

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1275

A. RAOUL BEZOU, M.D.

VERSUS

FAIRWAY MEDICAL CENTER, LLC

Judgment Rendered: February 12, 2010

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Appealed from the  
Twenty-Second Judicial District Court  
In and for the Parish of St. Tammany, Louisiana  
Trial Court Number 2007-13,562

Honorable Martin E. Coady, Judge

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BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

*Hughes, Jr., concurs.*

WELCH, J.

Fairway Medical Center, LLC (“Fairway”) appeals a summary judgment granting a declaratory judgment in favor of A. Raoul Bezou, M.D., which reinstated him as owner of three units in Fairway, effective as of May 31, 2007. For reasons that follow, we affirm the judgment of the trial court.

### I. FACTUAL AND PROCEDURAL HISTORY

The background facts of this case are generally undisputed. PHIG, L.L.C. was formed on August 27, 1998, but later changed its name to Fairway. Prior to April 27, 1999, Fairway issued a private placement memorandum soliciting investors for an ambulatory surgery center, specifically providing for both active and passive investments by potential purchasers of units in the proposed ambulatory surgery center. Dr. Bezou executed a subscription agreement for the purchase of one unit in Fairway, and eventually, purchased two additional units in Fairway, such that he became the owner of three units in Fairway.

In connection with the purchase of those units, Dr. Bezou became a party to an operating agreement with Fairway dated April 27, 1999. The operating agreement provides, in pertinent part, as follows:

#### **10.3 Option to Purchase Membership Interests.**

(a) Upon the occurrence of any of the following events (a “Triggering Event”), the Member with respect to which the Triggering Event has occurred (or such Member’s Representatives in the case of the death of that Member) shall provide prompt written notice (the “Triggering Event Notice”) to the Company describing the Triggering Event and the date thereof, the interest or interests in the Company that have become subject to the options described in Section 10.3(b) (the “Subject Interest”), and the name or names of the persons who may at any time have rights to that interest (collectively, the “Selling Party”):

....

(vi) If a Member who had been a Qualified Owner ceases to be a Qualified Owner as a result of the loss, for any reason, of his or her medical license or his or her medical staff privileges at the Surgery Center, all of such Member’s interests in the Company (and

any community property interest of such Member's spouse) and all interests in the Company owned by any Affiliates of such Member shall be the Subject Interest under this Article X and such Member together with such Member's spouse and Affiliates shall be the Selling Party.

....

(b) The Triggering Event Notice shall constitute an offer by the Selling Party to sell the Subject Interest to the Company and to the Members who are not members of the Selling Party in accordance with the terms of this Article X and for the Redemption Price . . . For purposes of this Article X, the Members who are not members of the Selling Party and are not the Affected Member are herein called the "Other Members."

Within five (5) days after the date the Company receives the Triggering Event Notice, the Company shall send a copy of the Triggering Event Notice to each of the Other Members. The last date that the Triggering Event Notice is received by the Other Members shall constitute the "Triggering Event Notice Date." The Company shall be obligated to promptly determine the Triggering Event Notice Date following its delivery of the Triggering Event Notice to the Other Members, and such date shall be promptly communicated in writing by the Company to all the Members within five (5) days of the determination of such date.

....

The Company shall have the sole and exclusive option to acquire all or any portion of the Subject Interest (other than any portion to be acquired by an Affected Member) in accordance with the provisions of this Article X, (i) for a period of twenty (20) Business Days commencing on the Business Day immediately following the Triggering Event Notice Date (if there is no Affected Member), or (ii) from the eleventh (11<sup>th</sup>) Business Day to the thirtieth (30<sup>th</sup>) Business Day following the Triggering Event Notice Date (if there is an Affected Member). The Company may exercise such option by giving written notice of exercise to the Selling Party and to all Other Members prior to the termination of the Company's exclusive option period. Such notice of exercise shall refer to the Triggering Event Notice and shall set forth the portion of the Subject Interest to be acquired by the Company.

Dr. Bezou was diagnosed with a form of lymphoma cancer in 2006. Therefore, on October 19, 2006, Dr. Bezou sent a letter to Fairway resigning from the medical staff due to a permanent medical disability and requesting that he be placed on "Meritorious Status."

Approximately seven and a half months later, in June 2007, the managers of

Fairway acknowledged receipt of Dr. Bezou's October 19, 2006 letter, declined to grant Dr. Bezou meritorious status, and declared that Dr. Bezou's withdrawal from the medical staff was a "Triggering Event" under Section 10.3(a)(vi) of the operating agreement, which enabled Fairway to redeem Dr. Bezou's interest in Fairway, as of May 31, 2007.

Dr. Bezou disagreed with Fairway's interpretation of the operating agreement; therefore, on July 26, 2007, Dr. Bezou instituted these proceedings by filing a petition for declaratory judgment, equitable relief, and damages. In his petition, he requested that judgment be rendered declaring that the provisions of section 10.3 of the parties' operating agreement were inapplicable and that Fairway had neither the interest nor the right to make any declarations in connection with the events that occurred. Alternatively, Dr. Bezou requested that he be awarded appropriate damages and any other general and equitable relief.

Fairway subsequently filed a motion for summary judgment seeking dismissal of Dr. Bezou's suit. Dr. Bezou responded by filing a cross-motion for summary judgment. After a hearing on February 11, 2009, the trial court determined that while Dr. Bezou's October 19, 2006 letter qualified as a triggering event under the operating agreement, Fairway failed to timely exercise its option to purchase Dr. Bezou's interest in Fairway. Therefore, the trial court denied Fairway's motion for summary judgment, granted Dr. Bezou's motion for summary judgment, and rendered declaratory judgment in favor of Dr. Bezou and reinstating him as owner of three units in Fairway effective as of May 31, 2007. A judgment in conformity with the trial court's ruling was signed on March 10, 2009, and it is from this judgment that Fairway has appealed.

## **II. LAW AND DISCUSSION**

### *A. Summary Judgment*

A motion for summary judgment is a procedural device used to avoid a full-

scale trial when there is no genuine issue of material fact, and the summary judgment procedure is favored and designed to secure the just, speedy, and inexpensive determination of every action. La. C.C.P. art. 966(A)(2); **Power Marketing Direct, Inc. v. Foster**, 2005-2023, p. 8 (La. 9/6/06), 938 So.2d 662, 668. A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. *Id.*; La. C.C.P. art. 966(B).

Summary judgments are reviewed on appeal *de novo*, with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate: whether there is any genuine issue of material fact and whether the mover is entitled to judgment as a matter of law. **Power Marketing Direct, Inc.**, 2005-2023 at p. 9, 938 So.2d at 669.

In this case, since the material facts are not in dispute, we look solely to the legal question presented by the motion for summary judgment, *i.e.*, whether, based on the operating agreement of the parties, Dr. Bezou was entitled to a declaratory judgment reinstating or recognizing his ownership interest in three units of Fairway.

According to the operating agreement, the loss of a member's medical staff privileges at Fairway, *for any reason*, constituted a triggering event, and the notice thereof, of an offer to sell the member's interest. We agree with the trial court that Dr. Bezou's October 19, 2006 letter to Fairway constituted a triggering event, and the notice thereof, under section 10.3(a)(vi) of the operating agreement. In the letter, Dr. Bezou specifically resigned from the medical staff of Fairway due to a permanent disability, and therefore, lost his medical staff privileges at Fairway. As such, his letter constituted an offer to sell his ownership interest in Fairway to Fairway.

Thereafter, according to the operating agreement, within five days, Fairway was required to give notice of this triggering event to any affected or other member. Fairway then had the sole and exclusive option to acquire all or any portion of Dr. Bezou's interest in Fairway (other than any portion to be acquired by an affected member) for a period of twenty business days commencing on the business day immediately following the triggering event notice date (if there was no affected member), or from the eleventh business day to the thirtieth business day following the triggering event notice date (if there was an affected member). According to the record, Fairway did not comply with its obligations under the operating agreement in order to exercise its option to purchase Dr. Bezou's interest within these time periods. Instead, Fairway attempted to exercise the option approximately seven and a half months later. This belated attempt to purchase Dr. Bezou's interest failed to comply with the provisions of the operating agreement. Therefore, we find, as the trial court did, that Dr. Bezou was entitled to retain his ownership interest in Fairway.

Accordingly, the trial court properly granted Dr. Bezou's motion for summary judgment and rendered declaratory judgment in favor of Dr. Bezou reinstating or recognizing his ownership interest of three units in Fairway, effective May 31, 2007.

### **III. CONCLUSION**

For all of the above and foregoing reasons, the March 10, 2009 judgment of the trial court is hereby affirmed. All costs of this appeal are assessed to the defendant/appellant, Fairway Medical Center, LLC.

**AFFIRMED.**