

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Brunswick Division

**FILED**

Samuel L. Kay, Clerk  
United States Bankruptcy Court  
Savannah, Georgia  
By camerson at 1:10 pm, Dec 08, 2009

IN RE:	)	Chapter 13 case
	)	Number <u>09-20367</u>
VALENTIA LACHELLE COOK	)	
	)	
Debtor	)	
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VALENTIA LACHELLE COOK	)	
	)	
Debtor/Movant	)	
	)	
v.	)	
	)	
BRUNSWICK PAIN TREATMENT	)	
CENTER LLC and THE SPINE	)	
CENTER OF SOUTHEAST GEORGIA	)	
	)	
Objecting Creditors	)	
	)	
and	)	
	)	
M. ELAINA MASSEY	)	
	)	
Chapter 13 Trustee	)	
	)	
Respondents	)	

**ORDER**

This matter comes before me on the objection filed by Brunswick Pain Treatment Center LLC and The Spine Center of Southeast Georgia (collectively, the "Creditors") to the Debtor's Motion to Approve Settlement of a Tort Case. The Creditors argue that they have valid Hospital Liens (as later defined) secured by

the settlement proceeds ("Proceeds") from the Debtor's personal injury cause of action. Since those purported liens were not timely perfected in accordance with Official Code of Georgia ("O.C.G.A.") § 44-14-471, they are invalid under Georgia law. Therefore, because the Creditors do not have a valid lien against the Proceeds, they are not entitled to receive any distribution from those funds. The Creditors' objection is overruled.

#### **BACKGROUND**

The Debtor was involved in a vehicular accident on June 1, 2007. She hired Attorney C. Foster Lindberg to represent her in a personal injury tort case ("PI Case") arising from that accident.

In April 2008, the Debtor began experiencing pain arising from injuries sustained in the accident. To address that pain, she sought treatment from the Creditors. On May 9, 2008, Attorney Lindberg sent a letter ("Letter of Protection") by facsimile to the Brunswick Pain Treatment Center. That letter stated in pertinent part:

Please be advised that I represent Valenthia Cook in a personal injury case. It is my practice and procedure to see that providers of medical care are paid out of the settlement, before any payments are made to my client. Brunswick Pain [Treatment Center], as well as all known medical providers, will be paid out of any proceeds we are able to obtain, before distribution to my client.

(Dkt. No. 56 at 5.)

Thereafter, the Debtor began treatments with the Brunswick Pain Treatment Center and The Spine Center of Southeast Georgia. She was treated by the Brunswick Pain Treatment Center on five occasions between May 19, 2008, and November 5, 2008. The total amount billed for those treatments was \$31,300.00. (Dkt. No. 56 at 2-3.) The Debtor was treated by The Spine Center of Southeast Georgia on eleven occasions between July 25, 2008, and June 16, 2009. The total amount billed for those treatments was \$9,381.44. (Dkt. No. 56 at 1-2.)

On March 20, 2009, the Debtor filed a voluntary chapter 13 petition. (See Dkt. No. 1.) The Creditors were not listed in the schedules accompanying the petition, nor was the PI Case listed. The PI Case was, however, listed in the Debtor's Statement of Financial Affairs under the section entitled "Suits and administrative proceedings, executions, garnishments and attachments." (Id. at 26.)

On July 2, 2009, the Debtor amended several of her schedules as follows: Schedule B was amended to include the PI Case with a then-current value of \$16,386.00, Schedule C was amended to include the entire value of the PI Case as exempt under the Georgia exemptions, and Schedule F was amended to include the claims of the Creditors. (See Dkt. No. 39.) The certificate of service attached to the amended schedules stated that on June 29,

2009, in compliance with Southern District of Georgia Local Bankruptcy Rule 1009-1, the Debtor sent copies of the amended schedules, the 341 Notice with claims bar date of July, 27, 2009, the chapter 13 plan, and a proof of claim form to the Creditors. (See id. at 10.) Schedules B and C were amended again on July 24, 2009, to increase the current value of the PI Case to \$18,885.00 with that entire amount claimed as exempt under the Georgia exemptions. (See Dkt. No. 41.)

On July 24, 2009, the Debtor filed a Motion to Approve Settlement relating to the PI Case. (See Dkt. No. 43.) That motion was amended on August 4, 2009. (See Dkt. No. 48.) The amended motion requested approval of a settlement of the PI Case in the amount of \$25,000.00. (Dkt. No. 48.) Of that amount, \$6,114.58 was to be paid to Attorney Lindberg—\$5,833.33 as fees and \$281.25 as costs. (Id.) The settlement called for the remaining \$18,885.42 to be paid directly to the Debtor—\$10,000.00 for personal injuries and \$8,885.42 for lost wages—and sought to “bankrupt” certain medical expenses, including those amounts claimed by the Creditors. (Id.)

On August 6, 2009, the Creditors filed two documents (“Statements”) with the Clerk of the Superior Court of Glynn County, Georgia, claiming liens pursuant to O.C.G.A. § 44-14-470. (See Dkt. No. 56 at 7, 11.)

On August 27, 2009, the Creditors filed their Objection to Debtor's Motion to Approve Settlement ("Objection"). (See Dkt. No. 56.) In that Objection, the Creditors asserted that the treatments provided to the Debtor were made in reliance upon the Letter of Protection (id. at 1-2) and that the Creditors held liens against the Proceeds as evidenced by the Statements (id. at 3). As relief, the Creditors requested modification of the proposed settlement in order to pay the Creditors "a fair and reasonable amount" from the Proceeds. (Id. at 3.)

On September 8, 2009, a hearing was held on both the amended Motion to Approve Settlement and the Objection.<sup>1</sup> At hearing, counsel for the Creditors stated that while the Creditors do not necessarily object to the settlement, they do object to any settlement distribution that does not pay them anything towards the costs of the Debtor's treatments. Since the only dispute concerned the distribution of the Proceeds and no one objected to approval of the settlement, I stated that I would enter an order approving the settlement, with the Proceeds to be paid into the registry of the Court. At the close of hearing, I took this

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<sup>1</sup> The hearing also related to two objections filed by the Chapter 13 Trustee. The Trustee objected to the Debtor's claim of exemptions (see Dkt. No. 57) and to the proposed settlement (see Dkt. No. 58). Both objections were based on the Debtor's failure to provide evidence of lost wages that the Debtor claimed as exempt. (See Dkt. No. 57 at 1; Dkt. No. 58 at 1.) After the Debtor provided testimonial evidence of those lost wages at hearing, the Trustee withdrew both objections. (See Dkt. Nos. 60, 62.)

matter under advisement and allowed the parties to submit briefs on the issue of distribution.

On September 15, 2009, the Creditors filed their respective proofs of claim in the case. (See Cl. Nos. 9-10.) Both claims, which were listed as secured (id.), were filed after the July 27, 2009 bar date. (See Dkt. No. 15.)<sup>2</sup>

On October 6, 2009, I entered an order granting the Debtor's Amended Motion to Approve Settlement (see Dkt. No. 63) that was later amended to reflect the actual amount of Proceeds to be paid into court—\$16,385.42 (see Dkt. No. 71). On October 20, 2009, that amount was paid into the registry of the Court. (See Dkt. No. 77.) I must now determine how the Proceeds are to be distributed.

## DISCUSSION

### I. Georgia's Hospital Lien Statutes<sup>3</sup>

Under Official Code of Georgia § 44-14-470, a "physician practice"<sup>4</sup> that treats an injured person obtains a lien ("Hospital Lien") for "reasonable charges" associated with the treatment of

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<sup>2</sup> According to documentation in the record, the Creditors had actual notice of the bar date for filing proofs of claim since the Debtor mailed them a 341 Notice along with her amended schedules on June 29, 2009. (Dkt. No. 39 at 10.)

<sup>3</sup> The determination of whether a valid lien exists in the context of a bankruptcy proceeding is governed by nonbankruptcy law. Weed v. Washington (In re Washington), 242 F.3d 1320, 1322 (11th Cir. 2001).

<sup>4</sup> A "physician practice" is defined as "any medical practice that includes one or more physicians licensed to practice medicine in this state." O.C.G.A. § 44-14-470(a)(4).

that person. O.C.G.A. § 44-14-470(b).<sup>5</sup> As to the injured person, a Hospital Lien attaches only to the cause of action arising from the injuries that were treated and does not attach to the person or property of the injured person. Id.

A Hospital Lien that is not properly perfected is invalid under Georgia law. After a Hospital Lien has arisen, it must be perfected pursuant to O.C.G.A. § 44-14-471.<sup>6</sup> Physician practices

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<sup>5</sup> O.C.G.A. § 44-14-470(b) states in pertinent part:

"Any person, firm, . . . or corporation operating a . . . physician practice . . . shall have a lien for the reasonable charges for . . . physician practice . . . care and treatment of an injured person, which lien shall be upon any and all causes of action accruing to the person to whom the care was furnished . . . on account of injuries giving rise to the causes of action and which necessitated . . . physician practice . . . care, subject, however, to any attorney's lien. The lien provided for in this subsection is only a lien against such causes of action and shall not be a lien against such injured person . . . or any other property or assets of such persons and shall not be evidence of such person's failure to pay a debt.

<sup>6</sup> O.C.G.A. § 44-14-471(a) provides the process by which perfection is accomplished and sets forth a time period in which perfection must occur. It states in pertinent part:

(a) In order to perfect the lien provided for in Code Section 44-14-470, the operator of the . . . physician practice . . . :

- (1) Shall, not less than 15 days prior to the date of filing the statement required under paragraph (2) of this subsection, provide written notice to the patient and, to the best of the claimant's knowledge, the persons, firms, corporations, and their insurers claimed by the injured person or the legal representative of the injured person to be liable for damages arising from the injuries and shall include in such notice a statement that the lien is not a lien against the patient or any other property or assets of the patient and is not evidence of the patient's failure to pay a debt. Such notice shall be sent to all such persons and entities by first-class and certified mail or statutory overnight delivery, return receipt requested; and
- (2) Shall file in the office of the clerk of the superior court of the county in which the . . . physician practice . . . is located and in the county wherein the patient resides, if a resident of this state, a verified statement setting forth the name and address of the patient as it appears on the records of the . . . physician practice . . . ; the name and location of the . . . physician practice . . . and the

are required to file a statement with the clerk of the superior court "within 90 days after the person first sought treatment" for the injury. Id. § 44-14-471(a)(2)(B). Failure to perfect a lien within that time period causes the existing lien to be "invalidate[d]." Id. § 44-14-471(b).<sup>7</sup>

The invalidation language was first added in the 2002 amendments to § 44-14-471. See S.B. 451, 146th Gen. Assem., Reg. Sess. (Ga. 2002) (effective July 1, 2002). Prior to July 1, 2002, § 44-14-471 made no mention of the consequence for the failure to perfect a Hospital Lien.<sup>8</sup> There are no cases

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name and address of the operator thereof; . . . with respect to a physician practice, the dates of treatment; and the amount claimed to be due for the . . . physician practice . . . , which statement must be filed within the following time period:

. . .  
(B) If the statement is filed by a physician practice, then the statement shall be filed within 90 days after the person first sought treatment from the physician practice for the injury.

<sup>7</sup> O.C.G.A. § 44-14-471(b) states:

(b) The filing of the claim or lien shall be notice thereof to all persons, firms, or corporations liable for the damages, whether or not they received the written notice provided for in this Code section. The failure to perfect such lien by timely complying with the notice and filing provisions of paragraphs (1) and (2) of subsection (a) of this Code section shall invalidate such lien, except as to any person, firm, or corporation liable for the damages, which receives prior to the date of any release, covenant not to bring an action, or settlement, actual notice of a notice and filed statement made under subsection (a) of this Code section, via hand delivery, certified mail, return receipt requested, or statutory overnight delivery with confirmation of receipt.

<sup>8</sup> Prior to July 1, 2002, O.C.G.A. § 44-14-471 read as follows:

In order to perfect the lien provided for in Code Section 44-14-470, the operator of the hospital, within 30 days after the person has been discharged therefrom, shall file in the office of the clerk of the superior court of the county in which the hospital is located and in the county wherein the patient resides, if a

addressing the effect of § 44-14-471 on Hospital Liens since the 2002 amendments. Prior to those amendments, courts interpreting the earlier version of the statute held that medical providers could enforce Hospital Liens despite failing to comply with the perfection requirements of § 44-14-471. See Thomas v. McClure, 513 S.E.2d 43, 45 (Ga. Ct. App. 1999); Macon-Bibb County Hosp. Auth. v. Nat'l Union Fire Ins. Co., 793 F. Supp. 321, 325 (M.D. Ga. 1992).

In both Thomas and Macon-Bibb, the courts emphasized the fact that the liable parties had actual notice of the liens. Thomas, 513 S.E.2d at 45; Macon-Bibb, 793 F. Supp. at 325. That reasoning was codified in the 2006 amendments to § 44-14-471, which added language stating that a Hospital Lien is not invalidated as to any liable party with actual notice. See S.B. 306, 148th Gen. Assem., Reg. Sess. (Ga. 2006) (effective July 1, 2006). Although a Hospital Lien persists against a liable party with actual notice regardless of perfection, the lien against a

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resident of this state, a verified statement setting forth the name and address of the patient as it appears on the records of such hospital; the name and location of the hospital and the name and address of the operator thereof; the dates of admission and discharge of the patient therefrom; the amount claimed to be due for the hospital care; and, to the best of the claimant's knowledge, the names and addresses of all persons, firms, or corporations claimed by the injured person or the legal representative of the person to be liable for damages arising from the injuries. Such claimant shall also, within one day after the filing of the claim or lien, mail a copy thereof to any person, firm, or corporation claimed to be liable for the damages, said copy to be mailed to the address given in the statement. The filing of the claim or lien shall be notice thereof to all persons, firms, or corporations liable for the damages, whether or not they are named in the claim or lien.

cause of action must be perfected. The plain language of the statute states that if a lien against a cause of action is not perfected in the allotted time, then it is invalid.

In the present case, the Creditors do not have valid Hospital Liens against the cause of action and resulting settlement proceeds. The Creditors, as physician practices under § 44-14-470(a), had 90 days from the date on which they first treated the Debtor to file the necessary paperwork to perfect their Hospital Liens. See O.C.G.A. § 44-14-471(a)(2)(B).<sup>9</sup> The Debtor was first treated at the Brunswick Pain Treatment Center on May 19, 2008, and at The Spine Center of Southeast Georgia on July 25, 2008. Both of the Creditors filed the statements needed for perfection on August 6, 2009 (see Dkt. No. 56 at 7, 11), well past the respective 90-day periods. Therefore, because the Creditors failed to comply timely with the requirements of § 44-14-471(a), their purported Hospital Liens are invalid under Georgia law.

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<sup>9</sup> Section 44-14-471(a) does not appear to contemplate ongoing treatment at a physician practice. While hospitals, nursing homes, and traumatic burn care medical practices must file a statement with the clerk of the superior court "within 75 days after the person has been discharged," O.C.G.A. § 44-14-471(a)(2)(A), physician practices have "90 days after the person first sought treatment . . . for the injury," O.C.G.A. § 44-14-471(a)(2)(B). It is not clear how a physician practice could comply with the requirements of § 44-14-471(a)(2), since all charges arising from the treatment of the injury must be recorded in the statement that must be filed within 90 days after the first treatment. In a literal reading of the statute, charges incurred after the 90-day period could never become part of a perfected Hospital Lien since they could not possibly be recorded within the 90-day period.

## II. Violation of the Automatic Stay

The Creditors' act of filing the Statements violated the automatic stay. Under 11 U.S.C. § 362(a), filing a bankruptcy petition stays various actions by creditors, including "any act to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. § 362(a)(4). If a creditor acts in violation of the automatic stay, then that action is "void and without effect." United States v. White, 466 F.3d 1241, 1244 (11th Cir. 2006).

There are, however, exceptions to the automatic stay. In particular, the automatic stay does not apply to "any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title." 11 U.S.C. § 362(b)(3). Section 546(b) provides that the trustee's rights and powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of such perfection." Id. § 546(b)(1)(A). "If the particular interest is a lien, that lien must be in place prepetition before section 362(b)(3) can come into play." In re 229 Main St. Ltd. P'ship v. Mass. Dep't of Env'tl. Prot. (In re 229 Main St. Ltd. P'ship), 262 F.3d 1, 8 (1st Cir. 2001).

In the present case, the Creditors did not have an interest in property that could be perfected at the time they filed the Statements. As previously discussed, the Creditors' failure to file the documents required to perfect their Hospital Liens within 90 days of the dates on which the Debtor's treatments meant that the Hospital Liens were invalid under O.C.G.A. § 44-14-471. Thus, as of the date of the Debtor's bankruptcy filing, on March 20, 2009, the Creditors' Hospital Liens had already been invalidated, and they no longer had any interest in the Proceeds under Georgia Law. Accordingly, because the Creditors had no "interest in the property" as required to invoke § 362(b)(3), their act of filing the Statements violated the automatic stay, see 11 U.S.C. § 362(a)(4), and that action was "void and without effect," White, 466 F.3d at 1245. Therefore, not only were the purported Hospital Liens invalid under Georgia law, they were also void as violative of the automatic stay.

### **III. The Letter of Protection**

The Creditors have not demonstrated that the Letter of Protection obligated the Debtor to pay the Creditors from the Proceeds. The Creditors have cited no case authority supporting the proposition that a representation made by counsel in a "letter of protection" is enforceable under Georgia law, nor am I aware of any such authority. As previously discussed, the

Official Code of Georgia already provides a means by which medical providers can secure a debt against settlement proceeds by timely perfection of a Hospital Lien. Given the lack of Georgia statutory or case authority allowing for any other means by which to secure such a debt, I am without authority to recognize an alternative to the requirements of Hospital Lien perfection. Therefore, because of the Creditors' failure to obtain a validly perfected Hospital Lien, the Debtor was not obligated to pay the Creditors from the Proceeds.

Furthermore, any obligation arising from the Letter of Protection cannot be construed as an equitable lien against the Proceeds. Unless the party against whom the lien is sought to be enforced has prevented perfection, an equitable lien cannot arise from the failure to comply with perfection requirements. Clover Cable of Ohio, Inc. v. Heywood, 392 S.E.2d 855, 859 (Ga. 1990). There is nothing in the record to indicate that the Creditors were in any way prevented from making the necessary filings in order to perfect their Hospital Liens within the 90-day period. Thus the Letter of Protection, standing alone, is not evidence of a secured claim against the Proceeds.

Finally, the Letter of Protection does not cause the Statements to relate back to the 90-day period for filing under § 44-14-471. It is true that the Letter of Protection was received by the Creditors well before the 90-day period had

expired; in fact, it was received before the Debtor's treatments began. Georgia's lien statutes, however, make no accommodation by which other documents might substantially comply with the requirements of perfection. Section 44-14-471(a) specifies exactly the actions that must be taken to perfect a Hospital Lien, and § 44-14-471(b) plainly states that the failure to comply with subsection (a) invalidates the lien. Under Georgia law, "lien statutes . . . are to be strictly construed against the lien claimant, and . . . strict compliance is required in order to enforce them." Benning Constr. Co. v. Dykes Paving & Constr. Co., Inc., 426 S.E.2d 564, 566 (Ga. 1993). Therefore, because the Creditors failed timely to perfect their liens within the required 90-day period under § 44-14-471, they do not have a secured claim entitling them to the Proceeds. This conclusion does not address whether the Hospital Lien would remain valid under § 44-14-471(b) as against a tortfeasor with actual notice.

#### CONCLUSION

Since the Creditors do not have valid Hospital Liens against the Proceeds due to their failure timely to perfect, they are not entitled to any portion of the Proceeds. It is therefore **ORDERED** that the Creditors' Objection is **OVERRULED**. It is **FURTHER ORDERED** that the Debtor's motion to approve settlement and proceeds distribution is approved and the Clerk shall distribute

the full amount of the funds paid into registry of the Court,  
plus any accrued interest, to the Debtor as exempt property.



JOHN S. DALIS  
United States Bankruptcy Judge

Dated at Brunswick, Georgia,  
this 8<sup>th</sup> day of December, 2009.