IN THE SUPREME COURT OF FLORIDA
Case No. SC09-2069

SHANDS TEACHING HOSPITAL AND CLINICS, INC.,

Appellant,

v.

MERCURY INSURANCE COMPANY OF FLORIDA,

Appellees.

Amicus Curiae Brief of the State of Florida In Support of Shands Teaching Hospital and Clinics, Inc.

On Appeal From a Decision of the First District Court of Appeal
Case No. 1D08-1198

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS

This brief is submitted by the Attorney General on behalf of the State of Florida pursuant to his authority to appear in and attend to all suits in this Court in which the State may be interested. See § 16.01(4), Fla. Stat.

The constitutionality of the Alachua County Lien Law, chapter 88-539, Laws of Florida, under article III, section 11(a)(9) of the Florida Constitution, is the primary issue in this appeal and the one that will be addressed in this brief. The State has a significant interest in this case because there are numerous lien laws that give hospitals throughout Florida a lien upon the legal claims and settlements of patients treated by the hospitals. In March 2000, the staff of the House Committee on Health Care and Licensing published a report entitled Feasibility of Establishing a Statewide Lien Law. As of that year, the report indicated that 21 of Florida's 67 counties had hospital lien provisions, 19 of them by special acts, and 116 hospitals had lien rights. Id. at 10. The report discussed the complex and conflicting interests attendant to recovery of the cost of hospital care provided injured and insolvent patients and recommended enactment of a uniform, statewide law. However, no such law was enacted.

Quantifying the precise fiscal impact of invalidating these hospital lien laws under article III, section 11(a)(9) would require detailed study. Hospitals that are Medicaid providers can seek limited reimbursement from Medicaid funds pursuant

to section 409.908, Florida Statutes. Although rules of the Agency for Health Care Administration require Medicaid providers to pursue recovery of third party benefits and to have a plan for seeking such recovery, including "the filing of liens, in counties where available…," see Rules 59G-7.051 and 59G-7.053, Fla. Admin. Code, such efforts may be largely ineffective in the absence of the lien laws. In that event, Medicaid will bear the burden of indigent care, but hospitals may not be fully compensated when reimbursed at Medicaid rates. It is possible that hospital districts having taxing authority may find it necessary to increase taxes to cover their losses, thus passing on to taxpayers costs that should be paid by a tortfeasor's insurance.

The State therefore has a strong interest in assuring that the constitutional language at issue is given the most careful consideration.

SUMMARY OF THE ARGUMENT

The First District's decision is premised on its finding that there is a quasi-contract between a hospital and an indigent patient admitted on an emergency basis. Decisional law makes clear that such a contract is implied to avoid unjust enrichment. Under Florida law, however, a quasi-contract is not a true contract. Article III, section 11(a)(9) of the Florida Constitution prohibits liens based on private contracts, not quasi-contracts. When clear, constitutional language must be read as written. By applying the constitutional language to quasi-contracts, the First District's decision impermissibly adds words to the constitution. Moreover, the term "private contracts" is used twice in article III, section 11(a)(9), and should have a consistent meaning. The law does not fix interest rates on quasi-contracts; it only infers their existence. Accordingly, the term "private contracts" means contracts based on actual agreements.

Chapter 88-539 is a statutory lien, not a lien "based on a contract." It does not enhance the hospital's rights against a patient under any implied contract, but rather imposes an obligation on insurers to check the public records and respect a hospital's right to seek reimbursement from third party benefits.

ARGUMENT

I. The Alachua County Hospital Lien Law, Chapter 88-539, Laws of Florida, Does Not Violate Article III, Section 11(a)(9) of the Florida Constitution.

Article III, section 11(a)(9), of the Florida Constitution prohibits special laws "pertaining to . . . creation, enforcement, extension or impairment of liens based on private contracts, or fixing of interest rates on private contracts." (Emphasis added). Chapter 88-539, Laws of Florida, the Alachua County Lien Law, does not violate this provision because i) the term "private contracts" does not include "quasi-contracts;" and ii) chapter 88-359 imposes a statutory lien, not a lien based on a contract.

A. The Term "Private Contracts" Does Not Include "Quasi-Contracts."

Although the majority opinion of the First District referred to the contract between Krystal Nicole Price and Shands only as "a private one" (App. at 3), the concurring opinion of Judge Clark noted that:

> Hospitals have a contractual relationship with each patient, either express or implied. Where the patient is admitted in an emergency situation, quasi-contract theory applies because the patient has accepted the medical services and in so doing, is deemed to have agreed to pay for them. The contract is implied so as to avoid unjust enrichment.

App. at 7 (citations omitted).

The concurring opinion correctly acknowledges the law of Florida on quasi-contracts. "Quasi-contracts or contracts implied in law 'are obligations imposed by law to prevent unjust enrichment.'" Rabon v. Inn of Lake City, Inc., 693 So. 2d 1126, 1131 (Fla. 1st DCA 1997). In interpreting the term "private contracts," however, the First District failed to consider that

> [U]nlike a true contract based upon the express or apparent intention of the parties, a quasi-contract is not based on a promissory agreement or the apparent intention of the parties to undertake the performance in question. Restatement (Second) of Contracts, § 4, cmt. (1982). * * * * Quasi-contracts, therefore, are obligations created by law for reasons of justice, not by the express or apparent intent of the parties. Thus, it may be said that obligations of this type should not properly be considered contracts at all, but a form of the remedy of restitution. See Restatement (Second) of Contracts § 4, cmt. b.

Id. at 1131-1132 (emphasis added); see also Florida Sheriffs Ass'n v. Dep't of Admin., Div. of Ret., 408 So. 2d 1033, 1035-1036 (Fla. 1981) (quasi-contracts "rest solely on a legal fiction and are not contract obligations at all in the true sense, for there is no agreement").

Shands' initial brief correctly points out that the term "private contracts" as used in article III, section 11(a)(9), of the Florida Constitution cannot mean "quasi-contracts." Shands' Init. Br. at 30-35. A contract is a negotiated agreement consisting of a promise or set of promises.[1] A quasi-contract is not a contract, but

[1] "A contract is a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty." Restatement (Second) of Contracts § 3.

an obligation which the law creates in the absence of an agreement without reference to the intentions of the parties. The constitutional language must therefore be read as written - - it applies only to contracts, not obligations created by law to avoid unjust enrichment. See Crist v. Florida Ass'n of Criminal Def. Lawyers, Inc., 978 So. 2d 134, 140 (Fla. 2008) (if constitutional language is clear, unambiguous, and addresses the matter in issue, it must be enforced as written). "[W]hen constitutional language is precise, its exact letter must be enforced . . . ." Benjamin v. Tandem Healthcare, Inc., 998 So. 2d 566, 570 (Fla. 2008) (quoting Florida League of Cities v. Smith, 607 So. 2d 397, 400 (Fla. 1992)). Moreover, courts are not at liberty to add words either to statutes or to the constitution. Lawnwood Med. Ctr., Inc. v. Seeger, 990 So. 2d 503, 512 (Fla. 2008). "Private contracts" therefore must mean private agreements. The First District's ruling, that article III, section 11(a)(9) may be interpreted to include quasi-contracts, which are not agreements, impermissibly adds words to the constitution.

Furthermore, the term "private contracts" is used twice in article III, section 11(a)(9), the second prohibition applying to the "fixing of interest rates on private contracts." The term must have the same meaning in both contexts. The law does not fix interest rates on quasi-contracts; it merely implies their existence. The constitutional language must therefore refer to express contracts. Section 11(a)(9) simply recognizes that interest rates on private (express) contracts are based on

agreement of the parties and makes them subject to regulation by general law, not special laws. Thus, Shands' brief correctly contends that the prohibition on creating liens based on private contracts refers only to express agreements such as mortgages, car loans, security interests, and chattel mortgages. See Shands Init. Br. at 23-24.

B. Chapter 88-539 is a Statutory Lien, Not a Lien Based on a Contract.

Without chapter 88-539, Shands would have no way of compelling Mercury to pay for the treatment it provided Krystal Nicole Price. While an express contract may provide for a lien on a judgment or proceeds of a settlement in favor of the injured victim, see Wellington Reg'l Med. Ctr., Inc. v. Meder, 819 So. 2d 981 (Fla. 4th DCA 2002), an implied contract or quasi-contract does not give a hospital the right to a lien on any particular property or property interest of the injured victim. A court may impose an equitable lien to prevent unjust enrichment only when a party has acquired a "special interest" in particular property. See Ben-Yishay v. Mastercraft Dev., LLC, 553 F. Supp. 2d 1360, 1373 (S.D. Fla. 2008) (citing Lake Placid Holding Co. v. Paparone, 508 So. 2d 372, 377-78 (Fla. 2d DCA 1987), and Garcia v. Santa Maria Resort, Inc., 528 F. Supp. 2d 1283, 1296 (S.D. Fla. 2007)); see also Della Ratta v. Della Ratta, 927 So. 2d 1055, 1059 (Fla. 4th DCA 2006) (equitable lien "is a right granted by a court of equity, arising by

reason of the conduct of the parties affected which would entitle one party to proceed against certain property.")

A hospital's implied contract with an indigent patient confers no special interest in the insurance coverage of the tortfeasor. Shands, without chapter 88-539, would have only a cause of action against Ms. Price based on unjust enrichment. It would have no rights against Mercury and no special interest in insurance proceeds paid Ms. Price as distinguished from any other property or property interest she may have. Shand's lien is therefore not based on the implied contract. It is conferred by statute and is wholly a creature of statute. See Hosp. Bd. of Directors of Lee County v. McCray, 456 So. 2d 936, 939 (Fla. 2d DCA 1984).

Chapter 88-359 relieves Shands of the nearly impossible task of uncovering a legal action brought by an indigent patient against a tortfeasor or pursuing wasteful and probably fruitless litigation against an indigent patient who has settled a claim without the hospital's knowledge or concurrence. But it does little or nothing to enhance the hospital's claim against the patient. Even assuming the action at law for damages prescribed in section 4 may be brought against the patient as well as the tortfeasor's insurer, the patient is by definition indigent. Chapter 88-539 therefore does not create a lien "based on" the hospital's implied contract with Ms. Price, but rather imposes an obligation on third party insurers to

inspect the public records before satisfying a judgment or agreeing to a settlement and to honor the hospital's recorded claim.

CONCLUSION

The decision of the First District Court of Appeal should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE/COMPLIANCE

I certify that this brief was prepared with Times New Roman 14-point in compliance with Fla. R. App. P. 9.210(a)(2), and that a copy of the foregoing has been furnished by U.S. Mail on December 28th, 2009, to the following:

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