IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CHS/COMMUNITY HEALTH SYSTEMS, INC. and CHSOSC, LLC,	)	
Plaintiffs,	)	NO. 3:20-cv-00163
	)	JUDGE RICHARDSON
v.	)	
MEDICAL UNIVERSITY HOSPITAL AUHTORITY,	)	
Defendant.	)	

MEMORANDUM OPINION

Pending before the Court is Defendant's Motion to Dismiss and Memorandum in Support (Doc. No. 27, "Motion").[1] Plaintiffs have responded (Doc. No. 28). Defendant has replied. (Doc. No. 29). The Motion is ripe for review.

For the reasons discussed herein, the Court will deny Defendant's Motion.

BACKGROUND[2]

The present lawsuit arises out of the Medical University Hospital Authority ("Defendant" or "Defendant MUHA")'s breaches of an asset purchase agreement ("APA") entered into between Plaintiffs and Defendant. (Doc. No. 26). The APA constituted an agreement for Plaintiffs to sell, and Defendant to purchase, substantially all of the assets of four hospitals, as well as the sale of certain related businesses, clinics, facilities, and real property. (*Id.* at 9). Through the terms of the

[1] Defendant filed its Motion and Memorandum in the same document, instead of in separate documents as required by the local rule. L.R. 7.01(a)(2).

[2] The facts herein are taken from the Amended Complaint, which is the operative complaint in this matter. *See Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000).

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APA, Defendant also agreed to enter into a Transition Services Agreement ("TSA") with Plaintiff's affiliate. (*Id.* at 2).

Plaintiffs allege that Defendant breached the APA in several ways, including: 1) failure to pay the full purchase price under the APA, including a net working capital adjustment, 2) failing to forward correspondence relating to seller cost reports and remit funds received, and not remitting all misdirected funds, and 3) breaching a transition services agreement by inaccurately reporting its collected accounts receivable and not paying the amount of service fees owed. (*Id.*).

This matter was filed in Williamson County Chancery Court and removed to this Court. (Doc. No. 1).

LEGAL STANDARD

Rule 12(b)(1) "provides for the dismissal of an action for lack of subject matter jurisdiction."[3] *Cartwright v. Garner*, 751 F.3d 752, 759 (6th Cir. 2014). "Subject matter

[3] Defendant does not clarify in its Motion the subsection of Fed. R. Civ. P. 12(b) under which it moves to dismiss, instead merely arguing that it is entitled to dismissal based on the Eleventh Amendment and sovereign immunity. (Doc. No. 27 at 1). This issue is not one of mere formality, because a motion under subsection (b)(6) portends dismissal on the merits and thus with prejudice while motions under other subsections (including (b)(1)) portend dismissal without prejudice. The case law is conflicted regarding the subsection under which such a motion should be brought in the Sixth Circuit. *E.g.*, *Martinson v. Regents of Univ. of Michigan*, 562 F. App'x 365, 370 (6th Cir. 2014) (employing both 12(b)(1) and 12(b)(6)); *Castanias v. Lipton*, No. CIV.A. 11-296-HJW, 2011 WL 3739035, at *4 (S.D. Ohio July 14, 2011), *report and recommendation adopted*, No. C-1-11-296, 2011 WL 3705971 (S.D. Ohio Aug. 24, 2011) (same); *Uttilla v. City of Memphis*, 40 F. Supp. 2d 968, 970 (W.D. Tenn. 1999), *aff'd sub nom. Uttilla v. Tennessee Highway Dep't*, 208 F.3d 216 (6th Cir. 2000) (considering a facial challenge under 12(b)(1)); *Seider v. Hutchison*, No. 3:06-CV-215, 2009 WL 2430824, at *5 (E.D. Tenn. Aug. 5, 2009) ("The Sixth Circuit has recognized that " '[w]hile the Eleventh Amendment is jurisdictional in the sense that it is a limitation on the federal court's judicial power,' the defense 'is not coextensive with the limitations on judicial power in Article III.' Thus, the Court does not believe that dismissal pursuant to Fed. R. Civ. P. 12(b)(1) would be proper based on the Eleventh Amendment. However, Defendant [] has also moved pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the claims against him, which permits dismissal when there is an unsurmountable bar on the face of the complaint." (quoting *Nair v. Oakland County Cmty. Mental Health Auth.*, 443 F.3d 469, 474 (6th Cir. 2006) (internal citation omitted)); *U.S. ex rel. Moore v. Univ. of Michigan*, 860 F. Supp. 400, 402 (E.D. Mich.

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jurisdiction is always a threshold determination." *Am. Telecom Co. v. Republic of Lebanon*, 501 F.3d 534, 537 (6th Cir. 2007).

There are two types of motions to dismiss for lack of subject-matter jurisdiction: facial and factual attacks. *Gentek Bldg. Products, Inc. v. Sherman-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007). A facial attack questions merely the sufficiency of the pleading. When reviewing a facial attack, a district court takes the allegations in the complaint as true. *Id.* If those allegations establish federally-cognizable claims, jurisdiction exists. *Id.* A factual attack instead raises a factual controversy concerning whether subject-matter jurisdiction exists. *Id.*

Where there is a factual attack on the subject-matter jurisdiction of the court under Fed. R. Civ. P. 12(b)(1), no presumptive truthfulness applies to the complaint's allegations; instead, the court must weigh the conflicting evidence to arrive at the factual predicate that subject-matter jurisdiction does or does not exist. *Gentek Bldg. Products, Inc.*, 491 F.3d at 330. "[T]he district court has considerable discretion in devising procedures for resolving questions going to subject

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1994) (when motion to dismiss on Eleventh Amendment grounds was brought under both 12(b)(1) and (12)(b)(6), noting that "[a] complaint that is barred by the Eleventh Amendment fails to state a claim upon which relief can be granted, and hence, should be dismissed by this Court. Fed. R. Civ. P. 12(b)(6)."); *Darwall v. Michigan Dep't of Corr.*, 933 F.2d 1007 (6th Cir. 1991) (finding dismissal on Eleventh Amendment grounds proper when brought solely under 12(b)(6)).

However, it has been the practice (a prudent one, in the view of the undersigned) of this Court to view challenges to jurisdiction under the Eleventh Amendment as factual challenges under 12(b)(1). As neither party has briefed this issue, in accordance with this Court's precedent the Court will construe the Motion as making a 12(b)(1) factual attack. *Dunn v. Spivey*, No. 2:09-0007, 2009 WL 1322600, at *3 (M.D. Tenn. May 11, 2009); *Gaffney v. Kentucky Higher Educ. Student Loan Corp.*, No. 3:15-CV-01441, 2016 WL 3688934, at *2 (M.D. Tenn. July 12, 2016); *Hornberger v. Tennessee*, 782 F. Supp. 2d 561, 563 (M.D. Tenn. 2011); *Hemenway v. 16th Judicial Dist. Attorney's Office*, No. 3:15-CV-00997, 2020 WL 6364486, at *3 (M.D. Tenn. Oct. 29, 2020); *see also Giorgadze v. Tennessee Tech. Ctr.*, No. 2:06CV264, 2007 WL 2327034, at *2 (E.D. Tenn. Aug. 10, 2007).

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matter jurisdiction[.]" *Ohio Nat. Life Ins. Co. v. United States*, 922 F.2d 320, 327 (6th Cir. 1990). The Sixth Circuit has noted that:

> The factual attack, however, differs greatly for here the trial court may proceed as it never could under 12(b)(6) or Fed. R. Civ. Pro. 56. Because at issue in a factual 12(b)(1) motion is the trial court's jurisdiction—its very power to hear the case—there is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. In short, no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.

RMI Titanium Co. v. Westinghouse Elec. Corp., 78 F.3d 1125, 1134 (6th Cir. 1996) (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 890 (3d Cir. 1977)).

In making its decision, the district court has wide discretion to allow affidavits, documents, and even a limited evidentiary hearing to resolve jurisdictional facts.[4] *Gentek Bldg. Products, Inc.*, 491 F.3d at 330; *see also Nichols v. Muskingum Coll.*, 318 F.3d 674, 677 (6th Cir. 2003) ("In reviewing a 12(b)(1) motion, the court may consider evidence outside the pleadings to resolve factual disputes concerning jurisdiction, and both parties are free to supplement the record by affidavits."); *Cunningham v. Rapid Response Monitoring Servs., Inc.*, 251 F. Supp. 3d 1187, 1192 (M.D. Tenn. 2017) (discussing *Gentek*).

Defendant here lodges a factual attack on subject-matter jurisdiction. "An assertion of Eleventh Amendment sovereign immunity, as has been made by the defendants here, constitutes a factual attack." *Dunn v. Spivey*, No. 2:09-0007, 2009 WL 1322600, at *3 (M.D. Tenn. May 11, 2009); *see also Gaffney v. Kentucky Higher Educ. Student Loan Corp.*, No. 3:15-CV-01441, 2016 WL 3688934, at *2 (M.D. Tenn. July 12, 2016); *Giorgadze v. Tennessee Tech. Ctr.*, No.

[4] Neither party has requested an evidentiary hearing or pointed the Court to additional evidence they might submit at such a hearing. The Court therefore exercises its discretion to rule on the present Motion without an evidentiary hearing. *See e.g., Ohio Nat. Life Ins. Co. v. United States*, 922 F.2d 320, 327 (6th Cir. 1990).

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2:06CV264, 2007 WL 2327034, at *2 (E.D. Tenn. Aug. 10, 2007). Defendant bears the burden of proving that it is entitled to immunity under the Eleventh Amendment. *Town of Smyrna, Tenn. v. Mun. Gas Auth. of Georgia*, 723 F.3d 640, 650 (6th Cir. 2013); *Gragg v. Kentucky Cabinet for Workforce Dev.*, 289 F.3d 958, 963 (6th Cir. 2002).

DISCUSSION

Defendant argues that this case must be dismissed because (according to Defendant) Defendant is entitled to Eleventh Amendment immunity as a state agency. (Doc. No. 27). Plaintiffs respond that 1) Defendant is not entitled to immunity, and 2) alternatively, if Defendant is (otherwise) entitled to immunity, Defendant has waived its immunity. (Doc. No. 28). In response, Plaintiffs primarily argue that Defendant is not entitled to immunity because Defendant is not a state agency (or "instrumentality") inasmuch as a judgment against Defendant would not be a judgment against the State of South Carolina. (Doc. No. 28 at 5). Plaintiffs argue that the Court should consider Defendant to be not a state agency, but rather a political subdivision, akin to a county or municipality. (*Id.*). In reply, Defendant argues that Plaintiffs ignore the language in the statute creating Defendant and base their arguments on inapplicable case law. (Doc. No. 29).

Because the Court finds that Defendant is not entitled to immunity, the Court does not reach the question of whether immunity has been waived.

A. Whether Defendant is protected by immunity

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. Under the Eleventh Amendment, states and state agencies or departments have sovereign immunity from suit in federal

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