THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2019-CP-23-00473

Estate of Patricia Royston, by and through
the appointed Personal Representative, Marianne McCoig,
Individually, and on behalf of the statutory beneficiaries, Respondent,

v.

Hunt Valley Holdings, LLC
a/k/a Fundamental Long Term Care Holdings, LLC;
Fundamental Clinical and Operational Services, LLC;
Fundamental Administrative Services, LLC; and
THI of South Carolina at Magnolia Place at Greenville, LLC,
d/b/a Magnolia Place-Greenville, Appellants.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court err in denying the Facility's[1] motion to compel arbitration (and, in turn, denying the Other Appellants'[2] corresponding motions for a stay)?

A. Did the circuit court err in finding that "[t]he Arbitration Agreement is not a valid and enforceable agreement because it was not signed by the party seeking its enforcement"[3]?

1. Did the circuit court err in concluding, "[t]here is no evidence the Arbitration Agreement was signed by [Ms.] Royston during the admission process and provided to [the Facility]"[4]?

2. Did the circuit court err in concluding there was a lack of mutual assent because the Facility did not sign the Arbitration Agreement?

B. Did the circuit court err in finding that the Arbitration Agreement is not a valid and enforceable agreement because "[t]he parties on the Arbitration Agreement are not those parties specifically listed in this lawsuit"[5]?

II. Assuming, *arguendo*, out of an abundance of caution, that it (i.e., the following point about the circuit court's order denying the Facility's motion to compel arbitration) poses a threat of undue prejudice to Appellants (e.g., in case it could somehow be construed as binding or

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[1] The "Facility" is Defendant-Appellant THI of South Carolina at Magnolia Place at Greenville, LLC d/b/a Magnolia Place-Greenville. It is a skilled nursing facility in Greenville County.

[2] The "Other Appellants" are, collectively, Defendants-Appellants Hunt Valley Holdings, LLC, a/k/a Fundamental Long Term Care Holdings, LLC ("HVH"), Fundamental Clinical and Operational Services, LLC, and Fundamental Administrative Services, LLC. Collectively, the Facility and the Other Appellants are the "Appellants" or "Defendants."

[3] (R. p. 4.)

[4] (R. p. 2.)

[5] (R. p. 5.)

otherwise material going forward), did the court err by including in its order extraneous language relating to disputed matters of fact that were not before it for decision and, in any event, it could not properly decide, and regardless of whether the denial of the Facility's motion compel arbitration is reversed on appeal, should this aspect of the circuit court's order be reversed or otherwise rendered immaterial going forward?

A. Did the circuit court unduly recite as fact Plaintiff's contention (which is denied and disputed) that the Facility "is owned and operated by" HVH[6]?

B. Did the circuit court improperly state, "All Defendants are related entities of the [Facility] and have a significant relationship in the ownership, operation, and management of the [Facility], and derive significant economic benefit from its revenue"[7]?

STATEMENT OF THE CASE

Plaintiff,[8] personal representative of the estate of her late mother, Patricia Royston ("Ms. Royston"), filed this wrongful death and survival action on January 31, 2019, in the Court of Common Pleas, Greenville County, asserting claims arising out of alleged deficiencies in the care/treatment provided to Ms. Royston when she was a resident of the Facility in December 2016. (*See* R. pp. 14–74, 444–45.)

The Facility moved to compel Plaintiff's claims to arbitration, pursuant to an Arbitration Agreement it contended Ms. Royston had signed in conjunction with her admission to the Facility on December 19, 2016. (R. pp. 225–28; *see also id.*

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6 (R. p. 2.)

7 (R. p. 6 (internal footnote omitted).)

at pp. 235–371.)[9] While, admittedly, the Facility was unable to find the Arbitration Agreement among its own records,[10] a copy—bearing what purports to be Ms. Royston's signature, though unsigned by/on behalf of the Facility itself[11]—was found in Ms. Royton's personal effects and produced to the Facility by Plaintiff's counsel. (R. p. 5.)

The Other Appellants filed motions to stay this case until the arbitrability issue (i.e., the issue raised by the Facility's motion) was finally decided and any/all arbitration proceedings were completed (the "Motions to Stay"). (R. pp. 229–34; *see also id.* at pp. 372–98.)[12]

The circuit court heard the motions on August 29, 2019, the Honorable Robin B. Stilwell presiding. (*See* R. pp. 156–91.) It denied the Facility's motion to compel arbitration by order filed October 9, 2019, finding the Arbitration Agreement invalid and unenforceable because (A) "[t]he Arbitration Agreement . . . was not signed by the party seeking its enforcement [(i.e., the Facility)]" and (B) "[t]he parties on the Arbitration Agreement are not those parties specifically listed

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[8] "Plaintiff" is Plaintiff-Respondent, Marianne McCoig.

[9] Prior to moving to compel arbitration, the Facility had timely answered Plaintiff's complaint. (R. pp. 75–97.) Its answer was expressly made "*subject to and without waiving its rights to compel this matter to arbitration.*" (R. p. 75 (emphasis in original).)

[10] (*See* R. pp. 180:7–18, 239.)

[11] (R. p. 228.)

[12] Prior to moving to compel arbitration, the Other Appellants had timely answered Plaintiff's complaint, too. (R. pp. 98–155.)

in the lawsuit." (R. pp. 1–8; *see also id.* at p. 443.)[13] The court denied Appellants' timely Rule 59(e), SCRCP, motion[14] by order filed October 23, 2019. (R. pp. 9–10.)

This appeal timely follows.[15]

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[13] The court's order effectively disposed of the Motions to Stay, too, though not on the merits. The Motions to Stay sought a stay of this action until the arbitrability issue was finally decided and any/all arbitration proceedings were completed. (*See* R. pp. 229–34, 372–98.) Obviously, the arbitrability issue will not be finally decided until this appeal is decided, but the relationship between the Facility's motion to compel arbitration and the Motions to Stay is such that, insofar as the circuit court was concerned, its denial of the former mooted the latter. (*See* R. pp. 189:12–190:7.) Thus, while the circuit court did not grant the relief the Other Appellants sought, it also did not rule against them on the merits, and the final determination of the arbitrability issue in this appeal will at least determine whether the Motions to Stay are moot, if not determine them on the merits in favor of the Other Appellants. *See* 9 U.S.C. § 3 ("If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall* on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.") (emphasis added); *Episcopal Housing Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 641, 239 S.E.2d 647, 652 (1977) ("The fact that Federal is not a party to an arbitration agreement does not prevent an order staying the judicial proceedings pending arbitration between those who are parties to such an agreement. However, the Circuit Court included in its order the requirement that all parties be included in one arbitration proceeding. Federal has signed no arbitration agreement and cannot be forced into compulsory arbitration. We feel it was erroneous to condition the relief to which respondents are plainly entitled upon the voluntary submission of Federal to arbitration proceedings. This provision has been deleted from the foregoing Order of the lower court.").

[14] (R. pp. 432–43.)

STANDARD OF REVIEW

A circuit court's determination of whether a claim is subject to arbitration is reviewed de novo on appeal. *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009). "Under de novo review, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings." *Wilson v. Willis*, 426 S.C. 326, 334, 827 S.E.2d 167, 172 (2019).

ARGUMENT

I. The circuit court erred in denying the Facility's motion to compel arbitration (and, in turn, denying the Motions to Stay).

A. The circuit court erred in finding that "[t]he Arbitration Agreement is not a valid and enforceable agreement because it was not signed by the party seeking its enforcement."

1. The circuit court incorrectly concluded, "[t]here is no evidence the Arbitration Agreement was signed by [Ms.] Royston during the admission process and provided to [the Facility]."

As the circuit court itself states in its order denying the Facility's motion to compel arbitration, the Arbitration Agreement "*was found in [Ms. Royston's] personal effects* and produced by the Plaintiff." (R. p. 5 (emphasis added).) Given that it was found in Ms. Royston's personal effects, that it clearly bears what purports to be Ms. Royston's signature,[16] written in what cannot reasonably be

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[15] Appellants' notice of appeal was served and filed November 20, 2019. (R. pp. 446–50.)

[16] (*See* R. p. 228.)

denied to be the same hand as that which signed the separate Admission Agreement (the validity of which Plaintiff expressly does not dispute[17]) in Ms. Royston's name,[18] and that Plaintiff (Ms. Royston's daughter) herself has not actually denied that Ms. Royston signed the document,[19] the only reasonable conclusion capable of being drawn is that the signature on the Arbitration Agreement purporting to be Ms. Royston's is in fact Ms. Royston's.

As for whether Ms. Royston provided her signed Arbitration Agreement to the Facility, here again, the only reasonable conclusion is that she did. As Plaintiff made clear via her unconscionability argument below (which argument, it should be noted, the circuit court did not find persuasive[20]) and as the circuit court implicitly recognizes, Ms. Royston did not create the Arbitration Agreement herself; rather, it was presented to her by the Facility at the time of her admission. (*See* R. p. 422 ("As is true in the present action, facilities often present the

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[17] (*See* R. pp. 400 ("[Ms. Royston] was admitted as a short-term resident into [the Facility] . . . according to the Admission contract. The Admission Agreement governed the type of care [Ms. Royston] would receive at the Facility and [her] financial obligation to pay for those services.") (internal citation omitted); R. p. 174:9–11 ([Plaintiff's counsel:] "[The Admission Agreement] was also not signed by the facility. But we're not challenging the enforceability [of the Admission Agreement] . . . .").)

[18] (*Compare* R. p. 228 *with* pp. 270–81.)

[19] Plaintiff has done no more than refrain from admitting that the Arbitration Agreement bears her mother's signature. (*See* R. p. 401 (stating that Plaintiff "need[s] the original [Arbitration Agreement] to verify the authenticity and genuineness of the alleged signature of [Ms. Royston].").)

[20] (*See* R. p. 443.)

[proposed arbitration] contract *after* the person decides to apply for admission . . . .") (emphasis in original); *id.* at p. 7 (regarding construing the Arbitration Agreement against the Facility as the drafting party).) In other words, it would not have been possible for the Arbitration Agreement to be found in Ms. Royston's personal effects unless she had first received it from the Facility, and the time when she had to have received it from the Facility was the time of her admission.

The fact that the Facility has been unable to locate the Arbitration Agreement since the filing of this lawsuit in 2019 does not prove that Ms. Royston did not provide it to the Facility when she was admitted in 2016. Indeed, to conclude that Ms. Royston did not provide her signed Arbitration Agreement to the Facility requires adherence to the patently improbable, and wholly speculative,[21] belief that Ms. Royston, being presented with the Arbitration Agreement by the Facility at the time of her admission, signed the agreement, presumably having "read, understood, and assented to its terms,"[22] then switched gears and decided not to provide her signed agreement to the Facility, but nonetheless decided to keep the signed agreement among her personal effects. Moreover, this must be

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[21] *Cf. The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005) ("[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.").

[22] *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) ("[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms."). To be clear, there is no question of Ms. Royston's contractual capacity here.

believed in the face of the fact that what was found in Ms. Royston's personal effects was only a *copy* of the Arbitration Agreement, not the *original* document she actually signed. (*See* R. p. 401 (stating that Plaintiff "need[s] the original [Arbitration Agreement] to verify the authenticity and genuineness of the alleged signature of [Ms. Royston]," thus confirming that the original was not found in Ms. Royston's personal effects); *see also id.* at p. 173:7–8 ([Plaintiff's counsel:] "We can't authenticate this signature [purporting to be Ms. Royston's on the Arbitration Agreement] because nobody has the original.").) Respectfully, this belief, i.e., the circuit court's belief, is a logical bridge too far. The only reasonable conclusion capable of being drawn from the evidence is that, although the Facility has been unable to locate it in its files, Ms. Royston provided the *original* Arbitration Agreement bearing her signature to the Facility at the of her admission and was provided a *copy* for her own records, which she kept.

2. The circuit court incorrectly concluded there was a lack of mutual assent because the Facility did not sign the Arbitration Agreement.

The Facility made an offer to Ms. Royston when it presented the Arbitration Agreement to her for her consideration. Ms. Royston did not propose any changes to the Arbitration Agreement, i.e., she did not make a counteroffer, but rather accepted the offer according to its *exact terms*, signing the Arbitration Agreement as is. (R. p. 228.)

In her memorandum in opposition to the Facility's motion to compel arbitration, Plaintiff cited *Pennsylvania* law in support of her argument that the Facility's signature is required to have a valid, enforceable contract; however, this is not the rule under *South Carolina* law. South Carolina has long recognized that the mutual assent required to form a binding contract can exist even absent the signature of one of the contracting parties. *Jaffe v. Gibbons*, 290 S.C. 468, 473, 351 S.E.2d 343, 346 (Ct. App. 1986); *see also Bulwinkle v. Cramer*, 27 S.C. 376 (1887); *Bishop Realty & Rentals v. Perk, Inc.*, 292 S.C. 182, 355 S.E.2d 298 (Ct. App. 1987); *Laidlaw Envt'l Servs., (TOC), Inc. v. Honeywell, Inc.*, 966 F. Supp. 1401, 2409 (D.S.C. 1996). "It has long been a paradigm of South Carolina law that when a contract signed by one party only is accepted by the other party, it becomes binding upon both just as if it were signed by both." *Jaffe*, 290 S.C. at 473, 351 S.E.2d at 346; *see id.* ("A contract does not always require the signature of both parties; it may be sufficient, if signed by one and accepted and acted on by the other."); *see also Bulwinkle*, 27 S.C. 376.

Certainly, the Facility assented to the terms of the Arbitration Agreement, as evidenced by its drafting and presenting the same to Ms. Royston (with the Facility's and her name written in the appropriate blanks) for her consideration, whereupon Ms. Royston manifested her agreement by signing the Arbitration Agreement as presented to her. Without question, there was a "meeting of the

minds," with each party manifesting assent and intent to form this particular contract. Again, Ms. Royston signed the Arbitration Agreement and thus is "presumed to have read, understood, and assented to its terms." *Gibson*, 426 S.C. at 352, 827 S.E.2d at 181. And, respectfully, to conclude that assent to the Arbitration Agreement is in any way lacking on the part of the Facility, the party who drafted and presented the Arbitration Agreement to Ms. Royston—and who expressly filed its answer "*subject to and without waiving its rights to compel this matter to arbitration*,"[23] even before Plaintiff's counsel produced the Arbitration Agreement, and promptly moved to compel arbitration thereunder once they did—is absurd.

B. The circuit court erred in finding the Arbitration Agreement is not a valid and enforceable agreement because "[t]he parties on the Arbitration Agreement are not those parties specifically listed in this lawsuit."

Most respectfully, this part of the circuit court's order (or at least the majority of it) does not make sense. All but the final paragraph is devoted to addressing (though not in fact refuting) an argument that was not actually raised, specifically, the argument that the Arbitration Agreement is enforceable not just by the Facility, but by the Other Appellants, too. According to the circuit court, "these same Defendants" made this argument some years ago in another case. (R. p. 6.) The court goes on to suggest that all Appellants might be able to compel

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[23] (R. p. 75 (emphasis in original).)

Plaintiff to arbitration and, in turn, Plaintiff might be able to enforce any award she obtains in arbitration against all Appellants. (R. pp. 6–7.)

First off, if anything, this part of the court's order would seem to support the *grant* of the Facility's motion to compel arbitration, not the denial of it—all it really seems to be saying is that arbitration should not just be between Plaintiff and the Facility but between Plaintiff and all Appellants. In any event, however, this part of the court's order is wholly misplaced and provides no reason to deny the motion to compel arbitration because, again, it is wholly dedicated to addressing a non-existent argument. Only the *Facility*, not all Appellants, moved to compel arbitration here. (*See* R. pp. 225–234.)

The only other analysis in this part of the court's order reads as follows:

> It is also worth noting that at the beginning of the Arbitration Agreement in question where the parties are identified the Facility has listed itself as "Magnolia Place *of* Greenville." (Emphasis added). In actuality the Facility's correct title would be Magnolia Place – Greenville which is the name THI of South Carolina at Magnolia Place at Greenville, LLC is doing business as. It is up to the drafter of the Arbitration Agreement to be able to sufficiently and correctly identify themselves as a party of the Arbitration Agreement. Failure to do so must be construed against the drafting the party.

(R. p. 7 (emphasis in original).)

As an initial matter, it is not even clear whether the court is actually citing this as providing a basis to deny the Facility's motion to compel arbitration or

merely something "worth[y] of not[e]," but not itself dispositive; however, assuming the court intended this point to suffice as a basis to deny the Facility's motion to compel arbitration, most respectfully, it was mistaken.

As an arbitration agreement covered by the Federal Arbitration Act, 9 U.S.C. §§ 1–16 (the "FAA"),[24] the subject Arbitration Agreement "must [be] place[d] . . . on equal footing with other contracts . . . and enforce[d] . . . according to [its] terms[.]" *AT&T Mobility, L.L.C. v. Concepcion*, 563 U.S. 333, 339 (2011). The purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract. *Litchfield Co. of S.C., Inc. v. Kiriakides*, 290 S.C. 220, 223, 349 S.E.2d 344, 346 (Ct. App. 1986). Where one interpretation of a contract makes it unusual or extraordinary and another interpretation, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction prevails. *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 434 (1975). "An interpretation which establishes the more reasonable and probable agreement of the parties should be adopted while an interpretation leading to an absurd result should be avoided." *Koon v. Fares*, 379 S.C. 150, 155,

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[24] *See Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732–33 (2014) (finding the FAA applied to arbitration agreement signed in conjunction with admission to skilled nursing facility because "the terms of the residency agreement implicate interstate commerce and, thus, the FAA").

666 S.E.2d 230, 233 (2008). For a contract to be ambiguous, "the terms of the contract [must be] *reasonably* susceptible of more than one interpretation." *See S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001) (emphasis added); *see also Rodarte v. Univ. of S.C.*, 419 S.C. 592, 604, 799 S.E.2d 912, 918 (2017) ("[A]n unambiguous contract is by definition capable of only one *reasonable* interpretation.") (citation omitted) (emphasis added).

The discrepancy at issue here ("Magnolia Place of Greenville" versus "Magnolia Place – Greenville") does render the Arbitration Agreement *reasonably* susceptible of more than one interpretation. Indeed, given the exceedingly small variance in the names and the seeming lack of any reasonable cause for confusion between them, even to argue that the Arbitration Agreement is susceptible of more than one interpretation would seem at odds with the covenant of good faith and fair dealing. *See Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 86 (1995) (regarding the implied covenant of good faith and fair dealing binding on all contracting parties). In any event, though, "[a] contract is good between the parties, no matter how incorrect the names used in the paper may be, if it appears they were intended as the names of the parties to be bound by the contract or to receive its benefits." *Cobb & Seal Shoe Store v. Aetna Ins. Co.*, 78 S.C. 388, 58 S.E. 1099 (1907). Without question, the names of the parties to be bound to the

contract at issue, i.e., the Arbitration Agreement, were sufficiently stated here, and refusal to enforce the Arbitration Agreement cannot properly be based on the discrepancy at issue.

II. Assuming, *arguendo*, out of an abundance of caution, that it (i.e., the following point about the circuit court's order denying the Facility's motion to compel arbitration) poses a threat of undue prejudice to Appellants (e.g., in case it could somehow be construed as binding or otherwise material going forward), the court erred by including in its order extraneous language relating to disputed matters of fact that were not before it for decision and, in any event, it could not properly decide, and regardless of whether the denial of the Facility's motion compel arbitration is reversed on appeal, this aspect of the circuit court's order should be reversed or otherwise rendered immaterial going forward.[25]

A. The circuit court unduly recites as fact Plaintiff's contention (which is denied and disputed) that the Facility "is owned and operated by" HVH.

Even though this language is merely contained in the "Factual Background" section of the circuit court's order and does not even purport to be a *finding* of fact, the Appellants deny that the Facility "is owned and operated" by HVH (along with the allegations of "corporate negligence" Plaintiff makes against the so-called

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[25] To be clear, Appellants raise this issue/make this argument out of an abundance of caution, believing in the first instance that such extraneous language is of no legally binding or other material effect. *Cf. Watson v. Underwood*, 407 S.C. 443, 457, 756 S.E.2d 155, 162 (2014) ("The denial of a motion for summary judgment is not appealable because it does not finally determine anything about the merits or strike a defense."); *id.*, 756 S.E.2d at 163 ("However, when denying Watson's motion for summary judgment, the circuit court made conclusions of law. Because the denial of a motion for summary judgment cannot be appealed, we cannot consider this issue. We note that Watson is not bound by the circuit court's conclusions of law on this issue and can raise the issue again at trial).

"Corporate Defendants," i.e., the Other Appellants[26]), and any question of HVH's relationship to the Facility was not before the circuit court; nor would it have been proper for circuit court to have ruled on such a genuine issue of material fact;[27] nor, for that matter, putting aside the procedural impropriety of the circuit court making such a ruling, was there any evidence presented from which it could have been reasonably concluded that the Facility "is owned and operated" by HVH. Out of an abundance of caution, in the interest of avoiding any potential for undue meaning to be ascribed to this language in the future (whether in this case or in any other litigation involving these Defendants, or any of them), and given that the language was wholly unnecessary to the circuit court's decision on the matter actually before it (the Facility's motion to compel arbitration), regardless of whether the denial of the Facility's motion is reversed on appeal, this part of the

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[26] (*See, e.g.,* R. p. 400 (explaining that Plaintiff's wrongful death and survival claims "involve allegations of corporate negligence and nursing home neglect," the former being predicated on Plaintiff's allegations "that while the Corporate Defendants did not provide direct care or services to [Ms. Royston] . . . their control over the Facility directly affected the quality of care received by [Ms. Royston]."); *see also* Compl.; Defs.' Answers.)

[27] *See* Rule 56(c), SCRCP (Summary judgment is only appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law.); *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994) (In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.); *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) ("[I]n cases applying the preponderance of the evidence burden of

circuit court's order should be reversed or otherwise rendered immaterial going forward.

B. The circuit court improperly states, "All Defendants are related entities of the [Facility] and have a significant relationship in the ownership, operation, and management of the [Facility], and derive significant economic benefit from its revenue."

Here again, the circuit court's order states what is in fact a disputed contention (i.e., Plaintiff's contention[28]) about the relationship between the Facility and the so-called "Corporate Defendants" (the Other Appellants) as if it were not in dispute, or had already been adjudicated. Obviously, Appellants very much dispute this contention, and it could not possibly have been properly adjudicated by the circuit court because the matter was neither (a) presented to it for decision nor (b) capable of being decided by the Court as a matter of law. *See Worsley Cos., Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 528 S.E.2d 657 (2000) ("If triable issues exist, those issues must go to the jury."); *see also Am. Fed. Bank, FSB v. No. One Main Joint Venture*, 321 S.C. 169, 173–74, 467 S.E.2d 439, 442 (1996)

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proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.").

[28] As the order itself states, "Plaintiff's *claims* against Defendants are based on a *theory* of unified operation and control. Each is *alleged* to have participated in exactly the same wrongful conduct. . . . Plaintiff *alleges* each Corporate Defendant is a parent entity, agent or employee of the Facility that share a congruent interest. Plaintiff thus presumptively would be able to enforce any judgment from the proceeding against the Corporate Defendant and, in turn, each can rely on the principles of agency law and the broad scope of the FAA to compel and participate in the Arbitration Agreement." (R. p. 6 (emphasis added).)

("Whether an agency relationship exists is a question of fact.")[29] Out of an abundance of caution, in the interest of avoiding any potential for undue meaning to be ascribed to this language in the future (whether in this case or in any other litigation involving these Defendants, or any of them), and given that the language was wholly unnecessary to the circuit court's decision on the matter actually before it (the Facility's motion to compel arbitration), regardless of whether the denial of the Facility's motion is reversed on appeal, this part of the circuit court's order should be reversed or otherwise rendered immaterial going forward.

CONCLUSION

For the foregoing reasons, Appellants ask this Honorable Court to reverse the circuit court and compel Plaintiff's claims against the Facility to arbitration (or, alternatively, to remand the case to the circuit court with instructions that it do so) and to stay this action as to the Other Appellants (or, alternatively, remand the case to the circuit court with instructions that it either do so or conduct any further proceedings necessary to decide the Motions to Stay on the merits), and, assuming,

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[29] To be clear, Plaintiff did not move for summary judgment on this (or any other) issue. Nor did Plaintiff otherwise attempt to argue, much less actually show, "that there is no genuine issue as to any material fact [on this point] and that [she] was entitled to judgment as a matter of law," as is required under Rule 56(c) & (e), SCRCP, to even put the burden on the Facility to show the existence of a genuine issue for trial on this point. (*See* R. pp. 156–91, pp. 399–431.) Nor, for that matter, putting aside the procedural impropriety of the circuit court making such a ruling, was any evidence presented from which it could have reasonably arrived at such a conclusion.

arguendo, out of an abundance of caution, that a threat of undue prejudice to Appellants is posed by the extraneous language in the circuit court's order denying the Facility's motion to compel arbitration, regardless of whether the denial of the Facility's motion is reversed on appeal, to reverse the circuit court in respect of this language or otherwise render such language immaterial going forward.

Respectfully submitted,
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Dated: 9/3/20

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Robin B. Stilwell, Circuit Court Judge

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APPELLANTS' CERTIFICATION FOR FINAL BRIEF

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Attorneys for Appellants

I, Russell G. Hines, do hereby certify that the Final Brief of Appellants complies with Rule 211(b), SCACR. Additionally, the undersigned hereby certifies that this filing complies with the Supreme Court order of April 15, 2014.

Respectfully submitted,
YOUNG CLEMENT RIVERS, LLP

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