

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.)	ANSWER OF DEFENDANT
CAH ACQUISITION COMPANY 10)	HMC/CAH CONSOLIDATED, INC.
LLC; HMC/CAH CONSOLIDATED,)	
INC.; and RURAL COMMUNITY)	(Jury Trial Demanded)
HOSPITALS OF AMERICA LLC,)	
)	
Defendants.)	

COMES NOW Defendant HMC/CAH Consolidated, Inc. (“HMC”) and answers the Amended Complaint and asserts counterclaims filed herein for itself and not for Defendants Rural Community Hospitals of America, LLC (“RCHA”) or CAH Acquisition Company 10 LLC (“CAH”).

ANSWER

FIRST DEFENSE

Answering the correspondingly numbered paragraphs of the Complaint, HMC alleges and says the following:

1. It is admitted that the County of Yadkin (the “County”) is a political subdivision of the State of North Carolina and that this action has been brought on behalf of the County. It is denied that this action has been brought for the benefit of the citizens and residents of Yadkin County.

2. It is admitted that CAH is a Delaware limited liability company. It is

denied, as of the time of the filing of this Answer that CAH's principal office is in Yadkinville, North Carolina. It is admitted that HMC is the sole member of CAH. It is denied that HMC acts as the manager/official/organizer of CAH. It is admitted that CAH has an agent for service of process located in Wake County, North Carolina.

3. Admitted that HMC is the sole member of CAH. It is denied that HMC acts as manager/official/organizer of CAH. It is admitted that HMC is a Delaware corporation with its principal office in Kansas City, Missouri. All other allegations of Paragraph 3 are denied.

4. It is admitted, upon information and belief, that RCHA is a West Virginia limited liability company with its principal office in Kansas City, Missouri. It is further admitted that CAH and HMC contracted with RCHA to provide certain services in CAH's operation of the Hospital. It is also admitted that RCHA is not a party to the Purchase Agreement and the Hospital Lease between CAH and Plaintiff.

5. Paragraph 5 states legal conclusions to which no response is required. To the extent that a response is required, HMC denies the allegations of Paragraph 5.

6. Paragraph 6 states legal conclusions to which no response is required. To the extent that a response is required, HMC denies the allegations of Paragraph 6.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. HMC states that the hospital was closed to protect and insure patient safety. All other allegations of Paragraph 12 are denied.

13. It is admitted that the Wake County Superior Court issued its Temporary Restraining Order (“TRO”), the contents of which speak for themselves. HMC denies all allegations that are inconsistent with or contrary to the TRO. It is admitted that Plaintiff secured the TRO without any prior notice to CAH, HMC, or RCHA, even though Plaintiff knew Defendants’ identities and contact information, including the identity of CAH’s attorney and his contact information. It is admitted that HMC is not a party to the TRO. All other allegations of Paragraph 13 are denied.

14. Paragraph 14 fails to assert a factual allegation that HMC can either admit or deny. To the extent a response is required, HMC denies the allegations of paragraph 14

15. Admitted.

16. It is admitted that the Hospital was a critical access hospital, which are reimbursed differently than other hospitals. All other allegations of Paragraph 16 are denied.

17. HMC admits that it on April 22, 2010 it entered into a Sale Agreement. HMC denies all allegations that are inconsistent with or contrary to the Sale Agreement. HMC further states that the Sale Agreement was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 17 are denied.

18. HMC admits that it entered into a Guaranty. HMC denies all allegations that are inconsistent with or contrary to the Guaranty. HMC further states that the Guaranty was discharged in a bankruptcy proceeding and it no longer has any force or

effect. All other allegations of Paragraph 18 are denied.

19. HMC states that the Sale Agreement speaks for itself and it denies all allegations that are inconsistent with or contrary to the Sale Agreement. Neither CAH nor any Defendant agreed to operate the Hospital for any specific period of time, and the Hospital Lease does not contain any covenant to operate the hospital on the leased premises through the end of the lease term or any extensions thereof. HMC further states that the Sale Agreement was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 19 are denied.

20. HMC states that the Sale Agreement speaks for itself and it denies all allegations that are inconsistent with or contrary to the Sale Agreement. HMC further states that the Sale Agreement was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 20 are denied.

21. HMC states that the Sale Agreement speaks for itself and it denies all allegations that are inconsistent with or contrary to the Sale Agreement. HMC specifically denies that the Sale Agreement barred CAH or any Defendant from closing the Hospital. HMC further states that the Sale Agreement was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 21 are denied.

22. HMC states that N.C. Gen. Stat. §131E-13 speaks for itself and denies all allegations that are inconsistent with or contrary thereto.

23. HMC states that N.C. Gen. Stat. §131E-13 speaks for itself and denies all allegations that are inconsistent with or contrary thereto

24. HMC states that the Lease speaks for itself and it denies all allegations that are inconsistent with or contrary to the Lease. HMC denies that the Hospital Lease contains any provision whatever requiring CAH or any Defendant to operate the Hospital on the leased premises for any specific period of time or through the end of the lease term or any extensions thereof. HMC further states that the Lease was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 24 are denied.

25. HMC states that the Lease speaks for itself and it denies all allegations that are inconsistent with or contrary to the Lease. HMC denies that the Hospital Lease contains any provision whatever requiring CAH or any Defendant to operate the Hospital on the leased premises for any specific period of time or through the end of the lease term or any extensions thereof. HMC further states that the Lease was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 25 are denied.

26. It is admitted that HMC filed for Chapter 11 bankruptcy protection. The Sale Agreement and the Guaranty were discharged in the bankruptcy. Except as specifically admitted herein, the allegations of this Paragraph are denied.

27. HMC admits that after the bankruptcy, CAH continued to lease the hospital premises but under different terms. All other allegations of Paragraph 27 are denied.

28. HMC states that the First Amendment speaks for itself and it denies all allegations that are inconsistent with or contrary to the First Amendment. All other allegations of Paragraph 28 are denied.

29. Denied.

30. Denied.

31. It is admitted that the County and CAH entered into the Second Lease Amendment, which speaks for itself and is the best evidence of its content. It is admitted that HMC was not a party to the Second Lease Amendment. All other allegations of Paragraph 31 are denied.

32. It is admitted that the County and CAH entered into the Second Lease Amendment, which speaks for itself and is the best evidence of its content. It is admitted that HMC was not a party to the Second Lease Amendment. It is specifically denied that CAH was, at any time, using the Hospital premises for free. All other allegations of Paragraph 32 are denied.

33. Denied.

34. The allegations of Paragraph 34 are legal conclusions to which no response is required. To the extent that a response is required, HMC denies the allegations of Paragraph 34.

35. It is admitted that RCHA was formed as a West Virginia limited liability company on January 16, 2013. HMC denies all other allegations of Paragraph 35.

36. It is admitted that the County and CAH entered into the Third Lease Amendment, which speaks for itself and the best evidence of its content. It is admitted that HMC was not a party to the Third Lease Amendment. By Plaintiff's own admission, the Third Lease Amendment was entered into for one reason: to facilitate the transfer of hospital operations from CAH to Hugh Chatham. All other allegations of Paragraph 36

are denied.

37. It is admitted that CAH held the license to operate the Hospital and that the original of that license was delivered to the County at its request. Except as specifically admitted herein, the allegations of Paragraph 37 are denied.

38. Denied.

39. It is admitted that HMC is the sole member of CAH10. All remaining allegations of Paragraph 39 are denied.

40. Denied.

41. Denied.

42. Denied.

43. It is admitted that CAH offered to enter into a long-term extension to the Hospital Lease. The County failed to negotiate in good faith and rejected CAH's offer out of hand, and violated its statutory duties and obligations under N.C. Gen. Stat. §§ 131E-13 and 14-234.1. These unlawful acts were committed by the County in furtherance of its conspiracy with Kevin Austin and Hugh Chatham to replace CAH as Hospital operator with Hugh Chatham and to transfer CAH's ownership of the business and assets of the Hospital to Hugh Chatham without adequate compensation to CAH. In committing these and other unlawful acts, the County, Mr. Austin and Hugh Chatham failed to disclose to CAH that Kevin Austin was acting as a Member of Hugh Chatham's Board of Trustees. All other allegations of Paragraph 43 are denied.

44. It is admitted that Exhibit 3 is a copy of an email, the content of which speaks for itself, but the context of which has not been alleged by Plaintiff. Except as

specifically admitted herein, the allegations of this Paragraph 44 are denied.

45. Denied. The County failed to negotiate in good faith. The County failed to follow the RFP procedure required under North Carolina law. Instead, the County, Kevin Austin and Hugh Chatham conspired to replace CAH as Hospital operator with Hugh Chatham and to transfer CAH's ownership of the business and assets of the Hospital to Hugh Chatham without adequate compensation to CAH. In doing so, Mr. Austin failed to disclose to CAH his blatant conflict of interest in being both the Chairperson of the County's Board of Commissioners and a Member of Hugh Chatham's Board of Trustees.

46. Denied.

47. Denied.

48. It is admitted that on Friday, May 22, 2015, inspectors from the North Carolina Department of Health and Human Services ("DHHS") visited the Hospital for the stated purpose of carrying out an inspection. It is admitted that CAH advised the DHHS inspectors that the Hospital would close as soon as practicable, and likely by the next day, Saturday, May 23, 2015. Answering further, upon information and belief, HMC states that such visit was arranged by the County as a form of harassment and was done in furtherance of the conspiracy between the County, Kevin Austin and Hugh Chatham. Except as specifically admitted herein, the allegations of Paragraph 48 are denied.

49. HMC does not have information upon which to form a belief as to the truth or falsity of this allegation and the same is, therefore, denied.

50. Denied.

51. It is admitted that CAH mailed a notice to its employees concerning the closure of the Hospital and that Exhibit 4 is an example of such a notice. Except as specifically admitted herein, the allegations of Paragraph 51 are denied.

52. It is admitted that Plaintiff commenced an undefined civil action in Wake County against CAH at approximately 4:45 p.m. EDT on Friday, May 22, 2015. The remaining allegations of this paragraph are denied.

53. HMC admits that Plaintiff filed a civil action against CAH only and without giving HMC any real notice of what its claims were against CAH.

54. It is admitted that the Wake County Superior Court issued a TRO, *ex parte*, and based solely upon the representations made to the Court by Plaintiff, at 5:15 p.m. EDT on Friday, May 22, 2015, the contents of which speak for themselves. It is admitted that Plaintiff made no attempt to provide notice to CAH or its attorney, or to HMC or RCHA prior to the proceeding despite Plaintiff knowing Defendants' identities and contact information. It is admitted that HMC is not a party to the TRO. It is admitted that the TRO set a hearing on Plaintiff's Motion for Preliminary Injunction for Monday, June 1, 2015. It is admitted that a copy of the TRO is attached to the Amended Complaint as Exhibit 5. Except as admitted herein, the allegations of Paragraph 54 are denied.

55. It is admitted that Exhibit 6 is an e-mail sent to Mr. Davis. Except as admitted herein, the allegations of Paragraph 55 are denied.

56. It is admitted that Exhibit 7 is an e-mail sent from Mr. Davis. Except as admitted herein, the allegations of Paragraph 56 are denied.

57. Paragraph 57 contains legal conclusions to which no response is necessary.

To the extent that a response is required, HMC denies the allegations of Paragraph 57.

58. HMC is without information concerning Plaintiff's alleged efforts at hand-delivery upon CAH and, accordingly, all such allegations are denied. All remaining allegations are denied.

59. Denied.

60. Denied.

61. It is admitted that at the time the TRO was delivered to Mr. Davis there were no inpatients in the Hospital and there were only two persons in the Emergency Department receiving non-emergent and non-critical care. Except as admitted herein, the allegations of this Paragraph 61 are denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. HMC is without sufficient information to form a belief as to the truth of the allegations of Paragraph 67 and therefore denies all such allegations.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. HMC is without sufficient information to form a belief as to the truth of the allegations of Paragraph 74 and therefore denies all such allegations.

75. HMC is without sufficient information to form a belief as to the truth of the allegations of Paragraph 75 and therefore denies all such allegations..

76. Denied.

77. It is admitted that notices of the closure of the Hospital were placed in appropriate locations. Except as admitted herein, the allegations of Paragraph 77 are denied.

78. HMC admits that the Hospital closed on May 22, 2015. Except as admitted herein, the allegations of Paragraph 78 are denied.

79. Denied.

80. HMC is without sufficient information to form a belief as to the truth of the allegations of Paragraph 80 and therefore denies all such allegations..

81. It is admitted that CAH, after being told by Yadkin County sheriff's officers that CAH was being evicted from the Hospital premises, advised CAH personnel onsite that they should leave the Hospital and advised CAH personnel who were scheduled to work that they should not come to the Hospital. Except as admitted herein, the allegations of this Paragraph 81 are denied.

82. It is admitted that Linda Way sent a letter to DHHS, a copy of which is attached to the Amended Complaint as Exhibit 9. Except as admitted herein, the

allegations of this Paragraph 82 are denied.

83. Denied.

84. It is admitted that CAH obeyed the directives of the Yadkin County Sheriff's officers who told CAH that it was being evicted from the Hospital, that CAH locked the doors of the Hospital when its personnel obeyed the Sheriff, and that CAH advised DHHS of the Hospital's closure. Except as admitted herein, the allegations of this Paragraph 84 are denied.

85. It is admitted that CAH's press release is attached as Exhibit 10 to the Amended Complaint and that it is the best evidence of its content. Except as admitted herein, the allegations of Paragraph 85 are denied.

86. Denied.

87. It is admitted that the Hospital was closed prior to 6:00 p.m. on May 22, 2015. Except as admitted herein, the allegations of Paragraph 87 are denied.

88. It is admitted that CAH let the employees go upon closure of the Hospital. Except as admitted herein, the allegations of Paragraph 88 are denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. HMC does not have information with which to form a belief as to the truth

or falsity of the allegations of Paragraph 95 and the same are, therefore, denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. The content of the TRO speaks for itself and is the best evidence of its content. It is admitted that there was a hearing scheduled for June 1, 2015 on Plaintiff's Motion for Preliminary Injunction. Except as admitted herein, the allegations of Paragraph 107 are denied.

108. Admitted.

109. It is admitted that on Friday, May 29, 2015, CAH exercised the rights provided to it under the Federal Rules and the United States Code by filing its Notice of Removal to this Court and that upon such filing the Wake County Superior Court no longer had jurisdiction over this matter. It is admitted that CAH acted timely and fully within its right to remove the action to federal court despite the Plaintiff's strange

assertion to the contrary. HMC admits that it did not object to or oppose the removal. Except as admitted herein, the allegations of Paragraph 109 are denied.

110. Admitted.

111. Denied. HMC further states that CAH acted timely and fully within its right to remove the action to federal court despite the Plaintiff's strange assertion to the contrary.

112. CAH's removal documents speak for themselves and are the best evidence of their content. Except as admitted herein, the allegations of Paragraph 112 are denied.

113. Denied.

114. Denied.

CLAIM ONE: BREACH OF CONTRACT

115. HMC hereby incorporates by reference its responses to the correspondingly numbered paragraphs of the Amended Complaint.

116. Paragraph 116 states legal conclusions to which no response is required. To the extent that a response is required, HMC denies the allegations of Paragraph 116.

117. Paragraph 117 states legal conclusions to which no response is required. To the extent that a response is required, HMC denies the allegations of Paragraph 117.

118. Paragraph 118 states legal conclusions to which no response is required. To the extent that a response is required, HMC denies the allegations of Paragraph 118. Admitted.

119. Admitted.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied. As there has been no breach by any Defendant of the agreements, no cure is required.

129. Denied.

130. Denied.

131. Paragraph 131 states a legal conclusion which requires neither an admission nor a denial. To the extent an Answer is required, HMC denies the allegations.

CLAIM 2: BREACH OF IMPLIED CONTRACT

132. HMC incorporates by reference its responses to the correspondingly numbered paragraphs of Plaintiff's Amended Complaint.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

CLAIM 3: UNFAIR TRADE PRACTICE

141. HMC incorporates by reference its responses to the correspondingly numbered paragraphs of Plaintiff's Amended Complaint.

142. HMC states that the allegations set forth in Paragraph 142 are legal conclusions to which no response is required. To the extent that a response is required, HMC denies the allegations.

143. HMC states that the allegations set forth in Paragraph 143 are legal conclusions to which no response is required. To the extent that a response is required, HMC denies the allegations.

144. Denied.

145. Denied.

146. Denied.

147. Denied.

CLAIM 4: TORTIOUS INTERFERENCE WITH CONTRACT

148. HMC incorporates by reference its responses to the correspondingly numbered paragraphs of Plaintiff's Amended Complaint.

149. HMC states that the allegations set forth in Paragraph 149 are legal conclusions to which no response is required. To the extent that a response is required, HMC denies the allegations.

150. HMC admits that it was a party to a Guaranty Agreement with the Plaintiff,

which was discharged in bankruptcy. As to all other allegations of Paragraph 150, HMC states that they are legal conclusions to which no response is required. To the extent that a response is required, HMC denies the allegations.

151. HMC admits that it was a party to a Guaranty Agreement with the Plaintiff, which was discharged in bankruptcy. As to all other allegations of Paragraph 151, HMC states that they are legal conclusions to which no response is required. To the extent that a response is required, HMC denies the allegations

152. Denied.

153. Denied.

154. Denied.

155. Denied.

156. Denied.

CLAIM 5: THIRD-PARTY BENEFICIARY BREACH OF CONTRACT

157. HMC incorporates by reference its responses to the correspondingly numbered paragraphs of Plaintiff's Amended Complaint.

158. HMC admits that it entered into a management agreement with RCHA and CAH by which RCHA agreed to provide professional, reliable and cost effective management and supervision of the Hospital. HMC denies all other allegations of Paragraph 158.

159. Denied.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

164. Denied.

SECOND DEFENSE

Plaintiff's Amended Complaint fails to state any claim for relief against HMC and Plaintiff's Amended Complaint should, therefore, be dismissed.

FIRST AFFIRMATIVE DEFENSE

Plaintiff was not entitled to injunctive relief since its contractual and other remedies at law are adequate.

SECOND AFFIRMATIVE DEFENSE

Plaintiff was and is not entitled to any injunctive relief which would require the Hospital to remain open or be re-opened, as such was and would be barred by law and contrary to public safety.

THIRD AFFIRMATIVE DEFENSE

Any and all obligations under the Sale Agreement (Exhibit 1 to the Amended Complaint) were discharged in the Chapter 11 bankruptcy proceedings of Defendants CAH and HMC.

FOURTH AFFIRMATIVE DEFENSE

Any damage to Plaintiff was due to and caused by the negligence and/or omissions of Plaintiff, which negligence and/or omissions were the proximate cause of the damage, if any, to Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

Defendant HMC cannot be liable for any of the acts or omissions alleged in Plaintiff's complaint because at all relevant times, it exercised due care in compliance with applicable law.

SIXTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff suffered any detriment, such detriment was caused or contributed to by Plaintiff's acts, omissions or negligence, and any award of damages is, therefore, barred.

SEVENTH AFFIRMATIVE DEFENSE

The damages alleged by Plaintiff, if any, were proximately caused by the negligence, conduct and liability of other persons or entities. HMC may be held liable only if and to the extent that its particular acts and omissions and not those of others may have caused Plaintiff to be damaged.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff is entitled only to those damages which it may prove are particular to Plaintiff and lacks standing to seek or obtain any award or amount which represents some non-specific damage or injury alleged to have been suffered by the citizens and residents of Yadkin County.

NINTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate its alleged damages.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and prayer for relief are barred, in whole or in part, by the

doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and prayer for relief are barred, in whole or in part, by the doctrine of laches.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims and prayer for relief are barred, in whole or in part, by waiver.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and prayer for relief are barred, in whole or in part, by the doctrine of estoppel.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and requests for relief are barred, in whole or in part, by the doctrine of assumption of risk.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the statute of frauds.

SIXTEENTH AFFIRMATIVE DEFENSE

HMC is entitled to setoff for amounts collected by Plaintiff related to these events, including amounts awarded as damages for civil contempt.

WHEREFORE, having answered the Amended Complaint and asserted defenses, HMC prays the court that:

1. Plaintiff have and recover nothing of HMC and that Plaintiff's action be dismissed with prejudice;
2. HMC have and recover of Plaintiff their expenses and attorney's fees

pursuant to Chapter 75 of the North Carolina General Statutes;

3. Plaintiff be taxed with all costs of this action; and
4. For such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED.

This the 25th day of November, 2015.

HAGAN BARRETT & LANGLEY PLLC

/s/ J. Alexander S. Barrett

J. Alexander S. Barrett

N.C. State Bar No. 12859

300 N. Greene Street, Suite 200

Greensboro, NC 27401

Telephone: (336) 232-0650

Facsimile: (336) 232-0651

Email: abarrett@haganbarrett.com

SHOOK, HARDY & BACON L.L.P.

By: /s/ Russell J. Shankland

Russell J. Shankland, Mo. Bar #63238,

pro hac vice

2555 Grand Blvd.

Kansas City, MO 64108-2613

Telephone: (816) 474-6550

Facsimile: (816) 421-5547

rshankland@shb.com

Attorneys for Defendant HMC/CAH
Consolidated, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **ANSWER OF DEFENDANT HMC/CAH CONSOLIDATED, INC.** 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 25th day of November, 2015.

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