UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

CARLA JUANA TAYLOR — Case No. 99-10568-WSS-7
NORMAN RANDALL HARE, — Case No. 99-10741-WSS-7

Debtors.

JOSEPH O. VERNEUILLE, JR., as Trustee of the estate of Carla Juana Taylor, debtor and THEODORE L. HALL, as Trustee of the estate of Norman Randall Hare, debtor,

Plaintiffs,

vs. — Adv.No. 00-1051
Adv.No. 00-1078

CARLA JUANA TAYLOR; NORMAN RANDALL HARE; ROBERT WILLIAMS, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; BAPTIST HEALTH CARE CORPORATION, d/b/a BAPTIST HOSPITAL; and MURCHISON & SUTLEY, L.L.C.

Defendants.

ORDER ON COMPLAINT

A. Richard Maples, Jr., Mobile, Alabama, attorney for Plaintiff
Theodore L. Hall, Mobile, Alabama, attorney for Plaintiff
Barre C. Dumas, Mobile, Alabama, attorney for Defendants
J. Ross Holladay, Mobile, Alabama, attorney for Defendants
John Earle Chason, Bay Minette, Alabama, attorney for Defendants
Mary E. Murchison, Foley, Alabama, attorney for Defendants

These matters are before the Court on the adversary complaints of Joseph O. Verneuille, Jr., as Trustee of the estate of Carla Juana Taylor, Debtor, and Theodore L. Hall, as Trustee of the estate of Norman Randall Hare, debtor and are consolidated for trial on the merits. The actions were brought to determine the rights of the parties to insurance settlement proceeds and the extent, priority and validity of any liens that may be secured by these settlement proceeds. The Court has jurisdiction to hear these matters pursuant to 28 U.S.C. §§1334 and 157 and the Order of Reference

of the District Court. This is a core proceeding pursuant to 28. U.S.C. §157(b) and the Court has the authority to enter a final order.

FACTS

The parties have agreed that the facts of this case are not in dispute, and have submitted the case on the issues of law. On March 2, 1994, Carla Juana Taylor (formerly Carla Juana Hare and hereafter referred to as "Taylor") and her then husband, Norman Randall Hare (hereafter referred to as "Hare") were involved in an automobile accident in Foley, Alabama. As a result of the accident, they retained the legal services of defendant, Murchison & Sutley, L.L.C., to pursue their tort claim, which included medical expenses and other special damages. A civil action was filed in the Circuit Court of Baldwin County, Alabama, CV-94-979 and CV-94-979.99. The defendant in the state court action was Robert Williams who was insured by State Farm Mutual Automobile Insurance Company. In 1996, Norman Randall Hare and Carla Juana Hare were divorced. The Judgment of Divorce provided that the parties would equally divide any sums received from the law suit which was still pending at the time of their divorce. Taylor filed a Chapter 7 bankruptcy on February 15, 1999 and Hare filed his bankruptcy in Chapter 7 on February 26, 1999.

Hare incurred certain medical expenses with regard to the injuries that he received as a result of the accident. One of the healthcare providers was the defendant, Baptist Health Care Corporation, d/b/a Baptist Hospital located in Pensacola, Florida. Baptist Hospital claims a lien against any judgment or settlement that Hare may recover on his tort claim for approximately $45,000.00. No claim of lien has been made with respect to any settlement that Taylor recovers.

Murchison & Sutley, L.L.C., claim an attorney's lien of $17,451.00 for their fees and reimbursable expenses incurred while representing Hare and Taylor in the state court civil action. They were employed as special counsel in this case with approval of the court.

Answers have been filed and appearances were made. Defendant, State Farm Mutual Automobile Insurance Company (hereinafter referred to as "State Farm") and its named insured, defendant, Robert Williams, answered the complaint and filed a counterclaim and cross-claim seeking to interplead the sum of $50,000.00 to the Clerk of the United States Bankruptcy Court. Claims to the proceeds of the settlement have been made by the bankruptcy estates of Hare and Taylor, Baptist Hospital, and Murchison & Sutley, L.L.C. Each debtor has also claimed a portion of the settlement proceeds as exempt.

A stipulation for entry of judgment was filed with the Court. Baptist Hospital is not a party to the stipulation agreement. Among other provisions, the parties thereto stipulated that the $50,000.00 settlement amount would be paid one half to Verneuille as trustee, and one half to Hall as Trustee.

This Court must determine the validity and extent of the lien of Baptist Hospital to the proceeds of the Hare settlement. The parties in their memorandum briefs have stipulated that the facts are not in dispute. Baptist Hospital filed a hospital lien in Escambia County, Florida on April 26, 1994.

ISSUES

Whether an out-of-state hospital lien against proceeds of a settlement arising from a personal injury is enforceable against a trustee in bankruptcy, after allowance for exemptions and attorney's fees?

LAW

Baptist Hospital has conceded that it has never recorded a statement of lien anywhere in Alabama, but did file one in Escambia County, Florida. The motor vehicle accident and the settlement of the subsequent claim occurred in Alabama.

The settlement proceeds resulting from pre-petition causes of action are property of the estate. Under 11 U.S.C. §541, an "estate is comprised of all the following property, wherever located and by whomever held: (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case".

Pursuant to 11 U.S.C.§544(a)(1), upon the commencement of a case, the trustee has the status of a hypothetical creditor with a judicial lien. A judicial lien is defined in §101(36) as a lien "obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding."

Baptist Hospital claims its lien to the proceeds pursuant to Chapter 30733, Laws of Florida 1955, a copy of which said statute is attached hereto. That statute provides in part that a hospital in Escambia County, Florida

> shall be entitled to a lien for all reasonable charges for hospital care, treatment and maintenance of ill or injured persons upon any and all causes of action, suits, claims, counterclaims and demands accruing to the persons to whom such care, treatment or maintenance are furnished, or accruing to the legal representatives of such persons, and upon all judgments, settlements and settlement agreements . . .

A hospital lien attaches the moment an injured person is admitted as a patient. *Public Health Trust v. Carroll,* 509 So.2d 1232, 1234 (Fla. App. 4 Dist. 1987); *State Farm Mutual Automobile Insurance Co. v. Palm Springs General Hospital, Inc.,* 232 So.2d 737, 738 (Fla. 1970). To perfect such a lien, the statute provides that the hospital must, within ten days after discharge from the hospital, file with the Clerk of the Circuit Court of Escambia County a verified claim. The statute further provides for certain notices to be sent to anyone that may be liable on account of such illness or injuries. However, lack of notice to the parties has not been raised and is not an issue in this case.

The Alabama hospital lien statute is almost identical to the Florida statute and is found at §35-11-370, et. seq., *Code of Alabama*, 1975. The essential distinction for purposes of this case is

that the hospital must operate in Alabama and the lien is perfected by filing a verified statement in the office of the Judge of Probate of the County in which the cause of action arose.

The plaintiffs argue that the hospital lien is not valid as against the right, title, and interest of the trustee to the settlement proceeds because the hospital lien is not perfected under Alabama law. Therefore, the unperfected hospital lien is invalid against a trustee, who stands in the shoes of a lien or execution creditor in existence on the date a case is commenced. 11 U.S.C.§ 544(a). Since the hospital lien is a statutory lien as defined in 11 U.S.C.§101(53), the trustee's avoiding power derives from 11 U.S.C.§545. Baptist Hospital contends that its lien is properly perfected pursuant to Florida law regardless of the fact that the debtors are residents of Alabama, the accident giving rise to the cause of action occurred in Alabama and the bankruptcy was filed in Alabama.

In a case similar to this one, the bankruptcy court for the district of Maryland held that a hospital lien similar to the one filed by Baptist Hospital may not be avoided under 11 U.S.C.§545. *In re Howard*, 43 B.R.135 (Bkrtcy Court 1983). The court analyzed §545(1) and determined that none of its subsections were applicable. In that case, however, there was no issue as to whether the lien of the hospital, which was located in the District of Columbia., was properly perfected. The court did not deal with the issue of whether the hospital lien perfected in the District of Columbia would be considered a perfected lien in the state of Maryland.

To determine whether the settlement proceeds are subject to the lien of Baptist Hospital, the court must resolve whether Florida law or the law of Alabama controls. This case is pending in Alabama, which is the state of the debtors' residence and domicile. " 'When faced with a true conflicts of laws question, the first determination must be which state's choice-of-law rules are to be applied. Federal courts are bound by the choice-of-law rules of the forum state.' " *In re Gillett*, 248 B.R. 845, 848 (Bankr. M.D. Fla. 1999) quoting *In re Goldstein*, 66 B.R. 909, 912 (Bankr. W.D. Pa. 1986) (citing *Klaxon Co. v. Stentor Electric Manufacturing Company, Inc.*, 313 U.S. 487, 61

S.Ct. 1020, 85 L.Ed. 1477 (1941), et. al.). Therefore, this Court must follow Alabama's choice-of-law. In this case, the debtor Hare entered Baptist Hospital located in Escambia County, Florida. No evidence has been provided that indicates a written contract between Hare and Baptist Hospital. However, the rendering of hospital services creates an implied contract between the hospital and the person being given medical care.

"The general choice-of-law rule in Alabama is lex loci contractus, which provides that 'a contract is governed as to its nature, obligation, and validity by the law of the place where it is made.' " *Kruger Commodities, Inc. v. United States Fidelity & Guaranty*, 923 F.Supp. 1474, 1477 (M.D. Ala. 1996) (citations omitted). "The lex loci controls the validity and construction of the contract but the lex fori operates on the remedy to enforce it." *Macy v. Crumb*, 249 Ala. 249, 30 So.2d 666, 669 (1947); *American. Nonwovens v. Non Wovens Engineering,S.R.I.* 648 So.2d 565, 567 (1994).

In the case of *Galliher v. State Mutual Life Insurance Co.*, 150 Ala. 543, 43 So. 833 (1907), the Alabama Supreme Court decided a case in which a widow in Alabama sued on a Georgia insurance policy in order to have the proceeds paid to her. The insurance company defended on the basis of statute of limitations under Georgia law. Discussing the principle of lex loci and lex fori, the court said as follows:

> Guided by these plain rules, which can be denied by no one, to my mind it seems plain that, where a law of another state is relied on as a defense to a suit brought in this state, it must be shown that according to the lex loci contractus the contract was invalid, or, if once valid that it has become extinguished, and therefore is not in legal contemplation a contract. If the foreign law does not affect the contract itself, but only the remedy to enforce it, we cannot regard it; for all remedies on contracts, whether made in or out of this state, must be governed by our own laws, when the suit is brought here, without regard to the remedies afforded by the laws of other countries.
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> When a case involves the conflict of laws, lex fori, is used to determine when and how the foreign law is to be adopted or applied."

In the instant case, the plaintiffs maintain that even if Baptist Hospital has a hospital lien properly perfected in Florida, the lien is unenforceable in Alabama as to the proceeds of the Hare settlement which is property of the estate. The plaintiffs, however, have supplied no authority to support their assertion that the Florida hospital lien law does not have extraterritorial effect.

The Florida statute only applies to a hospital operating in Escambia County, Florida and provides a procedure for perfection of the lien. The Alabama statute only applies to hospitals operating within the state of Alabama and also provides a similar procedure for perfecting a lien. Similar issues were dealt with in the case of *The Traveler's Indem. Co. of Illinois v. Moore*, 642 F.Supp. 1119 (C.D. Ill. 1986). Even though the court decided the case using the concept of "depecage" which is the process of applying rules of different states to the various issues involved in the lawsuit, the decision is instructive in this case. The court stated that:

> Hospital lien statutes are remedial, having been enacted for the very humane purpose of encouraging hospitals to extend their services and facilities to indigent and uninsured persons. This purpose is effectuated by the provisions of the statute which assure that hospitals are compensated for the use of their facilities and the service rendered. The legislatures of both Illinois and the District of Columbia do so by providing that when a patient's injury is paid under a judgment, compromise, or settlement agreement, the hospital is entitled to be paid first from the proceeds if the hospitals comply with the statutory requirements of the forum. While there are some differences between the Illinois and the District of Columbia hospital lien statutes, both Illinois and the District of Columbia have indicated a legislative intendment to protect the interests of certain hospitals within their boundaries that provide hospital and medical services without receiving payment. Perfection of a lien under the District of Columbia's hospital lien statute simply does not conflict with any of the policies underlying Illinois.

Moore, 642 F.Supp. at 1127.

At least three of the four states that border Alabama have hospital lien statutes that apply only to hospitals within their own state.[1] It is not difficult to imagine that other Alabama residents living close to a neighboring state might seek out-of-state medical attention as the result of an

[1]Florida, Georgia and Tennessee.

accident which may give rise to a cause of action to which a hospital lien may attach. Alabama law does not provide for the perfection of a hospital lien for any hospital outside of Alabama. This would mean that all out-of-state hospitals providing medical services to Alabama residents injured in accidents occurring in Alabama would be at risk of not receiving payment. Further, if residents of neighboring states are injured in accidents in those states and receive medical care at hospitals in Alabama, the same argument could be used to defeat the lien of Alabama hospitals. The fact is that both Alabama and Florida have enacted hospital lien laws to protect their hospitals and the legislatures have determined that said laws are reasonable, necessary and desirable.

Generally, the law of the forum controls as to matters of remedy and procedure. However, there is an exception "where the remedy prescribed by the foreign law which is the basis of the relief sought to be enforced is so inseparable therefrom that it must also be enforced in order to preserve the integrity of the substantive right." 15A C.J.S., *Conflict of Laws*, § 9, p. 425 (1967).

In order to enforce the lien of the hospital, it must be perfected pursuant to the terms of the Florida statute. Where the hospital is not given the right to perfect its lien in Alabama, the substantive right of the hospital to a lien against the settlement proceeds is substantially affected. Therefore, this Court concludes that the lien of Baptist Hospital, perfected under the Florida law, is perfected as to the settlement proceeds, and may not be avoided under 11 U.S.C. §545(2).

The trustee for the Hare estate submitted in his memorandum of law, that the validity, nature and effect of liens in bankruptcy proceedings are governed by the law of the state in which the property is located. However, the cases supporting this rule are distinguished from the instant case, in that they relate to instances where the property subject to the lien is either real property or tangible personal property.

In the memorandum brief filed by the debtors, it was stated that Hare was discharged from the hospital on March 15, 1994, and that the hospital recorded its lien on April 26, 1994. The

debtors argued that the lien was not perfected because Baptist Hospital did not file its verified statement within ten days after Hare was discharged and was therefore untimely and subject to avoidance pursuant to 11 U.S.C.§545(2).

This issue was considered in *Public Health Trust of Dade Co. v. Carol*, 509 So.2d 1232, 1234 (Fla. Dist. Ct. App. 1987). The court stated that "a tardy filing does not invalidate the hospital lien, but only results in the lienor or creditor being an unsecured creditor, at least until such time as the lien is filed. (Citation omitted.) And so, only another creditor, who may have been somehow prejudiced by the late filing has standing to challenge the lien based on its late filing." See also *Gwin v. Carroway Methodist Medical Center*, 583 So.2d 1317, 1319 (Ala. 1991); *Ex Parte Infinity Ins. Co., Inc.*, 737 So.2d 463, 466 (Ala. 1999) (claim against tort feasor and insurance company could not be maintained where settlement was already disbursed).

The bankruptcies of each debtor in these cases were filed in February 1999, over four and one-half years after the date Baptist Hospital recorded its lien. The trustees are not prejudiced by the late filing and cannot avoid the lien of Baptist Hospital under §545(2).

In its memorandum brief, Baptist Hospital conceded the priority of the attorney lien of Murchison and Sutley, L..C., but took the position that the hospital lien attached to Hare's exempt share. In his schedules, Hare claimed the settlement proceeds exempt under §6-10-6, Code of Alabama, 1975, in the amount of $3,000.00. The Trustee filed a timely objection which was sustained by order of this Court on April 16, 1999, and allowed the exemption in the amount of $2,943.00. Hare never filed an action to avoid the lien under 11 U.S.C. §522. The perfected lien of Baptist Hospital is valid as to that portion of the settlement proceeds of Hare that were claimed as exempt. "The debtor is entitled to use property that is exempted from the estate; however, liens that are valid in bankruptcy that cover exempt property are preserved and creditors may enforce their

liens against exempt property. 11 U.S.C.§522(c)(2)." *In re Carruthers*, 87 B.R. 723 (Bankr. N.D. Ga. 1988); *U.S. v. Williams*, 156 B.R. 77 (S.D. Ala. 1993).

Therefore, it is **ORDERED** and **ADJUDGED**:

1. That the cross-claim and counterclaim of interpleader of State Farm is GRANTED and State Farm shall pay the sum of $50,000.00 to the Clerk of the Bankruptcy Court on behalf of Robert Williams, and State Farm and Williams shall be released and discharged from any and all further liability arising out of that certain motor vehicle accident occurring in Baldwin County, Alabama, on, to-wit, March 2, 1994, in which Hare was the passenger and Williams was the operator.

2. Hare and Taylor shall each, individually, execute a release of State Farm and Williams from any and all further liability arising out of said motor vehicle accident. However, payment of the settlement amount shall be credited against the Order for restitution entered by the Circuit Court of Baldwin County, Alabama, but shall not otherwise affect such restitution Order and said releases shall reference and incorporate said Order for Restitution. Such releases shall be delivered to State Farm upon payment by State Farm of the settlement amount.

3. That the settlement amount be equally divided between the estates of both debtors as provided in the Judgment of Divorce, and subject to the provisions of this order.

4. The firm of Murchison & Sutley, L.L.C., shall be paid its attorneys fees and expenses, and in discharge of its attorneys' lien the sum of $17,451.00, which sum shall be paid by the Clerk of the United States Bankruptcy Court, each estate shall bear the cost of one half of said sum.

5. Taylor shall be entitled to an exempt amount of $2,217.00 from the settlement proceeds. The exemption amount due Taylor shall be paid by the Clerk directly to J. Ross Holladay

and Associates, L.L.C., as attorneys for Armstrong, Vaughn and Scroggins for application to unpaid fees reaffirmed by Hare and Taylor pursuant to the stipulation agreement filed with the Court.

6. That the settlement proceeds attributable to Taylor are not subject to the lien of Baptist Hospital, and are property of her bankruptcy estate. The Clerk shall pay the remaining sum of $14,057.50 to Joseph O. Verneuille, Jr., as Trustee of the Estate of Carla Juana Taylor, Debtor.

7. That the lien of Baptist Hospital as to the proceeds of the Hare settlement is perfected, valid and has priority as against the trustee for the Hare estate and the trustee for the Taylor estate. The proceeds of the settlement claimed by Hare as exempt are subject to the lien of Baptist Hospital and said funds ($2,943.00) shall be paid by the Clerk of the Court along with the remaining proceeds ($13,331.50) to Baptist Hospital for a total amount of $16,274.50.

8. Upon entry of the Judgment herein, and confirmation of payment of the settlement amount, the civil action in the Circuit Court of Baldwin County between Hare and Taylor, as plaintiffs, and Williams, as defendant, shall be dismissed, with prejudice.

Dated: February_____, 2001

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WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE