

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THE HON. GEORGE H. WU, JUDGE PRESIDING

Jehan Zeb Mir,)
)
 Plaintiff,)
)
 vs.) No. EDCV 12-1791-GW(SPx)
)
 San Antonio Community Hospital,)
 et al.,)
)
 Defendants.)
)
 _____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, May 6, 2013; 9:09 A.M.

Motion Hearing

Wil S. Wilcox, CSR 9178
Official U.S. District Court Reporter
312 North Spring Street, # 432-A
Los Angeles, California 90012
Phone: (213) 290-2849

1 **APPEARANCES OF COUNSEL:**

2
3 **FOR THE PLAINTIFFS: JEHAN ZEB MIR, MD**
4 **417 Via Anita**
 Redondo Beach, CA 90277
 PRO SE

5
6 **FOR THE DEFENDANTS: JESSICA THOMAS, ATTORNEY AT LAW**
 McDermott Will and Emery
7 **2049 Century Park East, 34th Floor**
 Los Angeles, CA 90067
8 **310-277-4110**
 Email: jjthomas@mwe.com

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1 LOS ANGELES, CA.; MONDAY, MAY 6, 2013; 9:09 A.M.

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3 THE COURT: Let me call the matter of Mir versus
4 San Antonio Community Hospital.

5 MR. MIR: Good morning, Your Honor. Dr. Mir.

6 THE COURT: All right.

7 MS. THOMAS: Good morning, Your Honor.

8 Jessica Thomas of McDermott Will & Emery on behalf of
9 defendant San Antonio Community Hospital and 16 of the
10 individual moving physicians.

11 THE COURT: All right. We are here on a second
12 motion to dismiss. These are by, I guess, two separate
13 groups of individuals -- well, actually no. This is only as
14 to, I guess, Sani.

15 Is that the only defendant that is moving at this
16 point?

17 MS. THOMAS: The previous motions were never
18 heard. You continued the hearing until today.

19 THE COURT: Oh, okay. I issued a tentative,
20 though, I thought, on the other one.

21 MS. THOMAS: You did, yes.

22 THE COURT: Okay. I issued another tentative on
23 this one as well. I presume both sides have seen it?

24 MR. MIR: Yes, Your Honor.

25 THE COURT: Does somebody want to argue something?

1 MR. MIR: I want to argue, Your Honor.

2 THE COURT: Okay.

3 MR. MIR: First of all, I apologize, Your Honor,
4 in respect to this opposition to Dr. Sani's motion. I
5 didn't have enough time because I had a ruling on the same
6 day and then I had to put together everything and I couldn't
7 make all the arguments and provide all the facts to the
8 court. But, nonetheless, it will be covered with the rest
9 of the 15 physicians.

10 THE COURT: All right.

11 MR. MIR: Your Honor, the central question here is
12 whether on August 3rd, 2005, I could go to the state court
13 and file action in all of these causes of action against all
14 these defendants and the hospital. The answer is clearly
15 no. If I had filed an action in the state court, they would
16 have kicked it right out because *Westlake* is a good law
17 still as of today because I had not gone through the
18 judicial remedies.

19 In the *Interior Design* case, Your Honor, 121
20 Cal.3d 312, the court stated that the judicial remedies are
21 administrative remedies, and they cite *Westlake* why it
22 should not be, because the writ petition is the appellate
23 hearing on the administrative decision which is one-sided.

24 They have their own doctors. They investigated
25 the complaint. They charge. They prosecute. Their buddies

1 are sitting across the table ruling on the motions and the
2 hospital with whom they have kick-back relationship. They
3 affirm the decision. And, finally, it's one-sided. It's a
4 win-win situation.

5 The only prayer a doctor has is to go to the court
6 and have this thing reversed in a de novo review. So, I
7 have tons of cases, Your Honor, in all variety of situations
8 where they did not -- plaintiff did not exhaust judicial
9 remedies and they dismissed the case. If you have no case,
10 don't come to us.

11 Now, the tentative, Your Honor, that's as far as
12 the state law case is concerned. And also, I have a case,
13 Your Honor, a California Supreme court case. It's *Lerner v.*
14 *Board of Education LA*, 59 Cal.2d 382, which provides that if
15 a plaintiff is prevented from taking an action for any
16 reason, there is a tolling, automatic tolling. And the
17 accrual -- and the action does not accrue until that tolling
18 period ends.

19 In other words, the action -- all of these causes
20 of action could not have accrued -- state causes of action
21 I'm speaking right now, Your Honor -- could not have accrued
22 until January 25th, 2012, when the writ petition was denied
23 at that time.

24 All right. So, I had no cause of action. They
25 would have kicked it out. Now, coming back to federal

1 causes of action, Your Honor, you are absolutely correct
2 that the federal law determines when the claim accrues,
3 whether it's a 983 claim, RICO, or whatnot.

4 And the law also provides, as the tentative
5 states, that the plaintiff should have a clear and present
6 case -- complete and present cause of action so he can file
7 a suit to obtain relief with the court.

8 So the question here is could I have gone on
9 August the 3rd, 2005, to any federal court and filed this
10 action which I'm filing right now?

11 THE COURT: Let me stop you. The problem was not
12 that you didn't go to court on August 3rd, 2005. It's that
13 you didn't go to court for many years after that point in
14 time. That's the problem. It's not the August 3rd, 2005,
15 date.

16 MR. MIR: I just picked a date, Your Honor. This
17 applies from August 3rd, 2005, to 2009, for four years
18 period. I'm addressing for the entire period. If at any
19 time during that four-year period, could I have gone to
20 federal court and filed an action? No. They would have
21 kicked it out.

22 We have case law, Your Honor, and the tentative
23 cites it. The case law, Your Honor, is from the
24 Ninth Circuit court *Miller v. County of Santa Cruz*, 39 F.3d
25 1030. So they dismissed a 1983 case because the person had

1 not exhausted judicial remedies.

2 Now, the collateral estoppel. You know, one may
3 call it collateral estoppel or issue preclusion. The bottom
4 line is the same, Your Honor, that you cannot proceed in a
5 federal court. And this opinion that the court cited, also
6 cited *Westlake*. They relied on *Westlake*.

7 So I could not have brought an action in federal
8 court because I did not have a clear present cause of action
9 to file a claim. And the tentative recognizes --
10 acknowledges that unreviewed administrative findings have
11 preclusive effects, both in the state and the federal court.

12 So I had no ground to go back. I had no cause of
13 action. The cause of action accrues after the writ petition
14 defines the causes, the actions, the issues.

15 And in this case, they disrupted the due process
16 equal protection under the law. The review by the court
17 under 1094.5 was a remedy, was appellate remedy. They
18 disrupted that. So they cut off the hearing in the middle.
19 It's just like the hospital starts the administrative
20 hearing and after two days, terminated and said you are off
21 the staff. That's the reason why there is a due process
22 violation here. So if that cannot be applied here because
23 that is some procedure, it's because of them.

24 Now, Your Honor, the other reason is that the
25 court mentioned about -- excuse me. Can I --

1 THE COURT: Sure.

2 MR. MIR: The court mentions about this test, the
3 first case and the second case. That doesn't apply here,
4 Your Honor. That applies in situations where a person has
5 two appellate remedies available, like workman's
6 compensation claim and personal injury claim or retirement
7 situation. There is no alternative remedy available. I
8 had, as I've discussed, Your Honor, within 2005 and 2009, I
9 had no parallel remedy available either in state court or in
10 federal court. So that analysis does not apply.

11 THE COURT: Let me say this: The thing that you
12 are complaining about occurred on or before August 2nd or
13 3rd of 2005, and you didn't file anything until July 31st of
14 2009. And the causes of action, some of them are less than
15 a year. And so the problem is, is that by the time you did
16 file something, that certain of them, the causes of action,
17 the statute of limitation had already lapsed because you did
18 not do anything within the timeframe that's allowed for by
19 law. That's the problem.

20 MR. MIR: Your Honor, I understand perfectly. The
21 premise is -- what the court is saying is that the statute
22 of limitation on federal and state causes of action accrued
23 on August 3rd, 2005. That's what the court is saying, that
24 they -- they were parallel remedies. They were not parallel
25 remedies, Your Honor. I have discussed in detail. Unless I

1 had the administrative proceedings overturned. Their
2 decision had a preclusive effect in the state and the
3 federal court.

4 THE COURT: Why did you wait four years?

5 MR. MIR: Well, I waited four years, Your Honor,
6 because first of all --

7 THE COURT: You don't have a good explanation.
8 That's one of the reasons why there is a problem here.

9 MR. MIR: No, no, no. I'm coming to that. Your
10 Honor, I mentioned that I've been calling the hospital to
11 resolve this matter in good faith. And I see your tentative
12 here, Your Honor, which states that they have the right not
13 to respond. That's fine. But that's not the reason I made
14 that statement, Your Honor. That satisfies the three-prong
15 test for tolling.

16 THE COURT: It doesn't. And there is no case that
17 holds it. There is no obligation on the part -- when you
18 called up the defendant and asked to settle the case, the
19 defendant doesn't have to respond.

20 MR. MIR: No. I understand that part, Your Honor,
21 but there are three tests. First of all, notice to the
22 other side. That's serving notice on the other side. There
23 is case law that states any time you request an
24 administrative hearing, that satisfies the notice
25 requirement.

1 THE COURT: You had not asked for an
2 administrative hearing for four years, almost four years,
3 slightly less than four years.

4 MS. THOMAS: If I could, I believe he had the --
5 he had a 15-session administrative hearing. He hadn't
6 requested judicial review yet.

7 THE COURT: Okay. All right.

8 MR. MIR: Your Honor, it was filed within the
9 statute of limitations. Now, what the court is saying is
10 that I should have followed a different statute of
11 limitations in filing the petition, that the statute of
12 limitations for a state cause of action like one year
13 applied to my writ petition. There is no authority for
14 that, Your Honor, because they were not federal actions,
15 Your Honor. They were not federal actions. I could not
16 have gone to the court.

17 THE COURT: Let me hear a response from the
18 defense.

19 MR. MIR: I have still more stuff, Your Honor.

20 THE COURT: Let me address that issue in turn.

21 MR. MIR: Okay. Thank you, Your Honor.

22 MS. THOMAS: I believe that Dr. Mir has both
23 administrative hearings mixed up with a judicial review of
24 the administrative hearing. There was, as the court pointed
25 out in its tentative and here today, there was nothing that

1 precluded him from bringing his causes of action any time
2 between 2005 and 2009. There was nothing pending and there
3 was no reason for the delay. And his claim should be time
4 barred for that reason alone.

5 THE COURT: What else do you want to argue?

6 MR. MIR: Your Honor, that's a precondition. It's
7 going to --

8 THE COURT: Let me ask you: Are you arguing
9 something that you have not stated in your papers? Because
10 everything you've argued so far is in your papers.

11 MR. MIR: Yeah, I have additional arguments here,
12 Your Honor.

13 THE COURT: Yeah, but are they in your papers? In
14 other words, I've looked at your papers. Don't make an
15 argument to me that you've raised before because I've
16 addressed it in these tentatives. I spend time on these
17 tentatives to present the arguments that are presented to
18 me. So the fact that you now want to orally argue something
19 is not going to change if you've already presented the
20 materials to me in written form.

21 MR. MIR: Okay.

22 MS. THOMAS: Are you arguing something that you
23 have not presented to me?

24 MR. MIR: Yes, Your Honor.

25 THE COURT: What is it?

1 MR. MIR: Well, you have asked a question
2 regarding 1983 claim and state claim or was it a state
3 action or not, and you had asked me about the board member,
4 if they were public officials, and I do have the evidence
5 now, Your Honor.

6 There are four members who heard my appellate
7 review, and all of them are from outside the hospital.
8 Three of them were public officials on the outside. One was
9 a police commissioner and two of the city council who
10 heard -- this is three out of four. The fourth one was also
11 a private person and he was also a member of the Los Angeles
12 County Historical Society. He works with the -- with the
13 City.

14 The second point, Your Honor, is that the hospital
15 is the only hospital working in -- only operating in the
16 city of Upland. They have a monopoly and this monopoly is
17 set up by the state. The state gives the license to the
18 hospital to operate and they determine how many beds the
19 hospital can have. The wisdom behind that is if there are
20 too many empty beds in the hospital, then the hospital will
21 shift costs to the other patients raising the costs of
22 medical care. So it's a state-mandated monopoly here.

23 THE COURT: What's your argument? I don't
24 understand what your argument is.

25 MR. MIR: Your Honor, there was -- it was whether

1 the hospital Upland was the only hospital which had the
2 monopoly, which is one of the factors for the state
3 determining if there is a state action under 1983.

4 THE COURT: Let me hear from the defense on that.

5 MR. MIR: Your Honor, I have not completed. Can I
6 complete my argument here and then she can come back?

7 THE COURT: Okay. What is the completion of your
8 argument?

9 MR. MIR: The other part is, Your Honor, that when
10 my \$600,000 contract was terminated, I could not go to
11 another hospital in Upland where I could take my contract
12 to. So when it was terminated, it was a state action
13 because state controlled the monopoly and it was terminated
14 and it was a state action.

15 And the other argument I have, Your Honor, is
16 there is an element of coercion and compulsion because the
17 medical board requires that a hospital is required to file a
18 report within 15 days. If they don't, they fine them a
19 thousand dollars. There is a compulsion and coercion in
20 that aspect.

21 Finally, Your Honor, there is a joint action here.
22 The medical board, after they took action against me, they
23 served me notice of charges. They immediately filed a
24 report sending them a notice of charges. I sent them all of
25 the three charts. The medical board investigated for two

1 years. The hospital did the same thing.

2 And then what happens is the medical board calls
3 me for interview on August 28th, 2002. On December 4th they
4 dismiss all charges against me, which they have brought up
5 notice of charges, and they closed their file. They wrote
6 me a letter.

7 So there was a favorable determination right
8 there, Your Honor, while this thing was going on. It had an
9 issue preclusion effect under the case law I cited there.
10 So there was a joint action, Your Honor.

11 THE COURT: All right. Let me hear from defense.

12 MS. THOMAS: Yes, Your Honor. I believe he's made
13 several different arguments regarding the 1983 public actor.

14 And the first one was that three of the four board
15 members were public officials, citing that they held other
16 positions within the community. I don't believe there is
17 any case law for saying that that meets the standard for
18 pervasive entwinement of public officials within the
19 hospital. This is a private hospital. It's indisputably a
20 private hospital. They are not publicly-appointed
21 officials.

22 The second argument he made was that it has a
23 monopoly, but as he knows because he had privileges at
24 Pomona Valley Hospital, it's only six miles away. There are
25 also several other hospitals that are within a five-mile

1 radius where he could have practiced if he was able to
2 obtain privileges there.

3 And as for his argument that there was entwinement
4 based on the Medical Board of California actions, as this
5 court has noted several times in its tentative decision,
6 that has never been held sufficient to be state action as
7 well as the fact that the MBC action was an entirely
8 separate investigation.

9 THE COURT: All right.

10 MR. MIR: Can I respond, Your Honor?

11 THE COURT: Pardon? No.

12 All right. I'm making my tentative my final on
13 this. I will give plaintiff leave to amend as to the second
14 count which is RICO, the fourth which is 1985, and the
15 seventh which is intentional infliction of emotional
16 distress, which are based on supposedly the hospital's
17 actions during the post-administrative writ proceedings.
18 However, I am granting the motion to dismiss without leave
19 to amend as to the individual defendants.

20 Anything else I need to do today?

21 MS. THOMAS: There is one other individual
22 defendant who I believe Dr. Mir may have served last week
23 outside of the time granted by this court, Dr. Lee. Would
24 you like a separate -- if he responds, would you like a
25 separate motion from him, or is he also dismissed with the

1 other ones as well?

2 THE COURT: I'm dismissing him.

3 MS. THOMAS: Thank you, Your Honor.

4 THE COURT: You are welcome.

5 And I will give the plaintiff two weeks to file an
6 amended pleading as to those causes of action, and that is
7 only as to the hospital. Okay. Thank you.

8 MR. MIR: Thank you, Your Honor.

9 MS. THOMAS: Thank you, Your Honor.

10 (At 9:30 a.m. proceedings were adjourned.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
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proceedings held in the above-entitled matter and that the
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regulations of the Judicial Conference of the United States.

Date: February 6, 2014

/s/ WIL S. WILCOX
U.S. COURT REPORTER
CSR NO. 9178

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