

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL PONTING and  
JUDY WONG,

No. C 12-06442 WHA

Plaintiffs,

v.

**ORDER GRANTING DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT  
AGAINST PLAINTIFF JUDY WONG  
AND VACATING HEARING**

LOWE’S HIW, INC.

Defendant.

\_\_\_\_\_ /

**INTRODUCTION**

In this action for loss of consortium, defendant Lowe’s HIW, Inc., moves to dismiss plaintiff Wong’s sole claim. Plaintiffs have filed a notice of non-opposition (Dkt. No. 20 at 2). For the reasons stated below, Lowe’s unopposed motion for summary judgment is **GRANTED**.

**STATEMENT**

Plaintiff Judy Wong claims a loss of consortium as a result of injuries suffered by plaintiff Michael Ponting on August 11, 2010, when he allegedly slipped on paint in a Lowe’s hardware store in San Bruno, California. Plaintiffs have never married or registered with the State of California as domestic partners, but were granted a “Declaration of Domestic Partnership” by the County of San Francisco on May 22, 2000 (Dep. of Judy Wong at 10:1–12; Int. Ans. No. 2).

**ANALYSIS**

Summary judgment is proper when the pleadings and the evidence in the record “show that there is no genuine dispute as to any material fact and that the moving party is entitled to

1 judgment as a matter of law.” Rule 56(a). A dispute is genuine only if there is sufficient  
2 evidence for a reasonable factfinder to find for the non-moving party, and material only if the  
3 fact may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49  
4 (1986). In this analysis, all reasonable inferences must be drawn in the light most favorable to  
5 the non-moving party. *Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1018  
6 (9th Cir. 2010). Unsupported conjecture or conclusory statements, however, cannot defeat  
7 summary judgment. *Surrell v. Cal. Water Serv. Co.*, 518 F.3d 1097, 1103 (9th Cir. 2008).

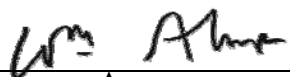
8 Loss of consortium can exist when a negligent third party injures the claimant’s spouse.  
9 *Elden v. Sheldon*, 46 Cal. 3d. 267, 277 (1988). Domestic partners recognized under California  
10 law have the same rights and responsibilities as spouses. Cal. Fam. Code § 297.5. Defendant  
11 argues, however, that the state does not recognize plaintiffs as either domestic partners *or*  
12 spouses; therefore, plaintiff Wong cannot successfully claim loss of consortium. California  
13 Family Code Section 299.6(b) preempted local governments from creating new domestic  
14 partnerships after July 1, 2000, and recognized domestic partnerships created before that date  
15 only upon registration with the Secretary of State. Plaintiffs received a domestic partnership  
16 from the City and County of San Francisco on May 22, 2000, but never registered as domestic  
17 partners with the state. This order finds that had plaintiffs properly registered as domestic  
18 partners, then plaintiff Wong could have met this element of her claim. Because plaintiff Wong  
19 is neither plaintiff Ponting’s spouse nor his state-registered domestic partner, she cannot make a  
20 valid claim for loss of consortium.

21 **CONCLUSION**

22 Plaintiffs have filed a notice of non-opposition to the motion. For this reason and those  
23 stated above, defendant’s motion for summary judgement on plaintiff Wong’s sole claim for  
24 loss of consortium is **GRANTED**. The hearing on **JANUARY 29, 2014**, is hereby **VACATED**.

25 **IT IS SO ORDERED.**

26  
27 Dated: January 7, 2014.

28  
  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE