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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2020-001441

Thelma Rudd, as Personal Representative
of the Estate of Charles S. Rudd, Respondent,

v.

Pepper Hill Nursing & Rehab Center, LLC
d/b/a Pepper Hill Nursing & Rehab Center,
The Place at Pepper Hill, LLC, Pepper Hill
Senior Properties, LLC n/k/a The Place at
Pepper Hill, LLC and Shiloh Management,
Company, Inc. Defendants,

Of whom Shiloh Management, Company,
Inc., Pepper Hill Nursing & Rehab Center,
LLC d/b/a Pepper Hill Nursing & Rehab
Center, Appellants.

PETITION TO LIFT AUTOMATIC STAY

Pursuant to Rule 241(c)-(d), SCACR, Respondent Thelma Rudd, as Personal Representative of the Estate of Charles S. Rudd submits this petition to lift the automatic stay imposed by Rules 205 and 241, SCACR for the limited purpose of obtaining a ruling from the circuit court on Ms. Rudd's pending motion to amend her complaint to add crucial parties as defendants and to take other related actions.

INTRODUCTION

Ms. Rudd's seemingly typical nursing home negligence suit has been complicated by the complex innerworkings and self-dealing of the individuals and entities operating Appellant Pepper Hill Nursing & Rehab Center, LLC ("the Facility"), the nursing home where her husband's ultimately fatal injuries were suffered. Decedent Charles S. Rudd suffered an unnecessary fall both because the Facility's employees were inattentive and because the individuals who operate the Facility (i.e. the Jones family members) intentionally underfunded and understaffed it so that more of the residents' monthly payments could be personally pocketed by the Joneses as profits. Since the Facility has now been sold and its executives claim it has no insurance to cover Ms. Rudd's losses, it is crucial Ms. Rudd be permitted to amend her complaint to add the Jones family members as defendants.

The automatic stay incident to an appeal filed by the Facility and its management company (Appellant Shiloh Management Co., Inc. ("Shiloh")) currently stands in Ms. Rudd's way to even obtain a ruling on her pending motion to amend. But, that appeal arises from the Facility/Shiloh's once-rejected claim that they are entitled to compel Ms. Rudd to arbitration without providing proof of a valid arbitration contract. Regardless of its questionable merits, the appeal has no bearing on a potential pleading amendment to add the Jones family members as defendants. Even if there was some connection between the appeal and proposed amendment, the precarious financial standing of the Facility and its related entities means Ms. Rudd cannot afford to wait for the appeal to reach its conclusion before protecting her right to seek recovery from the Joneses.

FACTUAL BACKGROUND AND LEGAL ANALYSIS

A. Factual Background Necessary for an Understanding of the Petition

This nursing home negligence action arises from a preventable fall suffered by Mr. Rudd while a resident of Pepper Hill Nursing & Rehab Center, LLC d/b/a Pepper Hill Nursing & Rehab Center (“the Facility”) in November 2016. (R. pp. 4-7; 37-41). Respondent Thelma Rudd, Mr. Rudd’s wife and personal representative of his estate, brought this action in the Aiken County Court of Common Pleas on November 13, 2019, alleging negligence, recklessness, corporate negligence and statutory-based claims against the Facility and a related entity that participated in the Facility’s operations, Appellant Shiloh Management Company, Inc. (“Shiloh”). (R. pp. 1, 42-48). Both the Facility and Shiloh are owned and operated by members of the Jones family headed by Wade Jones Sr. (R. p. 53 ¶¶ 3-4; R. p. 62 ¶ 60).

The Facility/Shiloh knew Mr. Rudd’s physical condition posed an increase fall risk but failed to properly equip his wheelchair with appropriate safety devices. (R. p. 56 ¶¶ 21-22). On November 27, 2016, Mr. Rudd fell out of his wheelchair and struck his head as he fell to the ground. (R. p. 56 ¶ 25). Mr. Rudd suffered brain damage and, despite treatment and rehabilitation, died from his injuries in May 2018. (R. p. 56-57 ¶¶ 27-28, 34-35). Ms. Rudd alleges the misconduct leading to Mr. Rudd’s death occurred on multiple levels. Pepper Hill’s staff failed to properly heed Mr. Rudd’s injury risk by installing fall prevention devices and monitoring his movements. (R. p. 91 ¶ 208). More broadly, Mr. Rudd was injured because Pepper Hill was not funded or staffed at a level required to meet the needs of its residents. (R. pp. 91-92 ¶¶ 213-15). This larger systemic failure was a product of Shiloh’s financial decisions, which starved the Facility of crucial resources to maximize profits at the expense of resident care. (R. pp. 62-63). Rather than using payments

from residents to properly fund and staff the Facility, much of this money was diverted to Wade Jones Sr. and his family members for personal use. Id.

The Facility and Shiloh moved to compel arbitration on March 2, 2020, citing a provision in the “Admission Agreement” presented to Ms. Rudd at the time of Mr. Rudd’s admission. (R. pp. 100-01). The final page included an option for the parties to choose arbitration for their disputes by signing their initials and a separate signature block to execute the Admission Agreement overall. (R. p. 115). Mr. Rudd did not sign in either spot. Ms. Rudd’s initials and signature appear on this page but she was not acting pursuant to a power of attorney or other legal authority. After hearing arguments on May 5, 2020, the circuit court (Judge Courtney Clyburn Pope) entered an order on August 13, 2020, denying the motion to compel arbitration because the Facility and Shiloh failed to provide evidence of a valid arbitration contract. (R. pp. 182-86).

The Facility and Shiloh filed a motion to reconsider on August 24, 2020 (R. pp. 187-94), which the circuit court would also later deny. (R. pp. 195-97). However, while this motion was pending, Ms. Rudd filed a motion for leave to file a second amended complaint. (R. pp. 274-85).¹ The proposed amendment would add as defendants various members of the Jones family (Wade Jones Jr., Wade Jones, III, the Estate of Janice Jones, and Scott Jones) with allegations asserting the Facility and Shiloh were alter egos of the Jones family members. (R. p. 277). Additionally, the proposed amendment would allege the Jones family failed to observe corporate formalities in operating the Facility and Shiloh such that Ms. Rudd could “pierce the corporate veil” and recover on her claims directly from the Jones family members. (R. p. 277-79). Ms. Rudd argued that adding

¹ Ms. Rudd had amended her complaint as a matter of course on November 20, 2019, one week after her initial filing, to make a minor change to the caption.

the Jones family members was necessary to obtain justice because the Facility had been sold and doubts had been raised regarding its insurance coverage. (R. pp. 283-84).

The Facility and Shiloh opposed the proposed amendment, and a hearing was scheduled for October 26, 2020. However, the circuit court chose to continue the hearing pending resolution of the Facility and Shiloh's motion to reconsider its arbitration motion. That motion was denied three days later (October 29, 2020). (R. pp. 195-97). In response, Ms. Rudd immediately (October 30, 2020) requested the circuit court schedule a hearing on her motion for leave to amend. On that same day, the Facility and Shiloh noticed an appeal of the order denying their motion to compel arbitration. Pursuant to Rule 241, SCACR, Ms. Rudd then filed a motion to lift the automatic stay imposed as a matter of course following the filing of a notice of appeal. (R. pp. 426-30). Ms. Rudd's motion argued the stay should be lifted for the limited purpose of resolving her motion for leave to amend the complaint both because the proposed amendment was a "matter[] not affected by the appeal" (Rule 241(a)) and to "prevent a contested issue from becoming moot" (Rule 241(c)(2), SCACR). Id.

Following a January 25, 2021 hearing, Judge Clyburn Pope denied Ms. Rudd's motion (order entered March 16, 2021) as well as her motion to reconsider (Form 4 order entered June 16, 2021). (R. pp. 431-38). As the parties briefed the merits of the Facility and Shiloh's appeal, Ms. Rudd took additional steps in probate court to protect her interests by filing a Petition for Allowance of Creditor Claim (attached as **EXHIBIT 1**) against the Estate of Janice Jones (Case No. 2019-ES-02-1272). The same firm that represents the Facility and Shiloh filed a Notice of Disallowance of Claim (attached as **EXHIBIT 2**) on December 20, 2021. The estate disallowed the claim because the estate has not been added as a defendant to Ms. Rudd's suit against the

Facility and Shiloh. The Notice also falsely stated that the circuit court had denied Ms. Rudd's motion to amend her complaint to add the estate as a defendant.

Since her Petition for Allowance of Creditor Claim was denied, Ms. Rudd had just thirty days to pursue legal action against Ms. Jones' estate. S.C. Code Ann. § 62-3-804(2). In light of this change in circumstances, Ms. Rudd filed a motion to lift the automatic stay on January 14, 2022 (attached as **EXHIBIT 3**). The circuit court (Judge R. Markley Dennis Jr.) denied this motion on June 1, 2022. Pursuant to Rule 241(d)(4)(C), a copy of the circuit court's order is attached as **EXHIBIT 4**.

B. Grounds for the Petition with Legal Arguments and Supporting Authority.

The automatic stay incident to the Facility/Shiloh's arbitration-related appeal should not apply to Ms. Rudd's motion to amend her complaint because the proposed addition of the Jones family members as defendants is a matter not affected by the appeal. Moreover, by leaving the motion to amend unresolved, the circuit court risks mooting the contested issue of the Jones family's liability while the Facility/Shiloh's unrelated appeal is completed.

1. Ms. Rudd has Valid Legal and Equitable Claims against the Jones Family Members.

By declining to lift the automatic stay, the circuit court prevented Ms. Rudd from obtaining a ruling on her motion to amend the complaint. That motion is well-founded. The South Carolina Rules of Civil Procedure "strongly favor[] amendments and the court is encouraged to freely grant leave to amend." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005). Amendments should be permitted when "justice so requires." Rule 15(a), SCRCF. Here, Ms. Rudd's proposed amendment would add in the Jones family members as defendants. Under these circumstances, their inclusion is just as they are proper parties to answer for the dangerous conditions at the Facility that allegedly led to Mr. Rudd's injury.

The quality of care a nursing home provides correlates directly with the number of staff members it employs, the amount and quality of training those employees receive, and the financial resources available to meet residents' needs. For nursing homes like the Facility, control over staffing, training, and finances is often maintained by individuals or entities operating outside of the Facility's walls. South Carolina law recognizes this command structure and allows plaintiffs to extend their claims beyond the facility itself to the individuals and entities whose decisions contribute to dangerous conditions, Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 773 S.E.2d 144 (2015). For example, in Morrow, the South Carolina Supreme Court recognized "a duty which runs directly between a parent company and a patient, arising from negligence in actions such as leaving a hospital underfunded, understaffed, or undertrained so as to provide substandard care." Id. at 538, 773 S.E.2d at 146. An injured nursing home resident may pursue claims against both the facility itself and these related entities—both for vicarious and direct liability.

Ms. Rudd's claims go a step further by alleging the Jones family members siphoned off funds from the entities controlling the Facility's funding/staffing and left these entities undercapitalized in an effort to pocket receipts from the Facility's residents for themselves. Under South Carolina law, while the principals who operate a corporation are generally not personally liable for the corporation's torts, a claimant is allowed to "pierce the corporate veil" when the personal shield of the corporate form is being used to protect fraud, justify wrong, or defeat public policy. Drury Dev. Corp. v. Foundation Ins. Co., 380 S.C. 97, 668 S.E.2d 798 (2008) (citing Sturkie v. Sifly, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984)). Moreover, a plaintiff may invoke the "alter ego" or "mere instrumentality" theory of liability where one dominant individual or entity so completely controls a subservient corporation that the latter "functions solely

to achieve the goals of” the dominant individual/entity. Oskin v. Johnson, 400 S.C. 390, 400, 735 S.E.2d 459, 465 (2012); Peoples Fed. Sav. & Loan Ass’n v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 148, 425 S.E.2d 764, 774 (Ct. App. 1992).

Ms. Rudd’s proposed amendment would add the Jones family members as defendants in an effort to pierce the corporate veil by showing both their level of control over the corporations responsible for the Facility and the injustice of allowing these individuals to evade liability. Even at the pleading stage, there is plenty of evidence to show the Jones family members exercised substantial control. The Facility’s licensing application to the South Carolina Department of Health and Environmental Control (“SCDHEC”) listed Wade Jones Jr. and Janice Jones as the Facility’s managers. (R. p; 292-96). According to records maintained by the federal Center for Medicare and Medicaid Services, various Jones family members had “direct ownership” as well as “operational/managerial control” of the Facility. (R. p. 299). Cost reports for the Facility and Shiloh maintained by the South Carolina Department of Health and Human Services further demonstrate substantial self-interested transactions among these entities and the Jones’ family members’ roles as the entities’ owners. (R. pp. 300-05).

In sum, the Jones family members’ level of control over the Facility’s finances and staffing shows Ms. Rudd has legitimate grounds for adding these individuals as defendants to her nursing home negligence suit. Moreover, the Facility/Shiloh cannot show any way in which the proposed amendments would prejudice them. Therefore, Ms. Rudd’s motion to amend is valid and, for the reasons discussed below, the circuit court erred in refusing to lift the automatic stay to rule on this motion.

2. Ms. Rudd's Proposed Amendment is not Affected by the Appeal.

The circuit court erred in finding the viability of Ms. Rudd's motion to amend depends on the outcome of the Facility/Shiloh's arbitration-related appeal. The circuit court found that, if the Facility/Shiloh's appeal leads to the arbitration of Ms. Rudd's claims against them, then "arbitration would also be appropriate" for Ms. Rudd's claims against the parties to be added by amendment. (R. p. 433). The circuit court pointed to no evidence to support this conclusion, and the Admission Agreement's plain language shows this conclusion was erroneous.

Since arbitration involves waiver of the fundamental right to access the courts, it only applies if the parties to a dispute have formed a valid and binding arbitration agreement. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) ("a party cannot be required to submit to arbitration any dispute which he has not agreed to submit"); Wilson v. Willis, 426 S.C. 326, 827 S.E.2d 167 (2019) (citing E.E.O.C. v. Waffle House, Inc., 534 U.S. 279, 294 (2002) (finding that arbitration "is a matter of consent, not coercion"). If the Jones family members sought to compel arbitration, they would bear the burden of producing and proving Mr./Ms. Rudd agreed to arbitrate claims against them. Minnieland Private Day Sch., Inc. v. Applied Underwriters Captive Risk Assur. Co., 867 F.3d 449, 456 (4th Cir. 2017) (citing Adkins v. Labor Ready, Inc., 303 F.3d 496, 500-01 (4th Cir. 2002) ("a defendant who seeks to compel arbitration under the [FAA] bears the burden of establishing the existence of a binding contract to arbitrate the dispute"). There is no such contract, and the Jones family members would have no basis to compel arbitration on Ms. Rudd's claims. As detailed below, the Facility/Shiloh incorrectly argue the Admission Agreement demands arbitration claims for Ms. Rudd's claims against them. Ms. Rudd had no legal authority to sign the Admission Agreement or to initial its optional arbitration provision. See Resp'ts Br. at 5-14. The Facility/Shiloh's contrary arguments are at odds with unambiguous South

Carolina statutory language and have been rejected multiple times by South Carolina appellate courts.

The Jones family members would have an even less meritorious argument for using the Admission Agreement to compel arbitration on Ms. Rudd's claims as they are not parties to that purported contract. South Carolina law presumes contracts may only be enforced by their parties. Touchberry v. City of Florence, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988). This presumption may be overcome only if the contract's language unambiguously extends its benefits to third parties. Thompson v. Pruitt Corp., 416 S.C. 43, 57, 784 S.E.2d 679, 687 (Ct. App. 2016). The Admission Agreement's parties are limited to Mr. Rudd and the Facility. On the bottom of its first page (R. p. 102), the Admission Agreement references its "parties" right after mentioning the "Resident" (Mr. Rudd), his "Representative" (Ms. Rudd), and the Facility itself ("Pepper Hill Nursing & Rehab Center"). On the Admission Agreement's final page (R. p. 115), the arbitration opt-in section includes spots for the initials of "Resident," the Resident's "Responsible Party," and the Facility. The bottom of that same page includes signature blocks for just those same three individuals/entities. There is no colorable basis for the Jones family members to assert the right to assert any rights as an Admission Agreement party.

Similarly, the Jones family could not point to any contract language permitting them to enforce the Admission Agreement as a third party. While the Admission Agreement includes a provision extending its rights and duties to the Facility's "heirs, successors and assigns" (R. p. 113), the individual Jones family members do not fall into any of those categories. Plus, the arbitration provision itself indicates arbitration is limited to the Admission Agreement's parties. The scope of arbitrable disputes is limited to "[a]ny controversy or claim between or among the parties." (R. p. 115). Then, when describing the means by which arbitration may be pursued, the

Admission Agreement states that “[a]ny part[y] to the Admission[] Agreement may bring an action” to compel arbitration. Id. Thus, by its plain language, the Admission Agreement allows only its parties to pursue arbitration and limits the scope of arbitrable claims to disputes among the parties.

In sum, a successful appeal by the Facility/Shiloh on arbitration would not entitle the Jones family members to pursue arbitration because, unlike the Facility, the Jones family members are not parties to the purported Admission Agreement. Reading the Admission Agreement to permit the Jones family members to compel arbitration effectively rewrites the contract and violates a core contract interpretation rule. Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 588, 694 S.E.2d 15, 18 (2010) (quoting MailSource, LLC v. M.A. Bailey & Assoc., 356 S.C. 363, 369, 588 S.E.2d 635, 639 (Ct. App. 2003) (rejecting party’s interpretation that would require disputed contract to be rewritten because that is “a service the courts of South Carolina do not perform”).

3. Failure to Lift the Automatic Stay Would Negatively Affect Ms. Rudd’s Ability to Pursue Her Claims and Recover for Her Losses.

Even when a matter is affected by the appeal, this Court may still lift the automatic stay to “prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR. This provision recognizes that some time-sensitive matters must be addressed in the lower courts even as an appeal moves forward. The recent events in probate court relating to Janice Jones’ estate is one such matter.

To protect her interest in recovering on her claims related to Mr. Rudd’s death, Ms. Rudd filed a Petition for Allowance of Claim against the Estate of Janice Jones in the Aiken County Probate Court. See S.C. Code Ann. § 62-3-804(1)(a). In response, the Estate filed a Notice of Disallowance of Claim on December 20, 2021. That filing triggered a deadline for Ms. Rudd to

take further action to protect her right to recover from the Estate. Pursuant to S.C. Code Ann. § 62-3-804(5), Ms. Rudd had just thirty days after the Notice of Disallowance was mailed to commence an action against the Estate that would protect her right to recovery. This deadline prompted Ms. Rudd to file the current motion to lift the stay on January 14, 2022. Thus, lifting the stay is crucial to allowing Ms. Rudd to meet the South Carolina Probate Code's requirements for pursuing a disallowed claim against the Estate.

There are also broader timing and fairness concerns that should favor allowing Ms. Rudd to bring in the Jones family members by amendment and to take related actions necessary to protect her interests. Including the Jones family members in this litigation is important because the traditional sources of collecting on a judgment against the Facility/Shiloh may be unavailable to Ms. Rudd. The Facility has been sold, and its chief financial officer claims the Facility has no insurance coverage for Ms. Rudd's claims. Thus, adding the Jones family members as defendants and seeking attachment of property is the only way Ms. Rudd can protect her financial interests in the claims arising from Mr. Rudd's injury/death. See S.C. Code Ann. § 15-19-10 ("The plaintiff at the time of issuing the summons or any time afterwards may have the property of such defendant or corporation attached . . . as a security for the satisfaction of such judgment as the plaintiff may recover").

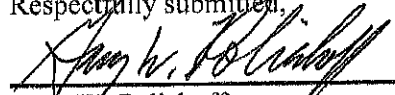
Delaying the Jones family members' inclusion in this suit until after the appeal is completed is not tenable because the Jones family could shed potentially "attachable" property in the interim, leaving Ms. Rudd with nowhere to turn to recover on her meritorious claims. In fact, it seems the litigation delay inherent to an appeal may have been part of the reason the appeal was filed. The Facility/Shiloh's appeal seeks to enforce a purported arbitration contract that Mr. Rudd did not sign and without offering any viable theory for how Ms. Rudd had authority to choose

arbitration on her husband's behalf. The Facility/Shiloh's primary contention is that Ms. Rudd held statutory power under the South Carolina Adult Health Care Consent Act. (Appellants' Br. at 6-8). However, that statute plainly requires physician verifications of Mr. Rudd's alleged incapacity, and the Record on Appeal contains no statements from any of his doctors. See Resp'ts Br. at 6-9 (citing S.C. Code Ann. § 44-66-20(8); § 44-66-30(A)). Alternatively, the Facility/Shiloh rely on estoppel, third-party beneficiary, and agency theories that have all been repeatedly rejected by South Carolina appellate courts in nursing home arbitration cases multiple times over the last ten years.² The Facility/Shiloh's pursuit of these flawed arguments should not be used as a means for preventing Ms. Rudd from protecting her legal interests.

CONCLUSION

For all these reasons, the circuit court unjustifiably denied Ms. Rudd's request to lift the automatic stay. Ms. Rudd respectfully requests this court grant Ms. Rudd's petition to lift the automatic stay so that she can obtain a ruling from the circuit court on her motion to amend and protect her rights to recovery while the Facility/Shiloh's unrelated arbitration-based appeal is resolved.

Respectfully submitted,



Gary W. Poliakoff
Raymond P. Mullman, Jr.
Poliakoff & Associates, PA
215 Magnolia Street
Spartanburg, SC 29306
(864) 582-5472

² Resp'ts Br. at 12-21 (citing Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 353, 755 S.E.2d 450, 454 (2014); Weaver v. Brookdale Senior Living, Inc., 431 S.C. 223, 847 S.E.2d 223 (Ct. App. 2020); Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); Thompson v. Pruitt Corp., 416 S.C. 43, 55, 784 S.E.2d 679, 686 (Ct. App. 2016)).

Jordan C. Calloway
McGowan, Hood, Felder & Phillips, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
jcalloway@mcgowanhood.com

Attorneys for Respondent

Rock Hill, SC

June __, 2022

~~July 6~~ (GWP)

CLIENT VERIFICATION

Pursuant to Rule 241(d)(3), SCACR, Thelma Rudd, as Personal Representative of the Estate of Charles S. Rudd, hereby certify that I have read and now verify the contents of this Petition.

Thelma Rudd
Thelma Rudd

6-29-22
Date

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF AIKEN)

STATEMENT OF CREDITOR'S CLAIM

IN THE MATTER OF:
JANICE GOWAN JONES
(Decedent)

CASE NUMBER: 2019ES021272

Decedent's Date of Death (if known): NOVEMBER 6, 2019

Decedent's Last Mailing Address: 935 HOUNDSLAKE DR., AIKEN, SC 29803

Creditor:	ESTATE OF CHARLES S. RUDD, DEC., THROUGH P.R. THELMA RUDD
Address:	C/O POLIAKOFF & ASSOCIATES, P.A. PO BOX 1572, SPARTANBURG, SC 29307
Telephone:	864-582-5472
Email:	ATTY@GPOLIAKOFF.COM
Original Creditor: Address (if different from above)	
Claim Amount Due:	\$275,000.00
Account Number:	
Other Reference Number:	
Basis of claim (Ex: Contract, Services Rendered for decedent, etc):	DECEDENT WAS AN OWNER, OPERATOR AND MANAGING MEMBER OF THE GOVERNING BODY OF PEPPER HILL NURSING & REHAB CENTER, LLC, AND PART OF THE ADMINISTRATION OF SAID FACILITY, WHICH NEGLECTED CHARLES, S. RUDD, LEADING TO A TRAUMATIC BRAIN INJURY, WHICH CONTRIBUTED TO HIS DEATH.
Date claim will become due (if not already due)	DUE
Nature of uncertainty as to the claim, if any (i.e. contingent claim, amount of claim, due date):	
Description of security as to the claim, if any (Ex: Collateral for the debt)	

Filed: 5/11/2020
Tonya L. Marchant
Probate Court Judge
By: A. Berk

Signature: *Gary W. Poliakoff*
Printed Name: GARY W. POLIAKOFF
Title: ATTORNEY FOR CREDITOR
Date: MAY 7, 2020

INSTRUCTIONS: Claims **MUST** be filed with the Probate Court of the county in which the Decedent's Estate is under administration and may be delivered or mailed to the fiduciary appointed to administer the Estate (see SCPC 62-3-803, 62-3-804, and 62-3-806).

No claim against a Decedent's estate may be presented or legal action commenced against a Decedent's Estate prior to the appointment of a Personal Representative to administer the

Decedent's Estate (except see SCPC 62-3-804(1)(b)).

Satisfaction or withdrawal of claim (FORM 325) **MUST** be filed once claim is resolved.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT

The Estate of Charles S. Rudd,) Civil Action No. 2019-CP-02-02840
deceased, through the duly appointed)
Personal Representative, Thelma)
Rudd, individually and on behalf of)
statutory beneficiaries,)

Plaintiffs,)

v.)

Pepper Hill Nursing & Rehab Center,)
LLC d/b/a Pepper Hill Nursing &)
Rehab Center and Shiloh)
Management, Inc.,)

MOTION TO LIFT STAY

Defendants.)

TO: MARK GENDE AND KENNETH WINGATE, ATTORNEYS FOR DEFENDANTS.

PLEASE TAKE NOTICE THAT the Plaintiffs, by and through their undersigned attorneys, hereby move before this Court pursuant to SCACR 241 to lift the automatic stay in this matter for the limited scope of Plaintiffs’ Motion to Amend the Complaint to assert a claim against the Estate of Janice Jones.

"After service of notice of appeal, any party may move [the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court] for an order lifting the automatic stay." Rule 241(c)(1). The supersedeas or lifting of the automatic stay, as well as any other affirmative relief granted, may be conditioned on such terms as the tribunal, court, judge, or justice entering the order deems appropriate. Rule 241(c)(3).

On **September 2, 2020**, Plaintiffs filed a Motion to Amend the Complaint to add individual Defendants including the Estate of Janice Jones under the theories of alter ego, and piercing the corporate veil.

On **October 26, 2020**, a hearing was scheduled on Plaintiffs’ Motion to Amend the Complaint. However, the Court held it was appropriate to continue the hearing on the Motion to

Amend the Complaint until resolution of Defendants' Motion to Reconsider the Court's Order Denying Arbitration.

On **October 29, 2020**, the Court denied Defendants' Motion to Reconsider the Court's Order Denying Arbitration. Plaintiffs contacted the Court to request a hearing on the Motion to Amend. See **Exhibit 1-October 30, 2020 letter to the Court**.

On **November 5, 2020**, Defendants filed a Notice of Appeal before the Motion to Amend the Complaint to add the Estate of Janice Jones could be scheduled to be heard. The Notice of Appeal immediately caused an automatic stay in all legal proceedings preventing the Motion to Amend the Complaint to be heard until the automatic stay was lifted. Defendants objected to a hearing on the Motion to Amend the Complaint. See **Exhibit 2-Nov. 3, 2020 Letter to the Court**.

On **November 20, 2020**, Plaintiffs filed a Motion to Lift the Automatic Stay to Amend the Complaint to add the Estate of Janice Jones. **Exhibit 3**. In the Response in Opposition to Motion to Lift Automatic Stay to hear the Motion to Amend the Complaint to add the Estate of Janice Jones (**Exhibit 4**), defense attorneys on behalf of the Jones Family represented to the Court the following:

As set forth below, Plaintiff argues that the stay in this matter should be lifted because the appeal does not impact matters raised in Plaintiffs' Motion to Amend Complaint. Not only is this incorrect, but the Court has already once continued a hearing on the Motion to Amend while a motion to reconsider was pending on the same issues now pending before the Court of Appeals. **No circumstances have changed that would justify a lift of the stay**, and the Appellate Court Rules further demonstrate that it is **not appropriate to lift the stay because the pending appeal affects the issues raised in the Motion to Amend**.

Defendants' argument continued:

Plaintiff argues that Appellate Rule 205's automatic stay should be lifted as to Plaintiff's Motion to Amend the Complaint because, in Plaintiff's estimation, the matters raised in the Motion to Amend are "not affected by the appeal." **This is incorrect because, as set forth below, the issue on appeal involves whether this matter is subject to arbitration, and this issue has a direct bearing on the entire process of this case. This includes the addition of new parties** and whether this entire matter should proceed to arbitration or remain in state court.

Second, it is inappropriate to lift the stay because the arbitration issues on appeal have a direct bearing on whether the causes of action against the individual defendants are also subject to arbitration. If the Court of Appeals finds that arbitration is appropriate as to the corporate defendants, arbitration would also be appropriate to the individuals addressed in Plaintiff's Motion to Amend. As a result,

the arbitration issues on appeal directly affect the issues raised in Plaintiff's Motion to Amend.

Based on Defendants' representations and arguments, the Court denied lifting the automatic stay, and the proceedings were stayed until the arbitration issue was resolved. **Exhibit 5 – Order Denying Lift Stay**. Defendants took the position that Defendants' potential success on appeal would result in arbitration of claims involving the parties Plaintiff seeks to bring in by amendment. The Order finds that, if Defendants were to prevail in their appeal, "arbitration would also be appropriate to the individuals addressed in Plaintiffs' Motion to Amend." (Order at 3).

Defense attorney Wingate on behalf of the Jones Family is now attempting to take the opposite position to gain an unfair advantage in violation of res judicata, equitable estoppel, and judicial estoppel. See **Exhibit 6—January 25, 2021 Hearing Transcript**. The Court did not deny Plaintiffs' Motion to Amend the Complaint to add the individuals on the merits but refused to lift the automatic stay to hear the Motion on its merits. The Court did not consider Plaintiff's Motion to Amend before the appeal of the Arbitration Order. Defendants claimed Plaintiff's Motion to Amend was "premature":

"First, Defendants request that the Plaintiff's Motion to Amend the Complaint be denied or that a ruling on the motion be stayed pending resolution of the Court's ruling on Defendants' Motion to Reconsider Defendants' Motion to Compel Arbitration. [...]. Because the Motion to Reconsider addresses whether this matter is subject to arbitration and, if granted, would likely result in the dismissal of this case for arbitration, **Plaintiff's Motion to Amend the Complaint is premature**. Defendants request that the Court deny the Motion to Amend **with Leave to Refile** or stay the Motion pending a ruling on the Motion to Reconsider. Further, if the Motion for Reconsideration is denied, this matter would be ripe for appeal on the issue of arbitration, further making the Motion to Amend "premature."

(See page 3 of **Exhibit 7--Defendants' Response in Opposition to Motion to Amend the Complaint**).

The case is now under an automatic stay because of the appeal of the Order denying Defendants' Motion to Compel arbitration. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The Court stayed the Motion to Amend because adding claims against decedent Janice Jones involves matters affected by the pending appeal.

Now, incredibly, the same law firm attempts to file a Notice to Disallow the claim during the same automatic stay they relied upon to convince the Court not to hear the Motion to Amend. Incredible and disingenuous gaslighting.

On **December 20, 2021**, a Notice of Disallowance was filed despite the automatic stay. **Exhibit 8.** Defense attorney Wingate on behalf of the Jones Family is now attempting to take the opposite position to gain an unfair advantage in violation of res judicata, equitable estoppel, and judicial estoppel. This type of disingenuous and fraudulent argument must be rejected by this Court to avoid injustice. S.C. Code Ann § 62-3-804(5) requires a claimant in Probate Court to commence the proceedings in Probate Court within 30 days of the Notice of Disallowance of Claim. As noted above, Defendants in this case have made every effort to prevent a proper filing in Common Pleas Court, yet now have filed a Notice of Disallowance in Probate Court, requiring the Plaintiff to commence the proceeding in Probate Court. Defendants' duplicitous actions must not be rewarded. This Court should allow the stay to be lifted solely for the purpose of Plaintiff protecting its legitimate interests. This is necessary under the facts and circumstances since the automatic stay applies to responding to a Notice of Disallowance.

Based on the filing of the Notice of Disallowance, Plaintiffs filed this Motion to Lift the Automatic Stay to Amend the Complaint to respond to the Notice of Disallowance. The change in circumstances and change in position by the Estate of Janice Jones, the Personal Representative, and their attorneys requires the Court to lift the automatic stay for the limited purpose of adding the claim against the Estate of Janice Jones. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any Matters not stayed by the appeal.

Mr. and Mrs. Rudd have a valid claim against the nursing home and management company that the Jones Family including decedent Janice Jones used as a mere instrumentality to siphon and divert taxpayer funds through related entities and now have sold the asset for millions leaving creditors and victims behind without insurance, assets, or way to pay claims.

This case involves a tort action for nursing home abuse and neglect which occurred while Mr. Rudd was a resident of a skilled nursing facility owned and operated by the Jones Family¹

¹ Pepper Hill and Shiloh Management were owned, managed, and operated by decedent Janice Jones and her husband Wade Jones Jr., and children Wade Jones III, Scott Jones, and Paige Jones.

through the above Defendants. Charles Rudd was admitted to Pepper Hill Nursing & Rehab Center on July 27, 2016. He was a high fall risk upon admission and remained so throughout his residency.

Since the wrongful death of Mr. Rudd, Defendants have sold the facility, and allegedly possess no assets or insurance coverage to pay any claims. **Exhibit 9-Affidavit of No Insurance letter.** Defendants claim there is no way to collect from any of the defunct corporate entities, therefore, attachment is necessary

Although often used interchangeably, the terms "alter ego" and "piercing the corporate veil" are not one and the same. Whereas "alter ego" describes a theory of procedural relief, "piercing the corporate veil" refers to the relief itself.² In other words, "[t]he alter ego doctrine is merely a means of piercing the corporate veil."³ "If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons." Drury, 380 S.C. at 101.

“South Carolina courts have long observed that equity looks beneath rigid rules of law to seek substantial justice, and it is well-settled that equity will not require the doing of a futile task. See State ex rel. Daniel v. Strong, 185 S.C. 27, 192 S.E. 671, 680 (1937)(“Equity owes its birth to the desire to look beneath the rigid rules of the law – to seek substantial justice.”); see also Elliot v. Dew, 264 S.C. 40, [212 S.E.2d 421](#) (1975) (“Equity will not require the doing of a futile task”), Earle v. Webb, 182 S.C. 175, 188 S.E. 798, 802 (1936)(“a court of equity does not invite litigation.”). Our Supreme Court in Drury v. Foundation Insurance Co., 668 S.E. 2d 798 (2008) also held:

Were we to adopt the rule urged by Defendants, creditors seeking to pierce the corporate veil of an insolvent or unresponsive corporate defendant would be required to file a pro forma action against the corporation before seeking to pierce the corporate veil in a subsequent action. While it is undoubtedly true that the corporate veil is often pierced post judgment, it is also true that South Carolina courts frequently consider these issues in one bifurcated action. See, e.g., Carolina Marine Handling v. Lasch et al., 363 S.C. 169, 176, 609 S.E.2d 548, 553 n.6 (recognizing that "an attempt to pierce the corporate veil often occurs post-judgment "); see also Mid-South Mgmt. Co. Inc. v. Sherwood Dev.

² See 1 William Meade Fletcher et al., Fletcher Cyclopedia of the Law of Private Corporations § 41.10 (per. ed., rev. vol. 2006).

³ 18 C.J.S. Corporations §23 (2008). See Drury Development v. Foundation Insurance, 668 S.E.2d 798 (2008)(Accordingly, we hold that so long as the plaintiff has pled facts sufficient to survive a motion to dismiss as to the corporate liability claims and the alter ego claim, the trial court should move forward to determination of both matters.

Corp., 374 S.C. 588, 649 S.E.2d 135 (Ct. App. 2007) (in which the trial court allowed claims against a corporation and its parent companies to proceed to a bifurcated trial on issues of corporate liability and veil-piercing theories); *Hunting v. Elders*, 359 S.C. 217, 597 S.E.2d 803 (Ct. App. 2004) (in which the trial court allowed claims against a corporation and its shareholder to proceed to a bifurcated trial on issues of corporate liability and veil-piercing). In our view, a trial court need not dismiss an alleged alter ego defendant from a case on the grounds that the issue of corporate liability has not yet been resolved. See *Chase Manhattan Bank v. 264 Water St. Assoc.*, 174 A.D.2d 504, 505 (N.Y. App. Div. 1991) (holding that it is not necessary "that an unsatisfied judgment first be obtained to pierce the corporate veil."). We therefore decline to adopt a rule which would require South Carolina's trial courts to resolve in two separate actions what they now ably determine in one.

The Jones Family had owned and operated the nursing home for decades deriving substantial individual benefits before selling the asset after the wrongful death of Mr. Rudd. Since the neglect suffered by Mr. Rudd, the Jones Family has sold the nursing home, let the insurance coverage lapse, and siphoned all assets that may be used to compensate the widow. Decedent participated and controlled the daily operation and function of the nursing home. See the Application for License which lists Janice Jones as owner, officer and director, and managing member of the governing body pursuant to 42 CFR 483.75(d). **Exhibit 10—Application for License.** Decedent Janice Jones is also personally liable as managing member of the governing body during the negligent acts. See *Canavan v. NHC*, 889 So.2d 825 (Fla. Ct. App. 2004).

Decedent was in direct control of the facility when the facility negligently responded to Mr. Rudd's needs contributing to his premature and wrongful death. On the Center for Medicare and Medicaid Services website Nursing Home Compare, the ownership and management indicate decedent Janice Jones as owner and manager. **Exhibit 11.** Defendants were in effect sitting beside the driver, ordering him to exceed the speed limit as evident by their budgetary and operational control of the facility. The Cost Reports show her personal and direct involvement. See **Exhibit 12-2016 Medicaid Cost Report.** Defendant Shiloh Management Cost Reports show the substantial financial benefits she derived from siphoning funds away from the facility to herself (and her family) causing the facility to be undercapitalized and without assets to pay creditors. See, for example, **Exhibit 13-Shiloh Management Cost Report.**

8. RELATIVE'S COMPENSATION (DETAIL BELOW)

<u>NAME</u>	<u>JOB TITLE</u>	<u>TOTAL HOURS WORKED</u>	<u>COMPENSATION PER BOOKS</u>	<u>COMPENSATION ADJUSTED</u>	<u>FACILITY ACCOUNT NUMBER</u>	<u>DO YOU CLAIM COMPENSATION AT ANOTHER FACILITY?</u>
JANICE W. JONES	BUSINESS MANAGE	2,080	\$69,017.00	\$0.00	5005	Yes
WADE H. JONES, III	CFO	2,080	\$96,197.00	\$79,770.00	5005	No
SCOTT JONES	ADMINISTRATOR	1,960	\$111,352.00	\$0.00	5005	Yes
PAIGE BENNETT	BOOKKEEPER	2,000	\$42,162.00	\$40,173.00	5005	No
SCOTT JONES	ASSISTANT CEO	120	\$6,798.00	\$4,590.00	5005	Yes

For example, the lease agreement between the facility and the landlord (also owned by the Jones Family) show improper self-dealing and unnecessary diversion of funds away from the facility into the pockets of the Jones Family including decedent Janice Jones. See 2016-2017 Medicare Cost Reports at **Exhibit 14**.

PART II. INTERRELATIONSHIP TO RELATED ORGANIZATION(S) AND/OR HOME OFFICE:

The Secretary, by virtue of the authority granted under section 1814(b)(1) of the Social Security Act, requires that you furnish the information requested under Part B of this worksheet.

This information is used by the Centers for Medicare and Medicaid Services and its intermediaries/contractors in determining that the costs applicable to services, facilities, and supplies furnished by organizations related to you by common ownership or control represent reasonable costs as determined under section 1861 of the Social Security Act. If you do not provide all or any part of the request information, the cost report is considered incomplete and not acceptable for purposes of claiming reimbursement under title XVIII.

1.00		A	WADE H. JONES	51.00
2.00		A	WADE H. JONES	51.00
3.00		A	WADE H. JONES	51.00
4.00		A	WADE H. JONES	51.00
5.00		A	WADE H. JONES	51.00
6.00				0.00
7.00				0.00
8.00				0.00
9.00				0.00
10.00				0.00
100.00	G. Other (financial or non-financial) specify:			0.00

(1) Use the following symbols to indicate interrelationship to related organizations:

- A. Individual has financial interest (stockholder, partner, etc.) in both related organization and in provider.
- B. Corporation, partnership, or other organization has financial interest in provider.
- C. Provider has financial interest in corporation, partnership, or other organization.
- D. Director, officer, administrator, or key person of provider or relative of such person has financial interest in related organization.
- E. Individual is director, officer, administrator, or key person of provider and related organization.
- F. Director, officer, administrator, or key person of related organization or relative of such person has financial interest in provider.

Related Organization(s) and/or Home Office			
Name	Percentage of Ownership	Type of Business	
4.00	5.00	6.00	

PART II. INTERRELATIONSHIP TO RELATED ORGANIZATION(S) AND/OR HOME OFFICE:

The Secretary, by virtue of the authority granted under section 1814(b)(1) of the Social Security Act, requires that you furnish the information requested under Part B of this worksheet.

This information is used by the Centers for Medicare and Medicaid Services and its intermediaries/contractors in determining that the costs applicable to services, facilities, and supplies furnished by organizations related to you by common ownership or control represent reasonable costs as determined under section 1861 of the Social Security Act. If you do not provide all or any part of the request information, the cost report is considered incomplete and not acceptable for purposes of claiming reimbursement under title XVIII.

1.00		PEPPER HILL, INC	51.00	ASSET HOLDING CO.
2.00		PEPPER HILL, INC	51.00	ASSET HOLDING CO.
3.00		PEPPER HILL, INC	51.00	ASSET HOLDING CO.
4.00		PEPPER HILL, INC	51.00	ASSET HOLDING CO.
5.00		SHILOH MANAGEMENT	100.00	MANAGEMENT CO.
6.00				

PART I. COSTS INCURRED AND ADJUSTMENTS REQUIRED AS A RESULT OF TRANSACTIONS WITH RELATED ORGANIZATIONS OR CLAIMED				
HOME OFFICE COSTS:				
1.00		318,346	960,000	-641,654
2.00		45,301	0	45,301
3.00		272,682	0	272,682
4.00		-988	0	-988
5.00		0	781,800	-781,800
6.00		0	0	0
7.00		0	0	0
8.00		0	0	0
9.00		0	0	0
10.00	TOTALS (sum of lines 1-9). Transfer column 6, line 100 to Worksheet A-8, column 3, line 12.	635,341	1,741,800	-1,106,459

The Jones family used these companies as their personal piggy bank with self-dealing agreements at the expense of residents including Mr. Rudd. **See Exhibit 15 and 16 – Lease Agreement and Management Agreements.** In fact, the Jones Family treated the taxpayer funds going into the facility as their own piggybank to be used for sports and entertainment for the Family. The Medicare Cost Report shows that \$1,740,000 were diverted to the Jones Family including decedent Janice Jones. **Exhibit 17 – Janice Jones Disbursements.** The Jones family siphoned funds away from patient care to the benefit of the Jones family members including decedent Janice Jones.

South Carolina has recognized the common law doctrine of piercing the corporate veil for many years.⁴ This cause of action is one in equity.⁵ “The corporate form may be disregarded only where equity requires the action to assist a third party.”⁶ Courts in South Carolina have pierced the corporate veil when the business is not properly capitalized. See **Exhibit 18—Order in Eaddy v. Tindal**. The Court allowed piercing of the corporate veil when the Defendants were “...**constantly enjoying distributions from the LLC for their own personal expenses and pay, despite knowledge of pending liabilities that go unpaid.**” (See **Exhibit 18** at *7). The Court went on to find that the dominant shareholder controlled all aspects of the business, parallel to decedent Janice Jones in this matter, siphoning off money and using the business as a mere façade for her benefit ultimately justifying piercing the corporate veil. (See **Exhibit 18** at *8).

Mr. and Mrs. Rudd have a valid claim against the nursing home and management company that the Jones Family, including decedent Janice Jones, used as a mere instrumentality to siphon and divert taxpayer funds through related entities and now have sold the asset for millions leaving creditors and victims behind without insurance, assets, or way to pay claims.

⁴ Jennings v. Automobile Sales Co., 107 S.C. 514, 93 S.E. 188 (1971).

⁵ Mid-South Mgmt. Co. v. Sherwood Dev. Corp., 374 S.C. 588, 596 (Ct. App. 2007).

⁶ Woodside v. Woodside, 290 S.C. 366, 370 (Ct. App. 1986).

Pursuant to Rule 205, the service of a notice of appeal divests the trial court of jurisdiction over matters affected by the appeal as it states:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these **Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.**

However, an automatic stay under Rules 205 and 241 is not unassailable: a party to the action need only petition either the trial court or the appellate court for an order lifting the stay. See Rule 241. When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. If a stay exists, either automatically under Rule 241(a) or by supersedeas under Rule 241(c), the appealed order may not be carried out or enforced during the pendency of the appeal. This is the purpose of a stay under Rule 241—to determine whether the appealed *order* may be carried out or enforced—not to determine whether the *action* may proceed in the lower court while the appeal is pending.

The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. The rule states: "Nothing in these Rules shall prohibit the lower court . . . from proceeding with matters not affected by the appeal." Rule 205, SCACR; *see also* Rule 241(a), SCACR ("The lower court . . . retains jurisdiction over matters not affected by the appeal . . ."). Thus, the existence or nonexistence of a stay under Rule 241 does not control the Court's power to proceed with the action and address matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a "matter affected by the appeal" under Rules 205 and 241(a). *See Arnal v. Fraser*, 371 S.C. 512, 518-19, 641 S.E.2d 419, 422 (2007) (per curiam) (explaining that Rules 205 and 241(a) permit the Court's action on matters not affected by the appeal and prohibit action on matters that are affected by the appeal).

Plaintiffs contend that amending the complaint was not decided in the Order denying reconsideration on arbitration under appeal, and therefore this Court has appropriate jurisdiction

under SCACR 241. Plaintiffs are asking this Court for an Order to lift the automatic stay to rule on Plaintiffs' Motion to Amend the Complaint based on the filing of the Notice of Disallowance.

RESPECTFULLY SUBMITTED,

s/Gary W. Poliakoff

Gary W. Poliakoff, S.C. Bar # 4488

atty@gpoliakoff.com

Raymond P. Mullman, Jr., S.C. Bar # 8662

rmullmanjr@gmail.com

215 Magnolia Street

P.O. Box 1571

Spartanburg, SC 29304

(864) 582-5472

(864) 582-7280 (Facsimile)

Attorneys for the Plaintiffs.

Date: January 14, 2021
Spartanburg, SC.



SWEENY WINGATE & BARROW P.A.

December 20, 2021

Reply to: Main Office

Kenneth B. Wingate
(803) 256-2233 x7133
kbw@swblaw.com

The Honorable Tonya L. Marchant
Aiken County Probate Court
Post Office Box 1576
Aiken, SC 29802-1576

RE: Estate of Janice Gowan Jones
Case No.: 2019-ES-02-1272
Our File: 4523-12481

Dear Judge Marchant:

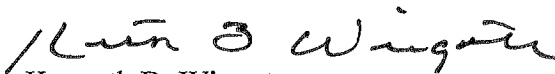
Please find enclosed for filing the original and one copy of a notice of disallowance of claim in the above-referenced matter. Please file the original and return a clocked-in-copy to me in the envelope provided.

By copy of this letter to opposing counsel, Gary W. Poliakoff, I am providing him with a copy of this notice of disallowance on behalf of his client.

Thank you for your attention to this matter.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.


Kenneth B. Wingate

KBW/drk
Enclosures

cc: Gary W. Poliakoff, Esquire
Wade Hampton Jones, Jr.
Mark V. Gende, Esquire

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF: AIKEN)

NOTICE OF ALLOWANCE/DISALLOWANCE OF CLAIM

IN THE MATTER OF:)
JANICE GOWAN JONES)
(Decedent))

CASE NUMBER: 2019-ES-02-1272

TO:	Creditor:	Estate of Charles S. Rudd, Dec., Through P.R. Thelma Rudd
	Address:	c/o Poliakoff & Associates, P. A.; PO Box 1572, Spartanburg, SC 29307
	Telephone:	864-582-5472
	Email:	atty@gpoliakoff.com
	Original Creditor:	
	Address (if different from above)	
	Filed Date of Claim:	5/11/2020
	Claim Amount:	\$275,000.00
	Account Number:	
	Other Reference Number:	

Allowance of a claim is evidence the Personal Representative accepts the claim as a valid debt of the Decedent's estate.

The undersigned, as the fiduciary(ies), find(s):

the claim is allowed and payment is to be made in full.

Allowance of a claim may not be construed to imply the estate will have sufficient assets with which to pay the claim.


the claim is allowed; however payment cannot be made. Explanation (optional): _____

the claim is partially allowed in the amount of \$ _____; the balance is disallowed. Explanation (optional) _____

the claim is disallowed in full. Explanation (optional): The purported claim relates to a lawsuit by the Estate of Charles S. Rudd against various defendants (Civil Action No. 2019-CP-02-02840) which does not include Janice Gowan Jones or the Estate of Janice Gowan Jones as a party to the suit. The claimant attempted to amend the lawsuit to include this estate as a party, and the Circuit Court denied the claimant's motion to amend by Order of the Honorable Courtney Clyburn Pope electronically filed on June 15, 2021. Additionally, the Claimant does not have a judgment against the Decedent or her estate, and the claim cites no proper basis for asserting a claim, contains false and fraudulent statements, and therefore is denied in full.

The disallowed claim or the disallowed portion of your claim will be forever barred unless you commence a legal proceeding requiring a Summons, a Petition and a filing fee of \$150.00 for allowance of the claim in accordance with SCPC 62-3-804(2), within thirty (30) days after the mailing or other service of this Notice of Allowance/Disallowance of Claim.

Executed this 20th day of December, 2021.

Signature: 
Attorney: Kenneth B. Wingate, Attorney for Personal Representative
Address: Post Office Box 12129
Columbia, SC 29211
Telephone: (803) 256-2233
Email: kbw@swblaw.com

PR Name: Wade Hampton Jones, Jr.
Address: 17 Inverness Street, E
Aiken, SC 29803

Telephone
(Home): (803) 641-6893
(Cell): (803) 215-8301
Email: jones1235@bellsouth.net

Charles S Rudd et al
PLAINTIFF(S)

Pepper Hill Nursing And Rehab Center Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on June 1, 2022. Plaintiff's Motion to Lift Automatic Stay is DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/01/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Aiken Common Pleas

Case Caption: Charles S Rudd , plaintiff, et al VS Pepper Hill Nursing And Rehab Center Llc , defendant, et al

Case Number: 2019CP0202840

Type: Order/Electronic Form 4

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

RECEIVED

Jul 06 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2020-001441

Thelma Rudd, as Personal Representative
of the Estate of Charles S. Rudd, Respondent,

v.

Pepper Hill Nursing & Rehab Center, LLC
d/b/a Pepper Hill Nursing & Rehab Center,
The Place at Pepper Hill, LLC, Pepper Hill
Senior Properties, LLC n/k/a The Place at
Pepper Hill, LLC and Shiloh Management,
Company, Inc. Defendants,

Of whom Shiloh Management, Company,
Inc., Pepper Hill Nursing & Rehab Center,
LLC d/b/a Pepper Hill Nursing & Rehab
Center, Appellants.

PROOF OF SERVICE

Gary W. Poliakoff
atty@gpoliakoff.com
Raymond P. Mullman, Jr.
rmullmanjr@gmail.com
Poliakoff & Associates, P.A.
P.O. Box 1571
Spartanburg, SC 29304
Attorney for Respondents

Cary Lawson

From: Cary Lawson
Sent: Wednesday, July 6, 2022 2:20 PM
To: mvg@swblaw.com; brg@swblaw.com; gpc@swblaw.com; mha@swblaw.com
Cc: Gary Poliakoff; jordan@mcgowanhood.com; rmullmanjr@gmail.com; Shelley Hogan; Amanda Prince
Subject: Rudd vs. Pepper Hill Nursing Home Appellate Case No.: 2020-001441
Attachments: Petition to Lift Automatic Stay - C. Rudd (Signed).pdf; EXHIBIT 1 Statement of Creditors Claim _ Jones, Janice (Filed with Probate Court).pdf; EXHIBIT 2 Motion to Lift Stay 1.14.22 (filed).pdf; EXHIBIT 3 Notice of Disallowance Allowance of Claim 12-20-2021.pdf; EXHIBIT 4 Form 4 - Plts Mtn to Lift Auto Stay - Denied 6-2-2022 (Filed).pdf

Good afternoon.

Enclosed in the above-referenced matter and being filed today, please find Respondent's Petition to Lift Stay with Exhibits 1-4.
Thank you.

Cary



Cary A. Lawson

Cary A. Lawson
Paralegal for
Gary W. Poliakoff
POLIAKOFF & ASSOCIATES, P.A.
PO Box 1571
Spartanburg, SC 29304-1571
(864) 582-5472
(864) 582-7280 (fax)

cary@gpoliakoff.com

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