

COPY

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE
SEP - 3 2004
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

CAROL BLISSITT, Temporary
Administratrix of the Estate of
SARAH EVELYN BLISSITT,

Plaintiff,

CIVIL ACTION No.: 2004CV90693

vs.

DOCTORS FOR MEDICAL LIABILITY
REFORM, ACKERMAN MCQUEEN, INC.,
MERCURY GROUP, INC. and SAINT
JOSEPH'S HOSPITAL OF ATLANTA,
INC.,

Defendants.

SECOND ORIGINAL
COUNTY

VERIFIED PETITION FOR INJUNCTIVE RELIEF AND
COMPLAINT FOR DAMAGES

COMES NOW CAROL BLISSITT, the Temporary Administratrix
of the Estate of SARAH EVELYN BLISSITT (hereinafter
"Plaintiff"), deceased, and files this Petition and
Complaint against Defendants DOCTORS FOR MEDICAL LIABILITY
REFORM, ACKERMAN MCQUEEN, INC., MERCURY GROUP, INC. and
SAINT JOSEPH'S HOSPITAL OF ATLANTA, INC. (hereinafter
collectively "Defendants") and shows this Court as follows:

NATURE OF THE ACTION

1.

This Petition and Complaint involves the unlawful
filming, commercial exploitation and willful invasion of the
privacy rights of SARAH EVELYN BLISSITT and other medical

patients in Georgia by DOCTORS FOR MEDICAL LIABILITY REFORM, a national coalition of physicians.

2.

This Petition and Complaint alleges invasion of privacy, commercial misappropriation and breach of fiduciary duty and seeks injunctive relief, general and punitive damages, as well as attorney's fees and costs of litigation.

PARTIES AND JURISDICTIONAL STATEMENT

PLAINTIFF

(Carol Blissitt)

3.

Plaintiff is the duly appointed Temporary Administratrix of the Estate of SARAH EVELYN BLISSITT.

4.

Plaintiff brings this action against Defendants on behalf of the Estate of SARAH EVELYN BLISSITT.

5.

Plaintiff is a resident and citizen of the State of Georgia.

6.

Plaintiff submits to the jurisdiction and venue of this Court.

DEFENDANTS

(Doctors for Medical Liability Reform)

7.

Defendant DOCTORS FOR MEDICAL LIABILITY REFORM ("DMLR") is a foreign corporation organized and existing under the laws of the State of Illinois with its principal place of business being located at 2121 K Street NW, Suite 325, Washington, DC 20037.

8.

At all relevant times, Defendant DMLR transacted business in Fulton County, Georgia.

9.

Defendant DMLR is a non-resident foreign corporation that has no registered agent in this State. Service on Defendant DMLR is authorized in this case by Georgia's Foreign Corporations Act, O.C.G.A. § 14-2-1510, and service may be made upon Defendant DMLR by serving Chairman Stewart Dunsker, MD, c/o Jenner & Block, LLP, 601 13th Street, N.W., Washington, D.C. 20005. Alternatively, service may be made upon Defendant DMLR by serving its registered agent JB Corporate Services, Inc., One IBM Plaza, Chicago, Cook County, Illinois 60611.

10.

Service on Defendant DMLR is also authorized in this case by Georgia's Long Arm Statute, O.C.G.A. § 9-10-90, et seq., by virtue of the fact that Defendant DMLR is a non-resident of this State who committed a tortious act within the State of Georgia.

11.

Defendant DMLR is subject to the jurisdiction and venue of this Court.

(Ackerman McQueen, Inc.)

12.

Defendant ACKERMAN MCQUEEN, INC. ("ACKERMAN MCQUEEN") is a foreign corporation organized and existing under the laws of the State of Oklahoma with its principal place of business being located at 1100 The Tower, 1601 N.W. Expressway, Oklahoma City, OK 73118.

13.

At all relevant times, Defendant ACKERMAN MCQUEEN transacted business in Fulton County, Georgia.

14.

Defendant ACKERMAN MCQUEEN is a non-resident foreign corporation that has no registered agent in this State. Service on Defendant ACKERMAN MCQUEEN is authorized in this case by Georgia's Foreign Corporations Act, O.C.G.A. § 14-

2-1510, and service may be made upon Defendant ACKERMAN MCQUEEN by serving CEO Angus McQueen, 1100 The Tower, 1601 N.W. Expressway, Oklahoma City, OK 73118. Alternatively, service may be made upon Defendant ACKERMAN MCQUEEN by serving its registered agent T. Scott Spradling, 101 Park Avenue, Suite 700, Oklahoma City, Oklahoma 73102.

15.

Service on Defendant ACKERMAN MCQUEEN is also authorized in this case by Georgia's Long Arm Statute, O.C.G.A. § 9-10-90, et seq., by virtue of the fact that Defendant ACKERMAN MCQUEEN is a non-resident of this State who committed a tortious act within the State of Georgia.

16.

Defendant ACKERMAN MCQUEEN is subject to the jurisdiction and venue of this Court.

(Mercury Group, Inc.)

17.

Defendant MERCURY GROUP, INC. ("MERCURY GROUP") is a foreign corporation organized and existing under the laws of the State of Oklahoma with its principal place of business being located at 201 N. Union Street, Suite 510, Alexandria, VA 22314.

18.

Defendant MERCURY GROUP is a non-resident foreign corporation that has no registered agent in this State. Service on Defendant MERCURY GROUP is authorized in this case by Georgia's Foreign Corporations Act, O.C.G.A. § 14-2-1510, and service may be made upon Defendant MERCURY GROUP by serving President Tony Makris, 201 N. Union Street, Suite 510, Alexandria, VA 22314. Alternatively, service may be made upon Defendant MERCURY GROUP by serving its registered agent T. Scott Spradling, 101 Park Avenue, Suite 700, Oklahoma City, Oklahoma 73102.

19.

Service on Defendant MERCURY GROUP is also authorized in this case by Georgia's Long Arm Statute, O.C.G.A. § 9-10-90, et seq., by virtue of the fact that Defendant MERCURY GROUP is a non-resident of this State who committed a tortious act within the State of Georgia.

20.

Defendant MERCURY GROUP is subject to the jurisdiction and venue of this Court.

(Saint Joseph's Hospital of Atlanta, Inc.)

21.

Defendant SAINT JOSEPH'S HOSPITAL OF ATLANTA, INC. ("ST. JOSEPH'S") is a domestic corporation organized and

existing under the laws of the State of Georgia with its principal place of business being located at 5665 Peachtree Dunwoody Road, Atlanta, Fulton County, Georgia 30342.

22.

Service may be made upon Defendant ST. JOSEPH'S by serving ST. JOSEPH'S registered agent Laurie English, 5673 Peachtree Dunwoody Road, Room 618, Atlanta, Fulton County, Georgia 30342.

23.

Defendant ST. JOSEPH'S is subject to the jurisdiction and venue of this Court.

24.

Subject matter jurisdiction is proper in this Court as to all Defendants.

FACTS

DMLR'S WEBSITE

25.

Defendant DMLR owns, operates and maintains an Internet worldwide website located at www.protectpatientsnow.org (the "Website").

26.

The Website is an interactive website that actively solicits business in Georgia, including monetary donations from Georgia residents.

27.

The Website solicits Georgia residents to contact DMLR through the Website and the use of a Post Office Box located at P.O. Box 56731, Atlanta, Fulton County, GA 30343.

28.

The Website actively receives internet traffic from Georgia residents.

29.

Defendant DMLR holds itself out to the public as a leading political coalition of over 230,000 of America's most prominent and skilled medical specialists dedicated to protecting the rights of medical patients.

30.

Defendant DMLR has raised over 7 million dollars to support the advancement of its political objectives.

DMLR'S REFORM INITIATIVE

31.

In or about 2003, Defendant DMLR began a political initiative designed to limit the recovery rights of medical patients harmed by medical malpractice and the victims of serious personal injuries.

32.

Between 2003 and 2004, Defendant DMLR hired Defendants ACKERMAN MCQUEEN and MERCURY GROUP to create, design and market its initiative.

33.

Defendant ACKERMAN MCQUEEN is one of the most prominent advertising agencies in America.

34.

ACKERMAN MCQUEEN clients include Pizza Hut, Hitachi computer products, Southwestern Bell and the National Rifle Association.

35.

Defendant MURCURY GROUP is a wholly owned subsidiary of Defendant ACKERMAN MCQUEEN.

36.

Defendant MURCURY GROUP specializes in political fundraising, litigation communications and crisis management.

THE PROTECT PATIENTS NOW CAMPAIGN

37.

On July 7, 2004, DMLR announced that it was launching a "multi-million dollar advocacy campaign in Georgia" designed to implement DMLR'S initiative.

38.

DMLR'S campaign is called the *Protect Patients Now in Georgia* (the "Campaign") campaign.

39.

A true and correct copy of DMLR'S July 7, 2004 press release announcing its Campaign in Georgia is attached and incorporated hereto as Exhibit "A".

THE DMLR INFOMERCIALS

40.

As part of DMLR'S multi-million dollar Campaign, Defendants ACKERMAN MCQUEEN and MERCURY GROUP created, designed and produced a 30-minute television infomercial that contains footage of Georgia emergency room patients, including SARAH EVELYN BLISSITT, a patient in the emergency room at ST. JOSEPH'S HOSPITAL on February 27, 2004.

41.

Although the DMLR infomercials are paid advertisements, they are produced in the format of an investigative news report to confer upon the infomercials the credibility of an objective, mainstream news story.

42.

As part of the creation of the DMLR infomercials, Defendants filmed numerous emergency room patients in other Georgia hospitals.

43.

On information and belief, Defendants obtained these films without obtaining prior consent or authorization of the patients

44.

Defendants' unauthorized filming of emergency room patients in Georgia includes footage of children and patients who were suffering from critical injuries, including gunshot wounds and motorcycle accident injuries.

45.

Since July 2004 DMLR has aired, and continues to air, 30-minute infomercials that include unauthorized footage of emergency room patients from Georgia.

SARAH EVELYN BLISSITT

46.

One of the Georgia emergency patients filmed by Defendants without consent and authorization was SARAH EVELYN BLISSITT, now deceased.

47.

On February 27, 2004, 76-year-old SARAH EVELYN BLISSITT was transported by ambulance to Defendant ST. JOSEPH'S hospital (the "Hospital") in Atlanta, Fulton County, Georgia.

48.

Prior to SARAH EVELYN BLISSITT'S arrival at the Hospital, Defendant ST. JOSEPH'S had invited Defendants DMLR, ACKERMAN MCQUEEN and MERCURY GROUP to film the treatment of its emergency room patients and allow the creation of footage for the DMLR Campaign infomercial.

49.

At the time of her arrival at the Hospital, SARAH EVELYN BLISSITT was suffering from a spiral fracture of her tibia and fibula.

50.

SARAH EVELYN BLISSITT was met at the Hospital by two of her children and her husband, who was suffering from a malignant brain tumor at the time.

THE ST. JOSEPH'S EMERGENCY ROOM FOOTAGE

51.

Upon entering the Hospital's emergency room, SARAH EVELYN BLISSITT'S family noticed Defendants' film crew who were being escorted by two individuals wearing ST. JOSEPH'S identification badges.

52.

The identity of the members of Defendants' film crew is presently unknown.

53.

The family specifically inquired with Defendants' film crew about their presence. Defendants' film crew falsely represented that it was filming an in-house video, to show how the emergency room team related with the emergency room technician teams that were bringing patients to the Hospital's emergency room.

54.

The family specifically asked Defendants' film crew if it was filming patients and Defendants' film crew falsely responded that patients were not being filmed.

55.

Defendants filmed SARAH EVELYN BLISSITT'S treatment and care at the Hospital.

56.

Defendants' film crew never disclosed to the family or SARAH EVELYN BLISSITT the true purpose of the filming or the fact that SARAH EVELYN BLISSITT had been filmed.

THE UNLAWFUL PUBLICATION AND INVASION OF PRIVACY

57.

SARAH EVELYN BLISSITT passed away on April 10, 2004.

58.

On July 24, 2004, SARAH EVELYN BLISSITT'S son was watching television when he observed footage of his mother displayed on Defendants' infomercial.

59.

Specifically, the Defendants' infomercial displays images of SARAH EVELYN BLISSITT'S care and treatment at the Hospital.

60.

These images show SARAH EVELYN BLISSITT strapped on a stretcher and being assisted with breathing through the use of oxygen tubes.

61.

The images further show a full frontal shot of SARAH EVELYN BLISSITT being moved from her stretcher by five medical professionals onto a hospital bed.

62.

In the footage, SARAH EVELYN BLISSITT appears frightened, confused and is seen with her mouth drooping, the effect of an earlier TIA mini-stroke.

63.

Upon learning that SARAH EVELYN BLISSITT'S image was being unlawfully used by Defendants, SARAH EVELYN BLISSITT'S daughter contacted ST. JOSEPH'S.

64.

A ST. JOSEPH'S representative advised SARAH EVELYN BLISSITT'S daughter that there was no record of a written consent for the filming of SARAH EVELYN BLISSITT.

65.

A ST. JOSEPH'S representative also acknowledged to SARAH EVELYN BLISSITT'S daughter that the filming of SARAH EVELYN BLISSITT was a violation of her medical privacy rights.

66.

SARAH EVELYN BLISSITT'S daughter explained to ST. JOSEPH'S that her mother was a very private person, had been suffering from rheumatoid arthritis for 47 years and since being diagnosed with rheumatoid arthritis had never allowed anyone to photograph her without her consent.

67.

SARAH EVELYN BLISSITT'S daughter also explained to ST. JOSEPH'S that her family was stunned by the photographic display of their mother and asked that the use of her images be stopped immediately.

68.

DMLR'S Campaign infomercial has been broadcast to millions of Georgians; is available for download to viewers worldwide through DMLR'S website and is scheduled to be

broadcast repeatedly on television stations and displayed in hospital waiting rooms throughout Georgia during the remainder of 2004.

69.

ST. JOSEPH'S has advised DMLR, ACKERMAN MCQUEEN and MERCURY GROUP about the BLISSITT family's objections.

70.

Defendants DMLR, ACKERMAN MCQUEEN and MERCURY GROUP nevertheless continue to unlawfully use the likeness of SARAH EVELYN BLISSITT, and other medical patients in Georgia who were filmed without their consent, in the DMLR infomercial.

CIVIL CONSPIRACY

71.

At all times relevant to the factual allegations in this Petition and Complaint, Defendants conspired and knowingly acted in concert with the intent and understanding that (a) they were invading SARAH EVELYN BLISSITT'S right to privacy as recognized under the law of Georgia and (b) they were invading and compromising the confidentiality rights of SARAH EVELYN BLISSITT as a patient of Defendant ST. JOSEPH'S HOSPITAL. As such, the unlawful, tortious acts of all Defendants undertaken in the course of and in furtherance of this civil conspiracy are imputed to each other and each

Defendant herein is civilly liable for all unlawful, tortious as if they actually, physically committed or ordered the commission of such unlawful, tortious acts themselves.

AGENCY

72.

At all times relevant to the factual allegations in this Petition and Complaint, Defendants ACKERMAN MCQUEEN, MERCURY GROUP and ST. JOSEPH'S were acting as agents or employees of Defendant DMLR and were acting within the scope of such agency or employment relationship with Defendant DMLR, the principal. The acts and omissions of Defendants ACKERMAN MCQUEEN, MERCURY GROUP and ST. JOSEPH'S as the agents or employees of DMLR are imputed to DMLR as a matter of law.

JOINT AND SEVERAL LIABILITY

73.

Defendants are jointly and severally liable for the acts and omissions alleged in this Petition and Complaint.

COUNT ONE - EQUITABLE INJUNCTION

74.

Plaintiff hereby incorporates, adopts and re-alleges the above paragraphs as if fully set forth herein.

75.

Pursuant to O.C.G.A. § 9-5-10 and O.C.G.A. § 9-11-65, Plaintiff requests an interlocutory and permanent injunction in this case.

76.

Plaintiff seeks an equitable injunction against the Defendants:

- (a) Requiring Defendants to account for each and every infomercial, videotape, recording, picture, photograph, or other likeness or depiction that has been created, disseminated, broadcast or otherwise used by Defendants that contain any images of SARAH EVELYN BLISSITT;
- (b) Enjoining Defendants from distributing, publishing, broadcasting, placing on its Website or otherwise using any and all images in the form of videotapes, recordings, pictures, photographs or other likenesses or depictions of SARAH EVELYN BLISSITT; and,
- (c) Enjoining Defendants from distributing, publishing, broadcasting, placing on its Website or otherwise using any other image, picture, photograph, likeness, or depiction of SARAH EVELYN BLISSITT in any manner.

77.

Unless an equitable injunction is granted, Plaintiff will suffer immediate and irreparable injury, loss and damage if Defendants are permitted to publish, broadcast or make any use of the image of SARAH EVELYN BLISSITT until a hearing can be had on Plaintiff's Petition.

78.

Plaintiff does not have an adequate remedy at law.

**COUNT TWO - INVASION OF PRIVACY
INTRUSION UPON SECLUSION**

79.

The allegations contained in all paragraphs above are incorporated herein by reference as if set forth verbatim.

80.

A Georgia citizen's common law and statutory right to privacy is sacrosanct and its invasion unconscionable.

81.

At all times pertinent and relevant to the incidents described in this Petition and Complaint, SARAH EVELYN BLISSITT had a right of privacy guaranteed to her by the Constitution of the State of Georgia as well as its statutory and common law.

82.

During SARAH EVELYN BLISSITT'S life, Defendants' surreptitiously filmed and photographed SARAH EVELYN BLISSITT'S medical care and treatment thereby intruding upon her right to seclusion, solitude and privacy.

83.

Defendants' filming and photographing of SARAH EVELYN BLISSITT'S medical care and treatment is offensive and objectionable to a reasonable person of ordinary sensibilities under the circumstances.

84.

As a result of the foregoing, Defendants have unlawfully invaded SARAH EVELYN BLISSITT'S privacy and caused her injury.

**COUNT THREE - INVASION OF PRIVACY
COMMERCIAL APPROPRIATION**

85.

The allegations contained in all paragraphs above are incorporated herein by reference as if set forth verbatim.

86.

During her life and after her death, Defendants' have broadcasted, published and used the likeness and images of SARAH EVELYN BLISSITT as part of DMLR'S *Protect Patients Now in Georgia* campaign.

87.

Defendants' broadcast, publication and use of images of SARAH EVELYN BLISSITT was done for Defendants' financial benefit, including the solicitation of funds from the general public, and for Defendants' commercial and legal advantage. These actions were undertaken without her knowledge or approval.

88.

As a result of the foregoing, Defendants have unlawfully invaded SARAH EVELYN BLISSITT'S privacy.

COUNT FOUR - BREACH OF FIDUCIARY DUTY

89.

The allegations contained in all paragraphs above are incorporated herein by reference as if set forth verbatim.

90.

Defendant ST. JOSEPH'S owed SARAH EVELYN BLISSITT a fiduciary duty of trust and confidence to protect SARAH EVELYN BLISSITT'S interest and right to confidentiality and privacy as a medical patient.

91.

Defendant ST. JOSEPH'S breached its fiduciary duty to SARAH EVELYN BLISSITT.

92.

As a direct and proximate result of ST. JOSEPH'S breach of its fiduciary duty, SARAH EVELYN BLISSITT has been proximately and directly damaged.

**COUNT FIVE - BAD FAITH LITIGATION EXPENSES
(O.C.G.A. § 13-6-11)**

93.

The allegations contained in all paragraphs above are incorporated herein by reference as if set forth verbatim.

94.

Defendants have acted in bad faith and have caused Plaintiff unnecessary hardship and expense in this matter.

95.

Plaintiff is entitled to an award of costs, attorney's fees and litigation expenses pursuant O.C.G.A. § 13-6-11.

COUNT SIX - PUNITIVE DAMAGES

96.

The allegations contained in all paragraphs above are incorporated herein by reference as if set forth verbatim.

97.

DMLR has created at least seven separate Campaign infomercials that are being broadcast in Georgia, Washington, North Carolina, Florida, Pennsylvania and Illinois.

98.

Upon information and belief, DMLR'S actions in Georgia are part of a pattern of conduct reflecting an intentional and willful disregard of the privacy rights of medical patients.

99.

Upon information and belief, DMLR created many of its infomercials, at least in part, by filming medical patients without authorization and consent.

100.

Upon information and belief, many of the DMLR infomercials that are being broadcast across the United States include footage of medical patients who were filmed without authorization and consent.

101.

The acts and omissions, as described above, were committed by Defendants:

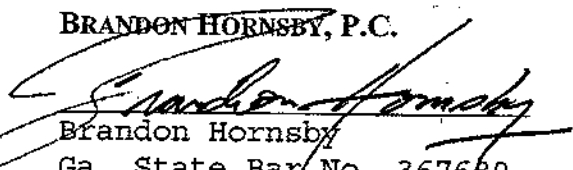
- (a) In a willful, wanton, reckless, and malicious manner evidencing that entire want of care which raises the presumption of conscious indifference to the consequences; and,
- (b) With the specific intent to cause legal harm to SARAH EVELYN BLISSITT.

The recovery of punitive damages is necessary to punish the Defendants and to deter them from ever engaging in such conduct again.

WHEREFORE, Plaintiff demands:

- (a) That summons issue and service be perfected upon Defendants requiring Defendants to be and appear in this Court within the time required by law and to answer this Petition and Complaint;
- (b) That the Clerk of this Court issue a second original or originals of summons and this Petition and Complaint as required for service to be perfected upon Defendants;
- (c) That Plaintiff recovers all costs, attorneys' fees, litigation expenses, general damages and punitive damages against Defendants;
- (d) That Plaintiff has a trial by jury; and,
- (e) That Plaintiff has such other and further relief as this Court deems just and proper.

BRANDON HORNSBY, P.C.


Brandon Hornsby
Ga. State Bar No. 367680

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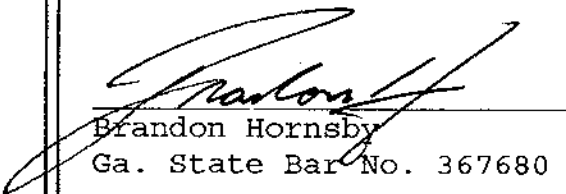
applicable; names, addresses, and capacities of the persons not so consulted; and as to each, state the reason why that person was not consulted.

16.

Identify each person or persons who assisted in any way in responding to any interrogatory propounded by Plaintiffs in this litigation, by stating the person(s) full name, address and telephone number and specify the particular response or responses to which each person responded.


This 3rd day of September 2004.

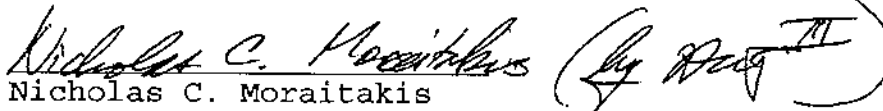
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