

Mediation Remains Confidential in California

On July 21, 2008, the California Supreme Court confirmed for the third time that, in matters within the jurisdiction of California state courts, mediated in accordance with California law, confidential means confidential.

Simmons vs. Ghaderi (2008) 44 Cal.4th 570, concerns the mediation of a medical malpractice suit. During mediation, the defendant's medical malpractice insurance provider arrived at settlement terms with plaintiffs, which terms were orally accepted by the plaintiffs and placed in a written settlement agreement for the parties to sign. The defendant, however, revoked her consent to settle and left mediation without signing the settlement agreement.

In opposing plaintiffs' Code of Civil Procedure section 664.6 motion to enforce what they contended was an oral settlement reached in mediation, the defendant argued that no enforceable settlement was reached because she had not signed the written settlement agreement and had withdrawn her consent to settlement. But the defendant did not object to consideration of the evidence of what had occurred in mediation. The trial court denied plaintiffs' motion to enforce settlement, finding that the requirements of CCP section 664.6 had not been met, but suggested that, alternatively, an enforceable oral contract may have been reached during mediation.

At the trial of what was limited to the defendant's alleged breach of an oral settlement agreement reached during mediation, the defendant did object that the mediation confidentiality statutes precluded plaintiffs from proving the existence of an oral settlement agreement. Plaintiffs' evidence of what had occurred at mediation, however, was admitted over the defendant's objection and the trial court concluded that plaintiffs and defendant's agent had, indeed, entered into a valid, enforceable oral contract before the defendant withdrew her consent. The Court of Appeal affirmed the trial court's judgment, finding that the defendant was estopped from asserting mediation confidentiality by her own failure to object and her use in pretrial motions of the evidence of what had occurred during mediation.

In reversing this decision, the California Supreme Court unanimously found that the Court of Appeal had improperly relied on the doctrine of estoppel to create a judicial exception to the statutory requirements of confidentiality in mediation proceedings. Agreeing with the Court of Appeal's dissenting opinion that this case is more accurately described as an implied waiver by conduct case, than an estoppel case, and finding that implied waiver does not apply to mediation confidentiality, the Supreme Court held, unambiguously, that:

“Here, the mediation confidentiality statutes made inadmissible all evidence of an oral contract between plaintiffs and defendant during mediation.”

Simmons 44 Cal.4th at 588.

In California, confidential means confidential.

See Simmons vs. Ghaderi [here](#).

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