

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2006 CA 0724**

**NELIDA TRIAS AND FERNANDO TRIAS**

**VERSUS**

**JOHN C. SIMON, M.D. (A PROFESSIONAL MEDICAL CORPORATION), NORTHLAKE NEPHROLOGY, L.L.C., NORTHLAKE NEPHROLOGY ASSOCIATES, L.L.P., ACUTE DIALYSIS SYSTEMS, L.L.C., ACUTE DIALYSIS SERVICES, L.L.C., SIMON OF INDEPENDENCE, L.L.C., SIMON OF HAMMOND, L.L.C., SIMON OF COVINGTON, L.L.C., DIALYSIS OF INDEPENDENCE, L.L.C., DIALYSIS SYSTEMS OF HAMMOND, L.L.C., DIALYSIS SYSTEMS OF COVINGTON, L.L.C., DIALYSIS TECHNICAL SYSTEMS, L.L.C., AND NOTAMI HOSPITALS OF LOUISIANA, INC., D/B/A LAKEVIEW REGIONAL MEDICAL CENTER**

**Judgment Rendered: February 14, 2007**

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On Appeal from the Twenty-Second Judicial District Court  
In and For the Parish of St. Tammany  
State of Louisiana  
Docket No. 2003-11786

Honorable Martin E. Coady, Judge Presiding

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C. William Emory  
Alan G. Brackett  
New Orleans, LA

Counsel for Plaintiffs/Appellants  
Nelida Trias and Fernando Trias

Aldric C. Poirier, Jr.  
James W. Vitrano

Counsel for Defendant/Appellee  
Lakeview Regional Medical Center

Mandeville, LA  
R. Joshua Koch, Jr.  
Metairie, LA

Counsel for Defendants/Appellees  
John C. Simon, M.D., Northlake  
Nephrology, L.L.C., Northlake  
Nephrology Associates, L.L.C.,  
And Acute Dialysis Systems, L.L.C.

Stephen D. Enright, Jr.  
Metairie, LA

Counsel for Defendants/Appellees  
Dialysis Systems of Covington,  
L.L.C., Dialysis Systems of  
Hammond, L.L.C. and Dialysis  
Systems of Independence, L.L.C.

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**BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.**

**McCLENDON, J.**

In this personal injury case, a nurse, Nelida Trias, and her husband, Fernando Trias, filed suit seeking damages. Mrs. Trias alleged that she was injured when a reverse osmosis machine, used to treat her dialysis patients, lost a wheel and fell on her. The trial court granted a motion for summary judgment filed by one of the defendants, Notami Hospitals of Louisiana, Inc., d/b/a Lakeview Regional Medical Center (hospital). The judgment dismissed the hospital from the suit. Mr. and Mrs. Trias appealed. We affirm.

**PROCEDURAL AND FACTUAL BACKGROUND**

The hospital filed a motion for summary judgment asserting that there remained no genuine issue of material fact, and that another defendant, Acute Dialysis Systems, LLC, the dialysis services contractor (contractor) who employed Mrs. Trias, was liable for its employees and the machines used in the dialysis treatments. In support of its motion for summary judgment, the hospital submitted the deposition of Mrs. Trias and an affidavit from the hospital's chief executive officer, Max Lauderdale.

In response, plaintiffs filed an opposition to the motion for summary judgment, primarily relying on a particular interpretation of the language of a specific provision of the contract between the hospital and the contractor. Plaintiffs argued that the language of the contract created a genuine issue of material fact on whether the hospital assumed responsibility for the injuries to Mrs. Trias. In a reply to the opposition memorandum, the hospital cited other provisions of the contract, and argued that the contract did not impose any obligation on the hospital for the professional personnel or machines used to provide dialysis services.

The contract in question is a professional services agreement in which the contractor agreed to provide acute dialysis services to the hospital for a flat fee. Specifically, section 5.5, entitled "Independent Contractor," stated that: "Contractor and all Contractor's Representatives are performing services and duties under this Agreement as independent contractors and not as employees, agents, partners of, or joint ventures with the [hospital]." In other sections of the contract, the contractor agreed to maintain the necessary insurance and professional licenses to engage in the practice of the "Service," which was defined in the contract as "Acute Dialysis Services." In section 1 of addendum 2 to the contract, entitled "Operation of the Service," the contractor agreed to "assume complete responsibility for the professional operation of the Service and shall provide all professional services which [the hospital] requires to be provided through the Service." Section 3 of the same addendum covered the physical location of the dialysis unit and services to be provided by the hospital to the contractor. In section 3, paragraph A, the hospital agreed to provide a "space" to house the dialysis services and "any expendable supplies, equipment, and services necessary for the proper operation of the Service." At a minimum, the hospital was to provide "janitor, standard facility telephone, laundry, and utilities." Paragraph B of the same section 3, stated that the hospital would "employ all non-physician technical and clerical personnel it deems necessary for the proper operation of the Service." The hospital also retained administrative control for "such Service personnel."

In her deposition, Mrs. Trias testified that she was an employee of the contractor, not the hospital, and that the injury occurred while she was working for the contractor. She further testified that, to her knowledge, the reverse osmosis machine that allegedly fell on her was owned by the

contractor's representative, Dr. John Simon, and that the technicians who maintained and repaired the machines were also Dr. Simon's employees.

The hospital's CEO, Mr. Lauderdale, attested that Mrs. Trias was not an employee of the hospital, and no hospital employee maintained, repaired, or exercised control over the reverse osmosis machine. The affiant also stated that the hospital had no contractual or ownership obligation to maintain or repair the machine.

After a hearing and review of the pleadings, contract, affidavit, and deposition, the trial court, without assigning oral or written reasons, granted judgment in favor of the hospital and dismissed it from the suit. In their appeal of the judgment, the plaintiffs' primary assignment of error is the trial court's failure to find that genuine issues of material fact remained concerning whether the hospital contractually assumed liability for the personnel responsible for maintenance of the reverse osmosis machine.

#### APPLICABLE LEGAL PRECEPTS

Summary judgment shall be rendered if no genuine issue of material fact remains, and the movant is entitled to summary judgment as a matter of law. LSA-C.C.P. art. 966B. When parties are bound by a valid contract and material facts are not in conflict, the contract's application to the case is a matter of law and summary judgment would be appropriate. **Ginger Mae Financial Services, L.L.C. v. Ameribank, FSB**, 2002-2492, p. 4 (La.App. 1 Cir. 9/26/03), 857 So.2d 546, 548, writ denied, 2003-2983 (La. 1/16/04), 864 So.2d 634. An appellate court reviews *de novo* a trial court's decision to grant a motion for summary judgment, using the same criteria that govern the trial court's consideration of the motion. **Ginger Mae Financial Services, L.L.C.**, 2002-2492 at p. 3, 857 So.2d at 547.

A determination of the existence or absence of an ambiguity in a contract entails a question of law. An appellate review that is not founded upon any factual findings made at the trial court level, but rather, is based upon an independent review and analysis of the contract within the four corners of the document, is not subject to the manifest error rule of law. In such cases, appellate review is simply whether the trial court was legally correct. **Claitor v. Delahoussaye**, 2002-1632, p. 11 (La.App. 1 Cir. 5/28/03), 858 So.2d 469, 478 , writ denied, 2003-1820 (La. 10/17/03), 855 So.2d 764.

To determine the meaning of words used in a contract, a court should give them their “generally prevailing meaning.” LSA-C.C. art. 2047. If a word is susceptible of different meanings, it “must be interpreted as having the meaning that best conforms to the object of the contract.” LSA-C.C. art. 2048. “A provision susceptible of different meanings must be interpreted with a meaning that renders it effective and not with one that renders it ineffective.” LSA-C.C. art. 2049. Furthermore, every “provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole.” LSA-C.C. art. 2050. Doubtful provisions must be interpreted in light of the nature of the contract, equity, usages, the conduct of the parties before and after the formation of the contract, and other contracts of a like nature between the same parties.” LSA-C.C. art. 2053.

With these rules of contract interpretation and summary judgment practice in mind, we review *de novo* the provisions of the contract. The legal issue to be decided is whether the hospital assumed contractual responsibility for maintenance of the reverse osmosis machine used in the treatment of the dialysis patients.

## ANALYSIS

Before granting summary judgment, the trial court first had to find that no genuine issue of material fact remained. In this particular case, the material facts are not in conflict. The only conflict was based on the parties' differing interpretations of the contract provisions. As interpretation of a contract is a question of law, not fact, we agree that no genuine issue of fact remained.

The plaintiffs' primary claim that the hospital was responsible for maintenance of the reverse osmosis machine used in the dialysis treatment, and thus liable for Mrs. Trias's injuries, is based on the language in addendum 2, section 3, paragraph B. The plaintiffs argue that the hospital's agreement in paragraph B to "employ all non-physician technical and clerical personnel it deems necessary for the proper operation of the Service," and its retention of administrative control over "such Service personnel," obligated the hospital to assume responsibility for all the dialysis machines and personnel, including the employees who maintained the dialysis machines used to treat the unit's patients. After review of the contract as a whole, we disagree.

The contractor's assumption of responsibility for all the "professional services" and "professional operation" of the dialysis services was delineated in the contract, and reiterated in addendum 2, section 1. Plaintiffs' interpretation of addendum 2, section 3, paragraph B, ignores the provisions of the main contract, the other sections of addendum 2, and the other paragraph comprising section 3.

In paragraph A of section 3, the hospital agreed to provide a physical location to house the dialysis unit and "any expendable supplies, equipment, and services necessary for the proper operation of the Service," including at

a minimum, a “janitor, standard facility telephone, laundry, and utilities.” (Emphasis added.) Thus, the reference in paragraph A to the “proper operation of the Service” related to the physical space necessary to house the unit, and the normal attributes for an efficient work space, such as cleaning, phone, and utilities, as opposed to the professional operation of the unit as a facility for treatment of dialysis patients. The same terminology used in paragraph A, “necessary for the proper operation of the Service,” was repeated in paragraph B, denoting an alignment of the coverage of the two paragraphs, which were contained in the same section. (Emphasis added.) The retained administrative control, provided for in paragraph B’s last sentence, applied to “all such Service personnel,” that is, the same personnel discussed in paragraphs A and B. Thus, the logical and most consistent interpretation of paragraph B is as the hospital’s agreement to employ the personnel necessary for the operation and maintenance of the physical location of the dialysis unit, and the necessary attendant services, as outlined in paragraph A. In other words, considering the contract as a whole, the contractor was responsible for the personnel and machines needed for the professional treatments, and the hospital agreed to provide and maintain the physical space and the necessary attributes of a physical location; both categories of personnel being necessary for the operation of the dialysis unit. Nothing in the contract logically allows a disconnect of paragraph B from the specific services offered by the hospital in the immediately preceding paragraph A, or a reading of paragraph B in isolation from other clear sections of the contract.

#### CONCLUSION

Therefore, from our de novo review, we conclude that the hospital met its burden to show that no genuine issue of material fact remained and



that it was entitled to summary judgment as a matter of law. In response, the plaintiffs failed to rebut that showing.<sup>1</sup> See LSA-C.C.P. arts. 966C & 967B.

For these reasons, we affirm the judgment of the trial court. The costs of the appeal are assessed to the plaintiff-appellants, Nelida Trias and Fernando Trias.

**AFFIRMED.**

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<sup>1</sup> For the same reasons, we find no error in the trial court's denial of plaintiffs' motion for a new trial.