

Eugene W. Villanova, By And Through His Atty In Fact, Karen Lynn Ward et al  
PLAINTIFF(S)

Pacifica Skylyn, Llc Db a Pacifica Senior Living Skylyn et al  
DEFENDANT(S)

**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.
- ACTION DISMISSED (*CHECK REASON*):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (*CHECK REASON*):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- 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:

The defendants' motion to dismiss this case or to stay the case pending binding arbitration is denied. Please see page 2.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/13/2022 .

**RECEIVED**  
**Aug 22 2023**  
**SC Court of Appeals**

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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The plaintiffs are residents of an elder care facility operated by the defendants which has accommodations that range from independent living to more intensive levels of care. A July 2021 failure of the HVAC system at the complex is alleged to have subjected the residents to temperatures around 100 degrees Fahrenheit for approximately two months. The issue is whether the plaintiffs can be compelled to submit this dispute to binding arbitration based on a contract. The problem is that neither the defendants nor the plaintiffs have a complete copy of the contract, so that sections related to the executed documents containing the full arbitration agreement are not in existence. It is unknown whether the complete version of the contract was executed, which is a distinct possibility. The defendants have produced a well-written and carefully researched brief in support of their motion, as well as affidavits which purport to show what the missing pages would have contained. The ability to avail oneself of access to the courts to resolve disputes is a fundamental constitutional right, and the court finds that the defendants have not made the necessary showing that this right was waived. Since the defendants are unable to produce a copy of an executed contract containing the full arbitration agreement and have no evidence that the plaintiffs are responsible in any way for the full documents being unavailable, the motion is respectfully denied.



Spartanburg Common Pleas

**Case Caption:** Eugene W. Villanova, By And Through His Atty In Fact, Karen Lynn Ward , plaintiff, et al VS Pacifica Skylyn, Llc Dba Pacifica Senior Living Skylyn , defendant, et al  
**Case Number:** 2021CP4202473  
**Type:** Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley