

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

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JUL 07 2015

SC Court of Appeals

Lawrence E. Morrow and Evelyn M. Morrow,
Petitioners,

v:

Fundamental Long-Term Care Holdings, LLC;
Fundamental Clinical Consulting, LLC; Fundamental
Administrative Services, LLC; THI of Baltimore, Inc.;
THI of South Carolina, LLC; THI of Baltimore
Management, LLC; THI of South Carolina at Magnolia
Place at Spartanburg, LLC, d/b/a Magnolia Place at
Spartanburg, Respondents.

Appellate Case No. 2012-212871

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

Opinion No. 27532
Heard January 13, 2015 – Filed June 17, 2015

REVERSED AND REMANDED

John S. Nichols and Blake A. Hewitt, both of Bluestein,
Nichols, Thompson & Delgado, LLC, of Columbia, and
Gary W. Poliakoff and Raymond P. Mullman, Jr, both of
Poliakoff & Associates, PA, of Spartanburg, for
Petitioners.

William L. Howard, Sr., D. Jay Davis, Jr., and Russell G. Hines, all of Young Clement Rivers, LLP, of Charleston, and Lori D. Proctor, of Cooper & Scully, PC, of Houston, TX, for Respondents.

JUSTICE HEARN: The court of appeals dismissed as interlocutory an appeal which severed a number of defendants from this lawsuit, ostensibly under the label of "bifurcation." We hold the order went far beyond our common understanding of bifurcation, thereby affecting a substantial right of the petitioners. We therefore reverse.

FACTUAL/PROCEDURAL HISTORY

Lawrence and Evelyn Morrow filed a lawsuit against THI of South Carolina at Magnolia Place at Spartanburg, LLC (Magnolia Place) alleging personal injuries were suffered by Lawrence as a nursing home resident. The Morrows alleged that due to Magnolia Place's negligence, Lawrence sustained an injury while being assisted in the shower and was required to undergo surgery to remove a penile implant. They also alleged the nursing home failed to properly monitor Lawrence's diabetes or properly care for his pressure wounds.

The Morrows also brought suit against Fundamental Long-Term Care Holdings, LLC, Fundamental Clinical Consulting, LLC, Fundamental Administrative Services, LLC, THI of Baltimore, Inc., THI of South Carolina, Inc., and THI Holdings, LLC (collectively, Fundamental Entities). The Morrows alleged the Fundamental Entities were vicariously liable for the negligence of Magnolia Place, and furthermore were directly responsible for Lawrence's injuries by way of their conscious disregard for his health in underfunding Magnolia Place, which led to issues with staffing, training, and nutrition.

The Fundamental Entities thereafter filed a motion to bifurcate the trial pursuant to Rule 42(b), SCRCP between the nursing home negligence claims and the corporate negligence claims, and further, to stay discovery related to the corporate negligence claims. The Fundamental Entities argued bifurcation was proper because the issues of nursing home negligence and corporate negligence were distinct, and the Morrows could only move forward on the corporate negligence claims if they were first successful against Magnolia Place. As an extension, the Fundamental Entities argued bifurcation of the trial would simplify the issues, save significant judicial resources, and cut costs related to discovery.

The trial court granted the motion, finding that without first proving negligence against the nursing home the Morrows' claims for corporate negligence could not proceed. Accordingly, the trial court ordered that discovery and a trial on the nursing home negligence claims could go forward, and only if the Morrows were successful, a new jury could hear the corporate negligence claims in a later proceeding.

The Morrows moved for reconsideration pursuant to Rule 59(e), SCRPC, and the trial court issued a Form 4 order denying the motion. The Morrows appealed, and a single judge of the court of appeals issued an order dismissing the case finding the order granting bifurcation was not immediately appealable. The Morrows petitioned for rehearing, which was denied by a three-judge panel. The Morrows petitioned this Court for a writ of certiorari and we granted the petition.

ISSUE PRESENTED

Did the court of appeals err in holding the trial court's order of bifurcation was not immediately appealable?

LAW/ANALYSIS

The Morrows argue the court of appeals erred by holding the trial court's order of bifurcation was not immediately appealable because the order affects a substantial right. We agree.

The determination of whether a trial court's order is immediately appealable is governed by statute. *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005); see S.C. Code Ann. § 14-3-330 (1976 & Supp. 2014). Pursuant to Section 14-3-330, appellate courts have jurisdiction to immediately review:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; *provided*, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants

or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330. The provisions of section 14-3-330 have been construed by this Court to serve the underlying policy favoring judicial economy by avoiding "piecemeal appeals." *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709. By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.

The Morrrows argue the trial court's order is immediately appealable under section 14-3-330 because it is based on a material misunderstanding of their claims against the Fundamental Entities. Specifically, they argue the trial court's order conflates the theories of vicarious liability and direct liability by determining the Morrrows can move forward on their claims against the corporate defendants only if they first recover against Magnolia Place. We agree.

The Morrrows correctly assert that the theory of vicarious liability is different than the theory of direct corporate liability. See Martin C. McWilliams, Jr. & Hamilton E. Russell, III, *Hospital Liability for Torts of Independent Contractor Physicians*, 47 S.C. L. Rev. 431 (1996). Vicarious liability attaches to a parent company or employer as the result of negligence on behalf of its employees, such as through the doctrine of respondeat superior. *Id.* at 439. Conversely, direct corporate liability attaches due to a breach of a duty which runs directly between a parent company and a patient, arising from negligence in actions such as leaving a hospital underfunded, understaffed, or undertrained so as to provide substandard care. *Id.* at 462. Accordingly, the two theories of vicarious liability and corporate liability can coexist in a lawsuit, and a finding of one does not necessarily preclude a finding of the other. See *Scampone v. Highland Park Care Ctr.*, 57 A.3d 582, 596-600 (Pa. 2012) (holding that claims of vicarious liability and direct liability could be brought either concomitantly or alternately in case against nursing home); see also *Montgomery Health Care Facility, Inc. v. Ballard*, 565 So. 2d 221, 225-26 (Ala. 1990) (finding parent corporation of nursing home could be held liable for patient's death where corporation controlled day-to-day operations of home); *cf.*

Forsythe v. Clark USA, Inc., 864 N.E.2d 227, 237 (Ill. 2007) (recognizing direct corporate liability as a valid theory of recovery in the context of workplace accidents).

We therefore find that the trial court's order misapprehended the nature of the Morrows' claims against the Fundamental Entities. The order treats these claims as based solely on vicarious liability that can be tried only after a finding of negligence on the part of Magnolia Place, when instead they are grounded in direct corporate liability which follows independent, albeit interconnected, duties owed to the Morrows. By considering the Morrow's claims against the Fundamental Entities as dependent upon their claim against Magnolia Place, the trial court's order effectively grants the Fundamental Entities potential summary judgment on the issues of direct corporate liability.¹

Accordingly, we find the trial court's order fits neatly within the statutory provision allowing immediate appeals where a substantial right is implicated. S.C. Code Ann. § 14-3-330(2)(a). The effect of this order is to prevent the Morrows from being architects of their own complaint, and deprives them of bringing their case against the defendant of their own choosing. *See Neeltec Enters., Inc., v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012) ("The right of the plaintiff to choose her defendant is a substantial right within the meaning of [section 14-3-330(2)(a)]"). To prevent the Morrows from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies after the first trial on nursing home negligence and its subsequent appeal.²

We decline the Fundamental Defendants' invitation to base our decision on the manner in which the motion was characterized—one of bifurcation. Our review of trial court orders is not constrained by how the order is styled. *See Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct.

¹ Defense counsel candidly admitted during oral argument that if the Morrows' claims against the Fundamental Entities was unsuccessful he would argue that based on the "bifurcation" order, summary judgment on the claims of corporate liability would be proper.

² The dissent asserts the trial court's order will have no effect if the Morrows win on their nursing home negligence claim. We respectfully disagree. The trial court's order implicates a substantial right of the plaintiffs. Just because *part* of the prejudice stemming from the order may be cured at a later date does not remove it from the purview of section 14-3-330(2)(a).

App. 2011) ("[A]n appellate court should look to the effect of an interlocutory order to determine its appealability.").

The trial court's order is quite distinct from other orders of bifurcation which have come before this Court. *See e.g., Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000) (holding order bifurcating issue of exclusion under insurance contract from issue of occurrence was not appealable); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000) (holding order bifurcating issues in contract case between liability and damages was not immediately appealable); *see also Durham v. Vinson*, 360 S.C. 639, 602 S.E.2d 760 (2004) (encouraging bifurcation of issues of actual and punitive damages in complex medical malpractice cases). We are therefore free to evaluate the trial court's order as what it is—not merely what it appears to be—and hold that it is one which is immediately appealable.

CONCLUSION

Accordingly, we hold the trial court's order is immediately appealable pursuant to § 14-3-330(2)(a). The order of the court of appeals dismissing the case is reversed and we remand for a determination on the merits of the appeal.

TOAL, C.J., and BEATTY, J., concur. KITTREDGE, J., dissenting in a separate opinion in which PLEICONES, J., concurs.

JUSTICE KITTREDGE: Because I believe the court of appeals properly dismissed the appeal as interlocutory, I respectfully dissent.

I reject any suggestion that perceived error in the trial court's bifurcation order impacts the appealability question. The majority is convinced that the trial court erred in bifurcating the plaintiffs' (the Morrows) claims against the Magnolia Place nursing home and corporate defendants (Fundamental Entities). The majority agrees with the Morrows that the trial court order "is based on a material misunderstanding of their claims" and that "the trial court order conflates the theories of vicarious liability and direct liability." After discussing the law concerning direct and vicarious liability, the majority "finds that the trial court's order misapprehended the nature of the Morrows' claims against the Fundamental Entities." This perceived error in the bifurcation order, in my judgment, is a central feature of today's decision. Yet, error in an order granting or denying bifurcation does not transform the order into an appealable one.

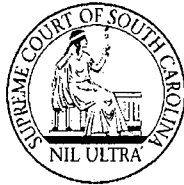
Even if I were to accept the Court's premise of error in the bifurcation order, I would still resist the temptation to find the interlocutory order immediately appealable. This is because the Morrows are in no manner precluded from appealing a subsequent, and truly final, order preventing their claims against the Fundamental Entities from going forward.³ The Court nevertheless concludes that the trial court order implicates a "substantial right" pursuant to section 14-3-330(2)(a), which allows an appeal from an interlocutory order when the order "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." The bifurcation order before us neither discontinues their action against the Fundamental Entities nor prevents a judgment from which an appeal may be taken should (and we are speculating) the Morrows be precluded from pursuing their claims against the Fundamental Entities.

I am concerned that today's loose construction of section 14-3-330 undermines the final judgment rule. I would affirm the court of appeals.

PLEICONES, J., concurs.

³ This highlights another concern. Assuming the Morrows' claim against Magnolia Place is successful, the additional claims against the Fundamental Entities would proceed in the normal course pursuant to the bifurcation order. In that event, the Morrows would have no reason to appeal.

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SC Court of Appeals

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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July 6, 2015

The Honorable Jenny Abbott Kitchings
1220 Senate Street
Columbia SC 29201-3726

Re: Lawrence Morrow v. Fundamental
Appellate Case No. 2012-212871

Dear Ms. Kitchings:

Please be advised that no petition for rehearing has been received within the time specified by Rule 221 of the South Carolina Appellate Court Rules. Therefore, the South Carolina Court of Appeals should proceed as directed in the remand from this Court.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

- cc: Gary W. Poliakoff, Esquire
- Raymond Paul Mullman, Jr., Esquire
- William L. Howard, Sr., Esquire
- Donald Jay Davis, Jr., Esquire
- Lori Diane Proctor, Esquire
- Russell Grainger Hines, Esquire
- John S. Nichols, Esquire
- Blake Alexander Hewitt, Esquire
- The Honorable M. Hope Blackley



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 15, 2015

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Re: Lawrence Morrow v. Fundamental
Appellate Case No. 2011-204166

Dear Counsel:

The Supreme Court issued an opinion remanding this case to the Court of Appeals. After reviewing our records, we have determined that the next step to perfecting this appeal is the filing of the appellants' initial brief and designation of matter. Accordingly, the appellants' initial brief and designation of matter of all parties to the cross-appeal must be served and filed by August 14, 2015. Because of the age of this appeal, extensions will not be granted except for extraordinary circumstances.

Very truly yours,


CLERK



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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V. CLAIRE ALLEN
DEPUTY CLERK

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Re: Lawrence Morrow v. Fundamental
Appellate Case No. 2011-204166

Dear Counsel:

This Court has received multiple notices of appeal in this matter. These appeals will be consolidated for consideration by the Court under the South Carolina Appellate Court Rules (SCACR), and we anticipate receiving one record on appeal. The times for perfecting this appeal will run from the service of the last notice of appeal.

In light of this consolidation, the title of this case is amended as follows:

Lawrence E. Morrow and Evelyn M. Morrow, Appellants/Respondents,

v.

Fundamental Long-Term Care Holdings, LLC; Fundamental Clinical Consulting, LLC; Fundamental Administrative Services, LLC; THI of Baltimore, Inc.; THI of South Carolina LLC; THI of Baltimore Management, LLC; THI of South Carolina at Magnolia Place at Spartanburg, LLC d/b/a Magnolia Place at Spartanburg, Respondents/Appellants.

The briefing schedule for both appeals shall be as set forth in Rules 208 and 209, SCACR. Each party must serve and file an initial appellant's brief by August 14, 2015, along with a designation of matter to be included in the record on appeal, as well as a respondent's brief, and a reply brief, if desired at the appropriate time. The appellant/respondent is responsible for filing the record on appeal. Please title these briefs in a manner similar to the following:

Appellants' initial brief of Appellant/Respondent.

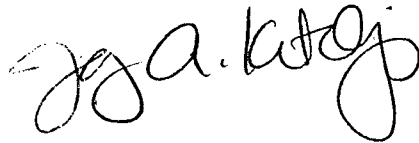
Appellants' initial brief of Respondent/Appellant.

Respondents' initial brief of Appellant/Respondent.

Respondents' initial brief of Respondent/Appellant.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. A. Wojcik". The signature is written in a cursive, flowing style with some loops and flourishes.

CLERK

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AUG 14 2015

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Spartanburg County
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2012-212871 (Supreme Court)
Appellate Case No. 2011-204166 (Court of Appeals)
Case No. 2007-CP-42-4601 (Circuit Court)

Lawrence E. Morrow and Evelyn M. Morrow,

Appellants/Respondents,

v.

Fundamental Long-Term Care Holdings, LLC; Fundamental Clinical Consulting, LLC; Fundamental Administrative Services, LLC; THI of Baltimore, Inc.; THI of South Carolina, LLC; THI of Baltimore Management, LLC; THI of South Carolina at Magnolia Place at Spartanburg, LLC d/b/a Magnolia Place at Spartanburg,
Respondents/Appellants.

AGREEMENT TO DISMISS APPEAL

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***ADDITIONAL ATTORNEY FOR
RESPONDENTS/APPELLANTS***

COME NOW Appellants/Respondents and Respondents/Appellants above named (the "Parties"), by and through their respective undersigned counsel, pursuant to Rule 260(b), SCACR, and hereby advise this Honorable Court of the Parties' agreement that this proceeding be dismissed, in its entirety.¹

WHEREAS, the Parties have reached agreement providing for the full and final resolution of all claims relating to this case and its subject matter;

NOW, THEREFORE, the Parties agree that this appeal should be dismissed, in its entirety, and the Parties jointly request an order of dismissal from the Court, with the Parties bearing their own costs on appeal, i.e., with no costs, fees, or other expenses being awarded to, or assessed against, any party.

<SIGNED ON THE FOLLOWING PAGE>

¹ Following Appellants/Respondents' successful petition for a writ of certiorari, this appeal is now pending in this Court in accordance with our Supreme Court's recent decision in Morrow v. Fundamental Long-Term Holdings, LLC, Op. No. 27532 (S.C. Sup. Ct. filed Jun 17, 2015) (Shearouse Adv. Sh. No. 23 at 24). Out of an abundance of caution, while agreeing that this appeal should be dismissed, in its entirety, Appellants/Respondents would make clear that the instant agreement does not include or otherwise reflect agreement by the Appellants/Respondents that dismissal of the appeal should have any effect on the Supreme Court's decision, and that, by filing the instant agreement, the Appellants/Respondents are not asking for the Supreme Court's decision to be affected in any way.

SO AGREED:

SO AGREED:

By: *John S. Nichols* *w/express permission*
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Spartanburg County
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Management, LLC; THI of South Carolina at Magnolia Place at
Spartanburg, LLC d/b/a Magnolia Place at Spartanburg,

Respondents/Appellants.

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***ADDITIONAL ATTORNEY FOR
RESPONDENTS/APPELLANTS***

I, Catherine H. Chase, of Young Clement Rivers, LLP, counsel for Respondents, do hereby certify that a copy of the **AGREEMENT TO DISMISS APPEAL** was served upon counsel for Appellants/Respondents via United States Mail, properly posted, on August 14, 2015, addressed as follows:

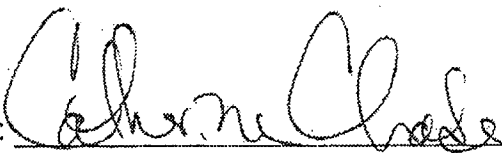
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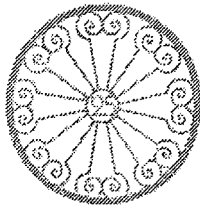
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YOUNG CLEMENT RIVERS, LLP

By: 
Catherine H. Chase

Charleston, South Carolina

Dated: August 14, 2015



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August 14, 2015

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AUG 14 2015

SC Court of Appeals

VIA FACSIMILE AND US MAIL

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
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Columbia, SC 29211

Re: Lawrence E. Morrow and Evelyn M. Morrow vs. Fundamental Long-Term Care Holdings, LLC; Fundamental Clinical Consulting, LLC; Fundamental Administrative Services, LLC; THI of Baltimore, Inc.; THI of South Carolina, LLC; THI of Baltimore Management, LLC; THI of South Carolina at Magnolia Place at Spartanburg, LLC d/b/a Magnolia Place at Spartanburg
Appeal Case Tracking Number: 2011204166
Supreme Court Case Tracking Number: 2012-212871
Case No.: 2012-212871
Claim No.: AIG Claim# 027-089-388/ HBLM# 0723767
YCR File: 14347-20100252

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced appeal, please find the original and seven (7) copies of an **Agreement to Dismiss Appeal** and the original and one (1) copy of a **Proof of Service** regarding the same. Kindly file the original and return one court-stamped copy to me using the pre-stamped envelope provided. With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Aimee M. Justman
Legal Assistant

/amj

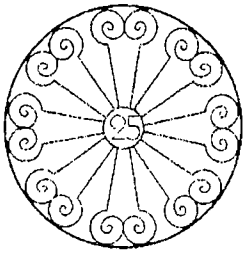
Enclosures

cc: (All below via Email and US Mail)

John S. Nichols, Esquire, Bluestein Nichols Thompson Delgado, LLC
Blake A. Hewitt, Esquire, Bluestein Nichols Thompson Delgado, LLC
Gary W. Poliakoff, Esquire, Poliakoff & Associates, P.A.
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Trucking and Transportation • Workers Compensation

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To: 18037341839
From: kbarnes@ycrlaw.com
Date: August 14, 09:29:48 AM EDT
Subj: Morrow v. Fundamental, et al; Case No.: 2012-212871
Pages: 10

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AUG 14 2015

SC Court of Appeals

Dear Ms. Kitchings,

Attached please find correspondence in the above-referenced matter filing an Agreement to Dismiss Appeal. The original and copies have been placed in the mail today. Please let us know if you need anything further.

Thank you,

Katy B. Barnes
Commercial Litigation Secretary
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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Spartanburg County
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

RECEIVED

AUG 17 2015

SC Court of Appeals

Appellate Case No. 2012-212871 (Supreme Court)
Appellate Case No. 2011-204166 (Court of Appeals)
Case No. 2007-CP-42-4601 (Circuit Court)

Lawrence E. Morrow and Evelyn M. Morrow,

Appellants/Respondents,

v.

Fundamental Long-Term Care Holdings, LLC; Fundamental Clinical Consulting, LLC; Fundamental Administrative Services, LLC; THI of Baltimore, Inc.; THI of South Carolina, LLC; THI of Baltimore Management, LLC; THI of South Carolina at Magnolia Place at Spartanburg, LLC d/b/a Magnolia Place at Spartanburg,

Respondents/Appellants.

AGREEMENT TO DISMISS APPEAL

BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC
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Blake A. Hewitt
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(803) 779-7599
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***ADDITIONAL ATTORNEY FOR
RESPONDENTS/APPELLANTS***

COME NOW Appellants/Respondents and Respondents/Appellants above named (the “Parties”), by and through their respective undersigned counsel, pursuant to Rule 260(b), SCACR, and hereby advise this Honorable Court of the Parties’ agreement that this proceeding be dismissed, in its entirety.¹

WHEREAS, the Parties have reached agreement providing for the full and final resolution of all claims relating to this case and its subject matter;

NOW, THEREFORE, the Parties agree that this appeal should be dismissed, in its entirety, and the Parties jointly request an order of dismissal from the Court, with the Parties bearing their own costs on appeal, i.e., with **no** costs, fees, or other expenses being awarded to, or assessed against, any party.

<SIGNED ON THE FOLLOWING PAGE>

¹ Following Appellants/Respondents’ successful petition for a writ of certiorari, this appeal is now pending in this Court in accordance with our Supreme Court’s recent decision in Morrow v. Fundamental Long-Term Holdings, LLC, Op. No. 27532 (S.C. Sup. Ct. filed Jun 17, 2015) (Shearouse Adv. Sh. No. 23 at 24). Out of an abundance of caution, while agreeing that this appeal should be dismissed, in its entirety, Appellants/Respondents would make clear that the instant agreement does **not** include or otherwise reflect agreement by the Appellants/Respondents that dismissal of the appeal should have any effect on the Supreme Court’s decision, and that, by filing the instant agreement, the Appellants/Respondents are **not** asking for the Supreme Court’s decision to be affected in any way.

SO AGREED:

By: Catherine Chade w/express permission
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC

for John S. Nichols
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SO AGREED:

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-AND-

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**THE STATE OF SOUTH CAROLINA
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Respondents/Appellants.

PROOF OF SERVICE

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***ADDITIONAL ATTORNEY FOR
RESPONDENTS/APPELLANTS***

I, Catherine H. Chase, of Young Clement Rivers, LLP, counsel for Respondents, do hereby certify that a copy of the **AGREEMENT TO DISMISS APPEAL** was served upon counsel for Appellants/Respondents via United States Mail, properly posted, on August 14, 2015, addressed as follows:

John S. Nichols, Esquire
Blake A. Hewitt, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
P.O. Box 7965
Columbia, SC 29202

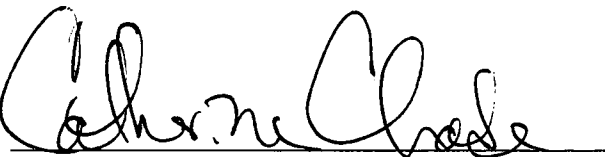
-AND-

Gary W. Poliakoff, Esquire
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ATTORNEYS FOR APPELLANTS/RESPONDENTS

YOUNG CLEMENT RIVERS, LLP

By:



Catherine H. Chase

Charleston, South Carolina

Dated:

August 14, 2015

The South Carolina Court of Appeals

Lawrence E. Morrow and Evelyn M. Morrow,
Appellants/Respondents,

v.

Fundamental Long-Term Care Holdings, LLC;
Fundamental Clinical Consulting, LLC; Fundamental
Administrative Services, LLC; THI of Baltimore, Inc.;
THI of South Carolina LLC; THI of Baltimore
Management, LLC; THI of South Carolina at Magnolia
Place at Spartanburg, LLC d/b/a Magnolia Place at
Spartanburg, Respondents/Appellants.

Appellate Case No. 2011-204166

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2007CP4204601

ORDER

Pursuant to Rule 260(b) of the South Carolina Appellate Court Rules, SCACR, the parties have consented to dismiss this cross appeal without prejudice, with each party to bear its own costs. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221 (b), SCACR.

FOR THE COURT

BY


CLERK

FILED

8-14-15 (166)

Columbia, South Carolina

cc:

William L. Howard, Sr., Esquire

Gary W. Poliakoff, Esquire

Lori Diane Proctor, Esquire

Russell Grainger Hines, Esquire

Raymond Paul Mullman, Jr., Esquire

Donald Jay Davis, Jr., Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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September 01, 2015

M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: Lawrence Morrow v. Fundamental
Lower Court Case No. 2007CP4204601
Appellate Case No. 2011-204166

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: William L. Howard, Sr., Esquire
Gary W. Poliakoff, Esquire
Lori Diane Proctor, Esquire

Russell Grainger Hines, Esquire
Raymond Paul Mullman, Jr., Esquire
Donald Jay Davis, Jr., Esquire