

## CONTRACTS

### BREACH OF PARTNERSHIP AGREEMENT

Breach of Contract/Warranty

Verdict: Defense

CASE/NUMBER: Leslie Baker an Individual and the Personal Representative of the Estate of David L. Baker v. Michael P. Morrissette DDS, Ivan Marks / 56-2017-00491298-CU-BC-VTA

COURT/DATE: Ventura Superior / Sep. 17, 2018

JUDGE: Mark S. Borrell

ATTORNEYS:

Plaintiff - Robert D. Crockett (Crockett & Associates)

Defendant - Jerry L. Freedman (Jerry L. Freedman APC); Bret Anderson (Ferguson Case Orr Paterson LLP) for Ivan Marks, DDS

FACTS: David Baker, DDS, and Michael Morrissette, DDS, were partners for 12 years in an Oral and Maxillofacial Surgery practice in Camarillo. Their partnership agreement required that each maintain life insurance on the other for \$1 million. In May 2012, Dr. Baker was diagnosed with brain cancer (glioblastoma). At that time, it was discovered that the life insurance premiums on Dr. Baker's life had not been paid and that the life insurance policy had been canceled by New York Life for nonpayment of premiums. Dr. Baker died in 2013.

Plaintiff Leslie Baker, decedent's widow, filed suit against Dr. Morrissette and Ivan Marks, DDS.

PLAINTIFF'S CONTENTIONS:

In late 2012, a series of letters were exchanged between counsel for Baker and Morrissette, wherein Baker accused Morrissette of allowing the policy to lapse and demanding that Morrissette agree to pay \$1 million upon Baker's demise. Morrissette's counsel disputed Baker's claim. Instead, Morrissette agreed to make payments to Baker pursuant to the permanent disability provisions of the partnership agreement. The Bakers cashed the first two disability payments. Thereafter, plaintiff claimed that she never received any further payments

in 2013 or 2014.

Plaintiff claimed that Dr. Morrissette breached the partnership agreement by not maintaining the life insurance policy on Dr. Baker's life. She also claimed that he breached the partnership agreement by not paying the required disability payments. Furthermore, she claimed that Dr. Morrissette converted her interest in the Morrissette Baker partnership by selling the practice to Dr. Marks and not paying her 50 percent community property interest. She also sued Dr. Marks for conversion.

DEFENDANT'S

CONTENTIONS: The office manager for the partnership denied receiving late notices from New York Life and further denied receiving notice of cancellation. Neither Dr. Morrissette nor Dr. Baker was aware of the cancellation until after Dr. Baker was diagnosed with brain cancer.

Dr. Morrissette claimed that the life insurance was a partnership obligation and not his individual obligation. Morrissette claimed he was not responsible individually for the lapse in coverage. Furthermore, he claimed that Dr. Baker was not entitled to the life insurance proceeds because he was permanently disabled before his demise, and had accepted permanent disability benefits from Dr. Morrissette. Pursuant to the partnership agreement, Dr. Morrissette was the sole beneficiary unless and until Dr. Baker survived for 36 months after his disability. Dr. Morrissette also claimed that the statute of limitations had expired before the suit was filed.

Marks denied that he converted Dr. Baker's interest in partnership assets.

DAMAGES: Plaintiff sought \$1 million for loss of life insurance benefits plus additional payments required under the partnership agreement.

SETTLEMENT DISCUSSIONS: Plaintiff demanded \$3 million. Defendants offered nothing.

RESULT: The jury found that the statute of limitations had expired before suit was filed. Dr. Marks was granted non-suit after plaintiff's opening statement.

FILING DATE: Jan. 3, 2017