

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 09, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EMPIRE HEALTH FOUNDATION, a
Washington nonprofit corporation,

Plaintiff,

v.

CHS/COMMUNITY HEALTH
SYSTEMS INC., a Delaware
corporation; SPOKANE
WASHINGTON HOSPITAL
COMPANY LLC, a Delaware limited
liability company; and SPOKANE
VALLEY WASHINGTON HOSPITAL
COMPANY LLC, a Delaware limited
liability company,

Defendants.

No. 2:17-cv-00209-SMJ

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
BREACH OF CONTRACT AND
VIOLATION OF CHARITY CARE
ACT**

Plaintiff Empire Health Foundation sues Defendants CHS/Community Health Systems Inc., Spokane Washington Hospital Company LLC, and Spokane Valley Washington Hospital Company LLC (collectively "CHS") for breach of contract, alleging it failed to fulfill the charity care commitments it made in its 2008 acquisition of two Spokane area hospitals. ECF No. 1. Before the Court is the Foundation's Motion for Partial Summary Judgment on Breach of Contract and

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON BREACH OF CONTRACT AND VIOLATION OF CHARITY
CARE ACT - 1

1 Violation of Charity Care Act, ECF Nos. 93 & 94. The Foundation seeks partial
2 summary judgment that CHS, by asking self-paying patients to pay deposits before
3 screening them for charity care eligibility, both (1) breached the parties' contract,
4 including two state agency certificates enforceable under it; and (2) violated the
5 Charity Care Act, Revised Code of Washington ("RCW") section 70.170.060(6)
6 (2006), including its implementing regulation, Washington Administrative Code
7 ("WAC") section 246-453-020(1) (2007)—conduct that was unreasonable *per se*.
8 *Id.* CHS opposes the motion, arguing it raises disputed facts and is unnecessary
9 ahead of the scheduled bench trial. ECF Nos. 123 & 126. After reviewing the record
10 and relevant legal authorities, the Court grants the motion because no genuine
11 dispute exists as to any material fact and, as a matter of law, the Foundation is
12 entitled to the narrow ruling it seeks.

13 BACKGROUND

14 In 2007, Empire Health Services and CHS entered an Asset Purchase
15 Agreement under which Empire Health Services sold Deaconess Medical Center and
16 Valley Hospital and Medical Center to CHS. ECF No. 14-1. The Foundation is a
17 nonprofit community health foundation formed from the proceeds of the sale. ECF
18 No. 1 at 1. The Foundation received all of Empire Health Services' rights and
19 obligations when it dissolved following the sale. *Id.*

20 Section 10.14 of the contract concerns "Indigent Care Policies." ECF No. 95-

1 at 3–4. Section 10.14 provides,

2 As of the Closing Date, Buyers shall adopt the indigent care policies of
3 CHS attached as Exhibit D hereto, including the relevant provisions of
4 the billing and collections policy with respect to the indigent, which are
5 at least as favorable to the indigent and uninsured as Seller’s indigent
6 care policy, including the relevant provisions of the billing and
7 collections policy with respect to the indigent, for the Hospitals as
8 Buyers’ indigent care policy. No patient will be turned away because
9 of age, race, gender or inability to pay. Buyers shall use best efforts to
10 cause the Hospitals to continue to provide services to patients covered
11 by the Medicare and Medicaid programs and those unable to pay for
12 emergent or medically necessary care at levels similar to the historic
13 levels of indigent care previously provided by the Hospitals. For a
14 period of at least ten (10) years following the Closing Date, Buyers will
15 provide the Board of Trustees with an annual report of their compliance
16 with this Section 10.14. Buyers will also continue to provide care
17 through community-based health programs, including cooperation with
18 local organizations that sponsor healthcare initiatives to address
19 identified community needs and improve the health status of the
20 elderly, poor, and at-risk populations in the community. This covenant
shall be subject in all respects to changes in legal requirements or
governmental guidelines or policies (such as implementation of
universal healthcare coverage).

Id.

Exhibit D, which section 10.14 cross-references, provides, “[i]n order to serve
the health care needs of our community, and in accordance with RCW 70.170 and
WAC 246-453, [each hospital] will provide ‘Charity Care’ to patients or the
‘Responsible Party’ without financial means to pay for ‘Appropriate hospital-based
medical services.’” ECF No. 95-2 at 3, 16. Exhibit D mandates that “[e]ligibility
determinations regarding Charity Care and decisions regarding collection of

1 amounts owed to [each] Hospital by Responsible Parties shall be made in accordance
2 with this Policy and the Procedures contained in this Policy.” *Id.* at 4, 17.

3 Exhibit D then establishes the following procedures:

4 [Each] Hospital shall make an initial determination of Charity Care
5 eligibility at the time of admission or as soon as possible following the
6 initiation of services to the patient. [Each] Hospital will suspend all
7 collection efforts (other than third party payors) and will not require any
8 deposit pending an initial determination of Charity Care eligibility or
9 pending a final determination of Charity Care eligibility in the event that
10 the initial determination of sponsorship status indicates that the
11 Responsible Party may meet the criteria for classification as an Indigent
12 Person.

13 *Id.* at 6, 19. Exhibit D’s requirement that the hospitals “suspend all collection efforts”
14 and “not require any deposit pending an initial determination of Charity Care
15 eligibility” tracks applicable statutory and regulatory law.¹

16 ¹ Compare ECF No. 95-2 at 6, 19, with RCW 70.170.060(6) (2006) (“Each hospital
17 shall make every reasonable effort to determine the existence or nonexistence of
18 private or public sponsorship which might cover in full or part the charges for care
19 rendered by the hospital to a patient; the family income of the patient as classified
20 under federal poverty income guidelines; and the eligibility of the patient for charity
care as defined in this chapter and in accordance with hospital policy. An initial
determination of sponsorship status shall precede collection efforts directed at the
patient.”), and WAC 246-453-020(1) (2007) (“The initiation of collection efforts
directed at the responsible party shall be precluded pending an initial determination
of sponsorship status, provided that the responsible party is cooperative with the
hospital’s efforts to reach an initial determination of sponsorship status; (a)
Collection efforts shall include any demand for payment or transmission of account
documents or information which is not clearly identified as being intended solely
for the purpose of transmitting information to the responsible party; (b) The initial
determination of sponsorship status shall be completed at the time of admission or
as soon as possible following the initiation of services to the patient; (c) If the initial

1 Pursuant to the contract, CHS applied for Certificates of Need from the
2 Washington State Department of Health. ECF No. 95-8 at 2; ECF No. 95-9 at 2. The
3 Department granted CHS's applications "pending agreement to the following
4 conditions":

5 [Each hospital] will provide charity care in compliance with the charity
6 care policies provided in this Certificate of Need application, or any
7 subsequent policies reviewed and approved by the Department of
8 Health. [Each hospital] will use reasonable efforts to provide charity
9 care in an amount comparable to or exceeding the average amount of
10 charity care provided by hospitals in the Eastern Washington Region.
11 Currently, this amount is 3.35% of the adjusted revenue. [Each
12 hospital] will maintain records documenting the amount of charity care
13 it provides and demonstrating its compliance with its charity care
14 policies.

15 ECF No. 18-1 at 2–3; *accord id.* at 5. The Department elsewhere described this
16 condition as "requir[ing] CHS to increase the level of charity care to the regional
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determination of sponsorship status indicates that the responsible party may meet
the criteria for classification as an indigent person, as described in WAC 246-453-
040, collection efforts directed at the responsible party will be precluded pending a
final determination of that classification, provided that the responsible party is
cooperative with the hospital's reasonable efforts to reach a final determination of
sponsorship status;"), and WAC 246-453-010(19) (2007) ("Initial
determination of sponsorship status' means an indication, pending verification, that
the services provided by the hospital may or may not be covered by third party
sponsorship, or an indication from the responsible party, pending verification, that
he or she may meet the criteria for designation as an indigent person qualifying for
charity care"). *See also* WAC 246-453-020(6) (2007) ("Hospitals may not
require deposits from those responsible parties meeting the [indigency] criteria
identified within WAC 246-453-040 (1) or (2), as indicated through an initial
determination of sponsorship status.").

1 average.” ECF No. 63-7 at 41. CHS agreed to this condition. ECF No. 18-2 at 2, 4.
2 Then, in 2008, the Department issued the Certificates of Need and approved the
3 purchase of each hospital, subject to this condition. ECF No. 95-3 at 2; ECF No. 95-
4 4 at 2.

5 **LEGAL STANDARD**

6 A party may seek summary judgment on just a “part of [a] claim or defense.”
7 Fed. R. Civ. P. 56(a). “[P]artial summary judgment is merely a pretrial adjudication
8 that certain issues shall be deemed established for the trial of the case.” Fed. R. Civ.
9 P. 56 advisory committee’s note to 1946 amendment. While CHS argues the
10 Foundation’s motion for partial summary judgment is unnecessary, that is not the
11 governing legal standard. Instead, “[t]he court *shall* grant summary judgment if the
12 movant shows that there is no genuine dispute as to any material fact and the movant
13 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a) (emphasis added).

14 A party is entitled to summary judgment where the documentary evidence
15 produced by the parties permits only one conclusion. *Anderson v. Liberty Lobby,*
16 *Inc.*, 477 U.S. 242, 250 (1986). But the Court will deny summary judgment if the
17 record establishes a “genuine dispute as to any material fact.” Fed. R. Civ. P. 56(a).
18 “A material issue of fact is one that affects the outcome of the litigation and requires
19 a trial to resolve the parties’ differing versions of the truth.” *SEC v. Seaboard Corp.*,
20 677 F.2d 1301, 1306 (9th Cir. 1982).

1 The moving party has the initial burden of showing no reasonable trier of fact
2 could find other than for the moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317,
3 325 (1986). Once the moving party meets its burden, the nonmoving party must
4 point to specific facts establishing a genuine dispute of material fact for trial.
5 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986).

6 “[A] mere ‘scintilla’ of evidence will be insufficient to defeat a properly
7 supported motion for summary judgment; instead, the nonmoving party must
8 introduce some ‘significant probative evidence tending to support the complaint.’”
9 *Fazio v. City & County of San Francisco*, 125 F.3d 1328, 1331 (9th Cir. 1997)
10 (quoting *Anderson*, 477 U.S. at 249, 252). If the nonmoving party fails to make such
11 a showing for any of the elements essential to its case as to which it would have the
12 burden of proof at trial, the Court should grant the summary judgment motion.
13 *Celotex*, 477 U.S. at 322.

14 The Court must view the facts and draw inferences in the manner most
15 favorable to the nonmoving party. *Anderson*, 477 U.S. at 255; *Chaffin v. United*
16 *States*, 176 F.3d 1208, 1213 (9th Cir. 1999). And, the Court “must not grant
17 summary judgment based on [its] determination that one set of facts is more
18 believable than another.” *Nelson v. City of Davis*, 571 F.3d 924, 929 (9th Cir. 2009).

19 DISCUSSION

20 “A breach of contract is actionable only if the contract imposes a duty, the

1 duty is breached, and the breach proximately causes damage to the claimant.” *Nw.*
 2 *Indep. Forest Mfrs. v. Dep’t of Labor & Indus.*, 899 P.2d 6, 9 (Wash. Ct. App. 1995).
 3 The Court previously ruled the Certificates of Need are enforceable under the
 4 parties’ contract. But the Court left it to trial to determine whether CHS breached
 5 the Certificates of Need by failing to “use reasonable efforts to provide charity care
 6 in an amount comparable to or exceeding the average amount of charity care
 7 provided by hospitals in the Eastern Washington Region.” ECF No. 61-1 at 2; ECF
 8 No. 61-2 at 2. The Foundation seeks partial summary judgment on the illegality of
 9 CHS’s “upfront deposit practice” so the Court may “consider this adjudicative fact
 10 when it decides whether ‘reasonable efforts’ were undertaken.” ECF No. 94 at 6.

11 CHS does not dispute that it asked self-paying patients to pay deposits before
 12 screening them for charity care eligibility. *See* ECF No. 123 at 6–9; ECF No. 125 at
 13 2–6. Nor does it dispute that it had a contractual and legal duty to refrain from doing
 14 so.² Nevertheless, CHS argues that it did not breach or violate this duty because it

16 ² For purposes of this motion, CHS does not dispute that asking self-paying patients
 17 to pay deposits constituted “collection efforts,” which were prohibited before
 18 patients had been screened for charity care eligibility. *See* ECF No. 95-2 at 6, 19
 19 (“[Each] Hospital will suspend all collection efforts (other than third party payors)
 20 and will not require any deposit pending an initial determination of Charity Care
 eligibility”); RCW 70.170.060(6) (2006) (“An initial determination of
 sponsorship status shall precede collection efforts directed at the patient.”), and
 WAC 246-453-020(1) (2007) (“The initiation of collection efforts directed at the
 responsible party shall be precluded pending an initial determination of sponsorship

1 did not require self-paying patients to pay deposits as a condition to receiving
2 appropriate hospital-based medical services, did not actively collect these deposits,
3 used these requests for payment as a trigger for determining ability to pay, ceased
4 all collection efforts once it received information suggesting inability to pay, and
5 refunded all deposited money in the rare event charity care eligibility was established
6 after payment. Assuming, as the Court must, that CHS's factual assertions are true,
7 this does not excuse its illegal practice of *asking* self-paying patients to pay deposits
8 *before* screening them for charity care eligibility. CHS's general efforts to inform
9 self-paying patients of their rights, including the right to charity care, does not negate
10 the fact that it sought payment before screening.

11 CHS's upfront requests for deposits not only constituted a breach of contract
12 and a violation of statutory and regulatory law, it was also unreasonable *per se*. This
13 is but one factor the Court must consider in determining whether CHS used
14 "reasonable efforts" to provide charity care comparable to or exceeding the regional
15 average—an issue that remains to be determined at trial.³ ECF No. 61-1 at 2; ECF
16 No. 61-2 at 2.

17
18 status, provided that the responsible party is cooperative with the hospital's efforts
19 to reach an initial determination of sponsorship status").

20 ³ Much of CHS's arguments concern whether it ultimately met this "reasonable
efforts" standard. But the Court previously reserved that issue for trial and the
Foundation's motion does not ask the Court to decide that issue ahead of trial.

1 CHS asks the Court not to rule on the illegality of its upfront requests for
2 deposits because the issue is not squarely presented in this case and is currently
3 pending in another district. But the issue is within the scope of the Foundation's
4 complaint and is relevant to its breach of contract claim. *See* ECF No. 1 at 8–10. The
5 Court cannot simply decline to rule on the issue.

6 Viewing all evidence and drawing all reasonable inferences in the manner
7 most favorable to CHS, no reasonable trier of fact could find in its favor on its
8 upfront requests for deposits. On the contrary, a reasonable trier of fact could only
9 find that doing so before screening for charity care eligibility is illegal. Therefore,
10 the Foundation has met its initial burden in support of partial summary judgment.
11 By contrast, CHS has failed to point to specific facts establishing a genuine dispute
12 of material fact for trial on its upfront requests for deposits. CHS has failed to
13 introduce the significant probative evidence required to defeat summary partial
14 judgment. And, to the extent CHS has identified genuine factual disputes, they are
15 not material because they do not affect the illegality of its upfront requests for
16 deposits.

17 In sum, no genuine dispute exists as to any material fact and, as a matter of
18 law, the Foundation is entitled to the narrow ruling it seeks. Because the Court grants
19 the motion, it does not reach the parties' remaining arguments.

20 //

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff Empire Health Foundation's Motion for Partial Summary Judgment on Breach of Contract and Violation of Charity Care Act, **ECF Nos. 93 & 94, is GRANTED.**

2. The following shall be deemed established for trial:


A. At times between 2011 and 2017, Defendants CHS/Community Health Systems Inc., Spokane Washington Hospital Company LLC, and Spokane Valley Washington Hospital Company LLC asked self-paying patients at both Deaconess Medical Center and Valley Hospital and Medical Center to pay deposits before screening them for charity care eligibility.

B. The above conduct (1) breached the Asset Purchase Agreement, including the Certificates of Need enforceable under it; and (2) violated the Charity Care Act, Revised Code of Washington section 70.170.060(6) (2006), including its implementing regulation, Washington Administrative Code section 246-453-020(1) (2007).

C. Because the above conduct constituted a breach of contract and a violation of statutory and regulatory law, it was unreasonable *per se*.

1 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
2 provide copies to all counsel.

3 **DATED** this 9th day of July 2019.

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6 SALVADOR MENDOZA, JR.
7 United States District Judge
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