IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

RALPH M AURIGEMMA, M.D. and VAN BUREN MEDICAL ASSOCIATES,	)	
Plaintiffs,	)	
v.	)	C.A. No. 05C-04-113 MJB
NEW CASTLE CARE LLC, d/b/a ARBORS AT NEW CASTLE SUBACUTE AND REHABILITATION CENTER,	)	
Defendants.	)	

Submitted: June 12, 2006
Decided: August 22, 2006

Upon Motion for Summary Judgment of New Castle Care, LLC.
GRANTED.

OPINION AND ORDER

David H. Williams, Esquire, Morris, James, Hitchens & Williams, LLP, Wilmington, Delaware, Attorney for Defendant New Castle Care, LLC.

James S. Yoder, Esquire, White and Williams, LLP, Wilmington, Delaware, Attorney for Plaintiffs Ralph M. Aurigemma and VanBuren Medical Associates.

BRADY, J.

Procedural History

This is a breach of contract action filed by Dr. Ralph M. Aurigemma ("Dr. Aurigemma") against New Castle Care, LLC, doing business as Arbors at New Castle Subachute and Rehabilitation Center ("Arbors") for violation of an alleged oral agreement reached between the two parties in which Dr. Aurigemma claims he was to serve as medical director for Arbors for the period of October 1, 2003 until October 1, 2004. Arbors filed a Motion for Summary Judgment on June 15, 2006.[1] Dr. Aurigemma filed opposition to the motion on June 30, 2006. The Court heard oral argument on July 6, 2006. This is the Court's opinion and order on the Motion for Summary Judgment.

Facts

In August and September of 2003, shortly after Arbor's medical director died unexpectedly, Dr. Aurigemma and several other physicians expressed interest in serving as the medical director of the facility. Dr. Aurigemma was designated as interim medical director.[2] Dr. Aurigemma alleges that he entered into an oral agreement on September 4, 2003 with Arbors to serve as medical director for one year beginning October 1, 2003. Arbors denies there was any such agreement. In fact, Arbors entered into a

[1] The Motion is dated June 15, 2005, but was clearly filed June 15, 2006.
[2] Exhibit A to *Response in Opposition to Defendant's Motion for Summary Judgment* (Transcript of Leigh A. Weber at 48).

written agreement on September 15, 2003 with Dr. Steven Cozamanis to serve as medical director, and cites that action as evidence of the lack of an oral agreement with Dr. Aurigemma.

For purposes of this Motion for Summary Judgment only, Arbors also pleads in the alternative that, if they reached an oral agreement with Dr. Aurigemma to serve as medical director on September 4, 2003 for a one year period to begin on October 1, 2003 and end on October 1, 2004, the contract would be unenforceable pursuant to the Delaware Statute of Frauds, DEL. CODE ANN. tit. 6, § 2714(a).

Standard of Review

The standard for granting summary judgment is high.[3] Summary judgment may be granted where the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.[4] "In determining whether there is a genuine issue of material fact, the evidence must be viewed in a light most favorable to the non-moving party."[5] When taking all of the facts in a light most favorable to the non-moving party, if there remains a genuine issue of material fact requiring trial, summary judgment may not be granted.[6] "Nor will summary

[3] *Mumford & Miller Concrete, Inc. v. Burns*, 682 A.2d 627 (Del. 1996).
[4] Super.Ct.Civ.R. 56(c).
[5] *Muggleworth v. Fierro*, 877 A.2d 81, 83-84 (Del. Super. Ct. 2005).
[6] *Gutridge v. Iffland*, 889 A.2d 283 (Del. 2005).

judgment be granted if, upon an examination of all the facts, it seems desirable to inquire thoroughly into them in order to clarify the application of the law to the circumstances."[7]

Contentions of the Parties and Applicable Law

DEL. CODE ANN. tit. 6, § 2714(a) states in relevant part:

> No action shall be brought to charge any person upon any agreement…that is not to be performed within the space of one-year from the making thereof…unless the contract is reduced to writing, or some memorandum, or notes thereof, are signed by the party to be charged therewith, or some other person thereunto by the party lawfully authorized in writing…

Arbors contends that this language precludes this breach of contract action by Dr. Aurigemma because if the alleged oral contract were reached on September 4, 2003, by Dr. Aurigemma's own contention, it would last until October 1, 2004 and could not have been performed within a year. Arbors contends, therefore, it is unenforceable under the Statute of Frauds.

Dr. Aurigemma counters this argument by pointing out that no Delaware court has ever construed DEL. CODE ANN. tit. 6, § 2714(a) to include contracts of exactly one year in duration that are made prior to the period they are set to begin. The Court's research confirms this contention. This issue must therefore be answered before any further analysis may take place.

[7] *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

The general rule regarding the Statute of Frauds can be stated as follows: "An oral contract for a year's services to begin more than one day after the contract is entered into is invalid under that provision of the statute of frauds making invalid an oral contract not to be performed within a year."[8] "The time within which such a contract is to be performed is reckoned from the making of the contract, not from the time the performance is to begin."[9] Although this rule of law has never been explicitly expounded in Delaware, it appears to be the widely accepted construction of this particular provision of the Statute of Frauds. [10]

[8] 72 Am. Jur. 2d *Statute of Frauds* § 38.
[9] *Id*.
[10] *See e.g. Gudenau v. Farm Crest Bakeries*, 256 N.W. 462, 463 (Mich. 1934) (holding an employment contract to begin the following week for a duration of year invalid under the statute of frauds because it could not be performed within a year and was not evidenced in writing); *Allen v. Williams Motor Sales Co*., 179 N.E. 159 (Mass. 1931) (holding a contract entered into in September, to begin in January for the duration of one year unenforceable under the Statute of Frauds because it was not evidenced in writing); *McCrillis v. American Heel Co*., 155 A. 410 (N.H. 1931) ("A contract calling for a year of employment not to commence until a time subsequent to the date of the contract must be in writing…"); *Sinclair v. Sullivan Chevrolet Co*., 202 N.E. 25 516, 518 ("It is agreed that either May 30 or May 31 plaintiff was employed for a one-year period starting June 6, 1960. This was a contract which could not on the date made have been performed within a year, and it was therefore of the class generally made unenforceable by the Statute of Frauds."); *Manning v. Woods, Inc*., 357 P.2d 757 (Kan. 1960) (holding an oral contract for an employment period of one year entered into on October 1st to begin two weeks thereafter was unenforceable because it was within the Statute of Frauds and was not evidenced by a writing); *Trovese v. O'Meara*, 493 N.W. 2d 221 (S.D. 1992) (holding an oral contract of employment for a period of one year made on August 12th and to begin August 20th, was unenforceable under the Statute of Frauds because it was not evidenced by a writing); *Failla v. Mandell*, 200 N.Y.S.2d 652, 653 (N.Y. Sup. Ct. 1960) (holding the Statute of Frauds to be a complete bar to maintenance of an action based upon an employment agreement for the period of one year to commence in the future); *McMorrow v. Rodman Ford Sales, Inc*., 462 F.Supp. 947, 948-949 (D. Mass. 1979) (holding an oral employment contract entered into in July for the duration of one year to begin the following July 1st, was unenforceable pursuant to the Statute of Frauds because it could not be performed within a year); *Rader v. Rayette Faberge, Inc*., 181 S.E. 2d 83, 84 (Ga. Ct. App. 1971) ("As a general rule, an oral contract of employment at a specified monthly salary, to commence at a future date and continue for a period of a year is void under the Statute of Frauds.").

In *LaBett v. Heyman Bros, Inc.*[11] the New Jersey Supreme Court held a contract, entered into on September 13, commencing September 17 for one year, to be invalid because it was within the Statute of Frauds and was not evidenced in writing.[12] In *Deevey v. Porter*[13] the New Jersey Superior Court, Appellate Division, again confirmed "[a]n agreement of employment for a period of one year commencing after the date of the making of the contract is within the statute."[14] This view has been approved in numerous jurisdictions. It is the view of this Court that this is the proper construction of DEL. CODE ANN. tit. 6, § 2714(a) as well. Therefore, this Court holds that a contract for exactly one year, entered into before the date it is set to commence, is within the Statute of Frauds and is unenforceable unless evidenced in writing.

Under this ruling, viewing the facts in the light most favorable to Dr. Aurigemma, the alleged employment contract in this case falls under the general rule of the Statute of Frauds precluding enforcement of any agreement that is incapable of completion within a year. The analysis now turns to whether an exception to the Statute of Frauds applies.

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[11] 151 A. 638, (N.J. 1935).
[12] *Id* at 639.
[13] 91 A.2d 158 (N.J. Super. 1952).
[14] *Id* at 159.

Dr. Aurigemma argues that an exception to the Statute of Frauds applies to the facts of this case. He contends that he partially performed the alleged contract to serve as medical director by assuming the duties of acting medical director on September 4, 2003.

Arbors argues that the partial performance exception is limited to real estate and financial transactions and does not apply to service or employment contracts. Moreover, Arbors argues, even though Dr. Aurigemma began to perform as interim medical director, this was not a partial performance of permanent medical director position duties. While the Court questions how Dr. Aurigemma can logically contend that he performed part of a contract he alleges had not yet begun, it will address the issue here.

The general rule for part performance in the Statute of Frauds context is set forth in *Quillen v. Sayers*:[15]

> [A] well settled general exception to the restrictions of the statute of frauds exists when there is evidence of actual part performance of an oral agreement. Part performance may be deemed to take a contract out of the provisions of the statute of frauds on the theory that acts of performance, even if incomplete, constitute substantial evidence that a contract actually exists.[16]

[15] 482 A.2d 744(Del. 1984); *See also Sargent v. Schneller*, 2005 WL 1863382 at *4-*5. (Del.Ch.) (applying the partial performance exception to the Statute of Frauds for the sale of a parcel of real estate upon an oral contract pursuant to which a buyer took possession of a property and made improvements thereon).
[16] *Id* at 747, (internal citations omitted).

However, Delaware law is clear that the part performance doctrine does not apply to oral contracts not to be performed within one-year. "It is…uncontroverted that partial performance of services under an oral contract not to be performed within a year does not remove the contract from the operation of the Statute of Frauds so as to affect the portion of the services not performed."[17] This view has been expressed as the majority view and is supported by case law in many jurisdictions.[18] The purpose of the Statute of Frauds is to prevent frauds that may occur if oral contracts were permitted in certain areas of the law. The Indiana Supreme Court recently penned an excellent recitation of the purpose of the Statute of Frauds in considering an argument identical to that offered here by Dr. Aurigemma. In *Coca-Cola Co. v. Babyback International, Inc.*,[19] that court said:

> This purpose would be undermined if a party's conduct could form the basis for establishing and enforcing a claimed oral agreement not to be performed within one year simply because the same party's conduct arguably provided the only explanation for the agreement. Such an approach would invite persons to concoct and seek enforcement of fictitious contracts

[17] *Hull v. Brandywine Fibre Prodcuts Co.*, 121 F.Supp. 108, 114 (D. Del. 1954) (applying Delaware law), citing cases collected at 6 A.L.R.2d 1083.
[18] *Coca-Cola Co. v. Babyback International, Inc*, 841 N.E.2d 557, 567 (Ind. 2006); *see also Ellicott v. Turner, et al*, 4 Md. 476, (Md. 1853), WL 2535 at *8 (Md.); *Barnes v. P&D MFG. Co*., 8 A.2d 388, 389 (N.J. 1939); *Nally v. Reading*, 17 S.W. 978, 979 (Mo. 1891); *Treadway's Executor v. Smith*, 56 Ala. 345 (Ala. 1876); *Sophie v. Ford*, 230 A.D. 568, 570 (N.Y. Sup. Ct. 1930); *Hodges v. Ettinger, et al*, 189 N.E. 113, 115 (Ohio 1937); *Chase v. Hinkley*, 105 N.W. 230, 231-232 (Wis. 1905); *A.J. Hamilton, Inc. v. Atlas Freight, Inc.*, 50 P.2d 522, 523 (Wis. 1935); *Nastrom v. Sederlin*, 3 P.2d 82, 84 (Wyo. 1931).
[19] 841 N.E.d 557 (Ind. 2006).

> on grounds that the existence of an agreement would provide the only possible explanation for such persons' conduct. In contrast to real estate contracts, where evidence of part performance is relatively clear, definite, and substantial, the nature of evidentiary facts potentially asserted to show part performance of an agreement not performable within one year would be vague, subjective, imprecise, and susceptible to fraudulent application.[20]

Viewing the facts in the light most favorable to Dr. Aurigemma, the Court holds that the partial performance doctrine does not apply to the alleged oral contract in the instant case.

Conclusion

For the reasons set forth herein, the alleged oral contract is unenforceable under DEL. CODE ANN. tit. 6, § 2714(a). Accordingly, the Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

/s/
M. Jane Brady
Superior Court Judge

[20] *Id* at 567.