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IN THE SIXTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

STEVEN SHAO, individually, and
next-of-kin to) the Deceased,
ELIZABETH SHAO,

Plaintiff,

HCA HEALTH SERVICES OF
TENNESSEE, mc. d/b/a SUMMIT
MEDICAL CENTER; TOBY SMITH, M.D.;
MIDDLE TENNESSEE PULMONARY
ASSOCIATES, PLLC,

Defendants.

FILED
2017 APR 24 PM 2:00
RICHARD R ROOKER, CLERK
[Signature]
D.C.

No. 16C2469

JURY DEMAND (12)

ORDER

This Cause came on to be heard on the 7th of April, 2017, before the Honorable Thomas Brothers, Judge of the Sixth Circuit Court for Davidson County, Tennessee, upon several motions:

(1) Plaintiff's Motion for Default Judgment against Toby Smith, M.D. and Middle Tennessee Pulmonary Associates, PLLC; (2) Defendants Toby Smith, M.D.'s and Middle Tennessee Pulmonary Associates, PLLC's Motion for Extension of Time to File Answer; and (3) Defendants Toby Smith, M.D.'s and Middle Tennessee Pulmonary Associates, PLLC's Motion for Enlargement of Time to Respond to Discovery.

After considering the written motions and briefs, the oral arguments of counsel, and the entire record herein, this Court finds that: (1) Plaintiff's Motion for Default Judgment is not well taken and should be denied; (2) Defendants' Motion for an Extension of Time to answer the

Complaint is well taken and should be granted; and (3) an enlargement of time for Defendants to answer discovery is justified and should be granted.

The Court has received two competing orders but finds that defendants' proposed order is not specific enough and plaintiff's proposed order is inaccurate.

The Court makes the following findings of fact and conclusions of law.

The initial complaint was filed on September 16, 2016. These defendants did not file an answer. Plaintiff filed a Motion for Default on October 25, 2016, and later struck the motion on November 7, 2016. Defendants nonetheless filed a response and indicated that they requested until December 15, 2016, to file an answer. All parties engaged in pretrial management discussions and an Agreed Order was entered on December 7, 2016, establishing deadlines for service of discovery and setting a case management conference on March 7, 2017. Another Agreed Scheduling Order was entered on February 28, 2017, modifying those deadlines and again setting a case management conference for March 7, 2017. Discovery requests were exchanged between all parties during this time. There is no indication of any communication during these dates relating to the answer of defendants. Plaintiff made no demand, informally or formally, to defendants to supply an answer.

These motions are unfortunately clouded by the untimely and unexpected death of Michael Geraciotti, who was counsel of record for these defendants. Mr. Geraciotti died in the early morning hours of March 16, 2017, and one of his associates, Linda Natheson, advised counsel for plaintiff of his passing. On that same day, at 12:48 PM, counsel for plaintiff, Brian Cummings, sent an email to Ms. Nathenson expressing his condolences and alerting her to outstanding items due in several cases. Three hours and ten minutes later, at 3:58 PM, counsel for plaintiff filed the instant Motion for Default Judgment. Four days later, on March 20, 2017,

plaintiff's counsel, Brian Manookian, sent a letter to Ms. Nathenson threatening to assert a claim of \$8,000,000.00 against her clients, her law firm, and the estate of Mr. Geraciotti.

This Court is profoundly disappointed in the conduct of plaintiff's counsel and the timing and manner in which the Motion for Default was presented. Being a zealous advocate does not mean that one abandons all sense of professionalism, courtesy and common decency. It is clear that counsel for plaintiff was attempting to gain a tactical advantage by aggressively pursuing the claim for default on the very day of Mr. Geraciotti's death; despite the fact that all parties had been actively engaged in pretrial proceedings and plaintiff's counsel never complained after striking the original motion. Such behavior operates as an estoppel to the current claims of prejudice.

It is with regret that this Court must reprimand all of plaintiff's counsel for conduct that is unbecoming members of the Bar and officers of the court. Hopefully counsel will apply this constructively and thereby avoid such reprehensible behavior in the future.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

- (1) Plaintiff's Motion for Default Judgment Against Toby Smith, M.D. and Middle Tennessee Pulmonary Associates, PLLC shall be and hereby is DENIED, with this Court further finding and ORDERING that the Plaintiffs are ESTOPPED from further referencing or arguing the positions they have taken with respect to their Motions for Default;
- (2) Defendants Toby Smith, M.D.'s and Middle Tennessee Pulmonary Associates, PLLC's Motion for Extension of Time to File Answer in this case is GRANTED. Since an Answer was filed on March 29, 2017 as a proposed Answer, Defendants Toby Smith, M.D. and Middle Tennessee Pulmonary Associates, PLLC will promptly refile their Answer after entry of this Order;

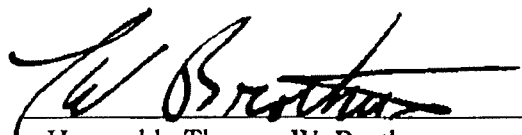
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(3) Defendants Toby Smith, M.D.'s and Middle Tennessee Pulmonary Associates, PLLC's Motion for Enlargement of Time to Respond to Discovery is GRANTED. Defendants Toby Smith, M.D. and Middle Tennessee Pulmonary Associates, PLLC shall have an additional thirty (30) days from the entry of this order to respond to Plaintiffs written discovery.

An additional case management conference is hereby Ordered before Special Master Marsh Nichols on **May 23, 2017, at 2:45 p.m. Central Time.**

IT IS SO ORDERED.

ENTERED this the _____ day of _____, 2017.

A handwritten signature in black ink, appearing to read 'T. W. Brothers', written over a horizontal line.

Honorable Thomas W. Brothers
Sixth Circuit
Judge

Copy

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document has been served via U.S. Mail and E-Mail upon:

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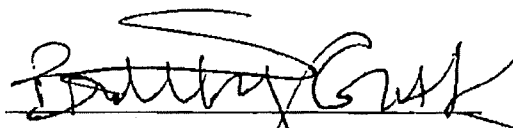
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on this the ^{24th} day of April, 2017.


Deputy Clerk