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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. 2017-CP-42-00219
Appellate Case No. 2024-001546

Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr., individually and on behalf of all others similarly situated,

Respondents,

v.

Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; CHSPSC, LLC; Professional Account Services, Inc.,

Appellants,

APPELLANTS' MOTION TO HOLD APPEAL IN ABEYANCE

Pursuant to 240(a), SCACR, Appellants Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; CHSPSC, LLC; and Professional Account Services, Inc. (collectively, "Defendants") respectfully move the Court for an order holding the above-captioned appeal (the "Second Appeal") in abeyance until a final decision is issued in the related appeal filed by Defendants that is currently pending before the Court, Appellate Case No. 2020-001613 (the "First Appeal").

BACKGROUND

This case involves three Plaintiffs' allegations that Defendant Mary Black (a hospital) provided them with emergency care following motor vehicle accidents. Plaintiffs allege that Mary

Black and its Co-Defendant affiliates' "contracts with patients' health insurance carriers" "required" Defendants to submit Plaintiffs' medical bills for this care "directly to the carriers," at discounted rates established by the contracts between the hospital and the health insurance carriers. But, according to Plaintiffs, Defendants billed them instead and at higher rates. By doing so, Plaintiffs allege, Defendants tortiously interfered with certain contractual relationships and were unjustly enriched.

In response to the Amended Complaint, Defendants moved to compel one of the plaintiffs, Samuel Owens, Jr., to arbitrate his claims under the doctrine of equitable estoppel. Defendants did so because the contract between Mary Black and Mr. Owens' health insurance provider (Cigna) contained an arbitration provision. Defendants also moved to dismiss each of the three Plaintiffs' claims on several grounds.

The circuit court denied those motions, and Defendants filed the Notice of Appeal in the First Appeal on December 8, 2020. On appeal, Defendants raised two primary issues (each with multiple sub-issues): (1) whether the circuit court erred in denying Defendants' motions to compel Mr. Owens to arbitrate his claims under the doctrine of equitable estoppel; and (2) whether the circuit court erred in denying Defendants' motions to dismiss.

This Court held oral argument on March 4, 2024. On September 18, 2024, this Court issued its opinion affirming the circuit court's decision regarding the motions to compel arbitration (Opinion No. 6088), holding that Mr. Owens was not bound by the arbitration clause in his insurer's contract with Mary Black, even though his claims were premised on that contract. The Court declined to address the circuit court's order on the motions to dismiss, holding that the issues raised in Defendants' motions "would benefit from further factual development." The decision, however, was not unanimous, and Judge Geathers dissented, explaining his view that "the causes

of action in the Amended Complaint … invoke the Providers' contractual duties to the insurance carriers with which Insureds also had contracts."

Indeed, the very same day, the same panel issued a decision authored by Judge Geathers and reversing a circuit court in a virtually identical case—holding that the plaintiff there was bound by the arbitration clause in his insurer's contract with the defendant hospital. *Bennett v. ACS Primary Care Physicians-Se. P.C.*, No. 2021-001342, 2024 WL 4234720 (S.C. Ct. App. Sept. 18, 2024). The only difference between the cases was how the plaintiffs styled one of their claims—here, in tort; there, in contract.

Because these two decisions were irreconcilable, raising the risk of gamesmanship and confusion in the trial courts, Defendants timely filed a Petition for Rehearing. On November 21, 2024, the Court requested that Plaintiffs file a Return to Defendants' Petition for Rehearing. Thus, the issues raised in the First Appeal remain pending before the Court, and the resolution of such issues affect this appeal and the remainder of the underlying litigation directly.

While the First Appeal was pending, Defendants took the position that, pursuant to the automatic stay under Rule 241(a), SCACR, the entire case was stayed and the circuit court lacked jurisdiction to proceed with the case in any capacity. The circuit court, however, disagreed, and issued an order holding that the automatic stay only applied to Mr. Owens' claims and allowing the case to proceed as to Plaintiffs during the pendency of the First Appeal. The circuit court did so even though Plaintiffs' claims were identical, even though Defendants had appealed the courts' ruling on the motions to dismiss in connection with all three Plaintiffs, and even though Plaintiffs sought to represent a putative class that included members who were likely subject to similar arbitration clauses between their insurers and Mary Black.

As the case involving the other two Plaintiffs proceeded, Defendants then responded to Plaintiffs' discovery requests, and Plaintiffs moved to certify a class. Even though Plaintiffs

submitted no evidence showing that they could meet their burden under Rule 23(a), the circuit court nevertheless issued an order certifying the following class:

> All individuals who, since January 1, 2014, received any type of healthcare treatment from any entity located in South Carolina that is owned or affiliated with Defendants, while being covered by valid health insurance other than Cigna, and whose medical bills resulting from that treatment were not submitted to their health insurance carrier for potential payment.

Because this class included individuals who, like Mr. Owens, were subject to arbitration clauses between their insurers and Mary Black, Defendants filed nine separate motions to compel certain class members to arbitrate their claims. Although the circuit court held a hearing on Defendants' motions to compel arbitration on March 16, 2023, the circuit court has refused to issue a decision on those motions. When reminded about those outstanding motions and requested to provide a ruling thereon, the circuit court, in a July 2024 correspondence with counsel, defended further delay in ruling based on the pendency of the First Appeal. *See* **Exhibit A**, July 8, 2024 Correspondence with the Circuit Court (stating that the court's "delay in ruling has been to wait for guidance from the appellate court" because "the appellate decision concerning the issue of arbitration is what may dramatically effect [sic] future proceedings"). While recognizing now the dramatic effect the arbitration issue may have on future proceedings, the circuit court did not heed that admonition when it refused to recognize the automatic stay after the filing of the First Appeal. Instead, the court allowed the litigation to continue and has now already ordered that these same class members subject to similar arbitration agreements receive notice under Rule 23 informing them that they are members of the certified class.

Additionally, by the circuit court allowing the other parts of the litigation to continue unfettered, on November 30, 2023, the circuit court issued an order striking Defendants' answers and holding Defendants in default based upon Defendants' purported failure to cooperate in discovery—discovery that should not have occurred because the circuit court lacked subject matter

jurisdiction over the case due to the pending First Appeal. After the circuit court denied Defendants' Motion to Alter or Amend that order, Defendants filed this Second Appeal, which seeks review of several of the circuit courts orders, including the order striking Defendants' answers and holding them in default, the court's order certifying a class, and the order regarding the scope of Rule 241(a)'s automatic stay after the First Appeal.

Now, these two interrelated appeals, each from a very different stage of the litigation, are simultaneously pending in this Court. In the interests of justice, economy, and efficiency and to ensure consistent rulings in this case, Defendants respectfully request that this Court hold the Second Appeal in abeyance until the First Appeal is resolved.

ARGUMENT

South Carolina courts have long recognized that the interests of justice are best served by holding an appeal in abeyance when other matters having a direct effect on the appeal are awaiting a final determination. *See Piedmont Press Ass'n v. Record Publ'g Co.*, 156 S.C. 43, 43, 152 S.E. 721, 728 (1930) (staying action pending resolution of a pending appeal to the United States Circuit Court of Appeals in a related case).

Here, the First Appeal affects every claim asserted by each of the named Plaintiffs and may render the issues in this Second Appeal moot. That is, in resolving the First Appeal, the Court may ultimately reach any of the following conclusions: (1) the circuit court erred in refusing to compel Plaintiff Owens to arbitrate his claims; (2) the circuit court erred in denying the motions to dismiss the claims of Plaintiff Owens; (3) the circuit court erred in denying the motions to dismiss the claims of Plaintiff Blackwell; (4) the circuit court erred in denying the motions to dismiss the claims of Plaintiff Brooks; or (5) any combination of the above. Each one of those decisions could affect the orders on appeal here—up to, and including, the sanctions order that prompted this Second Appeal.

Just by way of example, as even the circuit court recognized, resolution of the motion to compel arbitration necessary implicates the rest of the case. For example, it is not currently clear who is in Plaintiffs' class because many unnamed class members are, like Owens, potentially subject to arbitration clauses in their insurers' contracts with Mary Black. Indeed, confusion about the identity of the class based on the pending First Appeal is one reason why a class never should have been certified. Resolution of that issue, therefore, necessarily impacts—and potentially moots—issues about class certification in the Second Appeal. For similar reasons, the United States Supreme Court recognized that when a party appeals the denial of a motion to compel arbitration the underlying proceedings should be stayed while the interlocutory appeal on arbitrability is ongoing. *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740–41 (2023) (recognizing that "when a party appeals the denial of a motion to compel arbitration, whether the litigation may go forward in the district court is precisely what the court of appeals must decide" (internal quotation marks omitted)).

In addition, if this Court decides to review—and ultimately reverses—some or all of the circuit court's decision on the motions to dismiss, related issues in the Second Appeal will become moot. In fact, that possibility is why Rule 241(a) precluded the circuit court from proceeding with any part of this case in the first place. In any event, this Court has held appeals in abeyance under similar circumstances. For example, in *McDill v. Nationwide Mut. Ins. Co.*, the Court of Appeals held an appeal in abeyance pending the resolution of a related lawsuit and appeal. 368 S.C. 29, 31, 627 S.E.2d 749, 750 (Ct. App. 2006). Ultimately, the Court found that the resolution of that related action rendered the stayed appeal moot and vacated the underlying order. So too here. Resolution of the First Appeal in Defendants' favor would moot most, if not all, of the issues in the Second Appeal.

And even if some or all of the issues are not mooted, holding this appeal in abeyance until the First Appeal is resolved will help clarify the issues in this appeal, promoting efficiency, economy, and justice. It is strange indeed for the same case to be on appeal based on a circuit court ruling at the pleading stage *and*, at the same time, on appeal for issues involving discovery and class certification. Regardless of the resolution, therefore, allowing the First Appeal to run its course and reach resolution before turning to the Second Appeal will allow issues to be resolved efficiently and in the proper course by bringing this litigation into procedural order.

CONCLUSION

Accordingly, because the interests of efficiency, economy, and justice are best served by waiting for a final decision to be rendered in the Defendants' First Appeal before turning to a second appeal in the same action, Defendants respectfully request that the Court hold this appeal in abeyance.

s/James Lynn Werner
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Attorneys for Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; CHSPSC, LLC; Professional Account Services, Inc.

December 6, 2024
Columbia, South Carolina

From:	Hayes, J. Mark
To:	Werner, James Lynn; Hayes, J. Mark Secretary (Sharyn M. Walker); Martinez, Maribel; Hayes, J. Mark Law Clerk (Allen Chaplin Hughes, Jr.)
Cc:	Rachel Peavy; Perry Boulier; mshisko@johnbwhitelaw.com; John B. White, Jr.; John Simmons; Griffin Lynch; Josh Thompson; Dawson, Jr., Katon E.
Subject:	RE: Jo Ann Blackwell, et al. v. Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital, et al.; Case No. C.A. No. 2017-CP-42-00219
Date:	Monday, August 12, 2024 1:31:41 PM

Caution: External email

Mr. Werner

Thank you for your email.

Please be assured my not issuing a ruling on the motions to Compel Arbitration is not out of a lack of courtesy for the defendants' or the plaintiffs' arguments. I have the highest respect for the arguments presented by all of the attorneys as part of these issues, and the other issues that have been presented in this case. My delay in ruling has been to wait for guidance from the appellate court once it has addressed the issues presently on appeal. My view is that the appellate decision concerning the issue of arbitration is what may dramatically effect future proceedings. While the arbitration issue presently on appeal does not prevent the other issues developed and from going forward, my belief is waiting on the appellate decision is a more efficient use of resources and is consistent with this Court's SCRCP Rule 23 obligations.

I hope the above is useful.

Again, thank you for your email.

Respectfully

Mark Hayes

From: Becoats, Albertha E. <alberthabecoats@parkerpoe.com> **On Behalf Of** Werner, James Lynn
Sent: Monday, July 8, 2024 11:41 AM
To: Hayes, J. Mark <mhayesj@sccourts.org>; Hayes, J. Mark Law Clerk (Luther Carter) <mhayeslc@sccourts.org>; Hayes, J. Mark Secretary (Sharyn M. Walker) <mhayessc@sccourts.org>; Martinez, Maribel <mmartinez@spartanburgcounty.org>
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Subject: Jo Ann Blackwell, et al. v. Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital, et al.; Case No. C.A. No. 2017-CP-42-00219

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please

exercise caution before clicking any links or opening attachments. ***

Judge Hayes,

As the attorneys for Defendants, we have had the opportunity to review your email of Thursday, June 27, 2024, announcing your decision with regard to the prior Motion for Reconsideration. While we are not certain of your intent in the last two paragraphs of that email wherein you stated: "if the parties agree that a Form 4 summary ruling will suffice, the Form 4 summary that will contain this email is sufficient for this Court. Please advise the Court if the parties agree no further formal - only the Form 4 Order - will be needed… if the Court has not heard from the parties within the next 10-days, the Court will move forward with a more formal decision." To avoid confusion, we are responding to say that the Defendants take no position on whether the Court issues a Form 4 Order or a more formal decision. We believe that is a determination for the Court to make and we will simply await the entry of whatever Order is issued.

While we are communicating with you and addressing the status of this case, we respectfully request that you issue an Order on the Defendants' Motions to Compel Arbitration which were filed with the Court on November 14, 2022, and were argued before the Court on March 16, 2023. Obviously, it has been 19 months since the filing of those motions, and 15 months since the Hearing on those motions but, although the Court has issued numerous Orders during that interim period, we still have no decision on those Motions to Compel Arbitration. Please give us the courtesy of such rulings since such rulings will dramatically affect future proceedings in this case in either event.

Thank you for your time and consideration.

Respectfully,

Jim Werner

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Legal Professional Assistant

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APPEAL FROM SPARTANBURG COUNTY
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Appellate Case No. 2024-001546

Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr., individually and on behalf of all others similarly situated,

Respondents,

v.

Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; CHSPSC, LLC; and Professional Account Services, Inc.,

Appellants,

PROOF OF SERVICE

The undersigned hereby certifies that on December 6, 2024, a copy of **Appellants' Motion to Hold Appeal in Abeyance** was served on all counsel of record via email containing the above referenced document to counsels' individual AIS email addresses as follows:

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December 6, 2024
Columbia, South Carolina

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December 6, 2024

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VIA HAND-DELIVERY AND E-MAIL:
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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Re: Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr., individually and on behalf of all others similarly situated v. Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital, CHSPSC, LLC, and Professional Account Services, Inc.; Appellate Case No.: 2024-001546

Dear Mrs. Kitchings:

Enclosed for filing in the *Jo Ann Blackwell, et al v. Mary Black Health System, LLC, et al*, appeal, please find one copy of Appellants' Motion to Hold Appeal in Abeyance and Proof of Service. Copies of same are being provided to all counsel of record via e-mail.

Additionally, Check No. 518483 in the amount of $50.00 which covers our filing fee, is being hand-delivered to your office.

Should you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

s/Katon E. Dawson, Jr.

Katon E. Dawson, Jr.

KED/tlc
Enclosures
cc: All Counsel of Record on Proof of Service