

STATE OF NORTH CAROLINA
GUILFORD COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
1993 MAR -8 PM 3:05
GUILFORD COUNTY, N.C.
5045

RONNIE L. CLARK; ANITA CLARK;
and AUTUMN CLARK,
PLAINTIFFS

v.

CARDINAL ANIMAL CARE, P.A.,
ITS EMPLOYEES AND AGENTS;
JEFFREY DENIS, D.V.M.;
TERRI SMITH; and
SHERRY MCKENZIE,
Defendants

BY

[Signature]

COMPLAINT AND FIRST SET OF
INTERROGATORIES
JURY TRIAL DEMANDED

NOW COME THE PLAINTIFFS, complaining of Defendants, who allege and say that:

PARTIES

1. Plaintiffs RONNIE L. CLARK; ANITA CLARK; and AUTUMN CLARK are citizens and residents of Guilford County, North Carolina.
2. Defendant JEFFREY DENIS, D.V.M. is a citizen and resident of Guilford County, North Carolina.
3. Defendant CARDINAL ANIMAL CARE, P.A. (hereinafter referred to as "CARDINAL ANIMAL CARE") is a professional association, on information and belief formed in accordance with the laws of the State of North Carolina, licensed to do business in the State of North Carolina, and doing business in Guilford County, North Carolina.
4. Defendant JEFFREY DENIS, D.V.M. is licensed to practice veterinary medicine in the State of North Carolina and at all times relevant to this action was engaged in the practice of veterinary medicine and held himself out as having the special skills and knowledge possessed by veterinarians in this locality.

5. Upon information and belief, at all times relevant to this action Defendant JEFFREY DENIS, D.V.M. (hereinafter "DENIS") was director of the medical staff and owner or chief shareholder of Defendant CARDINAL ANIMAL CARE, and Defendants TERRI SMITH and SHERRY MCKENZIE were employed there as receptionists.

6. At all times relevant to this action Plaintiffs were clients of Defendant CARDINAL ANIMAL CARE whose family pet was under the care and control of defendants and/or their employees, servants, or agents.

FACTS

7. On or about 9:30 A.M., February 1, 1993, Plaintiff ANITA CLARK, acting for and on behalf of all three Plaintiffs, left their healthy four-year-old pet cat Charmin in the care of Defendants for the purpose of rabies vaccination, bath and dip, and routine dental cleaning.

8. Plaintiffs had utilized the services of Defendants exclusively since acquiring said cat in 1988 and Defendants knew or had reason to know that this was Plaintiffs' only pet and that Plaintiffs were strongly attached to said animal, as evidenced not only by Plaintiffs' comments within Defendants' establishment but by their long and consistent record of obtaining optimum veterinary care for their pet, including but not limited to vaccinations, prevention of internal and external parasites, and special bathing.

9. On or about 1:15 P.M., February 1, 1993, Defendant DENIS telephoned Plaintiffs and informed Plaintiff ANITA CLARK that the cat Charmin had awakened from the dental procedure with a cough and that said cat should remain overnight at Defendants' establishment as a precaution.

10. On or about 9:00 A.M., February 2, 1993, Plaintiff ANITA CLARK telephoned the establishment of Defendants and was told by Defendant DENIS that the condition of the cat had improved and that Plaintiffs should telephone later

that afternoon to learn if the animal could be released.

11. At no time on February 2, 1993 did Defendant DENIS communicate to Plaintiffs the fact that according to Defendants' own records the condition of their pet had actually worsened and the animal had developed subcutaneous pockets of air and a condition of respiratory distress known as dyspnea, and this failure to inform Plaintiffs prevented them from participating in decision-making regarding the further treatment of their animal, including but not limited to possible transport to North Carolina State University Veterinary School Teaching Hospital for specialized care.

12. On or about 12:10 P.M. on February 2, 1993, Plaintiff AUTUMN CLARK presented herself at the establishment of Defendants and asked to pick up the cat Charmin but was told by an as yet unidentified receptionist that the animal was alright but could not be released until 3:00 P.M. as he still had a slight cough.

13. On or about 3:35 P.M. on February 2, 1993, Plaintiff AUTUMN CLARK returned to the establishment of Defendants to pick up the cat Charmin but was told by Defendant TERRI SMITH, who left the reception area to check on the animal's condition, that although said animal was doing well he must again remain at the establishment overnight as he still had a slight cough.

14. On or about 9:15 A.M. on February 3, 1993, Plaintiff ANITA CLARK presented herself at the establishment of Defendants and was told by Defendant SHERRY MCKENZIE, who left the reception area to check on the animal's condition, that the cat Charmin was doing well but that Defendant DENIS was in surgery and could not then speak with her. At no time was Plaintiff ANITA CLARK informed that the condition of the cat Charmin had worsened and that surgery was or had been required, nor did she nor any of the other Plaintiffs authorize such surgery.

15. On or about 11:45 A.M. on February 3, 1993, Defendant DENIS telephoned Plaintiff ANITA CLARK at work and informed her that he had found

the condition of Plaintiffs' animal significantly worsened that morning, that he had performed surgery, and that he would know within two hours whether the animal would survive.

16. On or about 1:50 P.M. on February 3, 1993, Defendant DENIS telephoned Plaintiff ANITA CLARK and informed her that the cat had expired.

17. According to Defendants' records said cat suffered respiratory failure due to a condition known as pneumothorax, or air outside the lungs within the chest cavity.

18. On or about 2:15 P.M. on February 3, 1993, Defendant DENIS met with Plaintiffs ANITA CLARK and RONNIE L. CLARK and stated that the above-referenced unauthorized surgery had been performed to correct a severe tear in the trachea of the animal which had led to a leakage of air into the chest.

19. On or about 5:30 P.M. on February 3, 1993, Clark family member Chris Clark presented himself at the establishment of Defendants to obtain the body of the animal and was handed the body in a plastic garbage bag.

20. Upon opening the above-referenced garbage bag for burial of the animal on or about 5:45 P.M. on February 3, 1993, Plaintiffs RONNIE L. CLARK, ANITA CLARK, and AUTUMN CLARK observed extensive surgical alteration of the body due to the unauthorized procedure referenced above and experienced intense feelings of shock, grief, and emotional distress caused by the horrifying and mutilated condition of their pet.

FIRST CLAIM FOR RELIEF: NEGLIGENCE

21. The allegations of Paragraphs 1-20 are realleged and incorporated herein by reference.

22. The death of the cat Charmin and subsequent grief and incapacitating emotional distress suffered by Plaintiffs would not have occurred as they did in the usual course of events and the Plaintiffs could not have done anything to

prevent or avoid the death of their pet under these circumstances.

23. Tracheal tear and pneumothorax are not inherent risks of routine dental care performed competently upon animals, and infliction of such injury in the course of said procedure falls below the accepted standard of veterinary care within the community.

24. Presumptively under the doctrine of res ipsa loquitur Defendant DENIS and CARDINAL ANIMAL CARE are guilty of negligence, since they caused or allowed Plaintiffs' animal to incur the fatal injuries referenced above while in their care.

25. Defendants DENIS and CARDINAL ANIMAL CARE exclusively controlled the surgery and other procedures performed upon Plaintiffs' cat Charmin, but it has not been possible to determine which individual working at the facility is directly responsible for the fatal injury or injuries referenced above.

26. Defendants DENIS and CARDINAL ANIMAL CARE are responsible for any attendant negligence of any other doctors, technicians, nurses, or attendants having responsibility for the care and treatment of the cat Charmin who were employed at Defendants' establishment and were acting within the scope of their employment at all times relevant to this action.

27. For more than twenty-four hours Defendants failed to inform Plaintiffs of the true condition of their cat and ultimately performed highly invasive surgery without authorization by Plaintiffs.

28. But for the professional negligence of Defendants DENIS and CARDINAL ANIMAL CARE, Plaintiffs would not have suffered the property loss and concomitant emotional distress referenced above.

SECOND CLAIM FOR RELIEF: GROSS NEGLIGENCE

29. The allegations of Paragraphs 1-28 are realleged and incorporated

herein by reference.

30. Defendants' infliction of the above-referenced injury or injuries upon Plaintiffs' healthy cat undergoing routine dental cleaning displayed a manifestly far smaller degree of skill, watchfulness, and prudence than the circumstances would require of a veterinarian and/or his agents exercising the ordinary standard of veterinary care within the community.

31. Once the condition of Plaintiffs' animal began to worsen on February 2, 1993, Defendants DENIS and CARDINAL ANIMAL CARE had a legal duty to inform Plaintiffs of their pet's condition and to afford them the opportunity to make decisions concerning further treatment.

32. Upon information and belief, Defendants DENIS AND CARDINAL ANIMAL CARE did wantonly and willfully deceive Plaintiffs concerning the deteriorating condition of their animal, both directly in a telephone conversation with Plaintiff ANITA CLARK at 9:00 A.M. on February 2, 1993 and thereafter indirectly through their agents/receptionists, including Defendants TERRI SMITH and SHERRY MCKENZIE who, despite knowledge to the contrary, repeatedly assured Plaintiffs that their pet was doing well, up to and even including the point at which the animal was undergoing unauthorized surgery on February 3, 1993.

33. Despite abundant opportunity to communicate with Plaintiffs on the morning of February 3, 1993, including the presence of Plaintiff ANITA CLARK in the veterinary hospital reception area at the very time the above-referenced unauthorized surgery was being undertaken, Defendants did utterly fail to contact Plaintiffs regarding said surgery, did withhold vital information from them as referenced above, and did undertake said unauthorized, dubious, and ill-fated surgery, in gross violation of accepted veterinary standards and the canons of veterinary ethics.

THIRD CLAIM FOR RELIEF: NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS

34. The allegations of Paragraphs 1-33 are realleged and incorporated herein by reference.

35. Defendants negligently engaged in conduct resulting in the suffering and death of Plaintiffs' pet cat Charmin. But for their infliction of an injury or injuries while he was in their care for routine dental cleaning, and their subsequent failure to disclose the animal's true condition to his owners, as well as their undertaking to perform unauthorized surgery, Plaintiffs' beloved pet would not have suffered and died as he did.

36. Defendants were aware of Plaintiffs' attachment to their pet, and it was reasonably foreseeable that such conduct, including all the circumstances referenced above, would cause Plaintiffs severe emotional distress.

37. Plaintiffs' intense and debilitating emotional distress, including shock from the sudden death of an animal they had been repeatedly told was doing well; horror at the sight of his surgically mutilated body; and grief as they came to understand the extent of his suffering, was the foreseeable and proximate result of Defendants' grossly negligent conduct.

DAMAGES

38. The allegations of Paragraphs 1-37 are realleged and incorporated herein by reference.

39. As a direct and proximate result of Defendants' conduct, Plaintiffs have incurred financial and other loss, have endured severe and debilitating emotional distress, and are therefore entitled to recover actual, exemplary, and punitive damages in an amount to be determined at trial.

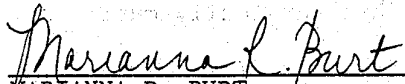
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

1. judgement against Defendants for a sum in excess of \$10,000; and
2. a sum to be awarded at trial for actual damages; and
3. further sums to be awarded at trial for exemplary and punitive damages; and
4. the costs of this action to be taxed by the Court against Defendants; and
5. for such and further relief to which Plaintiffs may be entitled.

PLAINTIFFS HEREON ENDORSE THEIR DEMAND FOR TRIAL BY JURY ON ALL ISSUES SO TRIABLE UNDER NORTH CAROLINA LAW.

This the 8th day of March, 1993.



MARIANNA R. BURT
Attorney for Plaintiff
P.O. Box 768, Apex, NC 27502
919/362-5653

FILED

1993 MAR -8 PM 3:53

GUILFORD COUNTY, N.C.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

GUILFORD COUNTY

BY _____ SUPERIOR COURT DIVISION

93 CVS _____

RONNIE L. CLARK; ANITA CLARK;
and AUTUMN CLARK,
Plaintiffs

v.

CARDINAL ANIMAL CARE, P.A.,
ITS EMPLOYEES AND AGENTS;
JEFFREY DENIS, D.V.M.;
TERRI SMITH; and
SHERRY MCKENZIE,
Defendants

PLAINTIFFS' FIRST SET OF
INTERROGATORIES

Plaintiff herewith serves upon you the following written interrogatories pursuant to Rule 33 of the Rules of Civil Procedure. Since one defendant is a professional association, you are required to select such officer or agent of said association as can furnish such information in answer to each interrogatory as is available to said officer or agent. You are required to have these interrogatories answered separately and fully in writing under oath and to serve a copy of your answers on the attorney for plaintiff within thirty (30) days of service thereof.

Pursuant to Rule 26 of the Rules of Civil Procedure, these interrogatories shall be continuing in nature until the date of trial and you are required to serve supplemental answers as additional information may become available to you.

1. State fully, completely, and at length the factual basis of every defense which you now assert or will assert in this action.
2. State the name, occupation, business address, and telephone number of each witness you expect to call or rely upon in the trial of this action, together with a summary of the matters to be testified about within the knowledge of each witness.
3. State at length and verbatim the contents of each and every document, writing, paper, or letter which you intend to utilize as a basis or ground for any defense in this action or which you intend to offer into evidence upon the trial of this action. In addition, state the date and circumstances of preparation or receipt of each such item. If you will do so without a Motion to Produce,

attach your answers to these interrogatories a copy of each and every such document, writing, paper or letter.

4. State the name, address, telephone number, and current employment status of each and every veterinarian, veterinary nurse, veterinary technician, veterinary assistant, and/or kennel worker who examined, treated, medicated, monitored, operated upon, tested, assisted in any of the above functions, or otherwise handled the cat Charmin belonging to Plaintiffs during his hospital stay from February 1, 1993 through February 3, 1993 at Defendants' establishment, and identify the activities performed by each individual with respect to said animal.

5. State the name, address, telephone number, and current employment status of each and every receptionist who communicated by telephone or in person with Plaintiffs concerning the medical condition of their cat Charmin during his hospital stay from February 1, 1993 through February 3, 1993 at Defendants' establishment.

This the 8th day of March, 1993.

BY:

Marianna R. Burt

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