

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
INTEGRATED HEALTH SERVICES, INC., et al.,)	Case Nos. 00-389 (MFW) through 00-825 (MFW)
)	
Debtors.)	(Jointly Administered Under Case No. 00-389 (MFW))
_____)	
RoTech MEDICAL CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	Adversary No. A-00-1145 (MFW)
v.)	
)	
BLOUNT MEMORIAL HOSPITAL, et al.,)	
)	
Defendants.)	
_____)	

MEMORANDUM OPINION¹

Before the Court is the Motion for Partial Summary Judgment by Defendant Blount Memorial Hospital, Inc. ("Blount") to dismiss the complaint of RoTech Medical Corp. and Eastern Tennessee Infusion and Respiratory, Inc., d/b/a Fox Home Medical ("Fox" and collectively "RoTech") to the extent the Complaint seeks monetary damages against Blount. For the reasons set forth below, we grant Blount's Motion for Partial Summary Judgment.

¹ This Opinion Constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. BACKGROUND

On February 2, 2000, Integrated Health Services, Inc. ("IHS") and certain of its direct and indirect subsidiaries, including RoTech, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. RoTech is in the home respiratory services business, providing home respiratory care, home infusion therapy and durable medical equipment to patients in rural areas. A plan of reorganization for RoTech and certain of its subsidiaries was confirmed on February 13, 2002.

On September 15, 2000, RoTech filed a Complaint against Blount and others alleging, inter alia, interference with contract rights, conversion, and alleged misappropriation of confidential trade secrets.

RoTech filed a motion for a preliminary injunction, inter alia, seeking to enjoin Blount and former employees of RoTech from unfairly competing with it. A Temporary Restraining Order was issued, expedited discovery was undertaken and a preliminary injunction hearing was conducted on September 26, 2000. By Decision and Order dated November 9, 2000, we found that Blount had improperly received Fox's customer list, as well as financial and other business information about Fox. We concluded that an injunction was necessary to prevent Blount from using that information. By Order dated January 5, 2001, we clarified our earlier Order and enjoined Blount from directly contacting or

soliciting any person who was a customer of Fox prior to the date the adversary proceeding was filed for any service which Fox was providing or could have provided.

On January 11, 2001, Blount filed a Motion for Partial Summary Judgment seeking an order dismissing all claims for monetary damages against it, asserting governmental immunity pursuant to the Tennessee Governmental Tort Liability Act ("TGTLA"). On February 2, 2001, RoTech filed a Response to the Motion of Blount for Partial Summary Judgment. Blount filed a Reply on February 14, 2001, and a Supplemental Reply on February 11, 2002.

II. JURISDICTION

This Court has jurisdiction over this matter, which is a core proceeding, pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(A), (E), and (O).

III. DISCUSSION

The party filing a motion for summary judgment bears the burden of proving that no genuine issue of material fact exists in the case. See, e.g., Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). The parties concede there is no genuine issue of material fact and that the issue raised by the Motion is purely a legal one.

A. Negligence Exception

Blount is a hospital owned and operated by the county of Maryville, Tennessee. (N.T. September 26, 2000 at 124-25). Blount alleges that it is a governmental entity as defined in section 29-20-102 of the TGTLA,² which protects it from monetary damages in this adversary proceeding. RoTech has not disputed the status of Blount as a governmental entity. Section 29-20-201(a) of the TGTLA states as follows:

Except as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary.

T.C.A. 29-20-201(a) (emphasis added). With the exception of Count Eleven, RoTech concedes that Blount is entitled to immunity from monetary damages.

RoTech asserts that Count Eleven titled "Negligence" falls within the limitation of section 29-20-205 of TGTLA thereby stripping the governmental immunity of Blount. Section 29-20-205 states:

² A governmental entity is defined as "any political subdivision of the State of Tennessee including, but not limited to, any municipality, metropolitan government, county . . . or any instrumentality of government created by any one (1) or more of the herein named local governmental entities. . . ." T.C.A. § 29-20-102(3).

Immunity from suit of all governmental entities is removed for injury proximately caused by a negligent act or omission of any employee within the scope of his employment except if the injury arises out of . . .
(2) . . . interference with contract rights . . . invasion of right of privacy . . .

T.C.A. § 29-20-205 (emphasis added). The Tennessee Supreme Court has recently held that section 29-20-205 is to be strictly construed and only those torts enumerated in the statute apply. See Limbaugh v. Coffee Medical Center, 59 S.W.3d 73, 81 (Tenn. Sup. Ct. 2001).

Count Eleven titled "Negligence" alleges the following:

75. [Blount] knew, or in the exercise of ordinary care, should have known that [RoTech's] assets, patient information, physician referral sources, forms, and other proprietary information were being misappropriated to their new company and that a competing business was being established contrary to the interests of [RoTech].
76. [Blount] . . . negligently, willfully, and recklessly failed and refused to stop the misappropriation of [RoTech]'s assets, and the creation of a competing business, when each of them had a duty to do so.
77. As a direct and proximate result of this negligence, gross negligence, willfulness, and recklessness of [Blount], [RoTech] have been damaged as, heretofore alleged, and is entitled to an award of both actual and punitive damages.

(Complaint §§ 75-77).

The negligence alleged in Count Eleven clearly is based on interference with contractual rights and misappropriation of trade secrets. Therefore, we conclude that Count Eleven falls squarely within section 29-20-205(2) which grants immunity for negligence where the injury arises out of "interference with contract rights" and "invasion of right of privacy." T.C.A. § 29-20-205(2).

B. Gross Negligence Exception

RoTech further alleges that section 29-20-201(b)(2) exempts gross negligence from TGTLA's grant of governmental immunity. That section provides:

All members of boards, commissions, agencies, authorities, and other governing bodies of any governmental entity . . . shall be immune from suit arising from the conduct of the affairs of such board, commission, agency, authority, or other governing body. Such immunity from suit shall be removed when such conduct amounts to willful, wanton, or gross negligence.

T.C.A. § 29-20-201(b)(2) (emphasis added).

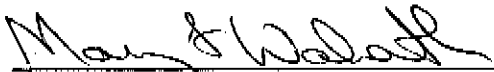
Blount asserts, however, that this provision only applies to members of governmental entities as opposed to the governmental entity itself. We agree. See, e.g., Jenkins v. Loudon County, 736 S.W.2d 603, 608 n.7 (Tenn. Sup. Ct. 1987), rev'd on other grounds, Limbaugh; Moore Const. Co., Inc. v. Story Engineering Co., Inc., 1998 WL 382198, *4 (Tenn. Ct. App. 1998).

IV. CONCLUSION

For the reasons set forth above, we grant Blount's Motion for Partial Summary Judgment and conclude that no monetary damages can be assessed against Blount on any of the counts. An appropriate order is attached.

BY THE COURT:

Dated: April 5, 2002



Mary F. Walrath
United States Bankruptcy Judge

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FOR THE DISTRICT OF DELAWARE

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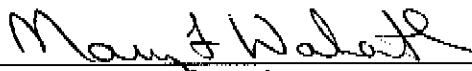
O R D E R

AND NOW, this 5TH day of APRIL, 2002, upon consideration of the Motion of Blount Memorial Hospital, Inc. for Partial Summary Judgment, for the reasons set forth in the accompanying Memorandum Opinion, it is hereby

ORDERED that the Motion is GRANTED, and it is further

ORDERED that no monetary damages can be assessed against Blount on any of the counts.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

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