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**Oct 10 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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Case No. 2022-CP-42-00454  
Appellate Case No. 2022-001210

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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.

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APPELLANTS’ PETITION FOR REHEARING

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Pursuant to Rules 221(a) and 240 of the South Carolina Rules of Appellate Procedure, Appellants, Deepak Israni, R Cucamonga, LLC, PAC R Cucamonga LP, Pacifica Skylyn, LLC, d/b/a/ Pacifica Senior Living Skylyn, Etros, LLC, and Matthew Arledge (collectively “Pacifica”) respectfully request rehearing regarding this Court’s September 25, 2024, opinion affirming the circuit court’s denial of Pacifica’s Motion to Compel Arbitration in this case. In the alternative, Pacifica moves this Court to supplement the Record on Appeal with excerpts of Respondent Ed Medford’s deposition testimony (taken by Respondent’s counsel after briefing was closed), submitted herewith as Exhibit A.

Respondent’s sole argument to avoid his agreement to arbitrate his claim rests on the use of the word “you” in his Residence and Care Agreement (“Agreement”) with Pacifica. The circuit court placed arbitration agreements on an unequal plane with other contracts by ignoring long-standing contract interpretation principles in finding a lack of mutual intent to be bound. Respondent has now testified that he understood there was a mutual intent to be bound, (*see* Section 3, *infra*), but such testimony was unnecessary for this Court to apprehend the circuit court’s error and reverse. In affirming, this Court overlooked South Carolina case law enforcing arbitration provisions drafted similarly to the one executed by Pacifica and Respondent. In support of this petition, Pacifica submits the following:

**ARGUMENT**

1. The Court overlooked South Carolina case law that enforces similarly drafted arbitration provisions to the one here. For example, the arbitration provision in *York v. Dodgeland of Columbia, Inc.* provided 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  
.....

406 S.C. 67, 81-82, 749 S.E.2d 139, 146 (Ct. App. 2013).

By comparison, the Agreement at issue states as follows:

By signing below, you agree that any and all claims and disputes arising from or related to this Agreement or your residency, care or services at the Community. . . shall be resolved by submission to neutral, binding arbitration in accordance with the Federal Arbitration Act . . . .

Like the arbitration provision here, the *York* arbitration provision used a single term to identify the offeree – “Purchaser” – who had the power to either accept or reject the contract’s

terms. *Cf. Carolina Amusement Co. v. Connecticut Nat. Life Ins.*, 313 S.C. 215, 220, 437 S.E.2d 122, 125 (Ct. App. 1993) (“The offer identifies the bargained for exchange and creates a power of acceptance in the offeree.”) (citing *Restatement (Second) of Contract* § 24 (1981)). Pacifica also used a single term—“you”—to identify the offeree, and the words following “you agree” demonstrate that Pacifica, as the offeror, also promised to submit “**any and all claims and disputes** arising from or **related to this Agreement** or your residency, care, or services at the Community” to arbitration. (emphasis added) (R. 64-65.). In offering the Agreement to Respondent, Pacifica manifested its intent to arbitrate any and all claims arising from the Agreement with only limited exceptions related to specific claims. *Cf. O’Neil v. Hilton Head Hosp.*, 115 F.3d 272, 273 (4th Cir. 1997) (“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.”). The arbitration provision did not include language allowing Pacifica to avoid arbitration, nor has Pacifica sought to avoid arbitration in this litigation. Accordingly, the Court should grant rehearing and reverse the circuit court’s Order and compel arbitration of Respondent’s claims.

2. The Court overlooked the “whole scope and effect of the language used” in the arbitration provision in this case. *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 147, 538 S.E.2d 672, 675 (Ct. App. 2000). While the arbitration provision does include the term “you” to identify the offeree with power to accept or reject the offer, the provision also includes other agreed upon parameters for arbitration that reflect the mutual intent to submit claims to arbitration. The provision calls for the use of a “mutually agreed upon” arbitrator and requires “each party” to bear its own costs and fees in arbitration. (R. 64-65). The provision also provides that if any part

of the arbitration provision is found to be unenforceable, “the remaining portions of the clause shall remain valid and shall be enforced by the **parties**.” (emphasis added) (*Id.*).

3. Finally, the contract element of “mutual intent to be bound” has now been established by the testimony of Respondent himself, and Pacifica moves in the alternative to supplement the Record on Appeal under Rule 212(a), SCACR. After briefing closed in this appeal, Respondent moved the trial court for an order permitting depositions pending appeal. The trial court granted the motion, over Pacifica’s objection, and permitted Respondent Ed Medford’s deposition. Pacifica submits this Court should consider Respondent’s deposition testimony, submitted herewith as Exhibit A, as evidence of the intention of the parties concerning the applicable arbitration provision. Specifically, Respondent testified that he understood the arbitration provision in this case required all disputes arising from the Agreement to be submitted in arbitration, whether such dispute was initiated by Respondent or Pacifica. (*See*, Ex. A at p. 65). In other words, Respondent himself understood Pacifica intended to be bound to arbitration when it presented the arbitration provision to him for execution. Pacifica recognizes the deposition testimony was not before the trial court when ruling on Pacifica’s Motion to Compel Arbitration; however, Pacifica submits that Respondent’s testimony should be considered because the testimony at issue was taken after the trial court issued its Order and after briefing closed in the appeal. Furthermore, it would be manifestly unjust for the Court to deny arbitration on the basis of lack of “mutual intent to be bound” when Respondent’s own testimony reveals there was a mutual intent to be bound. Accordingly, Pacifica moves in the alternative to supplement the Record on Appeal under Rule 212(a), SCACR.

## CONCLUSION

For the foregoing reasons, the Court should grant rehearing and reverse the trial court's denial of Pacifica's Motion to Compel Arbitration or, in the alternative, issue an Order permitting Pacifica to supplement the Record on Appeal with Respondent Ed Medford's deposition testimony for this Court's consideration. Pacifica also incorporates into this petition all the arguments it raised in briefing to this Court and does not abandon such arguments.

Respectfully submitted,

**HEDRICK GARDNER KINCHELOE &  
GAROFALO LLP**

*s/ Paul E. Allen, Jr.*

Jonathan G. Roquemore (SC Bar No. 68274)

Joshua D. Shaw (SC Bar No. 77835)

Paul E. Allen, Jr. (SC Bar No.: 104062)

1230 Main Street, Suite 325

Columbia, SC 29201

*Attorneys for Appellant*



1 APPEARANCES:

2 Mitch Slade, Esquire  
3 MITCH SLADE LAW OFFICE  
4 145 n. Church Street  
5 Spartanburg, South Carolina 29306

6 and  
7 Patrick E. Knie, Esquire  
8 KNIE & SHEALY LAW FIRM  
9 250 Magnolia Street  
10 P.O. Box 5159 (29304)  
11 Spartanburg, South Carolina 29306  
12 Attorneys for Plaintiff

13  
14 Jonathan G. Roquemore, Esquire  
15 HEDRICK GARDNER KINCHELOE GAROFALO  
16 1230 Main Street, Suite 325  
17 Columbia, South Carolina 29201  
18 Attorney for Defendants

19  
20 VIDEOGRAPHER: Cliff Williams, CLVS  
21 ARGYLE MULTIMEDIA, LLC  
22 cliff@argylemultimedia.com

23  
24 REPORTED BY: Sandy Satterwhite Reporting  
25 Satterwhite@Charter.net/ (864) 706-5698

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1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties  
3 that all formalities shall be waived until the time of the  
4 trial, except as to the form of the question and/or the  
5 responsiveness of the answer.

6 SIGNATURE:

7 Deponent expressly reserved his right to read over and  
8 sign this deposition transcript.

9 \* \* \* \* \*

10 ED MEDFORD, being duly sworn to tell the truth, the whole truth  
11 and nothing but the truth, testified as follows:

12 BY MR. ROQUEMORE:

13 So, before we get started, we want to memorialize  
14 our continuing agreement regarding several things in this  
15 case. The first is that all objections to any question on  
16 any basis are reserved until the time of trial. No  
17 objection is waived by not making it within the confines  
18 of this deposition.

19 Related to that, the defense asking questions on a  
20 topic is not a waiver of a later objection to the  
21 admissibility of those questions and answers; and by  
22 participating in the deposition, prior or today, the  
23 Defendants are not waiving any rights they have asserted  
24 via Motions to Dismiss previously filed in the case.

25 I think that covers anything.

1 Q. And you've already talked about this some, but --- and you  
2 kind of described it as one of the reasons why you were at  
3 least initially interested in a community like Pacifica  
4 Skylyn, which was, I think they call it, like the  
5 continuum of care where you can ---

6 A. Right. Yes.

7 Q. --- initially come in and basically live in an apartment  
8 and be totally independent and that can transition all the  
9 way to being totally dependent at the other ---

10 A. Right.

11 Q. --- end of the spectrum?

12 A. Yes, sir.

13 Q. And, just so we're clear, when you moved into Pacifica  
14 Skylyn, and after the entire time you lived there, you  
15 were in independent living, correct?

16 A. Yes, sir.

17 Q. And so you effectively lived in an apartment unit?

18 A. It was an apartment unit in the independent living section  
19 ---

20 Q. Yes, sir.

21 A. --- of Pacifica.

22 Q. All right.

23 You were never a resident of any other area of  
24 Pacifica Skylyn's campus other than independent living?

25 A. No, sir.

1 Q. All right. Mr. Medford, we're --- let's just mark this as  
2 the --- I'm fine if we just mark them consecutively. Just  
3 pick up where you left off. That's fine with me.

4 This would be Exhibit?

5 BY COURT REPORTER:

6 Twelve.

7 BY MR. ROQUEMORE:

8 Twelve.

9 (PLAINTIFF'S EXHIBIT NO. 12 MARKED FOR IDENTIFICATION)

10 CROSS EXAMINATION CONTINUED BY MR. ROQUEMORE:

11 Q. Mr. Medford, I'm going to scoot that down your way, and  
12 really Exhibit 12, I've grouped some stuff together that  
13 we probably don't even need to talk about, but the primary  
14 thing I want to talk to you about is the what's called the  
15 Residents and Services Agreement that begins at page  
16 three, but why don't you just take a moment to orient  
17 yourself.

18 A. Uh-huh (affirmative response).

19 Q. And just kind of flip through, see what's here, and when  
20 you get done, I'm going to --- I'm going to have a general  
21 question of along the lines of does it look like these  
22 documents are the ones that would have been completed  
23 either by you or the facility in connection with you  
24 becoming a resident at Pacifica Skylyn?

25 A. Yes, sir.

1 Q. You know, I honestly didn't pay attention to whether a  
2 copy of the Residence and Services Agreement was in the  
3 documents that --- that you produced. Did you keep a copy  
4 of it? Do you remember if you did?

5 A. I don't think I still have a copy of it.

6 Q. All right.

7 A. No, sir. I don't think I have a copy of it.

8 Q. Do you think you had one at some point in time?

9 (OFF THE RECORD)

10 BY THE WITNESS:

11 To the --- to my knowledge these first two pages,  
12 now this one and this one, this independent living like  
13 the Lease Agreement, that's my signature, and I had that.  
14 These first two pages I was never given those.

15 CROSS EXAMINATION CONTINUED BY MR. ROQUEMORE:

16 Q. Yes, sir. This is --- and you're right to make that  
17 distinction. I think this is a --- this --- this exhibit  
18 is ---

19 A. Yeah.

20 Q. --- kind of a compilation ---

21 A. Right. Yeah.

22 Q. --- of more Pacifica documents?

23 A. Right.

24 Q. For record keeping or whatever reasons.

25 A. Yes, sir.

- 1 Q. Versus something like that the Residence and Services  
2 Agreement, the Lease Agreement, as you called it, that you  
3 would have received a copy of, correct?
- 4 A. Yes, sir. Yes, sir.
- 5 Q. Let me just ask you a few things. On --- if you go to  
6 page two of the --- I'm sorry. Go back the other way.  
7 Page two of the whole thing. That right there.
- 8 A. Okay. Uh-huh (affirmative response).
- 9 Q. Is that your handwriting, any of that? It says, "Face  
10 Sheet"?
- 11 A. Yes, sir. That's my handwriting.
- 12 Q. Okay. So, it looks like you completed that, that form?
- 13 A. Yes. Uh-huh (affirmative response).
- 14 Q. And --- and this is what I was asking you about earlier  
15 about some of your medical history.
- 16 A. Uh-huh (affirmative response).
- 17 Q. This is where I was reading from ---
- 18 A. Right.
- 19 Q. --- and where I got your Social and date of birth from.
- 20 A. Right.
- 21 Q. Do you see your Social up there? Is that correct? Don't  
22 say it out loud on the record.
- 23 A. Yes, sir.
- 24 Q. And just for the record, we're not admitting any of this  
25 into evidence right now. So, if we get to the point where

1           anybody wants to do that, Mr. Medford, I wanted to let you  
2           know, we'll --- people will make sure that your  
3           identifying information gets redacted. I don't want you  
4           to worry about that.

5    A.    Okay.

6    Q.    Okay, and then at page three of the Exhibit 12, that's  
7           where the Lease Agreement begins; is that right?

8    A.    Yes, sir.

9    Q.    And it looks like, well, and I did a poor job, because I  
10          didn't number these pages. So, we'll see if we can find  
11          another way to do this. Bear with me just a second.

12                 If you'll flip back and keep flipping, you'll get to  
13          a page that says, "Appendix B," and I think you're  
14          getting close to it.

15   A.    Yes.

16   Q.    All right, and so there are, the Lease Agreement contains  
17          some appendixes ---

18   A.    Uh-huh (affirmative response).

19   Q.    --- that are in the back, but do --- do you agree  
20          generally that from the Residence and Services Agreement  
21          cover page back to that page just before Appendix B that  
22          that's the Lease Agreement that you signed with Pacifica  
23          Skylyn?

24   A.    Yes, sir.

25   Q.    Okay, and at that --- that last page before Appendix B, so

1            flip back one page with me. Is that where it --- does  
2            that page say, "Governing Law" at the top?

3    A.    Yes, sir.

4    Q.    And under Resident it says, "Roy Edwin Medford." Is that  
5            your signature on that page?

6    A.    Yes, sir.

7    Q.    Okay, and if you flip back or maybe forward.

8    A.    This?

9    Q.    Yes, right there. That page where it says you see at the  
10           bottom it says, "Entire Agreement" there at number 12?

11   A.    Yes, sir.

12   Q.    And above that there's a signature block that says, "Roy  
13           Edwin Medford." Is that your signature?

14   A.    Yes, sir.

15   Q.    And then if we flip back forward, you're going to see your  
16           --- and I apologize again for not having page numbers.

17           You're going to see your signature at the top of a page,  
18           at the very top right there, and underneath is that your  
19           signature at the top of that page, Mr. Medford?

20   A.    Yes, sir.

21   Q.    And that's a page where the first substantive language  
22           begins, "C. Transfers from Apartment," is that right?

23   A.    Yes, sir.

24   Q.    All right. I think that's all the signatures in there.

25           I noted that the dates, it looks like, for all of

1           those signatures are November the 7th of 2018, and do you  
2           think that accurately reflects the, the date that you made  
3           those three signatures in this document?

4    A.    Yes, sir.

5    Q.    And then it also looks like, and I know you don't know who  
6           this is, but on the last page where you signed, there's a  
7           --- that's it?

8    A.    Executive director.

9    Q.    Portends to be an executive director's signature there  
10           that frankly I can't read, but you don't ---

11   A.    I think her name was Sylvia something, but I can't  
12           remember her last name.

13   Q.    And that looks a little bit like an S-y to start.

14   A.    It might have been Sylvia Diaz or something like that, but  
15           I can't remember exactly what her name, because, like I  
16           said earlier, she was only there for a few weeks before  
17           she left.

18   Q.    Fair enough, and back when you signed this document and  
19           during the period of time that you lived at Pacifica, were  
20           you making your own decisions for yourself financial,  
21           medical, otherwise?

22   A.    Yes, sir.

23   Q.    You didn't have a POA that was making decisions for you?

24   A.    I had a POA, but it was a medical POA, but I didn't have  
25           one that was making decisions for me. No, sir.

1 Q. Yes, sir, and so in terms of entering this Lease Agreement  
2 with Pacifica Skylyn, that's a decision that you were  
3 capable of making on your own and that you did make on  
4 your own?

5 A. Yes, sir.

6 Q. Okay, and --- and you entered into the agreement freely  
7 and voluntarily. Would you agree with that?

8 A. Yes, sir.

9 Q. All right.

10 I'm going to have a few questions about this  
11 document. Do you want to take a break for a few minutes,  
12 or do you want me to ask those and then we take a break?

13 A. You can ask those, and we'll take a break.

14 Q. Let's do that.

15 All right. If you'll flip all the way back to the  
16 front of the agreement for me, please, sir, and it's going  
17 to be ---

18 A. Okay.

19 Q. It's going to be page three. The cover page is page one,  
20 then there's a Table of Contents.

21 A. Uh-huh (affirmative response).

22 Q. There, and then the next page is where I want to start.

23 A. Okay.

24 Q. It says, "Pacifica Senior Living Skylyn" at the top,  
25 "Residence and Services Agreement." Is that right?

- 1 A. Yes, sir.
- 2 Q. All right, and then it indicates that the agreement is  
3 made between Pacifica Senior Living Skylyn and Roy Edwin  
4 Medford, correct?
- 5 A. Yes, sir.
- 6 Q. And that's you, correct?
- 7 A. Yes, sir.
- 8 Q. And you agree that or do you agree that this document  
9 governed the relationship between you and to Pacifica with  
10 respect to your lease of the apartment at Pacifica Skylyn?
- 11 A. Yes, sir.
- 12 Q. And it looks like, if we come, just scoot down the same  
13 page a little bit maybe three-quarters down, there's a  
14 reference to your apartment number being 205?
- 15 A. Yes, sir.
- 16 Q. And did you live in apartment 205 the entire time you  
17 lived at Pacifica Skylyn?
- 18 A. Yes, sir. That was the only apartment I lived in the  
19 whole time I lived there.
- 20 Q. Did you --- well, we'll get to that in a minute, and I  
21 thought I saw or maybe you said, was that a one-bedroom  
22 unit?
- 23 A. Yes, sir. One bedroom. One bedroom, one bath.
- 24 Q. In that same paragraph, so it's 1a, Living Accommodations,  
25 Residence, it says, "You have chosen to live --- to live

1           in Apartment No. 205," correct?

2    A.    Yes, sir.

3    Q.    And then it says in the next sentence, "You may live in  
4           your apartment on a month-to-month basis, subject to the  
5           terms of this agreement and to the general rules and  
6           regulations of the community contained in the resident  
7           handbook, as it now exists and as it may later be  
8           amended." Did I read that correctly?

9    A.    Yes, sir.

10   Q.    Do you agree that your lease of the apartment at Pacifica  
11           Skylyn was month-to-month?

12   A.    Explain what you mean by month-to-month, please, sir?

13   Q.    I'm going to ---

14   A.    You're saying it wasn't a yearly lease? Is that what  
15           we're saying?

16   Q.    That would be --- that would be one thing that it would  
17           indicate is that it was not for a term of one year.

18   A.    Right. Well, no, I was explained to, when I first moved  
19           in, that it was a yearly lease. I did not think I was  
20           living a month-to-month. It was a yearly lease that I was  
21           told when I first moved in by that executive director that  
22           it was a one-year lease.

23   Q.    Okay, and we'll --- I'll keep having --- I'll have some  
24           more questions about that as we go through. You agree  
25           that the Lease Agreement says it's month-to-month?

- 1 A. Month-to-month. Yes, sir.
- 2 Q. All right, and bear with me just a second.
- 3 If you'll flip seven pages back from where you are,  
4 and I'm hoping you're going to end up on a page that has,  
5 Section D, Termination.
- 6 A. Yes.
- 7 Q. Close to the top.
- 8 A. D, Termination.
- 9 Q. Yes, sir, and it indicates there, "You may terminate this  
10 agreement at any time, with or without cause, by giving us  
11 30 days prior written notice of termination. You do ---  
12 you need not cite a specific reason for the termination."  
13 Did I read that correctly?
- 14 A. Yes, sir.
- 15 Q. All right, and --- and did you understand that you could  
16 terminate this agreement at any time by simply giving  
17 Pacifica 30 days' written notice of the termination?
- 18 A. Yes, sir.
- 19 Q. Okay. Would that suggest to you that this was a  
20 month-to-month lease?
- 21 A. Well, I didn't take it as that.
- 22 Q. Do you agree that a 30-day termination window is  
23 consistent with the language in the Lease Agreement  
24 stating that it is month-to-month?
- 25 A. Yes, sir.

1 Q. Okay, and you agree that based on the terms that we read  
2 under Termination, well, and just for foundational  
3 purposes, this, the title of this section is Termination  
4 by Resident, correct?

5 A. Uh-huh (affirmative response). Yes, sir.

6 Q. And you were the resident, correct?

7 A. Yes, sir.

8 Q. And this is saying that you, Ed Medford, could have left  
9 Pacifica Skylyn at any point in time while you lived there  
10 by giving 30 days' written notice?

11 A. Yes, sir.

12 Q. And you agree you had the ability to do that under this  
13 Lease Agreement?

14 A. Yes, sir.

15 Q. And you agree that that term regarding termination is  
16 consistent with the language saying this is a  
17 month-to-month lease?

18 A. Yes, sir.

19 Q. Is there anything --- well, that will be a bad way to ask  
20 that.

21 Did you read the Lease Agreement before you signed  
22 it?

23 A. I read parts of it. I didn't read all of it.

24 Q. All right. Now, I may ---

25 A. I didn't read it for word for word.

- 1 Q. Sitting here, and this might be silly, so you tell me if  
2 it's silly. We are talking, what are we, five-and-a-half  
3 years, roughly, since you signed this document, late 2018  
4 to early 2024?
- 5 A. Yes, sir.
- 6 Q. Something like that?
- 7 A. Yes, sir.
- 8 Q. Do you have a recollection sitting here today as to which  
9 sections you read for word for word and which you did not?
- 10 A. Well, I --- I glanced over every section, and if I got the  
11 gist of it, I didn't read the whole document word for  
12 word.
- 13 Q. Okay.
- 14 A. But I read most of it. I'd say 90 percent of it I read  
15 word for word.
- 16 Q. All right, and --- and sitting here today can you point  
17 out the approximate ten percent that you did not read word  
18 for word? Would that be possible for you to do at this  
19 point?
- 20 A. No, sir.
- 21 Q. Now your --- the majority of your working career was in  
22 HR, correct?
- 23 A. Yes, sir.
- 24 Q. And would you agree that working in the HR field you had  
25 one of your strengths was attention to detail?

1 A. Yes, sir.

2 Q. All right, and was that an important characteristic to  
3 have working in HR to have a strong attention to detail?

4 A. Yes, sir.

5 Q. Some people call having a strong attention to detail being  
6 inclined to cross every t and dot every i.

7 Are you familiar with that phrase?

8 A. Yes, sir.

9 Q. Do you agree that in performing your functions in the HR  
10 world you --- you were mindful of crossing every t and  
11 dotting every i?

12 A. Yes, sir.

13 Q. Because in the HR field it's important to be able to  
14 document how an employee has been handled in case the  
15 handling has to be defended at a later date; is that  
16 right?

17 A. Yes, sir.

18 Q. Did you --- were you involved with employment contracts  
19 when you worked in the HR world?

20 A. Yes, sir.

21 Q. Did you have one yourself?

22 A. Yes, sir.

23 Q. And did you deal with others who --- whose employment  
24 arrangement was --- the word is escaping me --- was  
25 handled through a written contract?

1 A. Yes, sir. As I hired HR managers for stores, they signed  
2 an employment contract.

3 Q. All right, and so in your professional career you were  
4 accustomed to reading contracts?

5 A. Yes, sir.

6 Q. And I assume on some level you were accustomed to  
7 explaining contracts?

8 A. Yes, sir.

9 Q. And certainly, being in the HR field, you knew it was  
10 important before you signed a contract to read and  
11 understand what it is you were signing, correct?

12 A. Yes, sir.

13 Q. Okay, and that was important to you when you signed the  
14 Lease Agreement, and Exhibit 12, it was important to you  
15 that you read and understand what you were signing? Would  
16 you agree with that?

17 A. Yes, sir, within the time limit they give you to read it  
18 while you --- before you sign it.

19 Q. Okay. Well, I mean did you --- are you telling me you  
20 didn't feel like you had an opportunity to ---

21 A. At --- at the time I signed it, no, I didn't have enough  
22 time to read every word. I glanced through it and got the  
23 --- the gist of the document, but when I signed it, I did  
24 not read every word, because they were sitting there  
25 staring at me, and I didn't --- I didn't have time to read

1 the whole document.

2 Q. Yes, sir. Did you ask for additional time or some privacy  
3 so that you could fully read ---

4 A. No, sir.

5 Q. --- the document?

6 A. No, sir.

7 Q. Did you complete your review later ---

8 A. Yes.

9 Q. --- after you had signed it?

10 A. Yes, sir.

11 Q. All right, and did you, based on your later review, go  
12 back to anyone and say, "Oh, I signed this, but I had not  
13 had an opportunity to fully read it, and I've got some  
14 questions or concerns about what I've apparently agreed to  
15 do"?

16 A. No, sir.

17 Q. In your --- in the --- your time in HR, did the employment  
18 agreements that folks signed contain arbitration  
19 agreements?

20 A. Yes, sir.

21 Q. All right. Is --- is an arbitration agreement something  
22 you were familiar with before you became a resident at  
23 Pacifica Skylyn?

24 A. I was very familiar with Lowe's arbitration commitment  
25 that they signed in their employment contract.

1 Q. I assume it was pretty standard from agreement to  
2 agreement?

3 A. It was pretty standard, but it was pretty in detail.

4 Q. Yes, sir.

5 A. So.

6 Q. And I meant, let me ask a better question.

7 The --- generally the same arbitration language  
8 showed up from Lowe's contract to Lowe's contract to  
9 Lowe's contract as opposed to it being reworked every  
10 time?

11 A. Yes. Yes, sir.

12 Q. Okay.

13 A. It was the same time over and over every time.

14 Q. That's what I thought you meant.

15 A. Yep. Yes, sir.

16 Q. And I think you even mentioned earlier that, when I asked  
17 you about whether you had given another deposition, you  
18 said, "No, but I --- I have been involved in  
19 arbitrations," and so, have you actually had to attend  
20 arbitration hearings or conferences before?

21 A. Yes. I attended arbitration hearings and conferences with  
22 Lowe's attorneys whenever there was a suit that went to  
23 the EEOC. We would go to the arbitration, and I would go  
24 with a Lowe's attorney present with me.

25 Q. Yes, sir. So, the concept of arbitration, what it is, was

1 not foreign to you when you moved into Pacifica Skylyn?

2 A. No, sir.

3 Q. And you understood it was different than being in --- in  
4 court?

5 A. Yes, sir.

6 Q. Okay, because I also assumed that at some point in time in  
7 your career, one or more of your employers perhaps a case  
8 advanced past the EEOC process and ended up in a lawsuit?

9 A. Yes.

10 Q. Is that true?

11 A. Yes, sir.

12 Q. Okay. So, you understood before you moved into Pacifica  
13 Skylyn the difference between filing a lawsuit and being  
14 in court with a jury versus being in the arbitration  
15 forum?

16 A. Yes, sir.

17 Q. I'll try to direct you without you doing too much work, so  
18 sit tight for a second. Okay?

19 All right. If you'll go, I think it's four pages  
20 back, oh, from --- from where you were, not ---

21 A. Four pages back from where I was there?

22 Q. Well, you're --- you're going from the wrong place now.  
23 From ---

24 A. Here?

25 Q. No, sir. From the page where we were talking about

1            termination. Go one more page, I think. Okay. Keep  
2            going. Four pages from there, and it's the page that  
3            says, "Pet Policy," at the top. When you get there, we're  
4            in the same place.

5    A.        I don't see it. Am I missing it?

6                        Yeah, there it is.

7    Q.        There you go.

8    A.        I've got it.

9    Q.        Does that say, does your say, "Seven, Pet Policy"?

10   A.        Yes, sir.

11   Q.        All right, and then if you come down that page at the  
12            bottom, number eleven is Arbitration; is that right?

13   A.        Yes, sir.

14   Q.        And then if you just --- just peek to the next page for a  
15            second, and we've already established that right above  
16            number 12, "Entire Agreement," that's your signature, "Roy  
17            Edwin Medford," correct?

18   A.        Yes, sir.

19   Q.        Okay, and above the signature is a paragraph that says,  
20            "By signing below, you warrant that this Arbitration  
21            Agreement has been explained to you, that you understand  
22            its significance, that you voluntarily agree to be bound  
23            by it, and that you understand that agreeing to  
24            arbitration is not a condition of admission to the  
25            community." Did I read that language correctly?

1 A. Yes, sir.

2 Q. All right, and you signed beneath that language, correct?

3 A. Yes, sir.

4 Q. All right. Did you read the arbitration provision before  
5 you signed it?

6 A. No, sir.

7 Q. You did not?

8 A. No, sir.

9 Q. All right. So, that's a part of the, you said you  
10 reviewed 90 percent of the contract word for word before  
11 signing it, and that you did not remember which portions  
12 you may not have read word for word. Are you telling me  
13 that the arbitration section is one you did not read for  
14 word for word?

15 A. I glanced over it, because --- and when I glanced over it,  
16 I knew the gist of arbitration from Lowe's, so I didn't  
17 read word for word what it said.

18 Q. Okay. So, you're --- you're telling me that when you got  
19 to the arbitration section, you --- you basically knew  
20 what arbitration was, and so you didn't feel the need to  
21 read the --- that section word for word?

22 A. Word for word.

23 Q. All right.

24 A. I asked questions to the then executive director who  
25 somewhat explained it to me and the marketing director.

- 1 Q. All right. So, rather than read the arbitration language  
2 for yourself, when you were accustomed to reading  
3 arbitration provisions, you opted instead to just ask the  
4 people there about the arbitration provision?
- 5 A. I glanced over it and got the gist of it, and then asked  
6 some questions. After I signed the entire document, I took  
7 and I read it later.
- 8 Q. Okay.
- 9 A. Like I did all the rest of it. After I left that, when I  
10 got home, I read the entire document.
- 11 Q. All right, and a couple of things to follow up.
- 12 A. Uh-huh (affirmative response).
- 13 Q. After you got home and read the entire document word for  
14 word, including the arbitration provision at paragraph  
15 eleven, correct?
- 16 A. Yes, sir.
- 17 Q. Okay. You read the language. If you'd go to the next  
18 page, please. You read the language in bold there that  
19 says, "You may withdraw your agreement to arbitrate within  
20 30 days after signing this agreement by giving written  
21 notice of your withdrawal to the community," correct?
- 22 A. Yes, sir.
- 23 Q. Okay, and you did not do that, correct?
- 24 A. No, sir.
- 25 Q. Let me --- I think --- I think a bad question called for

1 an answer ---

2 A. Yeah.

3 Q. --- that doesn't make sense, because I think I know what  
4 you were saying.

5 Did you give any notice in writing to the community  
6 to Pacifica Skylyn of your intent to withdraw your  
7 agreement to arbitrate?

8 A. No, sir, I did not. At that point I didn't feel the need.

9 Q. Yes, sir, and when you indicated a few minutes ago, that  
10 while you were sitting, and I'm making an assumption here,  
11 when you signed these documents, you were sitting in an  
12 --- in an office or conference room at Pacifica Skylyn; is  
13 that right?

14 A. Conference room at Pacifica Skylyn.

15 Q. Yes, sir.

16 A. Yes.

17 Q. I wanted to make sure they didn't like come to you or  
18 something ---

19 A. No, sir.

20 Q. --- wherever you were?

21 A. I was at Pacifica Skylyn on the facility there in the  
22 conference room.

23 Q. Yes, sir, and the people in the room with you, you  
24 mentioned somebody in marketing. Could you give us that  
25 person's name? I may not have asked.

- 1 A. I think her name was Donna, but I don't remember her last  
2 name.
- 3 Q. Yes, sir, and then it's not for the whole time, but at  
4 some point in time, the person you understood to be the  
5 then current executive director came in?
- 6 A. Right.
- 7 Q. And that may be Sylvia?
- 8 A. Right. Prior to that time, I had never met her. Now  
9 prior to meeting Sylvia for that few minutes, I had spoken  
10 to, I think her name was Donna, like I said. I had spoken  
11 to her numerous times on the phone. We communicated back  
12 and forth.
- 13 Q. Yes, sir, and anybody else in the room during the meeting  
14 where you're signing documents, other than we think Donna,  
15 the marketing person?
- 16 A. Uh-huh (affirmative response).
- 17 Q. And perhaps Sylvia, the person that we think was the then  
18 executive director. Anybody else in the room?
- 19 A. I had a friend with me.
- 20 Q. Okay. Who was that?
- 21 A. I can't remember his name. He's a long, long friend.  
22 Greg Smith.
- 23 Q. Okay, and what was the purpose of bringing Mr. Smith  
24 along?
- 25 A. At that point I wasn't --- I did --- I didn't want to

1 drive, and I wasn't driving a whole lot then. So, he  
2 drove me to the Pacifica to go over the things.

3 Q. Understood.

4 A. He --- in fact, he went with me when I went and did the  
5 tour, the original tour there. He went with me.

6 Q. So, you were, as you were kind of entering Pacifica  
7 Skylyn, you were already being very mindful of ---

8 A. Yes, sir.

9 Q. --- whether you thought it was safe for you to operate a  
10 vehicle or not?

11 A. Yes, sir.

12 Q. You're doing a really good job of being res --- responding  
13 audibly.

14 You're --- you're jumping in a little bit quickly.

15 A. Okay.

16 Q. Because I'm asking questions a little bit slowly. I'm not  
17 fussing at you.

18 A. Okay. I understand.

19 Q. Just --- just check up just a hair.

20 A. Okay.

21 Q. And I --- and I didn't tell you that at the beginning. If  
22 you find me cutting you off before you're done, ---

23 A. Okay.

24 Q. --- because you may pause or something, ---

25 A. Uh-huh (affirmative response).

- 1 Q. --- then you just tell me.
- 2 A. Okay.
- 3 Q. "I wasn't done, and I want to finish."
- 4 A. Okay.
- 5 Q. And I'll stop.
- 6 A. All right.
- 7 Q. Fair enough?
- 8 A. Yes, sir.
- 9 Q. Very good. I lost track for a second.
- 10 Mr. Smith was with you.
- 11 A. Uh-huh (affirmative response).
- 12 Q. To drive you there, and you think he was in the room when
- 13 you were going over the documents?
- 14 A. Yes, sir.
- 15 Q. And what's Mr. Smith up to now?
- 16 A. He's passed away.
- 17 Q. I'm sorry. Anybody else in the room while you're
- 18 reviewing and signing the documents?
- 19 A. No, sir, not that I remember.
- 20 Q. Okay. Now you said that you didn't feel the need to
- 21 review or I'm sorry. You didn't feel the need to read
- 22 word for word the arbitration language before signing
- 23 because you were familiar with arbitration.
- 24 Let me just ask you as a general principle. Do you
- 25 think it's important to read all of the words in a

1 document before you sign it if your signature is  
2 acknowledging that you are agreeing to the contents of  
3 that document?

4 A. Yes, sir.

5 Q. Okay, and that --- that was kind of a personal policy that  
6 you had put into practice in your professional career in  
7 HR for years, correct?

8 A. Yes, sir.

9 Q. Now you indicated there was --- some dis --- some  
10 questions, I think, that you asked of someone in the room,  
11 and I understood you to be saying those questions were  
12 related to the arbitration provision?

13 A. No, sir.

14 Q. Oh, I misunderstood you.

15 A. They weren't ---

16 Q. I'm sorry.

17 A. They weren't all --- what --- what they did, when they  
18 went through this with me, and it was, first of all, it  
19 was, I think her name Donna.

20 Q. Okay.

21 A. The marketing director, she had this checklist that she  
22 had in front of her, and that was a checklist she used and  
23 dated things and things like that, which it might not have  
24 been that exact checklist, but she flipped through it, and  
25 she said, "This is the furnishings." She gave me the gist

1 of that, and then when she got to the arbitration, she  
2 said, "This is the arbitration clause. This is the gist  
3 of it," and I was glancing over it, and then she was  
4 moving on to other parts of the document while I was ---  
5 and I didn't have time to read the whole document, no.

6 Q. So, sort of --- sort of a CliffsNotes versions going  
7 through the ---

8 A. Uh-huh (affirmative response).

9 Q. --- document?

10 A. Yes, sir.

11 Q. And do you agree that you could have said, "I want you to  
12 stop. Slow down. I want to read this thing word for  
13 word, and I'll tell you when I'm ready to move on to the  
14 next section"?

15 A. Yes, sir.

16 Q. That's a thing you could have done?

17 A. Yes, sir.

18 Q. And you did not do that?

19 A. No, sir.

20 Q. What --- do you have any recollection of --- I might be  
21 unclear on this, so let me ask it so I understand.

22 I'm unclear on whether you asked specific questions  
23 about the arbitration language or if you were saying that  
24 Donna simply explained it in some simple terms?

25 A. Donna simply explained it in some simple terms, and I

1           asked her one or two questions and compared it to a  
2           employee contract from Lowe's, and she somewhat explained  
3           a little bit of the difference.

4    Q.    What do you remember asking about the arbitration  
5           provision?

6    A.    To be honest with you I don't remember my exact questions.

7

8                        I remember something we discussed about the  
9           arbitration in --- in the manner of I asked her about  
10          evictions and that kind of stuff with arbitration if any  
11          --- if anybody was ever evicted, explain the arbitration  
12          to me there, or --- and I --- I think I asked her  
13          something about pertaining to if I left and had an issue,  
14          how would I handle that. Now she explained a little bit  
15          of that, but she did not go into detail, because her exact  
16          words, and I remember her exact words, she said she didn't  
17          --- she didn't know completely all about the arbitration.

18   Q.    Okay. Do you remember, outside of saying, "She," being  
19          Donna?

20   A.    Yes, sir. Donna.

21   Q.    That's the name we've assigned to her.

22   A.    Donna.

23   Q.    Or we think that's who it was?

24   A.    Yes, sir.

25   Q.    Saying something along the lines of, I think what you're

1           telling me is, "I'm not --- I don't completely understand  
2           it," or something like that?

3    A.    Well, I didn't really say, "I don't completely un" ---

4    Q.    But not you?

5    A.    No, her. Her.

6    Q.    Yeah.

7    A.    Donna said she didn't completely understand it, the whole  
8           ---

9    Q.    That's what I understood you ---

10   A.    Yes, sir.

11   Q.    --- to be saying.

12   A.    Yes, sir.

13   Q.    Okay.

14   A.    Yes, sir.

15   Q.    Outside of that, do you remember like when you said,  
16           "Okay. How do --- how's eviction get handled under this?"  
17           Do you remember what she said?

18   A.    She told me she didn't know how evictions got settled,  
19           because that was done by the executive director.

20   Q.    Okay, and the other thing you mentioned was, and I'm going  
21           to get this wrong, but it was something like, "What if I  
22           leave," ---

23   A.    Uh-huh (affirmative response).

24   Q.    --- and I've kind of forgotten. You said something like,  
25           "What if I leave and had something happen," or I didn't

1 understand what you were saying there.

2 A. What I was saying there is I asked her a general question,  
3 "What if I were to leave the facility on my own, and I had  
4 an issue with the facility, and I file something against  
5 them, how would that be handled?"

6 Q. Okay, and do you --- do you remember how she responded to  
7 that?

8 A. She responded to me that she said in the gist of the  
9 arbitration contract they would prefer the corporate  
10 office, and they, and when I said, "They," I mean  
11 corporate office, and the executive director would prefer  
12 that you go through arbitration instead of straight to a  
13 court trial. That's the way she explained it.

14 Q. All right, and --- and then at some point you indicated  
15 that you read the document word for word, I think you said  
16 after you got home?

17 A. Yes, sir.

18 Q. Okay, and was it that same day?

19 A. I started it that same day. I didn't finish it that same  
20 day, because it was late in the afternoon, but I did  
21 finish it over the next two or three days.

22 Q. Yes, sir.

23 A. I read the entire document.

24 Q. Okay, and --- and you understood, after reading the  
25 arbitration provision, for example, that if you had

1 concerns about having signed it, you could have said, "Hey  
2 community, I'm going to exercise my right under this term  
3 here to withdraw my consent to arbitrate"?

4 A. Yes, sir.

5 Q. Correct?

6 A. Yes, sir.

7 Q. I wanted to follow up on something else. I don't think  
8 you were suggesting this to me, but you may have been.  
9 Did you have a Lowe's Arbitration Agreement with you when  
10 you went to Pacifica to sign the document?

11 A. No, sir.

12 Q. Okay.

13 A. No, sir, I did not.

14 Q. I think you ---

15 A. I was com ---

16 Q. I'm talking over you.

17 A. I was comparing what theirs, what I remember that their  
18 arbitration clause said in the employment contract with  
19 what she was explaining to me there.

20 Q. I thought that's what you meant.

21 A. Yes.

22 Q. You had --- you kind of had bits and pieces of it in your  
23 head ---

24 A. Yes, sir.

25 Q. --- from having dealt with it for so long?

1 A. Yes, sir.

2 Q. After you had an opportunity to review or after you  
3 exercised the opportunity to review the document word for  
4 word after you had signed it, did you understand that  
5 disputes between you and Pacifica would be resolved via  
6 arbitration unless it was an eviction action, and it was  
7 funny you mentioned eviction earlier, or something that  
8 could be handled in small claims court? Did you have that  
9 understanding?

10 A. Say that again, please, sir. Rephrase or repeat that.

11 Q. Yes, sir. After --- I know you didn't read it or you've  
12 testified you didn't read it word for word the arbitration  
13 provision before you signed it, but you did within a day  
14 or two, and after reading it word for word, did you  
15 understand that disputes between you and Pacifica,  
16 regardless of who's initiating the dispute, would be  
17 resolved by arbitration unless they met one of the  
18 categories that are exempted from arbitration, which would  
19 be eviction and matters that can be brought in small  
20 claims court? Was that your understanding?

21 A. Yes, sir, I think so.

22 Q. Okay.

23 A. Can we take a quick break?

24 Q. We can.

25 Let's take a break.

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Oct 10 2024

SC Court of Appeals

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.

PROOF OF SERVICE

It is hereby certified that Appellants' Petition for Rehearing in the above-captioned case  
has been served on the following parties via e-mail, on October 10, 2024:

Patrick E. Knie  
Knie & Shealy Attorneys at Law  
250 Magnolia Street  
Spartanburg, SC 29306  
[pknie@knielaw.com](mailto:pknie@knielaw.com)

Mitch Slade  
Mitch Slade Law Office, P.A.  
PO Box 1007  
Spartanburg, SC 29304  
[mitch@mitchsladelaw.com](mailto:mitch@mitchsladelaw.com)  
*Attorneys for Plaintiffs/Respondents*

[Appellant Counsel's Signature on Following Page]

Respectfully submitted,

s/ Paul E. Allen, Jr.

Jonathan G. Roquemore

Joshua D. Shaw

Paul E. Allen, Jr.

Hedrick Gardner Kincheloe & Garofalo LLP

1230 Main Street, Suite 325

Columbia, SC 29201

*Attorneys for Appellants*

October 10, 2024