

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
FILED SUPERIOR COURT DIVISION
17-CvS-3061

ANNAH AWARTANI, individually and for
others similarly situated,

Plaintiff,

v.

THE MOSES H. CONE MEMORIAL
HOSPITAL OPERATING CORPORATION,

Defendant.

2017 JAN 26 P 3:44

GUILFORD CO., C.S.C.

BY _____

CLASS ACTION COMPLAINT
REGARDING THE
CONSTITUTIONALITY OF THE
DOCTRINE OF NECESSARIES

COMES NOW Plaintiff Annah Awartani (“Plaintiff”), individually and on behalf of those similarly situated, complaining of Defendant Moses H. Cone Memorial Hospital Operating Corporation (“Defendant”), and alleges as follows:

OVERVIEW

1. Upon information and belief, it has been the practice of Defendant and other health care providers, for many decades, to file collections actions against the wives of patients, despite the fact that such wives did not guaranty or otherwise agree to be responsible for the debts of their spouses. Upon information and belief, Defendants and other health care providers have justified such practice by relying on the common law Doctrine of Necessaries.

2. The effect of Defendant’s and other health care providers’ collections actions has been to burden Plaintiff and other wives of patients with enormous debts, despite the fact that such individuals did not consent to or directly benefit from the underlying services. Plaintiff and others similarly situated are referred to hereinafter as “the Class Members”.

3. Upon information and belief, many of the Class Members were burdened with large debts after the deaths of their spouses, and in many cases the Class Members did not know that

they were purportedly indebted to Defendant or other health care providers until well after the purported debts were incurred. The effect of such debts has been financial strain, encumbrance of properties, and damage to credit.

4. Defendant's conduct (in suing wives for their spouses' medical expenses under the Doctrine of Necessaries) violates Article X, Section 4, of the North Carolina Constitution, which provides in relevant part:

The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate of such female, and shall not be liable for any debts, obligation, or engagements of her husband, and may be devised, bequeathed, and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe.

N.C. CONST. art. X, § 4 (emphases added).

5. Defendant's conduct also violates Article I, Section 19, of the North Carolina Constitution by depriving Plaintiff and the other Class Members of property by conduct that conflicts with the law of the land. N.C. CONST. art. I § 19.

6. Upon information and belief, many Class Members have made payments to Defendant on the mistaken belief that Defendant's claims were valid. Such conduct is illegal as it is based upon legal theories that are unconstitutional.

PARTIES AND JURISDICTION

7. Plaintiff is a citizen of North Carolina and a resident of Guilford County.

8. Upon information and belief, Defendant is a corporation duly organized and existing under the laws of the State of North Carolina, with its registered office and principal place of business in Guilford County, North Carolina.

9. Pursuant to N.C. Gen. Stat. §§ 1-253 to 1-267 and North Carolina Rule of Civil Procedure 57, Plaintiff, on behalf of herself and the proposed class, seeks a declaratory judgment that the Doctrine of Necessaries has been repealed by Article X, Section 4 of the North Carolina Constitution and thus the judgments that Defendant obtained against Plaintiff and similarly situated individuals are void as a matter of law. *See* N.C. CONST. art. X, § 4; *id.* art. I, § 19.

10. A present and-real controversy exists between the parties as to the constitutionality of the Doctrine of Necessaries as applied by Defendant.

11. This Court has jurisdiction over the parties and subject matter of this lawsuit, and venue is proper.

PLAINTIFF'S FACTS

12. Plaintiff was the wife of Masoud Awartani ("Masoud") from their marriage in 1989 until Masoud's death in 2010.

13. Prior to his death, Masoud suffered from medical conditions for which he sought diagnosis and treatment with Defendant and other healthcare providers.

14. Upon information and belief, Plaintiff never guaranteed or otherwise committed to be responsible for the medical expenses or debts of Masoud.

15. After Masoud's death in 2010, Plaintiff discovered paperwork in the family home indicating that Defendant had sued Masoud and Plaintiff for the services apparently rendered by Defendant to Masoud. Such paperwork included some Complaints as well as Judgments.

16. A review of court files revealed four instances in which Defendant sued both Masoud and Plaintiff for debts incurred solely by Masoud. Specifically, Plaintiff discovered Complaints and Judgments in Guilford County cases numbered 08-CvD-14764; 09-CvD-13941;

09-CvD-15340; and 10-CvD-5819 (“the Collections Actions”). In each of the Collections Actions, the only basis stated for suing Plaintiff was her marital status.

17. As a result of the Collections Actions, judgment have been entered on the public record against Plaintiff. Such judgments have damaged Plaintiff by, *inter alia*, encumbering her residence and damaging Plaintiff’s credit.

18. Prior to filing this action, Plaintiff’s counsel wrote to Defendant’s counsel and explained that the only apparent basis for suing Plaintiff was Plaintiff’s marital status, and that the Doctrine of Necessaries appears to conflict with the express language of the North Carolina Constitution. The correspondence asked that, if other grounds existed for pursuing Plaintiff in the Collections Actions, Defendant’s counsel explain such basis. The correspondence further demanded that, in light of their lack of legitimate legal basis, the judgments be cancelled within fourteen days. Plaintiff received no response to this correspondence.

CLASS ALLEGATIONS

19. Plaintiff brings this action on behalf of herself and, subject to Court certification, others similarly situated.

20. The potential class for this matter is defined as:

All females resident in North Carolina who:

Have had judgments entered against them at any time since January 27, 1997 by Defendant for debts allegedly arising solely due to the application of the Doctrine of Necessaries; or

Have paid money to Defendant since January 27, 1997 for claims (whether formal or informal) for debts allegedly arising due to the application of the Doctrine of Necessaries.

21. Upon information and belief, there have been over fifty collections lawsuits filed in the Guilford County District Court alone by Defendant since January 1, 2007 that rely upon the

Doctrine of Necessaries as the basis for collection of a spousal debt. Upon information and belief, the total number of potential class members, when other counties and courts are considered, is far higher than fifty.

22. As described herein, Plaintiff is a member of the class because she has been subject to Defendant's unconstitutional reliance on the Doctrine of Necessaries.

23. Plaintiff has a genuine, personal interest in this proposed class action.

24. Plaintiff will fairly and adequately represent the interests of the members of the class. Plaintiff's claim is typical and representative of the claims of class members. There do not appear to be any defenses of a unique nature which may be asserted against Plaintiff, individually, as distinguished from other members of the class.

25. Since this proposed class action relates solely to debts collected by Defendant in North Carolina through the General Court of Justice, there do not appear to be any members of the class outside the jurisdiction of this Court.

26. No conflict exists in Plaintiff's representation of the class. Plaintiff does not have any claim or interest adverse to the interests of the class.

27. Plaintiff has retained counsel experienced in sophisticated litigation, including class actions.

28. The number of potential class members are so numerous as to make it impracticable to bring them all before the court.

29. Plaintiff and Class Members share an interest in the core legal issue before the Court: Whether the Doctrine of Necessaries is invalid due to its conflict with Article X, Section 4, of the North Carolina Constitution. This legal issue predominates over questions affecting individual class members.

30. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

FIRST CAUSE OF ACTION

(Declaratory Judgment Regarding Constitutionality of Doctrine of Necessaries)

31. The foregoing Paragraphs are incorporated herein by reference.

32. As set forth above, an actual and justiciable controversy exists between Plaintiff (individually and on behalf of the potential class) and Defendant as to the validity and constitutionality of the Doctrine of Necessaries and whether any legal actions brought, claims made, or judgments obtained based on such Doctrine are valid.

33. As noted above, the Doctrine of Necessaries, as it applies to female spouses, directly conflicts with the language of Article X, Section 4, of the North Carolina Constitution. Such Doctrine is therefore invalid. *See* N.C. CONST. art. X, § 4; *id.* art. I, § 19.

34. Plaintiff, both for herself and others similarly situated, is entitled to a declaratory judgment that the Doctrine of Necessaries is preempted and invalid as to female spouses, and that any claims made or judgments obtained by Defendant based on the Doctrine are void and invalid.

SECOND CAUSE OF ACTION

(Recovery of Monies Paid in Error)

35. The foregoing Paragraphs are incorporated herein by reference.

36. Upon information and belief, various members of the proposed class have made payments on debts that arise solely from the application of the Doctrine of Necessaries. Such payments have been made in response to demands and claims by Defendant.

37. As the Doctrine of Necessaries is unconstitutional as applied to female spouses, all Class Members who made payments to Defendant based on the Doctrine are entitled to have all such monies returned, with interest.

THIRD CAUSE OF ACTION
(Cancellation of Judgments)

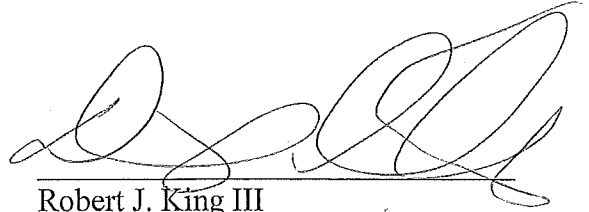
38. The foregoing paragraphs are incorporated herein by reference.

39. As any judgments against Plaintiff and other Class Members based on the Doctrine of Necessaries are based on an invalid and unconstitutional legal doctrine, all such judgments should be voided by the Court. *See* N.C. CONST. art. X, § 4; *id.* art. I, § 19.

WHEREFORE, Plaintiff respectfully prays that the Court:

1. Certify the class described above, pursuant to N. C. R. Civ. P. 23;
2. Declare Plaintiff the representative of the class for the purpose of prosecuting this action;
3. Enter a declaratory judgment that the Doctrine of Necessaries as applied to female spouses conflicts with the North Carolina Constitution and is invalid;
4. Order that all judgments obtained by Defendant against Class Members that are based on the Doctrine of Necessaries are void;
5. Order that Defendants return to Class Members all payments they have received from Class Members based on the Doctrine of Necessaries, with interest;
6. Award Plaintiff her attorneys' fees and costs in amounts to be determined;
7. Provide a trial by jury as to all issues so triable; and
8. Provide such other relief as the Court may deem just and proper.

This the 26th day of January, 2017.



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