

**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</b>	)	By: James P. Jones
<b>HOSPITAL, ET AL.,</b>	)	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 Defendants Ghullam Joyo, M.D., Saira Ahsan, M.D., and Faryal S. Sheikh, M.D.; and Gabor G. Laufer, M.D., Defendant Pro Se.*

Certain of the defendants have moved for summary judgment. The plaintiff has responded to the motions, and they are ripe for decision.<sup>1</sup>

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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.

The plaintiff, a physician who often sues in this and other courts,<sup>2</sup> filed this action pro se. In his Amended Complaint, filed June 25, 2004, he claimed that the fourteen 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

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<sup>2</sup> *See Payman v. Lee County Cmty. Hosp.*, 338 F. Supp. 2d 679, 681 n.1 (W.D. Va. 2004) (describing prior cases).

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).

GHULLAM JOYO, M.D.

Defendant Ghullam Joyo, M.D., has moved for summary judgment in his favor. Dr. Joyo has previously been sued by Payman<sup>3</sup> and Payman admits that he prepared

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<sup>3</sup> *See Payman v. Joyo*, No. 2:01CV00128, 2002 WL 1821635 (W.D. Va. Aug. 8, 2002) (defamation claim).

and filed at least one medical malpractice suit against Joyo on behalf of a patient.<sup>4</sup> Payman, an obstetrician and gynecologist, had an operating room squabble in 2000 with Joyo, an anesthesiologist, which was one of the events that led to Payman being notified that he was being terminated from employment by the hospital.<sup>5</sup> He eventually reached a monetary agreement with the hospital and was allowed to resign but since then has contended that his troubles were based at least in part by the fact that he is a member of the Bahá'í Faith, which he contends has been subjected to persecutions by Moslems, to which religion Joyo belongs. Payman's declaration in opposition to summary judgment is basically a statement of his view of why he was blameless in his dispute with Joyo and why Joyo was wrong. I find that Payman has failed to show that he has a viable claim of conspiracy and thus for the reasons set forth in the defendant's submissions, I will grant summary judgment in favor of this defendant.

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<sup>4</sup> See Mot. for Sanctions of Dr. Joyo & Mr. Eskridge & Second Time Mot. in Opp'n to Summ. J. ¶ 1.

<sup>5</sup> The details are described in the opinion in another one of Payman's cases, *Payman v. Abdrabbo*, No. 2:02CV00035, 2002 WL 31443212, at \*1 (Nov. 1, 2002), *aff'd*, 82 Fed. Appx. 826 (4th Cir. 2003), *cert. denied*, 124 S. Ct. 2052 (2004).

SAIRA AHSAN, M.D.

Defendant Saira Ahsan, M.D., has moved for summary judgment in his favor. Payman contends that in 1999 Ahsan, a pediatrician, advised one of Payman's patients to transfer to another hospital for delivery so that her new born child might receive more specialized care. In fact, the patient did not transfer and the baby was apparently born without incident. Payman believes that this advice to his patient called his qualifications into question, which he highly resents.

Based on the record, and for the reasons set forth in the summary judgment motion, I find that Payman has not shown proof that Ahsan was involved in any conspiracy and thus I will enter judgment for the defendant.

FARYAL S. SHEIKH, M.D.

Defendant Faryal S. Sheikh, M.D., has moved for summary judgment in her favor. She was an internist employed by Lee County Community Hospital until the end of 2000. Sheikh is the wife of Dr. Mirza, a defendant in another case by Payman,<sup>6</sup> which appears to be the primary basis of his claim against her. He does say that she was a member of the credentials committee of the hospital and that the credentials committee gave certain unspecified "false information" to other potential

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<sup>6</sup> See *Payman v. Mirza*, No. 2:02CV00023, 2002 WL 31443216 (Nov. 1, 2002), *aff'd*, 82 Fed. Appx. 826 (4th Cir. 2003), *cert. denied*, 124 S. Ct. 2052 (2004).

employers. The conclusory claims made against this defendant are unsupported and thus summary judgment will be granted for the reasons set forth in the defendant's submissions.

GABOR G. LAUFER, M.D.

Defendant Gabor G. Laufer, M.D., has moved for summary judgment in his favor. Laufer is a native of Hungary and an obstetrician. He was a member of the hospital's Medical Executive Committee when Payman was given notice of termination. Payman accuses Laufer of various wrongdoing, including causing Payman to develop lung problems from Laufer's smoking when they were sharing office space. None of his allegations support a claim of conspiracy and Laufer's motion will be granted and judgment entered in his favor.

REQUEST FOR ADDITIONAL DISCOVERY

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

#### MOTIONS FOR SANCTIONS

Defendants Joyo, Ahsan, and Sheikh have filed motions seeking sanctions against the plaintiff under Federal Rule of Civil Procedure 11.<sup>7</sup> The court will entertain any further submissions by the parties as to these motions. The court will consider monetary sanctions, as well as an injunction against further legal actions or suits by the plaintiff against the defendants in any court without the prior permission of this court. If the defendants seek attorneys' fees as a sanction, they must file an itemized statement of such fees and expenses.

#### ORDERS

For the foregoing reasons, it is **ORDERED** as follows:

1. The Motions for Summary Judgment by defendants Ghullam Joyo, M.D.,

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<sup>7</sup> Counsel for the defendants, Wm. W. Eskridge, has also filed a Motion for Sanctions on his own behalf, which motion the court will consider.

Saira Ahsan, M.D., Faryal S. Sheikh, M.D, and Gabor G. Laufer, M.D., are GRANTED and judgment on the merits is entered in favor of said defendants;

2. Ghullam Joyo, M.D., Saira Ahsan, M.D., Faryal S. Sheikh, M.D., and Wm. W. Eskridge, Esquire, are granted 14 days from the date of entry of this Order to file any further submissions in support of their Motions for Sanctions; and

3. The plaintiff is granted 7 days following the service of any further submissions in support of the above-described Motions for Sanctions to file any further response to the Motions for Sanctions, or, if no such further submissions are filed, he is granted 21 days from the date of entry of this Order to file any further response to the Motions for Sanctions.

ENTER: February 14, 2005

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