

68577

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Court of Common Pleas of Beaufort County, South Carolina
The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2011-199666

Elizabeth O'Meara,..... Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC, and Sonia S. King,
.....Defendants,

Of whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

Yvonne Carrie Pruett,..... Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC, and Sonia S. King,
.....Defendants,

Of whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC,
.....are the Appellants.

Janet Sue Scheerle,..... Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC, and Sonia S. King,
.....Defendants,

Of whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC,
.....are the Appellants.

APPELLANTS' MOTION TO ENFORCE THE AUTOMATIC STAY
PURSUANT TO RULE 205, SCACR

RECEIVED
MAY 31 2013
SC Court of Appeals

1. These cases are currently pending on appeal regarding the enforceability of an arbitration clause under the Federal Arbitration Act (“FAA”). The arbitration clause states that the parties may not take fact depositions, as only expert depositions are allowed. (**Exhibit A**, Arbitration Provision, p. 12, ¶ 6(c)).

2. Under SCACR 241, the filing of an appeal is an automatic stay of matters affecting the appeal. And under SCACR 205, the appellate court has exclusive jurisdiction over the appeal. Further, under the FAA, “a party may demand a stay of . . . judicial proceedings pending exercise of a contractual right” to resolve the case through arbitration. Rich v. Walsh, 357 S.C. 64, 68, 590 S.E.2d 506, 508 (Ct. App. 2004) (quoting MicroStrategy, Inc. v. Lauricia, 268 F.3d 244, 249 (4th Cir. 2001)).

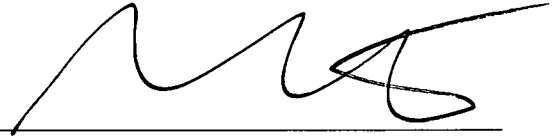
3. In addressing similar scenarios, the 7th and 11th federal circuits have held that an appeal regarding the enforceability of an arbitration clause stays proceedings in the district court. In Bradford-Scott Data Corp., Inc. v. Physician Computer Network, Inc., 128 F.3d 504 (7th Cir. 1997), the court noted that “[a]rbitration clauses reflect the parties’ preference for non-judicial dispute resolution, which may be faster and cheaper. These benefits are eroded, and may be lost or even turned into net losses, if it is necessary to proceed in both judicial and arbitral forums, or to do this sequentially.” And in Blinco v. Green Tree Servicing, LLC, 366 F.3d 1249 (11th Cir. 2004), the

court stated that “the underlying reasons for allowing immediate appeal of a denial of a motion to compel arbitration are inconsistent with continuation of proceedings in the district court, and a non-frivolous appeal warrants a stay of those proceedings.”

4. Despite the pendency of the appeals that will determine the mode of litigation and trial, Plaintiff O’Meara served on April 18, 2013, a Rule 30(b)(6) Deposition Notice, a Rule 30(b)(6) Deposition Subpoena Duces Tecum, along with Interrogatories and Requests to Produce (**Exhibit B**). And on May 9, 2013, Plaintiff Scheerle served a Rule 30(b)(6) Deposition Notice (**Exhibit C**), and a document Subpoena on May 6, 2013 (**Exhibit D**).

5. The deposition notices clearly violate the parties’ arbitration provision, as such depositions are prohibited under the arbitration clause, which allows no depositions except expert depositions. (**Exhibit A** at V. 6.(b)(c)). The other discovery is likewise improper, as it seeks to continue judicial proceedings while the arbitrability of the claim is pending on appeal. Allowing the parties to proceed in litigation and allowing the lower court to rule on discovery disputes would defeat the purpose of arbitration and create the risk of inconsistent decisions on discovery if this Court ultimately finds that the disputed arbitration provisions are enforceable. What happens, for example, if the lower court compels discovery on one issue, while the arbiter subsequently finds that such discovery is not warranted?

6. Therefore, this court should issue an order staying discovery while these cases are pending on appeal. If the Plaintiffs prevail on appeal, they will have ample opportunity to conduct discovery at the appropriate time.



Marcus A. Manos, SC Bar #011876
Manton M. Grier, Jr., SC Bar #70525
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
PHONE: 803.771.8900
FACSIMILE: 803.253.8277
MManos@nexsenpruet.com
MGrier@nexsenpruet.com

Attorneys for Appellants, Brookdale
Senior Living, Inc. and Southern
Assisted Living, LLC

May 30, 2013

Columbia, South Carolina

EXHIBIT A

The Company will provide a written explanation if the Company terminates this Agreement with less than thirty (30) days notice.

D. TERMINATION BY EITHER PARTY

You, your Responsible Party or the Company may terminate this agreement immediately in the event of death or if a physician certifies, based upon an examination prior to moving out, that you must be relocated because of your health. The Company requests you provide written notice of your intent to terminate. Termination shall be effective the day after your last date of residence.

V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION

Should any of sub-sections A, B or C provided below, or any part thereof, be deemed invalid, the validity of the remaining sub-sections, or parts thereof, will not be affected.


A. ARBITRATION PROVISION

1. Any and all claims or controversies arising out of or in any way relating to this Agreement or the Resident's stay at the Company, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. **The parties to this Agreement further understand that a jury will not decide their case.** The Federal Arbitration Act shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. Further, nothing in this Agreement is to be construed to contradict any applicable South Carolina statutory grievance or mediation procedure. Any party who demands arbitration must do so for all claims or controversies that are known, or reasonably should have been known, by the date of the demand for arbitration, and if learned of during the course of the arbitration proceeding shall amend the claims or controversies to reflect the same. All current damages and reasonably foreseeable damages arising out of such claims or controversies shall also be incorporated into the initial demand or amendment thereto.
2. Demand for Arbitration by Resident, his or her guardian, a person or organization acting on behalf of a Resident with the consent of the Resident or his or her guardian, or the personal representative of the estate of a deceased Resident (collectively "Resident Party") shall be made in writing and submitted to CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601, via certified mail, return receipt requested. Demand for Arbitration by the Company shall be made in writing and submitted to the Resident or his or her agent, representative, successor or assign and/or Resident's Attorney-in-Fact, and/or Responsible Party via certified mail, return receipt requested.

3. The arbitration proceedings shall take place in the county in which the Community is located, unless agreed to otherwise by mutual consent of the parties.
4. The arbitration panel shall be composed of one (1) arbitrator. Subject to the requirements of section A.5. herein, the parties shall agree upon an arbitrator that must either be a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience as an attorney. If the parties cannot reach an agreement on an arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then the arbitration shall be submitted to the National Arbitration Forum, or other similar organization, but must still be conducted by one (1) arbitrator who is a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience practicing as an attorney. If the arbitrator is selected from the National Arbitration Forum, or other similar organization, each party shall have the right to request one (1) substitution within ten (10) days of receiving notice of the identity of the arbitrator. The person requesting of the substitution shall submit a request for substitution in writing to the National Arbitration Forum, or other similar organization, and to the other party via U.S. mail.
5. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.
6. Discovery in the arbitration proceeding shall be governed by the Federal Rules of Civil Procedure. However, discovery shall be modified by the following, unless agreed to otherwise by the party to whom the request is made:
 - a. The Resident Party shall provide the Company with permissible discovery per the Federal Rules of Civil Procedure within twenty (20) days after Demand for Arbitration is received (and the Company shall reimburse Resident Party \$0.25 per page).
 - b. The Company shall provide the Resident Party with permissible discovery per the Federal Rules of Civil Procedure within twenty (20) days after the Demand for Arbitration is received (and Resident Party, unless proven indigent, shall reimburse the Company \$0.25 per page).
 - c. The only depositions allowed shall be of experts. No other individuals may be deposed.
 - d. Resident Party shall designate any and all expert witnesses within sixty-five (65) days after Demand for Arbitration is submitted.
 - e. The Company shall have thirty (30) days after Resident Party's expert designation is received in which to depose such experts.

- f. The Company shall designate any and all experts one hundred and fifteen (115) days after Demand for Arbitration is submitted.
 - g. Resident Party shall have thirty (30) days after the Company's expert designation is received in which to depose such experts.
 - h. Any report or affidavit of an expert, and a list of all records contained in the expert's file, must be exchanged by the parties no later than ten (10) working days before the date of the expert's deposition.
 - i. The following shall be exchanged no later than fourteen (14) working days before the arbitration hearing:
 - 1. List of witnesses to be called at the arbitration hearing (full name, title, address and phone number if known) and an outline of each witnesses' intended testimony;
 - 2. List of documents to be relied upon at the arbitration hearing;
 - 3. Any sworn recorded statements to be relied upon at the arbitration hearing and included therewith the full name, title, address and phone number of the person making the sworn statement.
 - j. The arbitration hearing shall be held no later than one hundred and eighty (180) days after Demand for Arbitration is submitted, or within a reasonable time thereafter if a conflict arises with the arbitrator's calendar.
7. The arbitrator shall designate a time and place within the county in which the Community is located, for the arbitration hearing and shall provide thirty (30) days' notice to the parties of the arbitration hearing.
 8. The arbitrator shall apply the Federal Rules of Evidence and Federal Rules of Civil Procedure in the arbitration proceeding except where otherwise stated in this Agreement. Also, the arbitrator shall apply, and the arbitration decision shall be consistent with, Federal law except as otherwise stated in this Arbitration Provision.
 9. The arbitration decision should be signed by the arbitrator and delivered to the parties and their counsel within thirty (30) days following the conclusion of the arbitration. The decision shall set forth in detail the arbitrator's findings of fact and conclusions of law.
 10. The arbitrator's decision shall be final and binding without the right to appeal.
 11. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties, unless the Resident Party is proven indigent. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.

12. The arbitration proceeding shall remain confidential in all respects, including the Demand for Arbitration, all arbitration filings, deposition transcripts, documents produced or obtained in discovery, or other material provided by and exchanged between the parties and the arbitrator's findings of fact and conclusions of law. Following receipt of the arbitrator's decision, each party agrees to return to the producing party within thirty (30) days the original and all copies of documents exchanged in discovery and at the arbitration hearing, except those documents required to be retained by counsel pursuant to law. Further the parties to the arbitration also agree not to discuss the amount of the arbitration award or any settlement, the names of the parties, or the name/location of the Community except as required by law.
13. The Limitation of Liability Provision below is incorporated by reference into this Arbitration Provision
14. This Arbitration Provision and the Limitation of Liability Provision below shall survive the death of the Resident.

X 
(Please initial as having read and understood
the provisions of section V., subsection A)

B. LIMITATION OF LIABILITY PROVISION: *Read Carefully Before Signing*

1. The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement.
2. Liability for any claim brought by a party to this Agreement against the other party, including but not limited to a claim by the Company for unpaid Basic Service or Personal Service charges, or a claim by, or on behalf of, a Resident, Resident Party, or by a Resident's Estate, Agent or Legal Representative, arising out of the care or treatment received by the Resident or the Resident's occupancy or presence at the Company, including, without limitation, claims for medical negligence, shall be limited as follows:
 - a. Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.
 - b. Noneconomic damages, such as pain and suffering, shall be limited to a maximum of \$250,000.00.
 - c. Interest and/or late fees on unpaid assisted living charges shall not be awarded.
 - d. Punitive damages shall not be awarded.

EXHIBIT B

April 18, 2013

Susan Taylor Wall

swall@mcnair.net
T (843) 723-7831
F (843) 722-3227

Via U.S. Mail

Manton M. Grier, Jr., Esq.
Marc Manos, Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29202

Re: *Elizabeth O'Meara vs. Brookdale Senior Living, Inc., Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head, and Sonia S. King*
Case No.: 2011-CP-07-1610

Dear Counsel:

Enclosed please find copies of the following:

1. Plaintiff's First Set of Interrogatories to Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head;
2. Plaintiff's First Set of Requests for Production to Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head; and
3. Notice of 30(b)(6) Videotaped Deposition Duces Tecum of Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head and subpoena duces tecum.

I have scheduled the deposition of the 30(b)(6) representative of Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head for May 20, 2013 at 10:00 a.m. in our Hilton Head office. If the chosen date is not convenient for your client, please let me know and provide additional dates so the deposition can be rescheduled.

McNair Law Firm, P. A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

RECEIVED

APR 22 2013

NEXSEN PRUET, LLC

CHARLESTON 345323v1

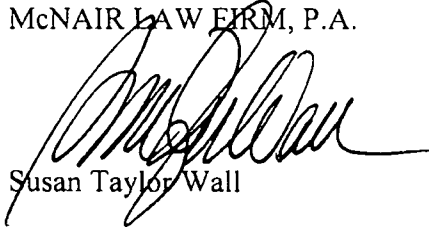
Manton M. Grier, Jr., Esq.
April 18, 2013
Page 2

MCNAIR
ATTORNEYS

With kind regards, I am

Very truly yours,

McNAIR LAW FIRM, P.A.



Susan Taylor Wall

STW:jsh
Enclosures

cc: Kelly M. Jolley, Esq.
Kathleen G. Chewning, Esq.

RECEIVED

APR 22 2013

NEXSEN PRUET, LLC

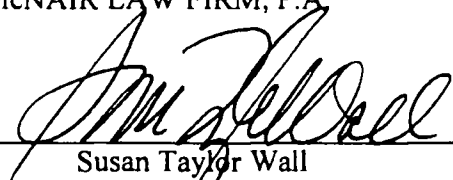
PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 30(j)(8), SCRPC, counsel for Plaintiff hereby identifies and reserves the right to use any and all documents produced or made available in discovery during this deposition and hereby gives notice of Plaintiff's intent to question the witness regarding any and all documents produced or made available by either party during the course of discovery, as well as those obtained pursuant to subpoena or records request.

You are hereby invited to be present as you may be advised in the premises.

Dated: April 18 2013

McNAIR LAW FIRM, P.A.

By



Susan Taylor Wall
E-Mail: swall@mcnair.net
Post Office Box 1431
Charleston, SC 29402
(843) 723-7831

Kelly M. Jolley
E-Mail: kjolley@mcnair.net
Kathleen Chewning
E-Mail: kchewning@mcnair.net
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171

Attorneys for Plaintiff
Elizabeth O'Meara

SCHEDULE A

1. All corporations, associations, entities, or persons who were a part of or had ownership or a financial interest in Carolina House and any company that was responsible for managing Carolina House from January 1, 2007, through present.
2. The sale of the Carolina House of Hilton Head community residential care facility to Kandu Capital, LLC, including the purchase price and terms as well as all operational changes including changes made to personnel, staffing, training, and supervision.
3. Names and addresses of employees of Carolina House who rendered care to Elizabeth O'Meara during her residency at Carolina House and the patient log for Mrs. O'Meara.
4. Complaint(s) or claims of alleged or suspected abuse, neglect, or mistreatment of any resident at Carolina House from January 1, 2007 to January 1, 2012.
5. Internal investigations of alleged or suspected abuse, neglect, or mistreatment of any resident at Carolina House from January 1, 2007 to January 1, 2012.
6. Any claims or litigation related to any complaint(s) of alleged or suspected abuse, neglect, or mistreatment of any resident at Carolina House from January 1, 2007 to January 1, 2012.
7. Staffing of the Clare Bridge Memory Care Unit at Carolina House from January 1, 2007, through March 1, 2011.
8. Resident daily census at Carolina House and in the Clare Bridge Memory Care Unit at Carolina House from January 1, 2007 through March 1, 2011.
9. Policies and procedures in place at Carolina House from January 1, 2007 through March 1, 2011, including but not limited to the following:
 - a. Dispensing medications;
 - b. Safety;
 - c. Supervision;
 - d. Medical Record charting;
 - e. Procedures regarding transfers, baths, and general nursing care and fall risk assessment;
 - f. Reporting Incidents/Accidents;
 - g. Change of Shift Reports and/or report sheets charting;
 - h. Contacting physicians with regard to health or changes in residents;
 - i. Reporting suspected abuse and neglect;
 - j. Complaints by residents and resident family members;
 - k. Internal investigations of abuse and neglect.
10. Employee training at Carolina House from January 1, 2007 through March 1, 2011, including but not limited to the following:.

- a. Care and treatment of residents with Alzheimer's disease and/or dementia;
 - b. Observing and documenting a resident's condition;
 - c. Reporting and documenting changes in a resident's condition, including but not limited to behavioral changes, deterioration, incidents, injuries and accidents, and medication errors or concerns;
 - d. Observing, assessing, documenting, and reporting symptoms or other evidence of suspected abuse; and reporting suspected abuse or neglect to Carolina House administration and legal authorities as required by law;
 - e. Dispensing medications;
 - f. Resident safety;
 - g. Supervision of residents and staff;
 - h. Medical record charting;
 - i. Procedures regarding transfers, baths, and general nursing care and fall risk assessment;
 - j. Reporting Incidents/Accidents;
 - k. Change of Shift Reports and/or report sheets charting;
 - l. Contacting physicians with regard to health or changes in residents;
 - m. Rehabilitation of residents;
 - n. Responding to complaints by residents and resident family members;
 - o. Medical tech services;
 - p. Internal investigations of abuse and neglect;
 - q. Treatment and retaliation against employees reporting suspected abuse or neglect of a resident.
11. Employment history for Sonia King, Barbara Newton, Olivia King, Rhoneda Maury, Silas Golden, Jennifer Benson, Ashley Cohen, Janette Ferguson, Angel Rivers and Williamae Perry.
 12. Deficiencies or sanctions imposed against Carolina House by any governmental or other regulatory entity or agency from January 1, 2007, through the present.
 13. Drug inventories and reports at Carolina House from January 1, 2007, through March 1, 2011.
 14. Surveys, survey reports, and communications regarding surveys scheduled or performed by the South Carolina Department of Health and Environmental Control regarding Carolina House from January 1, 2007, through March 1, 2011.
 15. Care and services provided to Elizabeth O'Meara while she was a resident of Carolina House.
 16. The medication schedule and administration for Elizabeth O'Meara while she was a resident of Carolina House.
 17. All injuries sustained by Elizabeth O'Meara while a resident at Carolina House, including visits to any physician or hospital facility for any matter.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1610

ELIZABETH O'MEARA,
PLAINTIFF,

v.


BROOKDALE SENIOR LIVING, INC.;
SOUTHERN ASSISTED LIVING, LLC, D/B/A
CAROLINA HOUSE OF HILTON HEAD; AND
SONIA S. KING,
DEFENDANTS.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing NOTICE OF 30(B)(6) VIDEOTAPED DEPOSITION
DUCES TECUM OF SOUTHERN ASSISTED LIVING, LLC, D/B/A CAROLINA
HOUSE OF HILTON HEAD has been served upon the following counsel of record by mailing
a copy of the same to them, postage prepaid, in the United States Mail, addressed as shown
below this 18 day of April, 2013:

Marc Manos, Esq.
Manton Grier, Jr., Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29202

*Attorneys for Defendants Brookdale Senior Living,
Inc. and Southern Assisted Living, LLC, d/b/a
Carolina House of Hilton Head*


MCNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 723-7831

RECEIVED

APR 22 2013

NEXSEN PRUET, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
ELIZABETH O'MEARA,)	
	)	C/A No.: 2011-CP-07-1610
PLAINTIFF,)	
)	
V.	)	PLAINTIFF'S FIRST SET OF
	)	INTERROGATORIES TO
BROOKDALE SENIOR LIVING, INC.,	)	DEFENDANTS BROOKDALE
SOUTHERN ASSISTED LIVING, LLC, D/B/A)	)	SENIOR LIVING, INC. AND
CAROLINA HOUSE OF HILTON HEAD,	)	SOUTHERN ASSISTED LIVING, LLC,
AND SONIA S. KING,	)	D/B/A CAROLINA HOUSE OF
	)	HILTON HEAD
DEFENDANTS.)	
_____)	

TO: MANTON GRIER, ESQ. AND MARC MANOS, ESQ., ATTORNEYS FOR DEFENDANTS BROOKDALE SENIOR LIVING, INC. AND SOUTHERN ASSISTED LIVING, LLC, D/B/A CAROLINA HOUSE OF HILTON HEAD:

Plaintiff, Elizabeth O'Meara, by and through her undersigned counsel, hereby requires, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, that Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head ("Defendants"), answer within thirty (30) days after service hereof to the following Plaintiff's First Set of Interrogatories to Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head.

DEFINITIONS AND INSTRUCTIONS

Unless otherwise specified, O'Meara's First Set of Interrogatories shall be governed by the following Definitions and Instructions, in addition to the South Carolina Rules of Civil Procedure:

1. "ABUSE" shall mean physical abuse or psychological abuse. Specifically, "PHYSICAL ABUSE" shall mean intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to,

slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in Section 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults. "PSYCHOLOGICAL ABUSE" shall mean deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

2. "DEFENDANTS" shall mean Brookdale Senior Living, Inc. and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head and all other persons acting on their behalf, including all members, managers, officers, directors, employees, and counsel.

3. "CAROLINA HOUSE" shall mean Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head.

4. The term "document" or "documents" is employed in its most comprehensive sense and shall, unless otherwise indicated, mean and include the original and all drafts of any and every kind of any and all writings (including handwritings, typed writings and printed writings, and also including electronically embedded or encoded writings or writings otherwise made), however produced or reproduced, of any kind or description, whether sent or received or neither, and all copies thereof which are different in any way from the original, regardless of whether designated "confidential," "privileged" or otherwise, including, without limitation, any paper,

drawing, graph, chart, photograph, computer program, source code, electronic or mechanical matter, microfilm of any kind or nature, disk, diskette, hard drive, tape, recording or other compilation from which information can be obtained (translated, if necessary, by Defendants through detection devices into reasonably usable forms) book, account, photograph, letter of intent, agreement, contract, correspondence, e-mail, Internet transmission, telegram, teletype, computer printout, study, memorandum, advertising material, letter, telegram, object, report, schedule, price list, quotation, record, journal entry, account(s), ledger, newspaper clipping, log book entry, transmittal, transcript, study, note, notation, working paper, intra-office and inter-office communication, chart, minutes, index sheet, deed of trust, partnership agreement, certificate of limited partnership, computer software, check, check stub, plan, specification, delivery ticket, bill of lading, invoice and all other writing(s) and paper(s) of every kind and nature, recordings of telephone or other conversations, or of interviews, or of conferences, or any other written, recorded, transcribed, punched, tabled, filmed or graphic matter, however produced or reproduced, to which Plaintiff has or has had actual or constructive access, possession, control, or custody, and/or of which Plaintiff has knowledge.

5. "COMPLAINT" shall mean the Amended Complaint in this action.

6. The terms "and" and "or," as used in these Interrogatories, shall be both conjunctive and disjunctive, such that, unless the context of the Interrogatory clearly indicates otherwise, each of these terms shall be understood to mean "and/or."

7. Unless the context of these Interrogatories clearly indicates otherwise, the term "YOU" or "YOUR," as used in these Interrogatories, shall mean and refer solely to Defendants and all other persons or entities acting on its behalf.

8. The phrase “refer” or “relate” means constituting, evidencing, reflecting, respecting, regarding, concerning, pertaining to, referring to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, analyzing, or discussing.
9. The term “communications” means any and all oral conversations, conferences or meetings and any written, postal telegraphic, telephonic, electronic or other message.
10. “Describe” shall mean to specify in detail and to particularize the content of the answer to the question and not just state the reply in summary or outline fashion.
11. “Identify” with respect to a person or persons shall mean to disclose:
 - a. The full name;
 - b. The job description;
 - c. Present address, or if unknown, last known address;
 - d. Past business experience;
 - e. The employer(s) of such person(s);
 - f. Dates of employment; and
 - g. The employment duties, functions, and responsibilities of such person(s).
12. “Identify” with respect to a document shall mean to disclose:
 - a. The title of the document;
 - b. The date of the document;
 - c. The name of the person(s) who signed or prepared, or participated in the preparation of the document;
 - d. The name(s) of the person(s) to whom the document was addressed;
 - e. The name of each person to whom the document was given or sent, or who received such document or copy thereof;

- f. The identity of each person having possession, custody or control of the document;
 - g. The current location of the document and all copies thereof; and
 - h. The nature and subject of the document.
13. “Identify” with respect to an event or circumstances shall mean to disclose:
- a. The date of such event;
 - b. The location of such event;
 - c. The identity of each person present at the event; and
 - d. What was said and/or done by each person present at the event.
14. “Identify” with respect to a service shall mean to disclose:
- a. The provider(s) of the service;
 - b. The service mark used to identify the source of the service;
 - c. The common commercial name of the service;
 - d. The dates the service was provided; and
 - e. The basic purpose or use of the service.
15. Words in the singular shall be construed to mean the plural and vice versa as appropriate.
16. The present tense shall include the past tense and vice versa.
17. Whenever these Interrogatories seek an answer or the production of a document or thing claimed by Defendants or their counsel to be privileged or subject to a qualified immunity, such as, without limitation, the qualified immunity for materials prepared in anticipation of litigation or in preparation for trial (whether referred to as “attorney work product” or otherwise), Defendants and their legal counsel shall specifically identify by name the particular privilege or immunity that they allege is applicable to each such individual document. In addition, in any and

all such cases, Defendants shall identify each such document in a sufficient manner to afford Plaintiff an opportunity to evaluate and, if appropriate, challenge Defendants' assertion of privilege or qualified immunity. Without limitation, this shall be understood to mean that Defendants shall identify any such allegedly privileged or immune document by its date, title, author(s) and recipient(s), and Defendants shall also provide Plaintiff with a complete summary of the substance and contents of the document.

18. If you are aware that a document or group of documents once existed, but has been destroyed or lost, you shall state when the document or group of documents was destroyed or lost, who destroyed or lost it, why it was destroyed or lost, the circumstances under which it was destroyed or lost, whether you have produced the document or group of documents in other litigation and, if so, the case caption for such litigation.

19. If you cannot answer the following Interrogatories in full after exercising due diligence to secure the full information to do so, so state and answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

20. Pursuant to the South Carolina Rules of Civil Procedure, these Interrogatories shall be deemed to be continuing in nature until the date of trial, and you are required to serve Supplemental Answers to these Interrogatories as required by the South Carolina Rules of Civil Procedure as additional responsive information, documents and/or things are discovered, found or become available to you.

INTERROGATORIES

1. Identify the persons known to you to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Identify and set forth the names and addresses of all insurance companies that have liability insurance coverage regarding the claims and identify the number of policies involved and the amount of liability coverage provided by each policy.
3. Describe the Defendants' sale of the Carolina House facilities in Bluffton and Hilton Head Island, South Carolina, to Kandu Capital, LLC, d/b/a Bloom Senior Living, including the reason for the sale, the purchase price, what assets and/or liabilities Defendants sold, and what employees of Defendants, if any, remain employed by the purchaser at the Carolina House facilities.
4. Identify any expert witness(es) whom you propose to use as a witness at the trial of this case, including a list of all cases in which each expert has testified by way of deposition and/or trial testimony, and identify all documents which have been provided to said expert(s) as well as any report(s) which said expert(s) may have generated.
5. Identify all staff who worked in, supervised, or managed the Clare Bridge Memory Care Unit at Carolina House from September 1, 2008, to January 1, 2012.
6. Identify all services, including but not limited to health care and social services, provided to Elizabeth O'Meara while she was a resident in Defendants' Carolina House facility.
7. Identify each person who participated in or conducted the internal investigation of the abuse suffered by Elizabeth O'Meara on December 31, 2010.
8. Identify all employees of Defendants who were reported or suspected of abusing or neglecting residents of Carolina House from September 1, 2008 to January 1, 2012, including the identity of the person(s) who reported or suspected such abuse.
9. Identify all incidents of accidental physical or mental injury or death to a resident of Carolina House from September 1, 2008 to January 1, 2012, including whether each incident was

reported to any state or local agency or law enforcement and whether and by whom any internal investigation of each incident was conducted and the result of any such internal investigation. Resident names and other identifying information may be redacted unless the incident involves Elizabeth O'Meara.

10. Identify any and all disciplinary actions taken by Defendants as to any of its employees as a result of any internal investigation of the abuse suffered by Elizabeth O'Meara while a resident at Carolina House.

11. Identify any and all employees who Defendants terminated and re-hired from September 1, 2008 to January 1, 2012.

12. Identify each and every incident during Elizabeth O'Meara's residence at Carolina House in which she went to the hospital and/or emergency room, including the reason for such visit and the names of all employees involved in the incident.

13. Describe the policies, procedures, or protocol Defendants' employees were required to follow if they suspected or knew of abuse of residents at Carolina House.

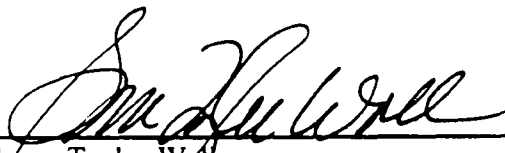
14. Describe the contract(s) between Defendants and any pharmacy company, with the company's name, address and contact person with whom Defendants dealt, providing medications to Mrs. O'Meara during her stay at Carolina House.

15. Describe and provide the date for all injuries and illnesses sustained by Elizabeth O'Meara while a resident at Carolina House, including visits to any physician or hospital facility for any reason.

16. Describe and provide the date for every deficiency and sanction concerning Carolina House by any governmental or other regulatory agency or entity from January 1, 2007 through May 30, 2012.

17. Give the names and addresses of all persons affiliated with Defendants who reported abuse or suspected abuse of residents at Carolina House to Defendants' employees or agents from January 1, 2008 through May 30, 2011.

18. Describe and list with date every survey and survey report performed by any governmental agency regarding Carolina House.



Susan Taylor Wall
MCNAIR LAW FIRM, P.A.
Post Office Box 1431
Charleston, SC 29402
Phone: 843-723-7831
Email: swall@mcnair.net

Kelly M. Jolley
Kathleen G. Chewing
MCNAIR LAW FIRM, P.A.
Post Office Drawer 3
Hilton Head Island, SC 29938
Phone: 843-785-2171
Email: kjolley@mcnair.net
kchewing@mcnair.net

ATTORNEYS FOR PLAINTIFF
ELIZABETH O'MEARA

April 18, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ELIZABETH O'MEARA,)
)
PLAINTIFF,)
)
V.)
)
BROOKDALE SENIOR LIVING, INC.,)
SOUTHERN ASSISTED LIVING, LLC, D/B/A)
CAROLINA HOUSE OF HILTON HEAD,)
AND SONIA S. KING,)
)
)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

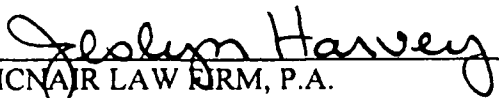
C/A No.: 2011-CP-07-1610

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS BROOKDALE SENIOR LIVING, INC. AND SOUTHERN ASSISTED LIVING, LLC, D/B/A CAROLINA HOUSE OF HILTON HEAD** has been served upon the following counsel of record by mailing a copy of the same to them, postage prepaid, in the United States Mail, addressed as shown below this 18 day of April, 2013.

Marc Manos, Esq.
Manton M. Grier, Jr., Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29202

Attorneys for Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head


MCNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Phone: (843) 723-7831

RECEIVED

APR 22 2013

NEXSEN PRUET, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
ELIZABETH O'MEARA,)	
	)	C/A No.: 2011-CP-07-1610
PLAINTIFF,)	
)	
V.	)	PLAINTIFF'S FIRST SET OF
	)	REQUESTS FOR PRODUCTION TO
BROOKDALE SENIOR LIVING, INC.,	)	DEFENDANTS BROOKDALE
SOUTHERN ASSISTED LIVING, LLC, D/B/A)	)	SENIOR LIVING, INC. AND
CAROLINA HOUSE OF HILTON HEAD,	)	SOUTHERN ASSISTED LIVING, LLC,
AND SONIA S. KING,	)	D/B/A CAROLINA HOUSE OF
	)	HILTON HEAD
DEFENDANTS.)	
_____)	

TO: MANTON GRIER, ESQ. AND MARC MANOS, ESQ., ATTORNEYS FOR DEFENDANTS BROOKDALE SENIOR LIVING, INC. AND SOUTHERN ASSISTED LIVING, LLC, D/B/A CAROLINA HOUSE OF HILTON HEAD:

Plaintiff, Elizabeth O'Meara, by and through her undersigned counsel, hereby requires, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head ("Defendants"), respond within thirty (30) days after service hereof to the following Plaintiff's First Set of Requests for Production to Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head.

DEFINITIONS AND INSTRUCTIONS

Unless otherwise specified, O'Meara's First Set of Requests for Production shall be governed by the following Definitions and Instructions, in addition to the South Carolina Rules of Civil Procedure:

1. 1. "ABUSE" shall mean physical abuse or psychological abuse. Specifically, "PHYSICAL ABUSE" shall mean intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited

to. slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in Section 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults. "PSYCHOLOGICAL ABUSE" shall mean deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

2. "DEFENDANTS" shall mean Brookdale Senior Living, Inc. and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head and all other persons acting on their behalf, including all members, managers, officers, directors, employees, and counsel.

3. "CAROLINA HOUSE" shall mean Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head.

4. The term "document" or "documents" is employed in its most comprehensive sense and shall, unless otherwise indicated, mean and include the original and all drafts of any and every kind of any and all writings (including handwritings, typed writings and printed writings, and also including electronically embedded or encoded writings or writings otherwise made), however produced or reproduced, of any kind or description, whether sent or received or neither, and all copies thereof which are different in any way from the original, regardless of whether designated "confidential," "privileged" or otherwise, including, without limitation, any paper,

drawing, graph, chart, photograph, computer program, source code, electronic or mechanical matter, microfilm of any kind or nature, disk, diskette, hard drive, tape, recording or other compilation from which information can be obtained (translated, if necessary, by Defendants through detection devices into reasonably usable forms) book, account, photograph, letter of intent, agreement, contract, correspondence, e-mail, Internet transmission, telegram, teletype, computer printout, study, memorandum, advertising material, letter, telegram, object, report, schedule, price list, quotation, record, journal entry, account(s), ledger, newspaper clipping, log book entry, transmittal, transcript, study, note, notation, working paper, intra-office and inter-office communication, chart, minutes, index sheet, deed of trust, partnership agreement, certificate of limited partnership, computer software, check, check stub, plan, specification, delivery ticket, bill of lading, invoice and all other writing(s) and paper(s) of every kind and nature, recordings of telephone or other conversations, or of interviews, or of conferences, or any other written, recorded, transcribed, punched, tabled, filmed or graphic matter, however produced or reproduced, to which Plaintiff has or has had actual or constructive access, possession, control, or custody, and/or of which Plaintiff has knowledge.

5. "COMPLAINT" shall mean the Amended Complaint in this action.

6. The terms "and" and "or," as used in these Requests for Production, shall be both conjunctive and disjunctive, such that, unless the context of the Request clearly indicates otherwise, each of these terms shall be understood to mean "and/or."

7. Unless the context of these Requests for Production clearly indicates otherwise, the term "YOU" or "YOUR," as used in these Requests for Production, shall mean and refer solely to Defendants and all other persons or entities acting on its behalf.

8. The phrase “refer” or “relate” means constituting, evidencing, reflecting, respecting, regarding, concerning, pertaining to, referring to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, analyzing, or discussing.

9. The term “communications” means any and all oral conversations, conferences or meetings and any written, postal telegraphic, telephonic, electronic or other message.

10. Whenever these Requests for Production seek the production of a document or thing claimed by Defendants or their counsel to be privileged or subject to a qualified immunity, such as, without limitation, the qualified immunity for materials prepared in anticipation of litigation or in preparation for trial (whether referred to as “attorney work product” or otherwise), Defendants and their legal counsel shall specifically identify by name the particular privilege or immunity that they allege is applicable to each such individual document. In addition, in any and all such cases, Defendants shall identify each such document in a sufficient manner to afford Plaintiff an opportunity to evaluate and, if appropriate, challenge Defendants’ assertion of privilege or qualified immunity. Without limitation, this shall be understood to mean that Defendants shall identify any such allegedly privileged or immune document by its date, title, author(s) and recipient(s), and Defendants shall also provide Plaintiff with a complete summary of the substance and contents of the document.

11. If you are aware that a document or group of documents once existed, but has been destroyed or lost, you shall state when the document or group of documents was destroyed or lost, who destroyed or lost it, why it was destroyed or lost, the circumstances under which it was destroyed or lost, whether you have produced the document or group of documents in other litigation and, if so, the case caption for such litigation.

12. Pursuant to the South Carolina Rules of Civil Procedure, these Requests for Production shall be deemed to be continuing in nature until the date of trial, and you are required to serve Supplemental Responses to these Requests for Production as required by the South Carolina Rules of Civil Procedure as additional responsive documents and/or things are found or become available to you.

REQUESTS FOR PRODUCTION

1. All documents related to Defendants' sale of the Carolina House facilities in Bluffton, South Carolina, and on Hilton Head Island to Kandu Capital LLC, d/b/a Bloom Senior Living, including but not limited to the purchase and sale agreement, any leases assigned or purchased by Kandu, a list of any assets and liabilities purchased by Kandu, and any communications sent to the facility residents regarding the pending lawsuits against Defendants, including the instant suit.

2. The entire employee file for the following people:

- a. Silas Thomas Golden
- b. Jackie Cochran a/k/a Jackie Marshall
- c. Janette Ferguson
- d. Olivia King
- e. Barbara Newton
- f. Willie Mae Perry
- g. Angel Rivers
- h. Dorothy Bryant
- i. Ashley Conen (Cohen)
- j. Sonia King
- k. Shanada Young

I. Rhoneda Maury

3. Defendants' entire policies, procedures, and manuals, including all versions and supplements, in effect from January 1, 2008 through March 1, 2011, used at the Carolina House of Hilton Head.
4. All documents related to Plaintiff Elizabeth O'Meara, including but not limited to:
 - a) resident file
 - b) resident profile book
 - c) medication chart
 - d) drug orders and invoices to Defendants and changes made by Defendants to Mrs. O'Meara or her representative
 - e) daily care chart/log
 - f) medical chart
 - g) food and fluid intake chart
 - h) notes on Mrs. O'Meara entered by any person on any document
 - i) all financial documents evidencing rate increases, bills, payments, and account charges.
5. Original records or copies of the same relating to Elizabeth O'Meara, including but not limited to:
 - (a) Admission/Discharge Records-transfer forms, discharge summaries, initial assessments, histories and physicals, physicians' orders at admission and upon discharge;
 - (b) Medication Records- telephone order slips, physician order sheets, medication administration records, PRN administration records, pharmacy order sheets and invoices;
 - (c) Physician's Records- progress notes, exams, physicals, written orders of attending physicians and specialists including, but not limited to, podiatrists, dentists and psychiatrists;
 - (d) Nursing Records- assessments (falls, skin, nutritional needs, care needs, other risks), Minimum Data Sets (MDS) and updates, RAPs, progress notes, care plans and updates, incident reports;

- (e) Dietary Records- initial diet orders, diet/nutritional assessments, on-going dietary orders, intake and output records, dietary progress notes;
- (f) Activities/Social Services- histories and assessments, care plans, progress notes;
- (g) Rehabilitation/Therapy Records- orders, evaluations, care plans, progress notes; and
- (h) Legal Records- notice of guardianship appointment, advance directives.

6. All schedules, lists and other documents regarding in-services or other training provided to Carolina House staff, including but not limited to documents with the names, titles and dates of staff attending in-service or other training programs regarding the following:

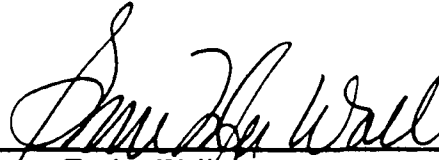
- (a) care and treatment of residents with Alzheimer's disease and/or dementia;
- (b) observing and documenting a resident's condition;
- (c) reporting and documenting changes in a resident's condition, including but not limited to behavioral changes, deterioration, incidents, injuries and accidents, and medication errors or concerns;
- (d) observing, assessing, documenting and reporting symptoms or other evidence of suspected abuse and reporting suspected abuse or neglect to Carolina House administration and legal authorities as required by law.

7. All documents related to the in-house investigation(s) conducted by or on behalf of Defendants regarding any physical or mental injury or abuse and neglect suffered by Plaintiff while a resident at Carolina House of Hilton Head.

8. All insurance policy(ies), declaration page(s), and certificate(s) of insurance with liability coverage for Defendants' Carolina House of Hilton Head facility from January 1, 2008 to the present.

9. A list of all employees of the Carolina House of Hilton Head from January 1, 2008, to the present, or until Defendants' sold the facility to Kandu Capital, LLC, including employee hire date, position(s) held, termination date (if any), and last known addresses.

10. All documents relating to or evidencing the job descriptions of the employees assigned to work in the Memory Care Clare Bridge Unit in which Plaintiff resided.
11. A list of all employees of the Carolina House of Hilton Head from January 1, 2008, to the present who were reported or suspected to have abused a resident and all documents related to or evidencing any investigation of the report, including the outcome of any such investigation.
12. Copies of all statements, whether written, recorded, summarized, or otherwise reproduced, including deposition testimony, taken from any person known to have knowledge of the facts of this case.
13. Copies of all documents relating to the claims or defenses of this case and obtained by Defendants or anyone acting on their behalf via a subpoena duces tecum, signed authorization, Freedom of Information Act request, or other legal process or request.
14. All reports, notes and memorandums from any expert, whether or not identified to date, concerning in any way Mrs. O'Meara.
15. Any and all documents concerning, about, or relating to any legal claim or lawsuit against either corporate Defendant herein arising out of an occurrence at or involving Defendants' subject assisted living facility in Hilton Head Island, South Carolina on or after January 1, 2008.
16. All photographs, slides, videotapes or motion pictures of Elizabeth O'Meara taken at or following her admission to Carolina House.
17. A copy of all contracts between Defendants and any pharmacy company providing pharmaceuticals or drugs/medications for residents at Carolina House from January 1, 2008 through May 30, 2011.



Susan Taylor Wall
MCNAIR LAW FIRM, P.A.
Post Office Box 1431
Charleston, SC 29402
Phone: 843-723-7831
Email: swall@mcnair.net

Kelly M. Jolley
Kathleen G. Chewning
MCNAIR LAW FIRM, P.A.
Post Office Drawer 3
Hilton Head Island, SC 29938
Phone: 843-785-2171
Email: kjolley@mcnair.net
kchewning@mcnair.net

ATTORNEYS FOR PLAINTIFF
ELIZABETH O'MEARA


April 18, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
ELIZABETH O'MEARA,)	
	)	C/A No.: 2011-CP-07-1610
PLAINTIFF,)	
)	
V.	)	CERTIFICATE OF SERVICE
)	
BROOKDALE SENIOR LIVING, INC.,)	
SOUTHERN ASSISTED LIVING, LLC, D/B/A))	
CAROLINA HOUSE OF HILTON HEAD,)	
AND SONIA S. KING,)	
)	
<u>DEFENDANTS.</u>)	

I certify that a copy of the foregoing **PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANTS BROOKDALE SENIOR LIVING, INC. AND SOUTHERN ASSISTED LIVING, LLC, D/B/A CAROLINA HOUSE OF HILTON HEAD** has been served upon the following counsel of record by mailing a copy of the same to them, postage prepaid, in the United States Mail, addressed as shown below this 18 day of April, 2013.

Marc Manos, Esq.
Manton M. Grier, Jr., Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29202

Attorneys for Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head


MCNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Phone: (843) 723-7831

RECEIVED

APR 22 2013

NEXSEN PRUET, LLC

EXHIBIT C

May 9, 2013

Kelly M. Jolley

kjolley@mcnair.net
T 843.785.2171
F 843.686.5991

Via U.S. Mail

Manton M. Grier, Jr.
Special Counsel
Nexsen Pruet, LLC
1230 Main Street
Suite 700
Columbia, SC 29201

Re: *Janet Sue Scheerle v. Brookdale Senior Living, Inc., Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head, and Sonia S. King*
Case No. 2011-CP-07-2654
MFN: 055181-00001

Dear Manton:

Enclosed please find Plaintiff's Amended Notice of 30(b)(6) Videotaped Deposition of Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head for June 11, 2013 at 10:00 a.m. in our Hilton Head Island office.

As you know, Judge Mullen ordered that this deposition take place on November 13 or 14, 2012, after your clients produced certain documents Judge Mullen ordered them to produce to the Plaintiff. Judge Mullen ordered your clients to produce the internal investigation documents to Plaintiff on November 7, 2012. However, when your clients failed to produce the documents prior to the deposition date, it was cancelled. Now that Plaintiff has received the internal investigation documents, the deposition should take place as ordered.

We have scheduled the deposition of the 30(b)(6) representative of Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head for June 11, 2013 at 10:00 a.m. in our Hilton Head office. If your client is not available for the chosen date, please let me know and provide additional dates so the deposition can be rescheduled.

McNair Law Firm, P. A.
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address
Post Office Drawer 3
Hilton Head Island, SC 29938

mcnair.net

RECEIVED

MAY 13 2013

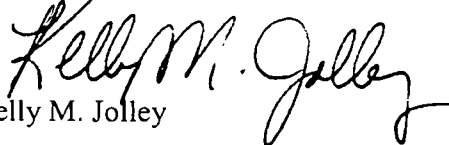
NEXSEN PRUET, LLC

HII.TONHEAD 812369v1

Manton M. Grier, Jr.
May 9, 2013
Page 2

M C N A I R
ATTORNEYS

Very truly yours,


Kelly M. Jolley

KMJ:ehb

Enclosures: as stated

cc: Susan Taylor Wall, Esquire
Marc Manos, Esquire

RECEIVED

MAY 13 2013

NEXSEN PRUET, LLC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2654

JANET SUE SCHEERLE,
Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC d/b/a
CAROLINA HOUSE OF HILTON HEAD and
SONIA S. KING,
Defendants.

)
)
)
)
) **NOTICE OF 30(B)(6)**
) **VIDEOTAPED DEPOSITION OF**
) **SOUTHERN ASSISTED LIVING, LLC,**
) **D/B/A CAROLINA HOUSE OF HILTON**
) **HEAD**
)
)
)
)

TO: MANTON GRIER, JR., ESQ. AND MARC MANOS, ESQ., ATTORNEYS FOR DEFENDANTS BROOKDALE SENIOR LIVING, INC. AND SOUTHERN ASSISTED LIVING, LLC, d/b/a CAROLINA HOUSE OF HILTON HEAD:

PLEASE TAKE NOTICE that pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, the undersigned counsel for Plaintiff Janet Sue Scheerle will take the testimony on oral examination by both stenographic and videotaped means of the 30(b)(6) representative of Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head ("Carolina House"), for the purposes of discovery and all other purposes pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public, or some other officer authorized by law to administer oaths and take depositions, at 10:00 a.m. on June 11, 2013, at the McNair Law Firm, P.A., 23-B Shelter Cove Lane, Suite 400 Hilton Head Island, South Carolina 29928. The deponent will be examined regarding all matters relevant to the subject matter involved in the pending case, as more specifically outlined in Schedule A attached hereto. Said deposition shall continue from time to time until completed, including any adjournments thereof.

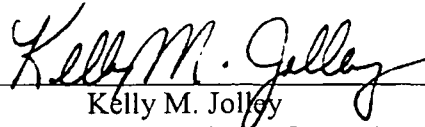
PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 30(j)(8), SCRPC, counsel for Plaintiff hereby identifies and reserves the right to use any and all documents produced or made available in discovery during this deposition and hereby gives notice of Plaintiff's intent to question the witness regarding any and all documents produced or made available by either party during the course of discovery, as well as those obtained pursuant to subpoena or records request.

You are hereby invited to be present as you may be advised in the premises.

Dated: May 9, 2013

McNAIR LAW FIRM, P.A.

By



Kelly M. Jolley

E-Mail: kjolley@mcnair.net

Kathleen Chewing

E-Mail: kchewing@mcnair.net

Post Office Drawer 3

Hilton Head Island, SC 29938

(843) 785-2171

Susan Taylor Wall

E-Mail: swall@mcnair.net

Post Office Box 1431

Charleston, SC 29402

(843) 723-7831

Attorneys for Plaintiff

Janet Sue Scheerle

SCHEDULE A

1. All corporations, associations, entities, or persons who were a part of or had ownership or a financial interest in Carolina House and any company that was responsible for managing Carolina House from January 1, 2007, through present.
2. The sale of the Carolina House of Hilton Head community residential care facility to Kandu Capital, LLC, including the purchase price and terms as well as all operational changes including changes made to personnel, staffing, training, and supervision.
3. Names and addresses of employees of Carolina House who rendered care to Janet Sue Scheerle during her residency at Carolina House and the patient log for Mrs. Scheerle.
4. Complaint(s) or claims of alleged or suspected abuse, neglect, or mistreatment of any resident at Carolina House from January 1, 2007 to January 1, 2012.
5. Internal investigations of alleged or suspected abuse, neglect, or mistreatment of any resident at Carolina House from January 1, 2007 to January 1, 2012.
6. Any claims or litigation related to any complaint(s) of alleged or suspected abuse, neglect, or mistreatment of any resident at Carolina House from January 1, 2007 to January 1, 2012.
7. Staffing of the Clare Bridge Memory Care Unit at Carolina House from January 1, 2007, through March 1, 2011.
8. Resident daily census at Carolina House and in the Clare Bridge Memory Care Unit at Carolina House from January 1, 2007 through March 1, 2011.
9. Policies and procedures in place at Carolina House from January 1, 2007 through March 1, 2011, including but not limited to the following:
 - a. Dispensing medications;
 - b. Safety;
 - c. Supervision;
 - d. Medical Record charting;
 - e. Procedures regarding transfers, baths, and general nursing care and fall risk assessment;
 - f. Reporting Incidents/Accidents;
 - g. Change of Shift Reports and/or report sheets charting;
 - h. Contacting physicians with regard to health or changes in residents;
 - i. Reporting suspected abuse and neglect;
 - j. Complaints by residents and resident family members;
 - k. Internal investigations of abuse and neglect.
10. Employee training at Carolina House from January 1, 2007 through March 1, 2011, including but not limited to the following:.

- a. Care and treatment of residents with Alzheimer's disease and/or dementia;
 - b. Observing and documenting a resident's condition;
 - c. Reporting and documenting changes in a resident's condition, including but not limited to behavioral changes, deterioration, incidents, injuries and accidents, and medication errors or concerns;
 - d. Observing, assessing, documenting, and reporting symptoms or other evidence of suspected abuse; and reporting suspected abuse or neglect to Carolina House administration and legal authorities as required by law;
 - e. Dispensing medications;
 - f. Resident safety;
 - g. Supervision of residents and staff;
 - h. Medical record charting;
 - i. Procedures regarding transfers, baths, and general nursing care and fall risk assessment;
 - j. Reporting Incidents/Accidents;
 - k. Change of Shift Reports and/or report sheets charting;
 - l. Contacting physicians with regard to health or changes in residents;
 - m. Rehabilitation of residents;
 - n. Responding to complaints by residents and resident family members;
 - o. Medical tech services;
 - p. Internal investigations of abuse and neglect;
 - q. Treatment and retaliation against employees reporting suspected abuse or neglect of a resident.
11. Employment history for Sonia King, Barbara Newton, Olivia King, Rhoneda Maury, Silas Golden, Jennifer Benson, Ashley Cohen, Janette Ferguson, Angel Rivers and Williamae Perry.
 12. Deficiencies or sanctions imposed against Carolina House by any governmental or other regulatory entity or agency from January 1, 2007, through the present.
 13. Drug inventories and reports at Carolina House from January 1, 2007, through March 1, 2011.
 14. Surveys, survey reports, and communications regarding surveys scheduled or performed by the South Carolina Department of Health and Environmental Control regarding Carolina House from January 1, 2007, through March 1, 2011.
 15. Care and services provided to Janet Sue Scheerle while she was a resident of Carolina House.
 16. The medication schedule and administration for Janet Sue Scheerle while she was a resident of Carolina House.
 17. All injuries sustained by Janet Sue Scheerle while a resident at Carolina House, including visits to any physician or hospital facility for any matter.

EXHIBIT D

May 6, 2013

Kelly M. Jolley

kjolley@mcnair.net
T 843.785.2171
F 843.686.5991

Via Certified Mail, Return Receipt Requested

Carter C. Elliott, Jr., Esquire
Elliott & Phelan
P.O. Box 1405
Georgetown, SC 29442

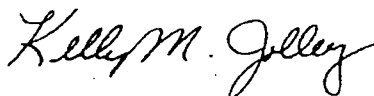
Re: *Janet Sue Scheerle v. Brookdale Senior Living, Inc., Southern Assisted
Living, LLC, and Sonia S. King*
Case No. 2011-CP-07-2654
MFN: 055181-00001

Dear Carter:

Enclosed please find our subpoena for the production of transcripts of the deposition testimony for the individuals listed therein on or before May 31, 2013, at 5:00 p.m.

Very truly yours,

McNAIR LAW FIRM, P.A.



Kelly M. Jolley

KMJ:ehb

Enclosure: as stated

cc: Manton M. Grier, Jr.

McNair Law Firm, P. A.
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address
Post Office Drawer 3
Hilton Head Island, SC 29938

mcnair.net

RECEIVED

MAY - 8 2013

NEXSEN PRUET, LLC

HILTONHEAD 811837v1

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GEORGETOWN

JANET SUE SCHEERLE, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC d/b/a
CAROLINA HOUSE OF HILTON HEAD, AND
SONIA S. KING, Defendant

Case Number: 2011-CP-07-2654

Pending in BEAUFORT County

TO: Carter C. Elliott, Jr., Esquire, Elliott & Phelan, 117 Screven Street, Georgetown, SC 29442

YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

Transcripts of the deposition testimony of the following persons, including any deposition conducted pursuant to Rule 30(b)(6):

1. Shanada Young
2. Kristi McCuin
3. Rhoneda Maury
4. Thomas Golden
5. Kenya Barkley
6. Shirley Harley
7. Monica Jenkins
8. Diane Bornstein
9. Olivia King
10. Janie Moore
11. Tywana Freeman
12. Julie Ling

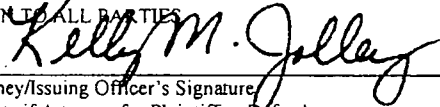
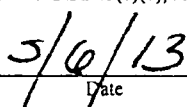
PLACE McNair Law Firm, P.A., Post Office Drawer 3, Hilton Head Island, SC 29938 - Attention: Kelly M. Jolley, Esq. (Street address: 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, SC 29938)	DATE AND TIME May 31, 2013, by 5:00 PM
--	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES

 Attorney/Issuing Officer's Signature	 Date	Kelly M. Jolley Print Name
Indicate if Attorney for Plaintiff or Defendant Attorney's Address and Telephone Number : Kelly M. Jolley, Esquire, SC Bar No. 72573, McNair Law Firm, P.A., Post Office Drawer 3, Hilton Head Island, SC 29938; (843) 785-2171		

Clerk of Court/Issuing Officer's Signature Pro Se Litigant's Name, Address and Telephone Number :	Date	Print Name
--	------	------------

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ N/A
	PLACE 117 Screven Street, Georgetown, SC 29442	
SERVED ON Carter C. Elliott, Jr., Esquire		MANNER OF SERVICE <u>CERTIFIED MAIL</u>
SERVED BY <u>E BOGAN</u>		TITLE <u>LEGAL ASSISTANT</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 10 MAY, 2013

E BOGAN
SIGNATURE OF SERVER

MCNAR LAW FIRM 100 DRAWER 3
ADDRESS OF SERVER

HAI, SC 29938

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

RECEIVED

MAY - 8 2013

NEXSEN PRUET, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Court of Common Pleas of Beaufort County, South Carolina
The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2011-199666

Elizabeth O'Meara,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

Yvonne Carrie Pruett,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

Janet Sue Scheerle,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the **Appellants' Motion To Enforce**

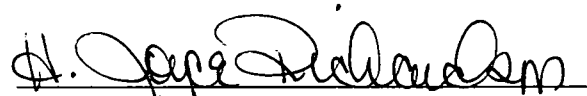
RECEIVED
MAY 31 2013

SC Court of Appeals

The Automatic Stay Pursuant To Rule 205, SCACR has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid in the United States Mail, on the 31st day of May, 2013, to the address shown below.

Susan Wall, Esquire
McNAIR LAW FIRM, P.A.
Post Office Box 1431
Charleston, South Carolina 29402

Kelly M. Jolley, Esquire
McNAIR LAW FIRM, P.A.
Post Office Drawer 3
Hilton Head Island, South Carolina 29938


NEXSEN PRUET, LLC

Columbia, South Carolina