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UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

POCATELLO DENTAL GROUP, P.C., an
Idaho professional corporation,

Plaintiff,

v.

INTERDENT SERVICE
CORPORATION, a Washington
corporation,

Defendant.

Case No. CV-03-450-E-LMB

ISC'S OPPOSITION TO PLAINTIFF'S
MOTION PURSUANT TO FED. R. CIV. P.
56(f)

INTERDENT SERVICE
CORPORATION, a Washington

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corporation,

Counterclaimant,

v.

POCATELLO DENTAL Group, P.C., an Idaho professional corporation; DWIGHT G. ROMRIELL, individually; LARRY MISNER, JR., individually; PORTER SUTTON, individually; ERNEST SUTTON, individually; GREGORY ROMRIELL, individually; ERROL ORMOND, individually; and ARNOLD GOODLIFFE, individually,

Counterdefendants.

LARRY R. MISNER, JR., individually,

Counterclaimant,

v.

INTERDENT SERVICE CORPORATION, a Washington corporation,

Counterdefendant.

LARRY R. MISNER, JR., individually,

Crossclaimant,

v.

POCATELLO DENTAL GROUP, P.C., an Idaho professional corporation,

Crossdefendant.

InterDent Services Corporation ("ISC") submits the following opposition to Pocatello Dental Group (the "Group")'s Fed. R. Civ. P. 56(f) motion.

I. Additional Discovery Is Unnecessary Because *Res Judicata* Bars the Group's Claims

The Group argues that the Court should refuse consideration of ISC's summary judgment motion until it has a chance to conduct more discovery. The Group misunderstands the concept of *res judicata*. "Res judicata, or claim preclusion, provides that a final judgment on the merits of an action precludes the parties from relitigating all issues connected with the action that were or could have been raised in that action." *Rein v. Providian Financial Corporation*, 270 F.3d 895, 898-99 (9th Cir. 2001).

Here, the prior action was *In re InterDent Services Corporation*, U.S. Bankruptcy Court for the Central District of California Case No. 03-13494 (the "Bankruptcy Action"). The Group asserted both an affirmative claim as well as an objection to the confirmation of the contract between the parties, the October 11, 1996 Management Agreement, in the Bankruptcy Action. (See previously filed Affidavit of Darian Stanford ¶ 2, Ex. 1 (the Group's claim) and previously filed Affidavit of Scott Kaplan ¶ 5, Ex. 4 (the Group's objection).) On October 3, 2003 (six days before they filed the present action), the Group, in a stipulation, withdrew all their claims and objections to ISC's assumption of the Management Agreement. (See previously filed Affidavit of Ivar Chhina ¶ 11, Ex. G.) The Bankruptcy Court approved ISC's plan of reorganization (which included the Group's stipulation) on October 3, 2003. (See previously filed Kaplan Aff. ¶ 4, Ex. 3.) Approval of this plan operates as a final judgment. 11 U.S.C.A. § 1141(a) (upon confirmation, Chapter 11 plan has effect of final judgment and binds prospective creditors as

well as debtor); *In re Varat Enterprises, Inc.*, 81 F.3d 1310, 1315 (4th Cir. 1996) (Chapter 11 plan, once confirmed, is accorded *res judicata* effect).

Discovery is not going to change the fact that the Group either has already argued or could have argued each of the issues raised in its fourth claim for relief in the Bankruptcy Action (see Part II discussion below). Since *res judicata* applies not only to claims that were raised in an earlier action but also to claims that could have been raised, *res judicata* bars the Group's claims. *In re Chattanooga Wholesale Antiques, Inc.*, 930 F.2d 458, 463 (6th Cir. 1991); *Crown v. Klein Bros.*, 121 Idaho 942, 829 P.2d 532, 536-37 (Ct. App. 1991) (plaintiff's claims barred by *res judicata* because plaintiff "had the capacity to present their entire controversy before the bankruptcy court"). Additional discovery is irrelevant.

II. The Group Could Have Asserted or Did Assert Each of the Claims in Its Fourth Claim For Relief

As detailed below, the Group either did assert or could have asserted each of its claims in its fourth claim for relief in the Bankruptcy Action.

A. Failing "to include in dentists' compensation the share of interest charged in patient accounts"

The Group asserted this claim in the Bankruptcy action. (See previously filed Stanford Aff. ¶ 2, Ex. 1. at second page) (noting "Unpaid interest collected on patients [sic] accounts".)

B. Failing "to deposit accounts receivable in an account approved by the Group"

On May 16, 2003, the Group made this demand to ISC. (See previously filed Affidavit of James Price dated February 9, 2004, Ex. A., submitted with Plaintiff's Objection to Defendant's Motion and Application for a Temporary Restraining Order.) The Group renewed this demand on June 3, 2003. (*Id.* at Ex. C.) Thus, the issue arose prior to October 3, 2003, and the Group

plainly could have asserted such claim in the Bankruptcy Action.

C. Failing “to pay the claims and obligations of the Group”

The Group raised this specific claim in its Objection to ISC’s Bankruptcy Plan. (See previously filed Kaplan Aff. ¶ 5, Ex. 4 at 10). The Group also specifically mentioned this issue in its Bankruptcy Claim (See previously filed Stanford Aff. ¶ 2 at 2).

D. Interfering “with the Group’s practice of dentistry”

On May 16, 2003, as the Group admitted in its previously filed Plaintiff’s Objection to Defendant’s Motion and Application for a Temporary Restraining Order (at p. 10), this claim includes the Group’s claim for failure to provide necessary supplies, which the Group asserted in the Bankruptcy Action (see discussion below). In fact, the Group’s counsel made an argument relating to ISC “interfer[ing] with the dentist-patient relationship” in May 2003. (See previously filed Price Aff., Ex. A. at p. 2.)

E. Failing “to hire and train all non-dentists personnel needed to operate the practice”

In its previously filed Plaintiff’s Objection to Defendant’s Motion and Application for a Temporary Restraining Order (at pp.10-11), the Group argues that “ISC *continues* to maintain staffing levels below the percentages stated in the dentists’ employment agreements and at levels that are inadequate for the efficient and effective operation of the practice.” (Emphasis added.) Such language indicates that the Group could have asserted this claim earlier, including in the Bankruptcy Action.

F. “[C]harging paid time off * to dentists as direct wages”**

While the Group has not formally made this allegation previously, the Group has taken the general position that the arrangement with ISC’s predecessor beginning in 1996 “worked fairly well until a few years ago, when ISC moved in”. (See previously filed [Plaintiff’s]

Memorandum In Support of Motion for Temporary Restraining Order, Order to Show Cause, and Preliminary Injunction at 2.) To the extent that the Group argues that all the alleged “problems” began when ISC moved in, the Group could have asserted this claim earlier.

G. Failing “to maintain practice as the preeminent group practice in the Pocatello and surrounding area”

The Group actually asserted this claim in its Objection. (*See* previously filed Kaplan Aff. ¶ 5, Ex. 4 at 2.) It also asserted this issue in its Bankruptcy Claim. (*See* previously filed Stanford Aff. ¶ 2, Ex. 1 at 2 (noting “Failure of Debtor to provide equipment and supplies necessary to maintain practice of Group as preeminent practice in area”).)

H. Failing “to provide and maintain equipment and supplies necessary for the efficient and effective operation of the practice”

As detailed in ISC’s Memorandum in Support of Summary Judgment, the Group raised this specific claim in its Objection. (*See* previously filed Kaplan Aff. ¶ 5, Ex. 4 at 9-10). It also raised the issue in its Bankruptcy Claim. (*See* previously filed Stanford Aff. ¶ 2, Ex. 1 at 2 and Ex. C (noting “Failure of Debtor to provide equipment and supplies necessary to maintain practice of Group as preeminent practice in area”).)

I. Failing “to provide an experienced manager”

Barbara Henderson, the allegedly inexperienced manager, was promoted to manager on or around May 2003. (*See* previously filed Affidavit of Bruce Call ¶ 6.) In its previously filed Plaintiff’s Objection to Defendant’s Motion and Application for a Temporary Restraining Order (at p. 12), the Group argues that ISC fired Dan Horrocks in May 2003 and replaced him with “Barbara Henderson, who had no experience in dental practice management.” Since Ms. Henderson was promoted in May 2003, the Group plainly could have asserted this claim in the Bankruptcy Action.

J. Failing “to provide financial statement and accounting records”

On June 3, 2003, the Group’s counsel represented to ISC that “the Group has unsuccessfully attempted over the years to obtain an accounting from InterDent. Demand is hereby made for a full and detailed accounting....” (See previously filed Price Aff., Ex. C at 3.) The Group could have asserted this claim in the Bankruptcy Action.

K. Denying “access to patients’ records”

While the Group has not formally made this allegation previously, the Group has taken the general position that the arrangement with ISC’s predecessor beginning in 1996 “worked fairly well until a few years ago, when ISC moved in”. (See previously filed [Plaintiff’s] Memorandum In Support of Motion for Temporary Restraining Order, Order to Show Cause, and Preliminary Injunction at 2.) To the extent that the Group argues that all the alleged “problems” began when ISC moved in, the Group could have asserted this claim earlier.

L. Violating “laws and public policy related to the practice of dentistry”

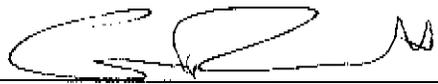
ISC assumes that the Group is referring to its contention that Joint Operations Committee approval of hiring dentists somehow constitutes the unlawful practice of dentistry. The Group’s counsel made this assertion on June 3, 2003, during the pendency of the bankruptcy proceedings. (See previously filed Price Aff., Ex. C at 1 (“Whether the JOC has the legal authority to address the disagreements is highly questionable.”)) Also, the papers filed by the Group in obtaining its ex parte state court TRO that began this latest litigation makes clear the issue arose before October 3, 2003. (See e.g. previously filed Affidavit of Dwight D. Romriell dated October 9, 2003, ¶¶ 11-13, Exs. C, D (issue arose in August 2003); previously filed Affidavit of L.R. Misner dated October 6, 2003 ¶¶ 11-13 (issue arose in August 2003), Ex. E at 2 (September 19, 2003 letter from Mr. Price asserting “[t]he Joint Operations Committee cannot legally make

decisions regarding the practice of dentistry, including the hiring of providers, because all of its members are not licensed to practice dentistry in Idaho....[the Management Agreement] impermissibly grants unlicensed persons authority over professional matters.”)

III. Conclusion

Additional discovery is irrelevant to the issue of whether the Group could have asserted or did assert its claims in a prior action. For this reason, the Court should deny the Group’s motion.

DATED this 12 day of April, 2004.


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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **ISC'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF'S CLAIMS** on the following named person(s) on the date indicated below by

- mailing with postage prepaid
- hand delivery
- facsimile transmission
- overnight delivery

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

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