

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

LINDA COMMONS, ESQ.

Appellant,

v.

JAMES SPRACKLEN; ECONOMY DENTURES OF HUDSON, L.L.C.;
ROBERT P. MOFFETT, D.D.S.; ECONOMY DENTURES, INC., d/b/a One
Day Dentures; LEROY POLITE, DMD.; and LEROY POLITE D.M.D., P.A.,

Appellees.

No. 2D20-2081

December 21, 2022

Appeal from the Circuit Court for Pasco County; Kimberly Sharpe Byrd,
Judge.

Desiree E. Bannasch of Desiree E. Bannasch, PA, Orlando, for Appellant.

Max R. Price and Dennis Grossman of Law Offices of Max R. Price P.A.,
Miami, for Appellee James Spracklen.

No appearance for remaining Appellees.

NORTHCUTT, Judge.

Attorney Linda Commons appeals an order in which the circuit
court rejected her attempt to enforce a charging lien against funds owed
to her by her client, James Spracklen, and held in attorney Max Price's
trust account. We reverse.

Commons and Price, from different firms, represented Spracklen as cocounsel throughout much of the underlying dental malpractice action in the Sixth Circuit. The lawsuit settled for \$1,055,500. The settlement funds were paid via two checks from the defendants, both of which were deposited into Price's trust account to be disbursed to various creditors (including the attorneys) with the remainder to Spracklen.

Commons created a closing statement from her firm for both her and Spracklen to sign. Spracklen signed the statement, confirming that Commons and Price would split forty percent of the settlement amount as attorneys' fees, with each to be paid \$211,100. Price similarly created a closing statement for his firm that Spracklen signed. His closing statement also confirmed that Commons had earned \$211,100 in attorneys' fees out of the settlement funds. Price's closing statement then included the following provisions requiring him to disburse the funds in accordance with the closing statement:

I have read the foregoing and it is true and correct and I hereby certify that I have authorized and accepted the agreed settlement figure listed above as "Gross Recovery." The disbursement of this recovery *in accordance with this Distribution Closing Statement* is hereby approved by me In accordance with this release, I do further certify that my attorneys have . . . acted in accordance with my wishes and directions in the settlement of my claim(s) and have fully explained to my satisfaction all questions regarding the settlement of my claim(s) *and the distribution of the monies resulting from that settlement in accordance with the Distribution Closing Statement.*

. . . .

By his signature below, the client hereby approves of the instant Closing Statement, and hereby grants to MAX R. PRICE, ESQ. of the LAW OFFICES OF MAX R. PRICE, P.A. a power of attorney authorizing him to receive and if necessary,

to sign any and all checks in settlement of the above referenced action in his name as if he had signed it himself, to deposit same in the LAW OFFICES OF MAX R. PRICE, P.A. TRUST ACCOUNT *and to disburse and pay out the settlement funds in accordance with the above.*

(Emphasis added.)

Price issued checks to Commons from the trust account, but not for the \$211,100 that everyone agreed she had earned. Instead, Price withheld \$27,274.90.¹ Price claimed that he was owed that sum as a fee for his representation of Commons *in an unrelated federal case*, so he was retaining it in trust. That is the source of the instant dispute.

Upon failing to receive payment in the amount she was owed, Commons submitted a notice to Spracklen and to Price that she claimed a charging lien on the settlement funds that Price held in trust for Spracklen. She later filed a motion to adjudicate and enforce the charging lien. Meanwhile, Price eventually revealed in the litigation that his personal charges from the unrelated federal litigation were the reason he was refusing to disburse all the fees from the settlement he and Commons had obtained for Spracklen.²

Under Florida law, a charging lien requires four elements:

1. A contract between the attorney and client;
2. An understanding that payment will come from recovery;

¹ The parties dispute whether cashing these checks would have resulted in an accord and satisfaction of the debt owed to Commons. However, we need not consider or resolve that issue to dispose of this appeal.

² In fact, Price had since filed suit in the Eleventh Circuit directly against Commons to collect what he thought she owed him from that other federal case.

3. "[A]n attempt to avoid the payment of fees . . . or a dispute as to the amount involved"; and
4. Timely notice.

Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertnik, P.A. v. Baucom, 428 So. 2d 1383, 1385 (Fla. 1983). " 'The lien is chargeable against any person who, at the time notice of intent to claim a lien is given, holds monies or property which become proceeds of a judgment to be entered in the future.' " *Brown v. Vermont Mut. Ins. Co.*, 614 So. 2d 574, 580 (Fla. 1st DCA 1993) (quoting *Hutchins v. Hutchins*, 522 So. 2d 547, 549 (Fla. 4th DCA 1988)).

The only dispute in this case relates to the third element. Price argued below, and does so on appeal, that this element was not satisfied because Commons, the attorney, and Spracklen, the client, had no quarrel. This was because Spracklen had "agreed to the full amount of fees due and owing on his case to both Commons and Price" and "has not disputed the fee structure as contracted with his attorneys." Price also claimed that Spracklen "[has not] disputed or taken action to withhold the payment to either Commons or Price." Effectively, Price argued that the disagreement in this case was between *himself* and Commons, not between Spracklen and Commons, so there was no basis for a charging lien against Spracklen's funds. The trial court agreed, finding that "[o]f the four elements for a charging lien . . . there is no evidence in the present action that Mr. Spracklen has either avoided payment to Ms. Commons or has disputed the amount of her fees due in his case."³

³ At an evidentiary hearing, the circuit court said, "There's no need for a charging lien because [Spracklen is] not disputing that the money is being held on behalf of Ms. Commons"; "Mr. Spracklen is not involved in this. He signed the settlement statement. He's given over the money."

In making this ruling, the circuit court misapplied the law regarding the third element of charging liens to the facts of this case. As explained in Florida Civil Practice and cited in the answer brief in this appeal, "[t]his requirement can be established by proof that the client failed to pay a part of the fee that is due for the service rendered." Philip J. Padovano, *Florida Civil Practice* § 6:7 (2022 ed.). Spracklen did not pay Commons all that he owed her. On the facts of this case, that is enough to make a prima facie showing of the third element of a charging lien.

This case presents additional facts that support the third element: (1) Spracklen's lawyer and agent, Price, *did* expressly act to withhold Spracklen's funds from Commons, (2) Spracklen knew about it, and (3) Spracklen appears to have done nothing about it.

Either way, the trial court erred in finding that this dispute does not implicate Spracklen. To the contrary, the dispute involves his liability for fees that Commons earned and the payment for those fees out of the settlement money that was tendered to settle his claim. Regardless of whether Spracklen's actions (or inaction) are attributable to him individually or to him as the principal responsible for his agent's conduct in regard to the settlement funds, the third element of a charging lien was satisfied.

Price seeks to evade this result by arguing that the money in his trust account was no longer Spracklen's concern once Spracklen signed the closing statement. Price's position is that the money became Commons' property at that point and that he is now holding the funds in trust on *her* behalf. He argues that he was under no specific directive

He's kind of out of it"; and "He's not a party to this dispute. He's not making a claim in this." The circuit court concluded that there was no basis for a charging lien since Spracklen was not refusing to pay.

requiring him to pay Spracklen's trust funds directly to Commons without first making a claim on the funds for himself by asserting a retaining lien.

Price has cited no authority for the proposition that a closing statement changed legal ownership of money held in trust in this manner. Nor does he cite any authority that would permit an attorney in his position to divert a client's trust funds to satisfy a debt owed by a different client, from an unrelated proceeding, possibly to the current client's detriment.⁴

Regardless, Price's own closing statement disproves his assertion that he was not directed how to disburse the money in trust. As quoted at length above, the closing statement that both he and Spracklen signed included a \$211,100 payment to Commons and directed Price to disburse "this recovery in accordance with this Distribution Closing Statement."

For these reasons, we hold that the circuit court erred when it found that Commons had not established the third element of a charging lien. We express no opinion on the other elements that were not disputed below or at issue here. The order on appeal is reversed, and the matter is remanded for further proceedings consistent with this opinion.

Reversed and remanded.

CASANUEVA and KHOUZAM, JJ., Concur.

⁴ Price's actions in this case appear to be solely for his personal benefit while placing Spracklen, his current client, in legal jeopardy with Commons. Spracklen owes a fee to Commons from the settlement in this case regardless of the unrelated dispute between the two attorneys. We need not determine whether Price's actions violate the Rules of Professional Conduct, but we feel compelled to note that we are troubled by them.

Opinion subject to revision prior to official publication.