STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
	)	
Saket Singh, M.D.,	)	Case No. 2024-CP-46-03641
	)	
Plaintiff,	)	
	)	**ORDER GRANTING PLAINTIFF'S MOTION TO PRODUCE CORPORATE RECORDS AND DENYING DEFENDANT'S MOTION TO DISMISS OR TO COMPEL ARBITRATION**
vs.	)	
	)	
Anesthesia Associates of Rock Hill, P.A.,	)	
	)	
Defendant.	)	
	)	

This matter is presently before the court on Plaintiff's Motion for Expedited Order to Produce Corporate Records, pursuant to S.C. Code Ann. § 33-16-104, and on Defendant's Motion to Dismiss or Alternatively to Stay the Action and Compel Arbitration. The court held oral argument on these motions via the court's virtual courtroom on Monday, October 21, 2024. Attorney David E. Rothstein appeared on behalf of Plaintiff, and Attorney H. Bernard Tisdale appeared on behalf of Defendant. After carefully reviewing the briefs and exhibits submitted by both parties and after considering the arguments of counsel, the court hereby grants Plaintiff's motion and denies Defendant's motion.

Plaintiff, Saket Singh, M.D. (hereinafter "Plaintiff" or "Dr. Singh"), filed this action on September 12, 2024, asserting a single cause of action seeking a court order under S.C. Code Ann. § 33-16-104 compelling Defendant, Anesthesia Associates of Rock Hill, P.A. (hereinafter "Defendant" or "AARH"), to produce corporate records for inspection and copying, at Defendant's expense. Plaintiff's Verified Complaint contains the following allegations of fact:

(1) Plaintiff is a current shareholder of Defendant, owning approximately 20% of the outstanding shares of Defendant's stock, (Complaint, at 3, 6, ¶¶ 10, 23);

(2) following the sudden and unexpected termination of Plaintiff's employment by Defendant on August 12, 2024, Plaintiff's counsel sent a letter dated September 3, 2024, to Defendant's counsel requesting to inspect and copy a variety of financial and corporate records of Defendant on or after September 10, 2024, (Complaint, at 5, ¶ 19 & Ex. A);

(3) Defendant's counsel acknowledged receipt of the email and letter on September 4, 2024, (Complaint, at 5, ¶ 20 & Ex. B);

(4) Defendant's counsel summarily denied Plaintiff's request to inspect and copy the records, by email dated September 10, 2024, in which Defendant's counsel asserted that Plaintiff is no longer a shareholder of Defendant and, therefore, does not have any rights to inspect and copy Defendant's corporate records, (Complaint, at 5, ¶ 21 & Ex. C); and

(5) Plaintiff has not "relinquished, forfeited, or transferred any of his shares in AARH back to the corporation or to any other shareholder of AARH." (Complaint, at 6, ¶ 25).

Defendant's sole argument in opposition to the merits of Plaintiff's Complaint is that Plaintiff was not a shareholder of AARH at the time this lawsuit was commenced because, it argues, Plaintiff's shares in AARH automatically reverted to the company upon the termination of Plaintiff's employment. There is nothing in the documents submitted by Defendant in opposition to Plaintiff's motion, to support this argument. Defendant also asserts that it redeemed Plaintiff's shares by mailing a check to Plaintiff for $10.00 on August 14, 2024, two days after his termination, which represents the purchase of Plaintiff's 10 shares of AARH stock at a par value of $1.00 per share. Plaintiff testified in his affidavit that he never cashed or negotiated the check. (Singh Aff., at 3, ¶ 9). The mailing of the check to Plaintiff was merely an offer by Defendant to purchase Plaintiff's shares of AARH, and the fact that Plaintiff did not return the check to Defendant is not evidence that Plaintiff ever accepted the offer to sell his

shares in AARH for $1.00 per share.

The proposed Separation and Redemption Agreement and General Release (hereinafter "Separation Agreement"), which Defendant's counsel gave to Plaintiff along with his termination letter on August 12, 2024, and which Plaintiff refused to sign, provides as follows: "Physician is also a shareholder of the Company and, as a result of Physician's separation from engagement with the Company, Physician must sell, and the Company will redeem, all of Physician's shareholder interests in the Company on the terms and conditions set forth herein." (Separation Agreement, at 1) (emphasis added) (Exhibit A to Plaintiff's motion). The proposed Separation Agreement also provides, "Physician owns ten (10) shares of stock in the Company (the 'Shares'), which Shares represent the entirety of Physician's shareholder interests in the Company." (Id.) (emphasis added). Moreover, that proposed document also provides, "Upon consummation of the transactions contemplated hereby and the delivery to the Company of the Shares, the Company will acquire valid and marketable title to the Shares, free and clear of all encumbrances, restrictions, and claims or charges of any kind as stated herein." (Id. at 2) (emphasis added). The tense of the emphasized language above used by Defendant in the proposed Separation Agreement makes clear that Plaintiff is still the owner of the AARH shares in question because the transaction described in the proposed Separation Agreement was not consummated. Although the proposed Separation Agreement was never signed by either party and, therefore, is not a binding agreement, the language in the Separation Agreement was drafted and proposed by Defendant's counsel and, therefore, can be viewed as an expression of Defendant's position on August 12, 2024, when that document was presented to Dr. Singh.

Section 33-16-102 of the South Carolina Code grants to shareholders the right to inspect and copy certain documents of the corporation upon written demand and upon at least five

business days' notice. Section 33-16-102(a) applies to corporate records that must be kept at the corporation's principal office, as specified by S.C. Code Ann. § 33-16-101(e), including articles of incorporation (and all amendments), bylaws (and all amendments), board resolutions creating classes of shares, minutes of shareholder meetings and all actions taken by shareholders without meeting, all written communications to shareholders as a group for the past three years including financial statements provided to shareholders, the list of names and addresses for all directors and officers, and the most recent annual report delivered to the SC Department of Revenue. S.C. Code Ann. § 33-16-101(e). For shareholders who own at least one percent (1%) of the outstanding shares of any class of stock in the corporation, they are also entitled to inspect and copy federal and state income tax returns for the past ten years. S.C. Code Ann. § 33-16-102(a). In addition, pursuant to S.C. Code Ann. § 33-16-102(b), shareholders are also entitled to inspect and copy other enumerated records at a reasonable location specified by the corporation, upon written demand again with at least five business days' notice, which records include excerpts from minutes of board meetings, records of actions by a committee of the board, minutes of shareholder meetings, records of actions taken by the board or shareholders without a meeting, accounting records, and a record of shareholders. S.C. Code Ann. § 33-16-102(b). The records requested under subsection (b) are only available if the requesting shareholder satisfies three conditions: "(1) his demand is made in good faith and for a proper purpose; (2) he describes with reasonable particularity his purpose and the records he desires to inspect; and (3) the records are directly connected with his purpose." S.C. Code Ann. § 33-16-102(c).

Plaintiff's counsel's letter of September 3, 2024, which is attached to the Verified Complaint as Exhibit A, appears to satisfy all of the requirements of Section 33-16-102, including subsections (a), (b), and (c). Plaintiff is a shareholder of Defendant AARH and was so

at the time the letter was written, owning ten (10) shares, which amounts to twenty percent (20%) of the outstanding shares of the corporation. Plaintiff appears to have been acting in good faith and for a proper purpose when he made the request, namely "to enable him to evaluate his potential legal rights and remedies, including dissenter's rights, minority shareholder oppression or freeze-out, shareholder's derivative action, and judicial dissolution or valuation of his shares." (Complaint Ex. A, at 2). Plaintiff identified with particularity the records he seeks to inspect and copy, along with the purpose for his request. (Id. at 1-2). And the records requested are directly related or connected with those stated purposes. Plaintiff's counsel also provided at least five business days' notice of the demand, requesting that the records be available "on September 10, 2024 or later that week." (Id. at 2). Under the statute, "[a] shareholder's agent or attorney has the same inspection and copying rights as the shareholder he represents." S.C. Code Ann. § 33-16-103(a). Plaintiff's counsel's letter of September 3, 2024, expressly notified Defendant's counsel that attorney Rothstein had been retained to represent Plaintiff in connection with Plaintiff's termination from AARH. (Complaint, Ex. A, at 1). Defendant has not contested any of these points, other than Plaintiff's status as a current shareholder of AARH.

There is also no dispute that Defendant's counsel has refused to allow Plaintiff to inspect the corporate records as requested under S.C. Code Ann. § 33-16-102, despite Plaintiff's compliance with subsections (a)-(c). By email dated September 9, 2024, Defendant's counsel stated, without any corroborating evidence or supporting legal authority, that Plaintiff "is no longer a shareholder of AARH." (Complaint, Ex. C).

Section 33-16-104 of the South Carolina Code provides that if the shareholder has complied with the requirements of Section 33-16-102(a), (b) & (c), but the corporation does not allow the shareholder to inspect and copy the records requested, the circuit court for the county

where the corporation's principal office is located can order the records to be produced "at the corporation's expense upon application of the shareholder." S.C. Code Ann. § 33-16-104(a). Subsection (a) uses the phrase "summarily may order," and subsection (b) provides that "[t]he court shall dispose of an application under this subsection on an expedited basis." S.C. Code Ann. § 33-16-104(a) & (b). The court is convinced that Plaintiff has made an appropriate showing, even at this preliminary stage of the case, to satisfy his burden to obtain an order under Section 33-16-104(a) & (b) for the production of the corporate records his counsel has requested on a summary or expedited basis.

Defendant filed a motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP, asserting that this court does not have jurisdiction over Plaintiff's lawsuit because of an alleged mandatory arbitration provision in the documents governing both Plaintiff's employment with AARH and his status as a shareholder and director of AARH. Defendant has also moved, in the alternative, to stay this action and to compel arbitration. The court is not convinced that arbitration of this case is mandated under South Carolina law.

As an initial matter and as noted above, S.C. Code Ann. 33-16-104 appears to vest sole authority to order the inspection and copying of corporate records in "the circuit court of the county where the corporation's principal office . . . is located." S.C. Code Ann. § 33-16-104(a) & (b). Because the statute specifically refers to the circuit court as the appropriate forum for ordering the inspection and copying of corporate records, arbitration would not be appropriate here. Furthermore, the statute provides that a shareholder's right to inspect and copy corporate records "may not be abolished or limited by a corporation's articles of incorporation or bylaws." S.C. Code Ann. § 33-16-102(d). Although there appears to be no published case law in South Carolina construing either of these two sections of the SC Model Business Corporations Act, the

clear intent of the statute is to provide an expeditious judicial remedy to a shareholder of a corporation and to prevent a corporation from diminishing or limiting a shareholder's right to crucial information about the corporation in which he or she holds an ownership interest, such as by inserting a mandatory arbitration clause in the corporation's governance documents.

Even if the corporate records statute did not preclude arbitration of this case, Defendant cannot compel arbitration in this case, because it has failed to submit an enforceable, mandatory arbitration clause that would apply to Plaintiff's narrow claim here. The documents that Defendant has attached to its motion are not sufficient to establish an enforceable agreement to arbitrate this dispute.

The Physician Shareholder Employment Agreement, which is referenced at Exhibit E to Defendant's motion, is not signed by Plaintiff or by anyone on behalf of Defendant. This Agreement would fall within the South Carolina Statute of Frauds, because it is a contract that cannot be performed within the space of one year. S.C. Code Ann. § 32-3-10(5). Because the Agreement has a 2-year non-compete provision, the Agreement cannot be performed within the space of one year. (Def.'s Ex. E, at 4-5, ¶ 11). As such, Defendant would have to produce a memorandum of the Agreement signed by Plaintiff as the party to be charged, in order for that Agreement to be enforceable by Defendant against Plaintiff. S.C. Code Ann. § 32-3-10(5).

Furthermore, the Physician Shareholder Employment Agreement requires arbitration only for "any dispute or controversy arising under, out of, or in connection with, or in relation to this Agreement, or any amendment hereof." (Def.'s Ex. E, at 6, ¶ 13). The sole cause of action in Plaintiff's Verified Complaint does not "arise under, out of, or in connection with, or in relation to [the Physician Shareholder Employment] Agreement," (Id.); instead, this action arises under statute–S.C. Code Ann. § 33-16-104. The Physician Shareholder Employment Agreement does

not refer to or incorporate any Shareholders' Agreement of AARH or any other corporate governance document of AARH. The Physician Shareholder Employment Agreement also contains an integration clause, which provides as follows: "Entire Agreement. This instrument contains the entire Agreement of the parties regarding the Physician's employment. It may not be changed except by written agreement signed by the parties hereto." (Def.'s Ex. E, at 6, ¶ 18). The Physician Shareholder Employment Agreement deals only with Plaintiff's employment with AARH, not his ownership interests or rights as a shareholder and director of AARH. Because the instant case does not "arise under, out of, or in connection with, or in relation to" the Physician Shareholder Employment Agreement, the arbitration provision of that Agreement simply does not apply to this narrow case relating only to Plaintiff's statutory right, as a shareholder of AARH, to access the practice's corporate records.

Defendant attempts to invoke the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq. in support of its motion. The FAA does not apply in this case because all of the documents upon which Defendant relies contain a choice-of-law provision expressly stating that the laws of the State of South Carolina apply. (See Def.'s Ex. B at 1, ¶ 8; Def.;s Ex. C at 6, ¶ 17; and Def's Ex. E. at 6, ¶ 15). In addition, two of the documents submitted by Defendant contain a notice at the top of the first page of each document expressly stating that the agreement in question is governed by the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10 et seq., not the FAA. (See Ex. C, at 1 (header) and Ex. E, at 1 (header)). The recent decision of the South Carolina Court of Appeals in 315 Corley CW LLC v. Palmetto Bluff Dev., LLC, Opinion No. 6074, 2024 WL 3514884 (S.C. Ct. App. July 24, 2024), is directly on point. In that case, the court of appeals stated, "Because the arbitration agreement explicitly requires application of South Carolina law, we need not address any requirements for FAA coverage; instead, we hold

that the SCUAA applies." Id. at *2. Accordingly, because all of the agreements upon which Defendant relies contain South Carolina choice-of-law provisions, the FAA does not apply here.

Defendant attempts to rely on the Purchase Agreement that Plaintiff signed on April 1, 2021, when he became a shareholder of AARH, which document is attached to Defendant's Motion as Exhibit B. The Purchase Agreement does not contain a mandatory arbitration provision at all, much less one that meets the strict notice requirements of the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10. The Purchase Agreement provides, "The shares issued to Singh are being issued by the Corporation pursuant to the Shareholders Agreement dated January 1, 2019 as amended (Shareholders' Agreement), and as the Shareholders' Agreement may be further amended or restated from time to time by the shareholders." (Def.'s Ex. B, at 1, ¶ 1). The Purchase Agreement also provides, "Singh agrees to comply with all terms and conditions contained in the Shareholders' Agreement which he has been provided a copy of." (Id., at 1, ¶ 4). Dr. Singh testified that when he signed the Purchase Agreement, he "was not provided with a copy of the Shareholders' Agreement dated January 1, 2019, which is referred to in Paragraphs 1, 4, and 7 of the Purchase Agreement." (Singh Aff., at 1, ¶ 3). In any event, the only document dated January 1, 2019 that has anything to do with the AARH Shareholders' Agreement is entitled "Tenth Amendment to Shareholders' Agreement of Anesthesia Associates of Rock Hill, P.A." (Def.'s Ex. C, at 34). The January 1, 2019 document does not actually contain a separate, mandatory arbitration provision. (Id. at 34-36).

Defendant asserts that the Purchase Agreement contains a typo, which should have referred to the original Shareholders' Agreement of July 1, 1999, instead of the "Shareholders Agreement dated January 1, 2019, as amended." (Frye Dec., at 2, ¶ 8). Defendant tries to incorporate the July 1, 1999 Shareholders' Agreement into the Purchase Agreement because the

actual Amendment dated January 1, 2019 does not contain the required notice at the top of the Agreement that is required for mandatory arbitration provision to be enforceable under the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10; nor does the January 1, 2019 Amendment contain a mandatory arbitration provision at all. Plaintiff testifies in his Affidavit that he was never provided with a copy of any of the prior Shareholders' Agreements or amendments attached by Defendant as Exhibit C of its motion, prior to the filing of Defendant's motion here. (Singh Aff., at 2, ¶ 4). Defendant has not submitted any competent evidence to refute Plaintiff's affidavit in this regard. Plaintiff cannot be bound by an arbitration provision that is contained within a Shareholders Agreement that he has never seen, that was never provided to him by Defendant or Defendant's counsel, and that he has never signed or acknowledged.

Plaintiff points out that when he was terminated by AARH on August 12, 2024, Defendant provided to him a copy of a document entitled "Amended and Restated Shareholders' Agreement," dated January 1, 2023, as an attachment to his termination letter. The Amended and Restated Shareholders' Agreement of AARH from January 1, 2023, which was never mentioned by Defendant in any of its filings, specifically provides. "This Agreement replaces and supercedes the original Shareholders Agreement dated July 1, 1999 and the subsequent ten amendments to that Shareholders Agreement." (Pl.'s Memo. Ex. B, at 1) (emphasis added). Although the Amended and Restated Shareholders' Agreement purports to be "by and among Anesthesia Associates of Rock Hill, P.A. . . . and all of the undersigned shareholders of the Corporation," (id.), Dr. Singh is not listed as one of those shareholders, and he did not sign that document, despite the fact that he became a shareholder partner of AARH on April 1, 2021, and was indisputably still a shareholder of AARH as of January 1, 2023. (Id. at 1, 9). Whether or

not the Amended and Restated Shareholders' Agreement was properly adopted by AARH's shareholders on January 1, 2023 (and, therefore, whether it has any legal force and effect) can only be determined by examining the corporate records Plaintiff has requested in this lawsuit, including the articles, by-laws, and records of meetings of the board and shareholders of AARH. This further demonstrates Plaintiff's need and interests in obtaining the corporate records of AARH that he has requested in this lawsuit.

In summary, Defendant has failed to produce any document where Plaintiff has actually signed a mandatory arbitration provision relating to his potential legal claims as a shareholder of AARH, including the right to inspect and copy corporate records of AARH pursuant to S.C. Code Ann. § 33-16-101 et seq., as requested here. Accordingly, Defendant has not established to the court's satisfaction that Plaintiff's claims asserted in this lawsuit are subject to mandatory arbitration.

The two cases cited in Defendant's brief in support of its motion to dismiss or to compel arbitration are not applicable to the facts presented here and do not excuse the fact that Plaintiff's signature is not contained on any contract actually containing a mandatory arbitration clause. First of all, both Weaver v. Brookdale Senior Living, Inc., 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020), and Pearson v. Hilton Head Hosp., 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), were pre-empted by the FAA; therefore, the court did not apply the SCUAA. Secondly, both Weaver and Pearson involved arbitration provisions in underlying contracts to which neither plaintiff was actually a party, and where no challenge was raised about the validity of the underlying contracts containing the arbitration provisions. In Weaver, the plaintiff was the granddaughter of a woman who died after she strayed away from an assisted living facility and was attacked by an alligator in a holding pond at the facility. The decedent in Weaver had

signed a contract with the assisted living facility, which contained the arbitration clause at issue there. In Pearson, the plaintiff was a physician who worked temporarily as an anesthesiologist at a hospital in Hilton Head pursuant to a contract between the hospital and a locum tenens agency that contained a mandatory arbitration provision. The physician plaintiff was not a party to or signatory of the underlying contract between the hospital and the agency at issue in that case. Both Weaver and Pearson involved the issue of whether a non-party to the underlying contract would be bound by a mandatory arbitration agreement signed by someone else with whom the third-party had a familial or business relationship. Neither Weaver nor Pearson involved a situation like that presented here, where the underlying contract was not enforceable because if failed to comply with the S.C. Statute of Frauds where the party seeking to compel arbitration could not produce a written copy of the contract signed by the party against whom the arbitration clause was being asserted.

On October 16, 2024, Defendant filed as Exhibit G to its motion a document showing that AARH filed a demand for arbitration with the American Arbitration Association on October 15, 2024, referring to Plaintiff's sole cause of action in this case under S.C. Code Ann. § 33-16-104. The only document Defendant attached to the AAA filing is the original Shareholders' Agreement of AARH from July 1, 1999 with the ten amendments through January 1, 2019, prior to Plaintiff's becoming a shareholder of AARH on April 1, 2021. None of the documents submitted by Defendant to the AAA bears Plaintiff's signature on any mandatory arbitration provision that could be applicable to this dispute. Plaintiff has requested an order from this court staying any proceedings in the AAA relating to Defendant's arbitration demand of October 15, 2024. The court agrees that such an order is appropriate; therefore, any proceedings before the AAA pursuant to AARH's demand for arbitration are hereby stayed.

Finally, S.C. Code Ann. § 33-16-104(c) provides that if the shareholder is successful in obtaining a court-ordered inspection of the records requested, the court "also shall order the corporation to pay the shareholder's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused the inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the demanded records." S.C. Code Ann. § 33-16-104(c). Plaintiff shall file a motion for attorney's fees and costs relating to this matter, along with any supporting affidavits or other materials, within ten (10) days of the date of this order, as allowed by Rule 54(e)(1), SCRCP.

In summary, Plaintiff's motion for an expedited order under S.C. Code Ann. § 33-16-104 requiring Defendant to produce copies of the requested corporate records of AARH to Plaintiff, at Defendant's expense, is hereby GRANTED. Defendant shall produce any and all such records to Plaintiff no later than thirty (30) days from the date of this order. Defendant's motion to dismiss or to stay this action and compel arbitration is DENIED. Any proceedings before the AAA on Defendant AARH's Demand for Arbitration filed on or about October 15, 2024, are hereby STAYED. The court retains jurisdiction of this case to rule on any motion for attorney's fees and costs filed by Plaintiff and to ensure that Defendant complies with this Order.

IT IS SO ORDERED.

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Marvin H. Dukes, III
Circuit Court Judge

_____, 2024

Beaufort, South Carolina

York Common Pleas

Case Caption: Saket Singh Md VS Anesthesia Associates Of Rock Hill Pa

Case Number: 2024CP4603641

Type: Order/Production

So Ordered

s/Marvin H. Dukes III #2785