

Licudine v. Cedars-Sinai Medical Center (2019) 30 Cal.App.5th 918

Plaintiff's offer for compromise pursuant to Code of Civil Procedure section 998 (§ 998 offer) was not in good faith when made just 19 days after complaint and five days after the defendant's answer was filed.

FACTS: 22-year-old Dionne Licudine (P) underwent surgery to remove her gallbladder; surgeons at Cedars-Sinai Medical Center (D) performed the operation. While operating, D's resident surgeon "nicked a vein" inside P's torso. The accidental incision caused substantial internal bleeding, which "necessitated a more invasive surgery that left [P] with a large scar, a month-long hospitalization and a chronic abdominal condition." As a result of injuries sustained during the February 2012 procedure, P could not compete for a spot on the US women's rowing team slated to compete in the Olympic Games later that summer.

On January 15, 2013, P filed a three-page medical malpractice lawsuit against D, seeking damages related to the surgery. D was served with P's complaint on May 23. On June 11, P mailed D an "Offer to Compromise" pursuant to Code of Civil Procedure § 998 (the "Offer") for \$249,999.99, plus legal costs. On June 27, in response to P's Offer, D mailed a written "Objection." Noting that P's Offer was made just five days after D's answer had been filed, D objected to the Offer because it did not afford enough time to investigate P's claims to an extent that D argued was necessary to ultimately determine whether the Offer was reasonable. P did not respond to D's Objection and on July 16, P's Offer expired.

PROCEDURAL POSTURE: The case proceeded to trial, where D was found liable for malpractice. At the request of both parties, a damages-only retrial was held, at which P's collage coach testified that P was on the verge of becoming an Olympic athlete before the botched surgery. The jury awarded total damages of \$5,594,557 in P's favor. P subsequently requested, pursuant to § 998, \$2,335,929.20 in prejudgment interest dating from entry of the August 2017 judgment back to P's June 2013 Offer to Compromise. D moved to strike the request, arguing that the Offer was "invalid" because it was "made so early in the proceedings that [D] did not have a fair opportunity to intelligently evaluate it." After a full hearing on the matter, the trial court granted D's motion to strike P's request for pretrial interest.

HOLDING: The Second District Court of Appeals affirmed the trial court's denial of P's request for pretrial interest.

DISCUSSION: On appeal, the case came down to whether P's § 998 was made in good faith. While the party making a § 998 offer generally must show that his offer was valid, the court observed that it is the § 998 offeree who bears the burden of showing that an otherwise valid § 998 offer was made in good faith. In its opinion, the *Licudine* court focused on "three factors that are especially pertinent in determining whether the offeree had enough facts to evaluate the offer, and thus whether it was made in good faith: (i) How far into the litigation the § 998 offer was made; (ii) The information available to the offeree prior to the § 998 offer's expiration; and (iii) Whether the offeree let the offeror know that it lacked sufficient information to evaluate the offer and, how the offeror responded." The *Licudine* court noted, however, that any analysis under these factors must occur "in light of the circumstances known to the offeror at the time of the offer and not by virtue of hindsight."

Here, the *Licudine* court concurred with the lower court's finding that P's "premature" Offer did not allow an "adequate opportunity" for D to evaluate damages because it was made just 19 days after D had been served with the case. Under the second factor, the Second District Court of Appeals pointed to P's "bare-bones" three-page complaint as the primary – albeit scant – source of information available on the specific nature of P's alleged injuries for D to assess damages and evaluate P's Offer. Finally, the court cited D's prompt written objection, as well as P's failure to respond in kind, as "potent evidence that the offer was neither reasonable nor made in good faith." Based on this analysis, the *Licudine* court concluded that there was sufficient evidence to affirm the trial court's finding that P's Offer for Compromise was not a valid basis upon which to award prejudgment interest under § 998.