

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

KEVIN NUTT AND LISA NUTT

PLAINTIFFS

v.

Case No. 3:10-cv-00307-KGB

STAFFORD KEES, ET AL.

DEFENDANTS

ORDER

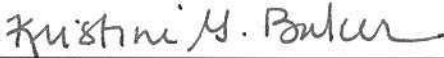
Before the Court is separate defendants Carroll County Nursing and Rehab Center, Inc., and Osceola Therapy and Living Center, Inc.'s motion for summary judgment (Dkt. No. 49). The Court heard argument on the motion at a hearing conducted October 16, 2012.

Based on the motion, response, reply, documents submitted, and argument presented, the Court denies the motion for summary judgment (Dkt. No. 49). Separate defendants Carroll County Nursing and Rehab Center, Inc., and Osceola Therapy and Living Center, Inc., (hereinafter "Separate Defendants") move for summary judgment on plaintiffs' three claims brought under the Employee Retirement Income Security Act ("ERISA"): (1) Breach of Fiduciary Duty; (2) Delinquent Contributions; and (3) Interference with Protected Rights.

There are genuine issues of material fact in dispute that preclude this Court from granting summary judgment in favor of Separate Defendants, including but not limited to whether, under the terms of the Agreement and as the parties operated prior to the closing, Separate Defendants qualify as "employers" under ERISA, whether Separate Defendants were successor management companies working on behalf of defendant Stafford Kees pursuant to the Agreement for which Separate Defendants would be compensated in a manner specified by the Agreement, whether Separate Defendants could be subject to liability under the federal common law doctrine of substantial continuity, or whether Separate Defendants are situated such that liability cannot

attach under ERISA or the federal common law based on plaintiffs' claims; whether Separate Defendants had notice of plaintiffs' claims or the previous owner's failure to provide benefits as required by ERISA prior to the time of the sale; and whether there was a causal connection between plaintiffs' termination and the likelihood of ERISA benefits for plaintiffs. The Court has taken under advisement the parties' arguments regarding whether to apply the federal common law doctrine of substantial continuity in this ERISA context and makes no ruling in this Order on that issue.

SO ORDERED this the 16 day of November, 2012.



KRISTINE G. BAKER
UNITED STATES DISTRICT JUDGE