

1-3. **25CV03075 June Howard, by and through her attorney in fact, Geneieve Bauguess v. AOCL, LLC et al.**

EVENT: (1) Defendant AOCL, LLC's Demurrer to Plaintiff's Complaint

(2) Defendants Sequoia Healthcare Group LLC, Aspen Skilled Healthcare, Inc., and Aspen Healthcare Services LLC's Demurrer to Plaintiff's Complaint

(3) Defendants AOCL, LLC, Sequoia Healthcare Group, LLC, Aspen Skilled Healthcare, Inc., and Aspen Healthcare Services, LLC's Motion to Strike Portions of Plaintiff's Complaint

Defendant AOCL, LLC's Demurrer

Uncertainty

The demurrer is overruled. Demurrers for uncertainty are disfavored and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond. (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.*, (2019) 38 Cal. App. 5th 677, 695) That is not the case here.

Elder Abuse Cause of Action

The demurrer is OVERRULED.

In order to pursue an elder abuse claim Plaintiff must sufficiently allege conduct amounting to "neglect" as prescribed in Welfare and Institutions Code ("WIC") 15610.57 and that the defendant has been guilty of "recklessness, oppression, fraud, or malice" as prescribed by WIC 15657. We read the complaint as a whole and its parts in context to give the complaint a reasonable interpretation. (*Ring v. Harmon* (2021) 72 Cal.App.5th 844, 850)

In reading the Complaint as a whole, although some allegations may be more properly classified as negligent in nature, some allegations meet the criteria of neglect as prescribed in WIC 15610.57. For example, paragraph 75 alleges " ... Mrs. Howard's family witnesses ... Mrs. Howard being urine soaked, uncleaned or changed, and repeated failures of Defendants to bathe or shower Mrs. Howard."

One of the categories of neglect under WIC 15610.57(b) is "Failure to assist in personal hygiene." The court, trial and appellate, accepts all facts alleged in the complaint as true, and draws all reasonable inferences from those facts in favor of the plaintiff. (*Kruss v. Booth* (2010) 185 Cal.App.4th 699, 713) Assuming the allegations in paragraph 75 as true, the complaint has sufficiently alleged neglect.

If there are sufficient facts pled or that can be inferred reasonably to state a cause of action under any theory, the demurrer must be overruled. (*Lin v. Coronado* (2014) 232 Cal.App.4th 696, 700) Thus, despite the fact the Complaint contains allegations not amounting to “neglect”, the Complaint survives demurrer on this ground.

The next issue is whether the Complaint adequately alleges facts demonstrating “recklessness, oppression, fraud, or malice” as prescribed by WIC 15657. The Court finds the Complaint, as a whole, alleges facts analogous to those in *Fenimore v. Regents of University of California* (2016) 245 Cal.App.4th 1339.

Fenimore held that allegations of a knowing pattern and practice of understaffing in violation of applicable regulations is sufficient to withstand demurrer. (*Fenimore, supra*, at p. 1349) As in *Fenimore*, the Complaint alleges facts amounting “a pattern and knowing practice of improperly understaffing to cut costs”. Further, the Complaint alleges that this practice contributed to Mrs. Howard’s injuries. (Paragraph 57 of the Complaint).

Regarding the issue of ratification, the Complaint sufficiently alleges the same. The allegations of understaffing inherently implicate management ratification. The reasonable inference from the under-staffing allegations is that those decisions were made by “an officer, director, or managing agent.” One would expect such a person to make that decision, as opposed to a subordinate employee.

As a result, Plaintiff has sufficiently alleged the elder abuse cause of action.

Willful Misconduct

The demurrer is SUSTAINED WITH LEAVE TO AMEND. Willful misconduct is not a separate tort, rather it is an aggravated form of negligence, differing in quality rather than degree from ordinary lack of care. (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 526) Consequently, Plaintiff cannot allege a willful misconduct cause of action in addition to their negligence cause of action. However, Plaintiffs can amend to supplement their negligence cause of action with the willful misconduct allegations.

Defendants Sequoia Healthcare Group LLC, Aspen Skilled Healthcare, Inc., and Aspen Healthcare Services LLC’s Demurrer to Plaintiff’s Complaint

Uncertainty

The demurrer is OVERRULED.

As previously noted, demurrers for uncertainty are disfavored and are only appropriate when the pleading is unintelligible. Defendants argue that the pleading is unclear as to how they are liable separately from Defendant AOCL. However, that is essentially an argument that the pleading fails to allege sufficient facts to support a cause of action.

Licensee Issue

The demurrer is OVERRULED.

The Court is struggling to understand Defendants' licensee argument. Defendants state that under the non-delegable rule a licensee could not be immunized by "shifting duties to others by contract." But Plaintiff is not seeking to absolve or immunize the licensee. To the contrary, the licensee (AOCL) is a named Defendant in this case. Rather, as it applies to these defendants, the Complaint ostensibly seeks to impose alter ego and vicarious liability, and perhaps direct liability under the theory they have separate legal duties.

Direct Liability

As Defendants correctly noted, elder abuse requires a custodial relationship between the defendant and plaintiff, or in this case, the deceased. (See *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 157-158) The general rule is that statutory causes of action must be pled with particularity, see *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790) Thus the custodial relationship must be pled with particularity.

Here, the Complaint sufficiently alleges a custodial relationship in a general sense based on the fact Mrs. Howard was a resident at a nursing home. The problem is the Complaint is not sufficiently specific as to how these defendants had a custodial relationship with decedent.

Although there are allegations that each defendant was acting as the agent of the other, while that might be sufficient for indirect liability theories and common law causes of action such as negligence, it is not sufficient for direct liability under statutory elder abuse. The demurrer is SUSTAINED WITH LEAVE TO AMEND on Plaintiff's theory that these defendants (non AOCL defendants) are each directly liable for elder abuse on the grounds the Complaint fails to sufficiently allege a custodial relationship.

As to the negligence cause of action, the demurrer is OVERRULED on the theory these defendants are directly liable for negligence. As a common law theory, heightened pleading standards for negligence do not apply.

Alter Ego Liability

The demurrer is OVERRULED.

Less specificity is required when it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy ... (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 403) As it pertains to the alter ego factors, Defendants necessarily "possess full information." The Complaint sufficiently alleges ultimate facts concerning the alter ego liability factors.

Elder Abuse - "Neglect" and "Recklessness"

The Court reincorporates its discussion with respect to Defendant AOCL's demurrer here. Consistent with that ruling, the Complaint sufficiently alleges neglect and recklessness. However, as noted, with respect to the non-AOCL Defendants, the Complaint has failed to allege a custodial relationship supporting Plaintiff's theory of direct liability for elder abuse.

Ratification

Consistent with the Court's previous ruling, the demurrer is OVERRULED.

Willful Misconduct

Consistent with the Court's previous ruling, the demurrer is SUSTAINED WITH LEAVE TO AMEND.

Motion to Strike

The motion is DENIED. Plaintiff's allegations with respect to purposeful understaffing could support a finding of "willful and conscious disregard of the rights or safety of others".

To the extent leave to amend is granted, Plaintiff shall amend within 20 of this order. Plaintiff shall prepare and submit a form of order within two weeks.