

IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

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CYNTHIA N. ALMOND, *et al*

FILED

PLAINTIFF

VERSUS

MAY 26 2015

CAUSE NO. 2014-2653

SINGING RIVER HEALTH SYSTEM, *et al*

TERRY MILLER, CLERK

DEFENDANTS

RESPONSE IN OPPOSITION TO MOTION and COUNTERMOTION FOR RELIEF

COMES NOW the Plaintiff, CYNTHIA N. ALMOND, *et al* by and through their attorneys of record, DENHAM LAW FIRM, PLLC, and DENHAM LAW FIRM, PLLC, and would answer the Motion for Protective Order filed by Defendant, SINGING RIVER HEATH SYSTEM, *et al* and would show as follows:

1. The allegations contained in the unnumbered Paragraph One (1) are admitted in that the Plaintiffs have requested said information, among other requests in Bill of Discovery and for Accounting and the two Subpoena Duces Tecum and Requested for Production propounded by Plaintiff to Defendants. The Defendants have not filed an answer to the Bill for Discovery as required in equity. The Discovery is long overdue, as is the accounting, and a Motion has been filed to compel it and was noticed before the case was removed to another jurisdiction. There is no need for a discovery cut-off or in fact a scheduling Order in this particular case, which is unique among the cases filed here, being filed upon a cause of action originating in equity, and the most ancient remedy available in equity today. The Defendants simply need to produce everything requested. The Defendants seem not to understand equity and its causes of action.

2. The allegations contained in the unnumbered Paragraph Two (2) are denied, as SRHS is not entitled to a Protective Order. What is required of them is to answer. See section 432 of Mississippi Chancery Practice by Griffith, which states Bills of Discovery, if valid on their face,

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“...must be answered, and the disclosures must be made without quibble or evasion. It is therefore not within the province of an answer to simply to withhold discovery on the ground that the matter or matters to be disclosed are not material, or that they come within any of the foregoing privileges against answer, unless the right so to withhold be so clear as to be beyond admissible debate.” The Defendants have never even bothered answer the Bill of Discovery and for Accounting, and are delinquent and in default.

3. The allegations contained in unnumbered Paragraph Three (3) regarding discussions are admitted, except that the primary discussions have been with another Plaintiff’s attorney from which these Plaintiffs have been entirely excluded, deliberately. However, the other Plaintiff’s attorney does not speak for these clients, and there has been no discussion between counsel for these clients and counsel for the Defendants in this matter, in fact, however, had there been discussion, the position that these Plaintiffs would take is that because this is a Bill for Discovery and for Accounting, the proposal of the Defendants to extend their time for Discovery, when they have never answered, when they are in Contempt for failure to answer, and when they have no intention of answering, and supplying the documentation as required by equity, the agreement being proposed has absolutely no application to these Plaintiffs and they will not enter into it with these Defendants who are before the Court with unclean hands.

4. The Motion for Protective Order filed on May 22, 2015, has as its goal the ensnarling of this equity process in a web of motions, counter motions, partial productions, and endless nonsense in order to avoid production of all documents requested. All the documents requested should have been produced long ago, and the Defendants are before the Court with unclean hands. Further, this whole exercise in pleadings, objections, and attempts to avoid Discovery are aimed solely at stopping the Discovery process in this court so that one of the Plaintiffs’

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attorneys who has been negotiating without cooperation, consultation, or authority from the others with counsel for SINGING RIVER HOSPITAL SYSTEM, can try to settle this matter on the cheap in Federal Court, to the disadvantage of the overwhelming majority of all of the Plaintiffs in all of the cases, and to the advantage of certain of the Defendants who do not wish their contribution to this fiasco and participation in it and its cover-up disclosed. Further, the Motion for Protective Order does not have a Prayer for Relief, therefore no relief can be granted.

And now, having answered each unnumbered paragraphs of Defendant's Motion for Protective Order, paragraph by paragraph, Plaintiff, CYNTHIA N. ALMOND, *et al* files this her Countermotion for Relief and would show as follows:

COUNTERMOTION FOR RELIEF

First, be it noted that the transcript of the hearing of May 12-13, 2015, be it that among the final exchanges between the Court Counsel for the Defendant, SRHS, are:

The Court: Well, I will consider your request for a scheduling (Order) [SIC] after the documents are produced and you have (addressed to Plaintiff's counsel) an opportunity to review what is there. What we will probably do is go ahead and order the deposition. During the course of the deposition if there is some issue brought up which requires documentation which is not available, then we would continue that question until the documentation would be available.

1. The Court in its hearing on May 12, 2015, specifically ordered the following relief "Defendant disclose sufficient discovery to adequately explain the current posture of the employee retirement system and the transaction [sic] that occurred in that system which have brought it to the circumstance it is in at this time... the defendant to make full and adequate disclosure of the transactions that have

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occurred and the transactions particularly that brought the retirement system to this point..." (Court transcript from May 12, 2015, hearing pg. 14)

2. At no time within the transcripts was there a discussion on the record of any confidentiality order raised by this Court or by counsel during the hearing, though there was discussion of a privilege log, with which no one agreed except the Defendants and the other Plaintiff's attorney identified herein. The Defendants efforts at this point are a transparent attempt to jam this case up while the Defendants explore with one of the Plaintiff's attorneys who represents an insignificant number of clients in this case, a way to arrange a cheap settlement with large attorney's fees in Federal Court which will not be in the best interest of the overwhelming majority of the Plan Participants, including these Plaintiffs. It will immure ultimately and primarily to the benefit of the Defendants, who seek to conceal their culpability in this disaster. In fact, on page 27, lines 7-17 of the May 13, 2015, transcript, Mrs. Duvall, counsel for SRHS stated "We anticipate that within 10 days, so by May 22nd we would produce what Your Honor has ordered today, the raw data that we talked about, in addition to other categories of documents that we have been working with Mr. Reeves and Mr. Mayo to target that they consider their core or most important financial documents that they want to look at at the beginning. We believe that we can do that within 10 days." Mrs. Duvall did not tell the Court the truth, and as noted, she did not include these Plaintiffs, nor did she have any intention as pointed out by Counsel for these Plaintiffs in open court to produce anything other than a way to stall, hinder, and ensnarl the Bill for Discovery and Accounting. As of the date of the filing of this

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Motion, Counsel for Plaintiff has only received circulated proposed Protective Orders and Scheduling Orders, to which these parties are not going to agree, and the Defendants have not even filed an answer to the Bill for Discovery and for Accounting and are grievously in contempt of the entire Chancery process.

3. Defendant cites MRCP 26(d) in their Motion for Protective Order citing that they need to protect the confidentiality of this sensitive information, however MRCP 26(d) does not provide protection of the “confidentiality of [the] sensitive information” as stated in Defendant’s Motion for Protective Order as stated in the unnumbered Paragraph Two (2), 26(d)(7) does not provide for protection under the Defendant’s request, as there is no prayer for relief. The real purpose for using such vague terms such as “confidential” and “sensitive” is to allow the Defendants the broadest imaginable interpretation of their own documents in order to avoid producing them. While it is conceded that patient names and records are protected under law, there is no conceivable document that is protected from a Bill of Discovery. It is becoming more apparent that many of the Defendants may have entered into a confidentiality agreement in order to create an illusion of confidentiality which can then be asserted in response to any requests for information. This court said it best when it ruled that the Plaintiffs were entitled to the documents which they requested and they will be entitled to such other documents as those requests and the responses thereto may reveal at a later time.
4. Whereas this case involves a one-hundred fifty million dollar (\$150,000,000.00) conspiracy by all of the Defendants involved, including their counsel to which the

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normal protections of privilege and confidentiality in a “normal” case do not apply. The Plaintiff has a right to see all the documents requested, which have been hidden from the Plaintiff now for a period of almost six months by subterfuge, unlawful removal to another forum which had no jurisdiction, and now by the efforts of experts in thwarting discovery hired solely for that purpose. The Defendants are not only before the court with unclean hands, in default, in contempt of this Court’s Order, and of the maxims of equity of which this suit was brought, but they are acting in deliberate bad faith in order to prevent timely discovery, and they should be heavily sanctioned as such.

5. Because this is a Bill of Discovery that counsel for Plaintiffs *Almond, Aguilar, Eiland, Bosarge, Drury, and Thompson* have filed, whatever the others do, it has no application to these Plaintiffs, who are here purely asserting their rights to the most ancient remedy in equity still available to the parties who have been wronged and damaged, as these Plaintiffs have been.

WHEREFORE PREMISES CONSIDERED, Plaintiff, CYNTHIA N. ALMOND, et al, respectfully prays that the Court sanction the Defendants per MRCP 45(g) and Rule 37 sanctions, and under the broad powers of the Court of Equity to confer such sanctions upon such parties as well ensure future cooperation with the Courts Orders, and sanction each of them, the Defendants and their counsel, no less than the sum of five-thousand dollars (\$5,000.00) each for the utter failure to respond to Discovery, and that the Defendants and their counsel be Ordered forthwith, within twenty-four (24) hours to produce all items requested under the Bill of Discovery and its attendant Discovery Requests, with the inducement to the Defendants and their Counsel to obey the Orders of the Court of a sanction of five-thousand (\$5,000.00) per day for

each day on the Defendants and their counsel that they refuse to produce all of the documents, without further quibbling or evasion, as requested by the Plaintiffs in this matter long ago.

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Plaintiff further requests that the Court DENY the Defendant's Motion for Protective Order and deny any and all requested relief by the Defendant and GRANT the Plaintiff's Motion for Relief, and any and all other relief this Court deems appropriate.

Respectfully submitted,

CYNTHIA N. ALMOND
BY: DENHAM LAW FIRM, PLLC
BY: BARTON LAW FIRM, PLLC

BY: 
EARL L. DENHAM

BY: 
W. HARVEY BARTON

CERTIFICATE

I, EARL L. DENHAM, do hereby certify that I have this day forwarded via e-mail, first a true and correct copy of the above and foregoing *Response to Motion and CounterMotion* to all counsel of record

SO CERTIFIED on this the 23rd day of May, 2015.



EARL L. DENHAM
MS Bar No. 6047
DENHAM LAW FIRM, PLLC
424 Washington Avenue (39564)
Post Office Drawer 580
Ocean Springs, MS 39566-0580
228.875.1234 Telephone
228.875.4553 Facsimile

Prepared by:

W. HARVEY BARTON
MS Bar No.: 2104
BARTON LAW FIRM, PLLC
3007 Magnolia Street
Pascagoula, MS 39567
228.769.2070 Telephone
228-769-1992 Facsimile

EARL L. DENHAM
MS Bar No. 6047
DENHAM LAW FIRM, PLLC
424 Washington Avenue (39564)
Post Office Drawer 580
Ocean Springs, MS 39566-0580
228.875.1234 Telephone
228.875.4553 Facsimile

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