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North Atlanta Vascular Clinic v. Dr. Thomas Matthews, M.D., Order on Cross-Motions for Summary Judgment

Eric A. Richardson
Fulton County Superior Court, Metro Business Case Division

IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA

NORTH ATLANTA VASCULAR CLINIC, P.C., Plaintiff, v. DR. THOMAS MATTHEWS, M.D.; Defendant, and NORTHSIDE HOSPITAL, INC., Intervenor.	Civil Action File No.: 2021CV345357

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This case comes to the Court on cross-motions for summary judgment and several discovery-related motions.[1] Plaintiff North Atlanta Vascular Clinic, P.C. ("Plaintiff") filed a Motion for Partial Summary Judgment ("Plaintiff's Motion"). Intervenor Northside Hospital, Inc. ("Intervenor") filed a Motion for Summary Judgment ("Intervenor's Motion"). Defendant Dr. Thomas Matthews, M.D. also filed a Motion for Summary Judgment ("Defendant's Motion") which incorporated the facts and arguments contained in Intervenor's Motion. A hearing was held on the matter. Having considered the record, the briefing, applicable law, and the parties'

[1] The discovery-related motions include Northside's Opposed Motion to Bifurcate, Northside's Opposed Motion for Protective Order, NAVC's Opposed Motion to Extend Discovery and Amend Scheduling Order, NAVC's Opposed Motion to Compel, and NAVC's Opposed Motion for Continuance (collectively, the "Discovery Related Motions").

arguments at the hearing, the Court **DENIES** Plaintiff's Motion, and the Court **GRANTS** Intervenor's and Defendant's Motions for the reasons that follow.[2]

I. BACKGROUND

This case involves the interpretation of an amendment to a Physician Employment Agreement ("Employment Agreement"), dated August 21, 2015, between Plaintiff and Defendant outlining the terms and conditions of Defendant's employment with Plaintiff. The record shows that the following facts are undisputed:

On August 21, 2015, Defendant entered into a Recruiting Agreement with EHCA Johns Creek, LLC d/b/a Emory Johns Creek Hospital ("Emory"). On the same day, Plaintiff and Defendant entered into a Recruiting Into Existing Medical Employer Addendum to the Recruiting Agreement ("Practice Employment Addendum") which included a provision prohibiting Plaintiff and Defendant from entering into a non-competition agreement. Plaintiff and Defendant executed the Physician Employment Agreement "pursuant to and subject to the terms of the Recruitment Agreement and Practice Employment Addendum…," and it did not contain a non-competition provision.

On November 30, 2018, Plaintiff and Defendant executed an Amendment to Physician Employment Agreement (the "Amendment") which stated, in relevant part, "Effective as of September 1, 2020, Article IX. Restrictive Covenants of the Agreement shall be deleted in its

[2] At the hearing, the Court announced its ruling on the cross-motions for summary judgment from the bench. In addressing the issues on the parties' cross-motions, the Court only needed to examine the Amendment and Employment Agreement. Both documents are in the record. The Court did not address the Discovery Related Motions at the hearing. As a result of the Court's oral ruling, the only remaining issues for trial were contained in Defendant's Counterclaim. Defendant later voluntarily dismissed its Counterclaim, leaving no remaining claims in this action. Therefore, the Court hereby denies all Discovery Related Motions as moot.

entirety and replaced with the following: [restrictive covenants]," which included a non-competition provision.

The Employment Agreement was rightfully and lawfully terminated on August 31, 2020, by Defendant's timely exercise of his unconditional right to terminate his employment with Plaintiff without cause. The only restrictive covenants in force between Plaintiff and Defendant on August 31, 2020, were covenants regarding non-solicitation of business relations, non-solicitation of patients, non-recruit of personnel, and non-interference provisions. As of August 31, 2020, Defendant was not subject to a non-competition provision. Defendant's employment with Intervenor began on September 1, 2020.

On February 3, 2021, Plaintiff filed the present action seeking a "[d]eclaratory judgment declaring that Defendant Matthews is subject to Article IX of the Amendment...." On April 1, 2021, Defendant filed an Answer and Counterclaims asserting several affirmative defenses and asserting a breach of contract claim and a claim for attorney's fees against Plaintiff. On May 4, 2021, Northside intervened in this case by filing a Complaint for Declaratory Judgment asking the Court, in relevant part: "(a) [t]o make and enter a declaratory judgment that Dr. Matthews is not bound by the Amendment to his Employment Agreement with NAVC [and] (b) [t]o make and enter a declaratory judgment that Northside may direct Dr. Matthews to perform vascular surgery services at its Forsyth and Johns Creek campuses...."

On July 15, 2021, Plaintiff amended its Complaint bringing claims for injunctive relief, breach of contract, and attorney's fees "in the event the Court rules that the Restrictive Covenants contained in the Amendment are enforceable against the Defendant."[3]

[3] The Court need not address the contingent causes of action included in Plaintiff's July 15, 2021, Amendment to Complaint because the Court finds that the Restrictive Covenants contained in the Amendment are not enforceable against Defendant.

II. ANALYSIS

In Fulton County v. Ward-Poag, 310 Ga. 289, 292 (2020), the Georgia Supreme Court reiterated the "well-established principles" guiding a trial court's review of a motion for summary judgment. "A trial court can grant summary judgment to a moving party only if there are no genuine issues of material fact and the undisputed evidence warrants judgment as a matter of law." See O.C.G.A. § 9-11-56(c). In reviewing the evidence, a court must construe all facts and draw all inferences in favor of the non-movant." Ward-Poag expressly relied on Messex v. Lynch, 255 Ga. 208, 210 (1985), which further provides, "[t]he party opposing the motion is to be given the benefit of all reasonable doubts in determining where a genuine issue exists, and the trial court must give that party the benefit of all favorable inferences that may be drawn from the evidence."

This Court is guided by the cardinal rule of contract construction—"to ascertain the intention of the parties." O.C.G.A. § 13-2-3. The rules of contract construction require courts to examine the four corners of a contract to discern the parties' intent, and to apply rules of contract construction only if the parties' intent cannot be determined by reference to the plain and unambiguous language of the contract. O.C.G.A. § 13-2-2(1). "It is the duty of the courts to construe and enforce contracts as made, and not to make them for the parties. The law will not make a contract for the parties which is different from the contract which was executed by them." Lee v. Mercury Ins. Co. of Ga., 343 Ga. App. 729, 735 (2017). Under Georgia law, parties' intent is determined by the text of the contract itself. O.C.G.A. § 13-2-3; Livoti v. Aycock, 263 Ga. App. 897, 901-02 (2003) (stating the rule that courts must first "look to the four corners of the instrument to determine the intention of the parties from the language employed"); Langley v. MP Spring Lake, LLC, 307 Ga. 321, 324 (2019). Because contract construction is a matter of law, the

interpretation of contracts is "particularly appropriate" for adjudication by summary judgment. Garvin v. Smith, 235 Ga. App. 897, 899 (1999).

The relevant language in the Amendment and Physician Employment Agreement lends itself to only one reasonable meaning. The Amendment uses clear and unambiguous language to state when the non-compete provision at issue could become a part of the Employment Agreement. Specifically, the Amendment provides: "Effective as of September 1, 2020, Article IX. Restrictive Covenants of the Agreement shall be deleted in its entirety and replaced with the following [restrictive covenants]."

Because the Court finds that the relevant language is clear and unambiguous, the Court must take the words used in the Amendment "in their plain, ordinary and popular sense as may be supplied by common dictionaries." Lemieux v. Blue Cross & Blue Shield of Georgia, Inc., 216 Ga. App. 230, 230-31 (1994); see also O.C.G.A. § 13-2-3 ("If that intention is clear and it contravenes no rule of law and sufficient words are used to arrive at the intention, it shall be enforced irrespective of all technical or arbitrary rules of construction."); Park'N Go of Ga., Inc. v. U.S. Fidelity & Guaranty Co., 266 Ga. 787, 791 (1996) (express terms of the contract must control its interpretation); Argo v. G-Tech Services, LLC, 338 Ga. App. 608, 611 (2016) (holding that words susceptible to only one meaning should be given that effect).

The language used by the parties in the Amendment evidences their intent that the restrictive covenants, including the non-competition provision, would be inserted into the Employment Agreement on September 1, 2020. The Amendment is not susceptible to a contrary, reasonable interpretation. Because the Employment Agreement was successfully terminated as of August 31, 2020, its language could not be amended on September 1, 2020, to add new obligations, including the non-competition provision.

The Court finds that the non-competition provisions contained in the Amendment, which the parties agreed would delete and replace the Employment Agreement's existing restrictive covenants effective September 1, 2020, never became a part of the Employment Agreement, which was terminated on August 31, 2020, and therefore, Defendant was never bound by a non-competition provision. Accordingly, the Court **DENIES** Plaintiff's Motion and **GRANTS** Intervenor's and Defendant's Motions.

III. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Partial Summary Judgment is **DENIED**, Intervenor's Motion for Summary Judgment is **GRANTED** and Defendant's Motion for Summary Judgment is **GRANTED**. Plaintiff's claims are hereby **DISMISSED**.

SO ORDERED, this 10th day of April, 2023.

Judge Eric A. Richardson
Superior Court of Fulton County by Designation
Business Case Division

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