

STATE OF SOUTH CAROLINA )  
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COUNTY OF ANDERSON )  
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Alicia Thiers-Hollis, )  
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Plaintiff, )  
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 )  
William Marion Scott, III, Younger Next )  
Year Age Management, Inc., and Dr. )  
William M. Scott Family Practice, P.A., )  
 )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

Civil Action No.: 2019-CP-04-00548

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS AND/OR  
COMPEL ARBITRATION**

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**SC Court of Appeals**

THIS MATTER CAME BEFORE the Court on Defendant's William Marion Scott III's ("Defendant Scott") Motion to Dismiss or Stay and Compel Arbitration. The Court held a hearing on this motion in Anderson, South Carolina on July 11, 2019. Jeremy R. Summerlin appeared on behalf of Plaintiff Alicia Thiers-Hollis ("Plaintiff") and Kelly M. Jolley appeared on behalf of Defendant Scott. The Court took this matter under advisement and has carefully considered the issues presented by Defendant's motion along with supporting memoranda, exhibits, the arguments of counsel, and applicable law. Based on the facts and law below, this Court denies Defendant Scott's Motion to Dismiss and/or Compel Arbitration.

**I. The Medical Director Agreement does not involve interstate commerce, which is required for the Federal Arbitration Act to apply.**

Defendant moved to dismiss or stay this proceeding and compel arbitration on the grounds the Federal Arbitration Act ("FAA") applied to the medical director agreement (the "Agreement") entered into between Plaintiff and Defendant Scott. Defendant alleged that the FAA applied because the parties were engaged in interstate commerce with each other, which Plaintiff denied.

The arbitration provision provides that any "controversy or dispute in connection with this Agreement shall be settled by binding arbitration in STATE COUNTY COUNTRY PLANET, in

accordance with the Code of Ethics and Rules of Procedure of the American Health Lawyers Association Alternative Dispute Resolution Service.” *Ex. 1 to Plaintiff’s Amended Complaint*, ¶ 20.

As an initial matter, Defendant Scott admitted that if the South Carolina Uniform Arbitration Act applied to this Agreement, then the arbitration provision is void because it fails to meet the notice requirement of the Act. Therefore, the primary issue before this court is whether the Federal Arbitration Act (“FAA”) applies to the causes of action alleged in Plaintiff’s complaint related to the Agreement.

In order for the FAA to apply, the arbitration clause must be contained within a contract involving interstate commerce. 9 U.S.C. § 2 (2018). The correct approach in making such a determination is to “focus upon what **the terms of the contract specifically require for performance** in determining whether interstate commerce is involved.” *Thornton v. Trident Med. Ctr., L.L.C.*, 357 S.C. 91, 96 (Ct. App. 2003) (emphasis added).

In early 2015, Plaintiff and Defendant entered into the Agreement, where Defendant agreed to serve as the medical director for Plaintiff’s business, which had one location in Anderson, South Carolina. *Amended Complaint*, ¶¶ 9, 11. Defendant’s medical office and practice was located in the same building as Plaintiff’s business.

The particular performance or transaction of the Agreement was for Defendant Scott to serve as a medical director for Plaintiff’s business. According to the Agreement, the job of a medical director was to be present onsite during certain patient procedures taking place at the location, to supervise treatment, to develop plans of care, and to ensure that protocols relating to treatment were being followed. *Ex. 1 to Amended Complaint*, pp. 1-2. In essence, the Agreement required Defendant Scott to be present at the office building during office hours. He was not

required to operate the medical laser or provide injectables. He was not required to buy a laser. He was not required to order supplies from out of state. He was not required to travel over state lines. The Agreement is between South Carolina residents, pursuant to South Carolina laws and regulations, and could only be performed in South Carolina.

Defendant argued that because Plaintiff acquired the laser from a company located out of state, the Medical Director Agreement therefore involves interstate commerce. *Defendant's Memorandum in Support*, p. 4. This court is not persuaded by this argument. As the court of appeals has noted, in determining whether the parties were engaged in interstate commerce, the court must “focus upon what **the terms of the contract specifically require for performance** in determining whether interstate commerce is involved.” *Thornton*, 357 S.C. at 96 (emphasis added). Defendant Scott's role under the Agreement was to supervise Plaintiff in her provision of laser treatment services to her patients. Nothing in the Agreement, based on this court's review, required Defendant Scott to purchase the laser as part of the Agreement's requirements. Indeed, it appears that the laser was purchased months before the Agreement was signed. *Amended Complaint*, ¶15. Further, nothing in the Agreement or otherwise in the record indicates that Defendant Scott was required to operate the laser in his role as Medical Director.

Defendant's counsel attempted to argue at the hearing that the purchase of the laser was somehow related to or *required by* the Medical Director Agreement. However, there was no evidence or testimony presented that the Agreement—which required Defendant Scott to serve as medical director for Plaintiff's business—somehow related to the separate oral agreement between Plaintiff and Defendant Scott for the purchase of the laser. Neither the Agreement itself nor the pleadings make such a connection. The purchase of the laser may involve interstate commerce, but there is no written arbitration agreement related to that separate alleged contract nor is that

claim the subject of this motion. Therefore, those separate allegations about the purchase of the laser are not relevant to determining whether the Medical Director Agreement itself involved interstate commerce.

Defendant Scott cites to several cases in his brief to support his motion. However, the court finds that these cases are distinguishable from the instant action. In *McMillan v. Gold Kist, Inc.*, the facts involved a South Carolina company contracting with a Georgia company for the purchase of lime coming from Tennessee. S.C. 353, 356-57 (S.C. App. 2003). The terms of that contract clearly involved goods being shipped over state lines. Defendant Scott also cites to *Episcopal Housing Corp. v. Federal Ins. Co.*, 269 S.C. 631, (1977) and *Blanton v. Stathos*, 351 S.C. 534, 541 (Ct. App. 2002). Both cases involve construction projects and the breaches by some party related to the contract for construction, situations that are completely different from the instant case. Ultimately, in the case before this court, the Medical Director Agreement is about personal services being performed at one location in Anderson County by two South Carolina residents for the benefit of South Carolina patients. *McMillan*, *Episcopal Housing Corp.*, and *Blanton* are factually and legally inapplicable to this case.

Simply put, Plaintiff may have been using a laser purchased out of state in the operation of *her* business, but as it relates to “the terms of the contract specifically require[d] for performance” between Plaintiff and Defendant Scott (i.e., Defendant Scott serving as medical director at the Anderson County location), this court holds that the terms of the Agreement, both as written and in practice, did not involve interstate commerce, and the FAA is therefore inapplicable to this case.

Without the FAA, the South Carolina Uniform Arbitration Act would apply. Because the Agreement does not meet the notice requirements of the Act, S.C. Code Ann. § 15-48-10 *et seq.*, as conceded by the Defendant, the arbitration provision is void and unenforceable.<sup>1</sup>

**II. The arbitration provision, by failing to provide for a location or jurisdiction for the arbitration proceedings, thereby lacks an essential and material term of the contract and fails to establish a meeting of the minds sufficient to support an enforceable contract.**

Further, the arbitration provision is unenforceable because the parties have not come to a meeting of the minds as to all essential and material terms of the contract. “[A]rbitration is a matter of contract, and our evaluation of the enforceability of an arbitration agreement is guided by general principles of contract law.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538 (2001). “In order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to **all essential and material terms** of the contract.” *Player v. Chandler*, 299 S.C. 101, 105 (1989) (emphasis added).

Specifically, the arbitration provision in the Agreement states that any claims under the Agreement “shall be settled by binding arbitration in **STATE COUNTY COUNTRY PLANET . . .**” See *Exhibit 1 to Plaintiff’s Amended Complaint*, ¶ 20 (bold text added). Based on the placeholder language that was not filled in, the parties never agreed to the location where an arbitration would take place. For a private arbitration that could take place outside of South Carolina’s legal system wherever in the world that the parties agree to, the location of such

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<sup>1</sup> The court notes that the Agreement contains a severability clause, which states that “[i]f any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nonetheless continue in full force without being impaired or invalidated in any way.” *Ex. 1 to Amended Complaint*, ¶ 19. Therefore, Plaintiff can still pursue her contract claims related other alleged breaches of the Agreement.

arbitration is clearly an essential and material term of the contract. See *Player*, 299 S.C. at 105. Therefore, the arbitration agreement is also unenforceable under basic contract law.

Defendant argued that the provision's reference to the Code of Ethics and Rules of Procedure of the American Health Lawyers Association Alternative Dispute Resolution Service fills in the fatal gaps in the agreement. See *Defendant's Memorandum in Support*, p. 5. That argument might be compelling if the agreement was altogether silent regarding the location of any arbitration. However, the placeholder language of "STATE COUNTY COUNTRY PLANET" indicates that the location of the arbitration was an important and essential term to be agreed upon. But because the parties did not come to an agreement on that term, the Agreement still lacks a meeting of the minds on this important and essential term. Without a meeting of the minds, there can be no enforceable agreement.

### CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Dismiss, Stay or Compel Arbitration is denied, based on the reasons explained herein.

IT IS SO ORDERED.

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J. Cordell Maddox, Jr.  
Circuit Court Judge

Anderson, South Carolina  
\_\_\_\_\_, 2019



Anderson Common Pleas

**Case Caption:** Alicia Thiers-Hollis VS William Marion Scott III , defendant, et al

**Case Number:** 2019CP0400548

**Type:** Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

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