

STATE OF NORTH CAROLINA  
COUNTY OF VANCE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
14 CVS 1173

JAMES A. MCCARTHY, SR., M.D., )  
Plaintiff, )

v. )

J. WELDON HAMPTON, M.D. and PREMIER )  
WOMEN'S HEALTH PROFESSIONALS, P.A., )  
Defendants. )

**ORDER ON VALUATION**

\_\_\_\_\_) )  
J. WELDON HAMPTON, M.D. and PREMIER )  
WOMEN'S HEALTH PROFESSIONALS, P.A., )  
Counterclaim-Plaintiffs, )

v. )

JAMES A. MCCARTHY, SR., M.D. and PWHP )  
REALTY, LLC, )  
Counterclaim-Defendants.)

THIS MATTER comes before the Court on Defendants J. Weldon Hampton, M.D. and Premier Women's Health Professionals, P.A.'s ("Defendants") Notice of Filing and Motion for Affirmative Relief ("Motion for Relief"). On November 16, 2015, the Court held a hearing on the Motion for Relief.<sup>1</sup>

THE COURT, having considered the Motion for Relief, briefs in support of and opposition to the Motion for Relief, arguments of counsel and other appropriate matters of record, FINDS and CONCLUDES as follows.

1. The factual and procedural background of this matter is more fully outlined in the Court's Order on Motion to Enforce Mediated Settlement Agreement entered on July 1, 2015 ("Order on Motion to Enforce"). In the Order on Motion to Enforce, the Court enforced

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<sup>1</sup> Also on November 16, 2015, the Court held a hearing on Defendants' Motion for an Order to Show Cause. A similar request was also contained in the Motion for Relief. The requested relief regarding Defendants' Show Cause request has been addressed in a separate Order.

the terms of a settlement document executed by Plaintiff and Defendants, and their respective counsel, following a mediation held on March 6, 2015.

2. That document, captioned Essential Terms of Mediated Settlement Agreement ("ETA"), and the Order on Motion to Enforce required Defendants to purchase Plaintiff's interest in an entity called PWHP Realty, LLC ("Realty LLC"), and provided a procedure to value Plaintiff's interest in that entity. The ETA required each party to obtain an appraiser to perform a valuation of the real property held by Realty LLC. Once the initial appraisals were completed, if the parties could not agree on a valuation, the two appraisers were to select "a third appraiser whose appraisal will be binding on the parties."<sup>2</sup> The Order on Motion to Enforce required the initial appraisals to be exchanged on or before August 5, 2015.

3. The parties' initial appraisals diverged significantly as to the value of the real property, with a difference of approximately \$440,000.00 between appraisals. The difference in value was primarily based on Plaintiff's contention that the current lease of the real property is invalid. Instead of submitting the issue to a third appraiser pursuant to the ETA to resolve the issue, counsel for Plaintiff indicated that he felt litigation would be necessary to resolve the validity of the current lease.<sup>3</sup> However, instead of raising the issue with the Court or otherwise attempting to resolve this disagreement with counsel for Defendants, counsel for Plaintiff indicated that Plaintiff's "appraiser will only consent to the selection of an appraiser who disregards the later lease 'agreement' . . . ."<sup>4</sup> Given this demand and Plaintiff's failure to submit the valuation to a third appraiser pursuant to the terms of the ETA, Defendants filed the Motion for Relief.

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<sup>2</sup> ETA ¶ 1.

<sup>3</sup> See Notice of Filing and Mot. Relief, Ex. 2.

<sup>4</sup> *Id.*

4. After considering the Motion for Relief and hearing argument on that motion,<sup>5</sup> the Court concludes that, particularly given Plaintiff's failure to follow the terms of the ETA, additional guidance is required to complete the buyout process agreed to by the parties in the ETA.<sup>6</sup> Accordingly, the Court, in its discretion enters the following order to facilitate the completion of the buyout of Plaintiff's interest in Realty.

THEREFORE, IT IS ORDERED that:

5. E. Cody Jetton ("Jetton") shall conduct an appraisal of the real property held by Realty LLC pursuant to the terms of the ETA and the Order on Motion to Enforce.

6. The parties shall provide Jetton with all information necessary to perform this appraisal. After considering all relevant information, the appraiser shall determine the value of Realty LLC's real property using the prevailing market lease rate for the property. The appraiser's valuation shall be binding on the parties.

7. The costs of Jetton's appraisal shall be shared equally by the parties.

This the 19th day of November, 2015.

/s/ Gregory P. McGuire  
Gregory P. McGuire  
Special Superior Court Judge  
for Complex Business Cases

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<sup>5</sup> At the hearing on the Motion for Relief, the Court requested that counsel for Defendants provide the Court with potential appraisers that would be willing to complete an appraisal of the real property. It is from that list that the Court selects the below appraiser.

<sup>6</sup> As noted in the hearing on the Motion for Relief, any disciplinary measures required based on the conduct of Plaintiff or counsel for Plaintiff will be reserved for another Order.