

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

Case No. ADJ7460457

JAVIER DEL BOSQUE,

Applicant,

vs.

MELMARC PRODUCTS INC;
INSURANCE CO OF THE WEST SAN
DIEGO;

Defendants.

FINDINGS AND ORDERS

The above entitled matter having been heard and regularly submitted, the Honorable Cassandra Stajduhar, Workers' Compensation Judge, now decides as follows:

EVIDENTIARY RULINGS

1. The Amended Pre-Trial Conference Statement filed by Lien Claimant True Scan Copy is accepted for consideration by the court;
2. Exhibits 24, 25, 26, and 29 are admitted into evidence;

FINDINGS OF FACT

3. Lien Claimant True Scan Copy has failed to set forth a good cause as to why its lien should not be dismissed for its failure to appear at the time of lien trial on July 5, 2014;
4. The Defendant has not violated Labor Code section 5813;
5. Lien Claimant True Scan Copy has violated Labor Code section 5813 entitling the Defendant to recover costs;

ORDERS

IT IS ORDERED that

- a. the lien of True Scan Copy be DISMISSED, with prejudice;
- b. Defendant Insurance Company of the West, San Diego, is entitled to recover costs of \$5,266.70 from Lien Claimant True Scan Copy, payable within thirty days of service of this Order.

DATE: October 13, 2017

Cassandra V. Stajduhar

Cassandra Stajduhar
WORKERS' COMPENSATION JUDGE

Served by mail on all parties listed on the
Official Address record on the above date.

On: October 13, 2017

By:

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appear was “unfortunate and clearly isolated.” (*Id.* at 3:13-16.) The objection was not verified or supported by affidavit(s) or other evidence.

On April 25, 2013, the defendant filed an Reply to the objection of True Scan, stating:

Here, True Scan makes no assertion or no explanation as to why it failed to appear for a properly noticed lien trial. True Scan admits that it had proper notice and simply failed to appear. That is where the analysis ends. True Scan fails to identify the lien representative to whom the trial was assigned, fails to produce any affidavit or anything else from the lien representative or any of its office staff as to who and when they conveyed the trial information to and fails to include an attorney affidavit specifying the full particulars of the supposed "excusable neglect" in failing to appear for the trial.

True Scan never checked the court web site to confirm the trial date, never contacted any of the other parties or the defense to confirm the trial date or to discuss potential settlement of the lien claim prior to the trial and took no other steps other than a phone call to a hearing representative. Clearly, these are not sufficient grounds to avoid a dismissal of the lien.

Under 8 CCR § 10562(e) "Where a lien claimant served with a notice of trial fails to appear the Workers' Compensation Judge may: (1) Dismiss the lien claim after issuing a ten- day notice of intention to dismiss with or without prejudice, or (2) Hear the evidence and after service of the Minutes of Hearing and Summary of Evidence that shall include a ten-day Notice of Intention to Submit make such decision as is just and proper, or (3) Defer the issue to the lien and submit the case on the remaining issues." In this case, the Workers' Compensation Judge ordered the dismissal of the lien and additionally heard the case on the merits for the other lien claimants. This resulted in a Findings and Award whereby all defendants were found not liable for any of the lien claimants who participated in the trial.

Here, True Scan fails to explain how a new trial on its lien, given the same facts as already tried to a Findings and Award, would have a different result.

Lastly, should the Court entertain that True Sean's lien dismissal be set aside, then the Court should also order True Scan to pay reasonable attorney's fees, costs and expenses in having to conduct a second trial simply for True Scan's lien. This request is made pursuant to Labor Code § 5813 and is well supported by the grounds set forth in 8 CCR§ 10561.

(Id. at 2:8-3:6.)

It is further noted, that a review of the underlying case-in-chief shows the applicant claimed an industrial injury to his wrist at the time of his termination from employment. (Exhibit D.) He was referred to the industrial clinic the same day and was diagnosed with a wrist strain. (Exhibit J.) There is no evidence of a delay or denial of care by the defendant. After a trial, it was found the applicant suffered a simple wrist strain and was not entitled to temporary or permanent disability. (Findings and Order dated October 12, 2011.) At the time of the lien trial, other copy services, namely Med Legal and Supreme Copy, accepted \$50 and \$300, respectively, in full and final satisfaction of their liens.

No further action was taken on the file until July 29, 2016 when lien claimant True Scan filed a Declaration of Readiness to Proceed [DOR] to a Status Conference. True Scan asserted the following as its specific, good faith efforts to resolve its dispute: “True Scan Bel Air is requesting WCAB assistance to verify lien status.” The DOR was signed by “Karla Chacon.”

At the time of hearing on November 8, 2016, the WCJ discussed the status of the matter with the parties. The defendant renewed its original reply to the lien claimant’s objection to the Notice of Intent to Dismiss Lien and further stated they intended to seek costs and sanctions from the lien claimant for having filed for a status conference without making any good faith efforts to contact the court of the defendant to determine the status of its lien. The court observed that even if it vacated the underlying Notice of Intent to Dismiss Lien, the defendant would likely be entitled to costs associated with having to re-litigate the case that had already proceeded to lien trial. It was further observed that because the liens of other copy services that may have provided duplicative services were resolved at the time of the original lien trial, it would be difficult to determine if the services provided by True Scan were duplicative of those provided by the other lien claimants in the case. The defendant and lien claimant discussed the matter and the parties reappeared before the undersigned—the defendant informally agreed to forgo filing a further cost petition and the undersigned ordered the lien claimant’s lien dismissed. It is noted that three different hearing representatives signed in for the lien claimant True Scan at the time of hearing.

On November 26, 2016 a Petition for Reconsideration was filed by True Scan in which it stated:

The Petitioner sent its Lien Representative Debbie Ketchens to Status Conference on November 8, 2016. Inexplicably, the WCALJ Cassandra Stajduhar issued an order to dismiss True Scan's lien. There was no explanation or rationale given as to why True Scan's lien was Order to be dismissed. The Petitioner and Lien Claimant, True Scan, respectfully disagrees with the Order, and through the instant Petition requests that reconsideration be granted and the Order Dismissing the Lien be rescinded, withdrawn and/or vacated.

(Id. at 4:10-15.) The Order Dismissing Lien was vacated and the case was reset for a Lien Conference.

On May 4, 2017, the case came on for Lien Conference. The status of the case was discussed with the parties. The hearing representative, David Reyes, indicated his client refused to give him authority to withdraw the lien at issue and Mr. Reyes requested the court indicate on the Minutes of Hearing he was withdrawing his appearance on behalf of True Scan. The defendant completed a Pre-Trial Conference Statement and the undersigned ordered "Alfredo Garcia" to appear at the time of trial as Mr. Garcia was identified by Mr. Reyes as the party who had authority to act on behalf of True Scan.

The lien claimant filed an Amended Pre-Trial Conference Statement on May 15, 2017.

The case came on for hearing on July 17, 2017 on the following issues:

1. Lien of True Scan Copy, namely, the objection by True Scan to the Notice of Intent to Dismiss originally issued by Workers' Compensation Judge Carero dated February 5th, 2013 and the objection to said Notice of Intent dated March 8, 2013.
2. Defendant further raises cost and sanctions per Labor Code 5813.

The Court sua sponte raises the issue of:

3. Labor Code section 4903.05(c); and,

4. Whether the amended Pre-trial Conference Statement and exhibit list of True Scan filed May 15, 2017 should be taken into consideration by the Court in which True Scan raises Labor Code section 5813 sanctions and costs and their lien for med/legal services with a balance of \$3,985.54.

At the time of hearing, the court requested True Scan—whose principal, Alfredo Garcia, was present pursuant to this court’s order, provide the court with a duly authorized Notice of Representation authorizing the hearing representative who was present, Debbie Ketchens, to appear on behalf of True Scan. The Notice of Representation filed with the court fails to comply with the requirements of 8 CCR 10774.5—*inter alia*, it fails to set forth an address for the hearing representative and is not countersigned by a representative for True Scan—nonetheless, it is noted that it does state that Ms. Ketchens’ representation began on July 14, 2017 and that “I am not aware of any other attorney or non-attorney who previously represented Lien Claimant, True Scan Copy Service.” (Notice of Representation filed July 17, 2017.)

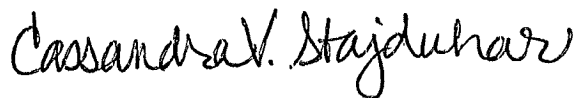
Findings

The undersigned finds that True Scan has failed to show good cause as to why its lien should not be dismissed for its failure to appear at the lien trial held in 2013. The hearing representative who completed the Pre-Trial Conference Statement on behalf of True Scan was present at the time of Trial but apparently did not appear on behalf of True Scan. Given the representative who previously appeared for the lien claimant was present at the time of trial, it is hard to understand how the case was miscalendered. In that circumstance, it is not reasonable to assume the Court of the defendant will track down whomever the lien claimant has decided ‘should’ appear for trial. This is particularly true where the lien claimant has failed to comply with the requirements of 8 CCR 10774.5 to duly authorize representatives to appear on their behalf. The objection to the Notice of Intent filed by the lien claimant is not supported by competent evidence setting forth good cause.

It is further held that True Scan’s actions in this case have been frivolous pursuant to Labor Code section 5813 and grants costs in the amount of \$5,266.70 as requested in the Final Petition for Costs and Sanctions of the defendant dated July 24, 2017.

The court further finds True Scan's lien was not dismissed by operation of law for failure to comply with Labor Code section 4903.05(c). Finally, having found True Scan failed to show good cause as to why its lien should not be dismissed, the acceptance of the Amended Pre-Trial Conference Statement is essentially immaterial to these proceedings; nonetheless, the Amended Pre-Trial Conference Statement is accepted by the court and the exhibits offered at the time of hearing are admitted into evidence. The undersigned notes the issues raised in the amended Pre-Trial Conference Statement are frivolous and further support the imposition of costs against the lien claimant.

DATE: October 13, 2017



Cassandra Stajduhar
WORKERS' COMPENSATION JUDGE

Served by mail on all parties listed on the
Official Address record on the above date.

On: October 13, 2017

By:



OFFICIAL ADDRESS RECORD

10-13-2017

Case Number: ADJ7460457

BRADFORD BARTHEL	Law Firm, 18801 VENTURA BLVD STE 200 TARZANA CA 91356
CASTRO ENTERPRISES INTERPRETING INC	Lien Claimant - Other, PO BOX 15595 IRVINE CA 92623
CENTRIC MED MGT	Law Firm, PO BOX 3600 PALMDALE CA 93590
EDD SDI LOS ANGELES	Lien Claimant, PO BOX 513096 LOS ANGELES CA 90051
INDUSTRIAL PHARMACY	Lien Claimant - Other, PO BOX 515808 LOS ANGELES CA 90051
INSURANCE CO OF THE WEST SAN DIEGO	Claims Administrator, PO BOX 509039 SAN DIEGO CA 92150
JAVIER DEL BOSQUE	Injured Worker, 1884 MONROVIA AVE #20 COSTA MESA CA 92627
MED LEGAL PHOTOCOPY	Lien Claimant - Other, PO BOX 1288 WEST COVINA CA 91793
MELMARC PRODUCTS INC	Employer, 4040 WEST CARRIAGE DRIVE SANTA ANA CA 92627
PRIME MEDICAL RESOURCES INC	Lien Claimant - Other, PO BOX 801090 SANTA CLARITA CA 91380
PROSPICE MEDICAL CTR	Lien Claimant - Other, PO BOX 25551 SANTA ANA CA 92626
RIVERSIDE DEPARTMENT CHILD SUPPORT SERVI	Lien Claimant - Other, 2041 IOWA AVE RIVERSIDE CA 92501
SOUTHLAND SPINE AND REHAB MEDICAL CENTER	Lien Claimant - Other, 1520 NUTMEG PL STE 240 COSTA MESA CA 92626
SUPREME COPY SERVICES	Lien Claimant - Other, P O BOX 2849 VAN NUYS CA 91404
THE NIELSEN FIRM	Law Firm, 3250 WILSHIRE BLVD STE 1510 LOS ANGELES CA 90010
TRUE SCAN LEGAL COPY	Lien Claimant , 2934 1/2 BEVERLY GLEN CIR STE 515 LOS ANGELES CA 90077

I am over age 18, not a party to this proceeding and I am employed by the State of California, DWC Los Angeles District Office, located at 320 W. 4th Street, Los Angeles, CA, 90013.

On **10/13/2017**, I deposited in the United States mail at 320 W. 4th Street, Los Angeles, CA, 90013, a sealed envelope containing a copy of **Findings and Orders & Opinion on Decision**, with postage fully paid, addressed **to the parties listed above**. *"I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct."*



Adriana Romero