

13-3426-cv

Bhanusali v. Orange Reg'l Medical Ctr.

1  
2 **UNITED STATES COURT OF APPEALS**  
3 **FOR THE SECOND CIRCUIT**

4  
5 **SUMMARY ORDER**

6  
7 **RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL**  
8 **EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER**  
9 **JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE**  
10 **OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE**  
11 **32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED**  
12 **WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL**  
13 **APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION**  
14 **"SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST**  
15 **SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**  
16

17 At a stated term of the United States Court of Appeals for the Second  
18 Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley  
19 Square, in the City of New York, on the 16<sup>th</sup> day of July, two thousand fourteen.  
20

21 **PRESENT: GUIDO CALABRESI,**  
22 **GERARD E. LYNCH,**  
23 **RAYMOND J. LOHIER, JR.,**  
24 *Circuit Judges.*

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26 **GOVINDLAL K. BHANUSALI, M.D.,**  
27 **GOVINDLAL K. BHANUSALI, M.D., PC,**

28  
29 *Plaintiffs-Appellants,*

30  
31 v.

No. 13-3426-cv

32  
33 **ORANGE REGIONAL MEDICAL CENTER,**  
34 **domestic nonprofit organization, CRYSTAL RUN**  
35 **HEALTHCARE LLP, BOARD OF DIRECTORS**  
36 **OF THE ORANGE REGIONAL MEDICAL**  
37 **CENTER, HAL D. TEITELBAUM, M.D.,**  
38 **individually and as Chief Executive Officer of**  
39 **Crystal Run Health Care, SCOTT BATULIS,**  
40 **individually and as President and Chief**  
41 **Executive Officer of Orange Regional Medical**

Center, GREGORY SPENCER, M.D., individually and as Chairman of Staff and as Chairman of the Medical Executive Committee at Orange Regional Medical Center, GERARD J. GALARNEAU, M.D., individually and as Chief of Staff at Orange Regional Medical Center, JAMES E. OXLEY, D.O., individually and as Vice President Medical Affairs/Medical Director of Orange Regional Medical Center, KEVIN TRAPP, M.D., individually and as the Department Chair of Orthopedics at Orange Regional Medical Center, CHRISTOPHER INZERILLO, M.D., individually and as the Vice Chair of the Orthopedics Department at ORMC, LOU HEIMBACH aka Lou Heimbach, M.D.,

*Defendants-Appellees.\**

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FOR APPELLANTS: Seth Marcus, Leffler Marcus & McCaffrey LLC,  
New York, NY.

FOR APPELLEES: Douglas P. Catalano, Neil G. Sparber, and  
Samantha E. Beltre, Fulbright & Jaworski LLP,  
New York, NY, *for* Orange Regional Medical  
Center, Board of Directors of the Orange Regional  
Medical Center, Lou Heimbach, Scott Batulis,  
Gerard J. Galarneau, M.D., and James E. Oxley,  
D.O.

Michelle E. Phillips and Michael L. Abitabilo,  
Jackson Lewis P.C., White Plains, NY, *for* Crystal  
Run Healthcare LLP, Hal D. Teitelbaum, M.D.,  
Christopher Inzerillo, M.D., Gregory Spencer,  
M.D., and Kevin Trapp, M.D.

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\* The Clerk of the Court is directed to amend the caption of this case as set forth above.

1 FOR AMICI CURIAE Andrew J. Schlafly, Esq., Far Hills, NJ.  
2 ASSOCIATION OF  
3 AMERICAN  
4 PHYSICIANS AND  
5 AMERICAN  
6 ASSOCIATION OF  
7 PHYSICIANS OF  
8 INDIAN ORIGIN:

9 Appeal from a judgment of the United States District Court for the  
10 Southern District of New York (Cathy Seibel, *Judge*).

11 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,  
12 AND DECREED that the judgment of the District Court is AFFIRMED in part  
13 and VACATED and REMANDED in part.

14 Plaintiffs-appellants Govindlal K. Bhanusali, an Asian Indian-American  
15 orthopedic surgeon, and Govindlal K. Bhanusali, M.D., P.C. (collectively,  
16 “Bhanusali”) allege that Orange Regional Medical Center, Crystal Run Health  
17 Care LLP, and various individual doctors affiliated with those entities  
18 (collectively, “defendants”) conspired in a “sham peer review” to deny Bhanusali  
19 promotion, advancement opportunities, medical privileges, and clinical  
20 contracts. On appeal Bhanusali argues that the District Court erred in granting  
21 defendants’ motion to dismiss his antitrust and employment discrimination  
22 claims. We assume the parties’ familiarity with the facts and record of the prior  
23 proceedings, to which we refer only as necessary to explain our decision to  
24 affirm in part and vacate and remand in part.

25 Bhanusali first argues that he adequately pled an “antitrust injury” as  
26 required to establish antitrust standing. Assuming arguendo without deciding  
27 that Bhanusali has antitrust standing under § 1 of the Sherman Act, we agree  
28 with the District Court’s determination that his allegations of harm to the  
29 marketplace and the existence of defendants’ conspiracy to engage in an

1 “unlawful group boycott” are conclusory and implausible.

2 However, the District Court did err in dismissing Bhanusali’s claims of  
3 discrimination at the motion to dismiss stage. Bhanusali alleged that he received  
4 peer reviews or was disciplined for surgeries that resulted in neither patient  
5 complaints nor negative patient outcomes. In comparison, he alleged that  
6 younger, white physicians at the same medical facility who engaged in conduct  
7 that caused significantly worse outcomes for patients, including death, avoided  
8 any peer review or discipline. On a motion to dismiss, drawing all reasonable  
9 inferences in Bhanusali’s favor, we conclude that these allegations suffice to  
10 plausibly support an inference of discrimination.

11 We have considered Bhanusali’s remaining arguments and conclude that  
12 they are without merit. For the foregoing reasons, the judgment of the District  
13 Court is AFFIRMED in part and VACATED and REMANDED in part.

14  
15 FOR THE COURT:

16 Catherine O’Hagan Wolfe, Clerk of Court  
17  
18  
19

The block contains a handwritten signature, "Catherine O'Hagan Wolfe", in black ink. Overlaid on the signature is the official seal of the United States Second Circuit Court of Appeals. The seal is circular with a blue outer ring containing the text "UNITED STATES" at the top and "COURT OF APPEALS" at the bottom. The center of the seal is white with the words "SECOND CIRCUIT" in blue.