

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2019-096071

04/19/2021

HONORABLE TRACEY WESTERHAUSEN

CLERK OF THE COURT

C. Avena

Deputy

JOHN SANDERS, et al.

CHRISTOPHER D HILL

v.

SPRINGFIELD COMMUNITY ASSOCIATION

DEAN R COX

JUDGE WESTERHAUSEN

MINUTE ENTRY

**Order granting Defendant Springfield Community Association’s Motion to Dismiss; denying Defendant Springfield’s request for attorneys’ fees and costs, without prejudice; granting Plaintiffs’ motion for entry of a final judgment.**

In the Court’ Minute Entry of May 11, 2020, it granted Defendants Springfield Community Association’s motion to dismiss, “with an expanded minute entry to follow.” This is that expanded Minute Entry.

**1. Background.**

On January 19, 2018, Coeta Sanders was walking on a sidewalk in the Springfield Adult Resort Community (“Springfield”), where she and her husband John, were residents. She tripped over a “raised lip” that rose at an expansion joint of the sidewalk. Her fall caused her physical injuries which required treatment, including hospitalization and rehabilitation. Complaint, Item 1 in iCIS, the in-house docketing system used by the Court and the Clerk.

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Attorney Christopher D. Hill was hired to make a claim regarding the trip-and-fall. In a December 28, 2018 letter to the insurance adjuster for Springfield's insurance company, Cincinnati Insurance Company ("CIC"). Hill wrote, "The Sanders family has authorized me to extend this counteroffer to the settlement offer you extended on behalf of CIC on December 11, 2018." Item 5 Filing ID 11229984, Exhibit 2. At the end of the letter, Hill wrote, "Based on the foregoing, the Sanders would agree to a lump-sum settlement amount of \$500,000.00, if paid within 30 days." Id.

On February 9, 2019, Hill wrote again to the adjuster. That letter begins "Thank you for your counteroffer of \$85,000 you extended on behalf of CIC in your January 28, 2019, letter to me. I have reviewed and discussed the counteroffer with the Sanders family." In the second paragraph, Hill wrote, "The counteroffer is substantially below the \$500,000 counteroffer the Sanders family authorized me to extend on December 28, 2018." The fourth paragraph read, in part, "Additionally as I explained in the counteroffer, Coeta and her family are unlikely to receive any benefit from a settlement amount that is less than \$200,000 since Ms. Sanders' medical expenses are being paid under a Medicare Advantage Plan." Included in the fifth paragraph was, "Based on the foregoing, the Sanders family has authorized me to extend this counteroffer. The Sanders would agree to a lump-sum settlement amount of \$400,000.00, if paid within 30 days and contemporaneous settlement with the Plan for receipt of \$100,000 of the lump-sum to extinguish its Medicare reimbursement rights." Item 5, Exhibit 3.

After that, on July 11, 2019, Ms. Sanders signed a Release of All Claims with CIC, for "the total sum of \$350,000 (paid as follows: \$200,000 paid to SANDERS through her attorney and \$15,000 paid directly to the Rawlings Company (Medicare lien) along with \$5,000 of available medical payment coverage to completely satisfy the existing Cigna HealthCare of Arizona, Inc's Medicare Advantage lien) . . . ." Item 5, Exhibit 1.

**2. Procedural history.**

John Sanders, Lori Venberg and Robert Sanders (Coeta's husband, daughter and son, respectively) then sued Springfield for their loss of consortium claims. Before the Court are:

- a. Springfield's Motion to Dismiss Plaintiffs' Complaint, Item 5 Filing ID 11229984;
- b. Plaintiffs' Response to Motion to Dismiss and Cross-Motion for Partial Summary Judgment re: Settlement of Claims, Item 7 Filing ID 11244283
  - a. (with a request also for leave to amend the Complaint);
  - b. Springfield's reply re: Plaintiffs' Response to Motion to Dismiss and Cross-Motion for Partial Summary Judgment re: Settlement of Claims, Item 8 Filing ID 11266458.

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- c. Springfield's Response to Plaintiffs' Separate Statement of Facts in Support of Cross-Motion for Partial Summary Judgment re: Settlement of Claims, Item 9;
- d. Plaintiffs' Motion to Dismiss, Item 10 Filing ID 11284665 ;
- e. Plaintiffs' Cross-Motion for Partial Summary Judgment re: Settlement of Claims, Item 11 Filing ID 11284707 (DENIED AS PREMATURE, ME 03-11-20, Item 19 );
- f. Springfield's Response to Plaintiffs' Cross-Motion for Partial Summary Judgment re: Settlement of Claims, Item 12 Filing ID 11289038;
- g. Springfield's Reply re Plaintiffs' Response to Motion to Dismiss, Item 13 Filing ID 11288995;
- h. Plaintiffs' Reply in Cross-Motion for Partial Summary Judgment re: Settlement of Claims, Item 14 Filing ID 11292408;
- i. Springfield's Response to Plaintiffs' Request for Leave to Amend (Their) Complaint, Item 15 Filing ID 11314864;
- j. Plaintiffs' Reply to Defendant's Response to Plaintiffs' Request for Leave to Amend Complaint, Item 16 Filing ID 11335174;

**3. Ruling granting Springfield's motion to dismiss.**

Springfield moved to dismiss the Complaint under Rule 12.b.6, failure to state a claim upon which relief can be granted. It argued that the loss-of-consortium claims of Coeta's family are derivative, so that when Coeta signed the release of all claims, those loss-of-consortium claims were extinguished.<sup>1</sup> This is accurate. "Loss of consortium is a derivative claim, which means that the success of a loss-of-consortium claim is dependent on the success of another claim." *Martin v. Staheli*, 248 Ariz. 87, 92, ¶ 17 (App. 2019). Coeta no longer has a claim, which means that her family members now have no claim.

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<sup>1</sup> Springfield relied on the release and correspondence regarding the claim in its motion to dismiss. These were matters outside the four-corners of the complaint. When that happens, the Court must review the motion as one for summary judgment, not to dismiss. Rule 12.d, "Result of Presenting Matters outside the Pleadings. If, on a motion under Rule 12(b)(6) or (c), matters outside the pleadings are presented to, and not excluded by, the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Plaintiffs cross-moved for summary judgment on almost all of the same facts. Plaintiffs did not file a Rule 56.d request to propose a plan to respond to the motion to dismiss as one for summary judgment. The Court applied the principles of *Orme Sch. v. Reeves*, 166 Ariz. 301 (1990) in reviewing the motion. An *Orme School* prism causes the same result.

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Further, Plaintiffs' attorney represented the Sanders family not Coeta and Coeta only. His correspondence with the adjuster created a written, binding contract under Rule 80.a, "Agreement or Consent of Counsel or Parties. If disputed, no agreement or consent between parties or attorneys in any matter is binding, unless: (1) it is in writing; or (2) it is made orally in open court and entered in the minutes." That contract – the release – bound Coeta and her family.

The Court **grants** Springfield's motion to dismiss.

**4. Ruling denying Springfield's request for attorneys' fees and costs, without prejudice.**

At the end of Springfield's Motion to Dismiss, in the conclusion, the defense wrote, "This Court should also order that Plaintiffs pay the association's attorneys' fees incurred in filing this Motion to Dismiss as the Complaint that was filed was without substantial justification under A.R.S. § 12-349, along with other appropriate sanctions pursuant to Rule 11, Ariz. R. Civ. P., as the Court deems just and proper." This is not a motion under Rule 7.1.a.1 as it lacks any particularity. Nor does the final sentence of the Motion to Dismiss comply with Rule 11.c. The Court **denies**, without prejudice, the concluding sentence, because it is not a proper motion.

**5. Ruling granting Plaintiffs' request for a final judgment.**

Plaintiffs requested that the Court provide a signed order with Rule 54.c certification of finality. They did not submit their own proposed form of judgment.

The Court **grants** Plaintiffs' request for a final judgment. The Court finds that no further matters remain pending and that the judgment is entered under Rule 54.c.

Dated this 19<sup>th</sup> day of April, 2021.

\s\ TRACEY WESTERHAUSEN

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Honorable Tracey Westerhausen  
Judicial Officer of the Superior Court