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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

CHRISTINE MENDIOLA,

Plaintiff and Appellant,

v.

CRESTWOOD BEHAVIORAL HEALTH, INC.,

Defendant and Respondent.

C082345

(Super. Ct. No. 34-2013-
00147943-CU-WT-GDS)

Plaintiff Christine Mendiola worked with mentally ill residents in a locked facility at defendant Crestwood Behavioral Health, Inc. (Crestwood). One of the residents violently assaulted her. Mendiola brought suit against Crestwood for assault, battery, fraudulent inducement and misrepresentation, unlawful business practices (Bus. & Prof. Code, § 17200), and other claims. She appeals from a judgment of dismissal, contending her fraud allegations are not subject to the exclusive remedy of workers' compensation. She further contends the trial court erred in granting summary adjudication on her assault claim, because she presented a triable issue as to whether Crestwood ratified the

resident's conduct.¹ We find the alleged misrepresentations and concealments about workplace safety fall within the exclusive remedy of workers' compensation and Mendiola presented no facts to support a finding of ratification. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

First Amended Complaint

Mendiola's first amended complaint alleged as follows. She was hired by Crestwood in March 2009 as a team leader. She understood she would be working with clients who were chronically mentally ill but stable. Crestwood concealed that a large portion of the residents had pending felony charges or significant criminal histories. In February 2011, she transitioned to the Dream House program, a physically separate, locked facility intended to offer a more independent learning environment in a less restrictive manner. The residents of Dream House were a smaller group with higher functioning and more stability. Mendiola's job was presented as administering service plans, assisting and charting recovery plans, holding team meetings, and assisting with independent living skills for transitioning to the community. Instead, she was required to perform the duties of a mental health worker, which included monitoring clients when not in a group, crisis intervention, and managing assaultive, disruptive, and suicidal clients.

On July 11, 2011, Mendiola was working the night shift and monitoring three clients on the patio during a smoke break. One of the clients required "line of sight" observation and Mendiola was the only staff member on the patio (a line of sight observation requires a staff member to be assigned to that particular client and only that client in order to keep an eye on him at all times). Another client (Resident G) became

¹ Crestwood did not file a respondent's brief as required by California Rules of Court, rule 8.212(a)(2). (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 719, p. 787 [duty of respondent to assist court on appeal].) We will decide the appeal on the record, the opening brief, and oral argument by the appellant. (Cal. Rules of Court, rule 8.220(a)(2).)

agitated, pacing and yelling in Spanish. When she tried to calm him, he turned his agitation towards her. She tried to call for help on a walkie-talkie, but Resident G knocked it out of her hand. He assaulted her, bashing her head against the cinder blocks and throwing her to the ground. For seven minutes she yelled for help. Finally, she directed another client to call for help on her walkie-talkie. That client pulled Resident G off Mendiola before help came.

Resident G had been admitted to Crestwood under a Murphy conservatorship with pending assault and battery charges.² He had been found incompetent to stand trial. Crestwood also knew that Resident G had a history of attacking women. Crestwood kept this information from staff.

Crestwood had failed to provide to appropriate authorities the proper notice of Resident G's change of placement to Dream House so someone could object. Resident G had failed to meet his treatment goals and refused to participate in activities. He spoke only Spanish and Mendiola did not understand Spanish. There was no interpreter provided to facilitate communication with him. Crestwood failed to report the attack to the Department of Mental Health, its successor the Department of Social Services, or the county's mental health director.

Mendiola has been unable to work since the attack.

² A Murphy conservatorship is a conservatorship imposed on one who “ ‘has been found mentally incompetent under Section 1370 of the Penal Code and all of the following facts exist: [¶] (i) The indictment or information pending against the defendant at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person. [¶] (ii) The indictment or information has not been dismissed. [¶] (iii) As a result of mental disorder, the person is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner’ ([Welf. & Inst. Code,] § 5008, subd. (h)(1)(B)).” (*People v. Karriker* (2007) 149 Cal.App.4th 763, 775.)

The first amended complaint contained claims for assault, battery, wrongful termination, fraud, violation of the Unruh Civil Rights Act (Civ. Code, § 51.7), and unfair business practices. It alleged Crestwood was responsible for the attack because it had knowingly and intentionally put Mendiola in a position to be assaulted, violated the law, and condoned and ratified the attacker's conduct. The fraud claim alleged fraudulent inducement to cause Mendiola to enter into employment and later to accept the position at Dream House, and concealment and misrepresentation as to whether Crestwood followed the law, the nature of its clients, and the nature of Mendiola's job.

The complaint sought damages "as a direct result of the assault," for "physical injuries, emotional distress, past and future lost wages and benefits of employment, other economic damages, special and/or incidental damages, and pre and post judgment interest" and punitive damages.

Motion for Summary Adjudication

Crestwood moved for summary adjudication as to all claims. It asserted workers' compensation was the exclusive remedy as to the assault and battery, and there was no triable issue of material fact as to the remaining claims. Crestwood provided documentation that Mendiola had acknowledged in writing that the job required the management of assaultive, disruptive, or suicidal clients.

In opposition, Mendiola argued Crestwood ratified the attack by failing to file an unusual occurrence report afterwards, not hiring translators or adequate staff, and not changing any of its policies after the attack. In her deposition, Mendiola testified she was not made aware of which clients were under a Murphy conservatorship and she had problems communicating with Resident G.

In a declaration, Mendiola stated she would not have accepted a position with Crestwood if she had known the truth. In late 2010 or early 2011, she approached management and indicated she was thinking of leaving Crestwood because the job was too stressful and she had been injured three times. She was offered a position as service

coordinator in Dream House, with no hands-on management or containment of residents. She would not have accepted this position had she known the truth. According to her doctor, she was not to have direct contact with severely mentally ill patients.

The trial court (Brown, J.) granted the motion for summary adjudication in part. The court found workers' compensation was the exclusive remedy for the claims of assault and battery. It found no evidence of ratification. "Ratification does not apply because Resident G was not an agent of Crestwood and ratification applies only to the acts of agents." The court found no triable issue of fact as to wrongful termination because Mendiola's doctor would not release her to return to work at Crestwood.

The court denied the motion as to the fraud claim. Focusing on the allegations of Mendiola's declaration concerning her move to the Dream House, the court found triable issues of fact as to fraudulent inducement. For the same reasons, the court denied summary adjudication of the unfair business practices claim.

Motions in Limine

Crestwood filed two motions in limine to exclude certain evidence. The first sought to exclude all evidence of allegedly fraudulent statements and misrepresentations about workplace safety. It asserted the trial court had no subject matter jurisdiction over any claims based on such evidence because a civil action was barred by the exclusive remedy of workers' compensation set forth in Labor Code section 3602. The second motion in limine sought to exclude evidence of damages. It claimed that because Mendiola sought damages solely from the assault, the exclusive remedy of workers' compensation deprived the court of subject matter jurisdiction.

In response, Mendiola filed a motion in limine to exclude evidence and argument concerning workers' compensation preemption.

The parties agreed that the trial court (Wood, J.) should resolve two questions prior to trial: 1) "Assuming that the statements and concealments alleged to be fraud and misrepresentation by plaintiff are true, are plaintiffs fraud claims precluded by the

Workers' Compensation Act?" and 2) "Are the losses alleged by plaintiff precluded by the Workers' Compensation Act?"

The parties submitted additional briefing on these questions. Crestwood relied on *Spratley v. Winchell Donut House, Inc.* (1987) 188 Cal.App.3d 1408 (*Spratley*), which held a claim for injuries based on intentional misrepresentations as to workplace safety intended to induce the employee to accept employment is subject to the exclusive remedy rule. Crestwood argued the gist of all the alleged misrepresentations was whether Dream House was a safe place to work.

Mendiola argued that fraud was not covered by workers' compensation, relying in part on a statement the court had made during its ruling on the motion for summary judgment. She questioned the continued viability of *Spratley* in light of later cases. She contended her fraud claims covered more than workplace safety; she also alleged fraudulent misrepresentations as to the nature of her job duties.

The trial court ruled that *Spratley* controlled and dismissed the action for lack of subject matter jurisdiction.

DISCUSSION

I

Propriety of Resolving Case by Motions in Limine

Mendiola contends the trial court employed an improper procedure to resolve this case. She asserts it was error to determine the exclusivity of the workers' compensation remedy by way of motions in limine. She contends this improper use of motions in limine removed the protections afforded by the summary adjudication procedure. She further argues that granting Crestwood's motions overruled a previous ruling made during the ruling on the motion for summary adjudication.

We recognize that courts have disapproved the use of a motion in limine as a substitute for a motion for summary adjudication. "I realize that it is not uncommon to bring motions for judgment on the pleadings, for summary judgment, and for summary

adjudication of issues in the guise of motions in limine. But, particularly in the latter cases, this practice removes all the protections afforded by the statute which prescribes the manner in which the court must handle such motions. To have the sufficiency of the pleading or the existence of triable issues of material fact decided in the guise of a motion in limine is a perversion of the process.” (*R & B Auto Center, Inc. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327, 371 (conc. opn. of Rylaarsdam, J).)

However, we find no prejudicial error in the procedure used here. First, “In spite of the obvious drawbacks to the use of in limine motions to dispose of a claim, trial courts do have the inherent power to use them in this way. [Citations.] Courts have inherent power, separate from any statutory authority, to control the litigation before them and to adopt any suitable method of practice, even if the method is not specified by statute or by the Rules of Court. [Citations.]” (*Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1595.) Second, Mendiola has failed to show any prejudice from the procedure used; she fails to identify any procedural protection she lacked. We cannot reverse a judgment of dismissal due to alleged procedural error unless that ruling resulted in a miscarriage of justice. (*K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939, 952 (*K.C. Multimedia*); see Cal. Const., art. VI, § 13.)

Mendiola contends that although Crestwood did not raise the exclusive remedy of workers’ compensation as a defense to the fraud claims in its motion for summary adjudication, the trial court specifically addressed the issue during its ruling on the motion and found the fraud claims were not barred. We disagree that the trial court ruled on this issue during the motion for summary adjudication.

First and foremost, the trial court *did not address* the issue of subject matter jurisdiction in ruling on the motion for summary adjudication; Crestwood did not raise the issue. In ruling on the motion for summary adjudication, the trial court began its discussion of the fraud claim with case law. “The Legislature never intended that an

employer's fraud be encompassed within the risk of employment. (*Ramey v. General Petroleum Corp.* (1959) 173 Cal.App.2d 386, 402-403 ['[W]e do not believe that an injury caused by the employer's fraud arises out of the employment nor is it proximately caused by the employment as those terms are used in the statute'], cited with approval in *Johns-Manville Products Corp. v. Superior Court* (1980) 27 Cal.3d 465, 475-476; see also *Piscitelli v. Friedenbergl.* (2001) 87 Cal.App.4th 953, 987-988.)”

The trial court then found Crestwood had failed to address the allegations concerning Crestwood's misrepresentations regarding Dream House and the nature of Mendiola's job there. The court found Crestwood failed to carry its burden on summary adjudication. There was no discussion of the exclusive remedy or the *Spratley* case. The court did not find that Mendiola's fraud claims were barred by the exclusive remedy of workers' compensation.

Where the trial court determines the factual allegations of the pleading do not support relief, our review is de novo. (*K.C. Multimedia, supra*, 171 Cal.App.4th at p. 952.) We thus proceed to review anew whether the fraud claims were barred.

II

The Fraud Claims and the Exclusive Remedy of Workers' Compensation

Mendiola contends the exclusive remedy of workers' compensation does not apply to the fraud claims. She argues that an employer's fraudulent statements to an employee who has already been injured and seeks to avoid further injury are not a normal part of the compensation bargain.

“California's Workers' Compensation Act (Lab.Code, § 3600 et seq.) provides an employee's exclusive remedy against his or her employer for injuries arising out of and in the course of employment.” (*Wright v. State of California* (2015) 233 Cal.App.4th 1218, 1229.) Labor Code section 3602, subdivision (a), provides that, as a general matter, where the statutory conditions for compensation under the Workers' Compensation Act “concur, the right to recover such compensation is [with enumerated exceptions] . . . the

sole and exclusive remedy of the employee or his or her dependents against the employer.”

“[T]he legal theory supporting such exclusive remedy provisions is a presumed ‘compensation bargain,’ pursuant to which the employer assumes liability for industrial personal injury or death without regard to fault in exchange for limitations on the amount of that liability. The employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of industrial injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort.” (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 16.)

Whether the exclusive remedy of the workers’ compensation system in California applies to intentional torts, including fraud, is a “complicated” question. (*Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701, 709 (*Fermino*)). In *Johns-Manville Products Corp. v. Superior Court* (1980) 27 Cal.3d 465 (*Johns-Manville*), the plaintiff, an employee of an asbestos manufacturing company, contracted various diseases related to long-term exposure to asbestos. He claimed that his employer had intentionally harmed him in two respects. First, despite its knowledge that long term exposure to asbestos was dangerous to human health, it concealed that knowledge from him, advised it was safe to work near asbestos, failed to provide proper protective equipment, and knowingly violated government regulations relating to the dust level in the plant. Second, the employer willfully withheld medical information on the existence and cause of plaintiff’s asbestos-related diseases from the plaintiff’s physician. (*Id.* at p. 469.)

The court rejected the employee’s first claim, explaining: “It is not uncommon for an employer to ‘put his mind’ to the existence of a danger to an employee and nevertheless fail to take corrective action. [Citation.] In many of these cases, the employer does not warn the employee of the risk. Such conduct may be characterized as intentional or even deceitful. Yet if an action at law were allowed as a remedy, many cases cognizable under workers’ compensation would also be prosecuted outside that

system. The focus of the inquiry in a case involving work-related injury would often be not whether the injury arose out of and in the course of employment, but the state of knowledge of the employer and the employee regarding the dangerous condition which caused the injury. Such a result would undermine the underlying premise upon which the workers' compensation system is based." (*Johns-Manville, supra*, 27 Cal.3d at p. 474.)

The court found the second claim was not barred, recognizing "a trend toward allowing an action at law for injuries suffered in the employment if the employer acts deliberately for the purpose of injuring the employee or if the harm resulting from the intentional misconduct consists of aggravation of an initial work-related injury." (*Johns-Manville, supra*, 27 Cal.3d at p. 474.)

"[T]he proposition that intentional or egregious employer conduct is necessarily outside the scope of the workers' compensation scheme is erroneous." (*Livitsanos v. Superior Court* (1992) 2 Cal.4th 744, 752. In *Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, our Supreme Court found a claim against an employer for intentional infliction of emotional distress was barred by workers' compensation.

"[W]hen the misconduct attributed to the employer is actions which are a normal part of the employment relationship, such as demotions, promotions, criticism of work practices, and frictions in negotiations as to grievances, an employee suffering emotional distress causing disability may not avoid the exclusive remedy provisions of the Labor Code by characterizing the employer's decisions as manifestly unfair, outrageous, harassment, or intended to cause emotional disturbance resulting in disability." (*Id.* at p. 160.) "If characterization of conduct normally occurring in the workplace as unfair or outrageous were sufficient to avoid the exclusive remedy provisions of the Labor Code, the exception would permit the employee to allege a cause of action in every case where he suffered mental disability merely by alleging an ulterior purpose of causing injury. Such an exception would be contrary to the compensation bargain and unfair to the employer." (*Ibid.*)

In *Fermino, supra*, 7 Cal.4th 701, the court considered whether an employee's action against her employer for false imprisonment was barred by the exclusive remedy provisions of the workers' compensation law. In concluding the false imprisonment claim was not barred, the court stated the proper focus was "whether the conduct itself, concretely, is of the kind that is within the compensation bargain." (*Id.* at p. 718.) "When an employer forcibly and criminally deprives an employee of her liberty, even as a means to otherwise legitimate ends, it steps outside its 'proper role,' whether it uses assault and battery to enforce that false imprisonment, or employs some other coercive stratagem." (*Id.* at pp. 721-722.) As the court made clear, it was not suggesting "that regulatory crimes such as violations of health and safety standards or special orders are actions outside the normal course of employment. On the contrary, the Act includes such regulatory crimes within its scope. [Citations.] It is an expected part of the compensation bargain that industrial injury will result from an employer's violation of health and safety, environmental and similar regulations." (*Id.* at p. 723, fn. 7.)

In *Spratley, supra*, 188 Cal.App.3d 1408, the intentional tort at issue was fraudulent misrepresentation. Plaintiff alleged she did not wish to accept employment at the donut shop because she feared working alone at night where a burglary had recently occurred. To induce her to accept employment, defendant falsely and fraudulently told plaintiff it had changed the locks and would arrange for continuous security. A month later, plaintiff was assaulted while working alone at night. (*Id.* at p. 1410.) The court held the demurrer to the fraud claim was properly sustained. "Were we to hold this complaint states a claim in tort, an employee who is injured and suffers emotional distress due to an unknown or concealed hazard in the workplace could avoid the workers' compensation bar simply by alleging the employer misrepresented or fraudulently concealed the hazard during the hiring process. Such a result, as well, would invite a multiplicity of claims, focus attention on the knowledge of employer and

employee and undermine the underlying premise on which the workers' compensation system is based.” (*Id.* at pp. 1415-1416.)

The exclusive remedy of workers' compensation was found not to bar a claim of fraudulent inducement in *Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959. There, plaintiff left a secure job to work at defendant employer. He alleged that without defendant's misrepresentations about the company's financial position and his future with the company he would not have left his previous job. In finding the claim for emotional distress damages for fraudulent inducement were not barred by the exclusive remedy of workers' compensation, the court distinguished *Spratley*. “In contrast, Lenk's fraud claim does not involve a claim of misrepresentation concerning employee safety. Workplace safety is clearly an issue contemplated by the workers' compensation statutory scheme. It is a normal part of the employment relationship and a risk reasonably encompassed within the compensation bargain. On the other hand, misrepresentations related to the financial stability of a company, the company's future plans to relocate its operations, and the job applicant's promotion in the corporate ranks, all designed to induce employment, are not (we hope) a normal part of the employment relationship.” (*Id.* at p. 973.)

Mendiola's fraud claims are nearly identical to those in *Spratley* and are similar to the first claim that was barred in *Johns-Manville*. These claims, whether misrepresentation or concealment, all relate to workplace safety, “an issue contemplated by the workers' compensation statutory scheme” and “a risk reasonably encompassed within the compensation bargain.” (*Lenk, supra*, 89 Cal.App.4th at p. 973.)

Mendiola contends that *Spratley* is no longer good law in light of *Fermino* and *Lazar v. Superior Court* (1996) 12 Cal.4th 631, which recognized, in the termination of employment context, a cause of action for fraudulent inducement of employment

contract.³ We disagree. *Spratley* relied on *Johns-Manville* and *Cole*. (*Spratley, supra*, 188 Cal.App.3d at pp. 1413, 1415.) *Fermino* cited both cases at length and distilled from them the rule that a civil action may be brought where the employer’s intentional conduct is “beyond the boundaries of the compensation bargain.” (*Fermino, supra*, 7 Cal.4th at pp. 711-714.) *Spratley* is consistent with *Fermino*’s directive to focus on whether the conduct at issue “is of the kind that is within the compensation bargain.” (*Id.* at p. 718.) As *Johns-Manville*, *Spratley*, and *Lenk* all recognize, statements, even misrepresentations, about workplace safety are within the compensation bargain.

Mendiola further contends that even if this court follows *Spratley*, the trial court erred in holding that *all* of her fraud claims were barred. Mendiola argues Crestwood made other misrepresentations besides those related to workplace safety. Crestwood also misrepresented the nature of Mendiola’s job, as well as the nature of the program and residents at Dream House. These alleged misrepresentations, however, all relate to workplace safety. Mendiola claims Crestwood misrepresented the danger posed by the residents of Dream House and her exposure to danger due to the level of contact she would have with the residents. Mendiola’s claims for damages are based on the assault.

The trial court did not err in finding Mendiola’s fraud claim and unfair business practice claim, which was based on fraud, were barred by the exclusive remedy of workers’ compensation.

III

Ratification of the Assault

Mendiola contends the trial court erred in granting summary adjudication on the claims of assault and battery because she presented evidence that Crestwood ratified the attack. She contends the trial court erred in stating that ratification did not apply because

³ *Lazar* did not address the issue of the exclusive remedy of workers’ compensation.

Resident G was not the agent of Crestwood. She asserts the issue of ratification was a factual question for the jury.

The exclusive remedy of workers' compensation does not apply "[w]here the employee's injury or death is proximately caused by a willful physical assault by the employer." (Lab. Code, § 3602, subd. (b)(1).) Where the employer ratifies the assailant's conduct, the exclusivity doctrine does not apply. (*Hart v. National Mortgage & Land Co.* (1987) 189 Cal.App.3d 1420, 1432; see also Civ. Code, § 2307 ["An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification"].)

In *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1112, plaintiff sufficiently pleaded a claim of ratification with allegations that defendant, with knowledge of the employee's misconduct, continued to employ him and destroyed documents evidencing the misconduct. In *Herrick v. Quality Hotels, Inns & Resorts, Inc.* (1993) 19 Cal.App.4th 1608, an employee threatened plaintiff, a co-employee, with a gun. There was sufficient evidence to uphold the finding that the employer ratified this conduct where the employer knew the employee carried a gun and had previously assaulted someone at work, the supervisor called plaintiff and begged him to forgive the employee, and the employee was later promoted. (*Id.* at p. 1618.)

Mendiola contends there was sufficient evidence of ratification for the issue to go to the jury. Her ratification argument is based on evidence that Crestwood failed to file an unusual occurrence report with the appropriate authorities, blamed Mendiola for the attack, failed to take any corrective actions such as increased staffing or proper screening of residents, and accepted the benefits of the lack of accountability.

"Ratification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done on his behalf by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him. [Citations.] [¶] A purported agent's act may be adopted expressly or it may be adopted

by implication based on conduct of the purported principal from which an intention to consent to or adopt the act may be fairly inferred, including conduct which is ‘inconsistent with any reasonable intention on his part, other than that he intended approving and adopting it.’ [Citations.]” (*Rakestraw v. Rodrigues* (1972) 8 Cal.3d 67, 73.)

“[A]n agent’s originally unauthorized act may be ratified by implication where the only reasonable interpretation of the principal’s conduct is consistent with approval or adoption. [Citation.] For example, an employer’s failure to discharge an employee after learning of the employee’s misconduct may be evidence of ratification.” (*Allied Mutual Ins. Co. v. Webb* (2001) 91 Cal.App.4th 1190, 1194.) “The theory of ratification is generally applied where an employer fails to investigate or respond to charges that an employee committed an intentional tort, such as assault or battery. [Citations.] Whether an employer has ratified an employee’s conduct is generally a factual question. (*Baptist v. Robinson* (2006) 143 Cal.App.4th 151, 169-170.)

Mendiola’s evidence of ratification is insufficient to show Crestwood intended to approve and adopt Resident G’s actions. After the assault, the police arrested Resident G and he was charged with felony assault. Thus, the investigation and discipline of the assailant was taken over by the criminal justice system. There is no evidence that Crestwood did anything to prevent the arrest or interfere with that process. At worst, Crestwood’s actions and omissions show an intent to avoid liability. That is a far cry from “ ‘approving and adopting it.’ ” (*Rakestraw v. Rodrigues, supra*, 8 Cal.3d at p. 73.)

The trial court did not err in granting Crestwood’s motion for summary adjudication on the assault and battery claims.

DISPOSITION

The judgment is affirmed. Mendiola shall bear her costs on appeal. (Cal. Rules of Court, rule 8.278.)

/s/
Duarte, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Nicholson, J.