

Judge Benson – Law & Motion – Wednesday, November 1, 2023 @ 9:00 AM
TENTATIVE RULINGS

1. 23CV01739 Larsen, Austin v. Harmony Communities, Inc. et al.

EVENT: Defendants Harmony Communities Inc. and Royal Palms Mobile Home Park Investors, LLC's Demurrer to Plaintiff's Complaint (Continued from 10/4/23)

Defendants Harmony Communities Inc. and Royal Palms Mobile Home Park Investors, LLC's Demurrer to Plaintiff's Complaint is SUSTAINED WITHOUT LEAVE TO AMEND. The demurrer is unopposed. Failure to oppose a demurrer may be deemed abandonment of the issue, see *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20. Defendants shall prepare the form of order within 2 weeks.

2. 23CV02267 In re: Mula, Jaclyn Christine

EVENT: Change of Name (minor) (Continued from 10/11/23)

Absent any objection at the hearing the Court will grant the petition and sign the decree provided.

3. 23CV02364 In re: Yuhnke, Kathleen

EVENT: Change of name (minor)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

4. **23CV02430 In re: Hurte, Toni**

EVENT: Change of Name (Adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

5. **23CV02441 In re: Lyon, Richard Cole**

EVENT: Change of name (adult)

The Court will hold a hearing.

6. **23CV02336 In re: Thurman, Rachelle**

EVENT: Change of name (minor) continued from 10/18/23

The Court will hear from Petitioner regarding notice to non-consenting parent.

7. **23CV02151 Enloe Medical Center v. Ampa Health Employee Benefit Plan**

EVENT: Defendant's Demurrer to Plaintiff's Complaint

Defendant's Demurrer to Plaintiff's Complaint is SUSTAINED in its entirety. Plaintiff is provided leave to amend as discussed herein. Plaintiff shall amend within 20 days after notice of this order.

Regarding the preemption issue, the Court finds the argument to be premature at the pleading stage. Nowhere in the Complaint do the allegations specifically implicate ERISA. One of the cases relied on heavily by Defendant, *Port Medical Wellness, Inc. v.*

Connecticut General Life Ins. Co., (2018) 24 Cal. App. 5th 153, which was decided on summary judgment, noted that conflict preemption is an affirmative defense.

[A] demurrer based on an affirmative defense will be sustained only where the face of the complaint discloses that the action is necessarily barred by the defense. (*Heshejin v. Rostami* (2020) 54 Cal.App.5th 984, 992) Because ERISA is not implicated on the face of the complaint, the issue is not ripe for consideration.

As to Defendant's argument regarding the statute of frauds and the Implied in Fact Contract cause of action, Defendant's argument is well taken. Civil Code Section 1624(a)(2) requires the promise to answer for the debt of another be in writing. There can be no debate that the gravamen of this cause of action seeks to enforce promises to answer the debts of patients.

Although Plaintiff notes that the authority cited by Defendant relates to matters unrelated to the payment of emergency services, Plaintiff has cited no authority nor is the Court aware of any authority which carves out an exception to Civil Code Section 1624(a)(2) for emergency medical services. Consequently, because the Implied in Fact Cause of Action cannot be squared with Civil Code Section 1624, the demurrer to the first cause of action is sustained without leave to amend.

Regarding the quantum meruit cause of action, the Court agrees with Defendant that Plaintiff has not and cannot plead that the services "benefited" Defendant. No matter how it is framed, the insured is benefiting from the services provided. It strains all logic to infer that a claim presented on behalf of an insured for which the insurer must cover is a benefit to the insurer.

Health and Safety Code § 1371.4. Authorization for emergency services

...

(b) A health care service plan, or its contracting medical providers, shall reimburse providers for emergency services and care provided to its enrollees, until the care results in stabilization of the enrollee, except as provided in subdivision (c). As long as federal or state law requires that emergency services and care be provided without first questioning the patient's ability to pay, a health care service plan shall not require a provider to obtain authorization prior to the provision of emergency services and care necessary to stabilize the enrollee's emergency medical condition.

A violation of Health and Safety Code section 1371.4 can support a basis for a cause of action on a quantum meruit theory. See *Bell v. Blue Cross of California*, (2005) 131 Cal. App. 4th 211, 216. Paragraph 9 of the complaint alleges facts suggesting a violation of section 1371.4:

California laws and Emergency Medical Treatment and Active Labor Act (EMTALA) obligate Enloe Medical Center to treat patients who require emergency medical services. As such, California and federal laws require health plans, such as DEFENDANTS, to reimburse emergency providers at the reasonable value for the services provided when there is no written contract.

The general rule is that statutory causes of action must be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790). Here, despite the factual allegations, the Complaint is silent as to whether Plaintiff is asserting a cause of action for quantum meruit based on violations of section 1371.4. Plaintiff is granted leave to amend to specifically plead a violation of section 1371.4.

Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

8. 23CV02973 Butte County Animal Control v. Taylor, Burlin

EVENT: Petition to Determine if Dog is Potentially Dangerous

The Court will conduct a hearing.

9. 163514 Ginsburg, Marvin v. Maw, Victoria

EVENT: OSC re: Sale of Real Property

The OSC is continued to January 3, 2024 at 9:00am. Creditor is directed to comply with the notice requirements of CCP § 704.770.