STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF YORK)	SIXTEENTH JUDICIAL CIRCUIT
Teresa Murphy, as Personal Representative for the Estate of Isaac Strong,)	Civil Action No.: 2018-CP-46-01459
Plaintiff,)	
v.)	
Hunt Valley Holdings, LLC f/k/a Fundamental Long Term Care Holdings, LLC; Fundamental Clinical and Operational Services, LLC; Fundamental Consulting, LLC; Fundamental Administrative Services, LLC; THI of Baltimore, Inc.; THI of South Carolina, LLC; THI of South Carolina at Rock Hill, LLC d/b/a Magnolia Manor of Rock Hill; and Amisub of S.C., Inc. d/b/a Piedmont Medical Center,)	**ORDER DENYING MOTIONS TO RECONSIDER**
Defendants.)	

This matter came before the Court on Defendant THI of South Carolina, LLC d/b/a Magnolia Manor Rock Hill's ("THI") Motion to Reconsider the Court's October 24, 2018 order and motions by numerous other Defendant's to reconsider the Court's October 24, 2018 holding that the Motions to Stay were moot. A hearing was held on December 5, 2018. After considering the parties' written submissions and oral arguments and for the reasons stated below, THI's motion is **DENIED IN PART AND GRANTED IN PART** and all of the Motions to Reconsider the Decision to Deny a Stay are **DENIED**.

At the hearing, counsel for THI stated that although THI disagreed with the Court's ruling in many respects, THI was seeking reconsideration on two grounds: 1) the Court's denial of limited discovery with regard to the alleged arbitration agreement, and 2) the Court's failure to address THI's ratification argument.

Defendant THI is, of course, free to conduct any discovery contemplated by the South Carolina Rules of Civil Procedure. THI has not done so, it states, because it fears waiving any right to arbitrate by invoking civil discovery procedures. This is not an idle fear. See, e.g., Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 647 S.E.2d 249 (Ct. App. 2007) (right to arbitrate waived by engaging in discovery). THI claims it is in a Catch-22 because it cannot prove its right to arbitrate without discovery but engaging in discovery risks waiver of the right to arbitrate. THI therefore asks the Court to order limited discovery that preserves THI right to demand arbitration.

Any Catch-22 is of THI's own making, however. THI, when faced with the imminent admission of Mr. Strong in December 2014, was under no obligation to accept Mr. Strong. It could have conditioned admission of Mr. Strong on proof that Plaintiff Murphy possessed the authority of a power-of-attorney, or demanded that Mr. Strong explicitly agree himself or ratify the alleged arbitration agreement, and have had him examined by its own medical providers to determine competency. It did not take any of these actions. Rather, THI accepted Mr. Strong on faith (with regard to the purported arbitration agreement) and now wants the Court to sanction discovery, pursuant to the civil litigation system, to determine whether or not Mr. Strong might in some currently unknown way have agreed to the arbitration agreement, while denying the benefits of the same civil litigation system to Plaintiff Murphy. The Court declines to do so, especially given the principal (Mr. Strong) is deceased and unable to testify concerning any of his thoughts or actions, and any written records or medical records concerning Mr. Strong's admission are already in the possession of THI. See, e.g., Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018) (circuit court did not err in denying request to depose husband with regard to agency issues). The request for discovery is even weaker in this matter than in Hodge, because in Hodge the defendants had evidence the husband had previously signed contracts

on his wife's behalf in other situations. Reconsideration of the denial of the request for discovery is therefore denied.

With regard to the ratification claim, counsel for THI conceded that THI currently has no evidence of ratification. The Court therefore denies reconsideration on this claim.

Finally, THI argues the Court erroneously stated at p.3 of its Order that THI "breached" duties owed to Mr. Strong. In this, THI is correct. The Court wrote: "The survival claim relates to duties established and breached during Isaac Strong's life and damages sustained during his life." That sentence should have stated: "The survival claim relates to alleged breaches of duties during Isaac Strong's life and damages allegedly sustained during his life." The Order is AMENDED to make this substitution.

CONCLUSION

For all these reasons, THI's Motion to Reconsider is **GRANTED** with regard to amending the sentence on page three, and is **DENIED IN ALL OTHER RESPECTS**. In light of this ruling, the Motions to Reconsider filed by the other Defendants are **DENIED**.

IT IS SO ORDERED

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William A. McKinnon
Circuit Court Judge, 16th Judicial Circuit

December ___, 2018

York Common Pleas

Case Caption: Teresa Murphy , plaintiff, et al VS Hunt Valley Holdings, Llc , defendant, et al

Case Number: 2018CP4601459

Type: Order/Amend

So Ordered

/s William A. McKinnon, #2761, Circuit Judge