

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Appellate Case No.: 2024-000596

Thomas D. Kilpatrick
as Special Administrator for the Estate of Anthony Lemon..... Respondent,

v.

Pruitthealth - Ridgeway, LLC f/k/a Unihealth Post-Acute Care –
Tanglewood, LLC, United Health Services of South Carolina,
Inc., Pruitthealth Consulting Services, Inc., Pruitthealth
Therapy Services, Inc. f/k/a United Rehab, Inc., Pruitthealth, Inc.,
Neil Pruitt, Jr., THI of South Carolina at Columbia, LLC d/b/a
Midlands Health and Rehabilitation Center, THI of South
Carolina, LLC, Fundamental Clinical and Operational Services,
LLC, Fundamental Clinical Consulting, LLC, Fundamental
Long Term Care Holdings, Inc., Fundamental Administrative
Services, LLC, and Hunt Valley Holdings, LLC..... Defendants,

Of which THI of South Carolina at Columbia, LLC d/b/a Midlands Health and
Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and
Operational Services, LLC, Fundamental Administrative Services, LLC, and
Hunt Valley Holdings, LLC, are..... Appellants.

**RESPONDENT’S REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL AND
FOR SANCTIONS**

Respondent Thomas D. Kilpatrick as Special Administrator for the Estate of
Anthony Lemon submits this Reply in Support of his Motion to Dismiss Appeal and

for Sanctions. In their Return, Appellants THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC protest that their Notice of Appeal was filed in good faith because the Court's published decision, *Solesbee v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023), is in error and because there are "gaps" in the decision. However, regardless of Appellants' reasoning for believing that these arguments have some merit, they cannot continue to have a good faith belief that further presentation of these arguments to this Court and the Supreme Court will have a favorable outcome. Appellants concede that the dispositive issue for all of the related Appeals is the merger argument, which involves the exact same arbitration and admission agreements in every single case that has been brought before this Court.

The Fundamental entities, including Appellants, have made the exact same arguments every time: that the *Solesbee* decision is in error because it misconstrues prior precedent, because it ignores a supposed presumption in favor of merger, and because the evidence the decision relies on is not actual evidence or because the Court misunderstands the evidence. This Court has now rejected these arguments in eighteen unpublished decisions, one published decision, and on fourteen petitions for rehearing. The Supreme Court has refused to grant certiorari on this Court's decisions fourteen times. It is incomprehensible that Appellants could

genuinely believe that there is any remaining possibility that further efforts will result in a different outcome.

Perhaps recognizing that this conclusion is inevitable, Appellants argue that because eighteen of the decisions are unpublished and have no precedential value, and because the Supreme Court has not granted certiorari, that this means neither they nor Respondent can rely on these decisions as proof of anything. Respondent acknowledges that these decisions have no precedential value or authority over substantive issues, but that is not why Respondent has drawn them to the Court's attention. The reason the unpublished decisions are relevant is not because they contain statements of law that would be binding on any court, but because they serve as proof that Appellants should know by now that further efforts to achieve a different outcome are no longer possible, and that their efforts are resulting in nothing more than delay and the unnecessary loss of considerable resources by the courts and opposing parties.

Under Appellants' logic, they and the Fundamental entities can continue immediately appealing every circuit court order denying a Fundamental entity's motion to compel arbitration over the merger issue from here into infinity so long as the Court continues to file unpublished decisions and the Supreme Court continues to deny certiorari, without their efforts ever being considered frivolous or in bad faith. This begs the question of how many times will this Court have to affirm a circuit court, and how many times will the Supreme Court have to deny certiorari, before the Fundamental entities accept that their argument as to the merger of their

admission and arbitration agreements is not legally correct? Respondent surmises that there is no end in sight unless the Court takes some action.

Appellants and the remaining Fundamental entities should not be permitted to continue abusing the appellate process and consuming the Court's time and resources for a lost cause. For these reasons and those set forth in his Motion, Respondent respectfully requests that the Court dismiss this Appeal and impose pecuniary sanctions on Appellants.

Respectfully submitted,

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January 2, 2025
Hampton, South Carolina

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Of whom THI of South Carolina at Columbia, LLC d/b/a Midlands Health and
Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and
Operational Services, LLC, Fundamental Administrative Services, LLC, and
Hunt Valley Holdings, LLC, are..... Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Respondent’s Reply in Support of Motion to Dismiss Appeal and for Sanctions has been served upon the following counsel of record by emailing a copy of the same, this 2nd of January 2025.

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Respectfully submitted,

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