

**Not Intended for Print Publication**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

<b>BAHMAN PAYMAN, M.D.,</b>	)	
	)	
Plaintiff,	)	Case No. 2:04CV00017
	)	
v.	)	<b>OPINION AND ORDER</b>
	)	
<b>LEE COUNTY COMMUNITY HOSPITAL, ET AL.,</b>	)	By: James P. Jones
	)	Chief United States District Judge
	)	
Defendants.	)	

*Bahman Payman, M.D., Plaintiff Pro Se; Wm. W. Eskridge and Cameron S. Bell, Penn, Stuart & Eskridge, Abingdon, Virginia, for Defendant Chanda Varandani, M.D.*

An additional defendant, Chanda Varandani, M.D., has moved for summary judgment in this case, brought pro se by Bahman Payman, M.D. The plaintiff has responded to the motion, and it is ripe for decision.<sup>1</sup>

The background of the case is set forth in earlier opinions of the court. *See Payman v. Lee County Cmty. Hosp.*, No. 2:04CV00017, 2005 U.S. Dist. LEXIS 2923 (W.D. Va. Feb. 28, 2005); *Payman v. Lee County Cmty. Hosp.*, No. 2:04CV00017,

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<sup>1</sup> I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process. The parties have filed lengthy declarations and exhibits relating to the Motions for Summary Judgment, all of which I have carefully reviewed.

2005 U.S. Dist. LEXIS 2009 (W.D. Va. Feb. 14, 2005); *Payman v. Lee County Cmty. Hosp.*, 338 F. Supp. 2d 679 (W.D. Va. 2004).

In his Amended Complaint, filed June 25, 2004, Dr. Payman claimed that the defendants had conspired in “early” 2000 to “interfere with [his] contractual [Lee County Community Hospital] relationship and [his] reasonable professional opportunities with other hospitals, and to injure [him] in his PROFESSIONAL REPUTATION, IN BAD FAITH AND MALICIOUS INTENT.” (Am. Compl. ¶ 3.)

Summary judgment is appropriate when there is “no genuine issue of material fact,” given the parties’ burdens of proof at trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see* Fed. R. Civ. P. 56(c). In determining whether the moving party has shown that there is no genuine issue of material fact, a court must assess the factual evidence and all inferences to be drawn therefrom in the light most favorable to the non-moving party. *See Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985).

Rule 56 “mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Summary judgment is not “a disfavored procedural shortcut,” but an important mechanism for weeding out “claims and

defenses [that] have no factual basis.” *Id.* at 327. It is the “affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial.” *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993) (internal quotation marks omitted).

In opposing summary judgment, the nonmoving party must “set forth such facts as would be admissible in evidence.” Fed. R. Civ. P. 56(e). Inadmissible hearsay cannot be used to oppose summary judgment. *See Greensboro Prof. Fire Fighters Ass’n v. City of Greensboro*, 64 F.3d 962, 967 (4th Cir. 1995).

Proof of a common law conspiracy requires a showing that two or more persons engaged in concerted action to accomplish some criminal or unlawful purpose, or some lawful purpose by criminal or unlawful means. *See Am. Online, Inc. v. LCGM, Inc.*, 46 F. Supp. 2d 444, 452 (E.D. Va. 1998).

Dr. Varandani is a pediatrician, born in India, who has practiced medicine in Lee County, Virginia, since 1980. Dr. Payman’s allegations against Dr. Varandani arise out of the so-called “face presentation” case that occurred in October of 1999 involving a pregnant patient of Dr. Payman’s. Dr. Varandani and another pediatrician at the Lee County Community Hospital became concerned because they believed that fetal ultrasound films showed the possibility that the unborn baby might have a cervical tumor. They recommended that the baby be delivered at another hospital,

where more specialized care would be available. Dr. Payman disagreed; moreover, he took umbrage at this advice, believing that he was being “pressured” and that his professional qualifications were being questioned. The baby was in fact delivered at Lee County Community Hospital without incident.

Based on this incident, Payman claims that Dr. Varandani “conspired with the other conspirators from the beginning of face presentation case, together, repeatedly second guessed the plaintiff.” (Payman Decl. ¶9.)

The summary judgment record shows clearly that Dr. Varandani is entitled to summary judgment in her favor. There is no evidence that Dr. Varandani engaged in any illegal conspiracy or otherwise violated the plaintiff’s legal rights.

Dr. Payman requests that summary judgment not be considered until he has had an opportunity to engage in discovery, including depositions of the parties.

Federal Rule of Civil Procedure 56(f) provides that when it appears that the nonmovant cannot “for reasons stated present by affidavit facts essential to justify the [nonmovant’s] opposition [to the motion for summary judgment],” the court may allow further discovery. Fed. R. Civ. P. 56(f). However, the nonmovant’s obligation under the rule is to “particularly specif[y] legitimate needs for further discovery.” *Nguyen v. CNA Corp.*, 44 F.3d 234, 242 (4th Cir. 1995). Here the plaintiff has not specified how any discovery might allow him to counter the motion for summary

judgment. This action has been pending for over a year and the events surrounding the plaintiff's claims occurred over five years ago. Further inconvenience and expense to the defendant are not justified. Accordingly, the request will be denied.

Accordingly, for the foregoing reasons, it is **ORDERED** that the Motion for Summary Judgment by the defendant Chanda Varandani, M.D., is GRANTED and judgment on the merits is entered in her favor.

ENTER: March 11, 2005

/s/ JAMES P. JONES  
Chief United States District Judge