

SUPREME COURT
FILED

FEB 20 2014

Frank A. McGuire Clerk
Deputy

Supreme Court No. S209836
2nd Civil No. B235409
Los Angeles County Superior Court No. VC058225

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CATHERINE FLORES,

Plaintiff/Appellant,

vs.

PRESBYTERIAN INTERCOMMUNITY
HOSPITAL,

Defendant/Respondent

After a Decision by the Court of Appeal, Second Appellate District
Case No. B235409

**REPLY OF PLAINTIFF/APPELLANT TO OPPOSITION TO
REQUEST FOR JUDICIAL NOTICE**

Edward W. Lloyd, Attorney
State Bar No. 92795
EDWARD W. LLOYD & ASSOCIATES
2900 Adams Street, #C130
Riverside, California 92504
951.656.1203

Attorney for Plaintiff/Appellant (Respondent to Petition),
CATHERINE FLORES

RECEIVED

FEB 13 2014

COMES NOW Plaintiff/Appellant and submits this Reply to
Opposition to Request for Taking of Judicial Notice:

**I. EXCEPTIONAL CIRCUMSTANCES WARRANT THE TAKING OF
JUDICIAL NOTICE EVEN THOUGH THE MATTERS SOUGHT TO
BE NOTICED WERE NOT BEFORE THE TRIAL COURT:**

Presbyterian Intercommunity Hospital opposes the Request for Judicial Notice on the basis that the matters sought to be noticed were not before the Trial Court. The law of California is clear, however, that a reviewing court may properly take judicial notice of matters that were not before the trial court when “exceptional circumstances” are present. (Haworth v. Superior Court (2010) 50 Cal. 4th 372, at 379) Such exceptional circumstances as warrant the taking of judicial notice are present in the case at bar.

PIH argues in its OPOM that every negligent act or omission that occurs within the confines of a hospital constitutes professional as opposed to ordinary negligence. This argument, however, appears highly disingenuous to Flores because neither PIH nor any other health care provider in the State of California nor their insurers operate in reality as if every negligent act or omission that occurs within the confines of a hospital constitutes professional as opposed to ordinary negligence. This is readily apparent from the documents Flores requests this Court to judicially notice.

These documents include the exemplar physician and hospital insurance policies provided by NorCal Mutual Insurance Company, the successor to SKIPIE. These policies clearly demonstrate that physicians, hospitals, and their insurers purchase and sell one coverage for negligent medical acts or omissions and a second class of coverage for general/premises liability. They also include the website and article presented by the American Academy of Orthopaedic Surgeons which directs its members to understand that medical malpractice coverage alone is not enough, but that they need to also purchase general/premises liability insurance.

PIH argues to this Court that every negligent act or omission that occurs within the confines of a hospital or a doctors office constitutes professional as opposed to ordinary negligence. Yet, the entire health care industry acts in reality as if not every negligent act or omission that occurs within the confines of a hospital constitutes professional as opposed to ordinary negligence.

Flores suggest that what is before this Court is an important issue of law, otherwise this Court would not have accepted review. Flores also suggests that this issue should be resolved in the full light and not in darkness. Justice should be formulated with full knowledge of the realities of the world within which it is to be applied. PIH would rather it be formulated with

blinders on.

Exceptional circumstances here exists because this matter was decided by the Trial Court on demurrer. Flores had no reasonable opportunity to conduct any discovery as to the insurance coverage purchased by PIH nor sold to PIH by its insurers. Had the action survived the pleading stage, Flores could and would have conducted discovery on the issue of insurance coverage. Form Interrogatory 4.1 would have been propounded seeking the identity of any and all insurance coverage providing or potentially providing coverage for her claim. A demand for production of documents would have been propounded demanding production of any and all such insurance policies. The case was decided on demurrer, however, and Flores has no such opportunity.

Flores' only opportunity to demonstrate the realities of the world, i.e. the fact that insurers sell and health care providers buy general/premises liability coverage comes by way of judicial notice before the reviewing courts. Flores's dilemma was not the result of lack of diligence. She did nothing wrong. The Trial Court sustained the demurrer to her complaint without leave to amend before she ever had a chance to conduct discovery. Here, she seeks merely to ask that this Court proceed without blinders to the realities in which the health care industry and its insurers act, contrary to how they argue to this Court.

II. PIH'S ARGUMENT THAT JUDICIAL NOTICE OF AB1 IS NOT PROPER IS TOTALLY UNFOUNDED:

Flores has asked this Court to take judicial notice of AB 1, the law enacted as MICRA. This is the law. In doing so, Flores asks this Court to take judicial notice of California statutory law. Pursuant to Code of Civil Procedure sec. 451, this Court must take judicial notice of California decisional, constitutional and statutory law. AB 1 is the statutory law of the state of California.

PIH argues that AB 1 constitutes the "Legislative History" of MICRA. To the contrary, AB 1 is the law enacted by the Legislature of the State of California. This Court must take judicial notice of this law.

Flores provided a copy of AB 1 to this Court for the convenience of the Court. PIH argues that Flores has not shown that "...the composite of the Medical Reform Legislation..." constitutes statutory law. Flores, however, is under no obligation to provide a court with a copy of the statutory law to mandate the taking of judicial notice. Flores only did so as a convenience to the Court. To this effect, her counsel went to the Orange County Law Library and copied AB 1 from the official records of the State of California. This was all done with the intent of saving the time and energy of this Court in doing so. If PIH would require the Court to do so on its own, then the time saving intent

of Flores is lost, but her request for judicial notice is not.

III. CONCLUSION:

Flores suggests that law, which operates in a real world, should be formulated with a view to the real world, not a view obscured from reality. PIH would appear willing to obscure the real world and to ask this Court to decide the important issues before it with blinders to how the health care industry actually operates. Law should not be formulated without a view to real life events and practices.

Dated: February 11, 2013

LAW OFFICES OF EDWARD W. LLOYD



Attorney for Plaintiff/Appellant, Catherine Flores

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing
and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner
a

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for
a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on , at , California.

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

TYPE OR PRINT NAME

SIGNATURE

PROOF OF SERVICE

1013a (3) CCP Revised 2004

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of ORANGE , State of California.

I am over the age of 18 and not a party to the within action; my business address is:
970 West 17th Street, Suite D, Santa Ana, Ca 92706

On February 11, 2014 , I served the foregoing document described as
REPLY OF PLAINTIFF/APPELLANT TO OPPOSITION TO REQUEST FOR JUDICIAL NOTICE

on All parties in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

Susan E. Shube, Esq. and Peter M. Fonda, Esq.
per the attached Service List.
Original and copies to the Supreme Court

BY MAIL

I deposited such envelope in the mail at Santa Ana , California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on February 11, 2014 , at Santa Ana , California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on , at , California.

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

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Edward W. Lloyd, Attorney

TYPE OR PRINT NAME

SIGNATURE

(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

SERVICE LIST
(Flores v. Presbyterian Intercommunity Hospital)
(Supreme Court Case No. S209836)
(Los Angeles Superior Court Case No. VC058225)

Peter M. Fonda, Esq.
Kristen J. Heim, Esq.
FONDA & FRASER
1925 Century Park East, Suite 1360
Los Angeles, CA 90067-2701
Attorneys for Defendant Presbyterian Intercommunity Hospital

Susan E. Shube, Esq.
FRASER, WATSON & CROUTCH, LLP
1100 West Town and Country Road, Suite 1030
Orange, CA 92868-4687
Attorneys for Defendant Presbyterian Intercommunity Hospital

Superior Court of California-County of Los Angeles
Southeast Judicial District
Attn: Honorable Yvonne Sanchez, Judge
Dept. C
12720 Norwalk Boulevard
Norwalk, CA 90650

California Court of Appeal
Second District, Division Two
300 S. Spring St.
Los Angeles, CA 90013

Supreme Court of California
Office of the Clerk – First Floor
350 McAllister Street
San Francisco, CA 94102

Catherine Flores
Plaintiff/Appellant
(Address Withheld)