

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WOJCIECH CYGAN, et al.)	
)	
)	
Plaintiffs,)	
)	No. 04 C 4168
v.)	
)	Judge Gottschall
RESURRECTION MEDICAL CENTER, et al.)	
)	
)	
Defendants.)	

ORDER

Plaintiffs are suing Resurrection Medical Center and Resurrection Health Care (“Resurrection”). On March 17, 2005, the court granted plaintiffs’ motion to voluntarily dismiss their pendant state claims, and counts 2, 3, 5, and 7 of plaintiffs’ complaint were dismissed. On March 16, 2005 plaintiffs had also voluntarily dismissed the American Hospital Association (“AHA”) as a defendant in this case, along with counts 8 and 9 which were directed at the AHA.¹ These voluntary dismissals leave counts 1, 4, 6 and 10 subject to Resurrection’s motion to dismiss under Fed. R. Civ. P. 12(b)(6).

Plaintiffs’ primary theories are identical to those discussed and rejected by this court in

¹ Plaintiffs’ current complaint (the “Second Amended Class Action Complaint”) was filed almost seven months after the court granted plaintiffs’ request for leave to file it (on September 30, 2004.) The second amended complaint is not materially different from plaintiffs’ prior complaint, which is the subject of Resurrection’s September 15, 2004 motion to dismiss, and the court thus considers Resurrection’s September 15, 2004 motion against the second amended complaint. The court also notes that the second amended complaint still names the AHA as a defendant and includes counts 2, 3, 5, 7, 8, and 9 which were previously voluntarily dismissed by plaintiffs. These counts are stricken, as are all allegations against the AHA. Fed. R. Civ. P. 12(f).

Watts v. Advocate Health Care Network, No. 04 C 4062, 2005 U.S. Dist. LEXIS 7418 (N.D. Ill. March 30, 2005) (Gottschall, J.) As in *Watts* (which was brought by the same counsel as this case), plaintiffs' main federal claims rest on their assertions that: (i) 26 U.S.C. § 501(c)(3) creates an "express and/or implied" contract between Resurrection (the tax-exempt institution) and the government of which members of the public are third-party beneficiaries; and/or (ii) there is a private right of action for members of the public to enforce an entity's obligations entitling it to tax-exempt status under § 501(c)(3). For the reasons discussed in *Watts*, the court holds (again) that there is no express or implied contract created by § 501(c)(3), nor is there a private right of action to enforce § 501(c)(3). Thus, Plaintiffs' count 1 ("Third Party Breach of Contract") is dismissed.

Plaintiffs' claim under the Emergency Medical Treatment and Active Labor Act ("EMTALA," 42 U.S.C. § 1395dd) also fails. As in *Watts*, the harms alleged by each of the named plaintiffs are exclusively related to Resurrection's billing and collection practices, precluding plaintiffs from recovery under EMTALA. *Watts*, 2005 U.S. Dist. LEXIS 7418, at *11 ("Plaintiffs' attempt to read EMTALA as a statute which regulates a hospital's payment practices must fail; there is nothing in the text of the statute which suggests that that is its purpose or reach.") For this reason, plaintiffs' count 6 ("Violations of the Emergency Medical Treatment and Active Labor Act") is dismissed.

A theory here that was not discussed in *Watts* is plaintiffs' assertion in count 4 that "[b]y accepting federal, state and local tax exemptions under 26 U.S.C. § 501(c)(3) and 35 ILCS 200 15-65 [*sic*], Resurrection created and entered into a public charitable trust to provide mutually affordable medical care to its uninsured patients." Plaintiffs point out that trusts are governed by

state law, and thus count 4 purports only to state a claim under state law. *George F. Harding Museum v. U.S.*, 674 F. Supp. 1323, 1329 (N.D. Ill. 1987) (“Federal law recognizes that the primary responsibility for policing charitable trusts lies with the states.”) (citations omitted). Plaintiffs offer no argument to show how count 4 states a federal claim, or, for that matter, any argument at all in support of count 4. *O’Hara v. Illinois Dep’t of Mental Health*, 120 F. Supp. 2d 704, 708 (N.D. Ill. 2004) (“unargued claims are treated as waived”), citing *United States v. Payne*, 102 F.3d 289, 293 (7th Cir. 1996).

Count 10 (“Injunctive/Declaratory Relief”), requesting injunctive and/or declaratory relief, depends entirely on the viability of plaintiffs’ other counts to survive. Those counts are dismissed and as a result, count 10 is also dismissed.

For the reasons discussed herein, all counts of plaintiffs’ second amended complaint have been dismissed. This case is terminated.

ENTER:

/s/
Joan B. Gottschall
United States District Judge

Dated: July 27, 2005