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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2021-CP-10-02744

Appellate Case No. 2025-000286

William Haynes,
as Personal Representative of the Estate of Elizabeth Varner,

Respondent,

v.

Fundamental Administrative Services, LLC,
Fundamental Clinical and Operational Services, LLC, and
Jerrolyn Montgomery-Smalls,

Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

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Defendants make the following points in reply to Plaintiff's brief.[1]

ARGUMENT IN REPLY

1. The Arbitration Order compelled all of Plaintiff's claims against Montgomery-Smalls to arbitration.

Plaintiff's position is founded on the false premise that the Arbitration Order, i.e., the circuit court's order granting the original motions to compel arbitration and stay, did not compel all of Plaintiff's claims against Montgomery-Smalls to arbitration, only those "involving her role as an employee of [the Facility],"[2] as opposed to those involving her alleged "corporate" negligence as an alter ego of and/or joint venturer with FCOS and FAS.

Montgomery-Smalls's original motion to compel arbitration sought to compel "Plaintiff's claims," i.e., *all* of Plaintiff's claims, against her to arbitration. (Montgomery-Smalls's Motion to Compel Arbitration, filed October 4, 2021, p. 1; *see also id.* (seeking dismissal of the entire action against Montgomery-Smalls in favor of arbitration).) And as explained in Defendants' principal brief, besides

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[1] Shorthand references defined in Defendants' principal brief are continued in this reply brief (e.g., "Defendants" refers, collectively, to Defendants/Appellants, Fundamental Administrative Services, LLC ("FAS"), Fundamental Clinical and Operational Services, LLC ("FCOS"), and Jerrolyn Montgomery-Smalls ("Montgomery-Smalls"); "Plaintiff" refers to Plaintiff/Respondent, William Haynes, as Personal Representative of the Estate of Elizabeth Varner ("Ms. Varner"); the "Facility" refers to THI of South Carolina at Charleston, LLC d/b/a Riverside Health and Rehab).

[2] (Plaintiff's Br. p. 3.)

being correctly decided, the Arbitration Order is the law of the case,[3] and nowhere in it does it say or in any way imply that anything less than the entirety of Plaintiff's claims against Montgomery-Smalls are compelled to arbitration. (Arbitration Order, filed February 24, 2022.) Indeed, the Arbitration Order expressly rules that the Arbitration Agreement is valid and enforceable by Montgomery-Smalls and covers "Plaintiff's claims," i.e., *all* of Plaintiff's claims, against Montgomery-Smalls. (Arbitration Agreement, filed February 24, 2022, pp. 9–11.)

With it being the law of the case that the Arbitration Agreement is valid and enforceable by Montgomery-Smalls and that its scope embraces the entirety of Plaintiff's claims against Montgomery-Smalls, in response to Defendants' Second Motion to Compel Arbitration and Stay, the circuit court had no choice but to compel any claims allegedly still remaining against Montgomery-Smalls to arbitration[4] (and, in turn, to stay the Instant Lawsuit as to FCOS and FAS), and thus it clearly erred in not doing so.

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[3] (Defendants' Br. p. 10.)

[4] "[T]he basic purpose of the [FAA] is to overcome courts' refusals to enforce agreements to arbitrate," *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 270 (1995), and "ensure that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement." *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012). To that end, the FAA provides that an arbitration agreement is "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. "By its terms, the [FAA] leaves no

Plaintiff's argument about FCOS and FAS not agreeing to participate in arbitration is misguided and unavailing. "Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which [the party] has not agreed to submit." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). Unlike Plaintiff, who is, as was already conclusively found via the Arbitration Order, bound to arbitrate all her claims in the Instant Lawsuit against Montgomery-Smalls under the terms of a valid and effective arbitration agreement, FCOS and FAS are not bound by any agreement to arbitrate with Plaintiff.

The fact Plaintiff has alleged the same claims against Montgomery-Smalls and FCOS and FAS neither makes those claims any less subject to arbitration with Montgomery-Smalls nor any more subject to arbitration with FCOS and FAS. The fact that Plaintiff's claims include allegations that Montgomery-Smalls is an alter ego and/or joint venturer with FCOS and FAS does not change the fact that Montgomery-Smalls has a valid and enforceable contractual right to arbitrate those claims, which claims, besides being established by the law of the case as being

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place for the exercise of discretion by a . . . court, but instead *mandates* that . . . courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis added); *see also* 9 U.S.C. § 4 ("The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement*.") (emphasis added).

within the scope of the Arbitration Agreement, are in fact clearly within the scope of the Arbitration Agreement, which covers, among other things, "*any* controversy or dispute . . . *relating in any way to [Ms. Varner's] stay at [the] Facility, or to the provisions of care or services to [Ms. Varner]* . . . ." (Arbitration Agreement (emphasis added).) Whether framed in terms of alleged negligence at the "corporate" level or the Facility "employee" level, *all* Plaintiff's claims against Montgomery-Smalls unavoidably run through and necessarily relate to Ms. Varner's stay at the Facility or the provision of care or services to her.

Most respectfully, Plaintiff's argument about Defendants' supposedly undue attempt to "get the Arbitration Agreement to apply to Smalls as it relates to Case 2477 [(i.e., the Instant Lawsuit)]" and Defendants' supposed admission of "a clear distinction between the corporate entities [(i.e., FCOS and FAS)], Smalls, and the Arbitration Agreement . . ."[5] does not make sense. While there is certainly a distinction between Montgomery-Smalls and FCOS and FAS in terms of whether Plaintiff's claims against them are subject to arbitration, this in no way means that any of Plaintiff's claims against Montgomery-Smalls are outside the scope of the Arbitration Agreement. And, of course, the Arbitration Agreement applies to Montgomery-Smalls as it relates to the Instant Lawsuit (Case No. 2477). The Arbitration Order expressly says so. (Arbitration Order, filed February 24, 2022,

[5] (Plaintiff's Br. p. 7.)

p. 20 ("Case 2477 [(i.e., the Instant Lawsuit)] is stayed in favor or arbitration between Plaintiff and Ms. Montgomery-Smalls . . . .").) For that matter, the Instant Lawsuit (Case No. 2477) is the *only case* against Montgomery-Smalls.

2. Having clearly erred in not compelling any claims allegedly still remaining against Montgomery-Smalls to arbitration, the circuit court just as clearly erred in not staying the Instant Lawsuit as to FCOS and FAS.

Besides being substantively erroneous,[6] Plaintiff's argument in favor of the circuit court not staying the Instant Lawsuit as to FCOS and FAS ignores the fact that the Arbitration Order also establishes the law of the case that § 3 of the FAA applies to require a stay of the Instant Lawsuit as to FCOS and FAS if arbitration is compelled between Plaintiff and Montgomery-Smalls. (Arbitration Order, filed February 24, 2022, pp. 18–19 ("The relationship between the Motions to Compel Arbitration and the Motions to Stay is such that the grant of the former requires the

[6] Even in multiparty cases, § 3 of the FAA mandates that, "on application of [any] one of the parties" to compel arbitration, "any suit or proceeding" "shall" be stayed if "any issue" therein is subject to arbitration. 9 U.S.C. § 3 ("If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall* on application of one of the parties *stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement*, providing the applicant for the stay is not in default in proceeding with such arbitration.") (emphasis added); *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) ("[The] FAA clearly requires a court stay 'any suit or proceeding' pending the arbitration of 'any issue referable to arbitration under an agreement in writing for such arbitration' upon the application of one of the parties.").

grant of the latter.") (citing 9 U.S.C. § 3; *Stokes*, 351 S.C. at 612, 571 S.E.2d at 715).) Accordingly, just as the circuit court had no choice but to compel any claims allegedly still remaining against Montgomery-Smalls to arbitration, it had no choice but to stay the Instant Lawsuit as to FCOS and FAS pending the outcome of arbitration between Plaintiff and Montgomery-Smalls, and thus it clearly erred in not doing so.

3. The appealed orders (i.e., the circuit court's orders (1) denying Defendants' Second Motion to Compel Arbitration and Stay and granting Plaintiff's Discovery Motion in part and (2) denying reconsideration of the same) are immediately appealable, and Defendants have duly appealed them; thus, this appeal should not be dismissed.

Although the FAA applies to the Arbitration Agreement as a matter of substantive law,[7] South Carolina's procedural rule regarding the appealability of arbitration orders, i.e., S.C. Code Ann. § 15-48-200, applies to determine whether the appealed orders are immediately appealable. *Toler's Cove Homeowners Ass'n,*

[7] In the Arbitration Order, the circuit court ruled that the Arbitration Agreement is governed by the FAA. (Arbitration Order, filed February 24, 2022, pp. 5–6).) This ruling is correct. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001) ("Unless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.") (internal footnote omitted); *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014) (holding that skilled nursing facility admission agreements implicate interstate commerce and, thus, the FAA). And in any event, this ruling is also the law of the case. *Shirley's Iron Works*, 403 S.C. at 573, 743 S.E.2d at 785 ("An unappealed ruling is the law of the case and requires affirmance.")).

Inc. v. Trident Const. Co., Inc., 355 S.C. 605, 611, 586 S.E.2d 581, 584–85 (2003). And the appealed orders are plainly immediately appealable under § 15-48-200(a)(1), which allows an immediate appeal from "[a]n order denying an application to compel arbitration . . . ." That said, even if the FAA applied in regard to appealability, the appealed orders would nonetheless be immediately appealable under § 16 of the FAA. 9 U.S.C. § 16(a)(1) (allowing an appeal to be taken from, among other things, an order "refusing a stay of any action under section 3 of [the FAA]" or "denying a petition under section 4 [of the FAA] to order arbitration to proceed").

Motions should be treated based on their substance and effect. *Mickle v. Blackmon*, 255 S.C. 136, 140, 177 S.E.2d 548, 549 (1970) (treating a motion for its substance and effect rather than how it was styled); *Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) (finding "[i]t is the substance of the requested relief that matters 'regardless of the form in which the request for relief was framed'") (quoting *Standard Fed. Sav. & Loan Ass'n v. Mungo*, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App. 1991))). Plaintiff's argument here relies on a superficial comparison of alleged similarities between Defendants' Motion for Summary Judgment and Defendants' Second Motion to Compel Arbitration and Stay (e.g., certain common exhibits etc.) that does not appreciate the material differences in these motions' substance and effect.

Plaintiff's argument for dismissal of this appeal is based on the patently false premise that the principal motion underlying the appealed orders, i.e., Defendants' Second Motion to Compel Arbitration and Stay, is equivalent to Defendants' Motion for Summary Judgment, filed June 28, 2024.

In no way did Defendants' Motion for Summary Judgment ask the circuit court to compel any claim to arbitration; indeed, that motion argued that, in consequence of the preclusive effect of the arbitration award, no claims remained against Defendants for Plaintiff to pursue in any forum. (*See* Defendants' Motion for Summary Judgment, filed June 28, 2024; Memorandum in Support of Defendants' Motion for Summary Judgment, filed September 9, 2024.)

In no way did Defendants' Motion to Compel Arbitration and Stay Proceedings ask the circuit court to reconsider its denial of Defendants' Motion for Summary Judgment; indeed, it was premised on the fact that Defendants' Motion for Summary Judgment had been denied:

> [I]n denying Defendants' Motion for Summary Judgment based on the *res judicata* and collateral estoppel effect of the arbitration, this Court signaled that it intends to allow Plaintiff to proceed on his corporate negligence, joint venture, and veil-piercing claims as to Defendant Smalls even though the Court's February 24, 2022 order already determined that all of Plaintiff's claims against Defendant Smalls must be arbitrated. Accordingly, to the extent Plaintiff seeks to pursue such arbitrable claims against Defendant Smalls in this Court, those claims must be sent back to the arbitrator for resolution pursuant to the February 24, 2022 order.

(Defendants' Second Motion to Compel Arbitration and Stay, filed November 14, 2024, p. 2.)

Again, Defendants' Motion for Summary Judgment argued that *no claims remained* against Defendants for Plaintiff to pursue in any forum, while Defendants' Motion to Compel Arbitration and Stay Proceedings argued that, *because the circuit court had denied Defendants' Motion for Summary Judgment*, and thus determined that claims remained against Defendants for Plaintiff to pursue, based on the Arbitration Order—i.e., the circuit court's order of February 24, 2022, granting the original motions to compel arbitration and stay, which had already established as the law of the case that the Arbitration Agreement is valid and enforceable[8] and requires all of Plaintiff's claims against Montgomery-Smalls to be arbitrated[9] and thus, in turn, requires the Instant Lawsuit to be stayed as to FCOS and FAS pending arbitration between Plaintiff and Montgomery-Smalls[10]—any such claims against Montgomery-Smalls had to proceed in arbitration and, in turn, the Instant Lawsuit had to be stayed as to any such claims against FAS and FCOS. These were materially different motions, and the appealed orders that arose out of Defendants' Second Motion to Compel Arbitration and Stay are

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8 (Arbitration Order, filed February 24, 2022, pp. 10–11.)

9 (*Id.* at pp. 9–10.)

10 (*Id.* at pp. 18–19.)

immediately appealable and have been duly appealed by Defendants, such that no part of this appeal should be dismissed.

4. Defendants' appeal properly includes their challenge to the circuit court's grant of Plaintiff's Discovery Motion.

As explained elsewhere, there is no question that the denial of a motion to compel arbitration (like Defendants' Second Motion to Compel Arbitration and Stay here) is immediately appealable. And the relationship between the circuit court's denial of Defendants' Second Motion to Compel Arbitration and Stay and its partial grant of Plaintiff's Discovery Motion is such that Defendants' appeal of the circuit court's grant of Plaintiff's Discovery Motion is part and parcel of Defendants' appeal of the circuit court's denial of Defendants' Second Motion to Compel Arbitration and Stay.

In properly challenging the circuit court's denial of Defendants' Second Motion to Compel Arbitration and Stay, Defendants are, of course, contending that any remaining claims against Montgomery-Smalls in the Instant Lawsuit must proceed in arbitration, not litigation, while any remaining claims against FCOS and FAS in the Instant Lawsuit must be stayed pending the outcome of arbitration between Plaintiff and Montgomery-Smalls. Accordingly, Defendants' challenge necessarily includes their contention that any discovery associated with any remaining claims against Montgomery-Smalls is a matter for the arbitrator to address, not the circuit court, and that any discovery associated with Plaintiff's

claims against FAS and FCOS in the Instant Lawsuit is not a matter for the circuit court to address at this time, because the Instant Lawsuit must be stayed. The circuit court's partial grant of Plaintiff's Discovery Motion is directly and inextricably linked to its denial of Defendants' Second Motion to Compel Arbitration and Stay, such that the appeal of these orders must go hand in hand, as to show that the circuit court erred in denying Defendants' Second Motion to Compel Arbitration and Stay is also to show that it erred in partially grating Plaintiffs' Discovery Motion.

And at a minimum, even assuming, *arguendo*, the circuit court's partial grant of Plaintiff's Discovery Motion is not immediately appealable of right, because it comes to this Court along with the clearly immediately appealable matter of the denial of Defendants' Second Motion to Compel Arbitration and Stay, in the interests of justice and judicial economy, the Court has and should exercise its discretion to consider it. *Morris v. Anderson County*, 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002) ("[T]his Court may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation . . . .").

CONCLUSION

For the foregoing additional reasons, the circuit court's denial of Defendants' Second Motion to Compel Arbitration and Stay should be reversed,

the circuit court's partial grant of Plaintiff's Discovery Motion should be reversed, Plaintiff's claims against Montgomery-Smalls (and any associated discovery matters) should be compelled (back) to arbitration, and the Instant Lawsuit (and any associated discovery matters) should be stayed pending the outcome of arbitration between Plaintiff and Montgomery-Smalls.

Respectfully submitted,

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I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that the **INITIAL REPLY BRIEF OF APPELLANTS** was served on Respondent on December 12, 2025, by emailing (see attached email) a copy of the same to Respondent's counsel of record:

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Respectfully submitted,

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December 12, 2025

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From: Hines, Russell
Sent: Friday, December 12, 2025 9:28 PM
To: 'Shawn Pinkston'
Cc: Brown, Stephen L.; Davis, Jay; Riddle, Matthew; Justman, Aimee; Peterson, Susan
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Attachments: Haynes v. Fundamental (2025-00286) -- Initial Reply Brief of Appellants.pdf

Attached for service in the above-referenced matter please find the **Initial Reply Brief of Appellants**.

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