

Circuit Court
OF THE
City of Richmond

March 23, 2020

JOHN MARSHALL COURTS BUILDING
400 NORTH 9TH STREET
RICHMOND, VIRGINIA 23219

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RE: Sloan v. Encompass Home Health of Mid Atlantic, LLC, et al., CL 19-2153

Counsel,

On March 5, 2020, the parties came before the Court on the Encompass Defendants' Demurrer to the Second Amended Complaint and Plea in Bar and Defendant One Heart One Hand, LLC's Motion Craving Oyer, Demurrer, and Motion for Bill of Particulars as to the Plaintiff's Second Amended Complaint. In an Order dated March 5, 2020, the Court granted the Motion Craving Oyer and Motion for Bill of Particulars and took the Defendants' Demurrers under advisement pending the filing of the Bill of Particulars. Upon receiving the Plaintiff's Bill of Particulars on March 17, 2020, the Court can now resolve the Defendants' Demurrers. There were three unique Demurrers filed in this case: one filed by the Encompass Defendants regarding the claim for punitive damages, one filed by One Heart One Hand, LLC regarding the claim for

punitive damages, and one filed by One Heart One Hand, LLC regarding contractual and statutory duties.

Because the Court has previously sustained a Demurrer as to gross negligence, the Plaintiff's punitive damages claim relies on allegations of willful and wanton conduct. Willful and wanton negligence "is acting consciously in disregard of another person's rights or acting with reckless indifference to the consequences, with the Defendant aware, from his knowledge of existing circumstances that his conduct probably would cause injury to another." *Wilby v. Gostel*, 365 Va. 437, 445-46 (2003). Accordingly, willful and wanton negligence "requires an act or constructive consciousness that injury will result from the act done or omitted." *Alfonso v. Robinson*, 257 Va. 540, 545 (1999).

Upon review of the allegations in Plaintiff's Second Amended Complaint and Bill of Particulars, the Court **FINDS** that the documents state a cause of action for willful and wanton conduct. The Bill of Particulars states, in sufficient detail, facts that if proven would state a cause of action for willful and wanton negligence as the Plaintiff identifies specific instances involving both sets of Defendants acting in conscious disregard or reckless indifference to Ms. Sloan's needs while knowing that such action would cause her injury. Therefore, the Court hereby **OVERRULES** the Encompass Defendants' and One Heart One Hand's Demurrers as to punitive damages.

Turning to One Heart One Hand LLC's Demurrer regarding contractual and statutory duties, One Heart One Hand only seeks to strike paragraphs 11, 29, 30, 31: subsection a, b, d, e, f, g, h, i, j, and l, and paragraph 55 from the Second Amended Complaint. The Court must begin by noting that according to the contract between One Heart One Hand and the Plaintiff, the One Heart One Hand nurse aids were responsible for providing services which included "personal

care bathing, grooming, dental care, monitoring clients and vital signs every two hours management, medication distribution, meal assistance, light housekeeping, laundry, and bathroom assistance.” This contract has been made a part of the Second Amended Complaint by way of One Heart One Hand’s Motion Craving Oyer that was previously granted. Further, the Bill of Particulars submitted by the Plaintiff also clarifies that where duties pertaining to high acuity clients, like Ms. Sloan, were not included within the Contract, One Heart One Hand separately assumed those duties.

Considering both the contract between the parties and the additional duties assumed and undertaken by the nurse aids, the Court finds that the allegations contained in paragraphs 11, 29, 30, 31: subsection l, and 55 fall within the scope of the contract and the additional duties assumed by the nurse aids. Thus, the Demurrer as to those paragraphs is **OVERRULED**. As to paragraph 31: subsections a, b, d, e, f, and j, the Bill of Particulars clarifies that those allegations pertain to the Encompass Defendants, not One Heart One Hand, so the Demurrer as to those paragraphs is also **OVERRULED**. The allegations included in paragraph 31: subsections g, h, i, and j were either rephrased or omitted in the Bill of Particulars to bring the allegations within the scope of the contract and the additional duties assumed and undertaken by the nurse aids. Therefore, the Court **OVERRULES** the Demurrer as to those allegations and notes that the language as included within the Bill of Particulars is proper to “amplify” the pleading. *See* Rule 3:7.

The Plaintiff is directed to draft an order consistent with this opinion, obtain Plaintiff’s Counsel’s endorsement, and return it to the Court within 10 days from the date of this letter.


W. Reilly Marchant, Judge

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