THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Oconee County
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2018-CP-37-00271
Supreme Court Case No. 2022-000100

Stephanie Underwood,
as Personal Representative of the Estate of Betty Herrington, Petitioner,

v.

SSC Seneca Operating Company, LLC,
d/b/a Seneca Health & Rehabilitation Center;
SavaSeniorCare, LLC; SSC Equity Holdings, LLC;
SavaSeniorCare Administrative Services, LLC;
SavaSeniorCare Consulting Services, LLC, Defendants,

Of which SSC Seneca Operating Company, LLC,
d/b/a Seneca Health & Rehabilitation Center;
SavaSeniorCare Administrative Services, LLC; and
SavaSeniorCare Consulting Services, LLC, are the Respondents.

BRIEF OF RESPONDENTS

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INTRODUCTION

In this nursing home malpractice action, Petitioner[1] asks the Court to reverse the Court of Appeals' decision to reverse the circuit court's denial of Respondents'[2] motions to compel Petitioner's claims against them to arbitration. Seizing upon certain language in the Arbitration Agreement[3]—more precisely, a portion of the language in the definition of the term "dispute," specifically, the portion that refers to "any claim or dispute totaling $50,000.00 individually or in the aggregate . . ."[4]—the circuit court determined that the Arbitration Agreement "only applies to claims or disputes of *exactly* $50,000.00"[5] and thus "does not apply to the present case as [Petitioner] is not claiming *exactly* $50,000.00 in damages." (R. p. 9 (emphasis added).) The Court of Appeals rightfully agreed with Respondents that the circuit court's interpretation of the Arbitration Agreement was erroneous, and this Court should affirm the Court of Appeals.

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[1] "Petitioner" is Plaintiff/Petitioner, Stephanie Underwood, as Personal Representative of the Estate of Betty Herrington. "Ms. Herrington" refers to the decedent herself, during her lifetime.

[2] "Respondents" are Defendants/Respondents SSC Seneca Operating Company, LLC, d/b/a Seneca Health & Rehabilitation Center (the "Facility"); SavaSeniorCare Administrative Services, LLC; and SavaSeniorCare Consulting, LLC, misidentified as "SavaSeniorCare Consulting Services, LLC".

[3] The "Arbitration Agreement" refers to the arbitration-related provisions of a document entitled Dispute Resolution Program (the "DRP"), which provides for various steps of alternative dispute resolution, culminating in binding arbitration. (R. pp. 84–92.)

[4] (R. pp. 7–11 (original emphasis omitted).)

[5] (R. p. 8 (emphasis added).)

QUESTION PRESENTED

I. Where the circuit court denied Respondents' motions to compel arbitration on the basis that the Arbitration Agreement only applies to claims for exactly $50,000—and therefore does not apply to the claims at issue, as they are not for exactly $50,000—did the Court of Appeals err in finding the circuit court's interpretation of the Arbitration Agreement erroneous and reversing its denial of the motions?

STATEMENT OF THE CASE

The Facility is a skilled nursing facility in Oconee County. (*See* R. pp. 19 at ¶ 2, 20 at ¶ 4, 22 at ¶ 12.) Ms. Herrington was admitted as a resident of the Facility on February 27, 2016,[6] and in conjunction with her admission, she agreed to the DRP and the Arbitration Agreement therein. (*See generally* R. pp. 84–92.)[7]

Alleging Respondents are liable to her for damages because of deficient care/treatment she received during her residency at the Facility, Ms. Herrington commenced this action on April 25, 2018, in the Oconee County Court of Common Pleas. (*See generally* R. pp. 19–41.)

Citing the Arbitration Agreement, Respondents moved to compel Ms. Herrington's claims to arbitration. (*See generally* R. pp. 80–108.)

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[6] (R. p. 24 at ¶ 23.)

[7] All Respondents are covered by the Arbitration Agreement. Besides, of course, Ms. Herrington herself, the "parties" to the DRP include, among others, "the facility, any parent or subsidiary of the facility, any company affiliated with the facility, or any of the facility's officers, directors, managers, employees, or agents acting in such capacity or any other person that may have a cause of action arising out of or relating in any way to the resident's stay at the facility." (R. p. 86.)

Respondents made various submissions in favor of their motions,[8] and Ms. Herrington likewise opposed them. (*See generally* R. pp. 109–157, 239–241, 251–259.) The circuit court heard the motions on September 10, 2018, the Honorable Scott Sprouse presiding,[9] and thereafter denied them by order filed October 11, 2018. (*See generally* R. pp. 7–11.)

The entirety of the circuit court's analysis is brief enough to recite here in full:

> As a threshold issue, the court must determine whether the DRP is a binding contract that applies to the present case. "General contract principles of state law apply to arbitration clauses governed by the FAA." Munoz v. Green Tree Fin. Com., 542 S.E.2d 360, 364 (S.C. 2001).
>
> The DRP applies to disputes and defines a dispute as "any claim or dispute *totaling $50.000.00 individually or in the aggregate* that would constitute a cause of action that either party could bring in a court of law[.]" (DRP, pgs. 2-3) (*emphasis added*). Claims for less than $50,000.00 are excluded from the definition of a dispute. (DRP, pgs. 2-3). Claims for greater than $50,000.00 are not included within the definition of a "Dispute." Therefore, by its own unambiguous terms, the DRP only applies to claims or disputes of exactly $50,000.00. At the hearing, [Appellants] argued that the DRP was intended by the parties to apply to claims equal to or greater than $50,000.00. However, to interpret the DRP to apply to claims exceeding $50,000.00, the Court would have to add language to the DRP that is not present. "When the language of a contract is plain and capable of

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8 (*See generally* R. pp. 158–180, 191–238, 260–262, 269–277.)

9 (*See generally* R. pp. 42–75.)

> legal construction, that language alone determines the instrument's force and effect. The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." Ellis v. Taylor, 449 S.E.2d 487, 488 (S.C. 1994) (internal citations omitted). "The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed." Pee Dee Stores. Inc. v. Doyle, 672 S.E.2d 799, 802 (S.C. App. 2009). By its plain and unambiguous language, the DRP only applies to claims for exactly $50,000.00. The DRP does not apply to the present case as [Ms. Herrington] is not claiming exactly $50,000.00 in damages. [Appellants] are sophisticated entities who drafted the DRP and presented it to [Ms. Herrington], and they are bound by the unambiguous language of the contract that they drafted. The Court cannot read words into the DRP to impart a meaning that was not expressed in the contract when executed. Because the DRP does not apply to the present case by its express terms, the Court does not need to address [Ms. Herrington's] other arguments as to whether or not the DRP is a valid and binding contract.

(R. pp. 8–9 (emphasis in original).)

Pursuant to Rule 59(e), SCRCP, Respondents timely moved the circuit court to reconsider, alter, and/or amend its denial of their motions to compel arbitration. (*See generally* R. pp. 242–250.) The circuit court denied those motions by orders filed October 26, 2018. (*See generally* R. pp. 12–17.)

Respondents timely appealed via notice served November 21, 2018. (R. pp. 279–283.)

By opinion filed October 6, 2021, the Court of Appeals found that the premise on which the circuit court had denied Respondents' motions to compel arbitration was erroneous and, therefore, reversed the circuit court and remanded the case for the circuit court to consider the remaining arguments opposing arbitration. (App. pp. 334–339.)[10] The Court of Appeals thereafter denied rehearing by order filed January 11, 2022. (App. pp. 340–352.)

On September 8, 2022, this Court granted a writ of certiorari to review the decision of the Court of Appeals.[11]

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). While it is true that factual findings made by the circuit court in determining whether a claim is subject to arbitration will not be reversed unless there is no evidence that reasonably supports them,[12] the circuit court made no factual findings here, but rather concluded as a matter of law that the claims at

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[10] Besides her argument about the Arbitration Agreement only applying to claims for exactly $50,000—which was the sole basis on which the circuit court denied Respondents' motions to compel arbitration—Ms. Herrington made other arguments in opposition to arbitration that the circuit court did not address.

[11] Ms. Herrington passed away during the pendency of these proceedings, and by order filed March 16, 2022, this Court granted a motion to substitute Stephanie Underwood, as Personal Representative of the Estate of Betty Herrington, in place of Ms. Herrington and amended the case caption accordingly.

[12] *Wilson v. Willis*, 426 S.C. 326, 334, 827 S.E.2d 167, 172 (2019).

issue were not subject to arbitration according to what it regarded as the plain and unambiguous language of the Arbitration Agreement. *See S.C. Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–303 (2001) (providing that the construction of a clear and unambiguous contract is a question of law for the court, as is the question of whether a contract's language is ambiguous). And issues of law are reviewed without any particular deference to the circuit court. *See, e.g., Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 782 S.E.2d 590 (2016). Even where a ruling is on a matter within circuit court's discretion, if the ruling is based on a misunderstanding of the law, rather than upon the exercise of discretion, the question presented on appeal is one of law. *See Bain v. Self Mem'l Hosp.*, 281 S.C. 138, 152, 314 S.E.2d 603, 611 (Ct. App. 1984).

ARGUMENT

I. Where the circuit court denied Respondents' motions to compel arbitration on the basis that the Arbitration Agreement only applies to claims for exactly $50,000—and therefore does not apply to the claims at issue, as they are not for exactly $50,000—the Court of Appeals correctly found the circuit court's interpretation of the Arbitration Agreement erroneous and reversed its denial of the motions.

The circuit court's denial of Respondents' motions to compel arbitration rested on a single ground: that, in its view, the Arbitration Agreement only calls for arbitration of claims for *exactly* $50,000—to the penny—and since the claims at

issue are not for that exact amount, they are outside the scope of the Arbitration Agreement. The Court of Appeals correctly found this to be erroneous.

Arbitration is a matter of contract law and general contract principles of state law apply to a court's evaluation of the enforceability of an arbitration clause. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007) (citations omitted). To determine whether an arbitration clause applies to a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the arbitration clause,[13] and, indeed, in doing so, the court should bear in mind that "[t]he *heavy* presumption in *favor* of arbitrability *requires* that when the scope of the arbitration clause is open to question, *[it] must decide the question in favor of arbitration*." *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 7, 791 S.E.2d 128, 131 (2016) (emphasis added);[14] *see also Green Tree Fin. Corp.- Ala. v. Randolph*, 531 U.S. 79, 91 (2000) (It is "the party resisting arbitration [who] bears the burden of proving that the claims at issue are unsuitable for arbitration.").

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[13] *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001).

[14] To be clear, however, while it certainly bolsters their position, Respondents success in this matter is not dependent on any presumption in favor of arbitration. In other words, even in the absence of such a presumption, Respondents' position is nonetheless meritorious based on the other principles analyzed herein.

Respondents do not take issue with the circuit court's determination that the Arbitration Agreement is unambiguous. Indeed, a contract is unambiguous where it is—like the Arbitration Agreement here—only susceptible to one *reasonable* interpretation. *See, e.g., Town of McClellanville*, 345 S.C. at 623, 550 S.E.2d at 302 ("We agree with the Court of Appeals the covenant is unambiguous; however, we think the 'only *reasonable* interpretation of the deed,' would not prohibit the town from charging a permit fee. A contract is ambiguous when the terms of the contract are *reasonably* susceptible of more than one interpretation.") (emphasis added). The problem with the circuit court's decision is that it is based on an interpretation of the Arbitration Agreement that is patently *unreasonable*—and indeed absurd. As the Court of Appeals correctly recognized, Respondents' contention is that "the agreement as a whole is capable of only one reasonable interpretation—that the parties agreed to arbitrate any claim or dispute totaling $50,000 *or more*." (App. p. 337 (emphasis in original).)

The circuit court's decision hinges on part of the language in the Arbitration Agreement's definition of the term "dispute." In full, that definition reads as follows:

> "**Dispute**" means (a) any claim or dispute totaling $50,000.00 individually or in the aggregate that would constitute a cause of action that either party could bring in a court of law (b) this agreement does not prevent either party from initiating a grievance proceeding,

> complaint to survey agencies, appeal proceedings with the appropriate state or federal entity regarding an involuntary transfer or discharge, or any such claim or dispute involving solely a monetary claim in an amount less than $50,000.00. Any such claim shall not be deemed a dispute under this agreement.

(R. pp. 86–87)

The circuit court took a single phrase in the Arbitration Agreement's definition of "disputes" out of context—not only out of its immediate surrounding context in the Arbitration Agreement but out of the context of the Arbitration Agreement altogether—and, viewing that phrase in isolation, declared the Arbitration Agreement's scope to be plainly and unambiguously stated in a way that effectively nullifies its very purpose.

It is well settled that a contract is to be read as a whole document so that "one may not, by pointing out a single sentence or clause, create an ambiguity." *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976). In fact, "[t]he meaning of a particular word or phrase is not determined by considering the word or phrase by itself, but by reading the [contract] as a whole and considering the context and subject matter of the . . . contract." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) (citing *Yarborough*, 266 S.C. at 592). Indeed, again, as noted above, "an unambiguous contract is by definition capable of only one *reasonable* interpretation." *Rodarte v.*

Univ. of South Carolina, 419 S.C. 592, 604, 799 S.E.2d 912, 918 (2017) (citation omitted) (emphasis added).

Although the definition of "dispute" does indeed contain the phrase "(a) any claim or dispute totaling $50,000.00 individually or in the aggregate that would constitute a cause of action that either party could bring in a court of law," importantly, it goes on to state,

> (b) this agreement does not prevent either party from initiating a grievance proceeding, complaint to survey agencies, appeal proceedings with the appropriate state or federal entity regarding an involuntary transfer or discharge, or any such claim or dispute involving solely a monetary claim *in an amount less than $50,000.00. Any such claim shall not be deemed a dispute under this agreement.*

(R. pp. 86–87 (emphasis added).)

Accordingly, the remainder of the definition of "dispute" makes it clear that $50,000.00 is a threshold monetary value where the provisions for alternative dispute resolution, inclusive of arbitration, are triggered, as subpart (b) of "disputes" states that claims or disputes for "less than $50,000.00 . . . shall not be deemed a dispute under this agreement." The only reasonable interpretation of the Arbitration Agreement, when the plain language of the *entire* contract is properly and objectively considered, is that claims or disputes for $50,000.00 *or more* are subject to arbitration.

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); *see also Goldston v. State Farm Mut. Auto. Ins. Co.*, 358 S.C. 157, 170, 594 S.E.2d 511, 518 (Ct. App. 2004) ("The primary purpose of all rules of contract construction is to determine the intent of the parties."). 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, 666 S.E.2d 230, 233 (2008).

Under Petitioner's view, the circuit court properly applied the rules of contract construction to find that, on the one hand, the parties did intend to agree to arbitration but that, on the other hand, they only intended to agree to arbitrate claims for *exactly* $50,000.00. Such a construction of the Arbitration Agreement is patently unreasonable—and indeed absurd and anathema to the very purpose of the rules of contract construction. Essentially, Petitioner invites this Court to accept a

supposed plain-language construction of the Arbitration Agreement even though it is plainly nonsensical. The Court of Appeals correctly declined her invitation. (App. p. 339 ("[W]e cannot adopt a construction that pits the agreement against itself and results in a dispute resolution scheme that is essentially void of any practical effect.").)

Moreover, the Arbitration Agreement must be interpreted broadly, with any doubts concerning scope of arbitrable issues resolved in favor of arbitration. *Parsons*, 418 S.C. at 7, 791 S.E.2d at 131 ("The *heavy* presumption in *favor* of arbitrability *requires* that when the scope of the arbitration clause is open to question, *a court must decide the question in favor of arbitration*."). Here, the Arbitration Agreement is only susceptible of one reasonable interpretation—that the claims at issue are within its scope—but even assuming, *arguendo*, there was some uncertainty in this regard, the circuit court still should have broken that tie in favor of arbitration.[15]

[15] As noted above, this presumption in favor of arbitration bolsters Respondents' position but is not essential to it, and Respondents should prevail even if the presumption is completely ignored. That said, Respondents would nonetheless make clear their position that the presumption should not be ignored, but rather should be applied in their favor. In this regard, Respondents recognize the language in this Court's decision in *Palmetto Construction Group, LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 856 S.E.2d 150 (2021), that "statements [in our appellate jurisprudence] that the law 'favors' arbitration mean simply that courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions" and that "[t]here is . . . no public policy—federal or state–'favoring' arbitration." *Id.* at 636, 639, 856 S.E.2d at 152,

CONCLUSION

For the foregoing reasons, as well as the reasoning set forth in the Court of Appeals' opinion, which Respondents' adopt and incorporate herein by reference, Respondents ask this Honorable Court to affirm the Court of Appeals' decision.

<SIGNED ON THE FOLLOWING PAGE>

153. This general language, however, does not address, and therefore leaves intact as good law, the Court's express and specific instructions in *Zabinski* that "[a]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration;" that, "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;" and that "[a] motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute." *Id.* at 597, 553 S.E2d at 118–19.

Respectfully submitted,

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