

Licudine v. Cedars-Sinai Medical Center (2019) 2DCA, No. B286350

Plaintiff's Section 998 offer was not made in good faith when it was made five days after defendant filed its answer

FACTS/PROCEDURE

Dionne Licudine underwent gallbladder surgery at Cedars-Sinai Medical Center. Her doctor accidentally nicked a vein inside her abdominal cavity causing substantial internal bleeding. She filed a medical malpractice lawsuit against the medical center.

Licudine made Cedars-Sinai an offer to compromise pursuant to Code of Civil Procedure Section 998 for \$249,999.99, plus legal costs. However, Cedars-Sinai stated that since Licudine filed this only five (5) days after it had answered that it was "too soon for it to make any determination as to whether [Licudine's 998 offer] was reasonable." The total verdict was \$5,594,557.00 in favor of Licudine and she sought \$2,335,929.20 in prejudgment interest from the date of her 998 offer to the date of judgment. The court struck Licudine's request for prejudgment interest.

HOLDING/DISCUSSION

Affirmed. A plaintiff who sues and prevails at trial is statutorily entitled to prejudgment interest starting from the date she makes a 998 settlement offer so long as the offer is "valid" and the subsequent verdict is more favorable than the rejected 998 offer. A 998 offer is valid if made in good faith and only if, among other things, the offeror knew that the offeree had reasonable access to the facts necessary to "intelligently evaluate the offer."

Three factors are especially pertinent: (1) how far into litigation the 998 offer made; (2) the information available to the offeree prior to the 998 offer's expiration; and (3) whether the offeree let the offeror know that it lacked sufficient information to evaluate the offer. Here, (1) Licudine made her 998 offer just nineteen (19) days after serving Cedars-Sinai with the complaint and just five (5) days after defendant answered; (2) Cedars-Sinai had very little information available prior to the date Licudine's 998 offer expired; (3) Cedars-Sinai alerted Licudine to its concern that it was too soon for it to make a decision as to whether the 998 offer was reasonable and Licudine did not respond to this. Therefore, the 998 offer was not made in good faith.