

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Diane Schafer Goodstein, Circuit Court Judge

Civil Action No. 2011-CP-38-1513
South Carolina Court of Appeals No. 2013-002402

Bertha Tyler, as Guardian of Henrietta Mayes

v.

UniHealth Post-Acute Care – Orangeburg, LLC and
Crystal Pavlick,

Appellant **SC Court of Appeals**

Respondents.

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SC Court of Appeals

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RESPONDENTS' MOTION TO DISMISS APPEAL

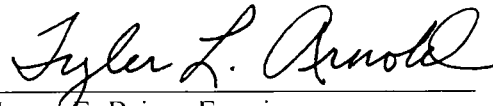
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Phone: (404) 873-8500

Attorneys for Respondents

MOTION TO DISMISS APPEAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondents hereby move for dismissal of Appellant's appeal. In support of their Motion, Respondents would show that the Orders of the Honorable Diane Schafer Goodstein, dated October 11, 2013 and October 17, 2013 are not appealable. For this reason and for reasons more fully set forth in Respondents' Memorandum Of Law In Support of Respondents' Motion to Dismiss Appeal filed contemporaneously with Respondents' Motion, Respondents respectfully request that Appellant's appeal be dismissed without prejudice.

Respectfully submitted,



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Attorneys for Respondents

November 25, 2013

November 25, 2013

VIA FEDERAL EXPRESS

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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SC Court of Appeals

Re: Bertha Tyler v. Unihealth Post-Acute Care – Orangeburg, LLC, et al.
South Carolina Court of Appeals No. 2013-002402

Dear Clerk:

Please find enclosed for filing in the above-referenced matter:

- (1) An original and seven copies of Respondents' Motion to Dismiss Appeal;
- (2) An original and seven copies of Respondents' Memorandum of Law in Support of Respondents' Motion to Dismiss Appeal;
- (3) An original and seven copies of a Proof of Service; and
- (4) A motion filing fee of \$25.00.

Please return a stamped "filed" copy of these filings to our office in the enclosed self-addressed stamped envelope. Thank you for your assistance in this matter. Do not hesitate to contact me if you have any questions.

Sincerely,

ARNALL GOLDEN GREGORY LLP



Tyler L. Arnold

Enclosures

cc: Theile McVey, Esq. (w/encl.)
Shane M. Burroughs, Esq. (w/encl.)

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Diane Schafer Goodstein, Circuit Court Judge

Civil Action No. 2011-CP-38-1513
South Carolina Court of Appeals No. 2013-002402

Bertha Tyler, as Guardian of Henrietta Mayes

Appellant,

v.

UniHealth Post-Acute Care – Orangeburg, LLC and
Crystal Pavlick,

Respondents.

**MEMORANDUM OF LAW IN SUPPORT OF
RESPONDENTS' MOTION TO DISMISS APPEAL**

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SC Court of Appeals

FACTS AND PROCEDURAL BACKGROUND

Appellant seeks to appeal the Orders of the Honorable Diane Schafer Goodstein, dated October 11, 2013 and October 17, 2013. The Order dated October 11, 2013 is an order granting arbitration and staying the litigation. The Order dated October 17, 2013 is an order denying Appellants' motion for reconsideration of the October 11, 2013 Order. Neither of these orders dismissed any of Appellant's claims. Appellants filed a Notice of Appeal on November 6, 2013 and an Amended Notice of Appeal on November 13, 2013.

ARGUMENT AND CITATION OF AUTHORITY

An order compelling arbitration and staying litigation is not immediately appealable. See Adickes v. Allison & Bratton, 21 S.C. 245 (1884) ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory; but if it so completely fixes the rights of the parties that the court has nothing further to do in the action, then it is final."); Heffner v. Destiny, Inc., 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995), overruled on other grounds, Green Tree Fin. Corp.-Alabama v. Randolph, 531 U.S. 79, 121 (2000) (providing orders relating to arbitration not mentioned in section 15-48-200(a) of the South Carolina code are not immediately appealable, and holding, "[T]he order in this case, which stays this action and compels arbitration, is not immediately appealable under § 15-48-200."); Toler's Cove Homeowners Association, Inc. v. Trident Construction Co., 355 S.C. 605, 610, 586 S.E.2d 581, 584 (2003) ("The court's order compelling arbitration is not immediately appealable under South Carolina law because Heffner held all orders relating to arbitration not mentioned in S.C. Code Ann. § 15-48-200(a) (Supp. 2002) are not immediately appealable.") (footnotes omitted); Carolina Care Plan, Inc. v. United Healthcare Services, Inc., 361 S.C. 544, 558, 606 S.E.2d 752, 759 (2004) ("Section 15-

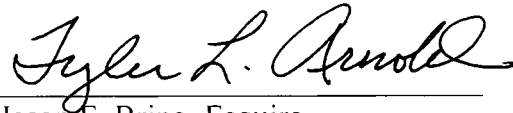
48-200 does not expressly permit an appeal from an order granting an application to compel arbitration or from an order to stay claims pending arbitration. Therefore, the order compelling arbitration . . . and staying the remaining claims is not immediately appealable.”); cf. Widener v. Fort Mill Ford, 381 S.C. 522, 674 S.E.2d 172 (Ct. App. 2009) (order *dismissing* action and compelling arbitration immediately appealable; action remanded to trial court to *stay* action pending arbitration rendering the order compelling arbitration non-appealable); see also Archie v. UHS-Pruitt Holdings, Inc., Case Tracking No. 2010159326, S.C. Ct. App. Orders dated June 26, 2010 and January 27, 2011 (copies attached hereto at Exhibit A).

Here, the Order dated October 11, 2013 that Appellants seek to appeal is an order compelling arbitration and staying litigation, and the Order dated October 17, 2013 is an order denying Appellants’ request for reconsideration of the October 11, 2013 Order. Since both Orders favor arbitration over litigation and neither Order results in a dismissal of any of Appellants’ claims, the Orders are not immediately appealable pursuant to Section 15-48-200. Accordingly, Appellants’ appeal is premature and should be dismissed.

CONCLUSION

For the foregoing reasons, Respondents respectfully requests that this Court dismiss Appellants' appeal because the orders which Appellant seeks to appeal are non-appealable.

Respectfully submitted,



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Attorneys for Respondents

November 25, 2013

EXHIBIT A

(Copies of S.C. Ct. App. Orders dated June 26, 2010 and January 27, 2011 in
Archie v. UHS-Pruitt Holdings, Inc., Case Tracking No. 2010159326)

The South Carolina Court of Appeals

Henry Archie, as Personal
Representative of the Estate of James
H. Archie, deceased, Appellant,

v.

UHS-Pruitt Holdings, Inc., Pruitt
Properties, Inc., United Health Services
of South Carolina, Inc., Carolina
Healthcare Properties, Inc., Unihealth
Post-Acute Care-Columbia, LLC, ABC
Company d/b/a Central Carolina Health
& Rehabilitation Center, and ABC
Corporation d/b/a Carolina Health and
Rehab, Inc., Respondents.

The Honorable G. Thomas Cooper, Jr.
Unknown County
Trial Court Case No. 2009-CP-40-00892

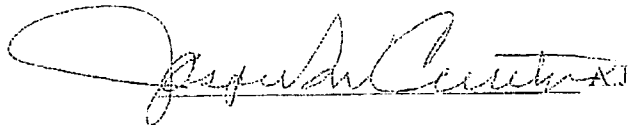
ORDER

Appellant has filed a Notice of Appeal from two orders of the circuit court. In the first order, filed December 23, 2009, the circuit court granted Respondents motion to compel arbitration and stayed the matter pending completion of the arbitration. In the second order, filed March 29, 2010, the circuit court denied Appellant's motion for reconsideration.

Respondents have now filed a motion to dismiss the appeal, arguing the orders are not immediately appealable. Appellant filed a Return, and Respondents filed a Reply. After careful review of the parties' filings, we dismiss Appellant's appeal. See Adickes v. Allison & Bratton, 21 S.C. 245 (1884) ("Any judgment or decree, leaving some further act to be done by the court

before the rights of the parties are determined, is interlocutory; but if it so completely fixes the rights of the parties that the court has nothing further to do in the action, then it is final."); Heffner v. Destiny, Inc., 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995), overruled on other grounds, Green Tree Fin. Corp.-Alabama v. Randolph, 531 U.S. 79, 121 (2000) (providing orders relating to arbitration not mentioned in section 15-48-200(a) of the South Carolina Code are not immediately appealable, and holding, "[T]he order in this case, which stays this action and compels arbitration, is not immediately appealable under § 15-48-200."); Carolina Care Plan, Inc. v. United HealthCare Services, Inc., 361 S.C. 544, 558, 606 S.E.2d 752, 759 (2004)(holding an order compelling arbitration staying the remaining claims was not immediately appealable).

AND IT IS SO ORDERED.



Columbia, South Carolina

June 26, 2010

cc: Fernando Xavier Starkes, Esquire
John Gressette Felder, Jr, Esquire
Amall, Golden, Gregory, LLP
Julianne Farnsworth, Esquire

FILED
6/29/10

The South Carolina Court of Appeals

Henry Archie, as Personal
Representative of the Estate of James
H. Archie, deceased, Appellant,

v.

UHS-Pruitt Holdings, Inc., Pruitt
Properties, Inc., United Health Services
of South Carolina, Inc., Carolina
Healthcare Properties, Inc., Unihealth
Post-Acute Care-Columbia, LLC, ABC
Company d/b/a Central Carolina Health
& Rehabilitation Center, and ABC
Corporation d/b/a Carolina Health and
Rehab, Inc., Respondents.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2009-CP-40-00892

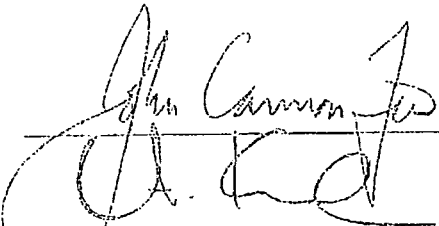
ORDER

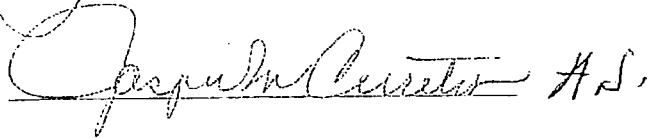
On June 26, 2010, this Court dismissed Appellant's appeal from orders of the circuit court compelling arbitration and staying the matter pending the resolution of arbitration. Appellant has now filed a petition for rehearing, arguing this Court erred in dismissing his appeal. Appellant argues the trial court's order is immediately appealable: (1) pursuant to section 14-3-330 of the South Carolina Code (1976) because the order denied Appellant of a mode of trial; and (2) pursuant to section 15-48-200(a)(6) of the South Carolina Code (2003), as "[a] judgment or decree entered pursuant to the provisions of [the Uniform Arbitration Act]."

Our courts have made it clear that when a specific appealability statute exists, that statute will control, and section 14-3-330 does not govern the right to appellate review. See Charlotte-

Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env'tl. Control, 387 S.C. 265, 266, 692 S.E.2d 894, 894 (2010); Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Specifically regarding arbitration, our courts have held section 15-48-200 controls appealability. See Carolina Care Plan, Inc. v. United HealthCare Services, Inc., 361 S.C. at 558, 606 S.E.2d at 759 (2004); Green Tree Fin. Corp.-Alabama v. Randolph, 531 U.S. 79, 121 (2000). As stated by our supreme court in Carolina Care Plan, Inc., "[s]ection 15-48-200 does not expressly permit an appeal from an order granting an application to compel arbitration or from an order to stay claims pending arbitration[;] [t]herefore, [an] order compelling arbitration . . . and staying the remaining claims is not immediately appealable." 361 S.C. 544, 558, 606 S.E.2d 752, 759. In his petition for rehearing, Appellant questions this Court's order of dismissal, stating it "effectively states that any order compelling arbitration is not subject to immediate appeal, regardless of the nature of findings and rulings contained in that order." That is correct. We hold that an order compelling arbitration and staying the action is never immediately appealable.

IT IS SO ORDERED.





Columbia, South Carolina

cc: Fernando Xavier Starkes, Esquire
John Gressette Felder, Jr, Esquire
Arnall, Golden, Gregory, LLP
Julianne Farnsworth, Esquire

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1/27/11

THE STATE OF SOUTH CAROLINA
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Diane Schafer Goodstein, Circuit Court Judge

Civil Action No. 2011-CP-38-1513
South Carolina Court of Appeals No. 2013-002402

Bertha Tyler, as Guardian of Henrietta Mayes

Appellant,

v.

UniHealth Post-Acute Care – Orangeburg, LLC and
Crystal Pavlick,

Respondents.

CERTIFICATE OF SERVICE

I do hereby certify that I served all counsel in this action with a copy of Respondents' Motion to Dismiss by mailing a copy of the same to counsel United States Mail, postage prepaid, at the following address(es):

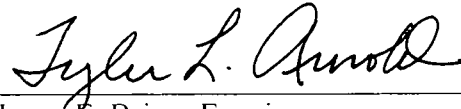
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Attorney for Appellant

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SC COURT OF APPEALS

Respectfully submitted,

ARNALL GOLDEN GREGORY LLP

A handwritten signature in cursive script that reads "Tyler L. Arnold". The signature is written in black ink and is positioned above a horizontal line.

Jason E. Bring, Esquire

W. Jerad Rissler, Esquire

Tyler L. Arnold, Esquire

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November 25, 2013