

**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; Matthew P. Pritts, Woods Rogers PLC, Roanoke, Virginia, for Defendants Kaye Smith, R.N., Hossein Faiz, M.D., Patton Speaks, and Gary Saylor; Dawn Figueiras, Elliott Lawson & Minor, Bristol, Virginia, for Defendant David Hartley.*

Additional defendants have moved for summary judgment in this case, brought pro se by Bahman Payman, M.D. The plaintiff has responded to the motions, and they are 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 2009

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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.

(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).

KAYE SMITH, R.N.

Defendant Kaye Smith, R.N., has held various positions at the Lee County Community Hospital, including Head Nurse in the Surgery Department, Director of Nursing, and Director of Surgical Services. Dr. Payman believes that Nurse Smith has conspired against him because she “instigated” an investigation of him by authorities in 1997 and otherwise “campaigned” against him at the hospital. (Payman

Decl. ¶¶ 9, 6.)<sup>2</sup> Smith's detailed declaration clearly shows an absence of conspiracy, and Dr. Payman has presented no evidence to the contrary. As with some other defendants in this case, she disagreed with Payman's professional judgment, but that is not evidence of conspiracy.

HOSSEIN FAIZ, M.D.

Defendant Hossein Faiz, M.D., is a surgeon and since 2000 has been the chief or acting chief of the medical staff at the hospital. Dr. Payman contends that Dr. Faiz had "secret meetings" with other doctors concerning him (Payman Decl. ¶ 1) and aided the alleged conspiracy by speaking at a town council meeting to support the erection of a cell tower near Dr. Payman's home with the intent to reduce its value. Dr. Faiz's lengthy declaration clearly shows that no claim of conspiracy can be proved against him.

DAVID HARTLEY

Defendant David Hartley was a member of the hospital's board of directors at the time Dr. Payman's employment there ended. To the extent that Hartley participated in the board's actions leading to the resignation of Dr. Payman, he is immune from civil liability under state law. *See* Va. Code Ann. § 8.01-581.16

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<sup>2</sup> Dr. Payman's declaration is in numbered paragraphs, but after paragraph 9, the numbering begins again with 1 through 7.

(Michie Supp. 2004). Even without such immunity, however, the uncontested facts shown in Hartley's declaration establish that he did not engage in any actionable conspiracy.

#### PATTON SPEAKS AND GARY SAYLOR

Defendants Patton Speaks and Gary Saylor have been employed at the hospital since 1986 and 1997, respectively, as Certified Registered Nurse Anesthetists. Along with others, they voiced concerns about Payman's professional competency to the hospital authorities. While Dr. Payman contends that he was not guilty of the professional lapses that were the subject of the hospital's concern, he has presented no evidence that Speaks or Saylor engaged in any conspiracy to harm him by unlawful means. Payman merely asks the court to assume that anyone who disagreed with him did so for an improper purpose.

#### REQUEST FOR ADDITIONAL DISCOVERY

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 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 Smith, Faiz, Speaks and Saylor have filed motions seeking sanctions against the plaintiff under Federal Rule of Civil Procedure 11. 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 Kaye Smith, R.N., Hossein Faiz, M.D., David Hartley, Patton Speaks, and Gary Saylor are GRANTED and judgment on the merits is entered in favor of said defendants;

2. Defendants Smith, Faiz, Speaks, and Saylor 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 28, 2005

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