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Appellate Reports

Medical-expense damages and the collateral-source rule/ Medicare; also, handwritten vs. electronic signatures on arbitration agreements, and scam ads on Facebook, binding arbitration agreements and wrongful-death heirs

By Jeffrey I. Ehrlich

Medical-expense damages; collateral-source rule; Medicare; failure to award future none-economic damages

Audish v. Macias, et al. (2024) __ Cal.App.5th __ (Fourth Dist., Div. 1) (CAOC depublication request pending)

Audish sued Macias after being involved in an automobile accident. At trial, the jury ruled for Audish. The jury found that Audish suffered $65,699.50 in damages, including $29,288.94 for past medical expenses, $32,790.56 for future medical expenses, $3,620 for past non-economic losses, and zero for future non-economic losses. It assigned both parties 50 percent fault. Audish appealed, arguing (1) the trial court erred in allowing Macias's counsel to elicit testimony that Audish was eligible for Medicare; and (2) that the jury's award of zero future non-economic damages was inadequate as a matter of law. The Court of Appeal rejected both arguments.

Relying on a medical-malpractice case where the collateral-source was not applicable and an earlier decision that held that it likely did violate the collateral-source rule to elicit testimony about Medicare eligibility, but that the error was harmless in that case, the court held that it did not violate the collateral-source rule to elicit testimony that Audish was eligible for Medicare and that it might pay his future medical expenses.

The court also held that there was no fatal defect in the jury's failure to award him future non-economic damages. The record showed that two months before the collision, Audish passed out and struck his head on a piece of furniture, suffering a concussion. The jury rationally could find that Audish did not prove with reasonable certainty that any future pain and suffering he might experience would be the result of the automobile collision, rather than the previous concussion or his preexisting mental-health conditions.

Arbitration; effect of plaintiff's failure to dispute the authenticity of signature on arbitration agreement; difference between handwritten and electronic signatures

Ramirez v. Golden Queen Mining Company, LLC (2024) __ Cal.App.5th __ (Fifth Dist.)

Ramirez filed a class action lawsuit against his former employer, alleging various violations of the Labor Code and unfair competition. The employer moved to compel arbitration. The trial court denied the motion on the ground that the employer failed to demonstrate the existence of an executed arbitration agreement. Reversed. On appeal, the employer argued that it carried the initial burden of making a prima facie showing that a written arbitration agreement existed, and that Ramirez's statements that he did not recall being presented with or signing an arbitration agreement were insufficient to rebut its initial showing and create a factual dispute about the authenticity of a handwritten signature.

The party seeking arbitration has the burden of proving the existence of a valid arbitration agreement. Although the party seeking arbitration bears the ultimate burden of proof on that issue, the burden of producing evidence on the issue may shift pursuant to a three-step process recognized by California courts. The first step requires the party seeking arbitration to carry the initial burden of presenting prima facie evidence of a written agreement to arbitrate the controversy. If that initial burden is met, the second step requires the party opposing arbitration to carry the burden of producing evidence to challenge the authenticity of the agreement. If the opposing party meets the burden of producing sufficient evidence, the third step requires the party seeking arbitration to prove by a preponderance of the evidence that the parties formed a valid contract to arbitrate their dispute.

The court agreed with prior authority recognizing that, although both handwritten and electronic signatures are legally binding and have the same force and effect, there is a considerable difference between the evidence needed to authenticate the two types of signatures. A party should be able to recognize his or her own handwritten signature. Hence, if a plaintiff presented with a handwritten signature on the arbitration agreement is unable to allege that the signature is inauthentic or forged, the plaintiff's failure to recall signing the document neither creates a factual dispute as to the signature's authenticity nor affords an independent basis to find that a contract was not formed. Ramirez's statements that he had no memory of signing the arbitration agreement or having it explained to him was therefore insufficient to create a factual dispute about whether the parties formed a valid agreement to arbitrate.

Communications Decency Act, section 230; immunities and limitations to immunity; viability of breach-of-contract claim

Calise v. Meta Platforms, Inc. (9th Cir. 2024) __ F.4th __.

Meta Platforms, Inc., commonly know as Facebook, is the world's largest social-media company. Meta does not charge users for its services. Instead, it largely makes money through advertising. Meta collects data from its users, and then

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sells targeted ads to third parties. These third parties then post their ads on Meta's platform, promoting their products and services to Meta's users. Meta's data collection software allows it to "show ads to the right people."

But not all of Meta's advertisers use the platform in good faith. Scammers have realized that they can use Meta's user data to run more effective deceptive ad campaigns. Plaintiffs claim that these scammers deliberately target Meta's more vulnerable users, and they identify themselves as victims of this deception. The ability to exploit Meta users has, in the words of scammers themselves, "revolutionized scamming."

Meta purports to curtail false or deceptive advertising on its platform. Meta users agree to Meta's Terms of Service (TOS), in which Meta promises to "[c]ombat harmful conduct." This includes removing any "content that purposefully deceives, willfully misrepresents or otherwise defrauds or exploits others for money or property." Meta's Advertising Policies also prohibit ads that are deceptive or misleading.

But plaintiffs allege that, although Meta outwardly claims that it tries to combat scam ads, it instead affirmatively invites them by "actively soliciting, encouraging, and assisting scammers it knows, or should know, are using its platform to defraud Facebook users with deceptive ads." The motive is obvious: money. Plaintiffs claim that Meta "refuses to drive scammers off its platform because it generates billions of dollars per year in revenue from" scam ads.

Plaintiffs are Meta users who claimed to have been bilked by scam ads. They sued, seeking to represent a putative class of similarly situated Facebook users. They asserted five claims against Meta: (1) negligence, (2) breach of contract, (3) breach of the covenant of good faith and fair dealing, (4) violation of California's Unfair Competition Law (UCL), and (5) unjust enrichment. Plaintiffs sought damages and declaratory and injunctive relief. The district court dismissed the case based on section 230 of the Communications Decency Act (section 230). Reversed in part.

Section 230(c)(1) immunity applies to "(1) a provider or user of an interactive computer service, (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker, (3) of information provided by another information content provider." The second element requires courts to examine each claim to determine whether a plaintiff's "theory of liability" would treat the defendant as a publisher or speaker of third-party content. Put another way, the inquiry is whether the duty the plaintiff alleges was breached derives from the defendant's status as a publisher or speaker. If so, then section 230(c)(1) precludes liability. But where the duty stems from another source, section 230 does not apply.

Here, the plaintiffs assert two contract claims, for breach of contract and breach of the implied covenant of good faith and fair dealing. These claims are grounded on Meta's promises to users to combat scam ads. To the extent that Meta manifested its intent to be legally obligated to "take appropriate action" to combat scam advertisements, it became bound by a contractual duty separate from its status as a publisher. We thus hold that Meta's duty arising from its promise to moderate third-party advertisements is unrelated to Meta's publisher status, and § 230(c)(1) does not apply to Plaintiffs' contract claims.

But section 230 does apply to plaintiff's claims for unjust enrichment, negligence, and UCL violations. Each claim would require Meta to actively vet and evaluate third-party ads, and therefore grounds liability on its conduct as a publisher or speaker.

Medical negligence; arbitration; whether arbitration agreement binds wrongful-death heirs

Holland v. Silverscreen Healthcare, Inc. (2024) 101 Cal.App.5th 1125 (Second Dist., Div. 2.)

Decedent Skyler Womack was a resident of defendant's 24-hour skilled nursing facility. When he was admitted, he signed an arbitration agreement that provided that any dispute about malpractice and any dispute relating to the provision of care, treatment and services at the facility, including claims for negligence, wrongful death, and intentional torts, would be subject to binding arbitration. The agreement further provided that it is "is binding on all parties, including the Resident's representatives, executors, family members, and heirs."

When Skyler's wrongful-death heirs sued the facility for wrongful death, it moved for arbitration. The trial court denied the motion finding that the wrongful-death claim was based on "neglect" under the Elder Abuse Act, as opposed to medical malpractice. Reversed.

The arbitration agreement's plain language manifests an intent between the parties to bind Skyler's heirs, i.e., the wrongful death claimants, to any claims of professional negligence. And the parents' claims sound in professional negligence. The law does not allow Skyler's parents to pursue an Elder-Abuse claim as a basis for their own wrongful- death claim. Only the decedent or his or her estate can sue for Elder Abuse; the Act was intended to apply to the victims of Elder Abuse, not their heirs. Skyler's parents cannot circumvent this limitation by simply labeling their claim for wrongful death. If the parents cannot maintain a claim for abuse under the Elder Abuse Act in their own name, it makes no sense for them to be able to pursue a claim for wrongful death based upon that same alleged abuse.

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