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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF FLORENCE	)	**Civil Action No.: 2012-CP-21-1149**
	)	
Pee Dee Healthcare, P.A.	)	
	)	**ORDER**
Plaintiff,	)	**Denying Motion to Dismiss, and**
	)	**Granting Motion to Compel Arbitration**
v.	)	
	)	
Lower Florence County Hospital	)	
District d/b/a Lake City Community	)	
Hospital,	)	
Defendant.	)	

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SC Court of Appeals

This matter comes before the Court on Defendant Lower Florence County Hospital District's Motion to Dismiss, filed November 11, 2008, and Plaintiff Pee Dee Healthcare's Motion to Compel Arbitration, filed January 27, 2020. The Defendant filed a memorandum in support of its motion to dismiss on February 5, 2009, and a supplemental memorandum to dismiss on February 14, 2020. The Plaintiff submitted a memorandum in opposition to Defendant's motion to dismiss on February 20, 2020, an amended memorandum in opposition on February 21, 2020, and supplemental memorandum in the form of a letter from Counsel dated June 15, 2020.

After careful consideration of the filings, review of the record, and for the reasons set forth herein, the Court denies Defendants' Motion to Dismiss and grants Plaintiffs' Motion to Compel Arbitration.

FACTUAL BACKGROUND

On April 1, 2008, in a distinct but related action, the Defendant (Lower Florence County Hospital District d/b/a Lake City Community Hospital LCCH) served a temporary restraining order suspending the general and ordinary business of its hospital. *See* Rule 65(e), SCRCP. Case

No. 2008-CP-21-0706 was the original case that began the litigation. In that case, Plaintiff LCCH sought rescission of agreements with Mid-Carolina Hospital Group (MCHG) to run the operation of its facilities. On May 1, 2008, LCCH entered into a Preliminary Separation and Unwinding Agreement with MCHG, HTR Management, and Plaintiff in this case, Pee Dee Healthcare, Inc. (PDHC). On May 6, 2008, Judge James held a status conference with the parties and thereafter agreed to an order on May 13, 2008 appointing Pershing Young and Associates to conduct the audit set forth in the May 1, 2008 Preliminary Separation and Unwinding Agreement.

On May 30, 2008, Judge James held a hearing on the appointment of a Trustee to receive and disburse funds. On June 17, 2008, Judge James entered an Order (from the May 30, status conference) appointing the Trustee. This Order specifically incorporated the Preliminary Separation and Unwinding Agreement by reference and became the law of the case when it was signed by Judge James and filed on June 17, 2008. The case was stricken from the active roster pursuant to Rule 40(j), SCRCP, and was restored to the civil roster as *Lower Florence County Hospital District, et al. v. Mid-Carolina Hospital Group, LLC, Tony R. Megna, and Benjamin R. Matthews*, Case No.: 2012-CP-21-1142. Although PDHC was not a party to that action, PDHC was the previous owner of the Darlington and Olanta clinics that were subjects of dispute in that action. There are now several actions pending between the parties.

This action was brought by Plaintiff PDHC on October 13, 2008 under a claim of breach of contract for three contracts between the parties. The contracts in dispute in this case are the following billing and collection agreements between only PDHC and LCCH and do not include other parties in the separate action Case No.: 2012-CP-21-1142:

1. Clinical Operations Agreement – dated March 26, 2007 between LCCH and PDHC for billing and management services of the Darlington office;

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2. Clinical Operations Agreement – dated January 31, 2007 between LCCH and PDHC for billing and management services of the Olanta office; and
3. Agreement for the Provision of Medical Billing and Collection Services – dated April 1, 2007 between LCCH and PDHC for Lake City Rural Healthcare.

Each of these contracts contained an identical arbitration provision.

On November 11, 2008 Defendant in this case, LCCH, filed a motion to dismiss, subsequently filed a memorandum in support of its motion to dismiss on February 5, 2009, and a supplemental memorandum to dismiss on February 14, 2020.

Defendant argues that under SCRCP Rule 12(b)(8) and Rule 12(b)(6) that this case should be dismissed, relying on the fact that the May 1, 2008 "Unwinding Agreement" includes PDHC as a signatory and PDHC's participation in a trusteeship of certain funds precludes Plaintiff PDHC from pursuing relief. Furthermore, Defendant argues that the contracts in contest in this case were executed without requisite corporate authority and that the contracts were violative of Section 4-9-82, Code of Laws of South Carolina 1976.

STANDARD OF REVIEW

Motions to dismiss are governed by SCRCP Rule 12(b). The Court must base its decisions on the allegations in the Complaint. *Spence v. Spence*, 358 S.C. 106, 628 S.E.2d 869 (2006). In considering a motion under Rule 12(b)(6), "[i]f the facts and inferences drawn from the facts alleged in the complaint, viewed in light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Id* at 116, 628 S.E.2d at 874. "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory." *Id*. "Pleadings in a case should be construed liberally so that substantial justice is done

between the parties." *H.H. Hunt Corp. v. Town of Lexington*, 389 S.C. 623, 632, 699 S.E.2d 699, 703 (Ct. App. 2010).

Under SCRCP Rule 12(b)(8), a court may dismiss a complaint when there is (1) another action pending, (2) between the same parties, (3) for the same claim. 12(b)(8), SCRCP. "To prevail on a motion to dismiss pursuant to Rule 12(b)(8), the movant must show that the actions in question are between the same parties in their same capacities." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 322, 701 S.E.2d 39, 44 (Ct. App. 2010). Dismissal under Rule 12(b)(8) is only appropriate if the claim is "precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 104, 674 S.E.2d 524, 531 (Ct. App. 2009).

ANALYSIS

MOTION TO DISMISS

Defendant moved to dismiss this case under SCRCP 12(b)(6) for failure to state facts sufficient to constitute a cause of action. Specifically, Defendant contends the contracts which form the basis for Plaintiffs' causes of action were executed without requisite corporate authority and violative of Section 4-9-82, Code of Laws of South Carolina, 1976. Defendants' motion to dismiss under 12(b)(6) is unfounded and has already been resolved by this Court.

In the case between LCCH and MCGH, Plaintiff LCCH asserted that under Section 4-9-82, Code of Laws of South Carolina 1976 the Hospital District had no authority to enter into the Lease Purchase Agreements (LPAs) of the Hospital with Plaintiffs, and its related entities. This issue was resolved by Court Order filed on December 3, 2014. The Court distinguished the authority of the Board of Directors to enter into Lease-Purchase Agreements of the Hospital (which the Court held LCCH did not possess) for the sale or lease of the Hospital as opposed to the

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authority of the Board to employ such personnel as it may deem necessary for the efficient operation of its hospital.

In that case, the Court distinguished the Lease-Purchase Agreements to sell or lease the Hospital, which required a special referendum of voters residing within the district and were *void ab initio*, from the type of agreements in question in this case to operate the facilities of LCCH, which required no referendum and were distinct from the Lease-Purchase Agreement. In the December 3, 2014 Order, Judge James specifically ruled:

> "...the board was permitted to hire MCHG to run the operations of its facilities, and the subject agreements reflect it intended to do so. A referendum was required only to approve transfers of assets and properties. Despite the headings of §4-9-82, and contrary to the plaintiff's contention otherwise, no referendum was required to approve the retention of personnel, i.e., MCGH, to operate the facilities for the plaintiff." [Order of December 3, 2014, page 7]

Based on the foregoing and in accordance with Judge James' December 3, 2014 Order, the Court concludes the Clinical Operations Agreements and Billing and Collections Services Agreement required no referendum and were not violative of Section 4-9-82, Code of Laws of South Carolina 1976.

Defendant also contends that the agreements in question were signed by LCCH personnel lacking requisite corporate authority to do so. The March 26, 2007 Clinical Operations Agreement and the April 1, 2007 Agreement for the Provision of Medical Billing and Collections Services were signed by LCCH CEO Clarence Bowman II, while the January 31, 2007 Clinical Operations Agreement was signed by CEO Bowman and Joe Landrum, the Chairman of the Board of Directors of LCCH. Section V of all three agreements between the parties, titled "REPRESENTATIONS AND WARRANTIES," specifically states:

All parties represent and warrant that:

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a. The execution, delivery and performance of this Agreement (a) has been approved by the governing body of each party. See Exhibits X, XX, XXX

By signing these agreements, CEO Bowman and Chairman Landrum represent and warrant that the agreements have been approved by the Board of Directors. Despite claims to the contrary, Defendant has provided no evidence to support its claim for lack of corporate authority. Accordingly, the Court concludes Defendants' claim is without merit. Based on the foregoing, Defendants' Motion to Dismiss under SCRCP 12(b)(6) for failure to state facts sufficient to constitute a cause of action is denied.

Defendant also moved to dismiss this case under SCRCP 12(b)(8) contending Plaintiff was seeking to revisit issues already being litigated and determined in another action. Specifically, Defendant claims that Plaintiff, as a party to the Separation and Unwinding Agreement, is now barred from asserting this claim as a 'party in fact' to the action between LCCH and MCHG. Defendant contends that because Plaintiff was a party to the Separation and Unwinding Agreement, its claim arises under a separate suit, of which it is not a party to.

To prevail on a motion to dismiss pursuant to Rule 12(b)(8), "the movant must show that the actions in question are between the same parties in their same capacities." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 322, 701 S.E.2d 39, 44 (Ct. App. 2010). In the case between LCCH and MCHG, Plaintiff was a party to the Separation and Unwinding Agreement, not to the litigation itself. The Court is not persuaded that Plaintiff was a 'party in fact' to the case between LCCH and MCHG, as its role in the Separation and Unwinding Agreement is distinct from its action in this case. This issue was resolved by Judge James' Order Appointing a Trustee. In the June 17, 2008 Order, Judge James specifically held:

"(14) Nothing in this order shall be construed, in any manner whatsoever;

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(a.) to limit any party from asserting any claims, counterclaims, cross-claims or other claims, however defined, on against the other, as any party deems necessary and/or appropriate." [Order of June 17, 2008, page 6]

As discussed above, Judge James held in his December 3, 2014 Order that the agreements in contention in this case are distinct from those voided in the case between LCCH and MCHG. The South Carolina Court of Appeals has adopted a narrow interpretation of Rule 12(b)(8) stating that, "Accordingly, we interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 104, 674 S.E.2d 524, 531 (Ct. App. 2009).

Based on the foregoing and in accordance with Judge James' June 17, 2008 and December 14, 2014 Orders, the Court concludes the, Plaintiff's claim is not barred by Rule 12(b)(8) because its role in the case between LCCH and MCHG does not make it a 'party in fact' to that litigation and its claims in the present action are distinct and preserved as a matter of law. Therefore, Defendants' Motion to Dismiss under SCRCP 12(b)(8) for failure to state facts sufficient to constitute a cause of action is denied.

MOTION TO COMPEL ARBITRATION

Plaintiff moved to compel arbitration of the three agreements at issue in this action pursuant to S.C. Code Section 15-48-10 et. seq., and the Federal Arbitration Act. Specifically, Plaintiff contends the parties expressly agreed to arbitrate any disputes related to the three agreements. The language of each agreement is the same and states in pertinent part:

> The parties agree that any and all disputes or controversies, *whatever they may be and however they are defined, in any way or manner, arising out of or related to this agreement or the relationship between the individual and/or corporate signatories to this agreement* (a) shall be subject to arbitration in Columbia, South Carolina and shall be governed by rules of reasonableness, civility, and mutual

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> reliance upon the honesty and trust one to the other. It is specifically understood and agreed that this clause is to be interpreted broadly and inclusively by any party, court or tribunal considering the enforceability of this clause. Any decision rendered and made pursuant to any arbitration shall be binding and conclusive upon the parties...

Defendant contends in its Supplemental Memorandum in Support of Motion to Dismiss and reiterates in its Reply in Support of Motion to Dismiss that its challenge to the validity of the entirety of the contracts is a central issue which must be resolved in Plaintiffs favor before deciding whether to compel arbitration. This Court finds Defendants argument unpersuasive and grants Plaintiffs' motion compelling arbitration.

The South Carolina Uniform Arbitration Act provides:

> A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration. [Section 15-48-10, S.C. Code]

The Court first examines whether the South Carolina Uniform Arbitration Act (SCUAA) applies to Plaintiffs' claim. The South Carolina Supreme Court has held that "because the terms of section 15-48-10(a) are clear, 'the court must apply those terms according to their literal meaning.'" *Singh v. Singh*, 429 S.C. 10, 19, 837 S.E.2d 651, 656 (Ct. App. 2019) quoting *Soil Remediation Co. v. Nu-Way Envtl., Inc.*, 323 S.C. 454, 457, 476 S.E.2d 149, 151 (1996). In this case, the Court finds that the arbitration provisions contained in each agreement meet the statutory requirements of Section 15-48-10(a). Accordingly, the Court finds that the South Carolina Uniform Arbitration Act applies to the three contracts in questions.

The Court must now consider whether the Federal Arbitration Act (FAA) applies to Plaintiffs' claim. The Federal Arbitration Act provides in pertinent part:

> A written provision in ... a contract ... to settle by arbitration a controversy thereafter arising out of such contract ... or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9. U.S.C. Section 2.

The FAA applies to any arbitration agreement regarding a transaction that involves interstate commerce. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). "'[I]nvolving commerce' is the same as 'affecting commerce,' which has broadly been interpreted to mean Congress intended to utilize its powers to regulate interstate commerce to its full extent." *Blanton v. Stathos*, 351 S.C. 534, 540, 570 S.E.3d 565, 568 (Ct. App. 2002). In order to determine whether a transaction involves commerce within the scope of the FAA, "the court must examine the agreement, the complaint, and the surrounding facts." *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 594, 553 S.E.2d 110, 117 (2001).

In this case, the contracts in question, the complaint, and the surrounding facts establish that the transactions in dispute involve the delivery of health care services, including the billing and collection for these services from Medicare, Medicaid, and national private insurance carriers. The Court finds these transactions involve commerce squarely within the meaning of the FAA. Accordingly, the FAA applies to the transactions and contracts in question.

Given the SCUAA and the FAA are both applicable to Plaintiffs' claims, the Court must determine which law(s) apply. Generally, a state law which arose to govern issues concerning validity, revocability, and enforceability of all contracts is applicable to claims involving an arbitration clause governed by the FAA. *Munoz*, 343 S.C. at 539, 542 S.E.2d at 364. "A state law

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that places arbitration clauses on an unequal footing with contracts generally, however, is preempted if the FAA applies." *Id.* The SCUAA applies specifically and exclusively to arbitration agreements, and is preempted. *Id* at 540, 542 S.E.2d at 364. Therefore, the SCUAA is preempted and the FAA controls in this case.

Finally, the Court must consider whether the arbitration provision is valid and enforceable under the FAA. The South Carolina Supreme Court has established a framework for determining whether a particular claim is subject to arbitration under the FAA. In *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118, the court stated:

> To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim. *Hinson v. Jusco Co.*, 868 F.Supp. 145 (D.S.C.1994); *S.C. Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993).
>
> Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. *Towles, supra*. Furthermore, unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered. *Id.* citing *Great W. Coal*, 312 S.C. at 564, 437 S.E.2d at 25.

Arbitration clauses are separable from the contracts in which they are embedded and a party cannot avoid arbitration by attacking the validity of the contract as a whole. *Jackson Mills, Inc. v. BT Capital Corp.*, 312 S.C. 400, 403, 440 S.E.2d 877, 879 (1994) citing *Prima Paint Corp. v. Flood & Conklin*, 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967). In *Jackson Mills Inc. v. BT Capital Corp.*, the Supreme Court of South Carolina adopted the US Supreme Court reasoning in *Prima Paint Corp v. Flood & Conklin*, *Prima Paint Corp.*, 388 U.S. 395 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967) stating that 'a party cannot avoid arbitration through rescission of the entire contract when there is no independent challenge to the arbitration clause.' *Jackson Mills,*

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Inc., 312 S.C. at 403, 400 S.E.2d at 879 quoting *South Carolina Public Service Authority v. Great Western, Inc.*, 437 S.E.2d 22 (Sup.Ct. 1993).

Recently, the South Carolina Court of Appeals invoked the *Primal Paint* doctrine in determining whether an arbitration agreement is valid and enforceable. In *Damico v. Lennar Carolinas, LLC.*, 430 S.C. 188, 198, 844 S.E.2d 66, 71 (Ct. App. 2020), the court stated:

> In deciding whether the parties have a valid agreement to arbitrate we must therefore isolate the arbitration clause from the rest of the contract. If the arbitration agreement is valid, any issues as to the validity of other parts of the contract go to the arbitrator, not the court. Accordingly, a party cannot duck arbitration unless it makes a specific, pinpoint (and successful) challenge to the validity of the arbitration provision itself; attacking the validity of the contract as a whole is not enough. Citing *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70, 130 S.Ct. 2772, 177 L.Ed.2d 403 (2010).

In this case, the Defendant contends the validity of the contracts in question must be settled before the issue of arbitration can be decided. Defendants do not challenge the specific arbitration provisions within the agreements in question and instead choose to posit their argument on the validity of each contract, taken as a whole. In *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70, 130 S.Ct. 2772, 2778, 177 L.Ed.2d 403 (2010), the Supreme Court outlined the framework for challenging to contract validity, stating:

> There are two types of validity challenges under §2: 'one type challenges specifically the validity of the agreement to arbitrate,' and '[t]he other challenges the contract as a whole, either on the ground that directly affects the entire agreement (e.g., the agreement was fraudulently induced), or on the ground that the illegality of one of the contract's provisions renders the whole contract invalid.' *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444, 126 S.Ct. 1204 (2006). In a line of cases neither party has asked us to overrule, ***we held that only the first type of challenge is relevant to a courts determination whether an arbitration agreement is enforceable***. [emphasis added]

Similar to the *Damico* case and in line with the *Prima Paint* Doctrine, this Court finds that the arbitration provisions, identical within all three contracts, must be separated

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from the rest of the contracts in order to determine validity. Under the framework set forth in *Rent-A-Center*, the Court concludes Defendants' challenge to the agreements, taken as a whole, is not relevant to determining whether the arbitration provisions are enforceable.

This Court finds the arbitration provisions in question to be valid and enforceable. Defendants' contentions regarding the validity of the contracts generally are to be decided by an arbitrator, not this Court. Defendant's claim regarding the validity of the contracts, taken as a whole, is insufficient and its failure to challenge the arbitration provisions specifically does not abrogate its preexisting contractual commitment to arbitrate. Accordingly, Plaintiffs' Motion to Compel Arbitration is granted.

CONCLUSION

For all of the reasons set forth above, Defendants' Motion to Dismiss is **DENIED** and Plaintiffs' Motion to Compel Arbitration is **GRANTED**.

[Electronic signature of the Hon. Diane S. Goodstein to follow]

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Florence Common Pleas

Case Caption:	Pee Dee Healthcare VS Lower Florence County Hospital District , defendant, et al
Case Number:	2012CP2101149
Type:	Order/Other

It is so Ordered!

s/Diane S. Goodstein