

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHESAPEAKE

CHESAPEAKE HOSPITAL AUTHORITY d/b/a

CHESAPEAKE REGIONAL MEDICAL CENTER,

Plaintiff,

v.

Civil Action No. CL21-___

SENTARA MEDICAL GROUP and

SENTARA HEALTHCARE,

Defendants,

COMPLAINT

Plaintiff Chesapeake Hospital Authority, d/b/a Chesapeake Regional Medical Center (“CRMC”), by counsel, for its Complaint, states as follows:

INTRODUCTION

1. CRMC is a community-focused hospital system that for decades has provided high-quality healthcare services to the citizens of Chesapeake and Southside Hampton Roads.¹

2. Defendants Sentara Medical Group and Sentara Healthcare (collectively “Sentara”) together constitute a hospital system and a number of associated medical groups.

3. CRMC has an approximate twelve percent (12%) market share of the cardiology services market in Southside Hampton Roads.

4. By contrast, Sentara has a monopoly of the cardiology services market in Southside Hampton Roads.

¹ For purposes of this Complaint, the term Southside Hampton Roads is intended to include the cities of Chesapeake, Virginia Beach, Norfolk, Portsmouth and Suffolk.

5. Specifically Sentara controls approximately seventy percent (70%) of the overall cardiology services market, and as much as eighty to ninety percent of certain distinct service lines under the wider cardiology services umbrella.

6. But a monopoly position is not enough – Sentara also seeks to eliminate competitors who attempt to encroach on its monopoly service lines.

7. CRMC is Sentara's latest target.

8. Sentara has focused its tortious and anti-competitive attentions on preventing CRMC from competing in the market for cardiology services.

9. Sentara has done so by attempting to cripple CRMC's existing cardiology programs and by blocking CRMC's attempts to expand into the open heart services market.

10. While CRMC's existing cardiology programs include interventional cardiology services, for years CRMC has sought to expand its cardiology offerings by establishing an open heart program.

11. Sentara and Bon Secours both have open heart programs.

12. CRMC does not and in fact is the only hospital system in Southside Hampton Roads without an open heart program. The lack of an open heart program has put CRMC at a disadvantage vis a vis its competitors.

13. To establish an open heart program, Virginia law requires that CRMC first obtain a Certificate of Public Need ("COPN").

14. The COPN application and review process is handled by the Virginia Department of Health ("VDH").

15. CRMC applied for an open heart COPN in 2017.

16. VDH staff recommended that the COPN be granted, which in most cases means the application will be approved.

17. Before the VDH commissioner could make a final decision, however, Sentara intervened in the proceeding in an effort to thwart CRMC's application.

18. Ultimately, Sentara's efforts were successful – notwithstanding the recommendation of approval by the VDH staff, the VDH commissioner, relying extensively on the arguments that Sentara asserted in its objection, denied the COPN application.

19. Undermining CRMC's COPN application was only part of Sentara's plan to cripple CRMC's cardiology services program.

20. In the first half of 2019 (after CRMC filed its COPN application and while it was still being contested), Sentara also began secretly meeting with the cardiologists who serviced CRMC's internal cardiology program, the Bayview interventional cardiologists, to persuade them to join Sentara and leave CRMC.

21. Sentara knew that stealing these cardiologists would cause significant damage to CRMC (and Bayview).

22. Therefore, Sentara attempted to conduct its meetings in secret by providing nondisclosure agreements to the cardiologists. These NDAs were an attempt to keep their communications private and hide them from CRMC and Bayview.

23. Sentara engaged in these discussions even though it knew that certain of the Bayview cardiologists were actually "medical directors" of CRMC health programs with direct contractual relationships with CRMC, and even though it knew that CRMC had ongoing business expectancies in continued professional relationships with all of the cardiologists, upon whom CRMC relied to provide interventional cardiology services at CRMC.

24. Sentara also solicited and received confidential, proprietary information from the interventional cardiologists, which it sought to use for purposes of assessing the value of their practice(s) – which would include, of course, their work with and for CRMC – and to formulate offers of employment to the cardiologists.

25. Further, Sentara knew that its cardiology programs were fully staffed prior to raiding these physicians.

26. Indeed, Sentara itself, in contesting CRMC's open heart COPN application, publicly argued that the need for cardiac services has been declining for years.

27. Sentara's only possible intent in stealing the cardiologists was to damage CRMC's cardiology services program.

28. Ultimately, Sentara's covert operation was successful – it stole the interventional cardiologists who formed the backbone of CRMC's existing cardiology program.

29. As of January 1, 2020, the Bayview interventional cardiologists resigned their privileges at CRMC and are no longer providing these services at CRMC.

30. Instead, these cardiologists are now providing cardiology services at Sentara hospitals.

31. By providing these services at Sentara hospitals within the scope of the noncompete provisions included in their CRMC contracts, the medical directors are in breach of their contracts, and those breaches have been caused by Sentara's tortious interference.

32. CRMC also had valid business expectancies in its continuing relationships with all of the cardiologists, and Sentara interfered with those business expectancies using improper methods and means.

33. In sum, between late 2017 and January 1, 2020, Sentara managed both to block approval for CRMC's open heart program (even after the VDH staff initially recommended approval of the application) and to steal the interventional cardiology physicians who were providing existing services to CRMC patients.

34. By inserting itself into the COPN process to block CRMC's open heart efforts, and by simultaneously stealing away CRMC's interventional cardiologists, Sentara caused an existential threat to CRMC's entire cardiology services line.

35. Only at great cost, both in dollars and time spent, was CRMC able to fill its interventional cardiology needs with contract doctors.

36. In addition to the costs of acquiring short term coverage, CRMC also incurred damage in the form of lost ancillary revenue that the Bayview interventional cardiologists brought to CRMC in the form of referrals to other CRMC service lines.

37. And to date, CRMC has not been able to successfully embark on its open heart program.

38. Sentara's predatory business practices and tortious conduct must be addressed, both by this Court ordering Sentara to change its behavior, by monetary damage awards to make CRMC whole and by punitive damages that send a message that these willful and malicious activities will not be tolerated.

39. This suit seeks monetary damages and injunctive relief.

PARTIES, JURISDICTION & VENUE

40. Plaintiff CRMC is a public body politic formed by the General Assembly for the purpose of providing healthcare and hospital services to the citizens of Chesapeake and the surrounding region.

41. Defendant Sentara Healthcare is a Virginia nonprofit corporation that owns and operates hospitals and other healthcare facilities.

42. Defendant Sentara Medical Group is a wholly-owned subsidiary of Sentara Healthcare.

43. Jurisdiction and venue are proper in this Court because activities at issue occurred in the City of Chesapeake.

GENERAL ALLEGATIONS

44. CRMC owns and operates Chesapeake Regional Medical Center, a hospital located in Chesapeake, as well as the related healthcare offerings and locations in the CRMC hospital system.

45. CRMC provides a wide range of high-quality healthcare to citizens of Chesapeake and the surrounding Southside Hampton Roads communities, including Northeastern North Carolina.

46. Sentara is also a hospital system, including a number of employed physicians in various medical groups, that also provides healthcare services to citizens in Southside Hampton Roads and the surrounding communities.

47. Sentara holds a dominant market position in Southside Hampton Roads healthcare services.

48. Sentara's overall hospital services share is approximately seventy percent (70%).

49. Sentara also holds a more than seventy percent (70%) market share in cardiology services, and in some specific cardiology service lines its market share exceeds eighty and even ninety percent of the Southside Hampton Roads market. This market share constitutes a monopoly.

50. By contrast, CRMC has only twelve percent of the cardiology market – in fact, unlike Sentara and the other hospital system operating in Southside Hampton Roads, Bon Secours, CRMC does not have an open heart program.

51. CRMC does, however, have an interventional cardiology program.

CRMC's Cardiologist Relationships via Bayview Physician Services: 2013 - Present

52. Historically, CRMC has relied upon a medical practice known as Bayview Physician Services, P.C. ("Bayview") to staff its cardiology needs.

53. While CRMC has not had an open heart program, it has for years serviced its patients with a robust interventional cardiology program.

54. Prior to January 2020, that interventional cardiology program was staffed by cardiologists employed by Bayview pursuant to an agreement between CRMC and Bayview (and certain of the individual cardiologists who served as medical directors for certain CRMC services).

55. At all times, prior to Sentara's interference described in this lawsuit, CRMC reasonably expected that its relationship with the Bayview cardiologists would continue and that the Bayview cardiologists would continue to service CRMC's patients with interventional cardiology needs.

56. Specifically, CRMC and Bayview are parties to a Management Services Agreement whereby Bayview provides, among other things, cardiologists to cover CRMC's interventional cardiology services for its patients.² A true and accurate copy of the Management Services Agreement is attached as **Exhibit 1**.

² CRMC originally entered into the Management Services Agreement with Cardiovascular Associates, LTD ("CVAL"). CVAL subsequently was acquired by Bayview, and the parties (including CRMC) entered into an assignment agreement whereby Bayview assumed all of CVAL's rights and obligations under the Management Services Agreement.

57. At the same time it entered into the Management Services Agreement, CRMC and the six individual cardiologists who were to act as CRMC's medical directors in connection with the cardiology services also entered into individual Physician Agreements.

58. Pursuant to the Physician Agreements, the individual medical director cardiologists agreed to provide medical services to CRMC.

59. Each of the Physician Agreements also includes a covenant not to compete. Per the covenant, each of the individual medical director cardiologists agree not to provide the "same, or substantially similar, services" that they were providing CRMC to certain Sentara hospitals. True and accurate copies of the Physician Agreements are attached as pages 39 and following of Exhibit 1.

60. Moreover, the Management Services Agreement itself also included a covenant not to compete, which also prohibited Bayview *and* the medical director cardiologists from providing the same or similar services to certain Sentara hospitals. (Management Services Agreement, § 14).

61. The covenants not to compete included in the Physician Agreement and in the Management Services Agreement both continue throughout the term of the Management Services Agreement.

62. As of the events described herein, the term of the Management Services Agreement had not yet expired.

63. In addition, all of the Bayview cardiologists had separate covenants not to compete with Bayview directly.

64. Those noncompete provisions applied in the event to a termination of the cardiologists' employment and prevented the cardiologists from engaging in cardiology services within 25 miles of Bayview for a six month period following the termination of employment.

CRMC's Pursuit of an Open Heart Program: 2015 - Present

65. For several years, CRMC has also explored the possibility of starting an open heart program. These efforts have included exploring alliances with strategic healthcare partners and kicking off a capital campaign and building program to build facilities that could house open heart operating rooms and related amenities.

66. In 2017, CRMC filed an application for a COPN, which under Virginia law CRMC must have to run an open heart program.

67. COPN applications are filed with the Virginia Department of Health.

68. The staff makes an initial recommendation, and ultimately the Commission of the VDH makes the final decision to approve or deny the COPN application.

69. The VDH staff originally recommended that CRMC's open heart COPN application be *approved*.

Sentara's Objections to CRMC's Open Heart COPN: 2017 - Present

70. While Sentara initially raised no objection to the COPN application, after the staff's recommendation to approve CRMC's application, Sentara took advantage of a procedural loophole to intervene in the proceedings and object to CRMC's application.

71. After holding several fact-finding sessions to consider Sentara's late entrance into the proceedings and CRMC's application, in August of 2018, the VDH Commissioner denied the COPN application.

72. In doing so, the Commissioner relied extensively on Sentara's objections.

73. CRMC pursued its legal avenues to appeal the denial of the COPN application, and those efforts are still ongoing.

Sentara's Interference with the Bayview Cardiologists: 2019 - Present

74. In early 2019, not long after taking steps to block CRMC's open heart application, unbeknownst to CRMC (and Bayview), Sentara began secret discussions with a number of the Bayview interventional cardiologists, including medical directors and others that provided services to CRMC.

75. The cardiologists at issue included Dr. Adler, Dr. Alimard, Dr. Iyer, Dr. McKechnie, Dr. Miller, Dr. Talreja and Dr. Woolett ("Bayview cardiologists"). Each of these doctors provided interventional cardiology services to CRMC.

76. Dr. McKechnie, Dr. Iyer, and Dr. Alimard were "medical directors," who (as discussed above) had direct contractual relationships with CRMC ("medical director cardiologists").

77. Sentara deemed these discussions so sensitive that it asked at least two of the principal cardiologists leading the discussions to execute non-disclosure agreements.

78. Sentara also asked the Bayview cardiologists to provide copies of contracts, including noncompete provisions, for Sentara's review.

79. Sentara, upon information and belief, also requested and received confidential, proprietary information involving revenue and productivity of the Bayview cardiologists, and their compensation. Upon information and belief, the revenue and productivity information included work performed with and at CRMC in the provision of interventional cardiology services there.

80. Further, upon information and belief, Sentara's own interventional cardiology needs were fully staffed – Sentara had no reason to hire away these cardiologists for its own business needs.

81. Instead, Sentara did so to continue and enhance its monopoly position in the cardiology services market in Southside Hampton Roads by cutting off its competitor, CRMC, from establishing a competing program.

82. Notwithstanding these facts, including that all of the Bayview cardiologists were bound by covenants not to compete with Bayview and the medical directors were directly bound by agreements with CRMC not to compete, Sentara contracted with each of them to provide services to Sentara as of January 1, 2020.

83. Also as of January 1, 2020, each of the Bayview cardiologists resigned their privileges at CRMC.

84. The services being provided by the Bayview medical director cardiologists to Sentara were provided in breach of the covenants not to compete that each of the medical director cardiologists has with CRMC.

85. The services were also provided in breach of the Bayview cardiologists' covenants not to compete with Bayview.

86. In addition, CRMC had a valid business expectancy that all of the Bayview cardiologists would continue to provide cardiology services to CRMC, just as they had since at least 2013.

87. Upon information and belief, Sentara was aware of the contracts that the individual medical director cardiologists have with CRMC.

88. Sentara was also aware of CRMC's business expectancies with the Bayview cardiologists.

89. Notwithstanding this knowledge, Sentara interfered with the contracts and expectancies and has continued to employ the Bayview cardiologists and engage their services in violation of the covenants.

90. Upon information and belief, Sentara has taken these actions for the purpose of monopolizing cardiology services in Hampton Roads, and specifically Chesapeake, and for the purpose of preventing CRMC from providing interventional cardiology services to its patients so that all such patients will be forced to seek care at a Sentara facility, thus increasing Sentara's revenue and market power.

91. In addition, Sentara knew that stealing the Bayview cardiologists would result in CRMC losing the additional revenue generated historically when the Bayview cardiologists referred patients to CRMC for non-cardiology healthcare services.

92. Sentara knew that losing this additional referral revenue would further weaken one of its few competitors in the South Hampton Roads hospital services market.

93. In sum, Sentara's actions have been taken for the purpose of crippling one of its key competitors in the provision of cardiology services in this market.

94. Sentara's actions involve, at the very least, improper methods, such as undue influence, misuse of inside or confidential information, violation of an established standard of a trade or profession, unethical conduct, sharp dealing, overreaching, unfair competition, sharp dealing, and are not in accordance with community norms or standards and constitute independent torts.

95. These actions have damaged CRMC. It has suffered lost profits, diminished goodwill in the community, and other related direct and consequential damages.

96. Furthermore, CRMC's ability to provide interventional cardiology care to its patients has been severely impacted, and it has only been able to do so at significant additional cost.

COUNT ONE
TORTIOUS INTERFERENCE WITH CONTRACT

97. Plaintiff CRMC incorporates all paragraphs above as though fully set forth here.

98. Individual Bayview medical director cardiologists had contracts with CRMC, which included, among other things, covenants not to compete.

99. Upon information and belief, Sentara was aware of the medical director contracts and covenants not to compete contained therein.

100. Sentara used improper means and methods to interfere with the medical director contracts.

101. Sentara interfered with the medical director contracts intentionally and caused the medical director cardiologists to breach the contracts with CRMC.

102. Sentara's actions have been willful and wanton, malicious and taken with the intent to harm CRMC.

103. CRMC has been damaged by Sentara's actions.

COUNT TWO
TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCIES

104. Plaintiff CRMC incorporates all paragraphs above as though fully set forth here.

105. CRMC had reasonable business expectancies in its relationships with the Bayview cardiologists described herein, including but not limited to the medical director cardiologists, continuing to provide services to CRMC. The expectancy included the probability of future economic benefit to CRMC.

106. Sentara was aware of the Bayview cardiologists' (including the medical director cardiologists') historic and ongoing relationships with CRMC and CRMC's attendant business expectancies.

107. It is reasonably certain that, but for Sentara's intentional misconduct, CRMC would have continued in the relationship with the Bayview cardiologists.

108. Sentara used improper means and methods to interfere with CRMC's business expectancies, including without limitation undue influence, misuse of inside or confidential information, violation of an established standard of a trade or profession, unethical conduct, sharp dealing, overreaching, unfair competition and independent torts.

109. Sentara interfered with the business expectancies intentionally and caused the Bayview cardiologists to resign their privileges with CRMC and discontinue providing healthcare services for and at CRMC.

110. Sentara's actions have been willful and wanton, malicious and taken with the intent to harm CRMC.

111. CRMC has been substantially damaged by Sentara's actions.

COUNT THREE
TORTIOUS INTERFERENCE WITH CONTRACT
(THIRD PARTY BENEFICIARY OF BAYVIEW CONTRACT)

112. Plaintiff CRMC incorporates all paragraphs above as if fully set forth herein.

113. Bayview and the Bayview cardiologists were parties to enforceable contracts that included covenants not to compete.

114. CRMC was a third-party beneficiary of the covenants not to compete in that, upon information and belief, Bayview and the Bayview cardiologists clearly and definitely intended to

confer a benefit upon CRMC in the form of the Bayview cardiologists not competing with CRMC's cardiology services in the aftermath of their departure from Bayview.

115. Sentara knew that CRMC was a beneficiary of the Bayview contracts with the Bayview cardiologists.

116. As a third party beneficiary, CRMC was damaged by Sentara's interference with Bayview's contracts with the Bayview cardiologists.

117. Sentara's interference with the Bayview contracts was willful and wanton, intentional and malicious.

118. Sentara's interference with the Bayview contracts was intended to harm both Bayview and CRMC.

119. CRMC has been substantially damaged by Sentara's actions.

COUNT FOUR
STATUTORY BUSINESS CONSPIRACY

120. Plaintiff CRMC incorporates all paragraphs above as if fully set forth herein.

121. In violation of Va. Code Ann. § 18.2-499, Sentara has conspired by express agreement and tacit understanding with the Bayview cardiologists to intentionally, purposefully, and without lawful justification willfully and maliciously injure CRMC in its reputation, trade, business, and profession, including by tortiously interfering with CRMC's contractual agreements and business expectancies with the Bayview cardiologists.

122. Sentara's actions have damaged CRMC. The damage includes, but is not limited to, lost profits, damage to goodwill and reputation, and other direct and consequential damages.

123. Pursuant to Va. Code Ann. § 18.2-500, CRMC is entitled to recover treble damages, costs and attorney's fees.

COUNT FIVE
COMMON LAW CONSPIRACY

124. Plaintiff CRMC incorporates all paragraphs above as if fully set forth herein.

125. Sentara and the Bayview cardiologists improperly combined, or acted in concert, for the purpose of tortiously interfering with CRMC's contracts and business expectancies. Sentara and the Bayview cardiologists engaged in this conduct for their own interests.

126. The conspiracy harmed CRMC, as further described above.

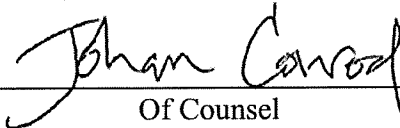
127. Sentara's conduct was intentional, willful and wanton, and malicious. CRMC is therefore entitled to punitive damages.

TRIAL BY JURY IS DEMANDED ON ALL ISSUES SO TRIABLE.

[Remainder of page intentionally left blank]

WHEREFORE, CRMC requests that the Court enter an Order: 1) awarding direct and consequential damages to CRMC in an amount of not less than \$20,000,000; 2) awarding injunctive relief to prevent Sentara from continuing to tortiously interfere in CRMC's contracts or business expectancies with physicians; 3) awarding punitive damages in an amount not less than \$350,000, or any larger amount permitted by law; 4) awarding CRMC its reasonable attorney's fees, costs and expenses pursuant to Va. Code Ann. §§ 18.2-499-500; 5) awarding pre-judgment interest from January 1, 2020 until any judgment is paid; and 6) awarding such other and further relief as the Court deems appropriate.

**CHESAPEAKE HOSPITAL AUTHORITY
d/b/a CHESAPEAKE REGIONAL MEDICAL
CENTER**

By: 
Of Counsel

THE CICALA LAW FIRM PLLC
R. Johan Conrod, Jr. (VSB No. 46765)
Joanne Cicala (*pro hac vice* to be filed)
Josh Wackerly (*pro hac vice* to be filed)
101 College Street
Dripping Springs, TX 78620
joanne@cicalapllc.com
josh@cicalapllc.com
johan@cicalapllc.com
Tel.: (512) 275-6550
Fax: (512) 858-1801

JOHAN CONROD LAW PLLC
R. Johan Conrod, Jr. (VSB No. 46765)
101 N. Lynnhaven Rd, #104
Virginia Beach, VA 23452
757.286.8299
johan@johanconrodlaw.com