

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

MECKLENBURG COUNTY

SUPERIOR COURT DIVISION

11 CVS 13379

FILED

2012 MAR -7 PM 4: 07

MECKLENBURG COUNTY, C.S.C.
THE CHARLOTTE-MECKLENBURG
HOSPITAL AUTHORITY, D/B/A
CAROLINAS HEALTHCARE SYSTEM,

Plaintiffs,

Vs.

ORDER

MECKLENBURG COUNTY,

Defendant,

The above-captioned action came before Robert C. Ervin, Superior Court Judge, on February 20, 2012, for hearing on the motion to dismiss of Defendant, Mecklenburg County (the "County"). The Court, having heard the motion upon submittals of record and briefs and arguments of counsel, does hereby GRANT IN PART the County's motion, as detailed below, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

The Court concludes, as a matter of law, that:

1. The provision for indigent care funding set forth in § II.C. of the 2000 Restated Consolidated Shared Programs Joint Undertaking (the "Contract") herein after constitutes an impermissible delegation of an inalienable power and is not a valid and enforceable provision of the Contract; and
2. The exclusive remedy provision set forth in § IV.N. of the Contract is valid and enforceable and limits CHS to termination of the Contract as the sole remedy for breach.

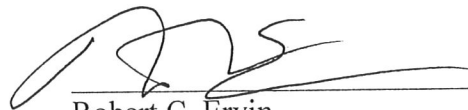
WHEREFORE, it is hereby ORDERED:

1. Because the remedies provision constitutes the sole remedy for a breach of the Contract, the claims for specific performance and damages (the Third and Fourth Claims for Relief) are DISMISSED WITH PREJUDICE.
2. With respect to the claims for declaratory judgment (the First and Second Claims for Relief):
 - a) CHS shall elect within thirty days of the entry of this order either to continue the Contract or terminate the Contract for cause;
 - b) If CHS elects to continue the Contract, the Court will enter a final order dismissing the remaining claims for declaratory judgment due to the lack of an actual justifiable controversy.
 - c) If CHS elects to terminate the Contract for cause, the County shall have 14 days from service of the notice of CHS's election to elect whether to contest CHS's

termination for cause. If the County elects not to contest the termination for cause, the Court will enter a final order dismissing the remaining claims for declaratory judgment due to the lack of actual justifiable controversy. If the County elects to contest the termination for cause, the motion to dismiss CHS's declaratory judgment claims will be denied.

3. The Court reserves entry of an appropriate order pending completion of the election process described above.

This the 5th day of March, 2012



Robert C. Ervin
Superior Court Judge