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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2024-000914

Kevin White,
as Personal Representative of the Estate of Mary Brisbon Respondent,

v.

St. George Health Care, LLC, d/b/a St. George Healthcare Center and
Vicki Sides..... Appellants.

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

Respondent Kevin White as Personal Representative of the Estate of Mary Brisbon submits this Reply in Support of his Motion to Dismiss Appeal and for Sanctions. In its Return, Appellant St. George Health Care, LLC, d/b/a St. George Healthcare Center protests that its 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 Appellant’s reasoning for believing that these arguments have some merit, it 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. Appellant concedes 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 Appellant, have made the exact same arguments every time: that the *Solesbee* decision is in error because it miscomprehends 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 This Court has now rejected these arguments in eighteen unpublished decisions, one published decision, and on fourteen petitions for rehearing.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 Appellant 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Perhaps recognizing that this conclusion is inevitable, Appellant argues that because eighteen of the decisions are unpublished and have no precedential value, and because the Supreme Court has not granted certiorari, that this means neither it nor Respondent can rely on these decisions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 Appellant should know by now that further efforts to achieve a different outcome are no longer possible, and that its efforts are resulting in nothing more than delay and the unnecessary loss of considerable resources by the courts and opposing parties.

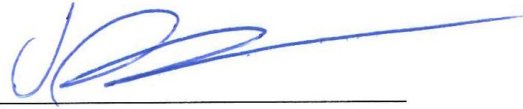
Under Appellant's logic, it and the Fundamental entities can continue immediately appealing every circuit court order denying a Fundamental entity's motion to compel arbitration over the merger issue from here into infinity so long as the Court continues to file unpublished decisions and the Supreme 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.

Appellant 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 Appellant.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

By:



January 2, 2025
Hampton, South Carolina

Lee D. Cope
John E. Parker, Jr.
PARKER LAW GROUP, LLP
Post Office Box 487
Hampton, SC 29924
Phone: (803) 903-1781
lcope@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com

ATTORNEYS FOR RESPONDENT

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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 day of January 2025.

CLEMENT RIVERS, LLP

D. Jay Davis, Jr. (SC Bar No. 12084)

jdavis@ycrlaw.com

Stephen L. Brown (SC Bar No. 66468)

sbrown@ycrlaw.com

Matthew O. Riddle (SC Bar No. 76650)

mriddle@ycrlaw.com

Gaillard T. Dotterer, III (SC Bar No. 103620)

gdotterer@ycrlaw.com

Russell G. Hines (SC Bar No. 72100)
rhines@yctrlaw.com
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Appellants

Respectfully submitted,

PARKER LAW GROUP, LLP

By: _____



Lee D. Cope, Esq. (SC Bar #14361)
John E. Parker, Jr., Esq. (SC Bar
#104225)
Post Office Box 487
Hampton, South Carolina 29924
Phone: (803) 903-1781
Fax: (803) 903-1793
lcope@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com

ATTORNEYS FOR RESPONDENT