

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAY J. SCHINDLER,

Plaintiff,

v.

OPINION AND
ORDER

05-C-705-C

MARSHFIELD CLINIC, PAUL
L. LISS, ROBERT K. GRIBBLE, DONALD
B. KELMAN, JOHN H. NEAL, RODNEY W.
SORENSEN, TOM FACISZEWSKI, KEVIN
RUGGLES, JAMES P. CONTERATO, FREDERIC
P. WESBROOK, GARY P. MAYEUX, ROBERT
A. CARLSON, DAVID J. SIMENSTAD,
TIMOTHY R. BOYLE, DANIEL G. CAVANAUGH,
GARY R. DEGERMAN, DOUGLAS J. REDING,
and IVAN B. SCHALLER,

Defendants.

In an order dated May 2, 2006, I granted former defendant St. Joseph's Hospital's motion to dismiss plaintiff's claim that the hospital had tortiously interfered with his prospective employment and insurance contracts by refusing to respond to potential employers and insurers who made inquiries regarding plaintiff's past affiliation with the hospital. Under Wisconsin law, the tort of interfering with a contract has five elements: (1) the plaintiff had a contract or prospective contractual relationship with a third party; (2) the

defendant interfered with the relationship; (3) the interference was intentional; (4) a causal connection exists between the interference and the damages; and (5) the defendant was not justified or privileged to interfere.” Aon Risk Servs. v. Liebenstein, 2006 WI App 4, ¶ 20, --- Wis.2d at ---, 710 N.W.2d 175. Although Wisconsin courts have never had occasion to address expressly whether a failure to act may constitute “interference” with a prospective contract, I noted that “Wisconsin courts have not recognized any duty on the part of hospitals to provide information to third parties that they are not obligated to provide by contract,” and that state courts had, on at least one prior occasion, declined to impose a duty upon hospitals “to furnish employment and performance information” in the absence of a contract requiring them to do so. Dkt. #22, at 19-20. Because plaintiff had not pleaded that the hospital was duty-bound to perform the acts he alleged it had not performed, I dismissed his tortious interference claim against the hospital, and because no other claims were asserted against St. Joseph’s Hospital, on May 19, 2006, I dismissed it from the lawsuit.

Now before the court is plaintiff’s motion for reconsideration of the May 2, 2006 order dismissing his tortious interference claim against the hospital. Plaintiff does not take issue with the court’s legal analysis regarding the showing he must make in order to state a claim; rather, he contends that because the court’s decision clarified a point of law on which state courts had never ruled, he was not on notice that his complaint needed to allege that defendant St. Joseph’s Hospital was obligated to provide the employment verification

information it failed to supply. According to plaintiff, the hospital's bylaws required its Chief of Staff to respond to "external credentialing inquiries," which included requests from third parties for verification of plaintiff's affiliation with the hospital.

If plaintiff's allegations are true and the hospital was bound to respond to inquiries and failed to do so, then plaintiff has stated a claim against the hospital for tortious interference. Petitioner has attached to his motion a copy of a document that he has authenticated as a copy of the hospital bylaws, along with several other documents. Because these documents fall outside the pleadings, I could not consider them in ruling on defendant St. Joseph Hospital's motion to dismiss. Nevertheless, they are relevant to determining whether plaintiff is capable of stating a claim against the hospital for tortious interference.

Although plaintiff exaggerates when he asserts that the court's May 2, 2006 ruling constituted a "controlling and significant change in the existing law regarding tort[i]ous interference," dkt. #31, at 10, it is true that the opinion clarified a point on which no Wisconsin court had spoken explicitly. Therefore, in order to insure that defendant St. Joseph's Hospital's motion to dismiss is resolved correctly, I will vacate the portion of the May 2, 2006 order dismissing plaintiff's tortious interference claim and, pursuant to Fed. R. Civ. P. 12(b), convert defendant's motion to dismiss to a motion for summary judgment in order to determine whether the hospital's bylaws imposed a contractual duty upon the hospital to respond third party requests for verification of plaintiff's affiliation with the hospital. In briefing the motion, the parties should comply with the schedule set forth

below.

ORDER

IT IS ORDERED that

1. Plaintiff Jay J. Schindler's motion for reconsideration of the court's May 2, 2006 order is GRANTED;

2. The May 2, 2006 order is VACATED with respect to dismissal of plaintiff's claim that defendant St. Joseph's Hospital tortiously interfered with his prospective employment and insurance contracts;

3. Defendant St. Joseph's Hospital's motion to dismiss plaintiff's claim that the hospital tortiously interfered with his prospective employment and insurance contracts is CONVERTED to a motion for summary judgment;

4. The parties are to observe the following schedule for briefing defendants' motion for summary judgment. Defendant St. Joseph's Hospital may have until June 23, 2006, in which to serve and file proposed findings of fact, evidentiary materials and a brief in support of their motion for summary judgment addressing the question whether the hospital bylaws imposed a contractual duty upon the hospital to respond to third party requests for verification of plaintiff's affiliation with the hospital. Plaintiff may have until July 14, 2006, in which to oppose the motion. Defendants may have until July 24, 2006, in which to serve and file a reply. In briefing the motion for summary judgment, the parties are to observe this

court's Procedures to be Followed on Motions for Summary Judgment, a copy of which is enclosed with this order.

5. If either party believes that it will need to undertake discovery in order to support or oppose plaintiff's contentions, that party should so advise the court and propose a revised schedule for completing the necessary discovery and briefing.

Entered this 2d day of June, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge