

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

IN RE: MATTER OF:

CIVIL DIVISION
Case No.: 2014-005737-CC26

DENISE M. SCANZIANI, ESQ. P.A.,
Plaintiff,

vs.

MARIO JIMENEZ
Defendant.

VERIFIED MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY

JUDGMENT

Defendant, Mario Jimenez, files this verified memorandum in opposition to Plaintiff's motion for summary judgment, stating:

1. This verified memorandum is supported by the attached affidavit of Mario Jimenez.
2. Several genuine issues of material fact precluding summary judgment are:

A. whether Plaintiff performed her part of the bargain, or misrepresented information both in writing and verbally, and

B. whether the defendant reasonably relied upon this misrepresentation to his detriment, and

C. whether Plaintiff is seeking to recover more than Plaintiff is entitled to recover in this case, and

D. whether award of the judgment sought by the Plaintiff would unjustly enrich the Plaintiff, and

E. whether the account, debt, or contract has already been satisfied, with Plaintiff having received full satisfaction as the Defendant has paid all that is owed under the agreement, as attested by Billing Details provided by Plaintiff, and

F. whether Plaintiff had a reasonable opportunity to file sooner, but Plaintiff unreasonably delayed letting the statute of limitation run out to deliberately prevent Defendant from filing a malpractice lawsuit, and

G. whether Plaintiff had already obtained an order dated September 3rd 2014, wrongly granting her to charge a lien for the same charges she is filing suit for here, and

H. whether Plaintiff has committed a wrongdoing, and this lawsuit is attempting to benefit this wrongdoing, and

I. whether Plaintiff failed to comply with the terms of the contract by not complying with third paragraph of second page of retainer agreement, and

J. whether Defendant performed all duties owed under the contract other than any duties which were prevented or excused, and therefore never breached the agreement.

3. These issues have not been adjudicated, no evidence has been presented on the record to contradict Defendant's assertions in regard thereto, and summary judgment is therefore improper at this time.

4. The pleading and admissions of file, together with the supporting Affidavit and Affidavits which may be filed hereinafter, along with any and all depositions which may be hereinafter taken, if any, show that there are genuine issues as to material facts.

Accordingly, Plaintiff is NOT ENTITLED to Final Summary Judgment as a matter of law upon its complaint.

5. Moreover, Defendant has not yet completed its discovery.

6. Summary judgment is not proper where discovery has not yet been completed.

7. "Summary judgment should not be granted until the facts have been sufficiently developed to enable the court to be reasonably certain that there is no genuine issue of material fact. Epstein v. Guidance Corporation, Inc., 736 So.2d 137 (Fla. 4th DCA 1999) citing Singer v. Star, 510 So.2d 637,639 (Fla. 4th DCA 1987).

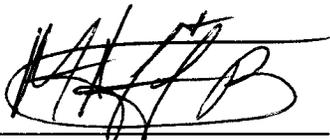
8. "It is reversible error to grant summary judgment where depositions are still pending."
Fleet Finance & Mortgage, Inc. v. Carey, 707 So.2d 949 (Fla. 4th DCA 1998).
9. There exist unresolved justifiable issues of material fact and law such that summary judgment is not appropriate.
10. Plaintiff has motioned for a summary judgment to prevent Defendant's due process right and circumvent Defendant's constitutional right to a jury trial.
11. The summary judgment motion should be denied.

WHEREFORE, Defendant, MARIO JIMENEZ, moves this Honorable Court to deny Plaintiff's Motion for Summary Judgment and to grant such further relief as the Court may deem reasonable and just under the circumstances.

DATED this 14th of January, 2015

Respectfully submitted,

By: _____



Signature of Defendant
Mario Jimenez, M.D.

CERTIFICATE OF SERVICE

I certify that a copy of this document was emailed to the person(s) listed below on January 14th, 2015.

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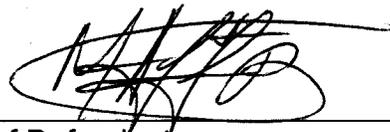
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Signature of Defendant
Mario Jimenez, M.D.

Pro Se

12901 SW 66 Terrace Drive, Miami, FL 33183

VERIFICATION

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

BEFORE ME personally appeared Mario Jimenez who, being by me first duly sworn and identified in accordance with Florida law, deposes and says:

1. I have read the allegations of fact contained in the foregoing VERIFIED MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, and each is true and correct.

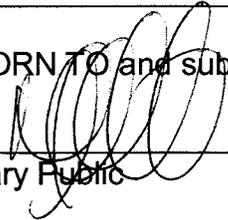
2. This affidavit is given under penalties of perjury.

FURTHER THE AFFIANT SAYETH NAUGHT.



Mario Jimenez, M.D.

SWORN TO and subscribed before me this 13 day of January 2015.



Notary Public

