

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:	§	
	§	
TRI-CITY HEALTH CENTRE, INC.,	§	CASE NO. 98-35770-SAF-11
DEBTOR.	§	
	§	
ROBERT MILBANK, JR., TRUSTEE,	§	
PLAINTIFF,	§	
	§	
VS.	§	ADVERSARY NO. 99-3379
	§	
RANDOLPH ROYAL GILLUM, et al.,	§	
DEFENDANTS.	§	
	§	
UNITED STATES OF AMERICA,	§	
PLAINTIFF,	§	
	§	
VS.	§	
	§	
RANDOLPH ROYAL GILLUM, D.O.,	§	
et al.,	§	
DEFENDANTS.	§	

**MEMORANDUM OPINION AND ORDER**

On March 5, 2001, the defendants, Randolph R. Gillum, Texas Summitt Corp., and Surgery & Diagnosis, Inc., filed motions for a new trial and for a judgment as a matter of law against both Robert Milbank, trustee of the bankruptcy estate of Tri-City Health Centre, Inc., the debtor, and the United States. By order entered March 13, 2001, the court set a briefing schedule for the motions. Milbank filed his response on April 2, 2001. The

United States filed its response on April 12, 2001. The defendants filed their reply to Milbank's response on April 12, 2001.

The defendants contend that they are entitled to judgments as a matter of law. The court applies Fed. R. Civ. P. 50, even though the Bankruptcy Rules do not make that procedural rule expressly applicable to bankruptcy adversary proceedings. Bankruptcy Rule 9029(b); L.B.R. 9029.3; L.R. 83.1.

The court must apply a "reasonable juror" standard and determine whether there was "sufficient material evidence to support the jury's verdict." Vance v. Union Planters Corp., 209 F.3d 438, 441 (5th Cir. 2000). A court may grant judgment as a matter of law when there is not sufficient conflict in substantial evidence to create a jury question. See id. The court reviews post-trial motions for judgment as a matter of law in the light most favorable to the jury's determinations. See Williamson v. City of Houston, Tex., 148 F.3d 462, 468 (5th Cir. 1998). The court must view all of the evidence, not just that evidence which supports the non-movant's case, in the light most favorable to the party opposing the motion. See Burch v. Coca-Cola Co., 119 F.3d 305, 313 (5th Cir. 1997), cert. denied, 522 U.S. 1084 (1998); Boeing Co. v. Shipman, 411 F.2d 365, 374 (5th Cir. 1969). "If the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that

reasonable men could not arrive at a contrary verdict, granting of the motion[] is proper." Boeing, 411 F.2d at 374. A court enters a judgment as a matter of law cautiously and sparingly because it deprives the non-moving party of a jury determination of the facts. See Bellamy v. Bradley, 729 F.2d 416, 418 (6th Cir. 1984), cert. denied, 469 U.S. 845 (1984). "The court may not substitute its judgment for that of the jury: it neither assesses witness credibility nor weighs evidence." Boodoo v. Cary, 21 F.3d 1157, 1161 (D.C. Cir. 1994).

The defendants seek a new trial pursuant to Fed. R. Civ. P. 59, made applicable by Bankruptcy Rule 9023. Under Rule 59, the trial court may grant a new trial on its appraisal of the fairness of the trial and the reliability of the jury's verdict. Smith v. Transworld Drilling Co., 773 F.2d 610, 612-13 (5th Cir. 1985). The trial court may grant a new trial if the verdict is against the great weight of the evidence, the damages awarded are excessive, the trial was unfair, or prejudicial error was committed in the course of the trial. Id. at 613.

### **Trustee's Judgment**

#### Statute of Limitations

The defendants contend that they should obtain a judgment as a matter of law or alternatively a new trial on the question of the running of the statute of limitations on the CT scanner transaction and on the construction work. The parties presented

substantial conflicting evidence on discovery and concealment making the determination appropriate for the jury. The defendants had a full and fair opportunity to present their evidence to the jury. While they presented evidence to support their position that Tri-City knew or should have known of the events through the state attorney general suit and the work of Tri-City's retained professionals, the jury had sufficient evidence to conclude that Randolph Gillum concealed and kept Tri-City from actually discovering the matters. Indeed, in closing argument, counsel for Randolph Gillum attempted to explain to the jury a series of documents and other evidence which the jury could find had been fraudulently prepared by or on behalf of the defendants. The jury weighed the evidence, assessed credibility and made its findings. The findings are not contrary to law and are supported by sufficient evidence.

#### Releases

The defendants next contend that they should obtain a judgment as a matter of law or, alternatively, a new trial, on whether Tri-City released its claims against them. The court found that the release among the defendants in the state attorney general litigation was ambiguous requiring submission to the jury. As Randolph Gillum must acknowledge, on the day that Tri-City's attorney communicated his agreement to the settlement to the Attorney General, Tri-City's attorney consulted with Gillum's

attorney about the scope of the release between their clients. Tri-City's lawyer wrote to Gillum's lawyer confirming that the release was not exhaustive between them. The next day, Gillum and Tri-City's lawyers submitted the settlement to the Tri-City board of directors for adoption or ratification. Gillum cannot assert the release is exhaustive in one breath while maintaining he did not release claims against Tri-City in the next or even the same breath. Essentially contemporaneous communications must be construed together.

Again, the parties presented substantial conflicting evidence for the jury to weigh and assess. This court cannot conclude that no jury could decide the release issue in the trustee's favor. There is sufficient evidence to support the jury's verdict.

The defendants request that the court grant a new trial on their laches affirmative defense. The jury had sufficient evidence to find in the trustee's favor.

Common Law Fraud, Unjust Enrichment, Conspiracy  
and Fiduciary Duty

Again, the defendants attack the sufficiency of the evidence on these counts. They do not attack the court's instructions to the jury. Nor do they attack the fairness of the trial. They do not assert any prejudicial error. The trustee has summarized the evidence the jury could believe. The court need not engage in that process. There is sufficient evidence to support the

verdict.

Punitive Damages

Gillum asserts there is insufficient evidence to support the jury's decision on punitive damages. This court has previously reviewed the evidence in the context of its determination of the sanctions issue under the False Claims Act. That exercise revealed sufficient evidence for a jury to award punitive damages on the trustee's claims. Furthermore, the jury may consider all the evidence introduced at trial to determine whether to award punitive damages. The court will neither usurp the jury's function nor retry the case.

**Government's Judgment**

In both motions, the defendants seek relief concerning the government's common law fraud claim. The court did not enter judgment for the government on common law fraud. The government chose, at trial's end, to elect a remedy under the False Claims Act, and the court proceeded accordingly. Consequently, the court need not consider the motions with respect to the common law fraud claim.

With regard to the False Claims Act, Randolph Gillum focuses on the acts of employees and professional persons to shield him from a finding of knowingly causing a false claim. But the government produced sufficient evidence from which the jury could reasonably infer that Gillum knew exactly what was happening, and

that Gillum's actions caused the claims to be filed. For example, Gillum testified that he thought Medicare would reimburse the hospital for commercially reasonable claims and that he relied on the hospital administrator and the hospital's professionals retained to prepare Medicare cost reports. But the jury had evidence that Gillum signed or caused to be signed a false document concerning Texas Summitt Corporation's construction profits. In addition, evidence submitted to the jury links Gillum with false construction bids and a false equipment bid. Furthermore, the jury had evidence that Gillum caused Texas Summitt Corporation to pay the hospital administrator what Gillum labeled as "bonuses," which this court has previously observed is but a euphemism for kick-backs. Gillum controlled the corporate defendants. The jury had sufficient evidence to find that the defendants knowingly caused false claims to be presented to Medicare for payment, knowingly caused false statements to be used to get claims paid and conspired to get false claims allowed or paid.

For all the grounds argued by the defendants in each of these motions, they ultimately face the same insurmountable hurdle. The substantial conflicting evidence raised issues of fact for submission to the jury. Viewing the evidence in the light most favorable to the trustee and the government, the court cannot conclude that no reasonable jury could decide the issues

in the trustee's or the government's favor. The court may not usurp the jury's function to assess the credibility of the witnesses and weigh the evidence. The trial had been fairly conducted. The verdict is not contrary to the great weight of the evidence. Rather, there is sufficient material evidence to support the verdict. Courts do not lightly interfere with jury verdicts when supported by sufficient evidence.

Based on the foregoing,

**IT IS ORDERED** that the motions are **DENIED**.

Signed this \_\_\_\_\_ day of May, 2001.

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Steven A. Felsenthal  
United States Bankruptcy Judge