

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

EXPRESS DENTAL CARE, LLC,

Plaintiff,

v.

CASE NO: 8:08-cv-1607-T-26MAP

ERNEST RODRIGUEZ, JR., et al.,

Defendants.

ORDER

Pending before the Court is Plaintiff's Motion for Partial Summary Judgment on Count 9 Against Defendant Cesar Salamone and on Defendants' Affirmative Defenses, which is accompanied by a statement of undisputed facts and a certificate of good faith conference. After careful consideration of Plaintiff's submissions, together with the Court's intimate familiarity with the procedural and factual history of this case, the Court is of the opinion that the motion is due to be denied as to count 9 because there can be no question that a genuine issue of material fact exists with respect to whether Defendant Cesar Salamone executed a non-competition

contract with Plaintiff, even without regard to the admissibility of the testimony of Defendant's forensic experts.¹ One example will suffice.

Plaintiff attaches to its statement of undisputed facts excerpts of the deposition testimony of Defendant Salamone. In Exhibit F, he makes it clear that his office manager, Ms. Leeman, "only" had authority to use his signature stamp "for the claim forms." In Exhibit E, Defendant Salamone testified unequivocally that "[w]hen the stamp was purchased, it was expressed [to Ms. Leeman] that it was to be used for the claim forms." In light of these statements, it would be manifest error for this Court to conclude as a matter of law, as Plaintiff urges, that "there is no genuine issue of material fact regarding whether Salamone's office manager had the authority to stamp Salamone's signature on the Provider Agreement and to provide it to Express, and that Salamone, therefore, is bound by the Provider Agreement."

Accordingly, it is ordered and adjudged that Plaintiff's Motion for Partial Summary Judgment (Dkt. 139) is denied.

DONE AND ORDERED at Tampa, Florida, on June 1, 2010.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

¹ The Court declines to reach the issue of whether summary judgment is appropriate as to Defendants' affirmative defenses at this time but instead prefers to defer the issue until time of trial.