

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen Tevis Mullen, Circuit Court Judge

Case No. 2012-212948

RECEIVED
OCT 15 2012
SC Court of Appeals

Janet Sue Scheerle,....., Respondent,

v.

Brookdale Senior Living, Inc. and Southern Assisted Living, LLC....., Appellants,

and


Sonia S. King....., Defendant.

RETURN TO RESPONDENT'S MOTION TO CONSOLIDATE

Appellants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC oppose Respondents' Motion to Consolidate on the grounds that factual distinctions in the three cases work against consolidating Appellate Case Nos. 2011-199687, 2011-199666, and 2012-212984. Although all three appeals concern the enforceability of the same arbitration provision, there are different issues of fact concerning how each Respondent agreed to be bound by the arbitration clauses. For example, in two of the three cases, the Respondent argues that she is not bound by the arbitration clause because the person signing on her behalf lacked proper authority. Therefore, in at least two of the appeals, the parties will need to brief whether the person signing the arbitration clause bound the Respondent to its terms.

The Appellants are concerned that the factual distinctions in the three cases will cloud the issues on appeal. The Respondents have not met their “burden of persuading the court that consolidation is desirable.” See Keels v. Pierce, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993) (analyzing consolidation under Rule 42(a), SCRCP). In these cases, each appeal arises from a separate action and from three separate orders denying arbitration. Although consolidation may be convenient for Respondents, it is not desirable when the distinct factual issues may cause confusion.

The Appellants, therefore, respectfully request that the Court deny Respondents’ Motion to Consolidate.



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October 15, 2012

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And Sonia King....., Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
are, Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the **Return To Respondent's Motion To Consolidate** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid in the United States Mail, on the 15th day of October, 2012, to the address shown below.

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