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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Diane S. Goodstein., Circuit Court Judge

Civil Action No.: 2012-CP-21-01149
Appellate Case No.: 2022-001500

Pee Dee Healthcare, P.A.....Respondent,
v.

Lower Florence County Hospital District d/b/a
Lake City Community Hospital.....Appellant.
.

MOTION TO DISMISS APPEAL

AND

RETURN TO MOTION TO DETERMINE APPEALABILITY

Respondent Pee Dee Healthcare, P.A. ("PDHC"), by and through undersigned counsel, hereby moves this Court to dismiss the Appeal of Appellant Lower Florence County Hospital District d/b/a Lake City Community Hospital ("LCCH') from an order granting PDHC's Motion to Compel Arbitration and submits this Return to LCCH's motion to determinate appealability. This appeal must be dismissed on the following grounds: (1) an order granting a motion to compel arbitration, and staying the pending civil action, is not immediately appealable; (2) LCCH will have an opportunity to appeal the order compelling arbitration after the conclusion of the

arbitration proceeding and after the stay has been lifted; and (3) Judge Goodstein correctly ruled that the arbitration agreements are enforceable.

ARGUMENT

I. An order compelling arbitration is not immediately appealable.

The South Carolina Supreme Court has long held that an order compelling arbitration is not immediately appealable, a fact which LCCH also recognizes in its appeal. *See Heffner v. Destiny, Inc.*, 321 S.C. 536, 471 S.E.2d 135 (1995) (holding orders pertaining to arbitration that are not expressly mentioned in Section 15-48-200(a) are not immediately appealable); *Carolina Care Plan, Inc. v. United HealthCare Servies, Inc.*, 361 S.C. 544, 558, 606 S.E.2d 752, (2004) ("Section 15-48-200 does not expressly permit an appeal from an order granting an application to compel arbitration or from an order to stay claims pending arbitration."). The Court has further held that the Federal Arbitration Act (FAA) does not preempt South Carolina procedural law regarding the appealability of arbitration orders. *Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co., Inc.*, 355 S.C. 605, 611, 586 S.E.2d 581, 584-585 (2003) ("While the FAA will preempt any state law that completely invalidates the parties' agreement to arbitration. . . in the instant case South Carolina law is not invalidating the arbitration agreement or undermining the goals and policies of the FAA."). Therefore, an arbitration agreement governed by the FAA is still subject to Section 15-48-200.

Here, the circuit court issued an order compelling arbitration and staying the proceeding – an order that is undoubtedly unappealable. *See Widener v. Fort Mill Ford*, 381 S.C. 522, 674 S.E.2d 172 (2009) (distinguishing orders compelling arbitration and staying the proceeding from orders dismissing the action and ordering arbitration, the latter of which the Supreme Court held was immediately appealable, since "the [lower] court finally determined the rights of the parties").

Although LCCH has acknowledged that an order compelling arbitration is not appealable, LCCH has asked this Court to hear the appeal because the issues raised are capable of repetition and need to be addressed. However, the issues LCCH raises are not issues that would evade review, since LCCH can appeal Judge Goodstein's ruling compelling arbitration once the arbitrator enters an award. Therefore, this Court must dismiss LCCH's appeal.

II. The circuit court properly compelled arbitration because the arbitration agreements between the parties are valid and enforceable.

A. The validity of the contracts at issue in this case has already been resolved by the circuit court and, therefore, is the "law of the case."

LCCH argues that the court erred in compelling arbitration because there are no agreements or contracts between the parties. Specifically, LCCH argues that the Clinical Operations Agreements dated March 26, 2007, and April 1, 2007, and the Provision of Medical Billing and Collection Services Agreement dated January 31, 2007, all violate S.C. Code Ann. 4-2-82 and, therefore, are invalid. LCCH further argues that the individuals who executed those agreements on behalf of LCCH did not have the corporate authority to do so, with one signature being a forgery. According to LCCH, because there are no valid contracts between the parties, there are no arbitration agreements to which LCCH is bound. Contrary to what LCCH is alleging, the validity of the contracts at issue in this case has already been resolved in a prior court order and is, therefore, the law of the case.

Under the law of the case doctrine, a party is precluded from re-litigating issues decided in a lower court order, when the party voluntarily abandons its appeal of that order. *Judy v. Martin,* 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (holding that Appellant may not seek relief from a prior unappealed order of the circuit court because the ruling has become the law of the case); *In re Morrison,* 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (noting an unappealed ruling becomes

the law of the case and precludes further consideration of the issue on appeal); *Watkins v. Hodge,* 232 S.C. 245, 247-48, 101 S.E.2d 657, 658 (1958) (refusing to consider jurisdictional matter of underlying case where issue had been ruled upon and not challenged on appeal).

In a prior Motion for Summary Judgment against PDHC, LCCH argued that under S.C. Code Ann. 4-2-82, LCCH's Board of Directors had no authority to enter into Lease Purchase Agreements (LPAs) with PDHC (and related entities) without a special referendum of voters residing within the hospital district. Because the requisite referendum did not take place before LCCH entered into the agreements, LCCH argued that the agreements were *void ab initio*.

On December 3, 2014, Judge George C. James issued an Order granting partial summary judgment to LCCH. The Order was not appealed by any party. In that Order, Judge James distinguished the authority of the hospital district's Board to enter into agreements to sell or transfer the hospital's assets from agreements to operate or run the hospital facilities. The Court ruled that agreements to sell or transfer LCCH's assets required a referendum as set forth in Section 4-2-82. Since the agreements did not comply with the referendum requirement, Judge James declared the agreements *void ab initio*. However, Judge James declared that agreements providing for the operation of LCCH's facilities needed no such referendum because the Board was permitted to "employ such personnel as it may deem necessary for the efficient operation of his hospital." Judge James stated:

> Despite the Plaintiffs arguments to the contrary in its memorandum, and follow-up letter of February 26, 2014, the referendum is required only when there is to be a transfer of assets and properties. The Court recognizes that Section 4-9-82(A) provides that the District is authorized to transfer assets and properties "upon the assumption by the transferee of the district for delivery of medical

> services but the transfer of responsibilities is not subject to the referendum requirement. . .[1]

Exhibit 1, December 3, 2014, Order at page 6.

Although the Order granting partial summary judgment to LCCH was appealable, LCCH failed to appeal the ruling.[2] *See Thornton v. South Carolina Elec. & Gas Corp.*, 391 S.C. 297 (Ct. App. 2011) ("[O]rders granting partial summary judgment may be immediately appealable under either the 'involving the merits' or 'substantial right' categories of Section 14–3–330(1) and (2)(c)); and *Link v. Sch. Dist. of Pickens County,* 302 S.C. 1, 6, 393 S.E.2d 176, 178–79 (1990) (holding an order granting partial summary judgment may be appealable under either category).

In the December 15, 2021, Order granting PDHC's Motion to Compel Arbitration and denying LCCH's Motion to Dismiss, Judge Diane Goodstein noted Judge James' December 3, 2014, ruling on the issue of the contracts' validity and recognized that the issue "has already been resolved by this Court." (Goodstein December 15, 2021, Order at page 4). Judge Goodstein stated:

> 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. Defendant's motion to dismiss under 12(b)(6) is unfounded and has already been resolved by this Court.
>
> 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 authority of the Board to employ such personnel as it may deem necessary for the efficient operation of its hospital.

Exhibit 2 December 15, 2021, Order at pages 4-5.

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[1] Judge James noted on pages 2 and 4 of his Order, (Exhibit 1), that the District a/k/a Lake City Community Hospital also entered into Clinical Operations Agreements with PDHC.

[2] LCCH also failed to file a Motion to Reconsider Judge James' December 3, 2014, Order granting partial summary judgement.

Judge Goodstein continued:

> 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.
>
> [I]n accordance with Judge James' December 3, 2014, Order, the Court concludes the Clinical Operations Agreements and Billing and Collections Services Agreements required no referendum and were not violative of Section 4-9-82. . . .
>
> Exhibit 2,December 15, 2021, Order at page 5.

After reviewing the affidavits that LCCH presented as evidence supporting its argument that the individuals who signed the contracts on LCCH's behalf, Clarence W. Bowman and Joseph Landrum, had no corporate authority to execute such agreements, Judge Goodstein concluded that Bowen and Landrum represented and warranted that the agreements signed had been approved by the Board of Directors. (Goodstein December 15, 2021, Order at page 5). Judge Goodstein explained:

> 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:
> a. The execution, delivery and performance of this Agreement (a) has been approved by the governing body of each party.
>
> *Id.* at pages 5-6.

Judge Goodstein concluded:

> 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 Defendant's 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.
>
> *Id.*

This Court has continuously held that "[a] circuit court's factual findings on the issue of arbitrability will not be reversed on appeal if any evidence reasonably supports the court's findings." *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 625, 667 S.E.2d 1, 3 (Ct.App.2008) (citing *Thornton v. Trident Med. Ctr., L.L.C.,* 357 S.C. 91, 94, 592 S.E.2d 50, 51 (Ct.App.2003). Although LCCH has attempted to present additional evidence in its efforts to re-litigate the contracts' validity, the circuit court's findings regarding this additional evidence must stand.

B. LCCH's challenge to the validity of the contracts is not relevant in determining whether the arbitration provisions within the contracts are enforceable.

The basis for LCCH's argument that the Court incorrectly applied these cases is LCCH's belief that the contracts at issue in this case are not valid, therefore, the arbitration provisions within the contracts are not valid. The problem with LCCH's argument is that LCCH is attempting to re-litigate the issue of the contracts' validity, which it is barred from doing under the law of the case doctrine. As explained above, the circuit court concluded in a prior unappealed ruling that the contracts pertaining to the operations of LCCH facilities were valid agreements, which is now the law of the case. LCCH is attempting to avoid arbitration by re-litigating the validity of the contracts under the guise of challenging the arbitration clauses within the contracts.

Assuming that there is a question of whether the contracts at issue are valid, which they are, it is well established that arbitration clauses are separable from the contracts in which they are embedded. *Jackson Mills, Inc., v. BT Capital Corp.*, 312 S.C. 400, 403, 440 S.E.2d 877 (1994), citing *Prima Paint Corp. v. Flood & Conklin*, 388 U.S. 395 (1967). Citing *Jackson Mills* and *Prima Paint*, Judge Goodstein declared:

> 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.

Id. at page 10 (emphasis added).

Quoting this Court in *Damico v. Lennar Carolinas, LLC.*, 430 S.C. 188, 198, 844 S.E.2d 66, 71 (Ct.App.2020), Judge Goodstein explained:

> 'In deciding whether the parties have a valid agreement to arbitrate, we must therefore isolate the arbitration clause from the rest of the contract. . . .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**.'

Id. at page 11 (emphasis added).

LCCH cannot circumvent arbitration by attacking the validity of the contracts in their entirety. "An arbitration clause's validity is distinct from the substantive validity of the contract as a whole." *Cornerstone Hous.,* 356 S.C. 328, 338 (Ct.App.2003) (citing *Munoz v. Green Tree Fin. Corp.,* 343 S.C. 531, 538–39 (2001)). *See also New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. at 631 ("[P]recedent forces a distinction to be drawn between disputes in which a party challenges the arbitration agreement itself and disputes in which only the overall contract is challenged."), citing *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007).

Even though LCCH argues the entire contracts are unenforceable, the arbitration provision within the contracts are not *unenforceable*, 'unless the reason the overall contract is unenforceable specifically relates to the arbitration provision.' *Cornerstone Hous.*, 356 S.C at 340; *Rent-A-Center, W., Inc., v. Jackson*, 561 U.S. 63, 130 S.Ct. 2772 (2010) (stating that the validity of the agreement to arbitrate is relevant to a court's determination whether an arbitration agreement is enforceable). LCCH does not challenge the arbitration provisions, specifically. Rather, LCCH argues that the contracts are unenforceable as a whole, which LCCH is barred from doing since the law on that issue has previously been ruled on by the circuit court and was not appealed by LCCH. Judge Goodstein concluded that LCCH's "challenge to the agreements, taken as a whole, is not relevant to determining whether the arbitration provisions are enforceable." *Id.* at page 12. Judge Goodstein further found "the arbitration provisions in question to be valid and enforceable." *Id.*

Therefore, LCCH's meritless appeal of the Order compelling arbitration should be dismissed.

CONCLUSION

For the reasons argued above, this Court should dismiss LCCH's appeal with prejudice and affirm the circuit court's order compelling arbitration.

Respectfully submitted,

s/ James M. Griffin
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Exhibit 1

Order, December 3, 2014

CERTIFIED: A TRUE COPY
Connie Reel-Spears
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

Lower Florence County Hospital District d/b/a Lake City Community Hospital; Lower Florence County Hospital District d/b/a Lake City Community Hospital Board; Albert D. Mims, M.D.; Ernest M. Atkinson, M.D.; Benjamin Wade Lamb, M.D.; and David W. Moon, M.D.

Plaintiffs,

v.

Mid-Carolina Hospital Group, LLC; Tony R. Megna; and Benjamin R. Matthews,

Defendants.

Case No.: 08-CP-21-0706

FILED
2014 DEC -3 PM 1:11
CONNIE REEL-SPEARS
CCCP & GS
FLORENCE COUNTY, SC

ORDER

This matter is before the court upon motion of the plaintiff Lower Florence County Hospital District ("the District") for summary judgment and upon the District's motion for reimbursement of certain funds now being held by the court-appointed Trustee. The plaintiffs submitted a memorandum in support of its motion, the affidavit of David K. Alford, Director of the Florence County Election Commission, the affidavit of William P. Campbell, Jr., and the affidavit of Kristopher Crawford, M.D. The plaintiffs also submitted a supplemental memorandum in the form of a letter from counsel dated February 26, 2014. Mid-Carolina Hospital Group, LLC (hereinafter "MCHG"), Tony R. Megna (Megna), and Benjamin R. Matthews (Matthews) submitted a memorandum in opposition to the motion for summary judgment, together with the affidavit of Mr. Matthews, to which were attached eighteen exhibits. For the reasons set forth herein, the motion for summary judgment is granted in part and denied in part. The motion for reimbursement is granted as to the defendants named in this action.

MOTION FOR SUMMARY JUDGMENT

A. Facts

All factual recitations set forth herein are taken in the light most favorable to the defendants. The plaintiffs allege and the defendants admit in their answer that the District is a hospital district created by the legislature in 1962 by Act No. 1095, which was subsequently amended in 2000 by Act No. 199. The District is governed by the Lake City Community Hospital Board (the Board). The District does business as Lake City Community Hospital. MCHG is a private, for profit entity formed under Title 33, Chapter 44 of the South Carolina Code of Laws.

The business relationship between the District and the defendants began in 2007. The District entered into an agreement with Pee Dee Health Care, P.A. (PDHC) on February 1, 2007. PDHC is an entity in which Matthews and Megna are principals. Under the agreement, the District purchased from PDHC a facility known as the Olanta Rural Health Center. Under a Clinical Operations Agreement signed January 31, 2007, the District undertook to operate the Olanta RHC. The District leased the land upon which the Olanta RHC sits from HTR Management, LLC, of which Mr. Megna was a member/manager. PDHC also operated the Darlington Rural Health Clinic and wanted the District to operate that clinic as well, but the District's attorney, E. Leroy Nettles, Sr., opined that the District could not operate a facility outside its geographical boundaries. In addition, according to the defendants, some Lake City physicians were interested in opening an RHC in Kingstree, also outside of the District's boundaries. In March 2007, District Board member Albert D. Mims, Jr., M.D., asked for a meeting with Matthews, Megna, and Buddy Watkins. Dr. Mims asked them to form a new entity to acquire the Lake City Community Hospital (Hospital) and operate all aspects of the Hospital

in partnership with several local doctors. On March 26, 2007, the District and MCHG entered into an "Agreement" and Bill of Sale (see Exhibits 7 and 8 to Matthews affidavit), pursuant to which MCHG purchased personal property, leased real property, and assumed liabilities of the District. As specified in the Bill of Sale, the personal property to be acquired consisted of leases, contracts, accounts, inventory, and supplies. The District and MCHG entered into a lease agreement for the real property, improvements, fixtures, and equipment located at the Hospital facilities at 285 Ron McNair Hwy. in Lake City. (See Exhibit 9 to Matthews affidavit).

Within a few days after the execution of the Agreement, Bill of Sale, and lease agreement, the District and MCHG signed a "Clarification to Agreement" (see Exhibit 10 to Matthews affidavit) memorializing their understanding "that various transactions that are the subject matter of the Agreement may require the regulatory approval of agencies of the State of South Carolina and the United States." The District and MCHG stated their intent to comply with "all rules and regulations, state and federal, that govern the operations of the District and MCHG." The parties further agreed that "[a]ll interpretations of the Agreement and all documents required by the Agreement shall incorporate by reference all regulatory requirements of the District and hospital operations." The parties further agreed that "[w]hile the Agreement is binding upon the parties, all components of the Agreement that require governmental approval(s) are conditioned on such approval(s) being granted." Finally, the Clarification to Agreement provided that "[u]ntil all state and federal approvals are obtained, the parties agree that the operations of [the Hospital] shall be operated by MCHG" pursuant to the March 26, 2007 Agreement.

The defendants maintain that based on the recommendations of Mr. Nettles, the District then entered into agreements for the Darlington RHC and began to make plans for an RHC in

Kingstree. The District and PDHC entered into a Clinical Operations Agreement, Asset Purchase Agreement, Bill of Sale, and a lease concerning the Darlington RHC. (See Exhibits11-14, Matthews affidavit).

At some point in late 2007, MCHG became aware that some new members of the District Board were dissatisfied with some provisions of the Olanta agreements. MCHG volunteered to renegotiate those agreements and continued to manage the operations of the Hospital pursuant to paragraph 3 (e) of the March 26, 2007 Agreement; after two months of renegotiation, the District and MCHG entered into a Lease and Purchase Agreement dated January 25, 2008 (see Exhibit 15 of Matthews affidavit). The January 2008 agreement provides that MCHG agrees to operate the Hospital in compliance with all rules and regulations affecting its operations and that both parties agree neither will interfere with the obligations, duties, rights or responsibilities of the other. The January 2008 agreement further provides that at the option of MCHG, all operations of the Hospital will continue under and pursuant to the certificate of need, billing numbers, contracts and authority of the District, actual or implied otherwise, as it existed prior to the signing of the January 2008 agreement and as it existed prior to the signing of the March 26, 2007 original agreement. The January 2008 agreement also provides that this agreement, along with the March 26, 2007 Bill of Sale, constitutes the entire understanding and agreement between the parties and that all prior agreements, representations, warranties, and covenants are merged therein.

The agreements which are the subject of this action were, according to the defendants, modeled after a Purchase Agreement between the District and QHG of Lake City, Inc., a subsidiary of Quorum Healthcare signed May 31, 1995 (see Exhibit 17 to Matthews affidavit).

There is no dispute that the approval of the transfers between the District and MCHG was never submitted to a referendum of voters residing within the boundaries of the District, and there is no dispute that approval of the transfers between the District and QHG of Lake City, Inc. was never submitted to such a referendum.

B. Plaintiffs' Stated Grounds for Summary Judgment

The plaintiffs submit in their motion that they are entitled to an order "declaring that the Lease and Purchase Agreement dated January 25, 2008, the Lease and Purchase Agreement dated March 26, 2007, and the Bill of Sale dated March 26, 2007 are all null and void *ab initio* pursuant to Act No. 1095, 1962 SC Acts 2683-90, as amended by Act No. 199 of 2005, and S.C. Code §4-9-82 and pursuant to S.C. Code §15-53-10 because the transfer by the [District] of assets, properties or responsibilities for the delivery of medical services required a formal referendum by a majority of voters in the district and no referendum occurred."

C. Discussion

S.C. Code §4-9-82 allows the District to transfer its "assets and properties for the delivery of medical services upon assumption by the transferee of the responsibilities of the district for the delivery of medical services...." Section 4-9-82 (B) provides that any such transfer is not complete until the question of the transfer has been submitted to and approved by referendum.

The heading of §4-9-82 in the Lawyers Co-operative Publishing Volume #1A reads "Transfer by hospital public service district of assets, properties **and responsibilities** for delivery of medical services" (emphasis added). The heading is misleading because the text of the statute, specifically subsection (A), does not mention transfer of responsibilities in the context of a transfer and speaks only to the authority of the district to transfer its assets and properties for the delivery of medical services. It is interesting to note that the heading of §4-9-92 in the

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Westlaw version of 1999 Act No. 94 (the last amendment to §4-9-82) reads simply "Hospital public service district may transfer assets and properties".

Despite the plaintiff's suggestion to the contrary in its memorandum and follow-up letter of February 26, 2014, the referendum is required only when there is to be a transfer of assets and properties. The court recognizes that §4-9-82 (A) provides that the district is authorized to transfer assets and properties "upon assumption by the transferee of the responsibilities of the district for delivery of medical services", but the transfer of responsibilities is not subject to the referendum requirement. This point is relevant to the issue of severability discussed below.

Section 4-9-82 (B) provides that before the transfer of assets and properties is complete, the question of the transfer must be approved by voters in a referendum. The defendants claim that certain provisions of Title 44 control, or at least should be read *in para materia* with §4-9-82. The defendants claim these provisions of Title 44 allow the transactions to go forward free of a referendum requirement. I disagree, as it is very clear that the enabling legislation and §4-9-82 are the exclusive provisions addressing the formation and activities of this particular Hospital District.

The January 2008 Lease and Purchase Agreement provides that MCHG (a) leases all real property of the District and (b) purchases all other tangible and intangible assets and personal property of the District. As a matter of law, the **purchase** of the tangible and intangible assets and personal property was subject to voter referendum. The defendants argue that the **lease** is not a transfer as contemplated under §4-9-82. The defendants point to §4-9-82 (D), which provides that upon transfer of assets and properties, the District may dissolve itself. The defendants claim the legislature did not intend for leases to be considered as transfers, as it would not make any sense for the District to dissolve when it simply leases its real property. The

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court disagrees with that reading and concludes that the legislature, by using the word "may", simply provided an option to the District to dissolve upon a final transfer of all assets and properties. I find that the word "transfer" as employed in 4-9-82 includes any transfer, whether it is a final sale or a lease for a stated term. Therefore, the plaintiff is entitled to a declaration as a matter of law that the lease and asset purchase provisions of the subject agreements are void due to the lack of a voter referendum approving those transfers.

The court finds that the terms of the agreements which address State and Federal regulatory approvals, approvals by State and Federal authorities, etc., do not encompass or contemplate a voter referendum. The voters in a referendum are neither State nor Federal actors, entities, or authorities. They are merely voters residing within the District.

The January 2008 agreement (see pages 5-6) also provides under the heading "OPERATION OF HOSPITAL AND ITS GOVERNING BODY" that "MCHG shall continuously use and occupy the premises herein leased by it for the provision of hospital services and/or such similar usages and services as MCHG, in its sole discretion, determines to be appropriate." As argued by the defendants, Section 5 (8) of the 1962 enabling legislation provides that the board of directors of the District is empowered to employ such personnel as it may deem necessary for the efficient operation of its hospital facilities. In my view, 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 heading of §4-9-82, and contrary to the plaintiff's contention otherwise, no referendum was required to approve the retention of personnel, i.e., MCHG, to operate the facilities for the plaintiff.

The question now becomes whether the void provisions of the agreement and the provisions regarding MCHG's operation of the facilities are severable. Case law clearly provides that the issue of severability is an issue of fact. As such, I must determine whether there is any genuine issue of fact regarding the severability of these provisions. The plaintiff cites Columbia Architectural Group, Inc. v. Barker, 274 S.C. 639, 266 S.E. 2d 428 (1980), which recites the general rule that a "contract is entire, and severable, when by its terms, nature, and purposes it contemplates and intends that each and all of its parts, material provisions, and the consideration are common each to the other and interdependent. A severable contract is one in its nature and purpose susceptible of division and apportionment, having two or more parts... not necessarily dependent upon each other, nor is it intended by the parties that they shall be. The entirety or severability of a contract depends primarily upon the intent of the parties rather than upon the divisibility of the subject, although the latter aids in determining the intention." 266 S.E. 2d at 429, quoting Packard & Field v. Byrd, 73 S.C. 1, 51 S.E. 678 (1905).

The court cannot conclude as a matter of law that the lease and purchase provisions are not severable from the provisions regarding operation of the facilities by MCHG. There is at least a scintilla of evidence on the issue of severability. The March 26, 2007 Agreement sets forth a formula in paragraph 3(b) detailing certain financial considerations; however, the January 2008 Lease and Purchase Agreement does not incorporate by reference any provisions from the March 26, 2007 Agreement. On the contrary, the January 2008 agreement (see page 11 of 16, "ENTIRE UNDERSTANDING") reflects that only the March 26, 2007 **Bill of Sale** survives the execution of January 2008 agreement. The January 2008 agreement specifically provides that the January 2008 agreement and the March 26, 2007 Bill of Sale constitute the entire

understanding and agreement between the parties and that all prior agreements, discussions, representations, warranties, and covenants are merged herein.

Neither side advances an argument as to whether the March 26, 2007 Agreement survived the execution of the January 2008 agreement. It seems to the court that it did not, as the above-noted merger clause seems to render moot the provisions of the March 26, 2007 Agreement; however, the plaintiffs have requested the court to also rule that the March 26, 2007 Agreement is void pursuant to §4-9-82. Therefore, since the plaintiffs seem to contend there are some potential rights and obligations emanating from the March 26, 2007 Agreement, the court must consider the issues of severability insofar as that instrument is concerned.

Based on the foregoing, the court concludes that the provisions of the January 25, 2008 Lease and Purchase Agreement, the March 26, 2007 Agreement, and the March 26, 2007 Bill of Sale providing for the transfer of assets and properties to MCHG is void *ab initio*. The court concludes there is at this time a genuine issue of fact as to the severability of the provisions calling for MCHG to operate the Hospital.

MOTION FOR REIMBURSEMENT

The District also moves for an order directing the court-appointed Trustee, Wesley Way, to reimburse the District the sum of $311,285.00 currently being held by the Trustee. This sum represents the liability levied by the Centers for Medicare and Medicaid Services (CMS) when the 2007 Medicare cost report was finalized on September 4, 2012.

By order filed November 10, 2008, the court ordered Pershing Yoakley & Associates, P.C. (PYA) to prepare the June 30, 2008 Cost Report and to amend the June 30, 2007 Cost Report filed for the Hospital. These reports relate to the time period in which the parties to that certain Separation and Unwinding Agreement dated May 1, 2008 were operating jointly under

the Hospital provider numbers. As noted above, the 2007 Cost Report was finalized on September 4, 2012 and resulted in a liability due to CMS. The District, dba the Hospital, was forced to pay this sum immediately because federal law mandates that such liabilities are automatically set off against any future payments to be made to the Hospital by CMS. The 2008 Medicare Cost Report was finalized on March 8, 2013 with a receivable due the Hospital in the amount of $338,567.00, of which $307,098.00 related to the Darlington and Olanta RHCs. Pursuant to Consent Order, those funds were forwarded to the Trustee.

The District contends that it is entitled to be paid back for the $311,285.00 it was forced to pay to CMS for the 2007 Cost Report liability. The court agrees with the District's position that the audit/accounting contemplated in the Separation and Unwinding Agreement has no relation to the CMS liability. The court concludes that the District should not be required to continue to carry this liability, especially when there are sufficient funds on deposit with the Trustee to repay that liability. Insofar as the named defendants are concerned, the court concludes the motion should be granted.

CONCLUSION

For the reasons set forth herein, it is

DECLARED as a matter of law that the provisions of the March 26, 2007 Agreement, the March 26, 2007 Bill of Sale, and the January 25, 2008 Lease and Purchase Agreement purporting to transfer assets and properties is void *ab initio;* it is further

ORDERED that the plaintiff's motion for summary judgment as to the provisions of these foregoing instruments purporting to transfer the operations of the facilities to MCHG is denied; it is further

ORDERED that the plaintiff's motion for reimbursement of the sum of $311,285.00 currently held by the Trustee is granted.

AND IT IS SO ORDERED

Sumter, S.C.
December 1, 2014

George C. James, Jr., Circuit Judge

FILED
2014 DEC -3 PM 1:11
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP2100706

PLAINTIFF(S)		DEFENDANT(S)	
Albert D Mims	Ernest M Atkinson	Tony R Megna	Benjamin R Matthews
Benjamin Wade Lamb	David W Moon	Mid Carolina Hospital Group	
Lower Florence County Hospital District	Lake City Community Hospital		
Lake City Communityhospital Board			

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

FILED
DEC 4 AM 11:11
FLORENCE COUNTY, S.C.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

12/4/2014

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Connie Rae-Spearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on **December 3, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **December 4, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

E. LeRoy Nettles Sr. PO Box 699 Lake City, SC 29560
Celeste Tiller Jones PO Box 11390 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Richard A. Harpootlian PO Box 1090 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel Shearin

Court Reporter

Connie Reel-Shearin - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Exhibit 2

Order, December 15, 2021

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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.)	
_____)	

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

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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.

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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

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

RECEIVED
Nov 04 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Diane S. Goodstein., Circuit Court Judge

Civil Action No.: 2012-CP-21-01149
Appellate Case No.: 2022-001500

Pee Dee Healthcare, P.A .....Respondent,

v.

Lower Florence County Hospital District d/b/a
Lake City Community Hospital .....Appellant.
.

CERTIFICATE OF SERVICE

I, Jaime Harmon, an employee of Griffin Davis, LLC, certify that, on this 4th day of November, 2022, a copy of Respondent's Motion to Dismiss Appeal and Return to Motion to Determine Appealability was served upon counsel of record in the above-referenced matter via electronic mail at the email addresses listed below:

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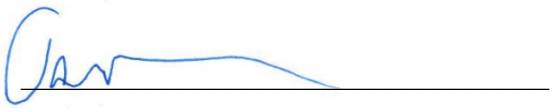

Columbia, SC