

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

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

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

The defendants filed a timely motion to reconsider an order dated July 13, 2022, which denied their motion to dismiss under Rules 12(b)(1) and 12(b)(6), SCRPC. The court alters and amends its prior order to reflect that it was not the court's intention to make a finding on the ultimate issue of the existence of a complete version of the contract that purportedly requires arbitration, nor was the order intended to foreclose the ability to raise the issue of arbitration following discovery. The court denies the defendants' challenge to the ruling that the motion for dismissal or to stay the lawsuit should have been denied at the preliminary stages of this litigation. This order is issued based on the court's finding that further briefing or argument is unnecessary. However, if either party files an objection to the procedure of deciding without oral argument or briefing within 10 days from the date of this order, briefing will be permitted under Rule 59(f), SCRPC. Please see page 2.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/24/2023 .

RECEIVED

Aug 22 2023

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

Through oversight, the reconsideration motion was not noted by the court on its matters under advisement list. The prior ruling hinged on the assertion that neither party was able to produce a full copy of the contract that contained the purported arbitration clause. The defendants challenge the overall ruling denying dismissal or staying the case to allow for arbitration, but also maintain that the court should clarify statements about the non-existence of a complete copy and rulings that seem to foreclose raising the issue at a later stage following discovery on the existence of a binding contract requiring arbitration. The body of the prior order is modified, as follows:

"The plaintiffs are residents of an elder care facility operated by the defendants which has accommodations that range from independent living to more intensive levels of care. A July 2021 failure of the HVAC system at the complex is alleged to have subjected the residents to temperatures around 100 degrees Fahrenheit for approximately two months. The issue is whether the plaintiffs can be compelled to submit this dispute to binding arbitration based on a contract. The problem is that neither the defendants nor the plaintiffs were able to produce a complete copy of the contract at the hearing. It is unknown whether the complete version of the contract was executed, which is a distinct possibility. The defendants have produced a well-written and carefully researched brief in support of their motion, as well as affidavits which purport to show what the missing pages would have contained. The ability to avail oneself of access to the courts to resolve disputes is a fundamental constitutional right, and the court finds that the defendants have not made the necessary showing that this right was waived. Since the defendants are unable to produce a copy of an executed contract containing the full arbitration agreement at this time and have no evidence at this point that the plaintiffs are responsible in any way for the full documents being unavailable, the motion is respectfully denied. This ruling is being made prior to discovery, and nothing contained herein prevents the plaintiff from raising the issues contained in its motion following discovery.



Spartanburg Common Pleas

Case Caption: Eugene W. Villanova, By And Through His Atty In Fact, Karen Lynn Ward , plaintiff, et al VS Pacifica Skylyn, Llc Dba Pacifica Senior Living Skylyn , defendant, et al
Case Number: 2021CP4202473
Type: Order/Electronic Form 4

Circuit Judge (Code #2050)

s/ William P. Keesley