2010 WL 8880785 (Ariz.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of Arizona.
Maricopa County

In the Matter of the Estate of Joseph Charles RHEINER, Deceased.
Sandra E. Zwick, Personal Representative of the Estate of Joseph Charles Rheiner, on behalf of the Estate of Joseph Charles Rheiner, and Sandra E. Zwick, individually and on behalf of Joseph Charles Rheiner's statutory beneficiariespursuant to A.R.S.section 12-612 (A), Plaintiff,
v.
Azore II, L.L.C, an Oregon limited liability company, doing business as Chris Ridge Premier Care and Rehabilitation Center, formerly known as Chris Ridge Village Health Care Center; Chris Ridge Senior Living, L.L.C, an Oregon limited liability company; Pinnacle Healthcare, Inc., an Oregon corporation; Donald D. Abdouch, Administrator; John Does 1-200., Defendants.

No. CV2008-091981.
September 17, 2010.

Plaintiff's Response to Defendants Azore II, LLC, Dba Chris Ridge Premier Care and Rehabilitation Center et Al's Motion for Partial Summary Judgment re: Pinnacle Healthcare, Inc. And Pinnacle Healthcare II, Inc.

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Assigned to the Honorable. John Ditsworth.

(Oral Argument Scheduled for October 7, 2010 at 10:00 a.m.)

(Court Reporter Requested)

Plaintiff, by and through undersigned counsel, hereby submits her response to Defendants' motion for partial summary judgment re: Pinnacle Healthcare, Inc. and Pinnacle Healthcare II, Inc. Plaintiff's response is supported by the concurrently filed separate statement of facts and the response to Defendants' statement of facts. For the reasons discussed herein, Plaintiff requests the court to deny Defendants' motion.

I. *FACTUAL BACKGROUND*

This is an **abuse** and neglect case brought by Plaintiff against Defendants pursuant to the Adult Protective Services Act (APSA), A.R.S. § 46-455. In an effort to escape liability, the Pinnacle Healthcare Defendants are alleging that they are separate and distinct from the Chris Ridge facility where Joseph Rheiner was a resident. Quite to the contrary, however, Pinnacle Healthcare represents to the public, including via its website, that it has affiliated facilities in Oregon and Arizona. Its two facilities in Arizona, which are described as “partners of Pinnacle Healthcare,” are Chris Ridge Premier Care and Rehabilitation Center and a facility in Sun City West. Pinnacle's website proudly describes its Chris Ridge facility in detail, including its landscaped grounds, amenities and convenient location. Plaintiff's Separate SOF at ¶¶ 3 - 9.

The Chris Ridge employee handbook also confirms Pinnacle's role and involvement in the facility. For instance, the cover includes the Pinnacle Healthcare logo and contains the Pinnacle name. Plaintiff's Separate SOF at ¶ 10. The handbook states

that Chris Ridge is affiliated with Pinnacle and goes on to provide that Pinnacle "participates in partnerships of two skilled nursing facilities in Arizona ..." Plaintiff's Separate SOF at ¶¶ 7, 12. The handbook identifies the locations of the Pinnacle Healthcare facilities in Arizona as the Chris Ridge facility and the Sun City West facility. Plaintiff's Separate SOF at ¶¶ 11 - 14. And, the anti-harassment policy contained in the handbook directs employees to contact human resources at Pinnacle Healthcare's Oregon office, providing the Pinnacle contact information. Plaintiff's Separate SOF at ¶ 17. Even Chris Ridge's employee corrective discipline form has the Pinnacle logo. Plaintiff's Separate SOF at ¶ 18. These facts, together with all the information submitted herein, establish Pinnacle Healthcare's role and involvement in the Chris Ridge facility. At a minimum, a jury question exists as to the Pinnacle Defendants' role and, in turn, their liability for Mr. Rheiner's injuries and death such to preclude summary judgment.

Defendants point out that they had been operating the Chris Ridge facility for only fifteen days at the time of Joseph Rheiner's admission as if that somehow relieves them of responsibility. *See* Defendants' Motion at p 4. However, regardless of whether Defendants had been operating the Chris Ridge facility for fifteen minutes, fifteen days, or fifteen years at the time of Joseph Rheiner's admission to the facility or at the time of his October 3, 2006 fall, they are liable for the injuries he sustained. As administrator Don Abdouch explained, and as documents establish, while Defendants assumed official control effective September 1, 2006, the process actually began several months earlier. Indeed, The Lease Agreement between Chris Ridge Senior Living, LLC and Azore II, LLC with respect to Chris Ridge Village, is signed by Mark Garber as manager of Azore II, LLC and was executed in May, 2006. The Operations Transfer Agreement between LB Phoenix Bethany Home Road LLC and Azore II with respect to Chris Ridge is signed by Mark Garber as manager of Azore II, LLC. and was executed in June, 2006. The operating agreement between SNF Properties II, LLC (Paul Friedlan) and Pinnacle Healthcare II, Inc. (Merlin Hart and Mark Garber) for the operation of Chris Ridge Premier Care & Rehab was adopted effective June 6, 2006 and the license application to the Arizona Department of Health Services is similarly dated in June, 2006. Plaintiff's Separate SOF at ¶¶ 46, 56, 57, 62. In addition, according to Defendants' website and employee handbook, they have a long history, and are well experienced, in the operation of skilled nursing facilities. Plaintiff's Separate SOF at ¶¶ 2 - 13. Thus, Defendants' liability cannot be disputed based on timing. *See* Defendants' Motion at p. 4.

Furthermore, while Defendants maintain that Pinnacle had little involvement with Chris Ridge prior to January, 2007, *see* Defendants' Motion at p. 4, again, the evidence reveals a different story. Defendants assumed official responsibility for the operation of the Chris Ridge facility on September 1, 2006 (although, as stated, the process began much earlier). Azore II and its members, SNF Properties II, LLC and Pinnacle Healthcare II, Inc., were responsible, as the governing authority, for the organization, operation, and administration of Chris Ridge Premier Care & Rehab, with the administrator being responsible to the governing authority for the operation of a nursing care institution and the authority and responsibility to administer the nursing care institution. Plaintiff's Separate SOF at ¶¶ 51, 52, 53, 54, 55.

After the start up of Chris Ridge, Mark Garber, Merlin Hart and Paul Friedlan met with administrator Don Abdouch. Paul Friedlan was Mr. Abdouch's direct supervisor and provided him consultation in the areas of administration, budgeting, licensure, applications, contract, and renegotiations. The roles of Mark Garber and Merlin Hart (officers in Pinnacle Healthcare) with respect to Chris Ridge were accounting, legal, payroll facilitation. In fact, the Chris Ridge administrator provided monthly financial statements to Paul Friedlan, Mark Garber and Merlin Hart. Furthermore, the Pinnacle accounting office generated unaudited income statements for the facility. Plaintiff's Separate SOF at ¶¶ 58, 60, 63, 64, 65, 66, 67, 68. Mark Garber or Merlin Hart tried to visit Arizona quarterly to meet Paul Friedlan, tour the facility, and have discussions regarding the operations, plans, politics, and budget cuts such as in the Medicaid rate which also extends to AHCCCS. Plaintiff's Separate SOF at ¶ 70.

Nor is Defendants' claim that Chris Ridge had its own employees supported by the evidence. *See* Defendants' Motion at p. 6. Individuals working at Chris Ridge were actually employees of Pinnacle. As mentioned above, the cover of Defendants' employee handbook for Chris Ridge Premier Care & Rehabilitation includes the Pinnacle Healthcare logo and includes the names Pinnacle Healthcare, Inc. and Management Southwest, Inc. and the date of September 2006. Defendants' employee handbook for Chris Ridge Premier Care and Rehabilitation Center includes the following language: "History - Chris Ridge Premier Care & Rehabilitation is affiliated with Pinnacle Healthcare, Inc...." In addition, the Handbook directs Chris Ridge

employees to contact Pinnacle Human Resources with questions. Plaintiff's Separate SOF at ¶¶ 10-17. Even Pinnacle's website which touts its many facilities, identifies the Chris Ridge facility as one of its own. Plaintiff's Separate SOF at ¶¶ 3 - 9.

As for Chris Ridge's Medicare number, *see* Defendants' Motion at p. 6, closer scrutiny reveals Pinnacle's link. Medicare's October 20, 2006 “Official Approval Document” for the ownership change from LB Phoenix Bethany Home Road, LLC to Azore II LLC, dba Chris Ridge Premier Care and Rehabilitation Center is addressed to Merlin Hart, CEO, Azore who just happens to be the president of Pinnacle Healthcare and Pinnacle Healthcare II. Plaintiff's Separate SOF at ¶¶ 34, 35; Plaintiff's Response to Defendants' SOF at ¶ 26. And, not only does Chris Ridge maintain a bank account in Oregon, those with access to withdraw funds from the account include the administrator, Paul Friedlan and individuals in Oregon with accounts payable responsibility. Plaintiff's Response to Defendants' SOF at ¶ 25.

With respect to any profits generated by the facility, Mark Garber, Merlin Hart and Paul Friedlan decide how to distribute those funds. The operating agreement addresses distribution of revenues or profits from the operation of Chris Ridge Premier Care and Rehab, with each partner receiving one-third of any profit or revenue Chris Ridge generates. Thus, two-thirds would go to Pinnacle (Mark Garber and Merlin Hart) and one-third to Paul Friedlan (SNF Properties II). Plaintiff's Separate SOF at ¶¶ 48, 49.

Thus, as can be readily seen, and as more fully discussed below and as documented in Plaintiff's statements of fact, Pinnacle Healthcare, Azore, and Chris Ridge Premier Care and Rehabilitation Center are intimately intertwined and have clearly disregarded any semblance of corporate separateness. As such, the Pinnacle Defendants cannot escape liability based on alleged lack of involvement in Chris Ridge Premier Care and Rehabilitation Center.

II. *SUMMARY JUDGMENT STANDARD*

Defendants, as the moving party, have the burden in connection with their summary judgment motion. *See Villas at Hidden Lakes Condominiums Ass'n v. Geupel Constr. Co., Inc.*, 174 Ariz. 72, 81, 847 P.2d 117, 126 (Ct. App. 1992) (citations omitted). Furthermore, summary judgment “is not a substitute for trial” and “litigants are entitled to the right of trial where there is the slightest doubt as to the facts.” *Peterson v. Valley Nat'l Bank*, 90 Ariz. 361, 362, 368 P.2d 317, 318 (1962). The court must review the facts in a light most favorable to the non-moving party, that is, Plaintiff herein. *See Andrews v. Blake*, 205 Ariz. 236, 240, 69 P.3d 7, 11 (2003). Summary judgment should be entered only if the facts produced in support of the claim or defenses “have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.” *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). Here, at a minimum, genuine issues of fact exist.

III. *EXPERT OPINIONS ARE NOT REQUIRED WITH RESPECT TO THE PINNACLE ENTITIES BUT THE OPINIONS OF PLAINTIFF'S EXPERTS ENCOMPASS THESE DEFENDANTS IN ANY EVENT.*

A. *This is Not a Medical Malpractice Action.*

Insofar as this matter is not brought under the Medical Malpractice Act (MMA), Plaintiff does not even need expert opinions as required pursuant to the Act. Nevertheless, the opinions of Plaintiff's experts encompass the Pinnacle Defendants in any event. Therefore, the Pinnacle Defendants are not entitled to summary judgment due to lack of expert opinions.

Plaintiff filed a three count complaint alleging negligence; **abuse**/neglect pursuant to APSA, A.R.S. § 46455; and wrongful death. Plaintiff's Separate SOF at ¶¶ 71, 72. The complaint does not include a medical negligence claim. Similarly, Plaintiff's disclosure statement alleges a violation of APSA and does not state an MMA claim. Plaintiff's Separate SOF at ¶ 74. Section B of A.R.S. § 46-455 authorizes an action in superior court “against any person or enterprise that has been employed to provide care....” *Id.* Section O states: “A civil action authorized by this section is remedial and not punitive and does not limit and is not limited by any other civil remedy or criminal action or any other provision of the law. Civil remedies provided under this

title are supplemental and not mutually exclusive." *Id.* Because Section O makes clear that APSA is not limited by MMA and that actions brought pursuant to each are separate and distinct, the MMA rules and statutes do not apply to this APSA case.

In *Denton v. Superior Court*, 190 Ariz. 152, 157, 945 P.2d 1283 (1997), the Court held that Arizona's survival statute (A.R.S. § 14-477), does not apply to APSA claims. In reaching this conclusion, the Court noted Section O (then listed as M) prohibited the limitation of APSA by any other provision of law. 190 Ariz. at 156, 945 P.2d at 1287. While *Denton* involved the applicability of the survival statute to APSA, the Court's logic follows for the applicability of MMA as well. The legislature enacted APSA out of concern for **elder abuse** due to Arizona's substantial **elderly** population. *Id.* Given the legislative intent, Defendants may not rely on MMA to dismiss proper defendants.

Nor does the fact that this action has been brought against licensed health care providers automatically bring it within MMA. In *Estateof McGill v. Albrecht*, 203 Ariz. 525, 57 P.3d 384 (2002), plaintiff brought both MMA and APSA claims against doctors and other services providers. On special action following the trial court's entry of summary judgment with respect to the APSA claim, the Arizona Supreme Court held that the plaintiff's could proceed to trial on the APSA claim. In so ruling, the Court recognized that APSA created a statutory civil cause of action with the legislative purpose of protecting Arizona's **elderly** population and that the statute increased the available remedies. *Estate of McGill*, 203 Ariz. at 528, 57 P.3d at 387.

The *McGill* case involved a vulnerable adult placed in the care of the defendants. As result of the relationship between caregiver and caretaker, the plaintiff's alleged that Mrs. McGill had been subjected to **abuse** and neglect which resulted in her death. Here, Mr. Rheiner was a dependent and vulnerable adult who required assistance with his activities of daily living and who was in the care of Defendants. He, too, was subjected to **abuse** and neglect and ultimately died as a result thereof. However, unlike *McGill*, Plaintiffs here did not also bring a claim under MMA.

Defendants' argument based on the fact that Defendants are licensed health care providers fails because otherwise APSA would be eviscerated. As stated, APSA was designed to protect vulnerable and **elderly** adults from neglect and **abuse** by their care custodians. More often than not, these care custodians were providing, or promised to provide, some level of nursing or medical care to those in their care. If MMA governs the ability of vulnerable adults to proceed against care custodians in situations where any medical care or nursing care was provided, virtually no APSA action will survive. As the *McGill* court pointed out, if MMA were the exclusive remedy in a situation such as the instant case, "the great majority of caregivers to the incapacitated would be immune from APSA actions and APSA would be a toothless tiger." 203 Ariz. at 530, 57 P.3d at 389.

Other jurisdictions agree that where an action is based on **elder** or vulnerable adult **abuse**, the procedural requirements for professional negligence causes of action give way to the procedural requirements for that state's **elder** and vulnerable adult protection statutes. *See Country Villa Claremont Health Care Ctr. v. Superior Court*, 120 Cal. App. 4th 426, 15 Cal. Rptr. 3d 315 (2004) (procedural statute for punitive damages claim in professional negligence against health care provider did not apply to this action); *Integrated Health Care Servs., Inc. v. Lang-Redway*, 840 So.2d 974 (Fla. 2003) (complaint that nursing home violated its statutory duty to provide adequate and appropriate health care to resident did not plead a medical malpractice cause of action against a healthcare provider, and thus Plaintiff was not required to comply with statutory pre-suit requirements for filing a medical malpractice action.).

In sum, APSA covers persons and enterprises in their role as care custodians for our **elderly** and vulnerable population. The holdings in *Denton* and *McGill* establish that APSA is not subsumed by MMA. Because Plaintiff brought the instant action pursuant to APSA and no MMA, the rules and statutes governing MMA actions are inapplicable.

B. *The Pinnacle Entities are Directly and Vicariously Liable for the Negligence of Chris Ridge Premier Health and Rehabilitation Center.*

The Pinnacle entities are directly and vicariously liable for the **abuse**, neglect, and exploitation of Joseph Rheiner. In *Corbett v. Manor Care of America*, 213 Ariz. 618, 146 P.2d 1027 (App. 2006), one issue before the court was whether the scope of

liability under APSA was limited to employees who had a direct caregiver-patient relationship with the patient. The defendant employees in *Corbett* argued that A.R.S. § 46-455 requires a direct caregiver-patient relationship for a duty to arise. However, the court found that reliance on the "proposition that APSA requires a direct caregiver-patient relationship is misplaced." 213 Ariz. at 628, 146 P.2d at 1037. The court further explained that "statutory language controls our interpretation when the language is clear and unequivocal." 213 Ariz. at 629, 146 P.2d at 1038 (citing *Mercy Healthcare Arizona, Inc. v. Arizona Health Care Cost Containment Sys.*, 181 Ariz. 95, 98, 887 P.2d 625, 628 (App. 1994)).

The *Corbett* court went on to explain that "[u]nder the plain wording of the statute, an incapacitated or vulnerable adult can bring a lawsuit against 'any person or enterprise' that 'has been employed to provide care' or that 'has assumed a legal duty to provide care' if the person or enterprise has 'caused or permitted' the incapacitated or vulnerable adult to be **abused**, neglected, or exploited." 213 Ariz. at 629, 146 P.2d at 1038, citing A.R.S. § 46-455(B). Accordingly, the *Corbett* court ultimately held:
[T]he legislature did not intend to limit liability to those who have a direct caregiver-patient relationship with an incapacitated or vulnerable adult. The statute subjects to liability both persons and enterprises, not just individuals.

Furthermore, the statute subjects to liability those who cause *or permit* the **abuse**, neglect, or exploitation of an incapacitated or vulnerable adult.

213 Ariz. at 629, 146 P.2d at 1038 (emphasis in original). Thus, the issue of liability of a person or enterprise who did not have direct care responsibilities for a patient has already been decided. Such a relationship is not a prerequisite for liability.

Here, Plaintiff has alleged that the Pinnacle Defendants caused or permitted Mr. Rheiner to be subjected to **abuse** and neglect. The Pinnacle Defendants' various claims disputing their role and involvement in the operations of Chris Ridge are contradicted by Plaintiff's Response to Defendants' Statement of Facts and Plaintiff's Separate Statement of Facts. Plaintiff has produced extensive evidence which establishes the Pinnacle Defendants' ownership, control and involvement in Chris Ridge Premier Care and Rehabilitation Center.

In addition to direct liability, employers may be vicariously liable for the negligent or tortious acts of their employees committed within the course and scope of their employment. *See Baker ex. rel. Hall Brake Supply, Inc. v. Stewart*, 197 Ariz. 535, 540, 5 P.3d 249, 254 (Ct. App. 2000). Thus, to hold the Pinnacle entities liable for the tortious and negligent conduct of their employees, Plaintiff must establish that the employees were acting within the course and scope of their employment with respect to their treatment of Joseph Rheiner. An employee's conduct falls within the scope of their employment "if it is the kind the employee is employed to perform, it occurs within the authorized time and space limits, and furthers the employer's business even if the employer has expressly forbidden it." 197 Ariz. at 540, 5 P.3d at 254.

The conduct of Defendants' employees fell within the scope of their employment since they were hired to provide care and treatment to the residents of the nursing home, including Joseph Rheiner. Plaintiff has alleged that the Defendants failed to ensure that Mr. Rheiner was provided with adequate nursing care because they failed to keep him safe and free from harm by allowing him to suffer a fall which resulted in a right femoral neck fracture. They further failed to prevent Mr. Rheiner from suffering from malnutrition and weight loss and by failing to provide fluids for dehydration in a timely manner as ordered. Thus, pursuant to the doctrine of respondeat superior, the Pinnacle Defendants can be held liable for the negligence of their employees.

C. *Plaintiff's Experts' Opinions Are Applicable Against the Pinnacle Entities.*

Expert opinions which establish liability of Defendants' employees, particularly nursing personnel, suffice to hold Defendants liable under respondeat superior. Nonetheless, the opinions of Plaintiff's experts, Cheryl L. Halkowicz, RN, MS, LNC, CPHQ and Sabine Maria von Preyss-Friedman, M.D., are also repeatedly stated in terms of "Defendants" which directly relate to Pinnacle Healthcare, Inc. and Pinnacle Healthcare II. For example, Ms. Halkowicz's opinions include that "the acts and omissions of the Defendants demonstrate outrageous deviations from the standard of care and constitute **abuse** and neglect, as

defined in the Arizona Protective Services Act." Ms. Halkowicz also opined that "Defendants failed to care for Joseph Rheiner in a manner that would promote maintenance or enhancement of his quality of life (see 42 CFR § 483.15)." *See* Plaintiff's Response to Defendants' SOF at ¶ 12.

In addition, the opinions of Sabine Maria von Preyss-Friedman, M.D., included that "Defendants' acts and omissions demonstrate that the Defendants disregarded significant risks to Mr. Rheiner and that the acts and omissions of the Defendants in failing to address his high risk for falls, including providing adequate supervision and assistive devices, and in failing to address his hydration and nutrition concerns caused Mr. Rheiner to suffer from injuries and contributed to his death." *See* Plaintiff's Response to Defendants' SOF at ¶ 12. Thus, while expert opinions are unnecessary with respect to the Pinnacle entities, Plaintiff has, nonetheless, provided such opinions.

IV. *PLAINTIFF HAS ESTABLISHED ISSUES OF FACT CONCERNING LIABILITY OF THE PINNACLE ENTITIES.*

A. *Defendants Have Disregarded Their Corporate Form.*

The various Defendants here are one and the same and, thus, the Pinnacle entities are proper Defendants. Pursuant to an alter ego theory, a parent corporation may be held liable for the acts of its subsidiary "when the individuality or separateness of the subsidiary corporation has ceased." *See Gatecliff v. Great Republic Life Ins. Co.*, 170 Ariz. 34, 37, 821 P.2d 725, 728 (1991). *See also Pan Pacific Sash and Door Co., v. Greendale Park, Inc.* 166 Cal.App.2d 652, 333 P.2d 802 (1958) ("Where injustice would result from a strict adherence to the doctrine of separate corporate existence, a court will look behind the corporate structure to determine the identity of the party who should be charged with a corporation's liability..Since the separate personality of a corporation is but a statutory privilege it must not be employed as a cloak for the evasion of obligations."); *Los Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal. App.3d 1220, 1249, 1 Cal. Rptr. 2d 301 (1991) ("A very numerous and growing class of cases where the corporate entity is disregarded is that wherein it is so organized and controlled, and its affairs are so conducted, as to make it merely an *instrumentality, agency, conduit, or adjunct of another corporation* ... it would be unjust to permit those who control companies to treat them as a single or unitary enterprise and then assert their corporate separateness in order to commit frauds and other misdeeds with impunity." [emphasis in original]).

In order to prevail under an alter ego theory, a plaintiff must prove unity of control and that observance of the corporate form would endorse a fraud or result in injustice. *Gatecliff v. Great Republic Life Ins. Co.*, 170 Ariz. at 37, 821 P.2d at 728. Factors which may suggest substantially total control include, among other things, the following:

> Stock ownership by the parent; common officers or directors; financing of subsidiary by the parent; payment of salaries and other expenses of subsidiary by the parent; failure of subsidiary to maintain formalities of separate corporate existence; similarity of logo; and plaintiff's lack of knowledge of subsidiary's separate corporate existence.

170 Ariz: at 37, 821 P.2d at 728. As demonstrated, many of these factors are present here.

The various entities have common officers, that is Merlin Hart, Mark Garber and Paul Friedlan. Plaintiff's Separate SOF at ¶¶ 28, 29, 34 - 44. These individuals have significant involvement in the operation of the facility, including conducting quarterly inspections; supervising the administrator; and dealing with budgeting. Chris Ridge maintains a bank account in Oregon where Pinnacle's corporate office is located and profits generated by the facility are distributed to Merlin Hart, Mark Garber and Paul Friedlan. Plaintiff's Separate SOF at ¶¶ 48, 49, 65 - 70; Plaintiff's Response to Defendants' SOF at ¶ 25. Also, Pinnacle's website includes Chris Ridge Premier Care and Rehabilitation as one of its facilities. The Chris Ridge employee handbook welcomes employees to Pinnacle and even directs them to voice concerns to Pinnacle's human resources department in Oregon. In addition, Chris Ridge employee forms contain the Pinnacle Healthcare logo. Plaintiff's Separate SOF at ¶¶ 3 - 18.

Recognizing the corporate form in light of all these factors which establish Defendants' disregard of the corporate separateness would certainly result in injustice to Plaintiff. Because Plaintiff has established unity of control, or has at least raised questions of fact with respect thereto, the Pinnacle Defendants are not entitled to summary judgment.

B. ***Aiding and Abetting***

The Pinnacle Defendants contend that Plaintiff cannot establish the elements of aiding and abetting. *See* Defendants' Motion at p. 13. Plaintiff did not assert in her complaint a separate count of aiding and abetting. Rather, under the "Direct and Vicarious Liability" section of the complaint, Plaintiff alleged that the "Defendants' tortious acts and omissions, as alleged herein, were done in concert with each other ... [and that] the Defendants aided and abetted each other in accomplishing the acts and omissions alleged herein." *See* Plaintiff's Separate SOF at ¶ 73. The evidence regarding the involvement and interrelationship among and between the various Defendants, including the Pinnacle Healthcare Defendants, establishes that they acted in concert with each other in the operation of Chris Ridge Premier Care and Rehabilitation Center.

V. ***CONCLUSION.***

For all the foregoing reasons, Plaintiff respectfully urges the court to deny Defendants' summary judgment motion re: Pinnacle Defendants.

Respectfully submitted: September 17, 2010.

WILKES & MCHUGH, P.A.

By: <<signature>>

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