

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

Appeal from Oconee County
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2018-CP-37-00271

RECEIVED

MAY 31 2019

SC Court of Appeals

Betty Herrington,

Respondent,

v.

SSC Seneca Operating Company, LLC,
d/b/a Seneca Health & Rehabilitation Center;
SavaSeniorCare, LLC; SSC Equity Holdings, LLC;
SavaSeniorCare Administrative Services, LLC;
SavaSeniorCare Consulting Services, LLC,

Defendants,

Of whom SSC Seneca Operating Company, LLC,
d/b/a Seneca Health & Rehabilitation Center;
SavaSeniorCare Administrative Services, LLC; and
SavaSeniorCare Consulting Services, LLC,

Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
Perry M. Buckner, IV (SC Bar No. 100031)
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Attorneys for Appellants

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Appellants¹ would make the following point in reply to Ms. Herrington's responsive brief.

ARGUMENT IN REPLY

1. Ms. Herrington's position overlooks the purpose of the rules of contract construction.

The purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract. *Litchfield Co. of S. C., Inc. v. Kiriakides*, 290 S.C. 220, 223, 349 S.E.2d 344, 346 (Ct. App. 1986). Where one interpretation of a contract makes it unusual or extraordinary and another interpretation, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction prevails. *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 434 (1975). "An interpretation which establishes the more reasonable and probable agreement of the parties should be adopted while an interpretation leading to an absurd result should be avoided." *Koon v. Fares*, 379 S.C. 150, 155, 666 S.E.2d 230, 233 (2008).

¹ Shorthand references already defined in Appellants' principal brief (e.g., "Appellants" are Defendants/Appellants SSC Seneca Operating Company, LLC, d/b/a Seneca Health & Rehabilitation Center; SavaSeniorCare Administrative Services, LLC; and SavaSeniorCare Consulting, LLC, misidentified as "SavaSeniorCare Consulting Services, LLC") are continued in this reply brief.

Under Ms. Herrington's view, the circuit court properly applied the rules of contract construction to find that, on the one hand, the parties did intend to agree to arbitration but that, on the other hand, they only intended to agree to arbitrate claims for *exactly* \$50,000.00. As explained in Appellants' principal brief, this construction of the Arbitration Agreement is patently unreasonable—and indeed absurd—and review of Ms. Herrington's responsive brief reveals she never actually argues otherwise. Ms. Herrington never actually argues that the circuit court's construction of the Arbitration Agreement is reasonable—nor could she reasonably have done so. Rather, she champions the circuit court's construction of the Arbitration Agreement as being based on “plain language,” not based on any suggestion that that construction actually makes sense. Essentially, Ms. Herrington invites this Court to accept the circuit court's “plain language” construction of the Arbitration Agreement *even though it does not make sense*. Most respectfully, the Court should decline her invitation.

CONCLUSION

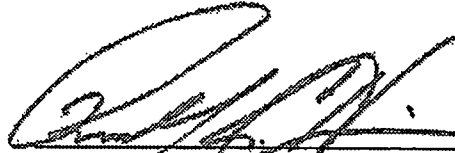
For the foregoing reasons, as well as those already set forth in their principal brief, Appellants ask this Honorable Court to reverse the circuit court and stay this lawsuit in favor of arbitration or, alternatively, to remand this case to the circuit court with instructions for it to do so.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By:



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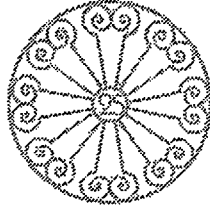
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Attorneys for Appellants

Charleston, South Carolina

Dated: 5/31/19



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Tiffany L. Bates
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May 31, 2019

Via Facsimile and U.S. Mail

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Betty Herrington v. SSC Seneca Operating Company, LLC, D/B/A Seneca Health & Rehabilitation Center, SavaSeniorCare, LLC, SSC Equity Holdings, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare Consulting Services, LLC
Appellate Case No. 2018-002088
YCR File: 14653-20170810

Dear Ms. Kitchings:

Enclosed herewith with regard to the above-referenced matter please find the following:

1. Original and seven (7) copies of a Motion for Leave to File Reply Brief Out of Time;
2. Original and one (1) copy of a Proof of Service for the Motion for Leave to File Reply Brief Out of Time;
3. This firm's check in the amount of \$50.00 for filing fees;
4. Original and one (1) copy of Appellant's Reply Brief;
5. Original and one (1) copy of a Proof of Service for Appellants' Reply Brief.

Please file these documents and return one file-stamped copy to me in the envelope provided.

By copy of this letter with the enclosures, we are serving counsel for the Respondent with a copy of these documents.

As always, thank you for your assistance. If you have any questions, please do not hesitate to contact our office. With best regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Tiffany L. Bates
Legal Secretary

TLB/

Enclosures

cc (w/enc., via email and U.S. Mail): Raymond T. Wooten, Smith, Esquire

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Defendants,

Of whom SSC Seneca Operating Company, LLC,
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SavaSeniorCare Administrative Services, LLC; and
SavaSeniorCare Consulting Services, LLC,

Appellants.

**MOTION FOR LEAVE TO FILE/SERVE
INITIAL REPLY BRIEF OF APPELLANTS OUT OF TIME**

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Attorneys for Appellants

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

COME NOW Appellants, SSC Seneca Operating Company, LLC, d/b/a Seneca Health & Rehabilitation Center; SavaSeniorCare Administrative Services, LLC; and SavaSeniorCare Consulting Services, LLC, by and through their undersigned counsel, pursuant to Rule 263(b), SCACR, and move for leave to file/serve their initial reply brief (which is being conditionally filed/served contemporaneously herewith) out of time.

1. By order of this Court filed May 21, 2019, the deadline for Appellants' initial reply brief was May 28, 2019. (The date actually written on the order was May 27th, but presumably the effective deadline was May 28th because May 27th was Memorial Day.)

2. The undersigned inadvertently overlooked this deadline.

3. With apologies to the Court and opposing counsel for such inadvertence, the undersigned asks that Appellants' initial reply brief be accepted for filing/service out of time.

4. The undersigned humbly submits that there is good cause to grant the requested relief given that the failure to meet the May 28th deadline was inadvertent; this motion (for such relief) and the initial reply brief conditionally filed herewith are being submitted sufficiently soon after May 28th so as to avoid undue delay in the progress of this matter; the requested relief is consistent with

the interests of justice; and the requested relief poses no threat of undue prejudice to Respondent.

WHEREFORE, Appellants move this Honorable Court to grant them leave to file/serve their initial reply brief out of time and ask that the Court accept as duly filed/served the initial reply brief conditionally filed/served contemporaneously herewith.

Respectfully submitted,
YOUNG CLEMENT RIVERS, LLP

By: 

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Attorneys for Appellants

Charleston, South Carolina

Dated: 5/31/19

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Defendants,

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Appellants.

PROOF OF SERVICE

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Attorneys for Appellants

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SC Court of Appeals

I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for Appellants, SSC Seneca Operating Company, LLC, d/b/a Seneca Health & Rehabilitation Center; SavaSeniorCare Administrative Services, LLC; and SavaSeniorCare Consulting, LLC (misidentified as "SavaSeniorCare Consulting Services, LLC"), hereby certify that the foregoing **INITIAL REPLY BRIEF OF APPELLANT** was served on all other parties to this matter by depositing a copy of the same in the U.S. Mail on May 31, 2019, properly posted for delivery to the following addressees:

Raymond T. Wooten, Esquire
Smith, Jordan & Lavery, P.A.
1810 East Main Street
Easley, SC 29640

Attorneys for Respondent Betty Herrington

Respectfully submitted,
YOUNG CLEMENT RIVERS, LLP

By:

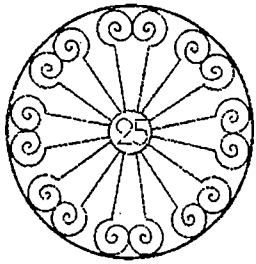


Russell G. Hines (SC Bar No. 72100)

Attorneys for Appellants

Charleston, South Carolina

Dated: 5/31/19



YCR LAW

Young Clement Rivers, LLP

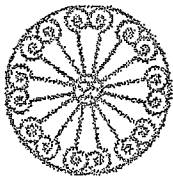
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Date: May 31, 04:07:11 PM EDT
Subj: Herrington v. SSC Seneca Operating Company, LLC, et al. - AppellateCase No.: 2018-002088
Pages: 15

Please see attached. Thank you.

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