

BEFORE THE INDUSTRIAL ACCIDENT BOARD  
OF THE STATE OF DELAWARE

SHIVANI INC., )  
)  
Employer, )  
)  
v. )  
)  
GLOBAL FINANCIAL CREDIT LLC, )  
)  
a Delaware company, )  
)  
and )  
)  
EILEEN MOHR, )  
)  
Employee. )

Hearing No.: 1442616

**ORDER**

Pursuant to due notice of time and place of hearing served on all parties in interest, this matter came before the Industrial Accident Board on a motion by Shivani Inc. (“Employer”) seeking an injunction against Global Financial Credit LLC (“Global Financial”) on the basis that any purported lien over compensation payments is void ab initio under 19 *Del. C.* § 2355.

**Background:** This case previously came before the Board on July 5, 2018 on a petition for review filed by Employer. At that time, the Board was asked to determine two matters: The first was whether the Board should void a compensation Agreement ab initio under 19 *Del. C.* § 2349, which states that “an award of the Board, *in the absence of fraud*, shall be final and conclusive between the parties.”<sup>1</sup> After reviewing the evidence, the Board voided the Agreement at issue ab initio under 19 *Del. C.* § 2349 and referred Claimant to the Fraud Prevention Bureau.<sup>2</sup> The second matter to decide was whether the Board should issue an injunction against Global Financial, which

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<sup>1</sup> Emphasis added. Pursuant to the holding in *Comegys v. Chrysler Corp.*, C.A. No.: 83A-SE-5 (Del. Super. July 20, 1984), the term “award” also includes compensation agreements.

<sup>2</sup> *Mohr v. Shivani Inc.*, No. 1442616 (Del. I.A.B. July 9, 2018).

was apparently attempting to assert a lien on Claimant's workers' compensation benefits pursuant to an alleged assignment of interest from Claimant. At that time the Board held:<sup>3</sup>

While it would appear that such an assignment is illegal under Delaware's law... it does not appear that Global Financial was properly notified of this motion hearing. As such, the Board makes no ruling at this time on Employer's request for an injunction.

Employer has now refiled its motion for an injunction after Global Financial resumed efforts to enforce its purported lien on August 7, 2018.

Claimant originally alleged to have injured her left thumb in an unwitnessed May 12, 2016 industrial accident. Employer ultimately accepted Claimant's story and entered into a compensation Agreement pursuant to which it paid Claimant \$4,695.18 in medical expenses and an additional \$2,380.00 in total disability compensation. During the course of litigation, Claimant and her former attorney had executed a document with Global Financial entitled "Cash Advance Agreement" ("CAA") on Global Financial's letterhead.<sup>4</sup> Therein, Claimant acknowledged that Global Financial "may make a substantial profit on this Agreement," which is described as "a high-risk cash advance from the potential legal claim proceeds" of her workers' compensation claim.

Pursuant to the terms of the CAA, Global Financial provided Claimant with a \$1,000.00 cash advance. This represented \$1,295.00 minus a "\$295.00 Minimum Return Fee." In return, she assigned "a security interest in the potential future proceeds of her Legal Claim amount," defined as "the gross amount of recovery from the Legal Claim less [her] attorney's fee and actual case preparation costs equal to the Cash Advance, plus a monthly fee equal to 2.99%" up to \$3,885.00. On top of this, Claimant was also responsible to pay a \$50.00 closing fee.

The CAA further states that Claimant "irrevocably instructs Insurer to satisfy the partial assignment" directly with Global Financial before releasing any settlement funds to Claimant.

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<sup>3</sup> *Mohr v. Shivani Inc.*, No. 1442616 at 1 fn. 1 (Del. I.A.B. July 9, 2018).

<sup>4</sup> Employer's Exhibit 1.

According to the CAA, upon resolution of her claim, Global Financial would “receive the Cash Advance plus the Monthly Fee” and “will be paid in full prior to [Claimant] receiving any funds.” The CAA also seemed to indicate that the parties might attempt to divest the Industrial Accident Board of any jurisdiction in this matter by stating that disputes may be determined “by one or more neutral arbitrators and not a judge or jury.” It further states that any arbitration decisions would be “subject to very limited review by a court.”

The CAA incorporates two exhibits. Exhibit A is entitled “Letter of Instruction” to Claimant’s former attorney’s firm “to place a consensual lien and security interest against any and all of the future settlement proceeds” due to Claimant from the claim. This was signed by Claimant and her former attorney. Exhibit B is entitled “Advance & Repayment Terms Agreement” and memorializes the payment terms referenced above. Claimant also executed this.

Claimant and her attorney subsequently filed a petition seeking 18.75 additional weeks of compensation at the rate of \$170.00 per week based on a 25% impairment rating to the thumb. If Claimant had succeeded, this would have equated to a total of \$3,187.50. As Employer points out, pursuant to the CAA’s terms, Claimant could have ended up owing \$3,935.00 to Global Financial on a petition in which she could only have received \$3,187.50 at most.

Employer was unaware of any of this until after Claimant withdrew her petition and her former attorney withdrew as counsel. Shortly thereafter, Employer’s counsel started to receive debt collection calls and letters from Global Financial who informed that Claimant’s former attorney gave them Employer’s counsel’s contact information to collect on their lien against any proceeds Claimant received out of her workers’ compensation claim.

Global Financial then sent a letter to Employer's counsel, which purports to be a written demand.<sup>5</sup> It is entitled "Notice of Lien" in bold, capital letters and quite specific to this workers' compensation claim:

Dear Joseph Andrews,

This letter is to inform you that Global Financial Credit, LLC (Tax ID 13-4214889) has a lien against all proceeds paid to the below referenced Plaintiff. Our firm initially perfected its lien through the Plaintiff and her attorney...

Please note our Agreement with our Claimant includes an irrevocable assignment of our interest in which the claimant instructs their attorney or insurer to pay our investment interest / lien prior to the disbursement of funds to her. Prior to the distribution of any settlement proceeds to Claimant, please mail payment to fully satisfy our assignment / lien.

This letter ends with Global Financial stating that it considers this lien to be "fully enforceable."

Employer's counsel received a second letter entitled "Payoff Amount – Security Interest & Assignment Satisfaction" in bold, capital letters on April 3, 2018.<sup>6</sup> Pursuant to this document, Global Financial demanded \$2,308.00 in repayment of its lien plus interest accruing at \$2.30 per diem for each day the lien remains unpaid. Finally, Global Financial provided a medical record that Claimant never previously produced to Employer. According to Global Financial, they required Claimant to provide a medical record to substantiate that she had a workers' compensation claim before they would enter into the CAA with her. This record turned out to be the emergency room report from Milford Memorial Hospital on the date of accident. It showed that Claimant treated at 10:32 A.M. after having cut her thumb minutes earlier at home and specifically documented that "this is not a job related problem."

Based on that, Employer then filed a petition to void the original Agreement ab initio, which the Industrial Accident Board granted on July 9, 2018. As stated, the Board made no ruling at that time concerning Employer's request for an injunction; however, following that decision, Employer

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<sup>5</sup> Employer's Exhibit 2. April 3, 2018 letter from Global Financial's representative to Joseph Andrews, Esquire.

<sup>6</sup> Employer's Exhibit 3.

has received additional telephone calls and correspondence from Global Financial attempting to collect on the purported lien.<sup>7</sup>

**Determination:** The Industrial Accident Board has exclusive jurisdiction “over all cases” under Chapter 23 of Title 19.<sup>8</sup> It can determine “that a named party as a matter of past or present fact, or of threatened or contemplated private action, is or is not in violation of a law or regulation” and issue decisions that include “without limitation, those of a declaratory nature respecting the payment of money or resulting in injunctive relief requiring a named party to act or refrain from acting or threatening to act in some way required or forbidden by the law or regulation under which the agency is operating.”<sup>9</sup> It has previously issued injunctions in similar cases to require parties to act or refrain from acting in a way forbidden by the compensation law under which it operates.<sup>10</sup>

Here, the Board must first decide whether the CAA between Claimant and her attorney on the one hand and Global Financial on the other is even valid. The Board holds that it is not; rather, it has always been void ab initio. 19 *Del. C.* § 2355 is a total prohibition on assignments of compensation like the one at issue here. That section states:

Except for attachments pursuant to child support orders... claims or payment for compensation due or to become due under this chapter shall not be assignable and all compensation and claims therefor shall be exempt from all claims of creditors.

This prohibition could hardly be phrased more explicitly. The General Assembly has made compensation a *conditional* right in Delaware. By saying that compensation “shall not be assignable,” it placed a strict limitation on what claimants are, and are not, able do with that money.<sup>11</sup> By also declaring that compensation “shall be exempt from *all* claims of creditors,” it further limits who is, and is not, able to lay claim to compensation to make clear that creditors like

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<sup>7</sup> Employer’s Exhibit 4. August 9, 2018 “Payoff Amount – Security Interest & Assignment Satisfaction” to Joseph Andrews, Esquire reflecting the increased lien amount after accounting for interest that accrued since the prior notice of April 3, 2018.

<sup>8</sup> 29 *Del. C.* § 8511(b).

<sup>9</sup> 29 *Del. C.* § 10102(3); 29 *Del. C.* § 10161(a)(8).

<sup>10</sup> E.g., *Soriano v. Natural House Inc.*, No. 1435246 (Del. I.A.B. Mar. 24, 2016); *Ruba v. State of Delaware*, No. 1358839 (Del. I.A.B. Jan. 10, 2013).

<sup>11</sup> This strict prohibition is not unique to Delaware. See, for example, 4-89 *Larson’s Workers’ Compensation Law* § 89.07.

Global Financial have no right to collect that money. So, while compensation is money, the General Assembly made it a special class of money, upon which it has placed strict limitations.

19 *Del. C.* § 2355 should be read in conjunction with 19 *Del. C.* § 2305, which states:

No agreement, rule, regulation or other device shall in any manner operate to relieve any... employee in whole or in part from any liability created by this chapter.

It should also be read in conjunction with 19 *Del. C.* § 2378(b), which states:

No policy of insurance against liability arising under this chapter shall be issued unless it contains the agreement of the insurer that it will promptly pay to the *person entitled to them* all benefits conferred by this chapter.

The CAA is an attempt by Claimant and Global Financial to circumvent 19 *Del. C.* § 2355. 19 *Del. C.* § 2305 prohibits such an attempt.<sup>12</sup> Likewise, § 2378(b) prohibits insurance payments to anyone other than employees. Together, 19 *Del. C.* §§ 2305, 2355 and 2378(b) provide a clear mandate: (1) employees cannot assign compensation; (2) creditors cannot collect compensation; (3) insurance policies cannot pay out to anyone other than employees; (4) all agreements to the contrary are void.

This prohibition exists because of the fundamental difference between “compensation” and “damages.”<sup>13</sup> The theory behind the compensation law “is that the compensation to be paid shall be in lieu of wages rather than as an award of damages; that is, that the injured employee shall receive a sufficient proportion of his weekly wage to provide the necessaries of life for himself.”<sup>14</sup> It is paid weekly to help an injured employee get by until he can return to meaningful employment. Yet, the very terms of this CAA could actually cost Claimant more than she could have received had she not withdrawn her petition for permanent partial disability: At her compensation rate, she would have only been entitled to a maximum of \$3,187.50 for a 25% impairment rating to her thumb; however, she could owe Global Financial a maximum of \$3,935.00. She would be worse off than if she never filed at all, which would defeat the purpose of the compensation law.

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<sup>12</sup> It also prohibits the CAA’s attempt to divest the Industrial Accident Board of its exclusive jurisdiction under 29 *Del. C.* § 8511(b).

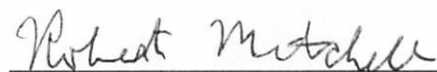
<sup>13</sup> The statute is replete with this distinction. E.g., 19 *Del. C.* §§ 2353(b), 2363(a), 2365, 2374(e)(3).

<sup>14</sup> See, *R & J Constr. v. Vidal*, No. 1448295 at 9 fn. 32 (Del. I.A.B. Apr. 27, 2018).

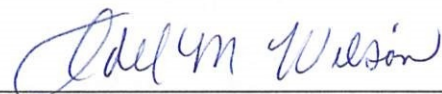
The above is intertwined with the Board's decision of July 9, 2018. While one reason for 19 *Del. C.* § 2355's prohibition on "cash advance" assignments is to protect claimants from predatory lending, it also protects employers by decreasing frivolous litigation. Here, had Claimant complied with 19 *Del. C.* § 2355, she would have been unable to retain an attorney to file a petition on a claim that the Board ultimately determined was based entirely on her affirmative misrepresentations. The result is that Employer was forced to endure unwarranted legal expenses, costs and illegal debt collection attempts all contrary to the other important purpose of the compensation law.

**Conclusion:** Given the clear prohibition against such assignments, the Industrial Accident Board GRANTS Employer's motion. Global Financial, and by extension Claimant and her attorneys, are hereby PERPETUALLY ENJOINED from entering into or attempting to enforce the assignment at issue or any other such device in the State of Delaware pertaining to compensation claims and from attempting to collect on such from employers, insurers, their attorneys or from any compensation payments. Violation of this injunction, including any further attempt to collect on the Cash Advance Agreement here, shall entitle Employer to bring this before the Board for additional sanctions, to include costs and automatic referral to Superior Court pursuant to 19 *Del. C.* § 2320(6). IT IS SO ORDERED THIS 6TH DAY OF SEPTEMBER, 2018.

**INDUSTRIAL ACCIDENT BOARD**



ROBERT MITCHELL



IDEL M. WILSON

Global Financial Credit LLC c/o Brandi Simmons  
Eileen Mohr, pro se Employee  
Joseph Andrews, Esquire for Employer