



IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

SHADOW MOUNTAIN
BEHAVIORAL HEALTH SYSTEM, LLC

Plaintiff,

v.

DEE ANN PAISLEY,

Defendant.

DISTRICT COURT
FILED

NOV - 1 2017

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

Case No
CJ-2017-04551

DAMAN CANTRELL

PETITION

Plaintiff, Shadow Mountain Behavioral Health System, LLC (“Shadow Mountain Hospital”), for its Petition against the Defendant, Dee Ann Paisley (“Paisley”), alleges and states as follows.

1. Shadow Mountain is a Delaware limited liability company licensed to conduct business in Oklahoma with facilities in Tulsa County, Oklahoma.
2. On information and belief, at all times from the filing of this action through and including the present, Paisley is and has been a resident and citizen of Tulsa County, Oklahoma.
3. Venue is proper because Paisley resides in Tulsa County and the actions of wrongdoing occurred in Tulsa County.

Statement Of The Claim

Shadow Mountain Hospital

4. Shadow Mountain Hospital owns and operates the Shadow Mountain Hospital and Behavioral Health Assessment Center in Tulsa. Shadow Mountain Hospital provides care to distressed children and adolescents in acute crisis and in need of inpatient care because of the

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risk of harm to self or others. Shadow Mountain Hospital is a 108-bed facility that also offers compassionate residential care. Shadow Mountain Hospital's campus is located on 27 acres and includes classrooms, a gymnasium, a playground, a football field, a dining room and multiple courtyards.

5. Shadow Mountain Hospital is licensed and supervised by many State of Oklahoma Authorities including the Oklahoma State Department of Health, the Oklahoma Department of Human Services, the Oklahoma Department of Mental Health and Substance Abuse Services, and the Oklahoma Health Care Authority. As all health care facilities in Oklahoma, Shadow Mountain Hospital is subject to regular review and inspection by those regulatory agencies.

6. Shadow Mountain Hospital's license is, and at all times has been, in good standing.

7. Shadow Mountain Hospital is fully accredited by The Joint Commission. From 2011-2015, Shadow Mountain Hospital was named a Top Performer on Key Quality Measures® by The Joint Commission. TJC bestows this recognition only to facilities that attain excellence based on measured performance.

8. Based upon most recent surveys, Shadow Mountain is in compliance with Medicare/Medicaid Conditions of Participation.

9. Many adolescent patients come to Shadow Mountain Hospital for significant and complex behavioral, emotional, and mental health issues.

10. Shadow Mountain Hospital has utilized several methods to monitor and protect against patient abuse. This includes, for example, utilizing surveillance cameras and employing persons to act as Patient Advocates.

11. Shadow Mountain Hospital's surveillance videos are electronically stored on Shadow Mountain Hospital's computer network, properly secured and accessible only to employees.

12. Shadow Mountain Hospital's patient records are also electronically stored on Shadow Mountain Hospital's computer network.

13. All patient records are protected under HIPAA, in compliance with all regulations.

Paisley Becomes an Employee of Shadow Mountain Hospital

14. Paisley became employed as a Patient Advocate by Shadow Mountain Hospital on February 11, 2013, and remained employed until she voluntarily resigned on April 15, 2016.

15. As an employee, Paisley was given, and signed to acknowledge having received, several documents articulating agreements between the parties, and/or Shadow Mountain Hospital's policies, including for example:

- An Employee Handbook;
- A Worker & Proprietary Confidentiality Protected Health Information Agreement;
- A Standards of Conduct policy;
- An Integrity Agreement;
- An Employee Agreement to Report Abuse, Neglect & Mistreatment or Concerns Regarding Quality of Care;
- A Professional Ethics Agreement;
- A Company Property Agreement;
- A HIPAA Acknowledgement;
- A policy (9.1) regarding Facility Surveillance Video Camera Recording;

- UHS Privacy Policies Concerning Use and Disclosure Requiring Authorization (Section 3.0), De-Identification of Protected Health Information, Photographs, Videotapes And Other Recordings Of Patients (Section 13.0);
- A policy for Reporting Suspected Wrongdoing.

16. The aforementioned documents confirmed the confidential nature of Shadow Mountain Hospital's surveillance videotapes and patient records, their status as Shadow Mountain Hospital's property, and Paisley's obligations to keep them confidential.

17. The aforementioned documents formed a part of Paisley's contract of employment with Shadow Mountain Hospital.

18. Paisley agreed to the terms and conditions in the aforementioned documents.

19. As a Patient Advocate, Paisley was entrusted with the authority to access and view surveillance videotapes and patient medical records belonging to Shadow Mountain Hospital.

20. Paisley acted as a fiduciary of Shadow Mountain Hospital as a Patient Advocate, an employee, and a person entrusted with access to Shadow Mountain Hospital's surveillance videotapes and medical records.

Paisley Resigns

21. Paisley did not perform well at her job and local facility leadership as well as governmental authorities advised Shadow Mountain Hospital that she was regularly inaccurately reporting matters, including but not limited to false claims of patient abuse. This was not only alarmingly false, but also undercut her credibility as a Patient Advocate with both governmental authorities and with her employer.

22. Paisley voluntarily resigned from her employment with Shadow Mountain Hospital on April 15, 2016.

23. On information and belief, Paisley was a disgruntled former employee who acted with malicious intent to “get even” with her former employer.

24. On information and belief, criminal larceny is defined in Oklahoma as follows: “Larceny is the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof.” 21 Okla. Stat. §1701.

25. On information and belief, criminal embezzlement is defined in Oklahoma as follows:

A. Embezzlement is the fraudulent appropriation of property of any person or legal entity, legally obtained, to any use or purpose not intended or authorized by its owner, or the secretion of the property with the fraudulent intent to appropriate it to such use or purpose, under any of the following circumstances:

1. Where the property was obtained by being entrusted to that person for a specific purpose, use, or disposition and shall include, but not be limited to, any funds “held in trust” for any purpose;

* * * *

3. Where the property is possessed or controlled for the use of another person....

21 Okla. Stat. §1451.¹

26. On information and belief, the Oklahoma Computer Crimes Act makes it unlawful to:

1. Willfully, and without authorization, gain or attempt to gain access to and damage, modify, alter, delete, destroy, copy, make use of, disclose or take possession of a computer, computer system, computer network or any other property;

¹ Shadow Mountain Hospital acknowledges that the criminal statutes cited herein do not create civil causes of action or provide civil relief, and Shadow Mountain Hospital is not attempting to assert civil claims or seek relief under those statutes. Shadow Mountain Hospital maintains that those statutes establish standards of conduct for persons like Paisley individually and/or as a Shadow Mountain Hospital employee or former employee, which if violated, can give rise to certain forms of civil liability on her part.

* * * *

3. Willfully exceed the limits of authorization and damage, modify, alter, destroy, copy, delete, disclose or take possession of a computer, computer system, computer network or any other property;

4. Willfully and without authorization, gain or attempt to gain access to a computer, computer system, computer network or any other property;

* * * *

7. Willfully and without authorization provide or assist in providing a means of accessing a computer, computer system or computer network in violation of this section;

21 Okla. Stat. § 1953(A)(1), (3), and (4).

Paisley Steals Shadow Mountain Hospital's Property

27. On information and belief, before voluntarily resigning, Paisley made copies of surveillance videotapes at Shadow Mountain Hospital's facilities.

28. On information and belief, before voluntarily resigning, Paisley made copies of records of patients of Shadow Mountain Hospital's facilities.

29. The aforementioned surveillance videotapes and medical records contain "Individually Identifiable Health Information" which constitutes "Protected Health Information" under 45 C.F.R. §160.103, under the Health Insurance Portability and Accountability Act of 1996, 29 U.S.C. §§1181 *et seq.*, 42 U.S.C. §300gg, and 42 U.S.C. §§1320d *et seq.*, and its implementing regulations at 45 C.F.R. Parts 160 & 164 (collectively, "HIPAA").

30. Shadow Mountain Hospital is a "Covered Entity" under HIPAA and is required to protect its patients' Protected Health Information under 45 CFR §164.502. Shadow Mountain Hospital takes this obligation very seriously.

31. Paisley was an employee of a "Covered Entity" when she was an employee of Shadow Mountain Hospital.

32. The surveillance videotapes, and the images and information therein, and the medical records, were the property of Shadow Mountain Hospital.

33. The surveillance videotapes, and the images and information therein, and the medical records contain confidential business information, which was the property of Shadow Mountain Hospital.

34. Paisley took the copies of the surveillance videotapes and medical records without the knowledge or consent of Shadow Mountain Hospital.

35. Paisley thus converted, embezzled, misappropriated, and stole the surveillance videotapes and medical records, and the confidential information contained therein including the patients' Protected Health Information.

36. On information and belief, Paisley kept the copies of the stolen surveillance videotapes and stolen medical records after she left her employment with Shadow Mountain Hospital.

37. Paisley subsequently notified Universal Health Services, Inc. ("UHS"), Shadow Mountain Hospital's parent company, that she was in possession of the stolen surveillance videotapes.

38. UHS demanded that Paisley return the stolen surveillance videotapes, and notified her that they contained HIPAA Protected Health Information, but she refused to return them.

39. On information and belief, Paisley provided those stolen surveillance videotapes to state governmental authorities.

40. On information and belief, the applicable governmental authorities examined the stolen videotapes and conducted a reasonable and appropriate investigation of the matter. However, that was not sufficient for Paisley, who wanted to inflict damage on Shadow Mountain Hospital.

***Paisley Leaks, and BuzzFeed.com Receives,
the Childrens' Stolen and Federally-Protected Health Information***

41. On information and belief, it is a federal crime for "A person who knowingly and in violation of this part ... obtains individually identifiable health information relating to an individual; or ... discloses individually identifiable health information to another person..." 42 U.S.C. § 1320D-6(a)(2), (3).

42. On information and belief, Paisley knowingly and in violation of Part C of HIPAA provided the stolen surveillance videotapes and stolen medical records containing the patients' Protected Health Information to BuzzFeed.com.

43. Paisley was aware that BuzzFeed was engaged in a malicious campaign to disparage UHS and its facilities.

44. BuzzFeed.com subsequently notified Shadow Mountain Hospital and UHS that it had obtained the stolen surveillance videotapes, and that it intended to publish them in an article about Shadow Mountain Hospital.

45. UHS, on behalf of Shadow Mountain Hospital, demanded in writing that BuzzFeed.com return the stolen surveillance videotapes, and notified BuzzFeed.com that they contained HIPAA Protected Health Information, but BuzzFeed.com refused to return them.

46. Instead, on information and belief, BuzzFeed.com copied the stolen surveillance videotapes, blurred the childrens' faces on the copies, and published the copies in the redacted

format in an article entitled “Videos Show the Dark Side of Shadow Mountain Youth Psych Facility.”

47. BuzzFeed.com included redacted information from the childrens’ stolen medical records in its article.

48. The stolen surveillance videotapes were either edited or displayed out of context to create an inaccurate depiction of care and treatment rendered at Shadow Mountain.

49. The stolen surveillance videotapes created a false impression of events surrounding those circumstances.

50. Shadow Mountain Hospital has posted a response to BuzzFeed.com’s misleading article. <http://www.shadowmountainthefacts.com/setting-the-record-straight-on-buzzfeeds-faulty-misleading-claims>.

51. BuzzFeed.com has a business and economic interest in publishing misleading and sensationalized stories about alleged patient abuse by Shadow Mountain Hospital.

52. On information and belief, Paisley was aware of the aforementioned business and economic interest of BuzzFeed.com when she provided the stolen surveillance videotapes and the stolen medical records to BuzzFeed.com.

53. On information and belief, Paisley was aware of the aforementioned business and economic interest of BuzzFeed.com when she provided the stolen surveillance videotapes and the stolen medical records containing the childrens’ HIPAA Protected Health Information to BuzzFeed.com.

54. On information and belief, Paisley acted with malicious intent to harm Shadow Mountain Hospital when she provided the stolen surveillance videotapes and the stolen medical

records containing the childrens' HIPAA Protected Health Information to Buzzfeed.com knowing that they would not be depicted accurately and would not be viewed objectively by those that do not understand or have appropriate background in the treatment of adolescents with severe mental health issues at behavioral health facilities.

Paisley has Harmed, Not Helped, Others

55. Buzzfeed.com (or a disgruntled Buzzfeed.com employee) could distribute unredacted copies of the stolen surveillance videotapes or the stolen medical records to third parties who could then publish them in an unredacted format – clearly violating HIPAA.

56. Paisley's conduct has placed at risk the well-being of Shadow Mountain Hospital and its patients.

57. For example, Shadow Mountain Hospital has been required under HIPAA to notify the childrens' guardians about the HIPAA breaches that occurred as the result of Paisley's conduct. Lawsuits have been filed against Shadow Mountain Hospital as a result of Paisley's actions.

58. Paisley breached her duties and obligations under her contract, agreements, and relationship with Shadow Mountain Hospital. Shadow Mountain Hospital has been damaged as a consequence of Paisley's breaches.

59. Further, Paisley, as a "patient advocate" has potentially caused harm to the very patients whom she was employed to serve as an advocate for by releasing this information to an outside, media source only as an act of retribution against the facility.

60. Shadow Mountain Hospital owns and has a right to re-possess the stolen surveillance videotapes and stolen medical records. Paisley wrongfully interfered with Shadow

Mountain Hospital's property right in the stolen surveillance videotapes and stolen medical records. Shadow Mountain Hospital has been damaged by her publication of those stolen surveillance videotapes and stolen medical records to third parties.

61. Paisley fraudulently appropriated the property of Shadow Mountain Hospital to a use or purpose not intended or authorized by Shadow Mountain Hospital.

62. On information and belief, Paisley benefitted from disclosing to BuzzFeed.com Shadow Mountain Hospital's stolen surveillance videotapes and stolen medical records and confidential business information.

63. Paisley committed fraud and defalcation while acting in a fiduciary capacity, embezzlement, and/or larceny within the meaning of 11 U.S.C. §523(a)(4).

64. Paisley's conduct was "willful and malicious" within the meaning of 11 U.S.C. §523(a)(6).

65. As a direct and proximate cause of Paisley's conduct, Shadow Mountain Hospital has suffered actual damages in an amount that exceeds the sum or value of \$75,000, exclusive of interest and costs.

66. There is clear and convincing evidence that the Paisley has been guilty of reckless disregard for the rights of Shadow Mountain Hospital and others. Shadow Mountain Hospital is therefore entitled to an award of punitive damages in an amount not to exceed the greater of One Hundred Thousand Dollars (\$100,000.00), or the amount of the actual damages awarded.

67. There is clear and convincing evidence that Paisley has acted intentionally and with malice towards Shadow Mountain Hospital and others. Shadow Mountain Hospital is therefore entitled to an award of punitive damages in an amount not to exceed the greater of

Five Hundred Thousand Dollars (\$500,000.00), or twice the amount of actual damages awarded.

68. Shadow Mountain Hospital is entitled to an order, injunction, and a declaratory judgment that Paisley is obligated to indemnify and defend Shadow Mountain Hospital for any lawsuits, legal proceedings, administrative or other proceedings arising from or involving her theft of Shadow Mountain Hospital's property or her disclosure of same to Buzzfeed.com and/or other private parties.

69. Shadow Mountain Hospital is entitled to an order, injunction, and a declaratory judgment requiring Paisley to disclose the whereabouts of, and return or assist in securing the return of, the stolen surveillance videotapes, the stolen medical records, any copies thereof, and any other property belonging to Shadow Mountain Hospital, and the identity of any persons known or believed by her to have had possession, custody, or control of, or access to, any such property belonging to Shadow Mountain Hospital.

70. Shadow Mountain Hospital is entitled to an order, injunction, and a declaratory judgment prohibiting Paisley from further engaging in the conduct described in this Petition.

DEMAND FOR JUDGMENT

Shadow Mountain Hospital demands that the Court:

1. Enter judgment in its favor against Paisley for actual and punitive damages in an amount in excess of \$75,000 exclusive of interest and costs;
2. Enter an order, injunction, and a declaratory judgment that Paisley is obligated to indemnify and defend Shadow Mountain Hospital for any lawsuits, legal proceedings,

administrative or other proceedings arising from or involving her theft of Shadow Mountain Hospital's property or her disclosure of same to Buzzfeed.com or other private parties;

3. Enter an order, injunction, and a declaratory judgment requiring Paisley to disclose whereabouts of and return or assist in securing the return of, the stolen surveillance videotapes, the stolen medical records, any copies thereof, and any other property belonging to Shadow Mountain Hospital, and the identity of any persons known or believed by her to have had possession, custody, or control of, or access to, any such property belonging to Shadow Mountain Hospital;

4. Enter an order, injunction, and a declaratory judgment prohibiting Paisley from further engaging in the conduct described in this Petition;

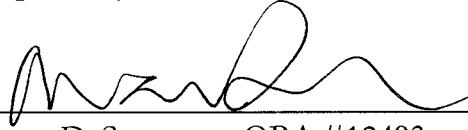
5. Enter a declaratory judgment that Paisley committed fraud and defalcation while acting in a fiduciary capacity, embezzlement, and/or larceny within the meaning of 11 U.S.C. §523(a)(4);

6. Enter a declaratory judgment that Paisley's conduct was "willful and malicious" within the meaning of 11 U.S.C. §523(a)(6);

7. Grant Shadow Mountain Hospital such other and further relief to which it is entitled in law or equity;

8. Award Shadow Mountain Hospital its costs, including a reasonable attorney's fee.

Respectfully submitted,



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**ATTORNEYS FOR SHADOW
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JURY TRIAL DEMANDED

ATTORNEY'S LIEN CLAIMED