IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 01-32323

RICHARD RANDOLPH PEYTON

Debtor

DR. RICHARD PEYTON

Plaintiff and
Counter-Defendant

v. Adv. Proc. No. 01-3104

RADIOLOGY ASSOCIATES - BRISTOL, P.C.

Defendant and
Counter-Plaintiff

and

JOHN R. FINCHER, JR. and
GUY STEVEN BUCY

Intervenors and
Counter-Plaintiffs

MEMORANDUM ON MOTION FOR SUMMARY JUDGMENT

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

Plaintiff/Counter-Defendant Dr. Richard Peyton (Peyton), a radiation oncologist, formerly practiced medicine under an Employment Agreement with Defendant Radiology Associates-Bristol, P.C. (RAB). On June 28, 1989, Peyton filed a Complaint for Declaratory Judgment (Complaint) against RAB in the Circuit Court of Washington County, Tennessee. The Complaint asserts that the covenant not to compete contained within the Employment Agreement is unenforceable.

On December 4, 1989, a Cross-Claim and Complaint of Intervenor Third-Party Beneficiaries (Cross-Claim) was filed in the Washington County Circuit Court by RAB and Drs. John A. Fincher, Jr., and Guy Steven Bucy (collectively, the Counter-Plaintiffs). Fincher and Bucy also practiced radiation oncology with RAB. The Cross-Claim seeks damages for Peyton's alleged breach of the Employment Agreement.

On January 11, 1990, counsel for the parties conducted settlement negotiations outside the presence of their clients.[1] While no written agreement was signed, the Counter-Plaintiffs contend that a binding oral settlement was reached and announced to the Circuit Court that day. However, the parties were unsuccessful in subsequently reducing the purported settlement to a writing. The matter unexplainedly languished in the Circuit Court ever since.

[1] Although not present during the meeting, the parties agree that they were in separate rooms and were consulted during the negotiations.

Peyton then filed his Chapter 11 Petition on May 8, 2001. He later removed the Circuit Court litigation to this court pursuant to 28 U.S.C.A. § 1452 (West 1994) and FED. R. BANKR. P. 9027.[2]

Now before the court is the Plaintiff/Counter-Defendant's Motion for Summary Judgment filed on November 6, 2001. Peyton seeks summary judgment on the issue of whether the parties' controversy was in fact resolved by the purported January 11, 1990 settlement. He argues that it was not and seeks a trial to determine which party committed the first material breach of the Employment Agreement.

The parties have briefed their positions to the court. Also on file is the Affidavit of Richard R. Peyton, portions of depositions of the parties' prior attorneys, and the Defendants' Responses to Plaintiff's Statements of Undisputed Facts.

This is both a core proceeding under 28 U.S.C.A. § 157(b)(2)(O) (West 1993) and noncore proceeding. To the extent that the proceeding involves noncore issues, the parties have consented to the entry of final orders by this court.

[2] At a scheduling conference on September 20, 2001, the parties asked the court to resolve the issue of whether their January 11, 1990 negotiations produced a binding settlement prior to resolution of the Employment Agreement issues. Accordingly, pursuant to the Pretrial Order entered on November 15, 2001, the court bifurcated the issues and set a December 4, 2001 trial date to determine the settlement issue. The trial was continued to allow the court time to resolve the present summary judgment motion.

I

Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to this proceeding by FED. R. BANKR. P. 7056, directs that summary judgment shall be granted ?if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). In response to a summary judgment motion, the nonmoving party must produce specific facts showing that there is a genuine issue for trial. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356 (1986) (citing FED. R. CIV. P. 56(e)).

At this stage of the proceedings, ?[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2513 (1986). The facts, and all inferences to be drawn from them, must be viewed in the light most favorable to the nonmovant. *See Matsushita*, 106 S. Ct. at 1356. The court's function is not to ?weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Liberty Lobby*, 106 S. Ct. at 2511. The court must decide ?whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 2512.

II

As noted, Peyton contends that the parties did not reach a final settlement on January 11, 1990. He asserts that no ?meeting of the minds" took place that would create an enforceable

agreement. Additionally, Peyton contends that the alleged oral settlement could not have been performed within one year and is thus invalid under the Statute of Frauds .[3]

For an oral agreement to be enforceable, ?it must result from a meeting of the minds of the parties in mutual assent to the terms . . . and sufficiently definite to be enforced." *Johnson v. Central Nat'l Ins. Co.*, 356 S.W.2d 277, 281 (Tenn. 1962). A ?meeting of the minds" requires an unconditional acceptance identical to the material terms of the offer. *See Canton Cotton Mills v. Bowman Overall Co.*, 257 S.W. 398, 402 (Tenn. 1924) (citation omitted).

In support of their position that the parties did in fact reach a valid settlement, the Counter-Plaintiffs cite the deposition testimony of their former attorneys, Don William Cooper and George W. Morton, Jr. Each deponent testifies that the parties reached a settlement on January 11, 1990. *See* Exc. of Oct. 24, 1991 Deposition of Don William Cooper, at 60-63; Exc. of Oct. 24, 1991 Deposition of George W. Morton, Jr., at 26.

Viewing this evidence and all resulting inferences in the light most favorable to the nonmovants, *see Matsushita*, 106 S. Ct. at 1356, a genuine issue exists for trial on the issue of the parties' prior settlement. When supported by evidence, a nonmovant's version of any disputed

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[3] (a) No action shall be brought:

. . . .

(5) Upon any agreement or contract which is not to be performed within the space of one (1) year from the making of the agreement or contract;

unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person lawfully authorized by such party.

TENN. CODE ANN. § 29-2-101(a)(5) (2000).

material fact is presumed correct. *See Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 112 S. Ct. 2072, 2077 (1992). Summary judgment is therefore not warranted on this issue.

Peyton fares no better with his Statute of Frauds argument. "Settlements may be enforced notwithstanding the absence of a writing even where the agreement was not arrived at in the presence of the court." *See Astroglass Boat Co., Inc. v. Eldridge (In re Astroglass Boat Co., Inc.)*, 32 B.R. 538, 542-43 n.4 (Bankr. M.D. Tenn. 1983) (citing *Kukla v. National Distillers Prods. Co.*, 483 F.2d 619, 621 (6th Cir. 1973)).

The Plaintiff/Counter-Defendant's Motion for Summary Judgment must therefore be denied. This matter will be reset on the court's trial calendar. An order consistent with this Memorandum will be entered.

FILED: December 7, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

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O R D E R

For the reasons stated in the Memorandum on Motion for Summary Judgment filed this date, the court directs the following:

1. The Plaintiff/Counter-Defendant's Motion for Summary Judgment filed November 6, 2001, is DENIED.

2. The issue of whether or not an enforceable agreement settling the issues between the parties was reached on January 11, 1990, is set for trial on January 29, 2002, at 9:00 a.m., in Bankruptcy Courtroom 1-C, First Floor, Howard H. Baker, Jr. United States Courthouse, Knoxville, Tennessee. Except for the change in trial date, the Pretrial Order entered on November 15, 2001, will continue to govern this action.

SO ORDERED.

ENTER: December 7, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE