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**Aug 05 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas  
The Honorable Courtney Clyburn Pope, Circuit Court Judge

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Appellate Case No. 2020-001441

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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 which Shiloh Management Company, Inc., Pepper Hill Nursing & Rehab Center, LLC d/b/a Pepper Hill Nursing & Rehab Center are the Appellants.

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**APPELLANTS' RETURN TO RESPONDENT'S PETITION TO LIFT AUTOMATIC  
STAY**

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## INTRODUCTION

Respondent's Petition to the Court of Appeals represents Respondent's fourth attempt to lift the automatic stay of the underlying action, either by motion or motion for reconsideration. The three prior attempts are: (1) Respondent moved to lift the automatic stay on November 20, 2020. That motion was denied on March 16, 2021, on the grounds that the matters addressed in the Motion to Lift Stay were affected by the ongoing appeal. *See* March 16, 2021 Order Denying Motion to Lift Stay, attached as **Exhibit A**. In its denial, the Circuit Court noted that the pending appeal seeks a ruling on whether the case is subject to arbitration, a ruling that would also impact the individuals and estate that Plaintiff seeks to add as defendants. *See id.* (2) On March 26, 2021, Plaintiff filed a Motion to Alter or Amend the Order Denying the Motion to Lift Stay. The Court denied the Motion to Alter or Amend on June 16, 2021. June 16, 2021 Order Denying Motion to Alter or Amend, attached as **Exhibit B**. (3) On January 14, 2022, Plaintiff filed a successive motion to lift the stay in the trial court. On June 2, 2022, that motion was also denied. June 2, 2022 Order Denying Motion to Alter or Amend, attached as Exhibit 4 to Respondent's Petition to Lift Automatic Stay.

## ARGUMENT

Respondents' fourth attempt to lift the stay through this Petition to Lift Stay should be denied for several reasons, including:

1. The pending appeal directly impacts the matters raised in Respondents' Motion to file a Second Amended Complaint;
2. Respondents' arguments that liability issues may become "moot" are legally incorrect;

3. Lifting the automatic stay would prejudice the defendants, reduce judicial efficiency, and waste resources of both the parties and the court by requiring piecemeal litigation;
4. Respondents' Petition to Lift Stay is based on misstatements of fact that further provide no basis to lift the stay; and
5. The Petition to Lift Stay is without legal basis, is brought merely to harass or injure a party, and is brought for improper purposes.

## **I. FACTUAL BACKGROUND**

Appellant rejects Respondent's statement of the factual background in this matter. Respondent's statement of the "Factual Background" directly contravenes Rule 241(d)(4)(A) by presenting disputed allegations as fact, unsupported by affidavit or sworn statement. This deficiency includes nearly the entirety of the statements presented across a full page of Respondent's Petition for Lift of Automatic Stay. *See* Respondent's Petition for Lift of Automatic Stay at 3. Appellant's counter-statement of the factual background is below.

### **a. Mr. Rudd's Admission to Pepper Hill**

Mr. Rudd was admitted to Pepper Hill for care pursuant to a July 27, 2016 Admissions Agreement (R. pp. 244-269). Respondent has conceded that at the time of his admission, Mr. Rudd was a "vulnerable adult" (R. p. 54 ¶ 9) and that he had suffered cognitive decline. (R. p. 139). Given Mr. Rudd's condition, Mr. Rudd's wife, Thelma Rudd, signed the Admissions Agreement as the Representative for Mr. Rudd. In executing this Admissions Agreement, Mrs. Rudd represented in writing to Pepper Hill that she was the Representative and responsible party for Mr. Rudd. (R. pp. 244, 255, 257). She further represented that she was "authorized by the Resident to act on the Resident's behalf." (R. p. 255). Mrs. Rudd further indicated through the

Admissions Agreement that, “by signing this contract,” she accepted “the duties and responsibilities” as Mr. Rudd’s Representative. (R. p. 255). In addition, Mrs. Rudd expressly acknowledged that “[the Admissions Agreement] shall be binding upon Resident/Representative, Pepper Hill Nursing & Rehab Center, and each of their heirs, successors and assigns.” (R. p. 255).

**b. The Arbitration Agreement**

Following receipt of Ms. Rudd’s Complaint, Appellants moved to compel arbitration because the Admissions Agreement executed by Mrs. Rudd includes a conspicuous and enforceable Arbitration Agreement. At the top of every single page of the Admissions Agreement, underlined, in all caps, and in bold, is the following:

**THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT, AND IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED.**

(R. pp. 244-257). In addition, the Admissions Agreement’s full arbitration provision is set forth on its own page under the word “ARBITRATION” in all caps. It states in relevant part as follows:

**ARBITRATION**

Any controversy or claim between or among the parties hereto, including but not limited to those arising out of or relating to this agreement or resident’s stay in this facility, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the Uniform Arbitration Act, Section 14-48-10, et. Seq., Code of Laws of South Carolina), the rules of practice and procedure for the arbitration of disputes of J.A.M.S. Arbitration or any successor thereof (“J.A.M.S.”) and the “special rules” set forth below. In the event of any inconsistency, the special rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any part to the Admissions Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which the

agreement applies in any court having jurisdiction over such action.

(R. p. 256).

Notably, Mrs. Rudd, who signed the Admissions Agreement, is the same individual who filed this lawsuit.

### **c. Underlying Incident**

Mrs. Thelma Rudd, as Mr. Rudd's Personal Representative, alleges that Mr. Rudd was injured after he fell from his wheelchair while he was a resident at Pepper Hill. (R. pp. 53-99). Per the nurse's affidavit filed with Respondent's Complaint, Mr. Rudd reported that he slipped from his chair while eating breakfast and that he hit his head on the wheelchair when he slid out. (R. pp. 49-50 ¶ 3). Mr. Rudd indicated that his head hurt but he had no signs of bruising or hematomas on his head or body. *Id.* Mrs. Thelma Rudd, the Plaintiff in this suit and Mr. Rudd's Representative per the Admissions Agreement, was called about the incident. *Id.* However, Mrs. Rudd did not want to send Mr. Rudd to the hospital that night and wanted to wait until the morning to see how he was doing. (R. pp. 50 ¶ 4). The next morning, Mr. Rudd indicated he was still in pain and wanted to go to the hospital. *Id.* Mrs. Rudd was again contacted and wanted Mr. Rudd sent to the Veterans Hospital. *Id.* Ultimately, because an ambulance was not available, Mr. Rudd went to Aiken Regional and was diagnosed with a slight hemorrhage, for which he was treated. *Id.*

Mr. Rudd then re-entered another long term care facility on December 13, 2016. (R. p. 50 ¶ 7). He did not pass away until nearly a year and a half later on May 10, 2018. (R. p. 99 ¶ 253). Appellants are not aware of any evidence that Mr. Rudd's death was related to his fall.

Appellants moved the trial court to compel arbitration of the Respondent's lawsuit arising out of this alleged incident. Appellants' Motion was denied and this appeal follows.

#### **d. Procedural Background**

On March 2, 2020, in lieu of an Answer, Appellants filed a Motion to Dismiss and to Compel Arbitration. (R. pp. 100-127). The Circuit Court conducted a hearing on the Motion to Dismiss and Compel Arbitration on May 5, 2020.

After the hearing, on August 14, 2020, the Circuit Court entered an Order denying Appellants' Motion to Compel Arbitration. (R. pp. 182-186).

Appellants filed a Motion to Reconsider on August 24, 2020. (R. pp. 187-194). The Court denied the Motion to Reconsider in a Form 4 Order on October 29, 2020. (R. pp. 195-197).

Appellants filed a Notice of Appeal on October 30, 2020.

## **II. GROUNDS FOR OPPOSING RESPONDENT'S PETITION**

### **a. Respondent's Claims Against the Jones Family and Ms. Jones' Estate are Subject to Arbitration, and thus the Pending Appeal Impacts Respondent's Motion to Amend.**

The Trial Court properly determined that the Pending Appeal impacts matters pending in the Respondent's Motion to Amend the Complaint to add the Jones Family and Ms. Jones' estate in the underlying action. Specifically, Respondent's Motion to Amend seeks to name four members of the Jones Family (or, as Ms. Jones is deceased, her estate) as defendants in their personal capacities based on "alter ego" and veil-piercing theories. *See* Respondent's Petition to Lift Automatic Stay at 4 (stating that "[t]he proposed amendment would add as defendants various members of the Jones family... with allegations asserting the Facility and Shiloh were alter egos of the Jones family members" and that "the Jones family failed to observe corporate formalities... such that Ms. Rudd could 'pierce the corporate veil' and recover on her claims directly from the Jones family members").

An action to pierce the corporate veil is an equitable action that allows, in rare circumstances, a party to disregard the corporate form to execute against a corporation's

shareholders. *See Sturkie v. Sifly*, 280 S.C. 453, 459, 313 S.E.2d 316, 319 (Ct. App. 1984). South Carolina law is clear that plaintiffs attempting to pierce the corporate veil must state a claim against the corporate entity in order to proceed on a veil piercing theory. *Id.* at 103-104, 668 S.E.2d at 801. Furthermore, even in the rare situation where veil-piercing applies, the corporation does not cease to exist; it is instead simply treated “as an association of persons.” *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008).

Under South Carolina law, even where they are not signatories to an arbitration agreement, it is well established that arbitration rights and obligations can extend to and bind non-signatories, including under theories of agency and “veil piercing/alter ego”. *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019). Not a single case cited by Respondents holds otherwise.

Under this well-established legal principle the claims against Jones family members and Ms. Jones’ estate are subject to arbitration because it is undisputed that Respondents seek to allege claims against them as agents, principals, officers, and/or managers of Pepper Hill Nursing and Rehab Center, LLC. *See, e.g.*, R. pp. 378-381 at ¶¶ 4, 5, 6, 7, 8, 17, 18, 19. *See also* Petition to Lift Automatic Stay at 8. Pepper Hill Nursing and Rehab Center, LLC, in turn, was a party to the Admissions Agreement and its arbitration provisions. Under South Carolina law, the arbitration agreement would plainly extend to the Jones family and Ms. Jones estate based on the allegations against them in the proposed Second Amended Complaint. *See Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019)(discussing arbitration agreement extending to agents). Moreover, the Respondents seek to name the Jones family and Ms. Jones’ estate based on veil piercing/alter ego claims, which also demonstrates that the arbitration agreement would extend to the Jones family and Ms. Jones’ estate under South Carolina law. *See Wilson v. Willis*,

426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019) (discussing that arbitration agreement can be binding under theories of veil piercing/alter ego).

Because the pending appeal seeks a ruling that the arbitration agreement applies to Ms. Rudd's lawsuit, and because that determination would also apply to any claims against the Jones family and Ms. Jones' estate, the pending appeal impacts the issues at play in the underlying Motion to Amend the Complaint.

If, on the other hand, the automatic stay was lifted as to the underlying Motion to Amend the Complaint, and if the Motion to Amend was granted, the parties would be forced to go through the motions of filing duplicative motions to compel arbitration for the individual defendants. This would further require potential hearings and orders by the trial court, and may also require duplicative notices of appeal and appellate briefings as to applicability of arbitration to the individual defendants.

Moreover, if the Court of Appeals ruled in the interim to compel arbitration as to the corporate defendants, the corporate defendants would be dismissed from the underlying action and compelled to arbitration, leaving the Jones family and Ms. Jones estate as defendants to a corporate veil-piercing action without a corporate defendant. This would likely require additional briefing and trial court involvement to obtain dismissal of the individual defendants. Thus, the automatic stay protects the Appellants from prejudice and prevents both the parties and judiciary from undue expenditures of time and costs.

In summary, the specific issue on appeal is whether the admission agreement and its arbitration provisions, which agreement was signed by Ms. Rudd as representative of Mr. Rudd's estate, is binding in relation to Ms. Rudd's Complaint related to Mr. Rudd's admission to and care at Pepper Hill Nursing & Rehab Center. If the arbitration provisions are controlling, in

whole or in part, the arbitration terms would also be applicable to claims against the Jones family and Ms. Jones' estate. Thus, the appeal impacts the underlying Motion to Amend the Complaint, the trial court properly denied each of the three requests by Respondent to Lift the Stay, and the Petition to the Court of Appeals to Lift the Automatic Stay should also be denied.

**b. The Automatic Stay Has No Bearing on Ms. Rudd's Ability to Pursue her Claims and Recover for Her Losses.**

Respondent next argues that the Court should lift the automatic stay to "prevent a contested issue from becoming moot." *See* Respondent's Petition to Lift Automatic Stay at 11. These arguments are without merit, as set forth below.

**i. Jones Estate/Probate Court Action**

Respondent initially presents a red herring, arguing that "lifting the stay is crucial to allowing Ms. Rudd" to meet a long-expired deadline to pursue a reportedly disallowed claim against Ms. Jones' estate. Specifically, Respondent indicates she filed a petition of allowance of claim against Ms. Jones estate in the Aiken County Probate Court. *See* Respondent's Petition to Lift Automatic Stay at 11. The estate reportedly filed a Notice of Disallowance on December 20, 2021. *Id.* By Respondent's admission, she had 30 days from the mailing of the Notice of Disallowance to commence a proceeding for enforcement or allowance of the claim. *See id.* Thus, Respondent's 30-day deadline would have run on or about January 19, 2022, more than six months ago.

Respondent's arguments to lift the stay on these grounds fail for at least the following reasons.

First, based on Respondent's own brief, her time to commence a proceeding for enforcement or allowance of a claim related to the probate matter has long since expired. Even if the stay in the present matter impacted Respondent's probate matter, lifting of the automatic stay

now would not make Respondent's probate proceedings timely. Thus, Respondent fails to meet Rule 241's "mootness" standard because, if anything, the issue of Respondent's Probate Court filing is already moot.

Second, even if the issue were not moot, neither the ongoing appeal nor the automatic stay prevent Respondent from pursuing a Probate Court action. To the contrary, South Carolina Code Ann. § 62-3-804(2) specifically indicates that the claimant may file a summons and petition for allowance of claim or complaint seeking payment of the claim "in any court," including the probate court. Thus, Respondent could have, and should have according to normal probate practice, commenced a proceeding in the probate court regardless of the status of her motion to amend the Complaint in the present action.

Third, the Rule 241 automatic stay in the present matter applies only to "matters decided in the order, judgment, decree or decision on appeal... ." Here, Appellants appealed only orders related to the motion to compel arbitration, not Ms. Jones' probate court action. In fact, it appears Respondent is well aware that this appeal did not prevent her from proceedings in the Probate Court. Among other things, on February 11, 2022, Respondent filed a petition with the Probate Court captioned as a "PETITION /MOTION FOR EXTENSION AND/OR A PROTECTIVE ORDER (OR IN THE ALTERNATIVE, ALLOWANCE OF FILING COMMENCEMENT OF PROCEEDING)". See July 6, 2022 Probate Court Order, attached as **Exhibit C**. Respondent's February 11, 2022 probate court filing, which Respondent filed after the automatic stay went into effect in the present case, belies any argument from Respondent that the automatic stay prevented her from proceeding in the Probate Court.

Fourth, to the extent Respondent seeks to remedy concerns she has regarding the Probate Court proceedings, such remedies should be sought through the Probate Court. The stay and

pending appeal in this action are totally separate and apart from Respondent's proceedings in the Probate Court under South Carolina Code Ann. § 62-3-804, and lifting the stay in this matter would have no impact on Respondent's remedies with regard to the timeliness of any Probate Court filings.

For these reasons, Respondent's reliance on the Probate Court filings and S.C. Code Ann. § 62-3-804 as grounds to lift the stay in this matter is without any legal merit.

## **ii. Timing and Fairness**

Finally, Respondent suggests that if an automatic stay is not granted now, and if she is not permitted to pursue attachment of individual officers and managers of a duly organized limited liability company, Ms. Rudd will be unable to protect her financial interests in this lawsuit. The only authority Respondent cites for this contention is the "mootness" provision in Rule 241 of the South Carolina Appellate Court Rules.

Rule 241 provides limited grounds for lifting an automatic appellate stay. The rules direct that the Court should consider whether an order lifting the stay is "necessary" to prevent "a contested issue from becoming moot." The legal standard, thus requires a showing of necessity.

However, not only has respondent failed to show that lifting the automatic stay is "necessary" to prevent a contested issue from becoming moot, but moreover, she cannot make such a showing. An issue becomes "moot" when a judgment, if rendered, will have no practical legal effect on the existing controversy. *See, e.g., Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). Here, Respondent has not identified any legal issue that would become moot for which an order lifting the stay is necessary to address. In fact, Respondent's arguments to lift the stay do not rely on arguments that some legal issue would become moot. Instead, Respondent's argument involves speculation of how Respondent might recover on its unproven claims against

individuals who, in the normal course and under the standard protections of corporate law, would not be subject even to liability, much less to attachment of their personal property.

In short, Respondent has failed to show that lifting the stay is necessary to prevent a legal issue from becoming moot. This is particularly true where, as here, not only does the doctrine of mootness not apply, but further Respondent's argument relies on conjecture about issues of recovery against individuals who, in the normal course, should not even be defendants to this suit, much less subject to any liability. This is particularly true where (1) the corporate defendants are active and engaged in this litigation, (2) the corporate defendants have raised meritorious and sound defenses; (3) the corporate defendants have even engaged in voluntary mediation, (4) the Respondent has established no right to pierce the corporate veil, and (5) the Respondent has, much less, established no right to apply yet another extreme remedy in the form of attachment of the personal property of individual officers and managers.

In addition, issues related to potential mootness, combined with issues of judicial efficiency and preservation of resources, actually weigh against lifting the stay. If, in fact, the Appellants are successful on appeal and this matter proceeds to arbitration, the motion to amend to add the individual defendants and estate to the circuit court litigation would become moot, as argued above in Section II.a. Thus, by preserving the stay, the Court of Appeals would act in the interests of judicial efficiency and in a way that preserves the resources of the parties and of the court.

Finally, to the extent Respondent suggests that Appellants' appeal is frivolous and devoid of merit, Appellant rests upon its initial brief and response brief filed in this appeal, which fully demonstrate otherwise.

**III. Conclusion**

For these reasons, Respondent's Petition to Lift the Automatic Stay should be denied..

Respectfully submitted,

**SWEENY, WINGATE & BARROW, P.A.**

s/Brandon R. Gottschall

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**ATTORNEYS FOR APPELLANTS PEPPER  
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D/B/A PEPPER HILL NURSING & REHAB  
CENTER, AND SHILOH MANAGEMENT  
COMPANY, INC.**

Columbia, South Carolina  
August 5, 2022

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

The Estate of Charles S. Rudd, ) Civil Action No.: 2019CP0202840  
 deceased, through the duly appointed )  
 Personal Representative, Thelma )  
 Rudd, individually and on behalf of )  
 statutory beneficiaries )

Plaintiff, )

v. )

Pepper Hill Nursing & Rehab Center, )  
 LLC d/b/a Pepper Hill Nursing & )  
 Rehab Center n/k/a The Place at )  
 Pepper Hill, LLC; and Shiloh )  
 Management, Inc. )

Defendants. )

**ORDER**

This matter came before the Court on January 25, 2021 for a hearing on Plaintiff’s Motion to Lift Stay. Attorney Gary Poliakoff appeared as counsel for Plaintiffs and attorney Brandon R. Gottschall appeared as counsel for Defendants. After consideration of the Parties’ briefs, arguments, and supporting materials, the Court finds that Plaintiffs’ Motion to Lift Stay should be DENIED.

**I. Background:**

This matter involves disputed allegations of nursing home negligence against Defendants in relation to a former resident, Charles S. Rudd. Plaintiffs filed a Notice of Intent to File Suit on June 3, 2019. Following unsuccessful pre-suit mediation, Plaintiffs filed a Summons and Complaint on November 13, 2019. Defendants filed a motion to dismiss and compel arbitration based on the arbitration provision contained in the admissions agreement signed by Ms. Rudd. The Court entered an Order denying the Motion to Dismiss and Compel Arbitration on August 14,

2020. On September 2, 2020, Defendants filed a motion requesting the Court to reconsider the ruling.

While the September 2, 2020 Motion to Reconsider was pending, Plaintiffs filed a Motion to Amend the Complaint to add certain additional defendants in their personal capacities. The Circuit Court conducted a hearing on the Motion to Amend on October 26, 2020, finding that a continuance was appropriate while the Motion to Reconsider was under advisement.

Shortly after the October 26, 2020 hearing, the Defendants' Motion to Reconsider was denied on October 29, 2020. Thereafter, on October 30, 2020, Defendants filed a Notice of Appeal appealing the Circuit Court's August 13, 2020 Order Denying Appellants' Motions to Strike, Dismiss and Compel Arbitration and the October 29, 2020 Order Denying Appellants' Motion to Reconsider. That appeal is currently pending.

After the appeal was filed, Plaintiffs filed a Motion to Lift the Automatic Stay for the purpose of obtaining a ruling on Plaintiffs' Motion to Amend the Complaint.

## **II. Standard**

Rule 205 of the South Carolina Appellate Court Rules provides that “[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal[.]” SCACR 205. It further provides that the lower court is not prohibited from proceeding with certain matters, provided they are “not affected by the appeal.” *Id.*

## **III. Analysis**

Plaintiff's Motion seeks to lift the automatic stay in this matter to obtain a ruling on Plaintiff's Motion to Amend the Complaint to add four defendants in their individual capacities. For the reasons explained below and based on the arguments and briefs presented by the parties, the Court finds that the Motion to Amend has been stayed by the appeal and that the Motion to

Amend involves matters affected by the pending appeal. As a result, the stay should remain in place.

Plaintiff's Motion to Amend seeks to name four new individual defendants in their personal capacity under alter ego and veil-piercing theories. However, the pending appeal involves whether Plaintiffs' actions against the corporate entities should be compelled to go to arbitration. If arbitration is ordered, the corporate entities would be dismissed from this case and subject to arbitration, leaving no corporations in this action. As a result, the Court finds that the Motion to Amend involves matters affected by the appeal.

In addition, the Court finds that the stay should remain in place 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 Plaintiffs' Motion to Amend. If, on the other hand, the Plaintiffs moved forward with their Motion to Amend and was permitted to add additional parties, the Defendants have indicated their intent to move to compel arbitration as to the new defendants. This would result in duplicative proceedings to compel arbitration and, potentially, a second notice of appeal. This duplication of efforts regarding arbitration would result in increased and unnecessary costs, inefficiency for the parties, and inefficiency for the Circuit and Appellate Courts.

The Court also notes that the Plaintiffs' Motion to Amend was previously scheduled for a hearing on October 26, 2020. At that time, Defendants requested that the Court continue the hearing based on the pending Motion to Reconsider the arbitration order (and any related appeal). The Court granted the continuance following Defendants' briefing and arguments.

### **CONCLUSION**

For the reasons discussed above and based on the arguments presented by counsel in their briefs and oral arguments, the Plaintiffs' Motion to Lift the Automatic Stay is DENIED.

**IT IS SO ORDERED.**

---

The Honorable Courtney Clyburn Pope  
Presiding Judge, 2nd Judicial District

February \_\_\_\_, 2021



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/Lift Automatic Stay

So Ordered

The Honorable Courtney Clyburn Pope

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:

Plaintiff's Motion to Alter/Amend 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 06/15/2021 .

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.

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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

So Ordered

The Honorable Courtney Clyburn Pope

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
 )  
 )  
 )  
IN RE: Estate of Janice Gowan Jones )  
 )  
 )  
\_\_\_\_\_ )

IN THE PROBATE COURT  
SECOND JUDICIAL CIRCUIT

CASE NO. 2019-ES02-1272

**ORDER**

After careful review and consideration of PETITION/MOTION FOR EXTENSION AND/OR A PROTECTIVE ORDER (OR IN THE ALTERNATIVE, ALLOWANCE OF FILING COMMENCEMENT OF PROCEEDING) filed with this Court on February 11, 2022, Plaintiffs/Claimants Motion is **DENIED**.

**AND IT IS SO ORDERED** this 6<sup>th</sup> day of July, 2022.

Tonya L. Marchant  
Honorable Tonya L. Marchant  
Probate Court Judge

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS COURT AND THAT THE SAME IS STILL IN FULL FORCE AND EFFECT WITNESS MY HAND AND SEAL OF THE COURT THIS THE

7<sup>th</sup> DAY OF July A.D. 2022  
Tonya L. Marchant  
JUDGE OF PROBATE FOR AIKEN COUNTY, S.C.  
BY Brittany Pearson  
CLERK

**RECEIVED**  
**Aug 05 2022**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas  
Courtney Clyburn-Pope, Circuit Court Judge

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Case No. **2019-CP-02-2840**

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The Estate of Charles S. Rudd, deceased, through the duly appointed  
Personal Representative, Thelma Rudd, individually and on behalf of  
statutory beneficiaries, .....Respondent,

v.

Pepper Hill Nursing & Rehab Center, LLC d/b/a Pepper Hill Nursing  
& Rehab Center n/k/a The Place at Pepper Hill, LLC; and Shiloh  
Management, Inc. ....Appellants.

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**PROOF OF SERVICE**

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I certify that I have served Appellants' Return to Respondent's Petition to Lift Automatic Stay on The Estate of Charles S. Rudd, deceased, through the duly appointed Personal Representative, Thelma Rudd, individually and on behalf of statutory beneficiaries, by depositing a copy of it in the United States Mail, postage prepaid, on August 5, 2022, addressed to Respondent's attorneys of record, Gary W. Poliakoff, and Ray Mullman, Esqs, 215 Magnolia Street, P.O. Box 1571, Spartanburg, SC 29304 and Jordan Calloway, Esquire, 1539 Health Care Drive, Rock Hill, SC 29732. Respondent's attorneys of record were also served by email.

August 5, 2022

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