

IN THE CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI

ALBERT LEE ABRAHAM, JR.

PLAINTIFF

VS.

CAUSE NUMBER 2012-0053-CI

R. ARNOLD SMITH, JR., M.D.,
NORTH CENTRAL MISSISSIPPI REGIONAL
CANCER CENTER, and Defendants A Through R,
Being Those Persons or Legal Entities Whose True
Names Have Yet to be Discovered

DEFENDANTS

ANSWER AND COUNTER-CLAIM OF R. ARNOLD SMITH, JR., M.D.

COMES NOW R. Arnold Smith, Jr., M.D., by and through his duly appointed Agent and Power of Attorney Mary K. Smith, and files this, his *Answer and Counter-Claim of R. Arnold Smith, Jr., M.D.*, and answers paragraph by paragraph and asserts his affirmative defenses and counter-claim, as follows:

1. The allegation in paragraph number 1 of the Complaint is admitted.
2. The allegation in paragraph number 2 of the Complaint is admitted.
3. The allegation in paragraph number 3 of the Complaint is denied. The entity named in paragraph number 3 is not listed in the style of the case.
4. The allegations in paragraph number 4 of the Complaint are denied.
5. The allegations in paragraph number 5 of the Complaint are denied.
6. The allegations in paragraph number 6 of the Complaint are denied.

7. The allegations in paragraph number 7 of the Complaint are denied.
8. The allegations in paragraph number 8 of the Complaint are denied.
9. The allegations in paragraph number 9 of the Complaint are denied.
10. The allegations in paragraph number 10 of the Complaint are denied.
11. The allegations in paragraph number 11 of the Complaint are denied.
12. The allegations in paragraph number 12 of the Complaint are denied.
13. Dr. Smith denies that the Plaintiff is entitled to any relief requested in that paragraph of the Complaint that begins "WHEREFORE, PREMISES CONSIDERED" and further denies that the Plaintiff is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Some or all of the Plaintiff's claims are barred to the extent that the Plaintiff engaged in any unlawful acts, illegal conduct or unlawful schemes.

SECOND DEFENSE

Some or all of the Plaintiff's claims are barred by the doctrine of spoliation of evidence.

THIRD DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted and should be dismissed under Rule 12(b)(6).

FOURTH DEFENSE

The Plaintiff's recovery, if any, should be barred or reduced by his contributory or comparative fault.

FIFTH DEFENSE

Dr. Smith invokes all rights and protections afforded under Miss. Code Ann. §11-1-65.

SIXTH DEFENSE

Punitive damages against Dr. Smith would violate the due process, equal protection, and excessive fines clauses of Fifth and Fourteenth Amendments to the Constitution of the United States and Article 3, §14 of the Mississippi Constitution.

SEVENTH DEFENSE

The imposition of punitive damages against Dr. Smith would be unconstitutionally vague and/or overly broad.

EIGHTH DEFENSE

The Plaintiff has not suffered any injury or damages.

NINTH DEFENSE

The Plaintiff fails to join the proper parties.

TENTH DEFENSE

Dr. Smith invokes the provisions of Miss. Code §85-5-7, as amended.

ELEVENTH DEFENSE

The Plaintiff has not specifically stated special damages, if any, as required by Rule 9(g) of the *Miss. Rules of Civil Procedure*.

TWELFTH DEFENSE

Some or all of the claims may be barred by estoppel, collateral estoppel, judicial estoppel and/or res judicata.

THIRTEENTH DEFENSE

The Plaintiff's Complaint fails to join indispensable parties.

FOURTEENTH DEFENSE

Some or all of the claims may be barred by the doctrines of illegality, or by the doctrine of unclean hands, or by an intervening and superseding cause.

FIFTEENTH DEFENSE

Dr. Smith reserves the right to raise and assert other defenses or claims after conducting discovery and investigating the facts and circumstances of this case; and he further reserves the right to adopt defenses and/or join in other claims asserted by any other defendant.

SIXTEENTH DEFENSE

Some or all of the Plaintiff's claims have no foundation in law or in fact.

WHEREFORE PREMISES CONSIDERED, R. Arnold Smith, Jr., M.D. prays that the Court will deny any and all relief requested by the Plaintiff, dismiss the Plaintiff's claims with prejudice, and order the Plaintiff to pay all attorney fees and costs incurred by Dr. Smith in this action.

Dr. Smith further prays that the Court will order whatever other relief to which he may be entitled in the premises, including but not limited to allowing Dr. Smith to assert any additional counter-claims or other claims he may have after further investigation and pretrial discovery.

IN THE CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI

R. ARNOLD SMITH, JR., M.D.

COUNTER-PLAINTIFF

vs.

ALBERT LEE ABRAHAM, JR. AND
JOHN DOES 1-10

COUNTER-DEFENDANTS

COUNTER-CLAIM AGAINST ALBERT LEE ABRAHAM, JR. AND
JOHN DOES 1-10

COMES NOW Ralph Arnold Smith, Jr., ("Dr. Smith") by and through his Agent and Power of Attorney Mary K. Smith, and files this, his *Counter-Claim Against Albert Lee Abraham, Jr. and John Does 1-10*, as follows:

1. Albert Lee Abraham, Jr. ("Lee Abraham") is a resident of Leflore County, Mississippi. Jurisdiction and venue of this Counter-Claim are proper in this court.
2. Due to the nature of the conduct complained of in this Counter-Claim, and the resulting inability to identify the true name of all proper Counter-Defendants, the court should allow leave to amend this Counter-Claim, and upon further investigation and pre-trial discovery, join the proper and identifiable Counter-Defendants, as set out in Rule 9 of the *Mississippi Rules of Civil Procedure*.

Count I: Civil Conspiracy

3. Lee Abraham has engaged in conduct with other persons to accomplish a purpose that is unlawful, and/or Lee Abraham has engaged in conduct with other persons to accomplish a lawful purpose unlawfully.

4. Lee Abraham entered into agreements with other persons and/or entities to accomplish a purpose that is unlawful, and/or has entered into agreements with other persons and/or entities to accomplish a lawful purpose unlawfully.

5. Lee Abraham's wrongful and unlawful conduct proximately caused damage to Dr. Smith, and continues to cause damage to Dr. Smith.

6. Due to the secretive nature of Lee Abraham's unlawful conduct, upon further investigation and pre-trial discovery, Dr. Smith reserves the right to seek leave of the court to amend his Counter-Claim and join additional claims, persons and/or entities.

Count II: Intentional Infliction of Emotional Distress

7. Dr. Smith incorporates paragraph numbers 1 through 6 into Count II.

8. Lee Abraham and other persons or entities have engaged in a pattern of intentional, unlawful and malicious conduct that proximately caused and continues to cause Dr. Smith to suffer severe mental and emotional distress.

9. Lee Abraham's conduct and the conduct of other persons or entities is malicious, intentional and outrageous.

10. Lee Abraham's intentional conduct, which is malicious and outrageous, along with the malicious, intentional and outrageous conduct of other persons or entities, proximately caused damage to Dr. Smith and continues to cause damage to Dr. Smith.

Count III: Aiding and Abetting

11. Dr. Smith incorporates paragraph numbers 1 through 10 into Count III.
12. Any and all persons and/or entities who are shown to have aided and abetted Lee Abraham in any way are jointly and severally liable with Lee Abraham for any and all damages that the court may award to Dr. Smith.

Count IV: Punitive Damages

13. Dr. Smith incorporates paragraph numbers 1 through 12 into Count IV.
14. The outrageous and malicious conduct of Lee Abraham and the Counter-Defendants meets the standard for imposition of punitive damages.
15. The court should award punitive damages to Dr. Smith in an amount the jury deems appropriate; and order that all Counter-Defendants shall be jointly and severally liable for any punitive damages awarded by a jury.

WHEREFORE, PREMISES CONSIDERED, Dr. Smith, by and through his Agent and Power of Attorney Mary K. Smith, prays that this *Counter-Claim Against Albert Lee Abraham, Jr. and John Does 1-10* be received and filed, and that upon a jury trial of this Counter-Claim, the court will enter judgment against Albert Lee Abraham, Jr. for all compensatory damages and punitive damages that a jury may award to Dr. Smith. The court should also enter judgment jointly and severally against any and all Counter-Claim defendants for all compensatory damages and punitive damages that a jury may award to Dr. Smith.

The court should also enter a judgment against Albert Lee Abraham, Jr. for all attorney fees and costs incurred by Dr. Smith in filing and prosecuting this Counter-Claim. The court

should also enter judgment jointly and severally against all Counter-Claim defendants for all attorneys fees and costs incurred by Dr. Smith in filing and prosecuting this Counter-Claim.

Dr. Smith prays for such other relief the court deems appropriate and to which Dr. Smith may be entitled in the premises.

Respectfully submitted, this 27th day of July, 2012.

R. Arnold Smith, Jr., M.D.

By: Mary K. Smith
Mary K. Smith, in her capacity as the Agent and Power of Attorney for R. Arnold Smith, Jr.

Attorneys for R. Arnold Smith, Jr., M.D.:

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JUL 27 2012
ELMUS STOCKSTILL, CIRCUIT CLERK
BY: [Signature] D.C.

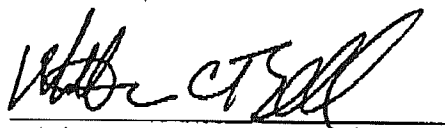
CERTIFICATE OF SERVICE

I, William C. Bell, do hereby certify that I have served by first class United States mail a true and correct copy of the foregoing *Answer and Counter-Claim of R. Arnold Smith, Jr., M.D.* on the following counsel for Albert Lee Abraham, Jr., as follows:

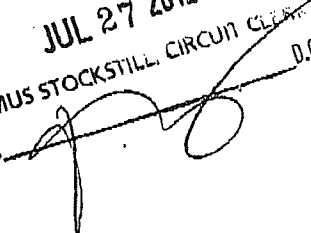
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This the 27th day of July, 2012.



William C. Bell
Attorney for R. Arnold Smith, Jr., M.D.

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JUL 27 2012
ELMUS STOCKSTILL CIRCUIT CLERK
BY:  D.C.