

Civil Case Information Statement

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

97 MAR 16 PM 4:40

I. CASE STYLE:

Case # 97-C-725

Ke

Judge _____

Plaintiff

RICHARD C. RASHID, M.D.

JUDGE MACQUEEN

vs.

Defendants

Days to

Answer

Type of Service

MUHIB TARAKJI, M.D.

20

Personal

4825 MacCorkle Avenue, S.W
Street
Charleston, West Virginia
City, State, Zip

Street

City, State, Zip

City, State, Zip

Rcpt 269626
875

~~Ret to Atty~~
No Summons issued

Original and 1 copies of complaint furnished herewith.

PLAINTIFF: RICHARD C. RASHID, M.D.	CASE NUMBER: 97-C-____
DEFENDANT: MUHIB TARAKJI, M.D.	

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY : (Month/Year) February, 1998

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?

☐ YES ☒ NO IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

Attorney:

Scott S. Segal
The Segal Law Firm
810 Kanawha Boulevard
Charleston, West Virginia 25301
Dated: 3-14-97

Representing:

☒ Plaintiff
☐ Defendant


Signature

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

97 MAR 14 PM 4:40

RICHARD C. RASHID, M.D.,

Plaintiff,

v.

Civil Action No. 97-C-725

MUHIB TARAKJI, M.D.,

Defendant.

COMPLAINT

COMES NOW the plaintiff, Richard C. Rashid, M.D. ("Dr. Rashid"), and says the following for his Complaint against Muhib Tarakji, M.D. ("Dr. Tarakji"):

Introduction

This action arose on March 24, 1995, when the defendant began a medical practice in Kanawha County, West Virginia. As will be more fully explained below, the defendant's practice was formed by the unauthorized use of trade secrets, which were misappropriated from Dr. Rashid through the use of fraud. Moreover, the defendant's practice was formed and operated in direct violation of a non-competition agreement, under which the defendant was not permitted to practice medicine in Kanawha County or to treat patients treated previously (within a specified time period) by the Rashid medical practice until March 25, 1997.

The Parties

1. Dr. Rashid is, and was at all times relevant to this action, a resident of Kanawha County, West Virginia, licensed to practice medicine in the State of West Virginia.

2. Dr. Tarakji is, and was at all times relevant to this action a resident of Kanawha County, West Virginia, licensed to practice medicine in the State of West Virginia.

3. Venue and jurisdiction in this Court are proper.

Underlying Facts

4. Since July 1, 1968, Dr. Rashid has maintained a medical practice ("the Practice"), in the field of ophthalmology in the Kanawha County, West Virginia.

5. By written agreement dated April 1, 1981 ("the Agreement"), Dr. Rashid and Dr. Tarakji agreed to terms and conditions under which Dr. Tarakji would render medical services as an independent contractor for the Practice. A true and exact copy of the Agreement is attached hereto as Exhibit A, and is incorporated herein.

6. Paragraph 9 of the Agreement ("the Noncompetition Clause") sets forth a binding covenant restricting Dr. Tarakji, for a period of two years after termination of the Agreement, from:

- a) "directly or indirectly engag[ing] in the practice of medicine, including . . . ophthalmology within Kanawha County, West Virginia"; and/or
- b) "treat[ing] or see[ing] as a patient any person who has been billed for medical services by Dr. Rashid's office within three (3) years prior to the termination of [the Agreement]".

7. By amendment dated December 23, 1994 ("the Amendment"), Dr. Rashid and Dr. Tarakji modified the terms of the Agreement so as to define Dr. Tarakji's relationship to Dr. Rashid as that of an employee and reaffirmed all other terms of the Agreement. Further, the Amendment provided that the Agreement would terminate on March 23, 1995 ("the Termination Date"). A true and exact copy of the Amendment is attached hereto as Exhibit B and is incorporated herein.

8. Also on December 23, 1994, Dr. Rashid made a \$178,000 payment to Dr. Tarakji in connection with the settlement of a then-pending federal investigation of Drs. Rashid and Tarakji. At or about this time, the parties verbally agreed that, following the Termination Date, Dr. Tarakji would continue to work with Dr. Rashid (in a capacity to be agreed upon by the parties) until at least December 31, 1995, after which time he would:

- a) continue his work with Dr. Rashid;
- b) leave the practice of medicine and begin teaching medicine; or
- c) practice medicine outside of Kanawha County.

9. Prior to the Termination Date, Dr. Rashid entered into negotiations with American Ophthalmic, Inc. ("AOI") for the sale of the Practice.

10. Prior to the Termination Date, Dr. Rashid had a reasonable expectation that he would sell his interest in the Practice to AOI for valuable consideration and that, subsequent to this sale, AOI would manage the Practice ("the AOI Practice").

11. Prior to the Termination Date, Dr. Tarakji had access to patient lists, accounts, billing information, and other records of the Practice, all of which constitute "trade secrets" within the meaning of W. Va. Code §47-22-1 ("the Trade Secrets").

12. After December 23, 1994, Dr. Rashid provided Dr. Tarakji with continued access to the Trade Secrets for the purpose of allowing Dr. Tarakji to continue his work with Dr. Rashid and for Dr. Tarakji to assess obtaining a managerial and/or ownership interest in the AOI Practice.

13. Prior to the Termination Date, and without knowledge on the part of Dr. Rashid, Dr. Tarakji made plans to form his own independent medical practice in Kanawha County, West Virginia.

14. On or about March 24, 1995, Dr. Tarakji did in fact begin practicing medicine (wholly separate and apart from Dr. Rashid) at 4825 MacCorkle Avenue, SW, South Charleston, Kanawha County, West Virginia ("the Competing Practice").

15. Pursuant to the terms of the Noncompetition Clause, Dr. Tarakji was restricted from practicing medicine in Kanawha County, West Virginia during the period March 24, 1995 to March 24, 1997 ("the Restricted Period").

16. Dr. Tarakji used the Trade Secrets in the start up and operation of the Competing Practice.

17. Dr. Rashid never consented to such use of the Trade Secrets by Dr. Tarakji.

18. Both prior to and after the Termination Date, Dr. Tarakji solicited individuals known by him to have been patients of the Practice during the time frame specified in the Noncompetition Clause, to become patients of the Competing Practice.

19. During the Restricted Period Dr. Tarakji has practiced medicine in Kanawha County and has treated, and/or seen as patients, individuals known by him to have been patients of the Practice during the time frame specified in the Noncompetition Clause.

COUNT I

Breach of Contract

20. Dr. Rashid realleges and incorporates by reference Paragraphs 1 through 19, above.

21. Dr. Tarakji breached the Noncompetition Clause of the Agreement by practicing medicine in Kanawha County and treating contractually restricted patients of the Practice within 2 years after termination of the Agreement.

22. Dr. Tarakji breached the Agreement by:

- (a) Failing (prior to the Termination Date) to devote his entire time, attention and energies to the Practice;
- (b) Failing to devote his full professional time to rendering professional services in the practice of ophthalmology to the public as a subcontractor or employee of Dr. Rashid;
- (c) Engaging in other business activities which interfered with his obligations as a subcontractor or employee of Dr. Rashid; and
- (d) Engaging in activities disruptive to the Practice prior to the Termination Date and during the Restricted Period; and

23. As a direct and proximate cause of the aforementioned breaches, Dr. Rashid has been damaged and Dr. Tarakji has been unjustly enriched.

COUNT II

Fraud

24. Dr. Rashid realleges, and incorporates by reference paragraphs 1 through 23, above.

25. Dr. Tarakji represented to Dr. Rashid that he would use the Trade Secrets only in connection with Dr. Tarakji's work under the Agreement and to allow Dr. Tarakji to assess obtaining an ownership or managerial interest in the AOI Practice ("the Representation").

26. Dr. Tarakji made the Representation to Dr. Rashid with the intent that Dr. Rashid would rely upon the Representation.

27. Dr. Rashid did in fact rely upon the Representation.

28. The Representation was false when made.

29. Dr. Rashid's reliance on the Representation was reasonable and without knowledge of its falsity.

30. Dr. Tarakji's conduct with respect to the Representation was not only fraudulent, but was intentional, willful, wanton, malicious, and without legal justification.

31. As a direct and proximate result of the fraud, as set forth above, Dr. Rashid has been damaged and Dr. Tarakji has been unjustly enriched.

COUNT III

Violation of Uniform Trade Secrets Act

32. Dr. Rashid realleges and incorporates by reference paragraphs 1 through 31 above.

33. Dr. Tarakji has a statutory duty to maintain the secrecy of the Trade Secrets and to limit his use of the Trade Secrets in accordance with the provisions of West Virginia's Uniform Trade Secrets Act, W. Va. Code 47-22-1 et seq.

34. Dr. Tarakji misappropriated the Trade Secrets by using such information to solicit Dr. Rashid's Patients and by using confidential business records in the set-up and operation of the Competing Office.

35. Dr. Tarakji's misappropriation of the Trade Secrets constitutes a violation of the Uniform Trade Secrets Act.

36. Dr. Tarakji's misappropriation of the Trade Secrets was intentional, willful, wanton, malicious, and without legal justification.

37. As a direct and proximate result of Dr. Tarakji's misappropriation of the Trade Secrets, Dr. Rashid has been damaged and Dr. Tarakji has been unjustly enriched.

COUNT IV

Tortious Interference

38. Dr. Rashid realleges and incorporates by reference Paragraphs 1 through 37, above.

39. Prior to the Termination Date, Dr. Rashid had a reasonable business expectation that he would sell his interest in the Practice to AOI in exchange for valuable consideration.

40. Prior to and subsequent to the Termination Date, Dr. Tarakji solicited contractually restricted patients of the Practice to cease seeking medical services and treatment from the Practice and thereby caused the Practice to experience decreased revenues and decreased profitability.

41. At all times during the Restricted Period, Dr. Tarakji provided medical services to patients in the Competing Office and in other areas situate in Kanawha County and thereby caused the Practice to experience decreased revenues and decreased profitability.

42. The aforementioned solicitations and competition by Dr. Tarakji were intentional, willful, wanton, malicious and without any legal justification.

43. As a direct and proximate cause of the decreased revenues and decreased profitability of the Practice caused by Dr. Tarakji's solicitations and competition, AOI did not purchase the Practice and did not pay Dr. Rashid valuable consideration for the purchase of the Practice.

COUNT V

Unjust Enrichment

44. Dr. Rashid realleges and incorporates by reference paragraphs 1 through 43, above.

45. The aforementioned acts of Dr. Tarakji have resulted in financial loss to Dr. Rashid.

46. The aforementioned acts of Dr. Tarakji have enabled Dr. Tarakji to financially benefit by the establishment of the Competing Practice and the income derived therefrom and have unjustly enriched Dr. Tarakji at Dr. Rashid's expense.

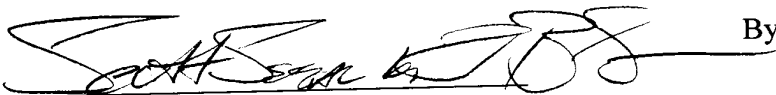
WHEREFORE, Dr. Rashid prays that he be granted judgment against Dr. Tarakji as follows:

1. For an award of compensatory and liquidated damages in an amount to be determined for the breach of contract as set forth in Count 1.
2. For an award of compensatory damages and punitive damages in amounts to be determined for the fraud as set forth in Count II;
3. For an award equal to the amount by which Dr. Tarakji has been unjustly enriched by his misappropriation of trade secrets, as provided by W. Va. Code §47-22-3(a), and a punitive award in twice such an amount, as provided by W. Va. Code §47-22-3(b);
4. For an award of attorney's fees incurred in this action, as provided by W. Va. Code §47-22-4;
5. For an award of compensatory and punitive damages in amounts to be determined for the tortious interference as set forth in Count IV;
6. For an award of compensatory and punitive damages in an amount to be determined for the unjust enrichment as set forth in Count V; and
7. For interest on all awards as provided by law, together with the costs of this action, and all such other and further relief as may be proper and just.

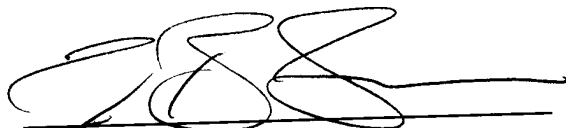
Respectfully submitted,

RICHARD C. RASHID, M.D.,

By Counsel



Scott S. Segal
The Segal Law Firm
810 Kanawha Boulevard, East
Charleston, West Virginia 25301

A stylized, handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

W. Bradley Sorrells
Post Office Box 6576
Charleston, West Virginia 25326