

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

McLAREN HEALTH CARE CORP, et al,

Plaintiffs,

v

Case No. 2013-137031-CB

Hon. Wendy Potts

THE DETROIT MEDICAL CENTER,

Defendant.

OPINION AND ORDER RE: DEFENDANT THE DETROIT MEDICAL CENTER'S
MOTION FOR SUMMARY DISPOSITION

At a session of Court
Held in Pontiac, Michigan

On
FEB 13 2014

This dispute arises from a November 2005 Affiliation Agreement between Defendant The Detroit Medical Center and Plaintiffs Barbara Ann Karmanos Cancer Institute and Barbara Ann Karmanos Cancer Hospital d/b/a Karmanos Cancer Center. The key provision of the Affiliation Agreement at issue here is Section 6, which bars the Karmanos entities from affiliating with other local hospitals or health systems without DMC's consent:

6. Restrictions on Other Affiliations; Restrictions on Use of the Karmanos Name. Without the prior consent of The DMC, such consent not to be unreasonably denied or delayed, neither KCI [Karmanos Cancer Institute] nor KCC [Karmanos Cancer Center] shall (a) enter into any clinical affiliation with any hospital or health system located in the Tri-County Area, except for Permitted Clinical Affiliations, or (b) permit any hospital or health system in the Tri-County Area to use the name "Karmanos" or any other name owned or controlled by KCI or KCC and by which either is known to the public, except in connection with the Permitted Clinical Affiliations.

On October 30, 2013, Karmanos announced that it entered into an agreement with Plaintiff McLaren Health Care Corporation that, among other provisions, would allow McLaren to use the Karmanos name. On the same day, Plaintiffs filed this action claiming that Section 6 of the Affiliation Agreement is an unreasonable restrictive covenant that violates the Michigan Antitrust Reform Act (MARA) and asking the Court to enter a declaratory ruling on the enforceability of Section 6. In the alternative, Plaintiffs ask the Court to rule that any refusal of DMC to consent to Karmanos's affiliation with McLaren would be unreasonable.

DMC now moves for summary disposition of Plaintiffs' claims under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). DMC raises several challenges to the adequacy of Plaintiffs' complaint, including the threshold issue whether this action is barred by the Karmanos entities failure to follow the Affiliation Agreement's pre-suit dispute resolution procedure. However, as DMC concedes, Section 10.3 of the Agreement states that nothing in Sections 10.1 and 10.2, the dispute resolution provisions, prevents Karmanos from seeking equitable relief. Because Plaintiffs seek only equitable relief through a declaratory judgment, Karmanos was not required to attempt to resolve this agreement before filing suit. Even if Karmanos was under an obligation to engage in pre-suit dispute resolution, DMC waived that requirement by filing a counterclaim alleging Karmanos breached the agreement. In addition, the dispute resolution procedure would be applicable only to Karmanos, as McLaren is not a party to the Affiliation Agreement. For all of these reasons, DMC is not entitled to dismissal based on the pre-suit dispute resolution requirements of Section 10.

DMC also contends that Plaintiffs' claims fail because Karmanos failed to first seek DMC's consent for the affiliation with McLaren. The Court agrees with DMC that Plaintiffs'

Count II alleging unreasonable refusal to consent was filed prematurely where Karmanos never sought DMC's consent. However, the issue has since been rendered moot by DMC's statements in this motion, its answer to Plaintiffs' complaint, and its counterclaim demonstrating that DMC would not have given its consent. "The law does not require a useless formality." *Swain v Kayko*, 44 Mich App 496, 501; 205 NW2d 621 (1973). Because it is clear that DMC would not have given its consent, requiring Karmanos to seek that consent before pursuing this action would be a useless formality. DMC is not entitled to dismissal on this ground.

DMC also asserts that Karmanos cannot seek to bar DMC from enforcing Section 6 of the Affiliation Agreement because Karmanos is in breach of other provisions of that agreement or of other agreements between DMC and Karmanos. However, DMC cites no authority that would bar the Court from entering a declaratory judgment on the enforceability of a contract provision merely because the party seeking the judgment may have violated other provisions. DMC fails to demonstrate that it is entitled to dismissal on this ground.

DMC also asserts that Plaintiffs' claims fail because they did not attach a copy of the agreement between Karmanos and McLaren. MCR 2.113(F) generally requires a party to attach a copy of an agreement to a pleading if a claim or defense is based on that agreement. Plaintiffs contend that they were not obligated to attach their agreement because their claims are not based on the McLaren-Karmanos agreement. Although Plaintiffs' claim in Count I appears to be based solely on the Affiliation Agreement, Plaintiffs' Count II asks the Court to determine if DMC unreasonably refused to give its consent to the Karmanos entities' affiliation with McLaren. Plaintiffs fail to explain how this Court could determine if DMC's refusal to consent is unreasonable without reviewing the McLaren agreement. Because Plaintiffs' Count II is based, at least in part, on the agreement between Karmanos and McLaren, Plaintiffs should have attached

that agreement to their complaint. Because the McLaren agreement is not attached, and none of the exceptions to MCR 2.113(F) are applicable, Plaintiffs' Count II fails as a matter of law. However, in lieu of dismissal, the Court will allow Plaintiffs to file an amended complaint that either attaches the McLaren agreement or contains specific factual allegations demonstrating why MCR 2.113(F) does not require the agreement to be attached.

DMC further argues that Plaintiffs fail to allege the necessary elements of their claim that Section 6 of the Affiliation Agreement is an unlawful restrictive covenant and violated MARA. DMC asserts that a claim that an agreement is an unlawful restraint of trade requires Plaintiffs to plead certain elements including that DMC had a purpose or intent to monopolize or restrain trade in a relevant market and that competition in that market has been harmed. Plaintiffs contend that DMC cites only case law analyzing federal antitrust actions. However, MARA states that "courts shall give due deference to interpretations given by the federal courts to comparable antitrust statutes . . ." MCLS § 445.784(2). Although DMC cites no Michigan decisions holding that a MARA antitrust claim must allege the same elements as a federal antitrust claim, the statute mandates that this Court to look to federal case law in making this decision. Thus, to the extent that MARA is comparable with federal antitrust statutes, the federal case law is applicable.

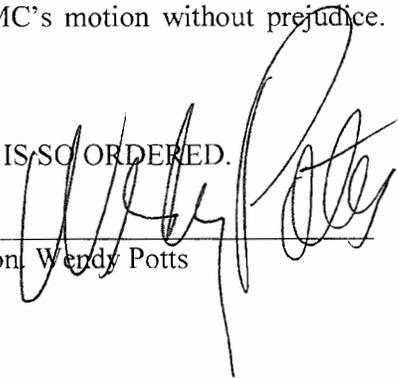
Plaintiffs also contend that under established Michigan precedent they are required to plead only that Section 6 lacks a legitimate business purpose and it is unreasonable as to its scope and duration. However, Plaintiffs' argument is based on case law analyzing noncompetition agreements under the standard set forth in MCL 445.774a. That statute says that "[a]n employer may obtain from an employee an agreement or covenant which protects an employer's reasonable competitive business interests and expressly prohibits an employee from

engaging in employment or a line of business after termination of employment if the agreement or covenant is reasonable as to its duration, geographical area, and the type of employment or line of business.” Plaintiffs note that courts have applied the standard for analyzing employee noncompetition agreements to commercial noncompetition agreements. See e.g., *Spradlin v Lakestates Workplace Solutions, Inc*, 284 B.R. 830 (2002); *Certified Restoration Dry Cleaning Network, LLC v Tenke Corp*, 511 F3d 535, 546 (CA 6, 2007). However, Plaintiffs’ argument presumes that Section 6 is a noncompetition agreement, which it is not. Section 6 does not bar Karmanos from competing against DMC or from “engaging in employment or a line of business.” MCL 445.774a. Rather, it merely restricts the Karmanos entities’ ability to affiliate with other hospitals. To the extent that Plaintiffs are asserting that Section 6 is an unreasonable noncompetition agreement, that claim fails as a matter of law. Because Plaintiffs cite no case law holding that the standard for interpreting enforceability of noncompetition agreements under MCL 445.774a applies to any antitrust claim brought under MARA, the Court rejects their assertion that Count I, as pleaded, alleges a valid claim.

Instead, the issue appears to be whether Section 6 of the Affiliation Agreement violates MCL 445.772, which states that “[a] contract, combination, or conspiracy between 2 or more persons in restraint of, or to monopolize, trade or commerce in a relevant market is unlawful.” This statute is comparable with § 1 of the federal Sherman Act, which states that “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.” Thus, this Court must look to federal case law requiring a plaintiff to plead that the agreement is either a per se antitrust violation or is an unreasonable restraint of trade under the “rule of reason” test. See *Care Heating & Cooling, Inc v American Standard, Inc*, 427 F3d 1008, 1012,

(CA 6, 2005). To the extent that Plaintiffs are alleging Section 6 of the Affiliation Agreement violates MCL 445.772, they must allege, at a minimum, that the agreement is either a restraint on or an attempt to monopolize trade or commerce in a relevant market. If Plaintiffs are pleading a claim under the rule of reason test, they must allege that Section 6 “produces significant anticompetitive effects within the relevant product and geographic markets.” *Care Heating, supra*. Although Plaintiffs have not adequately pleaded that Section 6 of the Affiliation Agreement violates MCL 445.772, in lieu of dismissing the claims, the Court will allow Plaintiffs to file an amended complaint pleading the necessary elements of their claim.

For all of these reasons, the Court denies DMC’s motion without prejudice. Plaintiffs may file an amended complaint within 14 days.

IT IS SO ORDERED.


Hon. Wendy Potts

Dated: FEB 13 2014

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