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Mar 29 2023

STATE OF SOUTH CAROLINA )  
COUNTY OF PICKENS ) IN THE COURT OF COMMON PLEAS

SC Court of Appeals

Deonda Weldon, Individually and as )  
Personal Representative of the Estate )  
of Earline Cooley, )

Plaintiff, )

v. )

Dominion Clemson, LLC d/b/a Dominion )  
Senior Living at Patrick Square, Dominion )  
Senior Living, LLC, Dominion Management )  
Group, LLC, Dominion Group, LLC, and )  
Dominion Clemson, II, LLC )

Defendant. )

ANSWER

2021-CP-39-01127



Defendants Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC (collectively, “Defendants”), answering Plaintiff’s Complaint, state as follows:

1. All allegations contained in the Complaint which are not admitted, qualified, or otherwise explained are denied.

**FOR A FIRST DEFENSE**

2. In response to the allegations contained in Paragraph 1 of the Complaint, Defendants admit that the Affidavit of Audrey Holmes is attached to Plaintiff’s Complaint. Defendants specifically deny that the Affidavit sets forth any valid criticisms or allegations against Defendants. All remaining allegations contained in Paragraph 1 are denied.

3. Defendants are without sufficient information upon which to form a belief as to the Paragraph 2 of the Complaint and therefore the same are denied and strict proof demanded.

4. In response to the allegations contained in Paragraph 3 of the Complaint, Defendants admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square is organized and exists under the laws of a state other than South Carolina. Defendants further admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square does business in Pickens County, South Carolina. Defendants further admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square is an assisted living facility licensed by the State of South Carolina that employs staff to provide assisted living services to residents such as Earline Cooley. Defendants further admit that Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square holds itself out to be competent and qualified to perform the services that it is licensed to perform. All remaining allegations contained in Paragraph 3 are denied.

5. In response to the allegations contained in Paragraph 4 of the Complaint, Defendants admit that Dominion Senior Living, LLC is organized and exists under the laws of a state other than South Carolina. Defendants further admit that Dominion Senior Living, LLC provides limited management services to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square. All remaining allegations contained in Paragraph 4 are denied.

6. In response to the allegations contained in Paragraph 5 of the Complaint, Defendants admit that Dominion Management Group, LLC is organized and exists under the laws of a state other than South Carolina. All remaining allegations contained in Paragraph 5 are denied.

7. In response to the allegations contained in Paragraph 6 of the Complaint, Defendants admit that Dominion Group, LLC is organized and exists under the laws of a state other than South Carolina. All remaining allegations contained in Paragraph 6 are denied.

8. In response to the allegations contained in Paragraph 7 of the Complaint, Defendants admit that Dominion Clemson II, LLC is organized and exists under the laws of a state other than South Carolina. All remaining allegations contained in Paragraph 7 are denied.

9. In response to the allegations contained in Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 of the Complaint, Defendants crave reference to the records in this matter and deny all allegations set forth in Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 which are inconsistent with the information set forth in said records. Defendants expressly denies any wrongful conduct on the part of their employees in this matter.

10. Defendants deny Paragraphs 36 and 37 of the Complaint.

11. The first two sentences of Paragraph 38 of the Complaint are statements of law to which no response is required. To the extent a response is required, Defendants deny the same. Defendants are without sufficient information upon which to form a belief as to the remaining allegations contained in Paragraph 38 and therefore the same are denied and strict proof demanded.

12. In response to Paragraph 39 of the Complaint, Defendants reiterate the above paragraphs.

13. Defendants deny Paragraphs 40 and 41 of the Complaint.

14. In response to Paragraph 42 of the Complaint, Defendants reiterate the above paragraphs.

15. Defendants deny Paragraphs 43 and 44 of the Complaint.

16. In response to Paragraph 45 of the Complaint, Defendants reiterate the above paragraphs.

17. Defendants deny Paragraphs 46, 47, 48, and 49 of the Complaint.

18. In response to Paragraph 50 of the Complaint, Defendants reiterate the above paragraphs.

19. Paragraph 51 of the Complaint is a statement of law and sets forth legal conclusions, which require no response. To the extent a response is required, Defendants admit that Dominion

Clemson, LLC d/b/a Dominion Senior Living at Patrick Square operates in compliance with all applicable state and federal regulations. Defendants deny all remaining allegations contained in Paragraph 51.

20. Defendants deny Paragraphs 52, 53, 54 and 55 of the Complaint.

**FOR A SECOND DEFENSE**

21. Defendants reiterate the above paragraphs.

22. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Defendants.

**FOR A THIRD DEFENSE**

23. Defendants reiterate the above paragraphs.

24. Plaintiff's Complaint against Dominion Senior Living, LLC, Dominion Management Group, LLC, and Dominion Group, LLC must be dismissed pursuant to Rule 12(b)(2), SCRCF based on lack of personal jurisdiction.

**FOR A FOURTH DEFENSE**

25. Defendants reiterate the above paragraphs.

26. To the extent that Plaintiff is alleging medical malpractice, Plaintiff's recovery against Defendants, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damage Award Act of 2005, S. C. Code Ann. § 15-32-200, et seq.

**FOR A FIFTH DEFENSE**

27. Defendants reiterate the above paragraphs.

28. Plaintiff's claim for punitive damages against Defendants and any award of punitive damages against Defendants would violate those clauses of the United States Constitution and the South Carolina Constitution relating to privileges and immunities, due process, and equal protection.

**FOR A SIXTH DEFENSE**

29. Defendants reiterate the above paragraphs.

30. Defendants reserve their rights arising under S. C. Code Ann. § 15-32-520 as to all issues described therein.

**FOR A SEVENTH DEFENSE**

31. Defendants reiterate the above paragraphs.

32. Defendants plead the limitations on punitive damages as set forth in S. C. Code Ann. § 15-32-530 as a defense.

**FOR AN EIGHTH DEFENSE**

33. Defendants reiterate the above paragraphs.

34. To the extent that Plaintiff is alleging medical malpractice, Plaintiff has commenced an action alleging medical negligence without first complying with the applicable provisions of S.C. Code Ann. § 15-79-125 and S.C. Code Ann. § 15-36-100. Plaintiff's Complaint, therefore, should be dismissed.

**FOR A NINTH DEFENSE**

35. Defendants reiterate the above paragraphs.

36. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed, expressly indicating agreement to submit any claims or disputes with alleged damages in excess of \$15,000.00 to binding arbitration. Therefore, this case should be dismissed or stayed and submitted to binding arbitration pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3), 12(b)(6), SCRCR and all other relevant State and Federal law.

**FOR A TENTH DEFENSE**

37. Defendants reiterate the above paragraphs.

38. At the time of Earline Cooley’s admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly waived the right to a jury trial. Therefore, Plaintiff’s request for a jury trial is barred by the doctrines of waiver, estoppel, and release.

**FOR AN ELEVENTH DEFENSE**

39. Defendants reiterate the above paragraphs.

40. At the time of Earline Cooley’s admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated: “Net economic damages shall be awardable, including, but not limited to, past and future medical expenses, offset by any collateral source payments.”

41. Therefore, Plaintiff’s claims, or certain portions of them, are barred by the doctrines of waiver, estoppel, and release.

42. Likewise, any economic damages awarded to Plaintiff must be offset by any collateral source payments.

**FOR A TWELFTH DEFENSE**

43. Defendants reiterate the above paragraphs.

44. At the time of Earline Cooley’s admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated: “Non-economic damages shall be limited to a maximum of \$250,000.”

45. Therefore, Plaintiff’s claims, or certain portions of them, are barred and/or limited by the doctrines of waiver, estoppel, and release.

46. Likewise, any non-economic damages award is capped and must be limited to no more than \$250,000.

**FOR A THIRTEENTH DEFENSE**

47. Defendants reiterate the above paragraphs.

48. At the time of Earline Cooley’s admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated: “Interest on unpaid fees shall not be awarded.”

49. Therefore, Plaintiff’s claims, or certain portions of them, are barred and/or limited by the doctrines of waiver, estoppel, and release.

**FOR A FOURTEENTH DEFENSE**

50. Defendants reiterate the above paragraphs.

51. At the time of Earline Cooley’s admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated: “Punitive damages shall not be awarded.”

52. Therefore, Plaintiff’s claims for punitive damages are barred and/or limited by the doctrines of waiver, estoppel, and release.

**FOR A FIFTEENTH DEFENSE**

53. Defendants reiterate the above paragraphs.

54. At the time of Earline Cooley’s admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated agreements concerning the care provided to Earline Cooley, including the lack of one-on-one care, staff response time, independence, activities done without supervision/assistance, falls, and the role of the resident’s physician.

55. Therefore, Plaintiff’s claims, or certain portions of them, are barred and/or limited by the doctrines of waiver, estoppel, and release.

**FOR A SIXTEENTH DEFENSE**

56. Defendants reiterate the above paragraphs.

57. At the time of Earline Cooley's admission to Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, a Resident Admission Agreement was signed which expressly stated:

**Release and Assumption of Risk.** With the freedom and independence of Assisted Living come certain risks of personal injury, such as falls or broken bones. The Resident knowingly and voluntarily agrees to assume all risks related to or arising from living in the ESTATEMENT, and not a facility that offers a higher level of care. The Resident agrees to waive, release, indemnify, defend and hold harmless the Community, its Manager, and their employees and affiliates from and against all liability, loss, costs (including attorneys' fees) or claims pertaining to or arising from their failure to obtain or furnish services beyond the Contractual Services."

58. Therefore, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrines of waiver, estoppel, and release.

59. Likewise, or in the alternative, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrine of assumption of the risk.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the same be dismissed, that it be granted its costs and disbursements in this action, and for such other and further relief as this Court deems just and proper.

**BOULIER THOMPSON & BARNES, LLC**

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Attorneys for Defendants

December 21, 2021  
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

IN THE COURT OF COMMON PLEAS

Deonda Weldon, Individually and as )  
Personal Representative of the Estate )  
of Earline Cooley, )  
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Plaintiff, )

**ANSWER**

v. )

2021-CP-39-01128

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Senior Living at Patrick Square, Dominion )  
Senior Living, LLC, Dominion Management )  
Group, LLC, Dominion Group, LLC, and )  
Dominion Clemson, II, LLC )  
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Defendant. )

Defendants Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, Dominion Senior Living, LLC, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC (collectively, “Defendants”), answering Plaintiff’s Complaint, state as follows:

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58. Therefore, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrines of waiver, estoppel, and release.

59. Likewise, or in the alternative, Plaintiff's claims, or certain portions of them, are barred and/or limited by the doctrine of assumption of the risk.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the same be dismissed, that it be granted its costs and disbursements in this action, and for such other and further relief as this Court deems just and proper.

**BOULIER THOMPSON & BARNES, LLC**

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Attorneys for Defendants

December 21, 2021

Spartanburg, South Carolina