



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BAMBERG  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2015-CP-05-00124  
Appellate Case No. 2015-002493

**RECEIVED**

APR 26 2016

**SC Court of Appeals**

Polly McGill and Mary Broxton, as Co- Personal Representatives of  
the Estate of Virginia Butler, deceased, Plaintiffs

Of Whom Polly McGill, as Personal Representative of the Estate of  
Virginia Butler is the ..... Respondent,

v.

The Regional Medical Center Foundation d/b/a The Regional Medical  
Center and Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute  
Care of Bamberg, LLC, Defendants,

Of Whom Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute  
Care of Bamberg, LLC is the ..... Appellant.

**APPELLANT'S RETURN TO MOTION TO DISMISS**

The Respondent has moved to dismiss the Appellant's appeal, contending that the Appellant's Notice of Appeal was filed late. This motion should be dismissed because it is based on the mistaken, inaccurate, and unsupported assumption that the Appellant received the Order Denying the Motion to Compel Arbitration before October 13, 2015. Because the Appellant did not receive the Order prior to October 13, 2015, the Respondent's Motion to Dismiss should be dismissed because its foundation is based on an erroneous assumption.

On July 10, 2015, the Appellant moved to Dismiss the Complaint and Compel Arbitration. On September 9, 2015, the Circuit Court, with Judge Thomas Cooper presiding, held a hearing on Appellant's Motion to Dismiss and Compel Arbitration. After hearing arguments of counsel, the Court took the matter under advisement and asked the parties to submit proposed orders. Both the Appellant and Respondent submitted proposed orders. Judge Cooper signed Respondent's proposed order denying the motion with minor modifications on September 30, 2015, and sent the signed Order to the Bamberg County Clerk of Court. Judge Cooper did not send a copy of his signed Order to the Appellant. The Clerk of Court filed the Order on October 5, 2015. The Appellant did not and has not to this date received a copy of this Order from either the trial judge or from the Clerk of Court. Rather, the Appellant's attorney, Monty Todd, first received a copy of the Order on October 13, 2015, when he was taking a deposition in another case at the office of Michael Tanner, who represents the co-defendant, Regional Medical Center Foundation, in this case. Thus, the Appellant did not receive a copy of the Order Denying the Motion to Dismiss and Compel Arbitration until October 13, 2015.

The Appellant then filed its Rule 59 Motion for Reconsideration on October 23, 2015, within ten days of the Appellant's receipt of the Circuit Court's Order and within the time period allowed for such a motion. In its Motion for Reconsideration, the Appellant advised the Respondent and the Court that it first received the Order on October 13, 2015. The Respondent did not contest the timeliness of the motion at that time.

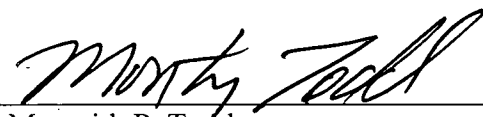
### **DISCUSSION**

In this case, the Circuit Court never provided notice of the Order in question to the Appellant. Rather, the Appellant was given a copy of the Order by the co-defendant's counsel and the Appellant timely filed its Motion for Reconsideration within ten days of its receipt of the Order.

Therefore, the Appellant filed its Motion for Reconsideration in a timely fashion, timely filed its Notice of Appeal within thirty days of its receipt of the Order Denying its Motion for Reconsideration, and has complied with all deadlines since the filing of its Notice of Appeal. The basis of the Respondent's Motion to Dismiss is based upon the assumption that the Appellant received a copy of the Order Denying the Motion to Dismiss and Compel Arbitration before October 13, 2015, but this assumption is inaccurate, untrue, and without any foundation. Therefore, the Respondent's motion should be dismissed.

Respectfully submitted,

BY:



Monteith P. Todd  
J. Michael Montgomery  
Alexander E. Davis  
Sowell Gray Stepp & Laffitte, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, SC 29211  
(803) 929-0300

Columbia, South Carolina

April 26, 2016

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Care of Bamberg, LLC, Defendants,

Of Whom Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute  
Care of Bamberg, LLC is the ..... Appellant.

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**AFFIDAVIT OF MONTEITH P. TODD**

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Monteith P. Todd, after first being duly sworn, deposes and says as follows:

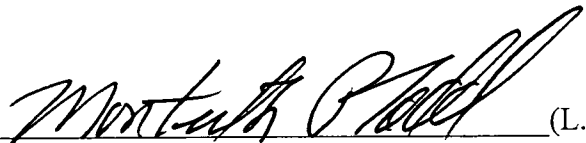
I represented the Defendant/Appellant, Pruitt Health-Bamberg, LLC, in this appeal.

I argued the Motion to Dismiss and Compel Arbitration before Judge Thomas Cooper in  
Bamberg in September 2015. At the hearing, Judge Cooper asked each party to submit proposed  
orders. Pursuant to this request, I prepared and submitted a proposed order to Judge Cooper.

I did not hear anything from Judge Cooper or the Clerk of Court in Bamberg regarding Judge Cooper's order until I was taking a deposition on October 13, 2015, in another case at the office of Michael Tanner in Bamberg. While taking this deposition, Mr. Tanner, who represents the co-defendant Orangeburg Regional Medical Center in this case, provided me with a copy of the order denying the motion which he had obtained from the Clerk of Court. Prior to Mr. Tanner providing me with this order on October 13, 2015, neither I nor my office had received a copy of this order from either Judge Cooper, from the Clerk of Court in Bamberg, or from any other person or entity.

After receiving a copy of the Order from Mr. Tanner, I filed a Motion for Reconsideration of the order within ten days of receipt of the order and within the time period permitted by the rules.

I have also checked with my assistant, Robin Owens, who can also attest that we did not receive a copy of this order either from the Court or from the Clerk of Court at any time prior to October 13, 2015.

  
\_\_\_\_\_(L.S.)  
Monteith P. Todd

SWORN TO AND SUBSCRIBED BEFORE ME

this 25<sup>th</sup> day of April, 2016.

Caren M. Moore (L.S.)  
Notary Public for South Carolina

My Commission Expires: 3/24/2019

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Care of Bamberg, LLC, Defendants,

Of Whom Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute  
Care of Bamberg, LLC is the ..... Appellant.

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**AFFIDAVIT OF ROBIN C. OWENS**

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Robin C. Owens, after first being duly sworn, deposes and says as follows:

I am the legal assistant for Monteith P. Todd at Sowell Gray Stepp & Laffitte, LLC.

I open, docket, and scan all incoming mail addressed to Monteith P. Todd and Alex E.  
Davis in the normal course of business.

The Order Denying Motion to Dismiss and Compel Arbitration has never been received by  
our office from the Clerk of Court of Bamberg County or from Judge Cooper by mail.

My first notification and docketing of the order signed by Judge Cooper denying the Motion to Dismiss and Compel Arbitration was on October 13, 2015, when Monty Todd returned from a deposition in Bamberg and advised he had received a copy of the order from Attorney Michael Tanner.

Robin C. Owens (L.S.)  
Robin C. Owens

SWORN TO AND SUBSCRIBED BEFORE ME

this 25<sup>th</sup> day of April, 2016.

Caren M. Moore (L.S.)  
Notary Public for South Carolina

My Commission Expires: 3/24/2019

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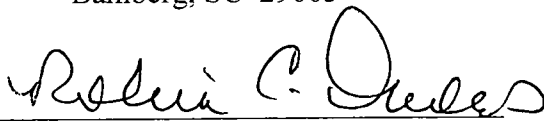
**PROOF OF SERVICE**

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp &  
Laffitte, LLC, attorneys for Appellant, Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post-Acute  
Care of Bamberg, LLC, do hereby certify that I have served all counsel in this action with a copy  
of the Appellant's Return to Motion to Dismiss by mailing a copy of same to counsel via United  
States Mail, postage prepaid, at the following address(es):

W. Jones Andrews, Jr., Esquire  
McGowan, Hood & Felder  
1517 Hampton Street  
Columbia, SC 29201

Michael C. Tanner, Esquire  
Post Office Box 1061  
Bamberg, SC 29003

4/26, 2016

  
Robin C. Owens, Legal Assistant

April 26, 2016

**VIA HAND DELIVERY**

Honorable Jenny Abbott Kitchings  
Clerk, SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

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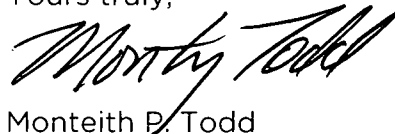
RE: Polly McGill and Mary Broxton, as Co-Personal Representatives of the Estate of Virginia Butler, deceased  
of Whom  
Polly McGill as Personal Representative of the Estate of Virginia Butler, deceased is the **Respondent**  
v.  
The Regional Medical Center Foundation d/b/a The Regional Medical Center and Pruitt Health-Bamberg, LLC d/b/a UniHealth Post-Acute Care of Bamberg, LLC  
of Which  
Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute Care of Bamberg is the **Appellant**  
Appellate Case No.: 2015-002493  
Our File No. 5593/1545

Dear Ms. Kitchings:

I enclose for filing the original and seven copies of Appellant's Return to Motion to Dismiss and Proof of Service in the above-captioned matter. Please return a clocked-in copy of same to me.

By copy of this letter to counsel shown below, I am serving a copy of same upon them by mail. Thank you for your assistance.

Yours truly,



Monteith P. Todd

MPT:rco

Enclosures

cc: W. Jones Andrews, Jr., Esquire  
Michael Tanner, Esquire