

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KEUMSOON HONG, M.D.

V.

C.A. NO. 06-1913

CHESTNUT HILL HOSPITAL, ET AL.

MEMORANDUM OPINION AND ORDER

GOLDEN, J.

NOVEMBER 1, 2006

This action was originally commenced by Plaintiff in the Court of Common Pleas of Philadelphia County, then removed by Defendants to this Court. The gravamen of the Complaint is that the Defendants suspended and then revoked Plaintiff's medical staff appointment and clinical privileges at Chestnut Hill Hospital. The Complaint asserts a number of state law causes of action against the Defendants, including breach of contract, intentional infliction of emotional distress, slander and interference with contractual relations. However, the Complaint also asserts a cause of action arising under federal law, namely that by revoking Plaintiff's medical staff appointment and clinical privileges at Chestnut Hill Hospital, Defendants intentionally discriminated against the Plaintiff on the basis of her race and national origin (Asian/Korean) and denied her the right to make and enforce contracts as is enjoyed by similarly situated physicians at Chestnut Hill Hospital who are not Asian/Korean, all in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981. The sole basis for removing the action to this Court is the federal cause of action under 42 U.S.C. 1981.

All of the Defendants have filed motions to dismiss the Complaint for failure to state a cause of action. However, the Court is not convinced that Plaintiff can prove a claim

against the Defendants under the federal cause of action, 42 U.S.C. § 1981, the only cause of action which provides this Court with jurisdiction. Although Plaintiff's general averments in paragraphs 66 through 74 of the Complaint are adequate enough to survive the Defendants' motion to dismiss the § 1981 claim for failure to state a claim, the Court is not convinced the claim could survive a motion for summary judgment. Therefore, the Court will deny the motions to dismiss at this time and allow the parties 45 days to engage in a period of limited discovery solely on the narrow issue of whether Plaintiff can prove a claim against the Defendants under 42 U.S.C. § 1981. If Plaintiff can convince the Court, through discovery, that she has a viable claim under 42 U.S.C. 1981, the Court will direct the parties to complete discovery on the remaining issues in the case. If, however, the Court decides that plaintiff does not have a viable claim under 42 U.S.C. § 1981, the Court will remand this matter to the Court of Common Pleas of Philadelphia County.

An appropriate Order follows.

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ORDER

AND NOW, this 1st day of November, 2006, upon careful consideration of the Defendants' motions to dismiss and all replies thereto, it is hereby ORDERED that:

The motion of the Defendant Community Health Systems, Inc. to dismiss [Doc. #3] is DENIED with leave to renew after discovery is completed

The motion of the Defendant Chestnut Hill Hospital to dismiss [Doc. #5] is DENIED with leave to renew after discovery is completed.

The motion of the Defendants Linda Dunn, Robert Gillesby, Chestnut Hill Hospital, Chestnut Hill Healthcare to dismiss [Doc. #6] is DENIED with leave to renew after discovery is completed.

The second motion of the Defendants Linda Dunn, et al to dismiss [Doc. #8] is DENIED with leave to renew after discovery is completed.

The parties are DIRECTED to complete discovery within 45 days of the date of this Order solely on the narrow issue of whether Plaintiff has a viable claim under 42 U.S.C. § 1981. No later than 14 days after completion of this limited discovery, the parties may file appropriate documents with the Court.

BY THE COURT:

THOMAS M. GOLDEN, J.