

Appellate Reports and Cases in Brief

Uspenskaya v. Meline

The amount a factoring company pays to purchase a medical lien is not evidence of the reasonable value of the underlying medical services

By Jeffrey I. Ehrlich

Uspenskaya v. Meline

(2015) __ Cal.App.4th __ (3rd Dist.)

Who needs to know about this case? Lawyers handling cases where the plaintiff's medical care was provided on a lien basis.

Why it's important: The case holds that, because a factoring company's decision to buy a medical lien is based on the collectability of the debt, and not necessarily the reasonable value of the underlying medical services, evidence of the factor's purchase of the lien should be excluded from evidence under Evidence Code section 352.

Synopsis: Meline's vehicle collided with Uspenskaya's vehicle at a busy intersection. Uspenskaya sustained spinal injuries, and eventually had surgery to repair a herniated lumbar disc. She did not have health insurance, and obtained the surgery and other post-accident medical services on a lien basis. A medical factoring company, MedFinManager, LLC, purchased the lien from the treating medical providers. But the purchase did not affect Uspenskaya's obligation to pay the full amount of the lien. At trial, Meline sought to introduce evidence of the amount of the MedFin purchase as evidence of the reasonable value of the medical services (and hence of Uspenskaya's damages). The trial court excluded the evidence. The jury awarded Uspenskaya past medical damages of $261,713. Meline appealed, arguing that the trial judge erred in excluding evidence that the lien had been purchased by MedFin. She argued that the amount that MedFin purchased the lien for established the market value of the lien, and hence of the reasonable value of the medical services. Affirmed.

The Court of Appeal concluded that, because Meline proffered no evidence to show that the MedFin payments represented the reasonable value of plaintiff's treatment, the probative value of that evidence (the amount paid by Medfin for the lien) was substantially outweighed by the probability that it would create a substantial danger of undue prejudice as well as a danger of confusing and misleading the jury. Consequently, the trial court's Evidence Code section 352 ruling precluding evidence of the MedFin payments was not an abuse of discretion.

Specifically, the court held that the MedFin payments are relevant because they have a tendency in reason to prove reasonable value. But without evidence that those payments represented a reasonable value for the treatment, the probative value of that evidence as to reasonable value was minimal. On the other side of the section 352 balancing analysis, there was a substantial danger of undue prejudice and that the evidence of the MedFin payments would confuse or mislead the jury. These dangers substantially outweighed any probative value that evidence of the payments may have had.

In explaining its conclusion, the court noted that, "The problem in cases involving MedFin, or similar companies purchasing accounts receivable (sometimes referred to as factors), is that MedFin's purchase price represents a reasonable approximation of the *collectability of the debt* rather than a reasonable approximation of the *value of the plaintiff's medical services*." (Emphasis in original.)

The court further noted, "In deciding what price to offer medical providers for the right to recover full payment from an injured person, MedFin evaluates the risk of collectability and bets on whether and how much the person will receive in a pending lawsuit. Given these reasons for selling and purchasing the right to collect the debt, the probative value of the MedFin payments on the question of the reasonable value of the treatment provided to plaintiff is at best limited without some evidence tending to show a nexus between the purchase price for the right to collect the debt and the reasonable market value of the medical services. . . . Indeed, the danger of prejudice is even greater here, where the injured plaintiff remains liable for the entire amount billed for the medical services she received. There is a substantial danger of prejudice because a jury could rely solely on a third-party payment to fashion its award, which might not represent the reasonable value of a plaintiff's treatment

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and result in a situation where the plaintiff is not made whole, but rather remains liable to the third party for the entire debt, including the difference between the billed amounts and the amounts paid to the providers to purchase the debt."

Short(er) takes:

Class actions; pre-certification discovery; *CVS Pharmacy, Inc. v. Superior Court* (2015) __ Cal.App.4th __ (3d Dist.)

Charlene Deluca sued her employer, CVS, seeking injunctive relief to challenge its policy of terminating any employee who did not work any hours for 45 consecutive days. She claimed that the policy discriminated against people with disabilities, and violated the FEHA. But Deluca was not disabled, nor had she been terminated under the alleged 45-day policy. The trial sustained CVS's demurrer based on Deluca's lack of standing, and dismissed her individual claims without leave to amend, but gave her 90 days leave to amend to find a substitute plaintiff, and granted her motion to compel discovery of the names and contact information of current CVS employees. CVS took a writ, which was granted.

The named plaintiff in a class action must be a member of the class he or she seeks to represent. If a court finds that the plaintiff lacks standing, leave to amend to redefine the class, or amend the complaint, or both, is often granted. This rule typically applies where the plaintiff originally had standing, but lost it as a result of factual or legal developments. Here Deluca was never a member of the class she sought to represent. "The potential for abuse of the class-action procedure is self-evident where the only named plaintiff has never been a member of the class. Here we find this potential for abuse far outweighs any conceivable benefit to the class." Accordingly, the trial court abused its discretion in allowing Deluca to have precertification discovery.

PAGA claims; Appealability; Death-knell doctrine: *Miranda v. Anderson Enterprises, Inc.* (2015) _ Cal.App.4th __ (1st Dist., Div. 5.)

Miranda sued his employer alleging various wage-and-hour claims, including a claim under the Private Attorneys General Act (PAGA), Labor Code section 2698, et seq. The trial court granted the employer's motion to compel arbitration and dismissed Miranda's lawsuit. Miranda appealed the dismissal of the PAGA claim, arguing that the dismissal was contrary to the Supreme Court's decision in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348. The Court of Appeal agreed, and reversed.

The employer challenged the court's jurisdiction to hear the appeal, arguing that there could be no final judgment until the arbitration had proceeded and been confirmed. Miranda invoked the "death-knell doctrine," and exception to the one-final judgment rule. The employer argued that the death-knell doctrine applied only to class actions; not PAGA claims. The Court of Appeal disagreed. It compared the nature of class actions and PAGA claims, and concluded that the death-knell doctrine should apply to PAGA claims.

(***Editor's note***: Counsel should be aware that because the death-knell doctrine applies to PAGA claims, making their dismissal appealable even if the individual claim can proceed, counsel *must* appeal the dismissal of a PAGA claim immediately, and not wait to seek review after the final adjudication of the individual claim.)

Homeowners; premises liability; worker's compensation; respondeat superior: *Vebr v. Culp* (2015) __ Cal.App.4th __ (4th Dist., Div. 3)

Plaintiff Vebr was employed by a painting contractor who contracted with the Culps to paint the interior of their home. An hour into the job, Vebr fell 12 feet from an extension ladder provided by the contractor and was hurt. Vebr sued the Culps for negligence and premises liability, based on allegations that his fellow painters were negligent, and the Culps were vicariously liable for that negligence. The trial court granted summary judgment for the Culps. Affirmed.

Because the painting contractor failed to secure worker's compensation coverage after hiring Vebr, its contractor's license was suspended by operation of law. The appellate court noted that it would assume, without deciding, that the Culps were potentially liable in tort to Vebr for their own direct negligence and also as Vebr's employer, within the meaning of Labor Code section 2750.5, and through the doctrine of respondeat superior. Nevertheless, the court found that there were no triable issues of material fact. Vebr testified at his deposition that the ladder from which he fell did not appear to have anything wrong with it, and he did not know why he fell.

There is no evidence showing that anyone, whether the Culps or Vebr's fellow painters, did anything or failed to do anything that caused Vebr to fall off the ladder. No evidence suggests the existence of any hazardous condition at the Culps' residence, much less one that had any causal connection to the fall. In light of the absence of a triable issue of material fact as to either of Vebr's claims, the trial court did not err by granting the Culps' motion for summary judgment.

Default judgments; Statement of Damages; Void judgments: *Dhawan v. Biring* (2015) __ Cal.App.4th __ (2d Dist., Div. 5)

Dhawan sued Biring in 2004, alleging 13 contract and fraud-based claims.

The complaint sought general, special, and contract damages "according to proof." In August 2005, Dhawan served a statement of damages identifying $2,153,333 in general and special damages. On September 12, 2005, the trial court issued a default judgment against Biring for $1.92 million, which did not include any damages for emotional distress or punitive damages. In March 2013, Biring filed a motion to vacate and set aside the judgment, arguing that it

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was void. The court granted the motion. Affirmed.

Section 580, subdivision(a), limits a trial court's jurisdiction to grant relief on a default judgment to the amount stated in the complaint, or in a statement of damages required by section 425.11. The purpose of the statement of damages (under section 425.11 or section 425.115) is to notify a defendant of the amount of damages sought where the law prevents the plaintiff from including a specific amount in the complaint. "Under Code of Civil Procedure section 425.10, subdivision (b), a complaint in an action for personal injury or wrongful death may not state the amount of damages. Similarly, under Civil Code section 3295, subdivision (e), a complaint may not state the amount of punitive damages sought."

Section 580 is to be strictly construed. As a result, a statement of damages cannot fulfill the requirement of the section's notice requirements concerning the amounts stated in the complaint in cases that do not involve personal injury or wrongful death. Here, Dhawan's claims did not involve personal injury or wrongful death. He therefore could not rely on the statement of damages to satisfy section 580, subd.(a). Since the default judgment exceeded the amount stated in the complaint, the default judgment was void, and was properly set aside.


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