Georgia State University
Digital Archive @ GSU

Georgia Business Court Opinions | College of Law

12-11-2006

Order (JOHN W. OXENDINE)

Alice D. Bonner
Superior Court of Fulton County

Follow this and additional works at: http://digitalarchive.gsu.edu/col_businesscourt

Recommended Citation
Bonner, Alice D., "Order (JOHN W. OXENDINE)" (2006). *Georgia Business Court Opinions.* Paper 1.
http://digitalarchive.gsu.edu/col_businesscourt/1

This Court Order is brought to you for free and open access by the College of Law at Digital Archive @ GSU. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Digital Archive @ GSU. For more information, please contact digitalarchive@gsu.edu.

COPY

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE

DEC 1 1 2006

Deputy Clerk Superior Court
Fulton County, Georgia

JOHN W. OXENDINE, Plaintiff, v. TOTAL LIFE CARE, P.C., et al., Defendants, v. CAPITAL CITY BANK & TRUST COMPANY, Third-Party Plaintiff, v. WILLIAM H. CLEVELAND, M.D., et al., Third-Party Defendants, v. TOTAL LIFE CARE, P.C., et al., Third-Party Plaintiffs, v. JOHN G. WHITMORE, et al., Third-Party Defendants.	*	Civil Action No. 2003-CV-98808 (Division One—ADB)

ORDER

This case is before the Court on Plaintiff's Motion for Partial Summary Judgment Against Total Life Care, P.C., TLC Administrators, Inc., TLC Management, Inc., Benjamin Woods M.D., and Iris Johnson. Plaintiff petitions the Court to rule in his favor on Count

Eight of the Complaint to collect on promissory notes from Total Life Care, P.C. (hereinafter "TLC") and on the counterclaims asserted by the Defendants.

From December 2001 through December 2002, Defendant TLC executed and delivered thirteen promissory notes to Providers Direct Health Plan of Georgia, Inc. (hereinafter "PDHP"). All thirteen notes are executed by Benjamin Woods on behalf of TLC in favor of PDHP. All thirteen notes were due one calendar year from the date of execution, provided for a 12% annual interest rate, provided for a 2% late fee, and required TLC to pay the costs of collection, including reasonable attorney's fees.

The identified payee in possession of a note, a "holder", is entitled to enforce a promissory note. O.C.G.A. §§11-1-201(20), 11-3-301. Plaintiff, as the appointed liquidator of PDHP pursuant to O.C.G.A. § 33-37-1, is entitled to enforce the promissory notes against TLC on PDHP's behalf. Upon review of the notes in question, the Court hereby **GRANTS** Plaintiff's motion for summary judgment on Count Eight, collection of promissory notes. The Court therefore awards Plaintiff $4,268,877.10 plus interest of $937.28 per day after June 15, 2006, as well as reasonable attorney's fees associated with this claim and any collection costs incurred by Plaintiff.

Defendants assert a series of counterclaims against Plaintiff in connection with Plaintiff's licensing and oversight of PDHP. After careful consideration of the arguments, the Court finds as follows:

The State and State officials are immune from tort claims pursuant to Art. 1, Sec. 2, Par. 9 of the Constitution of the State of Georgia except as set forth in the State Tort Claims Act. Under the State Tort Claims Act, State employees engaged in licensing functions enjoy governmental immunity for such actions. O.C.G.A. § 50-21-24 states "[t]he

SO ORDERED this 8 day of December, 2006.

Alice D. Bonner

ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

Ms. Linda Dreyer
Court Administrator's Office

Mr. Bandele Browne
Fulton County Clerk's Office

William W. Calhoun, Esq.
Langley & Lee, LLC
P.O. Box 607
323 Pine Avenue, Suite 300
Albany, Georgia 31702-0607

Tony L. Axam, Esq.
Sandra M. Davis, Esq.
Axam & Adams, P.A.
1280 West Peachtree Street
Suite 310
Atlanta, Georgia 30309

John T. McGoldrick, Jr., Esq.
Michael N. White, Esq.
Martin Show LLP
240 Third Street
P.O. Box 606
Macon, Georgia 31202-1606

Eric P. Schroeder, Esq.
S. Derek Bauer, Esq.
Powell Goldstein LLP
One Atlantic Center
Fourteenth Floor
1201 West Peachtree Street, NE
Atlanta, Georgia 30309

Kevin H. Hudson, Esq.
Halsey G. Knapp, Jr., Esq.
Foltz Martin LLC
Five Piedmont Center, Suite 750
Atlanta, Georgia 30305-1549

S. Ralph Martin, Jr., Esq.
P.O. Box 310568
Atlanta, Georgia 30305-1549

Edward H. Wasmuth, Jr., Esq.
Smith, Gambrell & Russell, LLP
Suite 3100 Promenade II
1230 Peachtree Street, NE
Atlanta, Georgia 30309-3592

Thomas B. Branch, Esq.
Tiffani Moody, Esq.
Holland & Knight LLP
One Atlantic Center, Suite 2000
1201 West Peachtree Street, NE
Atlanta, Georgia 30309

Steven D. Brower, Esq.
Drew, Eckl & Farnham, LLP
880 West Peachtree Street
P.O. Box 7600
Atlanta, Georgia 30357