

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 09, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EMPIRE HEALTH FOUNDATION, a
Washington nonprofit corporation,

Plaintiff,

v.

CHS/COMMUNITY HEALTH
SYSTEMS INC., a Delaware
corporation; SPOKANE
WASHINGTON HOSPITAL
COMPANY LLC, a Delaware limited
liability company; and SPOKANE
VALLEY WASHINGTON HOSPITAL
COMPANY LLC, a Delaware limited
liability company,

Defendants.

No. 2:17-cv-00209-SMJ

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

Plaintiff Empire Health Foundation sues Defendants CHS/Community Health Systems Inc., Spokane Washington Hospital Company LLC, and Spokane Valley Washington Hospital Company LLC (collectively "CHS") for breach of contract, alleging it failed to fulfill the charity care commitments it made in its 2008 acquisition of two Spokane area hospitals. ECF No. 1. Before the Court is CHS's Motion for Partial Summary Judgment, ECF No. 115. CHS seeks partial summary judgment that Deaconess Medical Center provided sufficient charity care in 2012

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT - 1

1 and Valley Hospital and Medical Center provided sufficient charity care in 2011
2 through 2014. *Id.* The Foundation opposes the motion. ECF No. 144. After
3 reviewing the record and relevant legal authorities, the Court grants the motion as to
4 Valley hospital’s charity care levels in 2011, 2012, and 2014—the only years in
5 which its charity care levels exceeded the regional average. However, the Court
6 denies the remainder of the motion because a genuine dispute of material fact exists
7 on whether the rest of the hospitals’ charity care levels were “comparable to” the
8 regional average within the meaning of two nearly identical conditions in two state
9 agency certificates enforceable under the parties’ contract.

10 **BACKGROUND**

11 This case is scheduled for a bench trial on August 12, 2019. ECF No. 190.
12 The underlying facts are set forth in the Court’s February 27, 2019 Order Ruling on
13 Cross-Motions for Summary Judgment, ECF No. 82, and will not be repeated here.

14 Two Certificates of Need, issued by the Washington State Department of
15 Health in 2008, provide that Deaconess hospital and Valley hospital “will use
16 reasonable efforts to provide charity care in an amount comparable to or exceeding
17 the average amount of charity care provided by hospitals in the Eastern Washington
18 Region.” ECF No. 61-1 at 2; ECF No. 61-2 at 2. The Court previously ruled this
19 charity care condition is enforceable under the parties’ 2007 Asset Purchase
20 Agreement. ECF Nos. 22, 36, 50, 82.

1 **LEGAL STANDARD**

2 A party is entitled to summary judgment where the documentary evidence
3 produced by the parties permits only one conclusion. *Anderson v. Liberty Lobby,*
4 *Inc.*, 477 U.S. 242, 250 (1986). The Court must grant summary judgment if “the
5 movant shows that there is no genuine dispute as to any material fact and the movant
6 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A material issue
7 of fact is one that affects the outcome of the litigation and requires a trial to resolve
8 the parties’ differing versions of the truth.” *SEC v. Seaboard Corp.*, 677 F.2d 1301,
9 1306 (9th Cir. 1982).

10 The moving party has the initial burden of showing no reasonable trier of fact
11 could find other than for the moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317,
12 325 (1986). Once the moving party meets its burden, the nonmoving party must
13 point to specific facts establishing a genuine dispute of material fact for trial.
14 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986).

15 “[A] mere ‘scintilla’ of evidence will be insufficient to defeat a properly
16 supported motion for summary judgment; instead, the nonmoving party must
17 introduce some ‘significant probative evidence tending to support th[at party’s
18 case].” *Fazio v. City & County of San Francisco*, 125 F.3d 1328, 1331 (9th Cir.
19 1997) (quoting *Anderson*, 477 U.S. at 249, 252). If the nonmoving party fails to
20 make such a showing for any of the elements essential to its case as to which it would

1 have the burden of proof at trial, the Court should grant the summary judgment
2 motion. *Celotex*, 477 U.S. at 322.

3 The Court must view the facts and draw inferences in the manner most
4 favorable to the nonmoving party. *Anderson*, 477 U.S. at 255; *Chaffin v. United*
5 *States*, 176 F.3d 1208, 1213 (9th Cir. 1999). And, the Court “must not grant
6 summary judgment based on [its] determination that one set of facts is more
7 believable than another.” *Nelson v. City of Davis*, 571 F.3d 924, 929 (9th Cir. 2009).

8 **DISCUSSION**

9 CHS argues that, using the Foundation’s own calculations, Deaconess
10 hospital provided sufficient charity care in 2012 and Valley hospital provided
11 sufficient charity care in 2011 through 2014. ECF No. 115 at 9–11. The Court partly
12 agrees. Using the Department’s official numbers,¹ and comparing those numbers on
13 an annual basis, without aggregation,² Valley hospital’s charity care levels exceeded

14
15 ¹ The Foundation urges the Court to alter the Department’s official numbers to
16 (1) omit Deaconess hospital and Valley hospital’s reported charity care levels from
17 the regional average, and (2) adjust Deaconess hospital and Valley hospital’s
18 reported charity care levels to account for alleged chagemaster inflation. ECF No.
19 144 at 12–14. The Court declines to do so because the Foundation presents no
20 evidence suggesting the parties intended CHS’s contractual performance to be
measured in that way. Further, the Foundation’s analysis conflates the damages
element with the breach element. The Foundation’s means of calculating an
equitable monetary award is an inappropriate measure of whether CHS breached its
duty relating to charity care in the first place. A breach either occurred or did not
occur; equitable considerations have no place in determining that issue.

² The Foundation urges the Court to aggregate Deaconess hospital and Valley
hospital’s reported charity care levels to determine how their “combined annual

1 the regional average in 2011 (100.87% of the average), 2012 (106.08% of the
2 average), and 2014 (101.25% of the average). ECF No. 116 at 1–3. Therefore, as to
3 that particular hospital in those particular years, CHS necessarily fulfilled its duty to
4 “use reasonable efforts to provide charity care in an amount comparable to or
5 exceeding the average amount of charity care provided by hospitals in the Eastern
6 Washington Region.”³ ECF No. 61-1 at 2; ECF No. 61-2 at 2.

7 However, a genuine dispute of material fact exists on whether the rest of the
8 hospitals’ charity care levels were “comparable to” the regional average within the
9 meaning of the Certificates of Need. Using the Department’s official numbers, and
10 comparing those numbers on an annual basis, Deaconess hospital’s charity care

11 _____
12 effort” compares to the regional average. ECF No. 144 at 14. The Court declines to
13 do so because the Foundation presents no evidence suggesting the parties intended
14 CHS’s contractual performance to be measured in that way. At most, the
15 Foundation establishes an arguable basis for joint and several liability between all
16 Defendants if either of the hospitals provided insufficient charity care. But it must
17 first be determined whether either of the hospitals provided insufficient charity care.
18 And that is plainly an individual rather than collective inquiry.

19 ³ The Foundation argues it may nevertheless maintain claims for breaches of other
20 contract requirements and for breaches of the duty of good faith and fair dealing.
ECF No. 144 at 13 & n.2, 15–16. Because CHS’s motion only addresses the claims
alleging the hospitals provided insufficient charity care, it is unnecessary for the
Court to address claims concerning other contract requirements. The Court
previously ruled that the Foundation’s good-faith-and-fair-dealing claims are
limited to the applicable statute of limitations period—from June 12, 2014 onward.
See ECF No. 22 at 14–15; ECF No. 36 at 3 n.1. Further, the Court agrees with CHS
that, here, the good-faith-and-fair-dealing claims are derivative of the contract
claims. *See* ECF No. 1 at 7, 10; ECF No. 171 at 12 n.4. Therefore, the Court grants
partial summary judgment in CHS’s favor as to all of the Foundation’s claims
involving Valley hospital’s charity care levels in 2011, 2012, and 2014.

1 levels fell below the regional average in 2012 (78.09% of the average) and Valley
2 hospital's charity care levels fell below the regional average in 2013 (79.22% of the
3 average). As the Court ruled previously, "[C]omparable to' could reasonably
4 require either approximation or a close match. Either way, the degree of deviation
5 to be tolerated is not conclusively established." ECF No. 82 at 12–13. CHS presents
6 no new evidence to the contrary.⁴ Thus, whether deviations of 21.91% and 20.78%
7 below the regional average are nevertheless "comparable to" it remains to be
8 determined at trial.

9 In a footnote, CHS argues it cannot be held liable for the hospitals' alleged
10 failure to provide sufficient charity care in the first and second quarters of 2017
11 because it sold them halfway through the year, compliance is supposedly (according
12 to the Foundation) measured annually, and quarterly data is often inaccurate or

13
14 ⁴ CHS resubmits some of the same evidence it presented when the Court denied its
15 earlier summary judgment motion. *See generally* ECF Nos. 82, 116, 116-1 to -9.
16 Specifically, CHS points to the Department's 2010 preliminary assessment
17 concluding "it appears that CHS is meeting the charity care commitments" when its
18 charity care levels were as low as 74.28% of the regional average. ECF No. 116-3
19 at 19; *see also* ECF No. 116 at 3. The Court was aware of such evidence earlier but
20 concluded it failed to conclusively establish how far below the regional average the
hospitals' charity care levels may fall and still be considered "comparable to" the
average. CHS now reiterates its argument that a deviation of up to 25.72% below
the regional average is *per se* acceptable. But, as it did before, the Foundation
presents deposition testimony flatly contradicting this proposition. *See* ECF No. 63-
1 at 35–36, 51, 65–69, 72, 84, 86, 89–93. The Court may not assess the weight or
credibility of the evidence at this stage. A genuine dispute of material fact exists on
how far below the regional average the hospitals' charity care levels may fall and
still be considered "comparable to" the average.

1 incomplete. ECF No. 115 at 7–8, 7 n.2. But these concerns do not render any alleged
2 charity care shortfall in the first half of 2017 entirely non-actionable, as CHS cites
3 no contractual provision or legal authority relieving it of its charity care obligations
4 during those transition months. Thus, CHS fails to establish it is entitled to judgment
5 as a matter of law on the hospitals’ alleged failure to provide sufficient charity care
6 in the first and second quarters of 2017.

7 Viewing all evidence and drawing all reasonable inferences in the manner
8 most favorable to the Foundation, no reasonable trier of fact could find in its favor
9 on its claims that Valley hospital provided insufficient charity care in 2011, 2012,
10 and 2014. On the contrary, a reasonable trier of fact could only find that Valley
11 hospital’s charity care levels exceeded the regional average in those years.
12 Therefore, CHS has met its initial burden in support of partial summary judgment.
13 By contrast, the Foundation has failed to point to specific facts establishing a genuine
14 dispute of material fact for trial. The Foundation has failed to introduce the
15 significant probative evidence required to defeat partial summary judgment. And, to
16 the extent the Foundation has identified genuine factual disputes, they are not
17 material because they do not alter the outcome.

18 In sum, no genuine dispute exists as to any material fact and, as a matter of
19 law, CHS is entitled to judgment on the Foundation’s claims that Valley hospital
20 provided too little charity care in 2011, 2012, and 2014. However, a genuine dispute

1 of material fact exists on whether the rest of the hospitals' charity care levels were
2 "comparable to" the regional average within the meaning of the Certificates of Need.

3 Accordingly, **IT IS HEREBY ORDERED:**

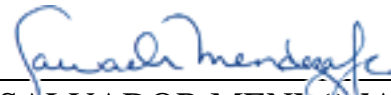
4 **1.** Defendants' Motion for Partial Summary Judgment, **ECF No. 115**, is
5 **GRANTED IN PART** and **DENIED IN PART**.

6 **A.** Summary judgment in Defendants' favor is granted as to
7 Plaintiff's claims regarding Valley Hospital and Medical
8 Center's charity care levels in 2011, 2012, and 2014.

9 **B.** The remainder of the motion is denied.

10 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
11 provide copies to all counsel.

12 **DATED** this 9th day of July 2019.

13 
14 SALVADOR MENDEZ, JR.
United States District Judge