

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
COOKEVILLE DIVISION**

FRANCIS J. SAVARIRAYAN, M.D.,

Plaintiff,

v.

WHITE COUNTY COMMUNITY HOSPITAL,

et al.,

Defendants.

No. 2:07-00055  
JUDGE HAYNES

**ORDER**

Before the Court is the Defendants BlueCross BlueShield of Tennessee, Inc.'s and Daniel Barnett, M.D.'s (the "BlueCross Defendants") motion for summary judgment (Docket Entry No. 202) and the Defendants White County Community Hospital's, Community Health Systems, Inc.'s and Gary Newsome's (the "Hospital Defendants") motion for summary judgment (Docket Entry No. 195). To date, Plaintiff has not responded to either motion.

Plaintiff, Francis J. Savarirayan, M.D., entered into a Recruitment Agreement with Sparta Hospital Corporation, d/b/a White County Community Hospital ("WCCH") on or about October 31, 2002. After a period of disagreements, WCCH and the Plaintiff executed a "Settlement Agreement and Release of All Claims" (the "Settlement Agreement"), in which the Plaintiff released any and all claims, including future claims, against WCCH and its related entities arising out of the Recruitment Agreement. In consideration for this Settlement Agreement, WCCH released its right to pursue repayment of \$260,789.44 in salary paid to the Plaintiff.

Despite this Settlement Agreement, Plaintiff filed this action for breach of contract,

tortious interference with a business relationship, fraud, violations of the Tennessee Consumer Protection Act, violations of 42 U.S.C. § 1981, violations of the Racketeer Influenced Corrupt Organizations (RICO) Act, and violations of the Clayton Act. Plaintiff's claims are those that Plaintiff specifically released under the Settlement Agreement.

On February 10, 2009, this Court dismissed the Plaintiff's action with prejudice after concluding that (1) the Plaintiff's claims were barred by res judicata, (2) the Plaintiff failed to procedurally and substantively create a genuine issue of material fact, and (3) the Settlement Agreement precluded the Plaintiff from pursuing claims against the Hospital Defendants and BlueCross Defendants (Docket Entry No. 152).

The only remaining claims are the Defendants' counterclaims for Plaintiff's breach of the Settlement Agreement, damages associated with that breach, including their applicable legal fees, costs, and expenses. The Hospital Defendants moved for summary judgment of the Plaintiff's claims for which the Plaintiff was precluded from asserting under the express terms of the Settlement Agreement. The Court granted summary judgment in favor of the Hospital Defendants after concluding, in relevant part, that (1) the Plaintiff failed to procedurally and substantively create a genuine issue of material fact, and (2) the Settlement Agreement precluded the Plaintiff from pursuing claims against the Hospital Defendants. This ruling is dispositive of the Hospital Defendants' counterclaims and the Hospital Defendants are entitled to judgment as a matter of law.

The Settlement Agreement presents a contract claim governed by Tennessee law. Absent fraud, misrepresentation or duress, the Plaintiff's release is binding. Evans v. Tillet Bros. Const. Co., Inc., 545 S.W.2d 8, 11 (Tenn. Ct. App. 1976) (perm. app. denied) (quoting Akard v.

Standard Accident Co., 8 Tenn. C.C.A. 497, 506 (1918)).

As to the Hospital Defendants' counterclaims under Tenn. Code Ann. § 47-18-109(e)(2) and 42 U.S.C. § 1988, the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-109(e), authorizes the Court to require a plaintiff to indemnify a defendant for any damages incurred, including reasonable attorney's fees and costs, "upon finding that the action is frivolous, without legal or factual merit, or brought for the purpose of harassment." Under 42 U.S.C. § 1988, the Court may award a defendant reasonable attorney's fees as part of the costs if a plaintiff's action was frivolous, unreasonable, or without foundation. See also Hune v. Sterling, 79 F.3d 1148, 1996 WL 116828 at \*2 (6th Cir. 1996).

Given the Court's prior grant of summary judgment in favor of the Hospital Defendants, the Court concludes that Plaintiff's claims were frivolous, without foundation, and without legal or factual merit given that he had contractually agreed to release all such claims. Thus, the Hospital Defendants should be awarded their legal fees, costs, and expenses under 42 U.S.C. § 1988 and Tenn. Code Ann. § 47-18-109(e)(2).

As to the Hospital Defendants' counterclaims for Plaintiff's breach of the Settlement Agreement, damages associated with that breach, and damages associated with the Plaintiff's frivolous claims, given the Court's earlier ruling that the Plaintiff breached the Settlement Agreement, the Hospital Defendants are **AWARDED** to \$260,789.44 (plus prejudgment interest) for the stated consideration paid to the Plaintiff for his execution of the Settlement Agreement.

Based upon the affidavit of Brian Cummings, the Hospital Defendants are also **AWARDED** \$38,618.42 for the attorney's fees, costs, and expenses incurred as a result of defending the Plaintiff's frivolous claims and pursuing the Hospital Defendants' corresponding


counterclaims.

The BlueCross Defendants are also entitled to summary judgment on their counterclaims given the Court's ruling on the Defendants' prior motion for summary judgment. Similarly, these Defendants are also entitled to damages pursuant to Tenn. Code Ann. § 47-18-109(e)(2) and 42 U.S.C. § 1988 given that Plaintiff's claims against these Defendants were frivolous. The BlueCross Defendants have not submitted an affidavit regarding their attorney's fees and costs, and the Court will enter an award for those fees upon their submission of such an affidavit.

For the reasons stated above, Defendants BlueCross BlueShield of Tennessee, Inc.'s and Daniel Barnett, M.D.'s motion for summary judgment (Docket Entry No. 202) and the Defendants White County Community Hospital and the Defendants White County Community Hospital's, Community Health Systems, Inc.'s and Gary Newsome's motion for summary judgment (Docket Entry No. 195) are **GRANTED**. Defendant White County Community Hospital's motion for judgment on the pleadings (Docket Entry No. 189) is **DENIED as moot**. Defendant White County Community Hospital, Community Health Systems, Inc., and Gary Newsome are **AWARDED** \$299,407.86 for Plaintiff's breach of the Settlement Agreement, attorney's fees, costs and expenses incurred as a result of Plaintiff's filing this action. The award of attorney's fees for Defendants BlueCross BlueShield of Tennessee, Inc.'s and Daniel Barnett, M.D. is reserved.

It is so **ORDERED**.

**ENTERED** this the 11<sup>th</sup> day of February, 2010.

  
WILLIAM J. HAYNES, JR.  
United States District Judge