proffered the testimony of Sergeant Shields of the Yadkin County Sheriff's Office who was present at the hospital on May 22, 2015. Sergeant Shields testified that he was instructed to go to the hospital on the evening of May 22nd in order to ensure that no equipment was removed from the hospital. Sgt. Shields further testified that he spoke to Mr. Bright but told him that he was not aware of any eviction proceedings and was not there to evict defendants. Sgt. Shields reviewed the affidavit of Mr. Bright and testified that statements contained in it were not accurate.

The Court finds that the credible testimony of Sgt. Shields, as well as the additional declarations by Yadkin County Sheriff's Office employees, including the Sheriff, [DE 27] and other evidence belies defendants' assertion that they believed they were being evicted. The Court places great weight on the sworn testimony of four law enforcement officers that at no time were defendants ever informed that they were being evicted. The letter signed by Shawn Bright and sent to DHHS by email at 6:03 p.m., within seconds of Mr. Davis' email confirming receipt of the temporary restraining order, further impeaches any testimony by defendants regarding eviction. The letter, dated May 22, 2015, states that due to failed contract negotiations the hospital would be closed effective immediately; the letter fails to mention any belief that the County had initiated eviction proceedings against defendants and this was the reason that the hospital would be forced to close prior to May 23rd. The evidence before the Court makes plain that defendants' attempt to argue that they believed they were being evicted from the hospital is absolutely untrue.

Moreover, defendants' alleged concern about eviction, even if truthful, is not a valid defense or excuse that would absolve them from their willful and knowing violation of the temporary restraining order. Mr. Davis testified that the presence of Sheriff's deputies only accelerated the closing process which defendants had already initiated, without any notice to the County. When they received notice of the restraining order, patients were still being treated and the hospital was not closed, but the knowledge of a temporary restraining order prohibiting their closing of the hospital prompted no action or response from defendants. Indeed, defendants did not take any action regarding the Wake County suit until Friday May 29, 2015, the last business day before the injunction hearing set before Judge Stephens on June 1st, when they filed a notice of removal of the case to this Court. When asked why defendants did not seek relief from or a

modification of the temporary restraining order, defendants responded that they felt they needed to be in federal court. Clearly, however, their jurisdictional concerns were not so great so as to prevent a full week from passing prior to their filing a notice of removal.

Defendants' next proffered justification for not complying with the temporary restraining order is their concern regarding the safety of the hospital's patients. As noted above, defendants were already in the process of closing the hospital when they received notice that they were enjoined from doing so. Had circumstances existed such that it would have been impossible for defendants to operate the hospital safely after Friday evening, the proper course would have been to petition for relief from the restraining order, not to merely disregard it; disregarding a valid court order is a sanctionable offense. *See In re Gen. Motors Corp.*, 61 F.3d 256, 258 (4th Cir. 1995) (violation of court's unequivocal command constitutes contempt). Further, though defendants have argued that the County is not entitled to injunctive relief because it cannot show a likelihood of success on the merits on its underlying breach of contract and related claims, "[i]t would be a disservice to the law if [this Court was] to depart from the long-standing rule that a contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy." *Maggio v. Zeitz*, 333 U.S. 56, 69 (1948).

In sum, the Court finds that each of the justifications for non-compliance claimed by defendants are pretextual attempts to post-hoc rationalize their willful and knowing violation of a valid court order. The Court presumes that the County would have remained ignorant of defendants' plan to close its sole hospital but for its fortuitous discovery of the closure from DHHS. The County acted expeditiously to secure a restraining order to prevent the closure and took the proper steps to ensure defendants' knowledge of the order. Defendants must be held

accountable for their flagrant disregard of a court order and woefully thin attempts to justify their actions.

FINDING OF CIVIL CONTEMPT AND AWARD OF SANCTIONS

For the foregoing reasons, the County has satisfied its burden to show defendants to have been in knowing violation of the temporary restraining order entered by the Wake County Superior Court. The Court further finds that defendants have not proffered sufficient justification of their non-compliance and a finding of civil contempt is therefore appropriate. Because, however, it has been established that it is no longer possible for defendants to reopen the hospital in order to purge themselves of the contempt, civil contempt sanctions are necessary to compensate the County for its losses sustained as a result of defendants' contumacy. *In re Gen. Motors Corp.*, 61 F.3d at 258 (citation omitted).

The County shall provide to the Court along with its plan to reestablish the hospital proof of its damages, to be measured from the time of the violation (May 22, 2015) to the time of reopening. The measure of damages shall not exceed July 31, 2015, the date that the contract between the County and defendants was set to expire.³ The County shall endeavor to reopen the hospital within thirty (30) days of the date of entry of this order and shall provide evidence of its damages to the Court within that time. The County shall be awarded its reasonable attorneys' fees. Defendants shall further purge their contempt by releasing patient records upon valid request and returning all hospital property subject to the contract with the County to the hospital premises so that the County may elect to purchase such property for fair market value pursuant to the terms of the contract.

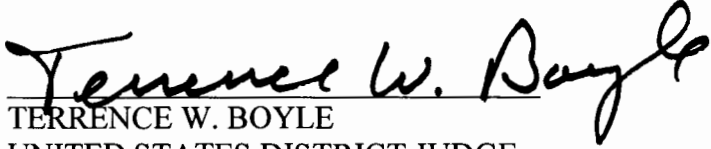
³ This holding does not foreclose the possibility of contract damages which would extend past the expiration of the underlying contract.

The Court reserves its ruling on the appropriateness of criminal contempt until it is established whether defendants will cure their civil contempt.

CONCLUSION

The Court having granted in part and denied in part the County's motion for order to show cause [DE 7], the underlying contract dispute between the parties may proceed in accordance with the Federal Rules of Civil Procedure.

SO ORDERED, this 18 day of June, 2015.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE