

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-472

ECHO INSTITUTE MEDICAL, LLC

versus

SHERRY FOSTER

ON APPEAL THE TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES, STATE OF LOUISIANA
NO. 93,634, DIVISION "E"
HONORABLE LAUREN D. ROGERS, JUDGE PRESIDING

May 11, 2026

TIMOTHY S. MARCEL
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, and Timothy S. Marcel

JUDGMENT REVERSED;
JUDGMENT DECLARED NULL IN PART;
REMANDED WITH ORDERS

TSM
FHW
JGG

TRUE COPY



MORGAN NAQUIN
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLEE,
ECHO INSTITUTE MEDICAL, L.L.C.

Andrew R. Capitelli
Sarah F. Constantine
Kenneth R. Whittle
Adam N. Davis

COUNSEL FOR DEFENDANT/APPELLANT,
SHERRY FOSTER

Aaron J. Hurd
Heather C. Ford

MARCEL, J.

In this suit arising from disputed payments for medical debt, defendant Sherry Foster appeals an April 23, 2025 judgment of the trial court granting a motion for summary judgment in favor of plaintiff Echo Institute Medical, LLC. For the following reasons, we reverse the judgment of the trial court and remand this case for further proceedings consistent with our decision herein.

BACKGROUND

Ms. Foster was injured in an automobile accident in December of 2019, for which she filed a personal injury suit as plaintiff in the 24th Judicial District Court. That litigation was settled in August 2023.¹ Over the course of the personal injury litigation, Ms. Foster elected to be represented by her current counsel, Mr. Aaron J. Hurd, first when he was an employee at Morris Bart Personal Injury Lawyers, then from April 2021 to June 2023 when he was with Egenberg Trial Lawyers, and since June 2023 as a practitioner with his own firm.

On January 12, 2024, Echo Institute Medical, LLC, a third-party litigation funding and factoring funding company engaged by Ms. Foster's previous counsel, Egenberg, APLC, filed a Petition for Breach of Contract and Damages against Ms. Foster in the 29th Judicial District Court. In the petition, Echo alleges that it purchased medical receivables from her medical providers² and that Ms. Foster is personally indebted to Echo for their payment.³ Echo further alleges Ms. Foster failed to pay an open account within thirty days of a written demand sent on December 8, 2023 pursuant to La. R.S. 9:2781. Echo seeks as damages "[t]he full,

¹ See *Sherry Foster and Matthew Foster v. Clear Blue Insurance Company, et al.*, 24th Judicial District Court for the Parish of Jefferson, No. 812-505.

² The petition does not state when these receivables were purchased.

³ The "Lien Summary" reproduced in the petition shows approximately twenty-two charges from five different medical providers totaling \$55,163.46 from June 28, 2021 to June 29, 2023, during which she was represented by the Egenberg firm. This summary does not specify what services were provided.

undiscounted amount advanced under the medical factoring agreement” as well as interest and attorney’s fees.⁴ Echo also states that it’s seeking “[t]he full, undiscounted amount due on [Ms. Foster’s] open account.”⁵

On May 16, 2024, Ms. Foster filed an answer to this petition in which she denies Echo’s allegations, denies ever having any account or agreement with Echo, and raises multiple affirmative defenses, including the defense that Echo had no right of action to pursue claims against her.⁶

Two weeks later, on May 30, 2024, Echo filed its first motion for summary judgment which restated the facts alleged in its original petition and claimed to be entitled to summary judgment as a matter of law.⁷ In its memorandum in support of the motion, Echo argues that it was undisputed that Ms. Foster entered into an agreement in which she received medical treatment, that Echo purchased the receivables from the providers through a factoring arrangement, and that Ms. Foster never paid Echo for the services. Echo attached to this motion as exhibits: an affidavit of Mr. Mason Moore, an Echo company employee, attesting to the facts set forth in the motion⁸; printed copies of text messages between “Amir”, an Echo employee, and Mr. Hurd⁹; a copy of an October 17, 2023 “Notice of Lien” sent by an unnamed Echo employee that states the medical providers sold their

⁴ No copy of a “medical factoring agreement” has ever been provided by Echo.

⁵ This petition makes no mention of the Egenberg firm.

⁶ Ms. Foster also raises as an affirmative defense misrepresentation and fraud; however, she has not yet raised these (or claims under the Louisiana Unfair Trade Practices Act) as demands in reconvention.

⁷ The Statement of Uncontested Facts & List of Essential Legal Elements provided with this motion provides a definition of “Open Account” from La. R.S. 9:2781 but does not actually set forth the essential legal elements plaintiff is required to prove.

⁸ On its face, it is unclear from this affidavit Mr. Moore’s role at Echo or how he has personal knowledge of any of the facts to which he attests. His name is not mentioned on any of the correspondence provided between Echo and Ms. Foster or her counsel, Mr. Hurd, or on any other evidence provided.

⁹ There is no affidavit from “Amir” or other document authenticating this supposed text message exchange included as evidence attached to this motion for summary judgment.

accounts to Echo and claims that Echo has acquired a privilege for its bills in the amount of \$54,628.46¹⁰ for treatment of Ms. Foster upon receipt of the letter pursuant to La. R.S. 9:4751, *et seq.*¹¹; a copy of a December 8, 2023 written demand for payment sent to Ms. Foster personally, by a Mr. Philippe Chamy, on behalf of Echo, seeking payment of \$54,629.16 within seven days of receipt of the letter.^{12 13} Ms. Foster filed an opposition to this motion in which she argued that the self-serving affidavits were insufficient to warrant judgment as a matter of law and also that the motion was premature because there had been no discovery conducted.

Following a hearing on the motion, on October 28, 2024, the trial court issued a judgment denying the motion. In her written reasons for judgment, the trial court found that there existed a genuine issue of material fact as to the amount owed on open account because the evidence introduced in support of Echo's motion stated in three different documents three different amounts purportedly owed: \$55,163.46, \$54,628.46, and \$54,629.16. The trial court also found that the amounts submitted by Echo were summaries and not actual invoices kept in the ordinary course of business.

On February 24, 2025, Echo filed a second "supplemental" motion for summary judgment in which it reiterated and re-alleged all of the facts, allegations, arguments, and evidence contained in and submitted with its original motion for summary judgment as well as an additional memorandum in support with

¹⁰ As with the "Lien Summary" reproduced in the petition, the summary in the Notice of Lien provides the name of the provider, a date of service, and a charge, but does not specifically state the medical services provided.

¹¹ While this notice states that it was sent via certified mail "return receipt requested", no copies of such receipts were included in this attachment.

¹² Mr. Chamy's role at Echo is not stated on the face of the demand letter. There is no indication that this letter was sent to Ms. Foster's counsel, Mr. Hurd.

¹³ The address provided for Echo Institute Medical, LLC in the demand letter and all other evidence in the record, 3436 Magazine Street, #524, New Orleans, LA 70115, is a mailbox at "Pack Rat Shipping Services."

additional exhibits attached. These additional exhibits consist of affidavits from five of Ms. Foster's medical providers that include descriptions of the medical services rendered and the dates and fees incurred for each, copies of the medical providers' accounting ledgers outlining charges to Ms. Foster, and so-called "Assignment Agreements" whereby the medical providers purportedly assigned their rights to collect medical debts to Echo.

In her opposition to the second motion for summary judgment, Ms. Foster argued that there remained genuine issues of material fact and that summary judgment was premature because there remained outstanding discovery, including interrogatories and requests for admission and production of documents. She also argued that Echo did not have the assignments from the providers at the time it demanded payment from her in December of 2023 or at the time it filed the lawsuit.¹⁴

Attached to the memorandum in opposition is Ms. Foster's own affidavit which included additional statements concerning the handling of her automobile accident case by Mr. Hurd and Egenberg Trial Lawyers. Therein Ms. Foster stated that she never entered into any agreement, contract, or account with Echo, and that Echo never provided her with evidence of their relationship with her medical providers or of the assignment of her medical debt. She stated that she understood her contract with Egenberg Trial Lawyers to indicate that she would be responsible for providing Egenberg with funds from the case resolution to cover costs incurred, including medical costs, and that she was never provided with invoices or any other evidence as to the specific amounts of her medical treatments. She further stated that she had deposited funds from her personal injury claim into the registry

¹⁴ The "Assignment Agreements" included in the second motion for summary judgment are all dated February 2025, though they purport to state that the "effective dates" of the agreements to be sometime in February, May, or June of 2023, before Ms. Foster reached a settlement on her automobile accident case.

of the court at the 24th JDC for the purpose of satisfying outstanding debts owed. Ms. Foster further averred that, due to misrepresentations made by Mr. Egenberg in a phone call to her concerning the circumstances of Mr. Hurd's departure from his firm, she decided to terminate her representation with Egenberg Trial Lawyers and retain Mr. Hurd as counsel. Ms. Foster stated that it is her belief that the present suit is retaliation for her termination of Egenberg Trial Lawyers.

On the same day that she filed her memorandum in opposition, Ms. Foster also propounded interrogatories and requests for admission and production on Echo in which she sought documents and information relating to Echo's purchase of medical receivables. These interrogatories and requests remained unanswered by Echo at the time of the hearing on the motion for summary judgment.

Echo filed a reply in support of its motion for summary judgment in which it argued that there were no genuine issues of material fact in dispute and, because the assignment agreement exhibits attached in its motion "speak for themselves", the evidentiary burden had shifted to Ms. Foster to negate an essential element of Echo's claim.¹⁵

Following the April 20, 2025 hearing on the motion, in a written judgment dated April 23, 2025, the judge granted plaintiff's motion for summary judgment and awarded Echo \$55,163.46 plus legal interest from the date of the demand, costs and attorney's fees. The judgment also "recognized Echo's lien and privilege pursuant to La. R.S. 9:4751" over the proceeds of Ms. Foster's settlement action deposited in the 24th Judicial District Court, though this relief was never requested by plaintiff in its petition or in its motion for summary judgment.

¹⁵ In this reply memorandum, plaintiff asserts, "Echo purchased the medical receivables from the medical providers according to a factoring agreement." Echo has not provided a copy of this factoring agreement, and the suggestion that this is the contractual arrangement whereby Echo claims the right to collect debts appears to be inconsistent with assertions made in the petition as well as the evidence of "assignment agreements" attached to the motion for summary judgment. See discussion of underlying contractual agreement, *infra*.

From the bench, the judge stated that she found that there were no genuine issues of material fact and granted the motion on the basis that Echo had proven with their affidavits that there had been assignments of the debts to Echo from the medical providers. It is unclear from the record whether the trial judge considered the essential elements that a creditor must prove in order to succeed on a suit for open account.¹⁶ In her subsequent judgment on October 20, 2025, the judge awarded \$16,000.00 in attorney's fees and \$1,411.57 in court costs.

On appeal, Ms. Foster raises the following assignments of error:

1. That Echo had no right of action when it filed the suit;
2. That there remain genuine issues of material fact as to: the existence of an open account between the parties at the time of the demand; whether Echo sent demands correctly setting forth the amount owed; whether the debt on the open account had been extinguished;
3. That summary judgment should not have been granted while there remained outstanding discovery; and
4. That the award of attorney's fees was unwarranted.

We consider these assignments of error *en globo* in our discussion below, beginning first with a consideration of the law and genuine issues of fact for the motion for summary judgment before proceeding to a discussion of that part of the judgment recognizing a lien in favor of Echo as exceeding the scope of the pleadings.

DISCUSSION

Appellate courts review summary judgments *de novo* using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. *Wiebelt v. Stonebridge Manor New Orleans, LLC*, 25-69, p. 2 (La. App. 5 Cir. 9/24/25), 423 So.3d 196, 198-99; *In re Succession of O'Krepki*, 16-50,

¹⁶ The record indicates that plaintiff Echo subsequently filed this April 23 judgment from the 29th JDC in the 24th JDC suit in order to secure funds deposited into the registry of the court there.

p. 5 (La. App. 5 Cir. 5/26/16), 193 So.3d 574, 577. The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action. La. C.C.P. art. 966. After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there are no genuine issues as to material fact and that the mover is entitled to judgment as a matter of law. *Id.* A summary judgment may be rendered or affirmed only as to those issues set forth in the motion under consideration by the court at that time. *Id.* If the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. *Id.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. La. C.C.P. art. 967.¹⁷ Only in the event that the mover's supporting documents meet the burden of showing that "it is quite clear as to what is the truth and that there has been excluded any real doubts as to the existence of a genuine issue of material fact," does the burden shift to the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *McClellan v. Premier Nissan L.L.C.*, 19-289, p. 10 (La. App. 5 Cir. 2/26/20), 293 So.3d 648, 656.

¹⁷ La. C.C.P. art. 967 also provides:

D. If it appears to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Article are presented in bad faith or solely for the purposes of delay, the court immediately shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney fees. Any offending party or attorney may be adjudged guilty of contempt.

Suits on Open Account and Assignment of Medical Debt

We begin with a restatement of the law for suits on open account. La. R.S.

9:2781 provides in pertinent part:

A. When any person fails to pay an open account within thirty days after the claimant sends written demand therefor correctly setting forth the amount owed, that person shall be liable to the claimant for reasonable attorney fees for the prosecution and collection of such claim when judgment on the claim is rendered in favor of the claimant. Citation and service of a petition shall be deemed written demand for the purpose of this Section. If the claimant and his attorney have expressly agreed that the debtor shall be liable for the claimant's attorney fees in a fixed or determinable amount, the claimant is entitled to that amount when judgment on the claim is rendered in favor of the claimant. Receipt of written demand by the person is not required.

...

D. For the purposes of this Section and Code of Civil Procedure Articles 1702 and 4916, "open account" includes any account for which a part or all of the balance is past due, whether or not the account reflects one or more transactions and whether or not at the time of contracting the parties expected future transactions. "Open account" shall include debts incurred for professional services, including but not limited to legal and medical services.

...

In order to sustain an action on an open account, a plaintiff-creditor bears the burden of proving his demand by a preponderance of the evidence. *Ochsner Clinic Found. v. Arguello*, 11-326, p. 5 (La. App. 5 Cir. 11/29/11), 80 So.3d 622, 625.

The touchstone element which the creditor must prove is that the debtor contracted for the services on open account. *A-MMED Ambulance, Inc. v. Cmty. Care, LLC*, 2024-0417, p. 8 (La. App. 4 Cir. 12/9/24), 407 So.3d 663, 670; *Salley & Salley v. Stoll*, 03-807, p. 7 (La. App. 5 Cir. 12/9/03), 864 So.2d 698, 703. There must necessarily be a contract which gave rise to the debt. *Salley & Salley, supra*. One who sues on open account has the burden of proving the contract. *Id.*

In proving an open account, plaintiff must further show that it was kept in the course of business and introduce supporting testimony as to its accuracy. *Id.* In terms of proving the amount owed, there is no particular billing format for

setting out the amount and services rendered, but there should be some description of the bill in order to alert the debtor of the charges and types of services rendered. *Anderson & Adams v. Bayou Land & Marine Contractors, Inc.*, 566 So.2d 438, 440 (La. 5 Ct. App. 1990); *see also Indus. Equip. Sales & Serv. Co., Inc. v. Sec. Plumbing Inc.*, 95-572 (La. App. 5 Cir. 12/13/95), 666 So.2d 1165 (overturning a judgment in favor of plaintiff creditor where there was no evidence that defendant received any invoices made out or directed to it or that defendant had transacted any business whatsoever with plaintiff.).

Because it is not the original provider of the services for which payment has been demanded, Echo also has the burden of proving the validity of the assignment it received. The Louisiana Civil Code sets forth the rules for assignments. All rights may be assigned, with the exception of those pertaining to obligations that are strictly personal. La. C.C. art. 2642. The assignee is subrogated to the rights of the assignor against the debtor. *Id.* The assignor of a right warrants its existence at the time of the assignment. La. C.C. art. 2646. The assignment of a right is effective against the debtor and third persons only from the time the debtor has actual knowledge, or has been given notice of the assignment. La. C.C. art. 2643. There is no requirement that the assignment be created by authentic form before a notary and two witnesses. *Louisiana Mobile Imaging, Inc. v. Ralph L. Abraham, Jr., Inc.*, 44,600, p. 5 (La. App. 2 Cir. 10/14/09), 21 So.3d 1079, 1082.

The purchase or assignment of an obligation for money must conform to the general rules applicable to sales set forth in the Civil Code. *Johnson Law Firm, LLC v. Knoll*, 2015-81, p. 9 (La. App. 3 Cir. 10/7/15), 175 So.3d 1038, 1044, *writ denied*, 2015-2062 (La. 1/8/16), 184 So.3d 695. The thing, the price, and the consent of the parties are requirements for the perfection of a sale. La. C.C. art.

2439. There is no sale unless the parties intended that a price be paid. La. C.C. art. 2464.

Under La. C.C. art. 1823, an obligee and a third person may agree on an assumption by the latter of an obligation owed by another to the former; that agreement must be made in writing and does not effect a release of the original obligor. In the context of this case, the medical provider (the obligee to whom payment is owed) may enter into an agreement with a factoring company (the third party) to allow the factor to assume the right to collect payment (the obligation owed) for medical services. This statute may be read as permitting medical factoring agreements between the financing company and the medical provider. However, one may not simply presume that just because the patient has received medical care that they are the party that owes the original obligation to pay for the services - there may be another entity (such as the plaintiff's lawyer or law firm) which has agreed to pay for these services. *See Louisiana Civil Law Treatise* § 10.21. Agreement entered into by the obligee, (2d ed.).

Having established that Echo is required to prove the existence of the underlying contract between Ms. Foster and her medical providers, as well as the valid assignment of the alleged medical debt from those providers to Echo, we next examine the evidence presented by Echo in support of its motion for summary judgment to determine whether it has met this burden.

The Underlying Agreement for Payment for Medical Services

Upon *de novo* review, we find no evidence of an agreement or contract between Ms. Foster and the medical providers to pay the full, unreduced amount for the medical services rendered. Echo argued, and the trial court agreed, that, because Ms. Foster consented to and received medical treatments, this fact alone is sufficient proof of an agreement between her and the medical providers. The

medical providers would not have provided the treatments for free, Echo argues.

This argument is erroneous. The fact that Ms. Foster received medical treatment is not evidence *ipso facto* that she personally obliged herself to pay the medical providers the full, unreduced amounts charged for the medical services provided. People very often seek out and obtain medical services with the expectation and understanding that those services will be paid, in part or in full, by a third-party such as an insurance company, or, in this case, a plaintiff's lawyer.^{18 19}

Echo has provided no direct evidence of an agreement between Ms. Foster and her medical providers requiring her to pay the full, unreduced amount charged for the medical services. Other parts of the record indicate that such an agreement never existed: when explaining the discrepancy between the different amounts it claims Ms. Foster owed in the lien letter and the petition, Echo stated that the \$535.00 difference represented an office visit to Dr. Waring that was “inadvertently omitted from the tally Echo keeps from time to time as medical charges accrue.” In its petition, Echo also stated, “Echo’s funding of the above treatment enabled Ms. Foster to get needed medical treatment she otherwise would

¹⁸ In this instance, Ms. Foster in her affidavit states that it was her expectation that the costs of the medical treatment would be covered by Egenberg, and that those costs would be paid from funds obtained on her personal injury claim. Her affidavit states in pertinent part:

12. I connected with my medical providers through my counsel and understood them to be engaging with medical providers who would be offering the best and most affordable treatment available.

13. I understood my contract with Egenberg Trial Lawyers to indicate that I would be responsible for providing Egenberg Trial Lawyers with funds from my case resolution to cover costs incurred in the case, and that Egenberg Trial Lawyers would pay those costs.

14. I further understood from my contract with Egenberg Trial Lawyers that I would not be personally responsible for those costs, but that they would be only drawn from the funds resulting from my injury claim.

¹⁹ We note that instead of acknowledging Ms. Foster’s relationship or contract with the Egenberg law firm (as stated in her affidavit) or the possibility that there may have been some other arrangement whereby a third-party would pay for the medical services, plaintiff, in its response to the memorandum in opposition to the second motion for summary judgment, uses opprobrious language and a disparaging tone to attack Ms. Foster’s intelligence, (e.g. “[h]ow did she think the medical bills were getting paid?”)

not have been able to afford or obtain due to a lack of funding.” These statements suggest that, instead of purchasing the medical debt from the medical providers following treatment as Echo asserts with its “assignment agreements”, that in fact there existed some agreement between Echo and Ms. Foster’s medical providers *before* treatment was ever provided and that Echo was keeping a tally of medical charges as they accrued.^{20 21} On the record provided, even without examination of the affidavit of Ms. Foster, there is a genuine issue of material fact as to who agreed to pay for Ms. Foster’s medical treatment.

²⁰ Echo makes multiple citations to the case *George v. Progressive Waste Sols. of La, Inc.*, 2022-01068 (La. 12/9/22), 355 So.3d 583, which Echo claims sanctions Echo’s business practices. The *George* case involved a bystander who was hit by a garbage pickup truck. The defendant insurer filed a pre-trial motion in limine to exclude or strike the medical bills related to plaintiff’s back surgery and charged to a medical factoring company on the basis that there was no evidence that plaintiff was personally responsible for payment of the medical bills. The trial court granted the motion in limine and the appeals court upheld the trial court’s judgment. The Supreme Court granted writs and reversed. In *George*, the medical provider and the medical factoring company entered into a “professional service agreement” prior to plaintiff receiving medical care whereby the provider transferred its right to collect payment to the factor in exchange for 50% of the billed charge. The plaintiff’s law firm executed a “Letter of Guaranty and Protection” in favor of the medical factoring company in which the law firm accepted full responsibility for full payment and performance of obligations due and also granted the factoring company rights to the proceeds recovered on the patient’s behalf. Examining these two agreements, the Supreme Court determined that, unlike the situation which existed in earlier cases, there was no evidence that the plaintiff had been released from his obligation to pay the full amount billed, and therefore the defendant could not subtract the discounted purchase price from the theoretical damage award to the plaintiffs.

The *George* case is factually and procedurally distinct from this case in multiple ways: (1) the *George* case does not involve a medical factoring company suing a patient; (2) the *George* case was decided on a pre-trial motion in limine rather than on a motion for summary judgment; (3) there is no evidence in the record in the case sub judice of a “factoring agreement” between the medical providers and Echo, or a “Letter of Guaranty” between Echo and any of Ms. Foster’s attorneys.

²¹ For additional cases addressing medical factoring agreements, see *Ochoa v. Aldrete*, 21-632 (La. App. 5 Cir. 12/8/21), 335 So.3d 957 (in which the medical providers entered into detailed contractual agreements with the injured plaintiff that expressly set forth the providers’ assignment of rights to the medical factoring company); *Reed v. United States*, 6:20-CV-01354, 2023 WL 5938802 (W.D. La. Sept. 12, 2023) (in which an injured plaintiff executed an assignment agreement in favor of his medical providers, assigning to them his right to recover amounts he received from the accident up to the total amounts they charged him.); see also *Williams v. IQS Ins. Risk Retention*, CV 18-2472, 2019 WL 937848 (E.D. La. Feb. 26, 2019) (in which the court determined that the plaintiff would not be able to recover the “full” amount charged in a situation in which plaintiff’s counsel contracted with the medical factoring company and promised to pay the “full” rate. The court pointed out that the difference between the full amount charged and the discounted amount paid to the provider by the medical factoring company was owed by plaintiffs’ counsel to the medical factor, but found it significant that plaintiffs themselves were not party to the agreements: “...while [plaintiffs] presumably agreed vis a vis their attorney that the Difference [between the full billed amount and discounted amount paid to providers] must come out of [plaintiffs’] recovery as a cost of litigation, no suggestion has been made that Plaintiffs themselves agreed to be responsible to anyone for any medical bills or for the Difference should their recovery at trial fall short.”)

The “Assignment Agreements”

Our finding that Echo failed to meet its burden of proving the underlying contract necessary for its suit on open account is a sufficient basis for reversing the trial court’s decision to grant the motion for summary judgment. Nevertheless, in light of the glaring inconsistencies Echo presents that should have also precluded granting summary judgment in plaintiff’s favor, we continue our analysis with an examination of the “Assignment Agreements” presented by Echo as part of their second motion for summary judgment.

The exhibits presented by Echo in support of its second motion for summary judgment come from five of Ms. Foster’s medical providers: Patrick Waring, M.D., The Pain Intervention Center, LLC, Doctors Imaging Services, LLC, Freedom Spine, LLC, and Intraoperative Neurophysiological Monitoring, LLC. Each exhibit includes: (1) a notarized one-page affidavit from a representative of the medical service provider²²; (2) an approximately one-page “Assignment Agreement” signed by the medical service provider and Echo Institute Medical, LLC; and (3) a billing statement or health insurance claim form. We observe the following inconsistencies in these exhibit documents:

- All of the affidavits and “Assignment Agreements” are dated between February 10th and 17th, 2025, more than a year after Echo filed its petition.
- The “Assignment Agreements” for Patrick Waring, M.D., The Pain Intervention Center, LLC, and Doctors Imaging Services were signed by the Echo representative, Philippe Chamy, one day after the date stated by the notary on the accompanying affidavits. For

²² Dr. Patrick Waring signed affidavits on behalf of himself and The Pain Intervention Center; Ms. Danielle Bodin signed affidavits on behalf of Freedom Spine and Intraoperative Neurophysiological Monitoring; Dr. John Hamide signed the affidavit on behalf of Doctors Imaging Services.

example, the affidavit of Dr. Hamide for Doctors Imaging Services was signed by the notary on February 10, 2025 while the accompanying “Assignment Agreement” was signed by Dr. Hamide on February 10, 2025 and Mr. Chamy on February 11, 2025.²³

- The “Assignment Agreements” purport to have “effective dates” of February 8, 2023 (The Pain Intervention Center), May 8, 2023 (Dr. Patrick Waring), June 21, 2023 (Doctors Imaging Services), and June 29, 2023 (Freedom Spine and Intraoperative Neurophysiological Monitoring). These are the dates on which Ms. Foster actually received medical services. The health insurance claim forms included in the exhibits for Freedom Spine and Intraoperative Neurophysiological Monitoring were signed by Intraoperative on July 17, 2023.²⁴
- The “billing statements” included in the exhibits of Dr. Waring, The Pain Intervention Center, and Doctors Imaging Services are dated February 4 and 10, 2025.²⁵
- The health insurance claim forms included in the exhibits for Freedom Spine and Intraoperative Neurophysiological Monitoring do not contain any description of the services provided, only numeric codes for procedures.

²³ This appears to belie the statement of the affidavit that “[t]he copy of the Assignment Agreement attached hereto is authentic, and the recitals and representations contained in it are true and correct.”

²⁴ It’s unclear why the medical provider would be continuing to sign off on claim forms weeks after the purported assignment of the debt.

²⁵ There is no indication on the face of these documents that they are copies of bills or invoices that were ever sent to Ms. Foster or her attorney, Mr. Hurd in 2023 or any other time prior to the filing of the motion for summary judgment.

- Some of the charges listed in the billing statements provided by Dr. Waring and The Pain Intervention Center reflect identical service dates, charge codes, charge descriptions, and charge amounts.²⁶
- None of the Assignment Agreements indicate where, when, by whom, or for how much the medical providers sold Ms. Foster's purported medical debt to Echo.²⁷

There is nothing in these exhibits that suggests any of the included billing statements or claim forms were ever sent to Ms. Foster, or any indication at all that these medical providers attempted to collect a payment from her. Most significantly, the purported "effective dates" of these assignments are directly contrary to Louisiana Civil Code article 2643, which states that such assignments are effective against the debtor and third persons only from the time the debtor has actual knowledge of or has been given notice of the assignment. Echo's attempt to include its own "effective dates" appears to be an illegal and unenforceable contractual provision. *See* La. C.C. art. 2030 ("[a] contract is absolutely null when it violates a rule of public order.")²⁸

On *de novo* review, we find that these purported "Assignment Agreements" are insufficient for Echo to meet its burden on the motion for summary judgment. The contradictory and inconsistent dates, vague and duplicative charges, and apparently illegal and unenforceable contractual provisions all raise rather than resolve questions about the facts and circumstances of what treatments Ms. Foster received, how much she was charged, how she was billed for those services, and

²⁶ It's unclear whether these are instances of double billing.

²⁷ In this, the purported agreements do not appear to conform to the general rules applicable to sales set forth in the Civil Code stated *supra*.

²⁸ In its reply brief, Echo asserts that "[t]he debtor's knowledge of the assignment is not relevant, and no notice to the debtor is necessary..." and cites La. C.C. art. 2649 in support of this claim. This statement appears to be a misrepresentation of the law. La. C.C. art. 2649 concerns insolvency and the rescission of contracts and makes no mention of notice.

how the debt she supposedly incurred was transferred to Echo. These genuine issues of material fact preclude granting summary judgment in Echo's favor. Furthermore, these deficiencies, including the backdating of the documents and apparent signing of documents outside the presence of the notary, raise concerning questions about whether these exhibits were presented to the court to show a genuine and truthful picture of the contractual relationship between Ms. Foster, her counsel, and her medical providers, or for the purpose of misleading or deceiving the court.

Pending Discovery

The motion for summary judgment is to be granted only after there has been adequate discovery. We observe that Echo filed its original motion for summary judgment only two weeks after Ms. Foster filed her answer. In support of its argument that defendant has had adequate opportunity for discovery, Echo includes a timeline that states, "1/12/24 Echo files suit against Foster, 1/17/24 Foster receives service of process, **Foster propounds no discovery...**" (emphasis original.) The suggestion that Ms. Foster should have propounded discovery on the same day that she received service of the suit filed against her is absurd. Under the circumstances of this case, we believe that defendant should be granted additional time to conduct discovery.

Judgment Beyond the Pleadings

In addition to granting Echo's motion and declaring summary judgment in the amount of \$55,163.46 in its favor, the trial court's April 23, 2025 judgment also states:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Echo's lien and privilege pursuant to La. Rev. Stat. § 9:4751, [sic] over the proceeds of any settlement or judgment in Foster's personal injury action entitled, "Sherry Foster and Matthew Foster v. Clear Blue Insurance Company, Transport Consultants, Inc.

And [sic] Karl Davis,” in 24th Judicial District Court for the Parish of Jefferson, under Proc. No. 812-505 is recognized.

The record indicates that this judgment was prepared and submitted by plaintiff’s counsel. This relief was not requested by plaintiff in any of its written pleadings or at the trial on the motion. La. R.S. 9:4751 is not mentioned at all in the petition.²⁹ Especially concerning to this Court is the indication in the record that plaintiff’s counsel took this April 23, 2025 judgment from the 29th JDC and subsequently used it to obtain funds deposited in the registry of the 24th JDC.

A final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings and the latter contain no prayer for general and equitable relief. La. C.C.P. art. 862. A party is entitled to any relief available based on the facts pled, regardless of the specific relief requested. *Miller v. Thibeaux*, 2014-1107, p. 8 (La. 1/28/15), 159 So.3d 426, 432. However, La. C.C.P. art. 862 does not permit a trial court to decide issues which litigants have not raised. *O’Reilly Auto. Stores, Inc. v. White*, 55,520, p. 20 (La. App. 2 Cir. 4/10/24), 384 So.3d 1194, 1210 (citing *Dupree v. Dupree*, 41,572, p. 11 (La. App. 2 Cir. 12/20/06), 948 So.2d 254, 260). The court may only grant relief warranted by the arguments contained in the pleadings and the evidence. *Id.*; *In re Interdiction of Amoroso*, 2019-0987, p. 5 (La. App. 1 Cir. 2/21/20), 298 So.3d 203, 206. A judgment rendered beyond the pleadings creates a nullity. La. C.C.P. art. 2002; *O’Reilly Auto. Stores, supra*; *Huckabay v. Huckabay*, 2024-501, p. 8 (La. App. 3 Cir. 2/12/25), 405 So.3d 1148, 1154; *In re Interdiction of Amoroso*, 2019-0987, p. 5 (La. App. 1 Cir. 2/21/20), 298 So.3d 203, 207; *Stockman v. Med. Tech., Inc.*, 2011-285, p. 2 (La. App. 3 Cir. 12/14/11), 81 So.3d

²⁹ The “medical lien” under La. R.S. 9:4752 is a “Privilege on net proceeds collected from a third party in favor of medical providers for services and supplies furnished injured persons” (per the title of that statute article). The Louisiana Supreme Court has recognized that this statutory privilege operates automatically as a matter of law provided the requirements of La. R.S. 9:4753 have been met. *Anderson v. Ochsner Health Sys.*, 2013-2970 (La. 7/1/14), 172 So.3d 579.

198, 200, *writ denied*, 2012-0145 (La. 3/23/12), 85 So.3d 94; *Domingue v. Bodin*, 2008-62, p. 3 (La. App. 3 Cir. 11/5/08), 996 So.2d 654, 657.

Suits on open account and actions to enforce liens are distinguishable. *See Bell Foundry Co. v. Lonnie McCurry's Four Wheel Drive Ctr., Inc.*, 46,553, p. 6 (La. App. 2 Cir. 10/5/11), 75 So.3d 529, 534, *writ denied*, 2011-2467 (La. 1/20/12), 78 So.3d 145. Echo has not argued and has not provided evidence showing that the requirements of La. R.S. 9:4751 have been met. There is no valid basis for recognizing a lien in Echo's favor, particularly in light of the glaring deficiency of the evidence presented. Accordingly, we declare that portion of the April 23, 2025 judgment of the trial court recognizing a lien in favor of Echo to be null and void as beyond the scope of the pleadings. Furthermore, we order Echo to return to the registry of the 24th JDC any and all funds obtained in recognition of this supposed lien within thirty (30) days of the publication of this judgment, and to provide copies of this judgment to the judge presiding over the matter No. 812-505, "Sherry Foster and Matthew Foster v. Clear Blue Insurance Company, Transport Consultants, Inc. And [sic] Karl Davis," and the clerk of court for the 24th JDC.

CONCLUSION

Upon *de novo* review, we find that there remain genuine issues of material fact that preclude granting summary judgment in favor of Echo. The evidence provided by Echo in support of its motion for summary judgment is not only insufficient to meet its evidentiary burden under the summary judgment standard, but also raises serious questions about plaintiff and counsel's representations of fact and law to the court. As we stated above, there is no direct evidence of an agreement between Ms. Foster and the medical providers in which she personally obligated herself to pay the full, unreduced amount for the medical services

provided. Echo's assertion that such an agreement existed, and subsequent provision of "Assignment Agreements" that purport to transfer to it the right to collect and file suit on such a non-existent obligation suggests conduct on the part of counsel that goes beyond zealous advocacy and into serious misconduct. On remand, we order the trial court, after appropriate briefing and argument by the parties, to conduct a hearing under La. C.C.P. art. 863 to determine whether the material misrepresentations made in plaintiff's pleadings have violated obligations of plaintiff's counsel under that statute.

DECREE

The April 23, 2025 judgment of the trial court granting summary judgment in favor of Echo is reversed. That portion of the judgment recognizing a lien in favor of Echo is declared null and void as beyond the scope of the pleadings. The October 17, 2025 judgment awarding Echo attorney's fees and costs is vacated. We order Echo to return to the registry of the 24th JDC any and all funds obtained in recognition of the null and void lien within thirty (30) days of the publication of this judgment, and to provide copies of this judgment to the judge presiding over the matter No. 812-505, "Sherry Foster and Matthew Foster v. Clear Blue Insurance Company, Transport Consultants, Inc. and Karl Davis," and the clerk of court for the 24th JDC. On remand, we also order the trial court, after appropriate briefing and argument by the parties, to conduct a hearing under La. C.C.P. art. 863 to determine whether the material misrepresentations made in plaintiff's pleadings have violated obligations of plaintiff's counsel under that statute.

**JUDGMENT REVERSED; JUDGMENT DECLARED NULL IN PART;
REMANDED WITH ORDERS**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT
SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **MAY 11, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-CA-472

E-NOTIFIED

29TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE LAUREN D. ROGERS (DISTRICT JUDGE)

ADAM N. DAVIS (APPELLEE)

AARON J. HURD (APPELLANT)

ANDREW R. CAPITELLI (APPELLEE)

KENNETH R. WHITTLE (APPELLEE)

SARAH F. CONSTANTINE (APPELLEE)

HEATHER C. FORD (APPELLANT)

MAILED

NO ATTORNEYS WERE MAILED