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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2021-CP-10-05289
Appellate Case No. 2022-000352

Medical University of South Carolina and University Medical
Associates of the Medical University of South Carolina,..... Appellants,

v.

HCA Healthcare, Inc.; Trident Medical Center, LLC;
Terry A. Day; Betsy Kay Davis; Joshua D. Hornig;
Eric J. Lentsch; David M. Neskey; and Anand K. Sharma..... Defendants.

Of whom HCA Healthcare, Inc. and Trident Medical Center, LLC;
are the..... Respondents.

**REPLY TO APPELLANTS’ RETURN TO THE MOTION TO HOLD APPEAL IN
ABEYANCE**

Respondents HCA Healthcare, Inc. (“HCA”) and Trident Medical Center, LLC (“Trident” or collectively with HCA, “Respondents”), submit this Reply to Appellants’ Return to the Motion to Hold Appeal in Abeyance. For the reasons set forth below, and those set forth in the original Motion to Hold Appeal in Abeyance along with the arguments submitted in support thereof, it is prudent and proper that the Motion to be granted and the appeal held in abeyance until following the ruling by the Business Court on HCA’s outstanding Motion to Dismiss for lack of Personal Jurisdiction.

I. Judicial Economy favors holding the appeal in abeyance until the Business Court determines whether it has jurisdiction over HCA.

Judicial economy favors holding the appeal in abeyance until the Business Court (to whom this matter has been assigned) issues its final ruling on HCA’s pending Motion to Dismiss for Lack of Personal Jurisdiction. This premise seems obvious because any judgment or order issued by any court purporting to bind a party over whom a court has not acquired personal jurisdiction is void. *See Hanson v. Denckla*, 357 U.S. 235, 249-50, 78 S. Ct. 1228, 1237-38, 2 L. Ed. 2d 1283 (1958) (“[A] State is *forbidden* to enter a judgment attempting to bind a person over whom it has no jurisdiction.” (emphasis added)).

If the Business Court grants HCA’s Motion to Dismiss for Lack of Personal Jurisdiction while this appeal is pending, then all of the briefing and arguments submitted by the parties relating to HCA in this appeal will have been wasted—since the appeal will be moot because any judgment or order entered against HCA will be void. *See Ex parte S.C. Dep’t of Revenue*, 350 S.C. 404, 408, 566 S.E.2d 196, 198-99 (Ct. App. 2002) (holding the master’s order was void and must be vacated because the master lacked personal jurisdiction over SCDOR); *see also Vinten v. Jeantot Marine Alls., S.A.*, 191 F. Supp. 2d 642, 650 (D.S.C. 2002) (“any judgment entered against a defendant over whom the court does not have personal jurisdiction is void” (citation omitted)).

Furthermore, judicial economy does not favor this appeal proceeding in a fragmented or bifurcated manner while the parties await a ruling on whether HCA is subject to the jurisdiction of any South Carolina court. It is more prudent and efficient that this matter be resolved in a single appeal at the proper time. The bifurcation of this appeal (between the claims against HCA and those against Trident) which otherwise is a necessity in the absence of personal jurisdiction having been established over HCA—would result in an appeal involving and affecting only Trident. Yet, Appellants’ arguments and allegations are generally asserted against Trident and HCA collectively

and without distinction. Therefore, judicial economy favors this appeal being resolved in a single integrated proceeding rather through an inefficient and segmented process.

II. HCA is not in control of when the Business Court hears or issues a ruling on HCA’s Motion to Dismiss for Lack of Personal Jurisdiction.

In their Return to the Motion to Hold Appeal in Abeyance Appellants argue that this appeal should proceed despite the fact that no finding of specific or general jurisdiction over HCA has been made by any court. In their Return, Appellants seek to place blame on Respondents for the Business Court not yet conducting a hearing or issuing a ruling on HCA’s Motion to Dismiss for Lack of Personal Jurisdiction, filed on December 7, 2021.

Contrary to the Appellants’ statements, nothing in the Supreme Court’s Administrative Order establishing the Business Court Program, S.C. Sup. Ct. Order, 2019-01-30-01, states that “the parties maintain responsibility for scheduling hearings with the Business Court Judge.” (Appellants’ Return p. 8). In fact, paragraph 11 of the Supreme Court’s Administrative Order states that, “[t]he Business Court Judge shall coordinate with the Chief Judge for Administrative Purposes (civil) of the respective county and Court Administration to schedule hearings and/or the trial.” It is clear that the authority to coordinate and schedule hearings belongs to the Business Court Judge—not the Respondents.

Of course, it is the Appellants’ burden to establish personal jurisdiction over HCA in this case. *See Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996) (“The plaintiff has the burden to establish that the court has personal jurisdiction over the defendant.” (citation omitted)). HCA challenged the existence of that personal jurisdiction by Motion, filed December 7, 2021, along with the supporting affidavit and memorandum of authorities to back-up that Motion. In fact, HCA previously secured a hearing on that Motion (scheduled for February 25, 2022), which hearing was frustrated by Appellants when they requested and secured a continuance of the hearing on that Motion by asserting that all of Appellants’ attorneys had the

more important need to attend a firm function in Las Vegas. Shortly thereafter, at Appellants' request, on March 11, 2022, a Consent Order of Protection was issued providing protection from the scheduling of hearing or trial for the period March 24, 2022 through April 15, 2022. Again, the justification given by Appellants for that Consent Order was that Appellants' "[c]ounsel has long standing vacation out of the country and has purchased airline tickets and hotel accommodations."

On March 21, 2022, Appellants filed a Notice of Appeal of the circuit court's orders denying their Motion for Injunctive Relief. After filing their Notice of Appeal, Appellants filed a Petition for Supersedeas with the circuit court (Petition denied by Order dated June 29, 2022); a Petition for Supersedeas with this Court (Petition denied by Order dated August 11, 2022); and a Petition for Full Appellate Court Review of the Order Denying the Petition for Supersedeas (Petition denied by Order dated September 13, 2022).

Although the law requires Appellants to establish jurisdiction over HCA before any South Carolina court has the authority to issue an order that could bind HCA, *Moore*, 322 S.C. at 523, 473 S.E.2d at 66, Appellants have utterly failed to meet this burden. In fact, while Appellants argue that it is urgent for this case to proceed, and they baselessly attempt to blame Respondents as the cause for why it allegedly has not, the fact is that Appellants have not requested a hearing in order to obtain a ruling on HCA's Motion to Dismiss for Lack of Personal Jurisdiction.

While this appeal has been pending, Appellants have done nothing to establish that any South Carolina court has personal jurisdiction over HCA, or to obtain a ruling on the pending Motion by HCA to challenge the existence of such jurisdiction. Nevertheless, Appellants now attempt to have the Court ignore its jurisdictional problem on the specious argument that it is HCA's fault that the jurisdictional issue has not been resolved (favorably) for Appellants.

To the extent the Court reviews the efforts made by the parties to obtain a ruling on HCA's Motion, Appellants' Return recognizes that after the continuation of the February 25, 2022, hearing, Respondents (on June 1, 2022) again requested the Business Court hear its Motion to Dismiss for lack of Personal Jurisdiction. (Appellants' Return p. 5). Despite HCA's request that its motion be heard, no hearing has been scheduled by the Business Court (which retains the jurisdiction to decide the Motion pursuant to S.C. CODE ANN. § 14-3-450). Appellants have made no request to the Business Court for a hearing.

HCA should not be prejudiced by any further involvement in this case until the Business Court decides whether Appellants have met their burden of establishing that a South Carolina court has general or specific jurisdiction over HCA.

III. If the appeal is held in abeyance, then the Court should deny Appellants' request for the very injunctive relief that is the subject of the pending appeal.

Appellants argue that if the Court holds the appeal in abeyance until the Business Court rules on HCA's Motion to Dismiss for Lack of Jurisdiction, then the Court should award Appellants the injunctive relief that is the subject of the appeal. Appellants' request must be denied.

Respondents' Motion to Hold Appeal in Abeyance does not provide Appellants with a sixth bite at the apple for obtaining the requested injunctive relief. Furthermore, Appellants' sixth request for an order that is binding on HCA further demonstrates the necessity for the Business Court first to rule on HCA's Motion to Dismiss for Lack of Jurisdiction. That is because if HCA is not subject to the jurisdiction of the Court, then any action that purports to bind HCA is void. *See Hanson*, 357 U.S. at 249-50, 78 S. Ct. at 1237-38, 2 L. Ed. 2d 1283. Accordingly, if the Court holds the appeal in abeyance, then the Court should deny Appellants' request for injunctive relief while the appeal is held in abeyance. To allow otherwise would be to issue an order that purports to bind a party (HCA) over whom jurisdiction has not been established. *See Fin. Fed. Credit Inc.*

v. Brown, 384 S.C. 555, 562, 683 S.E.2d 486, 490 (2009) (“A judgment is void if a court acts without personal jurisdiction.” (citation omitted)).

CONCLUSION

For the reasons set forth herein, Respondents request the Court grant the Motion and issue an Order holding the above-captioned appeal in abeyance until the circuit court issues an order adjudicating HCA Healthcare, Inc.’s Motion to Dismiss for Lack of Personal Jurisdiction.

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PROOF OF SERVICE

The undersigned hereby certifies that on September 21, 2022, copies of
**RESPONDENTS’ REPLY TO APPELLANTS’ RETURN TO THE MOTION TO HOLD
APPEAL IN ABEYANCE** were served on all counsel of record via emails containing the above
referenced document to counsels’ individual AIS email addresses:

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