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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Patrick Cleburne Fant, III, Circuit Court Judge

Appellate Case No. 2025-002427

Estate of Virginia Parsons by Respondent
and through her Personal
Representative Sandra P. White,
Individually and on behalf
of statutory beneficiaries

v.

Atlas Senior Living, LLC; Atlas
Senior Living II, LLC; AFF18
Oakview Park ALF, LLC d/b/a
Oakview Park Assisted Living;
AFF18 Oakview Park PropCo,
LLC; AFF18 Greenville,
Borrower LLC; Oakview Park
Developer, LLC Appellants.

RETURN TO APPELLANTS’ MOTION TO STRIKE

Pursuant to Rule 240(e), SCACR, Respondent Sandra P. White respectfully submits her return to Appellants’ Motion to Strike. None of the three grounds cited in Appellants’ motion support exclusion of Ms. White and Attorney Poliakoff’s affidavits.

Appellants first argue the affidavits are “irrelevant to this appeal.” (Mot. at 2). Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

Rule 401, SCRE. The facts of consequence in this appeal include all the items courts traditionally consider to determine whether a contract is unconscionable. (App. Br. at 1) (stating first issue on appeal is “[w]hether the Arbitration Provision here was unconscionable . . .”). South Carolina law defines unconscionability as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007).

“Absence of meaningful choice” speaks to “the fundamental fairness of the bargaining process” as evidenced by factors including the parties’ relative bargaining positions, the conspicuousness of the challenged provision within the contract, and whether there was an element of surprise in that challenged provision’s inclusion. Id. (citing Carlson v. Gen. Motors Corp., 883 F.2d 287, 293 (4th Cir. 1989)). Ms. White’s affidavit speaks directly to her relatively weak bargaining position. (S. White Aff. ¶ 5, attached as **EXHIBIT 1**) (“I was under significant pressure to immediately sign all the paperwork, as I needed to return to my mother” who was suffering from “serious” medical issues). Ms. White also speaks about whether the contract’s arbitration provision was conspicuous and whether its inclusion was surprising to her. (S. White Aff. ¶ 6 (stating that she received no information “about arbitration at all” before signing); Id. at ¶ 8 (“I was not informed about arbitration, and had no information or understanding of arbitration . . . at any time relevant to the admission process”).

As for “oppressive” terms, courts have recognized a fee-splitting provision in an arbitration contract can render the agreement unenforceable when the costs a plaintiff faces effectively prevent her from pursuing a viable claim. Bradford v. Rockwell Semiconductor Sys., Inc., 238 F.3d 549, 554 (4th Cir. 2001); see also Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 90-

91 (2000). Both affidavits address cost issues. Ms. White states that her mother's estate has such "limited assets" that it will be "unable to pay" the various fees associated with arbitration. S. White Aff. ¶¶ 10-12). Mr. Poliakoff's affidavit explains in detail how, in many instances, "the process of [a]rbitration is much more expensive" for claimants than litigation and claimants are "typically unable to pay such costs." (G. Poliakoff Aff. ¶ 5, attached as **EXHIBIT 2**). As the estate's attorney, Mr. Poliakoff has the insight to report the estate's resources are so limited that it would be "extremely difficult, if not impossible . . . to pay such fees and costs to arbitrate [this] case." (G. Poliakoff Aff. ¶ 7). Thus, both challenged affidavits address elements of the unconscionability analysis and are directly relevant to the primary issue Appellants raise on appeal.

Second, Appellants argue the affidavits were improperly presented to the circuit court. However, Appellants overlook the key procedural history and seek an unfair outcome. Appellants' motion to reconsider the circuit court's order refusing to compel arbitration expressly relied on a perceived lack of evidence that arbitration would impose an undue cost burden on Ms. White or the estate. (Appellants' Mot. to Reconsider at 5, attached as **EXHIBIT 3**) ("There is no evidence before the Court indicating that Plaintiff is likely to incur prohibitively expensive costs should this case be referred to arbitration."). In response (on October 17, 2025), Respondent filed for a second time the two challenged affidavits which, as discussed above, directly addressed Appellants' charge of no evidence to support a cost issue. See *Parsons v. Atlas Sr. Living LLC Public Index*, attached as **EXHIBIT 4**. Appellants' position now seems to be that, while they were allowed to challenge the sufficiency of the evidence in their motion to reconsider, Respondent was not permitted to respond to that charge by pointing to directly relevant evidence. There was nothing improper or untimely about the filing of the challenged affidavits. Respondent was not attempting

to expand the scope of the inquiry; she was only addressing the facially flawed argument Appellants chose for their Rule 59(e), SCRCP motion.

Third, Appellants also err in their requested relief. (Mot. for 2-3) (requesting leave to draft affidavits and add them to the Record on Appeal). Appellants received Ms. White and Attorney Poliakoff's affidavits on August 28, 2025, and again on October 17, 2025. Appellants had plenty of time and opportunity to file affidavits before the final order was entered on November 10, 2025. Practically speaking, if Appellants had affiants to address the fairness of the bargaining process and the disputed contract terms, then one would have expected affidavits to have been submitted in connection with any of the four memoranda Appellants filed on the arbitration-related motions in the circuit court. Moreover, Appellants point to no mechanism within the governing rules that would permit them to add affidavits now that they did not see fit to submit to the circuit court. See Rule 210(c), SCACR ("The Record shall not . . . include matter which was not presented to the lower court or tribunal").

CONCLUSION

Based on the arguments stated above, Respondent requests the Court deny Appellants' motion to strike.

Respectfully submitted,

/s/ Jordan C. Calloway
Gary W. Poliakoff
Raymond P. Mullman, Jr.
Poliakoff & Associates, PA
215 Magnolia Street
Spartanburg, SC 29306
(864) 582-5472

Jordan C. Calloway
McGowan, Hood, Felder & Phillips, LLC
1539 Health Care Drive
Rock Hill, SC 29732

(803) 327-7800
jalloway@mcgowanhood.com

Attorneys for Respondent

April 23, 2026
Rock Hill, SC

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Estate of Virginia Parsons, by and through)
her Personal Representative, Sandra P.)
White, Individually and on behalf of)
statutory beneficiaries,)

C. A No. 2024-CP-23-06777

Plaintiffs,)

**AFFIDAVIT OF SANDRA PARSONS
WHITE**

vs.)

Atlas Senior Living, LLC; Atlas Senior)
Living II, LLC; AFF18 Oakview Park ALF,)
LLC d/b/a Oakview Park Assisted Living;)
AFF18 Oakview Park PropCo, LLC;)
AFF18 Greenville Borrower, LLC;)
Oakview Park Developer, LLC;)

Defendants.

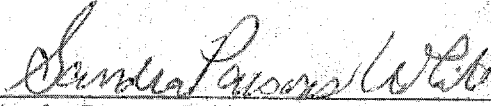
PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, AFTER DULY BEING SWORN, HEREBY STATES AND ATTESTS THAT THE FOLLOWING IS TRUE AND CORRECT UNDER PENALTIES OF PERJURY:

1. I am the daughter of Virginia Parsons.
2. I am the duly appointed Personal Representative of the Estate of Virginia Parsons.
3. At the time of her admission to the facility in this case, my mother suffered from dementia and cognitive impairment.
4. The Admission process was handled quickly by the nursing facility, and the facility told me the paperwork needed to be signed immediately. I was afforded no time to review the numerous pages of documents presented to me.
5. I was under significant pressure to immediately sign all the paperwork, as I needed to return to my mother at that time and address numerous concerns of hers, and numerous issues with the facility, regarding my mother's physical and emotional needs and her well-being, and other serious related issues.
6. At no time during the admission process or during the signing of the admissions paperwork did anyone call my attention to any arbitration provisions, or inform me about any arbitration

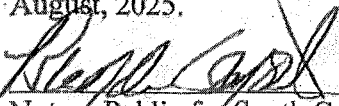
provisions, or explain anything to me about any arbitration agreement, or about arbitration at all. The overriding issue called to my attention during the admission process and my signing of the paperwork was that of the payments that would be owed, and how and when the payments were to be made.

- 7. I do not recall signing the alleged Arbitration Agreement.
- 8. I was not informed about arbitration, and had no information or understanding of arbitration, or any waiver of constitutional rights, or any waiver of rights to proceed in a court of law with a judge and a jury, at any time relevant to the admission process or the signing of admission paperwork. I was not represented by any attorney at the time of the admission process and received no legal guidance at the time of the admission process and the signing of admissions paperwork.
- 9. I have now been informed by my attorneys in this litigation that the Defendants are claiming an arbitration agreement, and have now been informed by my attorneys of the provisions in Defendants' alleged arbitration agreement.
- 10. Based on the limited assets in the Estate, the Estate is unable to pay the likely costs of arbitration.
- 11. I have no funds to spare to pay for arbitration proceedings.
- 12. I am unable to pay the arbitration administrative fee, or the arbitrator's fees, or the costs of arbitration, which would be required for such arbitration.

Executed this 26th day of August, 2025.


 Sandra Parsons White

SWORN and subscribed
before me this 26th day of
August, 2025.


 Notary Public for South Carolina
 My Commission Expires:

BRENDA S. AAMODT
 Notary Public - State of South Carolina
 My Commission Expires March 21, 2035

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Estate of Virginia Parsons, by and through her
Personal Representative, Sandra P. White,
Individually and on behalf of statutory
beneficiaries,

Plaintiffs,

v.

Atlas Senior Living, LLC; Atlas Senior Living
II, LLC; AFF18 Oakview Park ALF, LLC
d/b/a Oakview Park Assisted Living; AFF18
Oakview Park PropCo, LLC; AFF18
Greenville Borrower, LLC; Oakview Park
Developer, LLC;

Defendants.

IN THE COURT OF COMMON PLEAS
C.A. No: 2024-CP-23-06777

**AFFIDAVIT OF GARY W. POLIAKOFF
RE: Arbitration Issues**

Personally appeared before me Gary W. Poliakoff, who having been duly sworn, deposes and states:

1. That he is above the age of 18 years and is competent to execute this Affidavit.
2. That he is attorney for the Plaintiff in the above-captioned matter (a case in which Plaintiff alleges neglect by Defendants).
3. That he has been licensed as an attorney in the State of South Carolina for over 47 years (since November of 1977), has handled litigation extensively, has been granted a number of professional honors and awards, and has handled nursing home litigation extensively.
4. That he has also handled various matters which have been handled in Arbitration proceedings as well as in trial courts, including nursing home and long-term care litigation.
5. That, based upon his own experience as well as knowledge obtained in his profession, the process of Arbitration is much more expensive, and therefore more burdensome to litigants (particularly to plaintiffs), who are typically unable to pay such costs. Frequently the

fees and costs of the Arbitrator or Arbitrators, plus potentially arbitration administration and arbitration costs, alone can be tens of thousands of dollars, if not hundreds of thousands of dollars, in involved matters. This is compared to trial courts, where a modest filing fee (approximately \$150.00 in State Court; \$405.00 in Federal Court) covers the cost to the litigants for the Judge, jury, Clerk of Court's staff, Judge's staff, bailiffs, courtroom staff, and use of the courtroom (plus potentially some additional modest costs such as \$25.00 fee for filing Motions, etc.)

6. As examples of Arbitration costs:

(A) In Arbitration proceedings in a nursing home neglect case, tried for two weeks before a panel of three Arbitrators in 2013, the total fees and costs of the Arbitrators alone exceeded \$220,000.00. (In State Court, the entire cost for the Judge and Jury to the litigants would have been \$150.00, plus \$25.00 fees for Motions). These Arbitration fees and costs were in addition to all other typical costs of litigation, including but not limited to expert witness fees and costs, travel costs, court reporters fees for depositions, service of process, investigative costs, and others. The costs and expenses for these other litigation needs were as expensive in Arbitration as it would have been in a Court Trial. The difference in overall costs was the amounts paid to the Arbitrators – over \$220,000.00, as opposed to what would have been approximately \$200.00 for filing fees and motion fees in State Court.

(B) In Arbitration proceedings managed by the American Arbitration Association (AAA), utilizing Arbitrators arranged through AAA, in a case which ended in 2011, involving students and a for-profit college, the total fees and costs of the Arbitrators and the AAA exceeded \$100,000.00. In that case no hearing on the merits

was held, as the matter was ended at the Summary Judgment stage. Said amount covered pre-trial matters only. This is compared to what would have been a filing fee of \$150.00 in State Court, plus \$25.00 fees for motions. All other litigation costs – expert fees, court reporters fees, travel expenses, service of process, investigation costs, and others – were the same in Arbitration as would have been in Court proceedings.

(C) That the undersigned himself served as an Arbitrator, in an environmental litigation matter in which the parties, post-dispute, agreed to arbitrate a narrowed, specified issues in a pending case, and agreed to the undersigned as the Arbitrator. The fees of the undersigned, to arbitrate said narrowed, specified portion of the case, exceeded \$19,000.00. The comparable cost in Court would have been approximately \$200.00 (\$150.00 filing fee and \$25.00 fees for motions). In that particular matter, Plaintiff and Defendant were both corporations, with educated and sophisticated principals, both ably represented by competent counsel, who, post-dispute, negotiated and determined to submit that narrowed, specified portion of the case to Arbitration. In that case both parties were fully aware of the implications and costs of Arbitration when they negotiated and determined to submit it to Arbitration. In that case both parties were fully able to pay the cost of Arbitration.

7. That the Estate of Virginia Parsons is unable to pay such fees and costs for Arbitration. The imposition of such fees and costs upon the Parsons' is overly burdensome and oppressive. The beneficiaries have limited income and assets, and imposition of fees and costs of Arbitration would make it extremely difficult, if not impossible, for beneficiaries to pay such fees and costs to arbitrate their case. Arbitration of this matter would be prohibitively expensive.

8. That the undersigned would show that in involved matters such as the case at

hand, the fees and costs to arbitrate will likely be so excessive as to deny the Estate and its heirs and beneficiaries the opportunity to vindicate their rights. Accordingly, the undersigned would show that Arbitration in this case is unconscionable.

9. That the undersigned, based on extensive experience in litigation, particularly including nursing home and long-term care neglect cases, predicts that case presentation of the merits would require approximately a full week or more for the trial, preceded by several Motion Hearings, and presentation and review of various Briefs. Based upon experience and acquired knowledge regarding Arbitration, and based upon the issues in this case, the undersigned predicts that the total fees and costs of a single Arbitrator would likely exceed \$50,000.00, and potentially \$100,000.00, in the case at hand. The issues in this case will likely include discovery disputes to be resolved, and other pre-trial matters. The hearing on the merits will likely include complex corporate issues, as well as complex clinical issues. The above predictions are based on the extensive experience of the undersigned in civil litigation, particularly including nursing home and long-term care neglect cases. Further, qualified Arbitrators in this area typically charge approximately \$400.00 or more per hour, plus travel costs, and often arbitration administration fees, and other costs of arbitration, and sometimes costs for the use of a suitable location to conduct the proceedings to arbitrate similar matters. In the case referred to in paragraph 6(A) above, the Arbitrators charged \$550.00 per hour each.

10. The Plaintiffs in the present litigation are unable to pay the likely costs of Arbitration in this case. More specifically, the Decedent's Estate has limited assets. The Personal Representative is without sufficient funds to pay such arbitration costs herself.

11. That the alleged Arbitration Clause in the present case does not permit a party to waive or reduce the costs of Arbitration based on financial hardship or any other hardship.

12. In addition to the enormous costs to Arbitrate this case (which would not be charged in court proceedings), it is estimated that the Plaintiff will require three or more experts and various witnesses, and other costs of litigation, further imposing financial burdens on the Plaintiff.

13. That, based upon extensive litigation experience for over 47 years, including extensive nursing home and long-term care neglect litigation, and knowledge acquired in this field, as well as experience in Arbitration matters and knowledge acquired in said field, and based upon an understanding of the complex issues involved in nursing home litigation, and more specifically, the complex issues present in the case at hand, it is predicted that the costs of Arbitration (over and above the anticipated costs in litigating this case in any forum) will be enormous and unnecessary. Based upon the limited assets of the Estate, and insufficient resources of the Personal Representative herself, requiring the Plaintiff to Arbitrate this case would significantly impair the ability of the Plaintiffs to obtain redress for their claims, and would therefore be unconscionable.

14. That the above statements refer to procedural unconscionability of the arbitration provisions, which is in addition to many unconscionable substantive provisions in the arbitration agreement as well.

SWORN and subscribed to before me this 26 day of August 2025.

Amanda Freeman
Notary Public for South Carolina
My Commission Expires: 8/4/2033

Gary W. Poliakoff
Gary W. Poliakoff, Federal I.D. # 3078
Attorney for the Plaintiffs

Amanda Freeman
Notary Public, State of South Carolina
My Commission Expires August 4, 2033

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries,

Plaintiffs,

v.

Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF 18 Oakview Park PropCo, LLC; AFF 18 Greenville Borrower, LLC; Oakview Park Developer, LLC;

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2024-CP-23-06777

**DEFENDANTS' RULE 59(e)
MOTION TO RECONSIDER,
ALTER, AND AMEND THE
COURT'S SEPTEMBER 24, 2025
ORDER(s)**

Pursuant to Rule 59(e), SCRPC, Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC (collectively, "Defendants") respectfully request that this Honorable Court reconsider, alter, and amend its Order(s) of September 24, 2025.

I. The burden of proving unconscionability lies with the party asserting it.

The Court's Order incorrectly states that Defendants bear the burden of proving that the arbitration provision was *not* unconscionable. The Order cites to two cases in support of this contention; however, neither case says anything about which party bears the burden of proving unconscionability.

To the contrary, it is well-established that the burden of proving unconscionability lies with the party asserting it. See *Johnson v. Heritage Healthcare of Estill, LLC*, 416 S.C. 508, 512, 788 S.E.2d 216, 218 (2016) (“The litigant opposing arbitration bears the burden of demonstrating that he has a valid defense to arbitration.”); *Doe v. TCSC, LLC*, 430 S.C. 602, 612, 846 S.E.2d 874, 879 (Ct. App. 2020) (“To prove the arbitration provision unconscionable, [the party resisting arbitration] must show that (1) she lacked a meaningful choice as to whether to arbitrate because the Agreement's provisions were one-sided, and (2) the terms were so oppressive no reasonable person would make them and no fair and honest person would accept them.”); *Towles v. United HealthCare Corp.*, 338 S.C. 29, 38 n.3, 524 S.E.2d 839, 844 n.3 (Ct. App. 1999) (finding that the party resisting arbitration bears the burden of showing that “the prevailing law would release him from a contractual obligation to arbitrate.”); *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 81 (2000) (“[A] party seeking to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive bears the burden of showing the likelihood of incurring such costs.”); *Youmans ex rel. Elmore v. S.C. Dep't of Transp.*, 380 S.C. 263, 281-82, 670 S.E.2d 1, 10 (Ct. App. 2008) (“The [party] asserting an affirmative defense bears the burden of its proof.”).

Here, it is undisputed that there was an agreement to arbitrate between the parties. Plaintiff does not dispute that Sandra Parsons White signed the Residency Agreement and that she had the authority to do so on behalf of Virginia Parsons. Rather, Plaintiff asserts that the agreement should not be enforced, because it is

unconscionable. As unconscionability is an affirmative defense, Plaintiff bears the burden of establishing it.

II. Plaintiff has not met her burden of demonstrating procedural unconscionability.

For a contract provision to be unconscionable, both procedural and substantive unconscionability must be present. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007). “Substantive unconscionability appears in the content of the contract per se, while procedural unconscionability entails an examination of the contract formation process, and both are generally necessary to establish unconscionability.” 17A Am. Jur. 2d Contracts § 272.

“Procedural unconscionability involves ‘bargaining naughtiness’ in contract formation. It is determined by analyzing the respective bargaining power of the contracting parties, and the ability of the particular contracting party, in light of education, intelligence, or lack thereof, to understand the terms of the contract.” *Id.*

“As early as 1924, this Court recognized that every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it.” *Burwell v. S.C. Nat. Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986). Accordingly, “when there is no dispute a party has signed an agreement, there can generally be no bona fide dispute he or she is aware of all terms in the agreement.” *Hackworth v. Bayview Manor, LLC*, No. 2019-001536, 2023 WL 2519244, at 3 (S.C. Ct. App. Mar. 15, 2023); *see also Towles v. United HealthCare Corp.*, 338 S.C. 29, 39, 524 S.E.2d 839, 845 (Ct. App. 1999) (“After receiving and signing the Acknowledgment, Towles cannot legitimately claim United failed to

provide actual notice of the arbitration provisions because the law does not impose a duty to explain a document's contents to an individual when the individual can learn the contents from simply reading the document.”).

The undisputed evidence before the Court is that Sandra Parsons White was a sophisticated party who had received formal instruction on, and demonstrated her understanding of, South Carolina contract law and agency law. (See **Exhibits 5 and 6** to Defendants’ Reply Memo). It is undisputed that there were over thirty assisted living facilities within driving distance of The Oakview Park facility. (See **Exhibit 7** to Defendants’ Reply Memo). It is undisputed that the Residency Agreement itself informed Sandra Parsons White of the fact “that other assisted living companies’ Agreements may not contain an arbitration provision.” (See **Exhibit 4** to Defendants’ Reply Memo).

There is no evidence before the Court that indicates Sandra Parsons White lacked the education or intelligence to be able to read and understand the terms of the arbitration provision. There is no evidence that Defendants engaged in any “bargaining naughtiness.” There is no evidence of an absence of meaningful choice. Plaintiff has not met her burden of establishing procedural unconscionability.

III. Plaintiff has not met her burden of demonstrating substantive unconscionability.

Substantive unconscionability exists when the terms of the contract “are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Gladden v. Boykin*, 402 S.C. 140, 144, 739 S.E.2d 882, 884 (2013).

As previously argued in Defendants' memorandums of law and in oral argument, there is no South Carolina caselaw indicating that any terms within the arbitration provision are unconscionable, violative of public policy, or otherwise unenforceable. Conversely, the caselaw that does exist appears to indicate that all of the provisions here are enforceable. *See Gladden*, 402 S.C. 140, 739 S.E.2d 882; and *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016).

There is no evidence before the Court indicating that Plaintiff is likely to incur prohibitively expensive costs should this case be referred to arbitration. *See Green Tree Fin. Corp.-Alabama*, 531 U.S. at 81 (“[A] party seeking to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive bears the burden of showing the likelihood of incurring such costs.”). In fact, the arbitration provision itself provides that if Plaintiff is indigent, Plaintiff will not incur any arbitration costs. (See **Exhibit 4** to Defendants' Reply Memo).

Finally, while the Court's Order states that \$400,000 will likely be an insufficient amount to fully compensate Plaintiff for the injuries alleged in this case, Plaintiff's counsel appears to disagree, given that on March 17, 2025, Plaintiff's counsel filed an offer of judgment for \$375,000.

Plaintiff has not met her burden of establishing substantive unconscionability.

IV. The Court should sever any provision(s) it deems unenforceable.

In *Simpson*, the Supreme Court of South Carolina cited with approval a D.C. Circuit case called *Booker* for the proposition that “[i]f illegality pervades the arbitration agreement such that only a disintegrated fragment would remain after

hacking away the unenforceable parts, the judicial effort begins to look more like rewriting the contract than fulfilling the intent of the parties.” *Simpson*, 373 S.C. at 34, 644 S.E.2d at 673 (quoting *Booker v. Robert Half Int'l, Inc.*, 413 F.3d 77, 84-85 (D.C. Cir. 2005)).

However, in *Booker*, the D.C. Circuit did not invalidate the entire arbitration provision. Rather, the Court severed an unenforceable provision barring punitive damages and then upheld the remainder of the arbitration provision. *See Booker v. Robert Half Int'l, Inc.*, 413 F.3d 77. The Court found that “severance is inappropriate when the entire clause represents an integrated scheme to contravene public policy” but noted that “[t]here is no evidence of that here” because when the contract was signed “the law of this circuit was unclear as to whether bars on punitive damages in arbitration clauses were enforceable in this context.” *Id.* at 85 (internal quotations and citations omitted).

The same is true here. There is no South Carolina caselaw indicating that any of the provisions at issue here are unconscionable, violative of public policy, or otherwise unenforceable. Rather, the caselaw appears to indicate that all of the provisions here are enforceable. *See Gladden v. Boykin*, 402 S.C. 140, 739 S.E.2d 882; and *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498.

Defendants have a right to rely on existing caselaw when drafting contracts. Unlike in *Damico*, Defendants here have not engaged in “an integrated scheme to contravene public policy” for which they ought to be punished.¹

The *Damico* Court also cited with approval to 17A Am. Jur. 2d Contracts § 314, which provides that:

To determine whether an entire contract should be invalidated or whether only a particular term or set of terms should be severed, a court considers whether—

- the illegality is central or collateral to the purpose of the contract.
- the illegal provision involves moral turpitude.
- the agreement is an integrated scheme to contravene public policy.
- the party seeking enforcement has engaged in serious misconduct.
- the provision can be eliminated without frustrating the basic purpose of the contract.
- the contract would have been entered into independently of the invalid portion.
- the considerations from both sides are sufficient for performance absent the invalid provision.
- the invalid provision does not constitute the main or essential

¹ In *Damico*, the contract, amongst other things, purported to waive the implied warranty of habitability in exchange for the valuable consideration of \$0 and gave Lennar the unilateral ability to control who Plaintiff could name as a co-defendant in any arbitration proceeding brought against Lennar. The arbitration agreement was also characterized as an equitable servitude that would run with the land in perpetuity. The Court held that “[w]e find these and other terms of the contracts to be absurd, factually incorrect, and grossly oppressive.” *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 617, 879 S.E.2d 746, 758 (2022).

purpose of the agreement.

- the allegedly unenforceable clause can easily be severed from the remainder of the contract without reforming the substance of the contract.

17A Am. Jur. 2d Contracts § 314.

All of these factors weigh in favor of severing any term(s) that the Court deems unenforceable here, rather than invalidating the entire arbitration provision. The essential purpose of the arbitration provision was to memorialize the parties' agreement to settle disputes via arbitration. This is not an illegal purpose; in fact, this is a purpose and an endeavor that Congress sought to encourage and protect by enacting the FAA. The arbitration provision does not involve any moral turpitude. Defendants have not engaged in any serious misconduct or perpetrated an integrated scheme to contravene public policy. Any terms regarding how the arbitration is to be conducted or what damages are recoverable therein can easily be severed without frustrating the essential purpose of the arbitration provision.

Finally, the plain language of the arbitration provision itself evinces the parties' intent to sever any provisions that a Court may deem unenforceable. (See the severance clauses contained in **Exhibit 4** to Defendants' Reply Memo). The intent of the parties should be enforced. *See Columbia Architectural Grp., Inc. v. Barker*, 274 S.C. 639, 641, 266 S.E.2d 428, 429 (1980) (holding that "[t]he entirety or severability of a contract depends primarily upon the intent of the parties.").

Conclusion

For the foregoing reasons, as well as those previously raised in oral argument and in previous memorandums of law, Defendants respectfully request that this Honorable Court reconsider, alter, and amend its Order(s)² of September 24, 2025 and grant Defendants' Motion to Compel Arbitration.

Respectfully Submitted,

HOLCOMBE BOMAR, PA

s/ Timothy Maio
Brown Parkinson (S.C. Bar # 4437)
Timothy Maio (S.C. Bar # 105171)
PO Box 1897
Spartanburg, SC 29304
(864) 594-5322
ebparkinson@holcombebomar.com
tmaio@holcomebomar.com

*Attorneys for Atlas Senior Living, LLC,
Atlas Senior Living II, LLC, AFF 18
Oakview Park ALF, LLC d/b/a Oakview
Park Assisted Living, AFF 18 Oakview
Park PropCo, LLC, and AFF 18 Greenville
Borrower, LLC*

October 3, 2025
Spartanburg, South Carolina

² The Court appears to have signed and filed two identical Orders on September 24, 2025.



Greenville County 13th Judicial Circuit Public Index



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Switch View					
Virginia Parsons Estate , plaintiff, et al vs. Atlas Senior Living LLC , defendant, et al					
Case Number:	2024CP2306777	Court Agency:	Greenville County Common Pleas	Filed Date:	11/19/2024
Case Type:	Common Pleas	Case Sub Type:	Wrongful Death 360	File Type:	Jury
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties	Judgments	Tax Map Information	Associated Cases	Actions	Financials	
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Oakview Park Assisted Living	NEF(02-11-2026 09:10:17 AM) Notice/Other	Filing		02/11/2026-09:29		
Oakview Park Assisted Living	Notice of Transfer Within Firm	Filing		02/11/2026-09:10		
Virginia Parsons Estate	NEF(02-11-2026 08:52:07 AM) Order/Electronic Form 4	Filing		02/11/2026-08:52		
Virginia Parsons Estate	Order/Electronic Form 4	Order		02/11/2026-08:52		
Oakview Park Assisted Living	NEF(12-08-2025 11:44:19 AM) Appeal/Notice of Appeal to C...	Filing		12/08/2025-11:47		
Oakview Park Assisted Living	Appeal/Notice of Appeal to Court of Appeals	Filing		12/08/2025-11:44		
Poliakoff, Gary W.	2/9/2026_MOTION_Roster/Notice of Case Roster Publication Sen	Action		12/03/2025-09:13		
Mullman, Raymond P Jr.	2/9/2026_MOTION_Roster/Notice of Case Roster Publication Sen	Action		12/03/2025-09:13		
Darwin, A. Todd	2/9/2026_MOTION_Roster/Notice of Case Roster Publication Sen	Action		12/03/2025-09:13		
Parkinson, Edwin Brown Jr.	2/9/2026_MOTION_Roster/Notice of Case Roster Publication Sen	Action		12/03/2025-09:13		
Maio, Timothy	2/9/2026_MOTION_Roster/Notice of Case Roster Publication Sen	Action		12/03/2025-09:13		
Virginia Parsons Estate	NEF(11-24-2025 01:13:40 PM) Motion/Compel	Filing		11/24/2025-14:13		
Virginia Parsons Estate	Plt's/Motion to Compel Discovery	Motion		11/24/2025-13:13		
Virginia Parsons	NEF(11-10-2025 10:46:02 AM) Order/Other	Filing		11/10/2025-10:46		

Estate						
Virginia Parsons Estate	Order/Other	Order		11/10/2025-10:46		
Oakview Park Assisted Living	NEF(10-31-2025 10:15:24 AM) Reply/Other	Filing		10/31/2025-11:35		
Oakview Park Assisted Living	Reply to Plt's Memo in Opposition	Filing		10/31/2025-10:15		
Virginia Parsons Estate	NEF(10-17-2025 04:00:18 PM) Memo/Memo in Opposition	Filing		10/17/2025-16:32		
Virginia Parsons Estate	Affidavit/Affidavit of Gary W. Poliakoff	Filing		10/17/2025-16:00		
Virginia Parsons Estate	Affidavit/Affidavit of Sandra Parsons White	Filing		10/17/2025-16:00		
Virginia Parsons Estate	Memo/Memo in Opposition	Filing		10/17/2025-16:00		
Oakview Park Assisted Living	NEF(10-03-2025 08:35:24 AM) Motion/Reconsider	Filing		10/03/2025-10:23		
Oakview Park Assisted Living	Def's/Motion to Reconsider	Motion		10/03/2025-08:35		
Virginia Parsons Estate	NEF(09-24-2025 03:22:33 PM) Order/Other	Filing		09/24/2025-15:22		
Virginia Parsons Estate	Order/Other	Order		09/24/2025-15:22		
Virginia Parsons Estate	NEF(09-19-2025 04:13:18 PM) Order/Order Cover Sheet \$25....	Filing		09/22/2025-09:14		
Virginia Parsons Estate	Order/Order Cover Sheet \$25.00	Filing		09/19/2025-16:13		
Virginia Parsons Estate	NEF(09-05-2025 03:37:59 PM) Order/Electronic Form 4	Filing		09/05/2025-15:38		
Virginia Parsons Estate	Order/Electronic Form 4	Order		09/05/2025-15:37		
Virginia Parsons Estate	NEF(09-03-2025 03:35:39 PM) Order/Other	Filing		09/03/2025-15:35		
Virginia Parsons Estate	Order/Other	Order		09/03/2025-15:35		
Oakview Park Assisted Living	NEF(08-28-2025 01:29:51 PM) Reply/Other	Filing		08/28/2025-15:06		
Virginia Parsons Estate	NEF(08-28-2025 12:45:38 PM) Memo/Memo in Opposition	Filing		08/28/2025-14:01		
Oakview Park Assisted Living	Reply to Memo in Opposition	Filing		08/28/2025-13:29		
Virginia Parsons Estate	Memo/Memo in Opposition to Motion to Compel Arbitration	Filing		08/28/2025-12:45		
Oakview Park Assisted Living	NEF(08-13-2025 11:35:05 AM) Memo/Memo in Support	Filing		08/13/2025-12:32		

Oakview Park Assisted Living	Def's Memo of Law In Support of Motion to Compel Arbitration	Filing		08/13/2025-11:35		
Parkinson, Edwin Brown Jr.	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/22/2025-16:23		
Poliakoff, Gary W.	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/22/2025-16:23		
Mullman, Raymond P Jr.	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/22/2025-16:23		
Maio, Timothy	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/22/2025-16:23		
Darwin, A. Todd	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/22/2025-16:23		
Mullman, Raymond P Jr.	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/22/2025-16:20		
Maio, Timothy	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/22/2025-16:20		
Poliakoff, Gary W.	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/22/2025-16:20		
Darwin, A. Todd	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/22/2025-16:20		
Parkinson, Edwin Brown Jr.	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/22/2025-16:20		
Virginia Parsons Estate	NEF(07-17-2025 09:29:20 AM) Proposed Order/Consent Order	Filing		07/17/2025-13:24		
Virginia Parsons Estate	Order/Order Cover Sheet \$25.00	Filing		07/17/2025-09:29		
Oakview Park Assisted Living	NEF(07-03-2025 02:27:26 PM) Motion/Compel	Filing		07/07/2025-09:03		
Mullman, Raymond P Jr.	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/03/2025-15:09		
Poliakoff, Gary W.	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/03/2025-15:09		
Maio, Timothy	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/03/2025-15:09		
Parkinson, Edwin Brown Jr.	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/03/2025-15:09		
Darwin, A. Todd	8/25/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		07/03/2025-15:09		
Oakview Park Assisted Living	Def's/Motion to Compel Arbitration	Motion		07/03/2025-14:27	08/28/2025-14:27	
Oakview Park Assisted Living	Def's/Motion for Protection from Discovery	Motion		07/03/2025-14:27	08/28/2025-14:27	
Virginia Parsons Estate	NEF(07-02-2025 11:47:08 AM) Motion/Compel	Filing		07/02/2025-15:55		
Virginia Parsons Estate	Plt's/Motion for Compelling Records	Motion		07/02/2025-11:47	08/28/2025-11:47	
Atlas Senior Living LLC	NEF(06-30-2025 09:54:10 AM) Notice/Notice of Appearance	Filing		06/30/2025-09:54		
Atlas Senior Living LLC	Notice/Notice of Appearance	Filing		06/30/2025-09:54		
Virginia Parsons Estate	ADR/Alternative Dispute Resolution (Workflow)	Action		06/17/2025-11:32	10/08/2025-11:32	
Atlas Senior Living LLC	NEF(04-03-2025 12:06:25 PM) Notice/Notice of Appearance	Filing		04/03/2025-12:07		
Atlas Senior Living LLC	Notice/Notice of Appearance	Filing		04/03/2025-12:06		

Virginia Parsons Estate	NEF(03-17-2025 04:08:48 PM) Offer Of Judgment	Filing		03/17/2025-16:14		
Virginia Parsons Estate	Offer Of Judgment To Oakview Park Assisted Living	Filing		03/17/2025-16:08		
Oakview Park Assisted Living	NEF(02-28-2025 03:03:34 PM) Order/Signed Order/Protectio...	Filing		02/28/2025-16:04		
Oakview Park Assisted Living	Order/Signed Order/Protection from Court Appearance	Filing		02/28/2025-15:03		
Oakview Park Assisted Living	NEF(02-07-2025 12:04:40 PM) Answer/Answer	Filing		02/07/2025-13:10		
Oakview Park Assisted Living	Answer/Answer	Filing		02/07/2025-12:04		
Atlas Senior Living LLC	NEF(02-07-2025 12:02:25 PM) Notice/Notice of Appearance	Filing		02/07/2025-12:02		
Atlas Senior Living LLC	Notice/Notice of Appearance	Filing		02/07/2025-12:02		
Virginia Parsons Estate	NEF(12-19-2024 01:46:31 PM) Service/Certificate Of Servi...	Filing		12/19/2024-15:04		
Virginia Parsons Estate	Service/Certificate Of Service	Filing		12/19/2024-13:46		
Virginia Parsons Estate	Service/Certificate Of Service	Filing		12/19/2024-13:46		
Virginia Parsons Estate	Service/Certificate Of Service	Filing		12/19/2024-13:46		
Virginia Parsons Estate	Service/Certificate Of Service	Filing		12/19/2024-13:46		
Virginia Parsons Estate	Service/Certificate Of Service	Filing		12/19/2024-13:46		
Virginia Parsons Estate	Service/Certificate Of Service	Filing		12/19/2024-13:46		
Virginia Parsons Estate	Summons & Complaint	Filing		11/19/2024-11:32		
Virginia Parsons Estate	Affidavit/Affidavit of	Filing		11/19/2024-11:32		

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Apr 23 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Patrick Cleburne Fant, III, Circuit Court Judge

Appellate Case No. 2025-002427

Estate of Virginia Parsons by Respondent
and through her Personal
Representative Sandra P. White,
Individually and on behalf
of statutory beneficiaries

v.

Atlas Senior Living, LLC; Atlas
Senior Living II, LLC; AFF18
Oakview Park ALF, LLC d/b/a
Oakview Park Assisted Living;
AFF18 Oakview Park PropCo,
LLC; AFF18 Greenville,
Borrower LLC; Oakview Park
Developer, LLC Appellants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on April 23, 2026, he served Appellants’ counsel with the Return to Appellants’ Motion to Strike at the email addresses listed below pursuant to Rule 262(c)(3), SCACR and Section (d)(1) of the South Carolina’s Supreme Court’s August 25, 2021 order (Order No. 2021-08-25-02):

tmaio@holcomebomar.com

/s/ Jordan C. Calloway
Attorney for Respondent

April 23, 2026
Rock Hill, SC

V. Parsons v. Atlas Sr. Living, LLC et al. (Appellate Case No. 2025-002427) Apr 23 2026


SC Court of Appeals

From Jordan Calloway <jordan@mcgowanhood.com>

Date Thu 4/23/2026 9:43 AM

To Timothy Maio <tmaio@holcombebomar.com>

Cc Ray Mullman <rmullmanjr@gmail.com>; Gary Poliakoff <atty@gpoliakoff.com>

 5 attachments (1 MB)

V. Parsons--Return to Appellants' Mtn. to Strike FINAL PDF.pdf; Exhibit 1--S. White affidavit.pdf; Exhibit 2--G. Poliakoff affidavit.pdf; Exhibit 3--Def. Mtn to Reconsider.pdf; Exhibit 4--Public Index.pdf;

Counsel:

I am attaching the Return to Appellants' Motion to Strike that is being electronically filed today with the South Carolina Court of Appeals. Pursuant to Rule 262(c)(3), SCACR and Section (d) (1) of the South Carolina Supreme Court's August 25, 2021, order (Order No. 2021-08-25-02), please consider this email service for the Return.

Thanks,

Jordan Calloway
McGowan, Hood, Felder & Phillips, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800