

F I L E D
Clerk of the Superior Court

NOV 30 2011

By: L. SAN NICOLAS, Deputy

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION - HALL OF JUSTICE**

RICHARD CERVANTES, an individual,
Plaintiff,

v.

JOSE ALBERT MOLINA aka "Dr. Albert
Molina," PEOPLE'S DENTAL OFFICE
OF DR. MOLINA, A PROFESSIONAL
CORPORATION,

Defendants.

Case No. 37-2008-00099038-CU-BC-CTL

**JUDGMENT AFTER JURY AND
COURT TRIAL**

Judge: Hon. William S. Dato
Complaint Filed: December 29, 2008
Trial Date: April 22, 2011
Dept: 67

AND RELATED CROSS-ACTION

This cause came on regularly for jury trial between April 22 and May 12, 2011, in Department 67 of the above-entitled court, the Honorable William S. Dato, Judge, presiding. Plaintiff and Cross-Defendant RICHARD CERVANTES appeared by his counsel, Scott A. McMillan and Evan Kalooky, of The McMillan Law Firm, APC. Defendant and Cross-Complainant JOSE ALBERT MOLINA aka "Dr. Albert Molina," appeared by his counsel, Edward W. Freedman, of the Law Offices of Edward W. Freedman. Further proceedings before the court without a jury were held on June 30 and August 18, 2011.

PROCEDURAL HISTORY

A. Trial

On April 22, 2011, the Court called this case for trial. Following briefing, argument and hearing on pre-trial and *in limine* motions, the Court ordered that the parties try the legal claims to the jury, with a court trial of the equitable claims following the jury phase of the trial.

On April 26, 2011, the jury was selected and empaneled. On April 27, 2011, the court allowed opening statements and the jury began hearing testimony. On May 5, 2011, Plaintiff rested his case-in-chief, and Defendant began his case-in-chief. On May 5, 2011, Defendant rested.

At trial, Defendant abandoned, through voluntary dismissal, his remaining legal claims in the FACC - the first cause of action for breach of contract, second for breach of good faith and fair dealing, fourth for fraudulent inducement to contract, and seventh for conversion. The Court, on its own motion, dismissed Plaintiff's third cause of action for conversion and fourth for breach of fiduciary duties.

After jury instructions and verdict forms were finalized by the parties and the Court outside the presence of the jury, on May 10, 2011, the court read the jury instructions, and counsel made closing arguments. The jury began deliberations.

B. Jury Verdict

On May 12, 2011, the jury answered the two special verdict forms as follows:

SPECIAL VERDICT FORM NO. 1 – BREACH OF CONTRACT

We answer the questions submitted to us as follows:¹

1. Did the parties enter into a contract?

Yes X No

If your answer to question 1 is yes, then answer question 2. If you answered no, please sign and date this form and then move to the next form.

¹ The questions that were not answered by the jury are not included.

On May 12, 2011, pursuant to the jury finding of "malice, oppression, or fraud," Plaintiff called Defendant to the stand and examined him on punitive damage issues. The jury was then instructed and answered the special verdict form as follows:

SPECIAL VERDICT FORM NO. 3 – PUNITIVE DAMAGES

We answer the questions submitted to us as follows:

1. What amount of punitive damages, if any, do you award to Richard Cervantes?

\$900,000.00

C. Equitable Claims

After the jury was released, the Court set a hearing on the remaining claims for June 30, 2011. Specifically, prior to trial, the Court ordered the legal and equitable claims bifurcated, leaving the following claims for determination after the jury verdict - Plaintiff's second cause of action for specific performance of the parties' contract and sixth for unfair competition; Defendant's ninth cause of action for quiet title.

On June 30, 2011, Plaintiff filed and served a brief on the equitable issues, including Plaintiff's proposed election of remedies, in which Plaintiff requested specific performance of the parties' contract in lieu of breach of contract damages. At the June 30, 2011 hearing, the Court set a continued hearing for August 18, 2011, to allow Defendant to respond to Plaintiff's brief by July 22, 2011, with Plaintiff allowed to file a reply by August 5, 2011. On July 22, 2011, Defendant filed and served his brief on the equitable issues, and Plaintiff filed and served his reply on August 5, 2011.

At the hearing on August 18, 2011, after reviewing the parties' briefs and hearing oral arguments of counsel, the Court ruled as follows on the equitable claims:

1. The Court grants Plaintiff's election of specific performance, rather than rescission and restitution or damages, for breach of the contract in dispute, i.e. the parties' September 3, 2008 sale agreement, according to Plaintiff's second

cause of action, with Plaintiff foregoing the economic damages of \$30,200.00 under the jury verdict for breach of contract.

2. The Court finds that, in light of the order granting specific performance, the economic damages of \$30,200.00 under the jury verdict for breach of contract overlap with the economic damages of \$45,000.00 under the jury verdict for fraud against Defendant. As such, and as a result of Plaintiff's election of specific performance, the economic damages for fraud are reduced to \$14,800.00.
3. The Court finds that Defendant Molina engaged in unfair competition within the meaning of Business and Professions Code section 17200 by means of a fraudulent business practice.
4. The Court grants relief in favor of Plaintiff on Defendant's ninth cause of action for quiet title, and quiets title in Plaintiff Richard Cervantes' favor as to any legal or equitable interest of Defendant Jose Albert Molina in that real property located at 2387 Highway 86, Imperial, California, 92251.²
5. The Court grants injunctive relief, pursuant to Business and Professions Code section 17203 and to effectuate the specific performance order, that Defendant promptly sign the following documents to complete the transfer under the parties' contract of "all [Defendant's] right, title and interest in the real property located at 2387 Highway 86, Imperial California, 92251, and all [Defendant's] right, and interest in that certain business know[n] as PEOPLE'S DENTAL, INC., being conducted on said property."

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² In making this order, the Court rejects Defendant's argument that the Court lacked jurisdiction over the real property located in Imperial County. By virtue of raising an affirmative claim to quiet title and seeking such relief from this court, Defendant Molina cannot now be heard to disclaim the Court's jurisdiction over Defendant's interest in that real property.

- a. ~~A quitclaim deed and any and all other documents necessary to transfer to~~ Plaintiff the Defendant's entire interest³ in the real property located at 2387 Highway 86, Imperial, California, 92251;
- b. A transfer to Plaintiff of all shares Defendant has, owns, and/or possesses in the People's Dental dental practice;
- c. All necessary documents to permanently remove Defendant from all bank accounts relating to People's Dental, and an order that Defendant take no further actions as to those accounts;
- d. All necessary documents with the California Dental Board, and any services, vendors, etc. used by People's Dental, including but not limited to a Dential change of ownership form, to remove Defendant's name as an owner and/or officer of People's Dental, and substitute Plaintiff's name in his place; and
- e. The Court further orders that Defendant cooperate in resolving the present and future tax compliance and reporting issues with both the real property and People's Dental.

To the extent Defendant Molina refuses or fails to cooperate with the execution of the documents under the specific performance order, the Court will appoint an elisor to execute the documents on Defendant's behalf, and retain such other means otherwise available to enforce compliance with this judgment.

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³ Whether personal or through Triad Dental or any other entity.

IT IS ORDERED, ADJUDGED AND DECREED that:

1. Pursuant to this Court's granting of Cross-Defendant Sun Dental Office of Dr. Cervantes' Motion for Summary Judgment against all claims in Cross-Complainant Jose Albert Molina's First Amended Cross-Complaint, judgment is entered in favor of Cross-Defendant Sun Dental Office of Dr. Cervantes and against Cross-Complainant Jose Albert Molina. Cross-Defendant Sun Dental Office of Dr. Cervantes is a "prevailing party" under Code of Civil Procedure section 1032(a)(4).

2. Pursuant to this Court's granting, in part, of Cross-Defendant Richard Cervantes' Motion for Summary Judgment against certain claims in Cross-Complainant Jose Albert Molina's First Amended Cross-Complaint, and Cross-Complainant Jose Albert Molina's voluntary dismissal at trial of all remaining claims for damages against Cross-Defendant Richard Cervantes, judgment is entered in favor of Cross-Defendant Richard Cervantes and against Cross-Complainant Jose Albert Molina on the First Amended Cross-Complaint. Cross-Defendant Richard Cervantes is a "prevailing party" under Code of Civil Procedure section 1032(a)(4).

3. As to Cross-Complainant Jose Albert Molina's ninth cause of action for quiet title in the First Amended Cross-Complaint, the Court orders judgment in favor of Cross-Defendant Richard Cervantes, and quiets title in favor of Cross-Defendant Richard Cervantes, and against Cross-Complainant Jose Albert Molina, as to the real property located at 2387 Highway 86, Imperial, California, 92251.

4. As to the First Cause of Action for Breach of Contract against Defendant Jose Albert Molina in Plaintiff Richard Cervantes' Complaint, Plaintiff Richard Cervantes shall recover, in lieu of the jury verdict of damages in the amount of \$30,200.00, and at Plaintiff Richard Cervantes' election, specific performance of the contract dated September 3, 2008, entered into by Plaintiff Richard Cervantes and Defendant Jose Albert Molina. The Court orders, in favor of Plaintiff Richard Cervantes and against Defendant Jose Albert Molina, to effectuate the specific performance, that Defendant

Jose Albert Molina promptly sign the following documents to complete the transfer, under the parties' contract dated September 3, 2008, of "all [Defendant's] right, title and interest in the real property located at 2387 Highway 86, Imperial California, 92251, and all [Defendant's] right, and interest in that certain business know[n] as PEOPLES DENTAL, INC., being conducted on said property," as follows:

- a. A quitclaim deed and any and all other documents necessary to transfer Defendant Jose Albert Molina's interest⁴ in the real property located at 2387 Highway 86, Imperial, California, 92251, to Plaintiff Richard Cervantes;
- b. A stock transfer to Plaintiff Richard Cervantes of any and all shares Defendant Jose Albert Molina has, owns, and/or possesses in People's Dental;
- c. Those documents necessary to permanently remove Defendant Jose Albert Molina from all bank accounts relating to People's Dental;
- d. All necessary documents with the California Dental Board, and any services, vendors, etc. used by People's Dental, including but not limited to a Dential change of ownership form, to remove Defendant Jose Albert Molina from People's Dental and substitute Plaintiff Richard Cervantes in his place; and
- e. Those documents required from tax authorities as necessary, or those documents that will assist Plaintiff Cervantes in resolving outstanding reporting and payment compliance obligations of Peoples Dental Office of Dr. Molina, a Professional corporation.

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⁴ Whether personally, or through Triad Dental, Inc., or Triad Dental partnership entity.

5. As to the Second Cause of Action for Specific Performance against Defendant Jose Albert Molina in Plaintiff Richard Cervantes' Complaint, Plaintiff Richard Cervantes is granted specific performance of the contract dated September 3, 2008, entered into by Plaintiff Richard Cervantes and Defendant Jose Albert Molina, under the terms detailed above.

6. As to the Third Cause of Action for Conversion against Defendant Jose Albert Molina in Plaintiff Richard Cervantes' Complaint, Plaintiff Richard Cervantes shall recover nothing.

7. As to the Fourth Cause of Action for Breach of Fiduciary Duty against Defendant Jose Albert Molina in Plaintiff Richard Cervantes' Complaint, Plaintiff Richard Cervantes shall recover nothing.

8. As to the Fifth Cause of Action for Intentional Misrepresentation against Defendant Jose Albert Molina in Plaintiff Richard Cervantes' Complaint, Plaintiff Richard Cervantes shall recover \$14,800.00 in economic damages, \$250,000.00 in non-economic damages, and \$900,000.00 in punitive damages.

9. As to the Sixth Cause of Action for Unfair Competition against Defendant Jose Albert Molina in Plaintiff Richard Cervantes' Complaint, the Court finds that Defendant Jose Albert Molina engaged in unfair competition by means of a fraudulent business practice according to Business and Professions Code section 17200.

IT IS FURTHER ORDERED that those provisions of the Court's order of a Preliminary Injunction, issued January 30, 2009, affecting by limitation or by imposing obligations of affirmative conduct upon Plaintiff Richard Cervantes, Magdalena Garcia, or Peoples Dental Office of Dr. Molina, a Professional Corporation, not otherwise inconsistent with the foregoing rulings, are VACATED. The injunctive relief set forth within that order restraining Defendant Jose Albert Molina shall remain in effect and is ordered to be made permanent. The specific, operative portions of that order are set

forth at length below, with the portions that are to be vacated are stricken through (e.g., stricken).

"THE COURT ORDERS AS FOLLOWS:

~~THAT pending further order of this Court, Magdalena Cervantes Garcia is designated as the only authorized signatory on the accounts of Peoples Dental Office of Dr. Molina, A Professional Corporation;~~

~~THAT pending further order of this Court, WELLS FARGO BANK, N.A., is directed to accept Magdalena Cervantes Garcia's signature on withdrawals, issuances of checks on Account No. 043-3483146, and conducting other banking business for Peoples Dental Office of Dr. Molina, A Professional Corporation;~~

~~THAT Plaintiff Richard Cervantes is authorized to continue to practice dentistry at the Imperial, California office of Peoples Dental Office of Dr. Molina, A Professional Corporation, and shall receive as payment from that defendant for his services in treating patients a per diem rate of \$800 per full day, paid as an independent contractor;~~

~~THAT there shall be no withdrawals from Wells Fargo Bank, Account No. 043-3483146, except for those expenses incurred and paid in the ordinary course of the operation of the dental practice of Peoples Dental Office of Dr. Molina, A Professional Corporation, absent a court order authorizing such withdrawals;~~

~~THAT Plaintiff Richard Cervantes and Magdalena Cervantes Garcia shall provide an accounting of those expenses paid within 3 business days of the payment, to Molina's attorney by fax transmission to phone number (619) 479-0337;~~

~~THAT Defendant Jose Albert Molina a.k.a. "Dr. Albert Molina" is enjoined and restrained from transferring or encumbering any assets of Defendant People's Dental Office of Dr. Molina, A Professional Corporation absent further order of this Court; and~~

~~THAT Defendant Jose Albert Molina a.k.a. "Dr. Albert Molina" and Defendant People's Dental Office of Dr. Molina, A Professional Corporation are enjoined and restrained from causing any payor, including but not limited to, Denti-Cal or Delta Dental, from redirecting a payment from Wells Fargo Bank, Account No. 043-3483146.~~

~~THE Court orders that Plaintiff Richard Cervantes submit an undertaking by bond, or alternatively a deposit with the Court in the amount of \$5,000, on or before February 9, 2009."~~

IT IS FURTHER ORDERED that the undertaking, posted February 20, 2011, by Plaintiff Richard Cervantes in connection with the issuance of the pretrial temporary protective order and preliminary injunction, in the amount of \$10,000.00, by way of designating a deposit account with Wells Fargo Bank, N.A., account no. 1915385304, is EXONERATED. Wells Fargo Bank, N.A. is ordered to release the funds in said

account, plus any accrued interest therein, to the owner of those funds: Plaintiff Richard Cervantes.

IT IS FURTHER ORDERED that, exclusive of any prejudgment interests, attorney's fees, or costs, a monetary judgment in favor of Plaintiff Richard Cervantes and against Defendant Jose Albert Molina is granted in the total amount of \$1,164,800.00.

IT IS FURTHER ORDERED that with respect to any documents that are necessary to effectuate the transfer of property according to the order of specific performance, the Court will appoint an elisor to execute documents on Defendant Jose Albert Molina's behalf upon ex-parte notice and upon demonstration by declaration of necessity and diligent but ineffective efforts, to obtain cooperation from Defendant to execute such documents.

IT IS FURTHER ORDERED that the computation of prejudgment interest and an award, if any, shall be made according to California Rule of Court Rule 3.1802.

The parties shall make any applications for costs and/or attorneys' fees in compliance with California Rules of Court Rules 3.1700 and 3.1702.

IT IS SO ORDERED.

Dated: NOV 30 2011



HON. WILLIAM S. DATO, Judge

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Cervantes vs. Molina

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2008-00099038-CU-BC-CTL

I certify that I am not a party to this cause. I certify that a true copy of the JUDGMENT AFTER JURY AND COURT TRIAL was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 11/30/2011.

Clerk of the Court, by:


L. San Nicolas

, Deputy

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LAW OFFICE OF EDWARD W FREEDMAN
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Additional names and address attached.