IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

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| PLAINTIFF MED PROVIDER,  Plaintiff,  v.  DEFENDANT NAMES,  Defendants. | Case No.: CJ- |

**DEFENDANT DEF NAME’S MOTION FOR SUMMARY JUDGMENT**

Defendant moves the Court for Summary Judgment. There is no substantial controversy as to any material fact and he is entitled to judgment as a matter of law. Defendant incorporates by reference the following brief.

**BRIEF IN SUPPORT OF MOTION**

**I. Statement of Uncontroverted Facts**

1. Between September 22, 2003 and February 25, 2004, the CLINIC NAME clinic treated CLIENT NAME for injuries she sustained in a car wreck and billed Ms. CLIENT $4008.00 for the treatment.[[1]](#footnote-1)1

2. Ms. CLIENT received a $12,500 settlement from Farmers Insurance Company (the other driver’s insurance provider) for her injuries.[[2]](#footnote-2)2

3. Ms. CLIENT’s other health care provider~~s~~ reduced its bills;[[3]](#footnote-3)3 her attorney (Defendant, ATTORNEY NAME) then asked the chiropractic clinic to reduce its bill as well, or in the alternative, to submit the bill to Ms. CLIENT’s health insurance plan.[[4]](#footnote-4)4 This request was refused. The doctor instead elected to stand on a lien she claimed to have perfected against the recovery.[[5]](#footnote-5)5

4. Defendant ATTORNEY NAME deposited the disputed funds in his attorney trust account,[[6]](#footnote-6)6 on September 24, 2004, in order to construe the claimed lien. Ms. CLIENT moved to join the doctor as a “necessary party” in the underlying automobile liability action in Cleveland County.[[7]](#footnote-7)7

5. Dr. MEDICAL PROVIDER then sought to “quash” Ms. CLIENT’s attempt to join her as a necessary party in Cleveland County case.[[8]](#footnote-8)8

6. On November 19, 2004, The doctor filed her own action, *this action,* in Oklahoma County, seeking to foreclose the claimed lien.[[9]](#footnote-9)9

7. The doctor’s MOTION TO QUASH in the Cleveland County action was denied, she was joined in that action, but a hearing to determine the reasonableness of her bill, and the “order for payment” was stayed pending the outcome of this action.1[[10]](#footnote-10)0

8. According to the doctor’s own pleadings filed in the Cleveland County action, the chiropractic services that are the subject of this dispute were rendered by DOCTOR as an employee of CLINIC NAME Chiropractic, P.C., a professional corporation and *not by DOCTOR NAME in her individual capacity*.1[[11]](#footnote-11)1

9. However, the lien filed by DOCTOR NAME was filed in her name *individually*; DOCTOR NAME is even listed as payee, not CLINIC NAME, P.C.1[[12]](#footnote-12)2

**II. Statement of the Case**

CLIENT NAME was injured in a car wreck in Cleveland County. She was treated at the CLINIC NAME, P.C., for which she was billed $4008. Later, Ms. CLIENT received $12,500 from Farmers Insurance Company for her injuries. ATTORNEY NAME, Ms. CLIENT’s attorney, deposited the funds into his trust account prior to disbursement to interested parties. In light of the modest recovery, requests were made to Ms. CLIENT’s medical providers to reduce their bills. The chiropractic clinic was then asked to either submit its bill to Ms. CLIENT’s health insurance or discount the bill–the clinic refused and demanded payment of the full amount from the settlement proceeds.

Ms. CLIENT sought to join the chiropractor and the clinic in the Cleveland County auto negligence action in order to construe the chiropractor’s claimed lien and settle the clinic’s bill. In that action, DOCTOR NAME asserted she was not a proper party because the services were actually rendered by the clinic which was her employer. Meanwhile, DOCTOR NAME initiated this action, naming attorney ATTORNEY NAME and Farmers Insurance as defendants, and asking this court to foreclose her claimed physician’s lien.

**SUMMARY OF ARGUMENT**

The doctor’s position is fatally flawed–she perfected no lien–there is nothing for this court to foreclose. In order to create a physician’s lien, a doctor must fulfill the requirements of the physician’s lien statute–the terms of that statute *must be strictly followed.*

The physician’s lien statute1[[13]](#footnote-13)3 requires that, “. . . before the payment of any monies to the injured person, his attorney, or legal representative,” the would be lienor file notice on the materialman’s lien docket: “. . . containing the name and address of the physician claiming the lien.” Here, the doctor steadfastly maintained in the Cleveland County action that “all services . . . rendered” to CLIENT NAME were rendered not by DOCTOR NAME individually, but by the doctor, on behalf of the professional corporation “as an employee of said corporation.”1[[14]](#footnote-14)4 The doctor, however, tried to perfect the lien *in her own name*.1[[15]](#footnote-15)5

The corporation that treated CLIENT NAME is an entity separate from DOCTOR NAME individually; it is only that corporation that had a lienable interest in the settlement proceeds–never DOCTOR NAME personally. The settlement proceeds having been paid–with the clinic having never perfected a lien–time has now run on the clinic’s ability to rely on the physician’s lien statute. Defendants ATTORNEY NAME and Farmers Insurance Company are entitled to judgment in their favor.

**III. Argument and Authorities**

In *Riffe Petroleum Company v. Great National Corporation,*1[[16]](#footnote-16)6the Oklahoma Supreme Court set out the rule governing liens in Oklahoma:

[a] statutory lien, such as that created by [the coal miner’s lien statute],1[[17]](#footnote-17)7 stands in derogation of the common law. It must hence be strictly confined to the ambit of the enactment giving it birth. [footnote omitted] A lien that is not provided for by the clear language of the statute cannot be created by judicial fiat. The terms prescribed by statute cannot be ignored. They are the measure of the right and of the remedy.[footnote omitted] Neither may a lien be created out of a sense of fairness if the terms of the statutory lien are found too narrow and have not been met.[footnote omitted] Once it has been determined that a lien did in fact attach to the property because the claimant is within the protected class, enforcement provisions may be liberally applied.1[[18]](#footnote-18)8

Three years later, in *Republic Bank & Trust Company v. Bohmar Minerals, Inc.,*1[[19]](#footnote-19)9 the Court explained the apparent dichotomy between the phrases “strictly confined to the ambit of the enactment giving . . . birth [to the lien]” and, “liberally applied” at the enforcement stage:

[l]iberal construction is accorded to the enforcement stage after it is clearly established that the right has attached, but not so in the process of determining the question of whether a lien does exist in contemplation of law. [footnote omitted].2[[20]](#footnote-20)0

The omitted footnote from *Bohmar*, above, explains:

[s]tatutory liens ... have been looked upon with jealousy, and generally will only be extended to cases expressly provided for by the statute, and then *only where there has been a strict compliance with all the statutory requisites essential to their creation and existence.*2[[21]](#footnote-21)1

This, according to *Bohmar*, “. . . is the settled rule that governs all statutory liens in derogation of the common law.”2[[22]](#footnote-22)2 The physician’s lien is just such a lien–in derogation of the common law.2[[23]](#footnote-23)3

*Bovasso v. Sample*2[[24]](#footnote-24)4 illustrates the operation of the principles from *Riffe* and *Bohmar* with respect to compliance with the requirements for perfecting a lien. The plaintiff in that case tried to enforce a judgment against a married couple for the balance due under a construction contract by claiming a lien on the underlying property under the Mechanic’s and Materialman’s lien statute.2[[25]](#footnote-25)5 The court ruled that the plaintiff, having never “alleged and proved” that a lien was properly perfected, was “clearly not entitled to a judgment declaring or foreclosing a [lien].”2[[26]](#footnote-26)6 Mirroring *Bohmar,* the Court in *Bovasso* explained:

[a] judgment declaring a lien and ordering foreclosure and sale cannot be rendered unless the account and lien statement have been filed at the time, at the place, and in the manner provided by the statutes pursuant to which it is created.2[[27]](#footnote-27)7

*In re Woodward*,2[[28]](#footnote-28)8 also shows the rule of strict compliance in operation with respect to one’s failure to properly perfect a statutory lien according to Oklahoma law. There, the bankruptcy court was asked to enforce liens alleged to have been impressed by a hospital and a physician against the proceeds of a car wreck settlement. Although both the hospital and the doctor had filed lien notices on the mechanic’s and materialman’s dockets in the county courthouse as required by the statute, those notices contained only a *total* of the amount claimed, rather than the “*itemized statement*”mandated by the lien statutes.2[[29]](#footnote-29)9 The would be lienholders urged an exception, claiming that filing the defective liens provided sufficient notice and the liens should be enforced. The court was compelled to disagree, noting:

Oklahoma courts have consistently held that in order for a statutory lien to be enforceable, the *exact terms of the statute creating the lien must be complied with.*3[[30]](#footnote-30)0

Here, as was so in the cases discussed above, DOCTOR NAME, claims the lien, but did not comply with the requirements of 42 O.S. § 46:3[[31]](#footnote-31)1

*[n]o lien ... shall be effective unless, before the payment of any monies to the injured person, his attorney, or legal representative* as compensation for such injuries or death:

1. A written notice . . . setting forth an itemized statement of the amount claimed, identifying the insurance policy or policies against which the lien is asserted, if any, *and containing the name and address of the physician claiming the lien* . . . is filed on the mechanic’s and materialman’s lien docket . . .

DOCTOR NAME never had any *personal* lienable interest in the settlement proceeds at issue here. In the pleadings filed in the Cleveland County action arising from the underlying car wreck, the doctor claims she is an employee of CLINIC NAME, P.C.3[[32]](#footnote-32)2 She maintains further in that pleading that “all services rendered to . . . CLIENT NAME . . . were performed . . . by DOCTOR NAME as an employee of said corporation.”3[[33]](#footnote-33)3 By her own admission, she never had apersonal interest in the bills asserted in support of her claimed lien. While DOCTOR NAME now claims to have filed the lien on behalf of the professional corporation, it is clear from the paperwork actually filed, she filed the lien in her own name.3[[34]](#footnote-34)4 DOCTOR NAME should not be allowed to maintain she is merely an “employee” of “CLINIC NAME, P.C.” only when that position serves her.

The corporation that provided the chiropractic services is an entity separate from DOCTOR NAME individually.3[[35]](#footnote-35)5 It is that corporation that had the lienable interest in the settlement proceeds. The clinic, having failed to perfect a lien prior to receipt of the settlement proceeds by attorney ATTORNEY NAME, the time has now run on the clinic’s ability to perfect a lien against those proceeds. The clinic holds no lien against the settlement proceeds and the doctor personally never had an interest in those proceeds such that a lien could attach on her behalf. Defendant’s motion should be granted.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that on the \_\_\_\_ day of MONTH, 20\_\_\_, the above and foregoing instrument was mailed, postage pre-paid to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JOE ATTORNEY

1. 1Ex No. 1-Petition. [↑](#footnote-ref-1)
2. 2*See* Ex. No. 1. [↑](#footnote-ref-2)
3. 3Ex. No. 2-Letter dated 7-28-04 from ATTORNEY NAME to DOCTOR NAME. [↑](#footnote-ref-3)
4. 4Ex. No. 3-Letter dated 8-16-04 from Dr. DOCTOR NAME to ATTORNEY NAME. [↑](#footnote-ref-4)
5. 5*See* Ex. No. 3. [↑](#footnote-ref-5)
6. 6*See* Ex. No. 1. [↑](#footnote-ref-6)
7. 7Ex. No. 4-Motion to Join l as Necessary Party & Determine Amount of Payment for Medical Services. [↑](#footnote-ref-7)
8. 8Ex. No. 5- Special Appearance and Motion to Quash. [↑](#footnote-ref-8)
9. 9*See* Ex. No. 1. [↑](#footnote-ref-9)
10. 10Ex. No. 6-Summary Order dated November 19, 2004. [↑](#footnote-ref-10)
11. 11*See* Ex. No. 5-¶ 2 of Special Appearance and Motion to Quash. [↑](#footnote-ref-11)
12. 12Ex. No. 7-Physicians Lien filed August 2, 2004. [↑](#footnote-ref-12)
13. 1342 O.S. § 46. [↑](#footnote-ref-13)
14. 14*See*, Ex. No. 5. [↑](#footnote-ref-14)
15. 15*See*, Ex. No. 7. [↑](#footnote-ref-15)
16. 16*Riffe Petroleum Co. v. Great National Co.,* 1980 OK 112, 614 P.2d 576. [↑](#footnote-ref-16)
17. 1742 O.S. § 148. [↑](#footnote-ref-17)
18. 18*Riffe Petroleum Co. v. Great National Co.,* 1980 OK 112, 614 P.2d 576, 579; see also, *Balfour v. Jacobs,* 1993 OK CIV APP 200, 867 P.2d 1364, 1366; *Balfour v. Nelson,* 1994 OK 149, 890 P.2d 916. [↑](#footnote-ref-18)
19. 19*Republic Bank & Trust Co. Of Tulsa v. Bohmar Minerals, Inc.,* 1983 OK 29, 661 P.2d 521. [↑](#footnote-ref-19)
20. 20*Id.* at 523. [↑](#footnote-ref-20)
21. 21*Id*. at 534 n.9 (Emphasis added, ellipsis in original); see also, *Kratz v. Kratz,* 1995 OK 63, 905 P.2d 753, 756 (“[courts] must strictly construe statutes creating liens. Liens are property rights and it is not the function of the courts to create them from a sense of justice in a particular case.”) [↑](#footnote-ref-21)
22. 22*Republic Bank & Trust Co. Of Tulsa v. Bohmar Minerals, Inc.,* 1983 OK 29, 661 P.2d 521, 523. [↑](#footnote-ref-22)
23. 23See, *Balfour v. Nelson,* 1994 OK 149, 890 P.2d 916, 919 (applying *Riffe* to the 42 O.S. § 46 physician’s lien, and noting, “[c]ourts cannot ignore the terms prescribed by a statute creating a lien”). [↑](#footnote-ref-23)
24. 24*Bovasso v. Sample,* 1982 OK 84, 649 P.2d 521. [↑](#footnote-ref-24)
25. 2542 O.S. § 142. [↑](#footnote-ref-25)
26. 26*Bovasso v. Sample,* 1982 OK 84, 649 P.2d 521, 523. [↑](#footnote-ref-26)
27. 27*Id.* at 523. [↑](#footnote-ref-27)
28. 28*In re Woodward,* 234 B.R. 519, 34 Bankr.Ct.Dec. 388 (Bkrtcy N.D. Okla. 1999). [↑](#footnote-ref-28)
29. 29*Id.* [↑](#footnote-ref-29)
30. 30*Id.* (Emphasis added). [↑](#footnote-ref-30)
31. 31Under 42 O.S. § 46 (emphasis added). [↑](#footnote-ref-31)
32. 32*See*, Ex. No. 5. [↑](#footnote-ref-32)
33. 33*See*, Ex. No. 7. [↑](#footnote-ref-33)
34. 34See, Ex. No. 7 (CLINIC NAME: Dr. Balfour Saul; PHYSICIAN: Dr. Deborah K. Balfour-Saul; MAKE CHECK PAYABLE TO: Dr. Deborah K. Balfour-Saul). [↑](#footnote-ref-34)
35. 35See, e.g., *Deaton, Gassaway & Davison, Inc. v. Thomas,* 1977 OK 83, 564 P.2d 236, (professional corporation (P.C.) is separate entity from its employees–lawyer member of P.C. not party to action involving P.C. itself); *Seitsinger v. Dockum Pontiac Inc.,* 1995 OK 29 ¶10, 894 P.2d 1077, 1080 (“The general rule ... that the individual and the corporation are two separate and distinct legal entities ... is not ignored unless it can be shown that there is a scheme to defraud”). [↑](#footnote-ref-35)