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May 22 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2021-CP-42-02473
Appellate Case No. 2023-001343

Eugene W. Villanova and Ruth L. Villanova, by and through Karen Lynn Ward, their attorney in fact, and on behalf of those similarly situated,.....Respondents,

v.

Pacifica Skylyn, LLC, d/b/a Pacifica Senior Living Skylyn, Etros, LLC, and Matthew Arledge.....Appellants.

**RESPONDENTS' MOTION AND
MEMORANDUM IN SUPPORT OF
MOTION FOR ATTORNEY FEES AND SANCTIONS**

ISSUE PRESENTED

The issue presented by way of this Motion and Memorandum in Support of Respondents' Motion for Attorney Fees and Sanctions is that the Appellants knowingly filed improper frivolous appeals in an attempt to prolong and delay the underlying litigation involving elderly individuals which makes the filing of the appeals subject to the taxing of costs pursuant to Appellate Court Rule 222 and sanctions pursuant to Appellate Court Rule 269.

FACTUAL BACKGROUND

The Respondents, who were residents of Pacifica Senior Living Skylyn (“Pacifica”), through their attorney-in-fact, Karen Ward, executed a Residence and Services Agreement in December of 2019. A critical page was missing from the Agreement which, among other things, omitted much of the key language of the Arbitration Agreement including, but not limited to, the following:

You give up your constitutional right to have any such dispute decided in a court of law before a jury, and instead accept the use of arbitration.

Nonetheless, Pacifica moved to compel Respondents’ claims to arbitration pursuant to the purported Arbitration Agreement which failed to include essential language necessary for a valid Agreement.

On April 1, 2022, Pacifica filed a Motion to Dismiss Pursuant to Rule 12(b)(1) and Rule 12(b)(6), SCRCPP, or in the alternative to Stay and Compel Arbitration. The Honorable William P. Keesley denied the Motion to Compel Arbitration. Pacifica filed a timely Motion to Reconsider pursuant to Rule 59(e), SCRCPP. The Circuit Court denied the Motion to Reconsider reiterating that a complete copy of the Agreement had not been produced.

An appeal followed to the South Carolina Court of Appeals which in a *per curiam* decision denied the appeal. Nonetheless, the Appellants filed a Motion to Reconsider which was also denied.

Ultimately, the Appellants filed a Motion for *Certiorari* which was denied on

May 13, 2025.

ARGUMENT

It has become an obvious defense tactic by defense counsel in cases claiming nursing home negligence and abuse to file frivolous appeals with respect to arbitration agreements. Defense counsel hope that the ensuing two to three years will jeopardize the availability of witnesses and other evidence.

The present case is a glaring example of that tactic. The attorneys defending the Appellants had a clear understanding that the critical page of the Arbitration Agreement was missing from the Agreement and admittedly could not produce the same. Nonetheless, they continued to appeal the matter until all avenues were exhausted. During the course of this abusive conduct, Respondents' attorneys sent an email to Appellants' attorneys on December 23, 2024 cautioning them about this abusive conduct and putting them on notice that if they did not withdraw their Motion for *Certiorari* we would in fact file for all sanctions available if the Petition was not granted. Not only is the conduct of Appellants' counsel and other defense counsel abusive to nursing home and independent care residents, but it is also a tremendous burden on the South Carolina Court of Appeals in that this Court is flooded with frivolous appeals on arbitration clauses on a regular basis. In addition to the foregoing, the South Carolina Rule of Appellate Procedure 242(b) is absolutely clear that there are only five grounds for which the Supreme Court will consider *certiorari*. It is likewise clear that the present case does not in any way fit with one of those five grounds. Defense counsel has ignored the explicit guidance given to us by that Rule, and therefore, the foregoing is yet another reason for this Court to impose attorney fees and sanctions.

Respondents' counsel have in over sixteen hours in work product as a result of this frivolous appeal. One of Respondents' attorneys, Patrick E. Knie, was the author of Respondents' Memorandum in Opposition to *Certiorari*. He has practiced law for over fifty-two years, tried over a hundred cases to a verdict, and has been admitted *pro hac vice* representing clients in Tennessee, Arkansas, Ohio, Missouri, and North Carolina. His hourly rate is Five Hundred (\$500.00) Dollars per hour. Therefore, Mr. Knie is seeking reimbursement of Eight Thousand (\$8,000.00) Dollars in attorney fees, plus Fifteen Hundred (\$1,500.00) Dollars in paralegal costs, for a total of Ninety-five Hundred (\$9,500.00) Dollars.

Appellate Court Rule 269 provides the offending attorneys for parties "such sanctions as the circumstances of the case **and discouragement of like conduct in the future may require.**" While fines are at the discretion of the Appellate Court, we believe that a fine in the Court's discretion is appropriate in addition to the attorney and paralegal fees sought and encourage this Court to impose a fine at its discretion as well.

In the alternative, this Court can expect the same flood of frivolous appeals on arbitration clauses in the future.

RESPECTFULLY SUBMITTED,

KNIE & SHEALY


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Attorneys for Respondents

May 22, 2025

EXHIBIT A

Melody Gabriel

From: Pat Knie
Sent: Wednesday, May 21, 2025 3:26 PM
To: Melody Gabriel
Subject: FW: Ed Medford v. Pacifica Skylyn, LLC et al. - Petition for Writ of Certiorari



Patrick E. Knie
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From: Pat Knie
Sent: Wednesday, December 25, 2024 1:10 PM
To: Paul E. Allen Jr <pallen@hedrickgardner.com>
Cc: Joshua D. Shaw <JShaw@hedrickgardner.com>; Jonathan G. Roquemore <JRoquemore@hedrickgardner.com>; mitch@mitchsladelaw.com
Subject: Re: Ed Medford v. Pacifica Skylyn, LLC et al. - Petition for Writ of Certiorari

We are in receipt of your petition for cert. I have been involved in many arbitration fights but never one where the party claiming arbitration could not produce a fully executed copy with the critical arbitration language contained therein. Your appeal is based on what it should have said but did not. The COA has rejected your argument twice on the briefs only. We expect the same from the Supreme Court. In short, your appeal is frivolous, without merit, and intended for delay only. We therefore request that you withdraw your motion for cert forthwith. In the alternative, we plan to seek all sanctions available if your petition is not granted.
Sent from my iPad

On Dec 23, 2024, at 2:47 PM, Paul E. Allen, Jr <pallen@hedrickgardner.com> wrote:

Caution! This message was sent from outside your organization.

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Please excuse the second email, my email below did not contain the referenced attachments. They are attached here.

Paul E. Allen, Jr | Attorney
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From: Paul E. Allen, Jr
Sent: Monday, December 23, 2024 2:44 PM
To: 'supctfilings@sccourts.org' <supctfilings@sccourts.org>; Court Of Appeals Filings <ctappfilings@sccourts.org>
Cc: Joshua D. Shaw <JShaw@hedrickgardner.com>; Jonathan G. Roquemore <JRoquemore@hedrickgardner.com>; Pat Knie <pat@knieshealy.com>; mitch@mitchsladelaw.com
Subject: Ed Medford v. Pacifica Skylyn, LLC et al. - Petition for Writ of Certiorari

Good afternoon,

Please see the attached Petition for Writ of Certiorari and Appendix for filing in the above referenced matter. The filing fee is being mailed to the Supreme Court this afternoon. Please do not hesitate to contact my office if you have any questions or concerns.

Best regards,

Paul Allen
<Petition for Writ of Certiorari - Medford v. Pacifica et al..pdf>
<Appendix - Medford v. Pacifica et al..pdf>

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v.

Pacifica Skylyn, LLC, d/b/a Pacifica Senior Living Skylyn, Etros, LLC, and Matthew Arledge.....Appellants.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Respondents' Motion and Memorandum in Support of Motion for Attorney Fees and Sanctions and Form 17, Itemized Statement of Costs, have been served on counsel for Appellants via electronic mail at the email addresses stated in the Attorney Information System as set forth below on May 22, 2025:

HEDRICK GARDNER KINCHELOE & GAROFALO LLP

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May 22, 2025

VIA EMAIL AND REGULAR MAIL

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

RE: Eugene W. Villanova and Ruth L. Villanova, by and through Karen Lynn Ward, their attorney in fact, and on behalf of those similarly situated, Respondents, v. Pacifica Skylyn, LLC, d/b/a Pacifica Senior Living Skylyn, and Matthew Arledge, Appellants
Civil Action No.: 2022-CP-42-00454
Appellate Case No.: 2022-001210

Dear Ms. Kitchings:

Enclosed for filing are the original and one copy of the Respondent's Motion for Attorney Fees and Sanctions and Memorandum in Support of Motion, along with the supporting Exhibit and the Appellate Form 17 in the above-referenced matter. I am also enclosing an original and one copy of the Proof of Service of Respondent's Motion for Attorney Fees and Sanctions and Memorandum in Support of Motion to all Appellants, and a check in the amount of Fifty (\$50.00) Dollars representing the appropriate filing fee. These documents are being electronically filed and served upon all Counsel of record electronically.

Please advise if you need additional information from my office.

Sincerely,

Patrick E. Knie

Patrick E. Knie

PEK:mbg
Enclosures

cc: Mr. Mitch Slade
Mr. Matthew W. Shealy