THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2022-CP-42-00454

Appellate Case No. 2022-001210

Ed Medford, in his individual capacity, and on behalf of those similarly situated, ...Respondents,

v.

Deepak Israni, R Cucamonga, LLC, PAC R Cucamonga LP, Pacifica Skylyn, LLC, d/b/a Pacifica Senior Living Skylyn, Etros, LLC, and Matthew Arledge, ... Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

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ARGUMENT

I. Plaintiff's argument that a single word controls the meaning and intent of the Agreement is without merit.

Plaintiff's contention that this Court should limit its review of the subject arbitration clause to one word—"You"—is in direct conflict with two of the most fundamental principles of contract law. South Carolina law is clear: when construing a contract, a court's primary objective is to ascertain and give effect to the intent of the parties to the contract, and the court must look to the language of the entire agreement in doing so. *See e.g. Southern Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 80–81, 562 S.E.2d 482, 484–85 (Ct. App. 2002); *Thomas–McCain, Inc. v. Siter*, 268 S.C. 193, 197, 232 S.E.2d 728, 729 (1977). These principles apply with equal force when analyzing whether parties have demonstrated a mutual intent to be bound by the terms of the contract, or whether a contract is supported by sufficient consideration. The circuit court did not consider the language of the entire agreement, nor did it give effect to the demonstrated intent of the parties. This Court should correct this fundamental error in the circuit court's analysis, and reverse the Order Denying Pacifica's Motion to Compel Arbitration.

Pacifica and Plaintiff agree that the parties to a contract must manifest a mutual intent to be bound by the terms of the contract. Plaintiff, however, contends this mutual intent must be demonstrated in the first sentence of the subject arbitration clause. The circuit court erred in adopting Plaintiff's novel approach to contract interpretation, and effectively placed the arbitration agreement on an unequal plane with other contracts. *See Kindred Nursing Centers Ltd. Partnership v. Clark*, 137 S.Ct. 1421, 1426-27 (2017) (invalidating a state rule that failed "to put arbitration agreements on an equal plane with other contracts"). Plaintiff assigns great weight to Pacifica's counsel referring to the first sentence of the arbitration clause as containing the "operative language." However, by making this observation, Pacifica's counsel did not ask the

circuit court to ignore the remainder of the arbitration clause, nor could such a statement relieve the circuit court of its obligation to consider the "whole scope and effect of the language used" in the arbitration clause. *See Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 147, 538 S.E.2d 672, 675 (Ct. App. 2000).

Plaintiff cites *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 83, 749 S.E.2d 139, 147 (Ct. App. 2013), for the proposition that "ancillary logistical terms" or "parameters" cannot form a mutual intent to be bound if Pacifica did not objectively manifest an intent to arbitrate claims in the first sentence of the arbitration clause. In *York*, this Court held that ancillary logistical terms are not required for a valid arbitration clause. *Id.* at 82-83, 749 S.E.2d at 146-47. This Court did not hold that ancillary logistical terms found within the four corners of an arbitration clause cannot be considered as evidence of the parties' mutual intent to be bound. Here, the ancillary logistical terms, or parameters for arbitration, provide clear evidence of the parties' objective intent at the time the Agreement was executed. (Pacifica's Initial Br. at p. 5-6).

Additionally, this Court quoted the operative language in the arbitration clause at issue in *York* as follows:

> PURCHASER AGREES THAT ANY AND ALL DISPUTES IN ANY WAY RELATED TO ANY NEGOTIATION OR POTENTIAL PURCHASE, FINANCING, OR ACTUAL PURCHASE OF ANY VEHICLE OR SERVICE FROM DEALER SHALL BE SUBJECT TO THE FEDERAL ARBITRATION ACT....

Id. at 81-82, 749 S.E.2d at 146. This Court found the above language demonstrated "the parties' unambiguous, mutual intent to arbitrate." *Id.* The arbitration language in *York* is drafted similarly to the language at issue in the present case insofar as the arbitration provision references only the "purchaser" in the operative language. Thus, even when considering only the first sentence of the subject arbitration clause, Plaintiff and Pacifica demonstrated a mutual intent to be bound.

Finally, Plaintiff's criticism of *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272 (4th Cir. 1997), is without merit.[1] The utility of *O'Neil* in the present case is that the Fourth Circuit was presented with a nearly identical argument to the one Plaintiff makes here. While it is true that *O'Neil* involved an employment contract, its reasoning is instructive in this case:

> O'Neil first argues the contract to arbitrate was not supported by adequate consideration because the agreement was not binding on the hospital. O'Neil's argument fails because its premise is mistaken.
>
> Here the agreement to be bound by arbitration was a mutual one. The contract to arbitrate was proffered by the employer. Such a proffer clearly implies that both the employer and the employee would be bound by the arbitration process. If an employer asks an employee to submit to binding arbitration, it cannot then turn around and slip out of the arbitration process itself.

O'Neil, 115 F.3d at 273. Here, Plaintiff's premise is similarly mistaken. Pacifica proffered the contract to arbitrate, clearly implying that Pacifica would be bound by the arbitration process.

CONCLUSION

For the foregoing reasons, and for the reasons stated in Pacifica's initial brief, Pacifica requests this Court reverse the circuit court and stay this action in favor of arbitration of Plaintiff's claims, or remand the case to the circuit court with instructions to stay the case and compel the Plaintiff's claims to arbitration.

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[1] Pacifica notes that this Court recently cited *O'Neil* with approval in an unpublished opinion addressing an argument similar to the one Plaintiff makes in this case. *See Hackworth v. Bayview Manor, LLC*, Op. No. 2023-UP-096 (S.C. Ct. App. Filed March 15, 2023). Pacifica recognizes this case does not have precedential value pursuant to Rule 268(d)(2), SCACR, and has therefore not included it in the table of authorities.

Respectfully submitted,

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Deepak Israni, R Cucamonga, LLC, PAC R Cucamonga LP, Pacifica Skylyn, LLC, d/b/a Pacifica Senior Living Skylyn, Etros, LLC, and Matthew Arledge, ... Appellants.

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Initial Brief of Appellants in the above-captioned case has been served on the following parties via e-mail, on May 22, 2023, pursuant to the South Carolina Supreme Court Order No. 2020-000447, as amended on May 5, 2022:

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May 22, 2023

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Civil Action No.: 2022-CP-42-00454
Appellate Case No.: 2022-001210

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter is Appellants' Initial Reply Brief and Certificate of Service. Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,

s/ Paul E. Allen, Jr.

Paul E. Allen, Jr.

PEA/pea

Cc: All Counsel of Record (via e-mail)

Enclosure(s)