

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

C.H., as Settlor of the J.F. SPECIAL
NEEDS TRUST, and THE CENTER
FOR SPECIAL NEEDS TRUST
ADMINISTRATION, INC., as Trustee of
the J.F. SPECIAL NEEDS TRUST,

CASE NO.: 2004-CA-1202

DIVISION: 39

Plaintiffs,

vs.

JAMES SCOTT PENDERGRAFT, IV,
M.D., and ORLANDO WOMEN'S
CENTER, LLC, a Nevada limited
liability company, as successor to and
ORLANDO WOMEN'S CENTER, INC.,
an inactive Florida Corporation, by
conversion,

Defendants,

And

All Impled Third Party Defendants.

_____/

PLAINTIFFS' MOTION FOR SUMMARY JUDGEMENT
AGAINST IMPLIED THIRD PARTY DEFENDANT
METZGER & ASSOCIATES, LLC.

Pursuant to Rule 1.510, *Florida Rules of Civil Procedure*, the Plaintiffs hereby move for summary judgment against Impled Third Party Defendant Metzger & Associates, LLC, and avers as follows:

1. On July 21, 2011, the Jury reached a verdict in the underlying medical malpractice action, awarding \$18,737,660.16 in compensatory damages to Plaintiffs and against Defendants. On July 22, 2011, the Jury reached a verdict in the punitive

damages phase, awarding \$18,000,000.00 in punitive damages to Plaintiffs and against Defendants (\$11,888,000.00: Pendergraft; \$6,112,000.00: Orlando Women's Center). This Court thereafter entered final judgment in July of 2011.

2. On February 13, 2013, Defendant Pendergraft sold his million-dollar-plus stock portfolio held at Wells Fargo Advisors and wire transferred \$533,573.16 of his funds into his personal checking account at AIG Federal Savings Bank.

3. Between February 26, 2013 and March 13, 2013, Defendant Pendergraft then wire transferred in excess of \$600,000.00 into the commercial checking account of his company, Implied Third Party Defendant Wilson Medical Management.

4. On March 8, 2013, Implied Third Party Defendant Wilson Medical Management transferred \$132,000.00 of those moneys via check number #2720 to Implied Third Party Defendant Metzger & Associates, LLC. The Metzger law firm and its attorneys had represented Defendant Pendergraft individually, on medical licensure disputes, for many years.

5. At the time of the transfer, the Metzger firm had no outstanding attorneys' fees or costs due related to its representation of Defendant Pendergraft or Wilson.

6. At the time of the transfer, the Metzger firm had no bona fide claim to any of the \$132,000.00 received from Wilson Medical Management.

7. At the time of the transfer, the Metzger firm was well aware of an \$18,000,000.00 judgment entered against Defendant Pendergraft in the underlying action. Rule 4-1.2(d), *Florida Rules of Professional Conduct*, strictly prohibits a lawyer from assisting a client in conduct that the lawyer knows ***or reasonably should know is criminal or fraudulent.***

WHEREFORE the Plaintiffs hereby move for an Order granting final summary judgment against Implied Third Party Defendant Metzger & Associates, LLC, in the total amount of \$132,000.00, plus all associated costs and interest; Ordering the transfer \$132,000.00 to be void; and directing the Sherriff to take to the property of Implied Third Party Defendant Metzger & Associates, LLC, to satisfy the execution as provided by §56.3(b), *Florida Statutes*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed by using the E-Filing Portal which will furnish notice to: Jim Ippoliti, Esquire, serve@celebration.com; Scott D. Widerman, Esquire, scott@uslegalteam.com, jessica@uslegalteam.com, mgushiken@uslegalteam.com; David W. Spicer, Esquire, pleadings@davidspicerlaw.com, d.spicer@davidspicerlaw.com; William P. Weatherford, Jr., Esquire, wpw@winterparklaw.net; wpweatherford@gmail.com; dawn@winterparklaw.net; J. Timothy Schulte, Esquire and Julia Moffett, Attorney at Law; tschulte@zkslawfirm.com; jmoffett@zkslawfirm.com; service@zkslawfirm.com; this 6th day of September, 2018.


FRANK F. FERNANDEZ, III, ESQUIRE
Florida Bar No.: 0998508
THE FERNANDEZ FIRM
2503 W. Swann Avenue
Tampa, FL 33609
Telephone: (813) 228-6313
Facsimile: (813) 228-6323
eserve@fernandezfirm.com
Attorney for Plaintiff