

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH CIRCUIT

Lorraine Voros, by and through her)
duly appointed attorney-in-fact,)
John Voros,)

C.A. No.: 2023-CP-42-04147

Plaintiff,)

**ORDER DENYING DEFENDANT’S MOTION
TO DISMISS PURSUANT TO RULES 12(B)(1)
AND 12(B)(6), SCRCP, OR IN THE ALTERNATIVE
TO STAY AND COMPEL ARBITRATION**

v.)

Pacifica Skylyn, LLC,)

Defendant.)
_____)

This matter came before the Court on Tuesday, January 30, 2022, on Defendant’s Motion to Dismiss Pursuant to Rules 12(B)(1) and 12(B)(6), SCRCP, or in the Alternative to Stay and Compel Arbitration.

The Defendant is represented by Jonathan G. Roquemore and the Plaintiff was represented by Patrick E. Knie. Both parties provided the Court with memorandums of law arguing their respective postions. The hearing was held in the virtual courtroom. After hearing the arguments of counsel, and after careful consideration of each side’s memorandum, the Defendant’s Motion is **DENIED**.

BACKGROUND

The Plaintiff was a resident of the Defendant Pacifica Skylyn LLC, d/b/a Pacifica Senior Living Skylyn. On December 27, 2021, John Voros the duly appointed attorney-in-fact for

Lorriane Voros signed a contract with Defendant Pacifica entitled Pacifica Senior Living Residence and Service Agreement (The Residence Agreement). A copy of the Residence Agreement was attached to Defendant's memorandum. The Residence Agreement governs the terms of Plaintiff's residence at Defendant Pacifica's facility. The Residence Agreement contains an arbitration agreement found at XI P in the Residence Agreement.

THE ISSUES

The Plaintiff challenges the validity of the arbitration agreement contained within the Residence Agreement. Specifically Plaintiff contends there is a complete lack of mutuality and consideration which are basic elements in the formation of a contract under the principles of South Carolina contract law.

LEGAL ANALYSIS

The South Carolina Supreme Court in Simmons v. Benson Hyundai LLC, followed language of the US Supreme Court in Prima Paint Corp, in stating that the Federal Arbitration Act commands that arbitration agreements be treated the same as all other contracts, no more, no less. Simmons v. Benson Hyundai, LLC, 2022 WL791174 (Mar 16, 2022). Under the Federal Arbitration Act, an arbitration clause is separated from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole. Munozv Green Tree Financial Corporation, 343 S.C. 531, 540, 542 S.E. 2d 361, 364(2002). Therefore in order to determine if an arbitration agreement is valid and binding the Court must

apply state contract law principles to the language of the arbitration agreement without regard to the language of the rest of the agreement.

It is clear that South Carolina Contract Law requires the parties to the contract to manifest mutual intent to be bound. Simmons v. Benson Hyundai, 2022 WL 791174 (Mar 16, 2022).

The body of the arbitration agreement repeatedly uses the words “you agree.” In the arbitration agreement “you” is designated as the resident. The Defendant Pacifica is designated as (we), (us), (our), or (community). This court finds nothing in the arbitration agreement to indicate that Defendant Pacifica intended to be bound by the arbitration agreement. In the event that Defendant Pacifica did intend to be bound by the arbitration agreement Defendant Pacifica could have easily used the words “the parties agree”. It is also noteworthy that Defendant Pacifica was the author of the arbitration agreement and thus any ambiguity in the agreement should be held against Defendant Pacifica as its author.

Plaintiff further argues that the agreement lacks consideration which is another necessary element of a contract under South Carolina contract law. This Court has examined the arbitration agreement and finds that the Plaintiff has theoretically given up her right to a jury trial. However, there is nothing in the agreement that reflects the Defendant has provided her with any consideration within the four corners of the arbitration agreement in exchange for giving up her right to a jury trial. This court finds there is a lack in consideration flowing from Defendant Pacifica to the Plaintiff and therefore the arbitration agreement is invalid for that reason alone.

CONCLUSION

After consideration of the arguments of counsel and their memorandums, this Court finds and concludes that the arbitration agreement found within the Residence Agreement fails to form a valid and binding contract.

It is therefore ORDERED that the Defendant's Motion to Dismiss Pursuant to Rules 12(B)(1) and 12(B)(6), SCRCP, or in the Alternative to Stay and Compel Arbitration be and is hereby **DENIED**.



Spartanburg Common Pleas

Case Caption: Lorraine Voros, By And Through Her Attorney-In-Fact, John Voros
VS Pacifica Skylyn, Llc
Case Number: 2023CP4204147
Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge