THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2018-000943

Dr. Gregg N. Battersby, Appellant,

v.

Pamela Reid, State Farm Mutual Automobile Insurance Company and John Wiles, Defendants,

Of whom State Farm Mutual Automobile Insurance Company and John Wiles are the Respondents.

FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities iii

Statement of Issues on Appeal 1

Statement of Facts....................1

Arguments:

1.
A VALID CONTRACT EXISTED BETWEEN APPELLANT AND RESPONDENTS....................3

2.
BECAUSE RESPONDENTS ORAL CONTRACT WITH APPELLANT FELL OUTSIDE THE STATUTE OF FRAUDS, THE CONTRACT WAS ENFORCEABLE....................5

3.
RESPONDENTS CAUSED DAMAGE TO APPELLANT BY PAYING REID FOR THE TREATMENT RENDERED BY APPELLANT AND DETRIMENTAL RELIANCE WAS NOT AN ELEMENT IN ANY OF APPELLANTS CAUSES OF ACTION....................7

4.
BECAUSE RESPONDENTS TOLD APPELLANT THEY WOULD HONOR THE LIENS SIGNED BY REID AND PAY APPELLANT FOR HIS SERVICES RENDERED TO REID AND PAID REID INSTEAD, RESPONDENTS MADE A FALSE AND MISLEADING STATEMENT TO APPELLANT....................11

5.
APPELLANT WOULD NOT BE PRACTICING LAW WITHOUT A LICENSE BY TAKING OVER REID'S CLAIM....................11

Conclusion 12

Certificate of Service....................14

TABLE OF AUTHORITIES

Cases:

Campbell v. Hickory Farms of Ohio, 190 S.E.2d 26, 258 S.C. 563 (S.C., 1972.....................6

Ferst's Sons &Co. v. The Bank of Waycross...7

Klag v. Home Ins. Co., 158 S.E.2d 444, 116 Ga.App. 678 (Ga. App., 1967)................4, 5 &7

Lowrance v. Caldwell, 85 S. C. 94, 67 S. E. 143 (S.C., 1910)......................................6

Ortis v. The Travelers Insurance Company..7

Stringer v. State Farm Mut. Auto. Ins., 687 S.E.2d 58, 386 S.C. 188 (S.C. App., 2009)..........8

Trancik v. USAA Ins. Co...4

STATEMENT OF ISSUES ON APPEAL

1. DID A VALID CONTRACT EXIST BETWEEN APPELLANT AND RESPONDENTS?

2. DID RESPONDENTS ORAL CONTRACT WITH APPELLANT FALL OUTSIDE THE STATUTE OF FRAUDS AND WAS THE CONTRACT ENFORCEABLE?

3. DID RESPONDENTS CAUSE DAMAGE TO APPELLANT BY PAYING REID FOR THE TREATMENT RENDERED BY APPELLANT AND WAS DETRIMENTAL RELIANCE AN ELEMENT IN ANY OF APPELLANTS CAUSES OF ACTION?

4. DID RESPONDENTS TELL A FALSE AND MISLEADING STATEMENT WHEN THEY TOLD APPELLANT THEY WOULD HONOR THE LIENS SIGNED BY REID AND PAY APPELLANT FOR HIS SERVICES RENDERED TO REID BUT PAID REID INSTEAD?

5. WOULD APPELLANT BE PRACTICING LAW WITHOUT A LICENSE BY TAKING OVER REID'S CLAIM?

STATEMENT OF FACTS

Respondents do not have their facts straight regarding the Assignment of Proceeds, Contractual Lien and Authorization. This irrevocable lien directs "any and all insurance carriers" to make payment directly to Appellant for the services rendered to Reid. (R. p. 95). Those documents also assigned all of Reid's rights, remedies, and benefits to Appellant to the extent of his charges, as well as any causes of action that Reid may have against Calcutt in the event Respondents refuse to pay Appellant. And it allowed Appellant to prosecute the claim in Appellant's name. This lien does not limit the direction of payment to Reid's insurance company.

The liens are designed to protect Appellant from unscrupulous insurance companies that refuse to respect the wishes of the injured party in paying the doctor directly. Unfortunately, South Carolina has no statutory lien law that protects the provider. Providers are left with no

alternative but to have the rights, remedies, and benefits of the patient assigned to the provider. Of course, there is always the possibility that an insurance company might refuse to pay the provider. That is when the assignment comes into play. In a perfect world, insurance companies would honor the liens and pay the provider for his services. That is why it is so important for the insurance companies to stand by their promise to pay the provider. That promise to pay by Respondents precluded Appellant from asserting his rights under the assignments.

As Respondents noted, Appellant recorded the conversation with John Wiles, the claims specialist handling Reid's claim, on August 15, 2017. Appellant told Wiles that Reid signed liens directing payment to go to Appellant for Reid's treatment. Wiles told Appellant that if Reid wanted Appellant paid directly, as the liens indicated, they certainly can. Wiles went on to say, "that's not a problem for us". (R. p. 99, p.3, ll. 5-7). This statement by Wiles was clear and unambiguous. Appellant immediately emailed the liens to Wiles.

Any reference to Reid telling Respondents that she wanted to be paid directly was told to Appellant by Wiles after Respondents had already paid Reid. Appellant has no direct knowledge from Reid that she said this. Appellant made this clear in his deposition and at the hearing. (R. p. 148, p. 43, ll. 12-23) (R. p. 120, ll. 3-16). Paragraph 36 of Respondents Answer states "***these Defendants would show that Pamela Reid directed State Farm to send the settlement funds to her instead of the Plaintiff***". Paragraph 54 of Respondents Answer states "***these Defendants would further show that Reid never directed State Farm to directly pay the Plaintiff and, instead, Reid requested that payment for medical bills be made to her***". (R. pp. 26 & 28). Respondents have never shown proof that Reid directed payment to her. In fact, Respondents never showed proof that Reid, contrary to her signed liens, never directed payment to Appellant

as their answer indicated.

A CONTRACT DID EXIST BETWEEN APPELLANT AND RESPONDENTS.

It is clear from the conversation between Appellant and Wiles that Wiles said that they "certainly can" pay Appellant directly, that is not a problem for them. When asked if Respondents would honor the liens directing payment to Appellant, Wiles said "yeah". (R. p. 99, l. 5).

Contrary to Respondents position, there was a meeting of the minds. Appellant told Wiles that Reid signed liens directing payment to Appellant. Appellant asked Wiles if Respondents would honor the lien directing payment to Appellant. Wiles said "yeah", if Reid wants Respondents to pay Appellant directly they certainly can, that's not a problem for us. Wiles knew Reid wanted Appellant paid directly from Respondents. Nothing could be clearer.

There was consideration by both Appellant and Respondents. Appellant rendered treatment to Reid for injuries sustained in an automobile accident caused by William Calcutt, an insured of Respondents. Respondents were contractually obligated to pay damages Calcutt became legally liable to pay because of bodily injury. (R. p. 110). Respondents agreed to pay Appellant for his treatment to Reid for the bodily injury caused by Calcutt. Appellant not only told Wiles that Reid signed liens directing payment to Appellant, Appellant also sent the liens to Wiles.

Respondents were not only settling a debt of their insured, Calcutt, but their own potential liability. "***The insurer has a financial interest in the claim against the insured even though it only becomes liable to the third party when legal liability is established against the insured,***

and where the insurer agrees to settle its potential liability as well as the potential liability of the insured, the oral promise by the insurer to settle or pay the claim against the insured is an original undertaking and need not be in writing. See Klag v. Home Ins. Co., 158 S.E.2d 444, 116 Ga.App. 678 (Ga. App., 1967). It made no difference when Appellant spoke with Wiles about payment of Reid's treatment. I assume their answer would have been the same. Reid wanted Respondents to pay Appellant from the beginning of her treatment. Appellant had no notice that Respondents would not pay him for Reid's treatment. Wiles said he would honor Reid's liens directing payment to Appellant. Appellant had no way of knowing Respondents would violate their agreement. The liens gave Appellant an option to take over Reid's claim and settle it as he saw fit. Appellant could only settle for the amount of Reid's outstanding balance, nothing more or less.

Respondents continually raise Trancik v. USAA Ins. Co. as a defense. This case is different in that an oral agreement existed in this case where none existed in Trancik.

Because Calcutt caused the injuries to Reid, she could sue Calcutt. In turn, Respondents were contractually obligated to pay for the bodily injury Calcutt legally became liable for causing. In the event Appellant were to take over Reid's claim, Appellant would sue Reid for the treatment rendered to her and Calcutt would have been named third party defendant because he was responsible for her injuries. Respondents would have become involved in their duty to defend and because they were contractually liable to pay for the bodily injuries caused by Calcutt. This is all hypothetical since Respondents said they would honor the liens and pay Appellant directly. This promise prevented Appellant from taking over Reid's claim. The Assignment of

Proceeds, Contractual Lien, and Authorization referred to any and all insurance companies not just Reid's insurance company. (R. p. 95)

THE ORAL CONTRACT DOES NOT FALL UNDER THE STATUTE OF FRAUDS.

Appellant's oral contract falls outside the Statute of Frauds several ways.

Respondents issued an automobile insurance policy to Calcutt that made them contractually liable for bodily injuries caused by Calcutt. (R. p. 110). "It appears to us that the agreement here used upon was not, on the part of the insurer, a promise to answer for the debt, default, or miscarriage by another required by the Statute of Frauds to be in writing. ***The insurer's contract is the promise to answer for the debt, default, or miscarriage of the insured*** as provided in the terms of the policy. That contract is in writing. *** ***The insurer has a financial interest in the claim against the insured even though it only becomes liable to the third party when legal liability is established against the insured, and where the insurer agrees to settle its potential liability as well as the potential liability of the insured, the oral promise by the insurer to settle or pay the claim against the insured is an original undertaking and need not be in writing.***" See Klag v. Home Ins. Co., 158 S.E.2d 444, 116 Ga.App. 678 (Ga. App., 1967).

Respondents were settling a business and financial liability of their own. "It is important to determine in each case of an undertaking, which in form purports to be a promise to pay the debt of another, whether it is such fact; for it is well settled that, ***if an oral agreement is in effect a promise to pay the debt of the promisor himself, it is not within the statute of frauds, although the incidental result of its performance may be the discharge of the indebtedness of another person.***" *** "Wherever the main purpose and object of the promisor is, not to answer

for another, but to subserve some purpose of his own, his promise is not within the statute, although it may be in form a promise to pay the debt of another." See Lowrance v. Caldwell, 85 S. C. 94, 67 S. E. 143 (S.C., 1910). Respondents were contractually liable for the injuries to Reid caused by Calcutt up to the policy limits. The insurance contract issued to Calcutt stated that Respondents will pay for the injuries caused by Calcutt. Respondents were paying a debt owed by them.

Respondents were holding the settlement funds to pay for the treatment of Reid. "Another exception is that ***a promise to pay a debt out of the debtor's funds or property taken over or held by the promisor is an original undertaking, and the Statute is not applicable to the promise.***" See Campbell v. Hickory Farms of Ohio, 190 S.E.2d 26, 258 S.C. 563 (S.C., 1972).

Respondents continue to raise the issue of Appellant having firsthand knowledge that Reid told Respondents to pay her directly. As stated previously, Appellant only became aware that Reid told Respondents to pay her directly in the telephone conversation with Wiles a month after Respondents paid Reid. Appellant could have phrased it better. Appellant clarified this issue in deposition and at the hearing. Appellant did not allege that Reid told him of her wishes to be paid directly. Appellant was merely stating what was relayed by Wiles. Respondents have never provided any proof from Reid that she actually said this. Paragraph 36 of Respondents Answer states "***these Defendants would show that Pamela Reid directed State Farm to send the settlement funds to her instead of the Plaintiff***". Paragraph 54 of Respondents Answer states "***these Defendants would further show that Reid never directed State Farm to directly pay the Plaintiff and, instead, Reid requested that payment for medical bills be made to her***". (R. p. 26

& 28).

Appellant cited Klag v. Home Ins. Co. in his Statute of Frauds argument. Ferst's Sons &Co. v. The Bank of Waycross and Ortis v. The Travelers Insurance Company are citations within Klag. Klag used those cases and others to come to their conclusion that insurance companies have a financial interest in a claim against their insured and that they are answering for the debt of their insured.

Appellant's oral contract with Respondents falls outside of the Statute of Frauds.

RESPONDENTS DID CAUSE DAMAGES TO APPELLANT, AND APPELLANT DID NOT HAVE TO PROVE ANY DETRIMENTAL RELIANCE.

Respondents admit that the unpaid bills of Reid are damages to Appellant. Had Respondents paid Appellant as they agreed, Appellant would not have any damages. Respondents knew the chances of Reid paying Appellant were slim. Appellant's damages occurred after Respondents agreed to pay him for Reid's services. Appellant agreed to wait for payment for Reid's treatment as long as Respondents agreed to pay him directly for the services. Respondents knew that Reid's treatment had not been paid. It is customary for physicians to wait until the settlement to get paid for treatment rendered to personal injury patients especially when a promise is given by the insurance company to pay them directly. Insurance companies are well aware of this.

Respondents are playing coy regarding the order granting summary judgment issued by the trial court. The trial court told Respondents to draft a regular order regarding the summary judgment. (R. p. 137). Respondents knew they had no caselaw supporting their argument that Appellant had to prove detrimental reliance on Respondents actions. Respondents intentionally

glossed over those issues in drafting the order. Respondents cannot blame the trial court for their deceptive actions. If the trial court did not rule on the issue of detrimental reliance then only a partial summary judgment was issued and the other causes of action are still active.

The only case Respondents cite in support of their position is Stringer v. State Farm Mut. Auto. Ins., 687 S.E.2d 58, 386 S.C. 188 (S.C. App., 2009). Stringer relates to the cause of action for estoppel. Here is the full citation, "In addition, ***nothing in the record demonstrates Stringer satisfied the remaining elements of estoppel***. Namely, Stringer has failed to prove that he suffered a prejudicial change in position or detrimentally relied on the representations of Jennings." Appellant does not have estoppel as any causes of action. Once again, Respondents try to argue that Appellants loss occurred before Respondents told Appellant they would honor the lien signed by Reid to pay Appellant directly for Reid's treatment. Reid's claim was not settled until after Reid completed treatment. Respondents would never pay for treatment prior to settling a claim.

Even though Appellant did not have to prove detrimental reliance, Appellant did in fact show that he detrimentally relied on Respondents agreement to honor Reid's lien directing payment to Appellant. Reid agreed to assign all her rights, remedies, and benefits to Appellant to the extent of his charges, as well as any causes of action that she might have against Calcutt, to prosecute such causes of action in Appellant's name and settle or otherwise resolve such causes of action as Appellant sees fit, if Respondents did not agree to pay him directly. (R. p. 95). Reid has never challenged this agreement. Since Respondents agreed to pay Appellant directly, Appellant could not take over the claim and settle it as he saw fit. In addition, if Appellant knew that Respondents were not going to pay him directly, Appellant would have required that Reid

obtain a lawyer to settle her claim against Calcutt and protect Appellant's interests.

Appellant was not required to establish detrimental reliance in his causes of action.

Respondents claim that Appellant knew that Respondents would not pay him using twisted logic. Respondents claim that because Appellant was involved in a prior litigation against a different insurance company that Appellant knew that Respondents would not honor their agreement with Appellant to pay him directly. The prior litigation involved ***no*** promise by the other insurance company to pay Appellant for the treatment rendered to another patient. That was a totally different set of facts.

Respondents claim that a different outcome would have happened if Appellant had contacted Respondents before instead of after treating Reid. An agreement to pay makes no difference whether it is made sooner rather than later. An honorable person would not renege on their agreement. Respondents could have just as easily not paid Appellant if they agreed before treating Reid as after. If Appellant had received a promise from Respondents to pay before Reid received treatment they would have come up with some other inane excuse.

The liens signed by Reid gave Appellant the option to take over Reid's claim against Calcutt and settle it as he saw fit if Respondents did not agree to pay Appellant directly from the settlement. The fact that the liens might anticipate the possibility that an insurance company might refuse to pay Appellant refers to the outright refusal to pay when Appellant initially asks the insurance company if they would honor the liens. If this had happened with Respondents, Appellant would have immediately filed suit against Reid for the outstanding bill and against Calcutt as a third party defendant. The court would have directed Calcutt's payment for Reid's

treatment to Appellant because Reid signed the liens. Appellant has successfully used the lien against another patient that the insurance company refused to honor the patient's signed lien. This occurred since this summary judgment order. Appellant was paid his entire bill.

Respondents feel that Appellant needs to prove Respondents' claim that Reid told them she wanted paid for the treatment Appellant rendered to Reid. Appellant just needs to prove that Reid wanted Appellant paid. Appellant did that by showing the irrevocable liens signed by Reid indicating she wanted Appellant paid from Respondents. It is obvious that Reid never told Respondents she wanted paid because the recording between Reid and Wiles gave no indication Reid wanted to be paid. (R. p. 104). Respondents beat a dead horse by continually repeating that Appellant somehow had firsthand knowledge that Reid told Respondents she wanted paid. As Appellant has said many times, Wiles told Appellant that Reid wanted paid after Respondents had already paid Reid.. Paragraph 36 of Respondents Answer states "***these Defendants would show that Pamela Reid directed State Farm to send the settlement funds to her instead of the Plaintiff***". Paragraph 54 of Respondents Answer states "***these Defendants would further show that Reid never directed State Farm to directly pay the Plaintiff and, instead, Reid requested that payment for medical bills be made to her***". (R. p. 26 & 28). Respondents have never shown proof that Reid directed payment to her. In fact, Respondents never showed proof that Reid never directed payment to Appellant as they promised. Respondents realized they have no proof that Reid wanted to be paid so they are putting the burden on Appellant.

RESPONDENTS DID MAKE A FALSE AND MISLEADING STATEMENT TO APPELLANT.

In a telephone conversation on August 15, 2017, Appellant told Wiles that Reid signed

liens directing payment for her treatment to go directly to Appellant. Appellant asked Wiles if Respondents would honor those liens and pay Appellant directly. Wiles agreed. Appellant sent those liens immediately to Wiles. Wiles knew that the irrevocable liens signed by Reid were her wishes. Respondents violated Reid's wishes by paying her directly. Respondents claim that Reid told them she wanted paid for Appellant's services. Respondents claimed in there Answer that they would show proof of Reid telling them this. Respondents never showed proof that Reid told them to pay her directly. That is because she never told them. The recorded telephone conversation between Wiles and Reid makes no mention of such a request. Respondents chose to pay Reid instead of Appellant for no reason. Respondents made a false and misleading statement to Appellant by telling Appellant they would pay him for Reid's treatment knowing that Reid wanted Appellant paid then paying Reid instead, and falsely claiming Reid wanted them to pay her.

APPELLANT WOULD NOT BE PRACTICING LAW BY TAKING OVER REID'S CLAIM AGAINST CALCUTT

Reid assigned to Appellant all her rights, remedies, and benefits to her claim against Calcutt if Respondents refused to pay Appellant directly for Reid's treatment. If Respondents would have told Appellant that they would not honor Reid's liens, Appellant would have exercised this option. Appellant would have filed a lawsuit against Reid for the unpaid balance and only the unpaid balance. Calcutt would have been named as a third party defendant since he was responsible for Reid's injuries. Appellant would not seek any pain and suffering, lost wages, or any other compensation for Reid. Appellant would have shown the court that Reid signed irrevocable liens directing payment to Appellant. Judgment would have been rendered and

Appellant would have been paid for Reid's treatment. This is not unauthorized practice of law. Appellant would not be representing Reid. In fact, Appellant would be suing Reid.

Another option for Appellant if Respondents refused to pay Appellant is that Appellant would require Reid get a lawyer to represent her against Calcutt. Appellant knows that Reid could refuse to do this, in which case Appellant would exercise his option to take over Reid's claim and file suit as stated above. This is not the unauthorized practice of law.

Respondents are setting forth scenarios that would constitute the unauthorized practice of law, but Appellant would not be using those scenarios.

CONCLUSION

It is undisputed that an oral contract existed between Appellant and Respondents. Appellant's cause of action for breach of contract falls outside of the statute of frauds. Respondents gave a false and misleading statement to Appellant when they told Appellant they would honor Reid's lien and pay Appellant directly for Reid's services. Appellant was damaged by Respondents paying Reid for the services rendered by Appellant. Detrimental reliance is not an element of any causes of action set forth by Appellant. Respondents cited no caselaw showing Appellant needed to prove detrimental reliance. Appellant would not be practicing law without a license by taking over Reid's claim and suing Reid and Calcutt for his damages. Appellant requests this Court reverse the decision of the trial court.

Dated November 8, 2018

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CERTIFICATE OF COUNSEL IN FINAL REPLY BRIEF

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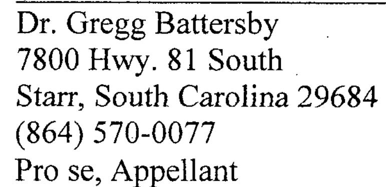
CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

November 8, 2018



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