

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JERSEY SHORE HOSPITAL,		
	Plaintiff	:
vs.		:
		:
		:
FRANK L. CONLY, M.D.		:
	Defendant	:

**OPINION AND ORDER**

This matter comes before the Court on Jersey Shore Hospital’s Motion for Partial Judgment on the Pleadings. Jersey Shore Hospital (JSH) seeks a judgment in its favor based on the pleadings in the amount of \$178,278.44 plus pre-judgment interest for breach of a contract for business professional support services for Dr. Conly’s medical practice. For the following reasons, the motion is denied.

**I. Procedural History**

On April 11, 2014, Jersey Shore Hospital (JSH) filed a complaint for breach of contract and, in the alternative, for unjust enrichment against Defendant, Frank L. Conly, M.D. Dr. Conly filed his answer with new matter and counterclaim on April 28, 2014. JSH filed an Answer with New matter on May 19, 2014. Dr. Conly filed a reply to JSH’s new matter on June 5, 2014. There are no other pleadings. This matter is on the Court’s January 2016 trial term with a pre-trial scheduled in December, 2015. Jersey Shore Hospital filed the instant motion for partial judgment on the pleadings.

**II. Findings of Fact**

JSH and Dr. Conly entered into a Physician Services Agreement (Agreement) dated March 1, 2000. See, Complaint, Exhibit A.<sup>1</sup> After March 2003, the Agreement automatically

---

<sup>1</sup> Dr. Conly does not admit that JSH was to provide the services under the agreement; rather he contends that Jersey Shore Healthcare Inc. was to provide the services under the contract. However, since Dr. Conly’s Answer can fairly be read to admit that the agreement at issue was attached to the Complaint, and the Agreement provides in the very

renewed for one year periods, unless notice of intent to terminate was provided. Pursuant to the agreement, JSH agreed to provide professional support services for Dr. Conly's practice, including accounting, billing and administrative services, as set forth in Schedule A of the Agreement. Dr. Conly agreed to pay for such services as set forth in Schedule B and Schedule C of the Agreement.

The pertinent parts of the agreement are as follows. (emphasis by the Court)

3. SERVICE FEES. The [Dr. Conly] agrees to pay the Service Fees to [JSH]. Such Service Fees shall be invoiced in accordance with the compensation arrangements pursuant to Schedule C. The parties may amend Schedule C from time to time upon mutual written consent of the parties.
4. EXPENSES. Physician is responsible for expenses generally incurred for the benefit of the Physician and as designated by Physician in advance as routine expenses. Extraordinary expenses shall not be paid until Physician approval is obtained. However, certain [JSH] services may require that the [JSH] be reimbursed for such expenses, including, but not limited to, travel, meals, report preparation, etc. Such expenses shall be identified in Schedule A. The [JSH] shall invoice the Physician monthly for such expenses. The Physician agrees to pay the [JSH] such expenses in accordance with the terms of Schedule C.

\*\*\*

8. BREACH. In the event of a breach of any obligation or covenant under this Agreement, other than the obligation to pay money, the non-breaching party may give the breaching party written notice of the specifics of the breach, and the breaching party shall have 60 business days from receipt of written notification of alleged breach (the "Cure Period") in which to cure the breach. Only if the breach is not cured within said Cure Period shall the non-breaching party be entitled to pursue any and all remedies it may have by reason of the breach, including a termination of this Agreement and suit for monetary damages. A waiver of any breach of this Agreement shall not constitute a waiver of any future breaches of this Agreement, whether of a similar or dissimilar nature.
9. TERMINATION.

\*\*\*

---

first sentence that it is made by and between Frank L. Conly, M.D. and Jersey Shore Hospital, the Court concludes that the Agreement is between them. For ease of reference, the Court will refer to JSH where Dr. Conly refers to Jersey Shore Healthcare, Inc. for purposes of this opinion.

(b) Termination by [JSH]. JSH may terminate this Agreement without breach as follows:

- i. ...
- ii. **In the event of a material breach** of this Agreement by Physician which is not cured within the Cure Period set forth in Section 8, "Breach," or in the event of a breach as to which no Cure Period is provided by this Agreement, **the [JSH] may terminate this Agreement upon no less than 30 days' notice;** provided that notice of termination must be given no later than 30 days after the expiration of the Cure Period if one is applicable. This remedy shall be in addition to any other remedy available at law or in equity. **Failure to terminate this Agreement shall not waive any breach of this Agreement.**

Schedule A of the Agreement lists the types of services covered by the management fee.

Schedule B of the Agreement lists the estimated expenses. Schedule C provides the following with respect to fees.

A. Fee Schedule

Human Resource Services

Annual salary and benefits cost of all employees supplied by Hospital and working in the practice for Physician (Salary) plus the amount equal to 6% times the Salary. The forgoing shall be paid in twelve (12) equal monthly installments and paid in advance on the first day of each month.

Billing Services

Estimated annual costs as per Schedule B plus the amount equal to 8% times estimated annual costs. The foregoing shall be paid in twelve (12) equal monthly installments and paid in advance on the first day of each month. Annual costs are anticipated to decrease after the first year start up costs.

- B. Payment for these services **will be made monthly during the term of this agreement.** For any partial month, payment will be made on a pro-rated basis calculated on the number of days in the month. **Any adjustments necessary due to part-time hours, etc. will be adjusted on the following months invoice.** Additional expenses will be invoiced on a monthly basis.

Dr. Conly generally denies that JSH provided all services required under the Agreement. See Answer, ¶13. Dr. Conly paid JSH for all of the services until November 2009. The amounts paid during that period were the amounts listed as "estimated expenses." As to Dr. Conly's

obligation to pay for professional services rendered pursuant to the Agreement, Dr. Conly specifically admits only the following.

The “Administrative Support Expenses” set forth in the ...Agreement were “estimated costs,” which were to be billed to Dr. Conly in the form of *actual* costs incurred plus eight percent (8%) of the actual costs incurred. Instead, [JSH] invoiced and continued to bill Dr. Conly based on estimated costs, including the full-time salary of a billing clerk working at least forty (40) hours per week, even when Dr. Conly was only seeing patients as little as one day per week. Strict proof of the *actual* Administrative Support Expenses are demanded at trial. See, Answer, ¶ 8, passim.

Dr. Conly admits that he paid the Human Resources Expense invoices that were forwarded to him through December 31, 2013. Dr. Conly believes “those invoices included charges that were more than actual expenses incurred to the extent the amounts invoiced were based on estimated costs.” Answer, ¶ 18. JSH claims unpaid invoices for the Human Resources Expenses from January 2014 through April 2014 in the amount of \$12,582.26. Dr. Conly has not paid for administrative support services since December 2009 and has not paid for human resource services since December 31, 2013.

The pleadings indicate the following as to termination of the Agreement. By letter dated November 1, 2013, JSH notified Dr. Conly that he failed to pay “services fees in the amount of \$161,588.72 in violation of section 3 of the agreement.” JSH also warned that a failure to cure within 30 days would result in termination pursuant 9(b)(ii) of agreement. Dr. Conly was advised by letter dated November 13, 2013 that the Agreement had been terminated effective in 30 days. On January 21, 2014, JSH notified Dr. Conly that they were terminating the agreement effective in 90 days.

### **III. Discussion**

Pursuant to Pa. R.C.P. 1034, “[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.”

A motion for judgment on the pleadings may be entered by this Court “when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law,” similar to a demurrer. Mellon Bank, N.A., v. Nat’l Union Inc., 768 A.2d 865, 868 (Pa. Super. 2001) (citations omitted). In making this determination, the Court “must accept as true all well-pleaded statements of fact of the party against whom the motion is granted and consider against him only those facts that he specifically admits.” Jones v. Travelers Ins. Co., 356 Pa. Super. 213, 217, 514 A.2d 576, 578 (1986)(citations omitted). “The parties cannot be deemed to admit either conclusions of law or unjustified inferences.” Id. (citations omitted). The Court “should confine itself to the pleadings themselves and any documents or exhibits properly attached to them.” Jones, supra, at 217, 578 A.2d at 578; Gallo v. J.C. Penney Casualty Ins. Co., 328 Pa. Super. 267, 270, 476 A.2d 1322, 1324 (1984). The case must be “so free from doubt that the trial would clearly be a fruitless exercise.” Gallo v. J.C. Penney Casualty Insurance Co., 328 Pa. Super. 267, 476 A.2d 1322 (1984)(citations omitted).

The Court concludes that it cannot issue judgment based upon the pleadings alone. Plaintiff seeks to rely on admissions based upon Defendant’s failure to specifically deny certain facts. However, the facts must be specifically admitted by the non-moving party to be relied upon by the Court in granting a motion for judgment on the pleadings. See, Jones, supra, 578 A.2d at 578, and the cases cited therein. Dr. Conly’s Answer does not specifically admit many facts.

Based upon the pleadings alone, the Court cannot make necessary factual findings and cannot make legal conclusions as to whether course of conduct is pertinent. For example, Dr. Conly does not specifically admit that the professional services were provided as required under the Agreement. It is unclear from the pleadings when Dr. Conly substantially reduced his hours

or started seeing patients only one day per week. It is unclear whether the billing clerk worked full time for Dr. Conly for the entire term of the contract. It is unclear when the Agreement and obligation to pay was effectively terminated. The Court notes that, in the absence of a course of conduct to the contrary, the Agreement suggests that there is no cure period for the failure to pay, but yet one was provided. The Court also notes that the pleadings fail to specify what the administrative support services were; the parties refer to administrative support services and the contract refers to billing services. Lastly, it is unclear whether and to what extent Dr. Conly received invoices as to the professional services rendered.

Accordingly, the Court enters the following Order.

**ORDER**

AND NOW, this 12<sup>th</sup> day of **October, 2015**, for the foregoing reasons, Plaintiffs' Motion for Judgment on the Pleadings is DENIED.

BY THE COURT,

October 12, 2015  
Date

\_\_\_\_\_  
Richard A. Gray, J.

cc: Kevin J. Hayes, Esq. for Plaintiff  
METTE, EVANS & WOODSIDE, 3401 N. Front Street, P.O. Box 5950  
Harrisburg, PA 17110  
Robert Englert, Esq. & Andrew F. Parker, Esq. for Defendant  
RFE LAW FIRM, LLC, 105 Rutgers Avenue, PO Box 249, Swarthmore, PA 19081