

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2012-007665

05/13/2014

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT  
J. Polanco  
Deputy

AMBER WINTERS, et al.

GEOFFREY M TRACHTENBERG

v.

BANNER HEALTH NETWORK, et al.

CHRISTOPHER L HERING

L ERIC DOWELL

UNDER ADVISEMENT RULING

The Court has had under advisement (i) Plaintiffs' Motion for Summary Judgment on Breach of Contract Claim and Defendants' Cross-Motion for Summary Judgment, and (ii) Defendants' Objections to Plaintiffs' Amended Form of Judgment. Having read and considered the briefing and having heard oral argument, the Court issues the following rulings.

**I. *Breach of Contract Claim.***

Plaintiffs argue that Defendants breached Paragraph 15 of their Provider Participation Agreements ("PPAs") with AHCCCS by asserting health care provider liens against the recoveries of AHCCCS patients.<sup>1</sup> The Court finds to the contrary.<sup>2</sup> Defendants did not breach

---

<sup>1</sup> Paragraph 15 provides:

The Provider shall not bill, nor attempt to collect payment directly or through a collection agency from a person claiming to be AHCCCS eligible without first receiving verification from AHCCCSA that the person was ineligible for AHCCCS on the date of service or that services provided were not AHCCCS covered services. The Provider agrees to abide by Arizona Administrative Code R9-22-702 prohibiting the Provider from charging, collecting or attempting to collect payment from an AHCCCS eligible person.

An older version of the PPA provides at Paragraph 4 that Defendants will "comply with all applicable Federal and State laws and regulations."

<sup>2</sup> The Court assumes without deciding that Plaintiffs are third-party beneficiaries of Paragraph 15 of the PPAs.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2012-007665

05/13/2014

the PPAs by exercising rights under A.R.S. § 36-2903.01(G)(4) which, at the time of contracting, was valid and enforceable.<sup>3</sup> *See Ward v. Johnson*, 72 Ariz. 213, 216 (1951); *Higginbottom v. State*, 203 Ariz. 139, 142 (App. 2002). Of course § 36-2903.01(G)(4) has not *always* been preempted, regardless how clearly the Court's ruling was prophesied. (Pls.' Reply at 2-3.) *See* Jan. 17, 2014 Under Advisement Ruling ("Ruling") at 7.<sup>4</sup> Nor did Defendants clearly and unmistakably "bargain away" their lien rights under § 36-2903.01(G)(4) by agreeing to abide by R9-22-702. *See* Ruling at 5; *cf. Begay v. Graham*, 18 Ariz. App. 336, 339 (1972).

Accordingly, based on the foregoing,

**IT IS ORDERED** denying Plaintiffs' Motion for Summary Judgment on Breach of Contract Claim.

**IT IS FURTHER ORDERED** granting Defendants' Cross-Motion for Summary Judgment.

**II. Form of Judgment.**

The Court ordered supplemental briefing on three issues with regard to Defendants' objections to the Amended Form of Judgment. Feb. 27, 2014 Minute Entry at 2. Addressing these objections,

**IT IS ORDERED** directing Plaintiffs to lodge a Second Amended Form of Judgment that:

(1) enjoins balance billing after a hospital receives *any* payment from AHCCCS; and

---

<sup>3</sup> Section 36-2903.01(G)(4) provides that a hospital may collect full payment from Medicaid and thereafter "collect any unpaid portion of its bill from other third-party payors or in situations covered by [A.R.S. § 33-931 *et seq.*]." *See also* A.A.C. R9-22-1007 (requiring hospitals to copy AHCCCS on health care provider liens).

<sup>4</sup> In oblique contradiction to their argument on this issue, Plaintiffs' counsel's stated at oral argument on issues related to the Form of Judgment that there was "no basis" pre-Ruling to preclude Defendants from continuing to settle with Open Lien Plaintiffs.

In essence, the Court would have been saying, no one has asked for a restraining order, no one has asked for a preliminary injunction. And I haven't ruled yet on whether or not what you're doing is illegal. But I just kind of have a bad feeling that maybe what you're doing is illegal, so stop doing it to the tune of thousands at a time. That's not a basis for stopping them from doing anything. And so there was no basis to order them, no, you need to stop doing the liens. Until now. Until now that the Court will be entering judgment to the effect that this practice is...a violation of federal law.

Apr. 17, 2014 oral argument at 3:07-3:08 p.m. (rough transcription).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2012-007665

05/13/2014

(2) orders Defendants to release *all known* class member Open Liens within 10 calendar days; as to any class member Open Liens that were not released, orders Defendants to release such Open Lien within 5 calendar days after oral or written request.<sup>5</sup>

Defendants request that the judgment recognize that class members remain free to settle their individual claims. Obj. at 7. For the reasons stated by Plaintiffs' counsel at oral argument,

**IT IS ORDERED** denying this request.

---

<sup>5</sup> See generally Apr. 17, 2014 oral argument at 3:38-3:39 p.m.