

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-012446

09/07/2011

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT  
D. Harding  
Deputy

ATHLETIC INSTITUTE OF MEDICINE INC

GENE G GULINSON

v.

LIBERTY MUTUAL GROUP INC

HOWARD T TRAFMAN

ROBERT A JENSEN

MINUTE ENTRY

The Court received and considered Plaintiff Athletic Institute of Medicine, Inc.'s [Plaintiff] Motion For Judgment On the Pleadings, Defendant Liberty Mutual Group, Inc.'s [Defendant] responsive pleadings and the reply. Defendant's responsive pleading also included a Cross-Motion For Judgment on the Pleadings. The issues presented in Defendant's Cross-Motion were also fully briefed.

In the interest of expediting the Court's business and pursuant to Ariz. R. Civ. P. Rule 7.1[c][2] this Court herein waives oral argument in these matters.

**Circumstances.** Plaintiff brought this action as a health care provider to enforce lien rights secured pursuant to A.R.S. §33-931, et. seq. Plaintiff provided medical care to an injured patient named Mary Alice Perry [Perry] who sustained injury in an auto collision. This Defendant was the insurance carrier insuring the alleged negligent driver. The injured party [Perry] and Defendant subsequently entered into a settlement agreement. Pursuant to the terms of this agreement, Defendant forwarded a settlement check to the Perrys made payable to both the Perry's and this Plaintiff. Plaintiff asserts in the context of this action that it did not release its lien and was never compensated for health care provided to the injured party, Mary Alice Perry.

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This action is being brought pursuant to A.R.S. § 33-934 which provided that a lien holder may enforce their perfected health care lien against any person or entity that is liable [to an injured person] for damages. For purposes of this motion, the following factual circumstances have been established by the pleadings:

- That Plaintiff recorded its health care provider lien on May 26, 2010.<sup>1</sup>
- That Defendant had notice of this lien prior to the issuance of its settlement draft;
- That Defendant issued a settlement check made payable to both the Perry's and Plaintiff;
- That Defendant obtained a release from the Perry's;
- That Plaintiff did not join in the release or otherwise execute a release of its lien claim;
- That for purposes of this motion, it is alleged that the Perrys forged Plaintiff's signature on the settlement check and cashed or negotiated it.
- That Plaintiff was not paid for its lien from any of the proceeds generated from the settlement check; and
- Both sides concur that the alleged fraudulent release allegedly signed by the Perry's is not effectual against Plaintiff.<sup>2</sup>

As stated, this claim is being pursued against this Defendant who is a corporation that is liable for damages on this patient's underlying personal injury claim. The cause of action created by these statutes is not recognized in common law and does not permit enforcement of these lien rights directly against the injured party.

Plaintiff asserts that the fraudulent release of claim executed by the Perrys did not validly release their lien rights. As the parties herein concur that this release was not valid, Plaintiff seeks judgment as a matter of law.

Defendant argues that it complied with the requirement of the statute by placing Plaintiff's name on its settlement check as a payee. That, by including Plaintiff name on the draft, it fulfilled or otherwise complied with its lien obligation. Defendant seeks through its Cross Motion for Judgment on the Pleadings a ruling by this Court that, as a matter of law, it did not violate A.R.S. § 33-934. As part of its argument, Defendant asserts that it complied with the requirements set forth in Plaintiff's notice of lien which provided that its name be included in any eventual settlement draft.

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<sup>1</sup> The lien referenced in Plaintiff's Complaint was incorrect. However, Defendant acknowledges notice of the true lien at issue in this matter [lien record #:2010-0457124].

<sup>2</sup> A.R.S. § 33-934 provides that a release of claim is not valid or effectual against the lien holder unless the lien holder joins in the release or executes a release of the lien.

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The Court finds no support for Defendant's position that by placing Plaintiff's name on the settlement draft it was in compliance with the requirements of these lien statutes. In fact, the statutory language used in A.R.S. § 33-934 specifically provides that a release of claim is not valid unless the lien holder joins in the release. Under these circumstances, it is clear that Plaintiff did not join or otherwise execute a release. There has been no authority cited for the proposition that adding Plaintiff's name to the settlement draft in some manner eviscerates the formal statutory requirement of a formal consensual release of claim.

For the reasons cited by Plaintiff in its moving papers, the Court finds that the facts of this case entitle Plaintiff to judgment as a matter of law.

In addition, the Court finds that Plaintiff is entitled to an award of attorney fees pursuant to statute.<sup>3</sup>

**IT IS ORDERED** granting Plaintiff's Motion For Judgment on the Pleadings;

**IT IS FURTHER ORDERED** denying Defendant's Cross Motion for Judgment on the Pleadings;

**IT IS FURTHER ORDERED** granting Plaintiff's request for attorney fees.

**IT IS FURTHER ORDERED** that Plaintiff shall timely submit a proposed form of judgment, Affidavit of Fees and Statement of Costs in this matter.

Dated: September 9, 2011

/ s / HONORABLE J. RICHARD GAMA

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JUDICIAL OFFICER OF THE SUPERIOR COURT

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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<sup>3</sup> A.R.S. §33-934[B].  
Docket Code 019