

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSHUA NEMZOFF and : CIVIL ACTION
NEMZOFF & COMPANY, LLC :
 :
v. :
 :
BAPTIST HEALTH SYSTEM, INC., :
BETH O'BRIEN, MERCER DELTA :
CONSULTING, LLC, GARY FURR :
and RICKY CREECH : NO. 04-01458

MEMORANDUM AND ORDER

Fullam, Sr. J.

July , 2004

Plaintiff Joshua Nemzoff and his company, Nemzoff & Company, LLC, are located in Pennsylvania. They provide consulting services for hospitals in financial difficulties - recommending and aiding in the implementation of restructurings, mergers and acquisitions designed to restore financial stability. The defendant Baptist Health System, Inc. operates a series of not-for-profit hospitals in the Alabama area. The individual defendants are officers and/or trustees of Baptist Health System, Inc.

On or about June 12, 2003, pursuant to a letter-agreement drafted by plaintiff, Baptist Health System, Inc. hired plaintiff as a consultant. For his consulting services, plaintiff was to be paid \$480,000 over a period of 12 months, at the rate of \$40,000 per month, plus expenses. Plaintiff was also

to receive additional compensation if mergers or acquisitions he recommended were carried out.

Plaintiff has filed an amended complaint of remarkable length and evidentiary detail, in patent disregard of the pleading requirements of the federal rules. In essence, plaintiff asserts that his contract was improperly terminated after only 8 months, and that the defendant Baptist Health System, Inc. owes him \$160,000 for the balance of the term, and significant additional sums on completed transactions.

The defendants have filed a motion to dismiss for lack of personal jurisdiction, and for improper venue. The brief accompanying the motion is noteworthy for its vituperative and uncivil language. The record before me, in its entirety, discloses what appears to have been an unfortunate series of factional fights and personality clashes concerning the proper management and future course of Baptist Health System, Inc. - disputes which both sides seem determined to litigate to victory regardless of expense.

The merits, if any, of the parties' dispute are not before me. The issue is whether this court has jurisdiction and whether venue is proper in this district. It is undisputed that this court does not have general jurisdiction over any of the defendants. Plaintiff does, however, contend that special jurisdiction exists as to all of the defendants because (1) a

substantial part of the work involved in carrying out the agreement was performed at plaintiff's office in Pennsylvania and, (2) as to the individual defendants, that their acts of defamation, interference with contract, and conspiracy were designed to, and did, cause plaintiff injury in Pennsylvania.

While some of plaintiff's arguments may have merit, I deem it unnecessary to resolve these issues because, in my judgment, this litigation clearly belongs in Alabama, where all of the significant events occurred, and where all of the witnesses except plaintiff himself are located. I note, also, that plaintiff is represented by a Florida law firm, hence cannot very well contend that Philadelphia is a more convenient location than an appropriate city in Alabama.

This action will therefore be transferred to the Northern District of Alabama for further proceedings.

An Order follows.

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BAPTIST HEALTH SYSTEM, INC.,	:	
BETH O'BRIEN, MERCER DELTA	:	
CONSULTING, LLC, GARY FURR	:	
and RICKY CREECH	:	NO. 04-01458

ORDER

AND NOW, this day of July 2004, upon
consideration of the defendants' motion to dismiss and
alternative motion for a change of venue, IT IS ORDERED:

1. That this action is transferred to the United States
District Court for the Northern District of Alabama.

John P. Fullam, Sr. J.