

ORIGINAL

FILED

LOS ANGELES SUPERIOR COURT

1 Scott B. McFall, State Bar No. 80396
 Donald Ornelas Jr., State Bar No. 207430
 2 AGAJANIAN, McFALL, WEISS, TETREULT & CRIST LLP
 346 North Larchmont Boulevard
 3 Los Angeles, California 90004
 Telephone: (323) 993-0198
 4 Facsimile: (323) 993-9509

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DEC 15 2009

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FEB 01 2010

JOHN A. CLARKE, CLERK
m. Faune
 BY MARIA FAUNE, DEPUTY

5 Attorneys for Defendant, USC UNIVERSITY HOSPITAL
 erroneously sued herein as USC SCIENCE HOSPITAL
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF LOS ANGELES - CENTRAL DISTRICT
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11 CYNTHIA L. CARDOZA,

12 Plaintiff,

13 vs.

14 USC SCIENCE HOSPITAL, DR. FRED
 WEAVER, KECK SCHOOL OF
 15 MEDICINE, DR. MICHAEL LEKE, DR.
 DOUGLAS HOOD, BOBBY G. MILES,
 16

17 Defendants.

) CASE NO.: BC338034

) ~~[PROPOSED]~~ JUDGMENT RE: USC UNIVERSITY
 HOSPITAL'S MOTION FOR SUMMARY
 JUDGMENT/ADJUDICATION

) DATE: December 9, 2009
) TIME: 8:30 a.m.
) DEPT.: "33"

File by Fax

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 19 The Motion for Summary Judgment, or in the alternative, Summary Adjudication, of defendant
 20 USC UNIVERSITY HOSPITAL, erroneously sued herein as USC SCIENCE HOSPITAL (hereinafter
 21 "HOSPITAL"), was heard by the Honorable Charles F. Palmer in department "33" of the above-entitled
 22 court on December 9, 2009. After having reviewed the papers submitted by counsel and entertaining
 23 oral argument, the Court adopted its tentative ruling as its final ruling, and granted the motion, finding
 24 that there were no triable issues of material fact and that HOSPITAL was entitled to judgment as a
 25 matter of law. A true and correct copy of the ruling is attached hereto as Exhibit "A".

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1 In light of the foregoing, IT IS ORDERED, ADJUDGED AND DECREED that plaintiff
 2 CYNTHIA L. CARDOZA, individually and as successor in interest to PASCENTIA McDONALD,
 3 shall take nothing from HOSPITAL, that HOSPITAL is entitled to judgment in its favor, and that
 4 HOSPITAL shall recover from said plaintiff costs of suit in the sum to be determined after the
 5 submission of a memorandum of costs.

6 Judgment is hereby entered for USC UNIVERSITY HOSPITAL, erroneously sued herein as
 7 USC SCIENCE HOSPITAL.

8 IT IS SO ORDERED.

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 10 DATED: ^{February 1, 2010} ~~December~~ __, 2009



Charles F. Palmer
 Judge of the Superior Court, County
 of Los Angeles

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Department 33
Tentative Rulings - December 9, 2009

§3. BC419166 – SCP Distributors LLC v. Santos v. Vasquez

The request by plaintiff SCP Distributors, LLC for entry of default judgment is DENIED without prejudice. CCP section 585; CRC Rule 3.1800. The following errors have been noted in plaintiff's request for entry of default judgment:

- (1) The fifth cause of action in plaintiff's complaint for money due on dishonor of bad check prays for damages in the amount of \$15,102.33. No mention of this claim or request for damages is made in the default judgment request. Presumably, plaintiff wishes to waive and dismiss the claim, however, plaintiff's position on this issue should be clarified and rectified.
- (2) Plaintiff improperly requests punitive damages in the amount of \$1500. Punitive damages are not recoverable on a claim for breach of contract. Civ. Code § 3294.
- (3) Plaintiff has requested attorneys' fees in excess of \$1000. Pursuant to Civil Code section 1717.5, on a claim for open book account where the agreement does not contain an attorneys' fee provision, a plaintiff is entitled to recover the lesser of \$1000 or 25% of the amount prayed for in judgment as attorneys' fees. Here, plaintiff has requested fees calculated in accordance with Local Rule 3.2(a) as though this were a general breach of contract claim with an attorneys' fee provision. It is not. The amount prayed for must be reduced to \$1000.

#7. BC416043 – Marina Gutierrez v. WMC Corporation, et.al.

The motion of defendant Mortgage Electronic Registration Systems, Inc. to quash service of summons is GRANTED. CCP section 415.10. Upon a motion to quash by the party purportedly served, the plaintiff bears the burden of proving valid service. Dill v. Berquist Const. Co., Inc. (1994) 24 Cal.App.4th 1426, 1439-1440. A defendant is under no duty to respond in any way to a defectively served summons. It makes no difference that defendant had actual knowledge of the action. Such knowledge does not dispense with statutory requirements for service of summons. Kappel v. Bartlett (1988) 200 Cal.App.3d 1457, 1466; Ruttenberg v. Ruttenberg (1997) 53 Cal.App.4th 801, 808. The court finds that the proof of service on file in this case shows that MERS, a California Corporation, not MERS, a Delaware Corporation, was served with process in this case. Because the Delaware Corporation is the named defendant in this action and it has not been served with summons and complaint, this court has no authority to exercise jurisdiction over it. The motion to quash must be granted.

#13. BC338034 – Cynthia L. Cardoza v. USC Science Hospital, et.al.

Defendant USC University Hospital's Motion for Summary Judgment or, in the Alternative, Summary Adjudication

The motion of defendants defendant University USC Hospital for summary judgment is GRANTED. CCP section 437c. After full consideration of the evidence, and the written and oral submissions by the parties, the Court finds that there are no triable issues of material fact, and that defendant USC Univeristy Hospital (the "Hospital") is entitled to judgment as a matter of law.

As a procedural matter, the court notes that following its ruling on the defendants' demurrers on 6/15/09, there remain three causes of action in plaintiff's complaint against the Hospital: (1) the first cause of action for violations of Probate Code section 4742(a), (2) the second cause of action for violations of Probate Code section 4742(b), and (3) the fourth cause of action for fraudulent concealment. The Hospital erroneously moves for summary adjudication of the third cause of action, however, the court's 6/15/09 ruling on the demurrer effectively rendered that cause of action dismissed. The Hospital's motion directed at the third cause of action is therefore not considered because it is moot.

Based upon the facts and evidence submitted by the parties, the court finds that the defendant Hospital is immune from liability under section 4740 of the Probate Code. Section 4740 provides, in relevant part:

"A health care provider or health care institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for any actions in compliance with this division, including, but not limited to ... Complying with a health care decision of a person that the health care provider or health care institution believes in good faith has the authority to make a health care decision for a patient, including a decision to withhold or withdraw health care."

It is undisputed that Pascentia McDonald, plaintiff's deceased mother, obtained the assistance of counsel to draft a health care directive in which she named plaintiff's brother, Bobby Miles, as her designated agent to make health care decisions on her behalf. (SUF 2). Pursuant to the AHCD, Miles' authority became effective upon her primary care physician's determination that she was no longer capable of making her own health care decisions. (SUF 5, Ex. A, p. 3 para. 1.3). Plaintiff was designated the alternate agent to Miles. (SUF 3).

Plaintiff does not dispute that, following the August 14 surgery, McDonald's primary care physician, Dr. Douglas Hood, determined McDonald incapable of making her own healthcare decisions. (SUF 7). Thus, pursuant to the health care directive Miles had authority to make decisions on McDonald's behalf in accordance with the instructions in the AHCD. Plaintiff takes issue not with whether a determination by Dr.

Hood, McDonald's primary care physician, was made that Ms. McDonald was not competent to make her own health-care decisions from the date of the original surgery, but with whether the determination was accurate. Plaintiff's opinion in that regard is inadmissible as a conclusion without appropriate foundation in that she has shown no expertise in medical matters. (Cardoza Decl. para. 8). It should be noted that plaintiff's observations of Ms. McDonald were not inconsistent with Dr. Hood's own declaration wherein he points out that although a patient may be responsive, a patient who is sedated cannot make her own health-care decisions. (Hood Decl. paras. 5, 6).

Plaintiff has offered the declaration of Stuart Friedman, M.D. to establish that the decedent, Placentia McDonald was competent to make her own health care decisions during the relevant time periods. However, in his declaration Dr. McDonald does not state that Ms. McDonald was competent to make decisions after her first surgery; rather he expresses his opinion that patients on respirators "are often clear and able to communicate." In his deposition, Dr. Friedman conceded he was expressing no opinion on Ms. McDonald's competency, but merely making a general statement regarding the mental competency of ventilator dependent patients. He specifically testified that the issue of specific time period wherein Ms. McDonald was competent was "beyond the scope of [his] review" and that based on his review of the medical records he was unable to state, to a reasonable medical probability that Ms. McDonald was at any time competent during her hospitalization. In that Dr. Friedman cannot express any opinion as to whether Ms. McDonald was or was not competent at any time, it cannot create a triable issue of fact on the issue of Ms. McDonald's competency. Thus, Dr. Hood's testimony to the effect that Ms. McDonald was not competent to make medical decisions after her initial surgery (Declaration of Douglas Hood, M.D., paragraph 5) remains the only admissible evidence on this issue of her competence and there is not triable issue of fact on that issue.

Once the AHCD was deemed applicable by Dr. Hood, Miles had the authority to make all healthcare decisions on McDonald's behalf in accordance with the directive. (SUF 6, 8). While plaintiff asserts that Miles was rarely present at the hospital, she does not dispute that Miles was available by telephone to make all necessary decisions. (Response to SUF 9). Nor does Plaintiff dispute that McDonald's doctors were cooperative with Miles or that there were discussions between Miles and the doctors regarding the treatment. (SUF 10, 11, 12). At the same time, however, plaintiff has admitted that McDonald's death occurred in compliance with the AHCD. (RFA No. 11, Ex. B, C to Hospital's motion).

Plaintiff also offers Dr. Friedman's testimony to support her assertion that defendants continued to take measures to prolong her life after she became incurable, which would have been inconsistent with the AHCD. While in his declaration Dr. Friedman testifies that once Ms. McDonald developed complications she had less than a 50% likelihood of survival, at his deposition he testified both that sepsis is not uniformly fatal and that sepsis can be successfully treated. Moreover, Dr. Friedman testified that he could not state, to a reasonable medical probability, at what point in time Ms. McDonald

became incurable because that question was beyond the scope of his review. Thus, there is no admissible evidence disputing Dr. Hood's testimony to the effect that he believed she was curable.

Based upon the foregoing, the undisputed facts and evidence demonstrate that the Hospital properly implemented and administered McDonald's AHCD in good faith by following all instructions given to it by McDonald's designated agent, Bobby Miles. As such, the Hospital is immune from liability under section 4740 as to the first and second causes of action.

As to the fourth cause of action, plaintiff has admitted that none of the physician defendants engaged in any act to intentionally harm McDonald, that plaintiff never asked any of the physician defendants about the directive and that none of the physician defendants ever denied the directive's existence to plaintiff. (RFA Nos. 21 - 23, 28 - 33, attached to motion at Ex. B and C). Further, there is no evidence that Cardoza held the durable power of attorney to make decisions on behalf of McDonald and there is no evidence to demonstrate that the determination by Dr. Hood that McDonald was incapable of making her own healthcare decisions was improper. (SUF 27, 30). Further, plaintiff admits that McDonald did not want her to make any decisions related to her healthcare while she was a patient at the hospital. (SUF 28). There is no evidence produced to show that any information to which plaintiff was entitled was concealed from plaintiff, and there is no evidence presented to create a triable issue on this point. As such, the motion for summary judgment by the hospital must be GRANTED in its entirety.

This determination is based upon the facts and evidence set forth in the defendant's separate statement of undisputed fact numbers 2 through 12, 15-17, 19, 22-28, 30-32, and 34. Therefore, IT IS ORDERED that the motion for summary judgment is GRANTED and that judgment in favor of defendant University USC Hospital and against plaintiff Cynthia Cardoza, individually and as successor in interest to Pascentia McDonald shall be entered accordingly. The prevailing party is to submit a proposed form of judgment within 5 days of this Order.

The Hospital's Evidentiary Objections

Cardoza Declaration

- (1) OVERRULED
- (2) SUSTAINED
- (3) SUSTAINED
- (4) SUSTAINED
- (5) SUSTAINED
- (6) OVERRULED
- (7) SUSTAINED

2/19/10

- (8) OVERRULED
- (9) OVERRULED
- (10) SUSTAINED
- (11) OVERRULED
- (12) OVERRULED
- (13) OVERRULED
- (14) OVERRULED
- (15) SUSTAINED
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- (22) SUSTAINED
- (23) OVERRULED
- (24) OVERRULED
- (25) OVERRULED
- (26) OVERRULED
- (27) OVERRULED
- (28) SUSTAINED
- (29) OVERRULED

Tahnee Miles Declaration

- (1) OVERRULED
- (2) SUSTAINED
- (3) SUSTAINED
- (4) SUSTAINED

Evidentiary Ruling on Plaintiff's Objection To Hood Declaration

OVERRULED

Motion of Defendants Hood, Leke, and Weaver for Summary Judgment Or. In the Alternative, Summary Adjudication

The motion of defendants Douglas Hood, M.D., Michael Leke, M.D. and Fred Weaver, M.D. for summary judgment is GRANTED. CCP section 437c. After full consideration of the evidence, and the written and oral submissions by the parties, the Court finds that there are no triable issues of material fact, and that Defendants Douglas Hood, M.D., Michael Leke, M.D. and Fred Weaver, M.D. are entitled to judgment as a matter of law.

02/10/10

Rather than repeat summary of evidence stated with respect to the Hospital's motion, the court incorporates it in this tentative by reference. With the evidence established through the plaintiff's admissions and other facts which are not disputed, the defendants have successfully shown that they are entitled to judgment as a matter of law on the first, second and fourth causes of action in the complaint. There is no evidence to create a triable issue of fact that the defendants breached any obligation under section 4742(a) or 4742(b) of the Probate Code so as to show any violation of either section occurred. In addition, there is no evidence that creates a triable issue of fact that the defendants concealed any information from the plaintiff so as to constitute a claim for fraudulent concealment.

This determination is based upon the facts and evidence set forth in the defendants' separate statement of undisputed fact numbers 5-7, 14, 16-18, and 21-30. Therefore, IT IS ORDERED that the motion for summary judgment is GRANTED and that judgment in favor of defendants Douglas Hood, M.D., Michael Leke, M.D. and Fred Weaver, M.D. and against plaintiff Cynthia Cardoza, individually and as successor in interest to Pascentia McDonald shall be entered accordingly. The prevailing party is to submit a proposed form of judgment within 5 days of this Order.

Evidentiary Ruling on Plaintiff's Evidentiary Objection

OVERRULED

PROOF OF SERVICE MAIL

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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is 346 N. Larchmont Blvd., Los Angeles, California 90004.

On December 15, 2009, I caused the service of the within **[PROPOSED] JUDGMENT RE USC UNIVERSITY HOSPITAL'S MOTION FOR SUMMARY JUDGMENT/ADJUDICATION** on the interested parties in said action, by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

Donald L. Prichard, Esq.
LAW OFFICES OF DONALD L. PRICHARD
2522 Artesia Boulevard, Suite 100
Redondo Beach, CA 90278
(310) 372-1988; Fax (310) 318-5894
Attorneys for Plaintiff

Mary Lawrence Test, Esq.
Bonne, Bridges, Mueller, O'Keefe & Nichols
3699 Wilshire Blvd., 10th Flr
Los Angeles, CA 90010
(213)480-1900; Fax (213)738-5888
Attorneys for Douglas Hood, M.D., Michael Leke, M.D. and Fred Weaver, M.D.

Bobby G. Miles, In Pro Per
2825 Charleston Street, N.E.
Albuquerque, N.M. 87110

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 15, 2009, at Los Angeles, California.

D. Rodriguez
Debra Rodriguez

7/19/19