

Case Summaries – June 2017 BHBA Luncheon

Kindred Nursing Centers, L.P. v. Clark, 581 U.S. ____ (2017)(filed May 15, 2017)

Family members signed nursing home paperwork on behalf of their incapacitated relatives pursuant to powers of attorney. The nursing home paperwork included arbitration agreements providing that any claims arising from a relative's stay would be resolved by binding arbitration. Following the deaths of the incapacitated relatives, the family filed suits against Kindred alleging that Kindred's substandard care cause the deaths. Kindred moved to dismiss the suits. The trial court and the Kentucky Court of Appeals ruled that the suits could proceed. The Kentucky Supreme Court held that one power of attorney was valid and the other was not, but that neither arbitration agreement was valid because a power of attorney could not entitle a representative to enter into an arbitration agreement without specific authorization. The Kentucky Supreme Court explained that the Kentucky Constitution protects the right of access to the courts and trial by jury as "sacred" and "inviolable." Accordingly, the Kentucky Supreme Court held that an agent may only deprive a principal of the right to a trial by jury if the power of attorney expressly so provided.

The matter was appealed to the U.S. Supreme Court. The Supreme Court held that the Kentucky Supreme Court "clear-statement rule" violates the Federal Arbitration Act by singling out arbitration agreements for disfavored treatment. The Supreme Court ruled that the Kentucky Supreme Court must enforce one of the arbitration agreements because it was executed under a valid power of attorney. The Supreme Court remanded as to other estate for determination of whether the power of attorney was truly invalid or whether the court's ruling was influenced by "the state court's erroneous, arbitration-specific rule."

Grappo v. McMills, No. A147522 (Cal. Ct. App. May 23, 2017)

A default judgment was entered against Kenneth McKean, after he died, after the petitioner, Donald Grappo, filed two complaints that were not properly pled.

Respondent Aubrey Cambra, the trustee of McKean's trust, learned of the default judgment when a creditor's claim was made against McKean's estate. Cambra filed a motion to vacate and set aside the default judgment. Grappo opposed, Cambra replied and the matter came on for hearing in the same trial court which had entered the default. After a lengthy hearing, the trial court entered a comprehensive order vacating the judgment as to McKean. Grappo appealed the order, and the Court of Appeal affirmed the trial court's order, stating "And we publish the opinion, to remind trial courts that however burdened they be, they must vigilantly attend to their duty in connection with the default process, to act as gatekeeper, ensuring that only the appropriate claims get through. Grappo's claim here should not have gotten through, the default judgment never entered in the first place." [*Citations omitted*].