

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2016-CP-26-0166
Appellate Case No. 2016-001499

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APR 30 2020

S.C. SUPREME COURT

Jeanne Beverly, Individually and on behalf of others similarly situated, ...Respondent,

v.

Grand Strand Regional Medical Center, LLC Petitioner.

**PETITIONER GRAND STRAND REGIONAL MEDICAL CENTER, LLC'S
PETITION FOR A WRIT OF CERTIORARI**

James Lynn Werner; SC Bar No. 6029
William R. Thomas; SC Bar No. 16348
Katon E. Dawson Jr.; SC Bar No. 101167
PARKER POE ADAMS & BERNSTEIN LLP
1221 Main Street, Suite 1100
Post Office Box 1509 (29202)
Columbia, South Carolina 29201
Telephone: (803) 255-8000
Facsimile: (803) 255-8017
jimwerner@parkerpoe.com
willthomas@parkerpoe.com
katondawson@parkerpoe.com

*Attorneys for Petitioner
Grand Strand Regional Medical Center, LLC*

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CERTIFICATION BY COUNSEL

The undersigned counsel for Petitioner Grand Strand Regional Medical Center, LLC certifies that a Petition for Rehearing was made and finally ruled on by the Court of Appeals on March 31, 2020.

QUESTIONS PRESENTED FOR REVIEW

- I. Whether the Court of Appeals' decision is in conflict with the controlling law of South Carolina, and constituted error in finding a non-signatory to a contract may pursue a claim to enforce that contract as a third-party beneficiary despite the plain and unambiguous statement of intent by the parties to the contract that the contract "is not intended to, and shall not be construed to make any person or entity a third-party beneficiary."
- II. Whether the Court of Appeals' decision is in conflict with the controlling law of South Carolina, and constituted error in finding an insured under a health insurance policy is a direct and intended third-party beneficiary of the business (not insurance) contract between a hospital and the patient's insurance provider that addresses the business logistics of the arrangement between the hospital and the insurer for processing and paying claims covered by the insurer.
- III. Whether the Court of Appeals' decision is in conflict with the controlling law of South Carolina, and constituted error in elevating various incidental and consequential benefits allowed to third-parties by the contract between a hospital and an insurance provider to the status of intended and direct benefits sufficient to provide non-signatory third-parties the right to sue to enforce the business contract between the hospital and insurance provider.
- IV. Whether the Court of Appeals' decision is in conflict with the controlling law of South Carolina, and constituted error in permitting a plaintiff to pursue a claim for unjust enrichment/*quantum meruit* after ruling that the plaintiff is a third-party beneficiary with the right to enforce the terms of an express contract related to the same alleged conduct and damages as the claim for unjust enrichment/*quantum meruit*.

STATEMENT OF THE CASE

This case is about whether a person who is admittedly not a party to a contract between two other entities may enjoy legal status as a third-party beneficiary of that contract, with the power to sue on the contract and to enforce such terms in the contract as she chooses, when the parties to the contract included a specific and express term precluding any third-party beneficiary.

On September 6, 2012, Jeanne Beverly ("Beverly") was injured in an auto accident. (R. 141). Beverly sought treatment for the injuries she suffered in that accident at Grand Strand

Regional Medical Center, LLC (“Grand Strand”) in Horry County. (R. 141). At the time of her injury, Beverly was covered under a Blue Cross Blue Shield of South Carolina (“BCBS”) health insurance policy. (R. 141).

Separate from Beverly’s health insurance policy with BCBS, Grand Strand and BCBS are, and have been, parties to a business contract (the “Institutional Agreement”) which covers the terms of the business relationship between Grand Strand and BCBS such as how insurance claims will be processed, submitted, and paid between those two parties. The Institutional Agreement covers various logistical details about the business relationship between Grand Strand and BCBS when Grand Strand provides medical services to a BCBS insured—including payment terms and rates which Grand Strand would accept from BCBS.

Beverly alleges that after delivering medical services to her, Grand Strand billed her directly at standard (non-discounted) rates for those services. (R. 142). Beverly subsequently filed a complaint against Grand Strand asserting claims for (1) breach of the Institutional Agreement between Grand Strand and BCBS to which she allegedly was a third-party beneficiary, (2) breach of fiduciary duty, and (3) unjust enrichment. (R. 144-147).

In response to Beverly’s complaint, Grand Strand filed a motion to dismiss, arguing (1) Beverly lacks standing to sue on and enforce the Institutional Agreement because she is not a third-party beneficiary with such rights, (2) Grand Strand does not owe Beverly a fiduciary duty to file insurance claims on her behalf, and (3) Grand Strand was not unjustly enriched by billing Beverly the standard rates for the medical services she received. (R. 149-150).

The circuit court recognized and acknowledged that the Institutional Agreement contains an express provision stating that there are not, and not intended to be, any third-party beneficiaries to the Institutional Agreement. (R. 127-130). Specifically, the circuit court relied on Section 16.16

of the Institutional Agreement to find Grand Strand and BCBS did not intend the Institutional Agreement to be enforceable by third-parties. Section 16.16 states the following:

No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to, make any person or entity a third party beneficiary. Notwithstanding the preceding, nothing in this section shall affect Plans['] rights under Article XV, or a Member's right to receive Covered Services pursuant to the Terms of this Agreement.

The circuit court found this language to be a clear, explicit, and unambiguous expression of BCBS and Grand Strand's intent to preclude third-parties from asserting legal status as third-party beneficiaries and from suing to enforce the Institutional Agreement. (R. 128). Thus, the circuit court found the third-party beneficiary disclaimer to be enforceable as written, and to bar Beverly from suing on the Institutional Agreement. Therefore, the circuit court held that Beverly does not have standing to sue upon or enforce the Institutional Agreement. (R. 127-130).

The circuit court dismissed Beverly's claim for breach of fiduciary duty on the grounds that Grand Strand does not owe Beverly a fiduciary duty to submit her bills to BCBS. (R. 130-132). Finally, the circuit court also found that Beverly failed to state a claim for unjust enrichment, because Grand Strand was not unjustly enriched when it billed Beverly the standard rate for the medical services provided to Beverly. (R. 132-134).

On July 19, 2016, Beverly filed a Notice of Appeal of the circuit court's order granting Grand Strand's Motion to Dismiss. Following oral argument, the Court of Appeals issued its opinion, finding: (1) the circuit court erred in concluding Beverly is not a third-party beneficiary with the right to sue to enforce the Institutional Agreement; (2) the circuit court properly dismissed Beverly's claims for breach of fiduciary duty because South Carolina does not recognize a fiduciary duty related to a hospital's billing practices; and (3) the circuit court erred in dismissing Beverly's claim for unjust enrichment.

Grand Strand timely filed a Petition for Rehearing, arguing: (1) the Court of Appeals ignored South Carolina authority and improperly interpreted the plain and unambiguous language of the Institutional Agreement in holding that Beverly is an intended and direct third-party beneficiary of that Agreement; (2) the Court of Appeals erred and ignored South Carolina law controlling the interpretation of the Institutional Agreement by concluding that the second sentence of the Institutional Agreement's third-party beneficiary disclaimer creates an exception and overrides the clear and unambiguous contractual disclaimer of third-party beneficiaries; (3) the Court of Appeals erred in concluding that Beverly is a direct and intended third-party beneficiary of the Institutional Agreement; and (4) the Court of Appeals erred in reversing the circuit court's dismissal of Beverly's claim for unjust enrichment/*quantum meruit* after having expressly found that an express contract existed, and was enforceable by Beverly, governing the very circumstances and claims upon which Beverly's unjust enrichment claim is purportedly based.

The Court of Appeals denied Grand Strand's Petition for Rehearing on March 31, 2020.

ARGUMENTS

Grand Strand petitions for review of the decision by the Court of Appeals to allow Beverly to sue upon and to enforce the provisions of the Institutional Agreement between Grand Strand and BCBS for her own purpose as an intended third-party beneficiary, and to allow Beverly simultaneously to pursue a claim for *quantum meruit*/unjust enrichment after having concluded that the express terms of the Institutional Agreement applied to and were enforceable by her, because: (1) that decision conflicts with the well-established law of South Carolina regarding interpretation of contracts—and, in particular, an express disclaimer of third-party beneficiary rights; (2) if determination of this case is dependent on the particular interpretation of an agreement between a hospital and an insurance provider, such as the Institutional Agreement between Grand Strand and BCBS, then this case presents a novel question of law in this state and should not be

decided exclusively by reliance on authority from other jurisdictions to justify the conclusions reached by the Court of Appeals; and (3) the decision to allow Beverly to continue to pursue a claim for *quantum meruit*/unjust enrichment after holding that an express contract exists which governs the claims conflicts with the established law of South Carolina. For these reasons, it is appropriate for this Court to review and decide those issues, and to reverse the decision by the Court of Appeals.

I. The Court of Appeals ignored the controlling law of South Carolina and erred in reversing the circuit court's dismissal of Beverly's claim for breach of contract.

A. The Court of Appeals improperly interpreted the plain and unambiguous language of the Institutional Agreement to find that Beverly is an intended and direct third-party beneficiary of the Institutional Agreement.

The language of the Institutional Agreement is plain and unambiguous. Grand Strand and BCBS do not intend for Beverly, or anyone else, to enjoy legal status as third-party beneficiaries able to enforce the terms of their agreement. The Court of Appeals erred in ignoring this clear, unambiguous declaration of the parties' intent and in interpreting the Institutional Agreement to allow claims by third-parties.

The Court of Appeals' opinion is in conflict with the well-established law of South Carolina, under which it is fundamental that there is a presumption that a contract is not enforceable by a person who is not a party to the contract, and the expressed intent of the parties to the contract shall govern the interpretation of that contract. *See Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct. App. 2004); *Bob Hammond Const. Co. v. Banks Const. Co.*, 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct. App. 1994); *Touchberry v. City of Florence*, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988). It is well settled in South Carolina that the law presumes that parties contract exclusively for their own benefit. *See Ancrum v. Camden Water, Light & Ice Co.*, 82 S.C. 284, 295, 64 S.E. 151, 155 (1909). In order to overcome this presumption, a non-signatory third-party may show that the parties to a contract

intended the third-party to be a direct beneficiary of the contract. *Touchberry*, 295 S.C. at 48-49, 367 S.E.2d at 150. However, “[n]o third-party beneficiary status is created absent an intent by the parties to confer a substantial benefit on [a non-signatory third-party].” *Windsor Green Owners Ass’n, Inc.*, 362 S.C. at 19, 605 S.E.2d at 753 (emphasis added).

The line between a direct intended third-party beneficiary of a contract and an incidental or consequential third-party beneficiary is first drawn by examining the clear intent expressed by the actual parties to the contract. Absent an expression that the actual contracting parties clearly intended to directly benefit the third-party, that third-party is merely an incidental beneficiary with no right to enforce the contract. *See TCX, Inc. v. Commonwealth Land Title Ins. Co.*, 928 F. Supp. 618, 623 (D.S.C. 1995), *aff’d*, 86 F.3d 1152 (4th Cir. 1996) (applying South Carolina law to a claim for breach of a title insurance policy). Therefore, the necessary first step in determining whether a party is an intended direct third-beneficiary of a contract is to ascertain and give legal effect to the language of the contract on the issue of intent. *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012) (“The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.” (citation omitted)).

When the parties to a contract include an express third-party beneficiary disclaimer, as they did in the Institutional Agreement, a court is bound to find the parties did not intend to convey a direct benefit to third parties or to create a right for such third parties to enforce or sue upon the contract. *See Lightsey v. Toshiba Corp.*, No. 9:18-CV-190, 2019 WL 5872168, at *3 (D.S.C. Mar. 4, 2019) (applying New York law and finding that “[d]ismissal of a third-party-beneficiary claim is appropriate where the contract rules out any intent to benefit the claimant. . . .”).¹

¹ While not binding precedent because it is an unpublished opinion, in *Atherton v. Tenet Healthcare Corp.*, No. 2005-UP-362, 2005 WL 7084013, at *4 (Ct. App. May 25, 2005) the Court of Appeals held the third-party disclaimer in the contract at issue in that case conveyed an unambiguous

The Court of Appeals ignored the clear and unambiguous language of the Institutional Agreement which plainly and directly expresses Grand Strand and BCBS's intent to bar third-parties from enforcing the Institutional Agreement. This intent is unequivocally stated in Section 16.16 of the Institutional Agreement, which expressly and definitively states Grand Strand and BCBS's intention that the contract was not to be construed to have any third-party beneficiaries:

This Agreement is not intended to be, and shall not be construed to make any person or entity a third party beneficiary.

Despite observing that the actual parties to the Institutional Agreement plainly stated their intention, the Court of Appeals, contrary to well established law in South Carolina, impermissibly ignored that direct statement of the parties' intentions and, instead, chose to rewrite the Institutional Agreement to create a contrary outcome.

Moreover, rather than accepting and enforcing the plain and unambiguous language of the contract, and its express disclaimer of third-party beneficiaries, the Court of Appeals improperly chose to search for and give greater weight to other jurisdictions' interpretations of other contracts in an effort to circumvent the application of guiding legal principles in this state. The Court of Appeals ignored South Carolina authority in a zeal to create a basis to find an unspoken, and contrary, intent of Grand Strand and BCBS at the time the Institutional Agreement was drafted.

The Court of Appeals' determinative step in reviewing the Institutional Agreement should have been to review its plain and unambiguous language. Review of the plain and unambiguous language must result in a finding that Grand Strand and BCBS did not express, and did not have, an intent to allow Beverly to enforce the Institutional Agreement as a third-party beneficiary. This intent was directly expressed, and the Court of Appeals ignored this stated intention in finding

expression of the parties' intent to exclude third-parties from being able to enforce its terms and that such an expression of intent was controlling. The application and enforceability of third-party beneficiary disclaimers in hospital services agreements has not been directly addressed in a published opinion in South Carolina.

otherwise. Such action by the Court of Appeals is improper and violates the undeniable legal tenets of contract interpretation in South Carolina. Accordingly, the Court should grant Grand Strand's Petition for a Writ of Certiorari, reverse the Court of Appeals, and affirm the circuit court's dismissal of Beverly's breach of contract claim on the grounds that Beverly is not a third-party beneficiary with standing to pursue a claim for breach of the Institutional Agreement.

B. The Court of Appeals ignored the controlling law of South Carolina and erred in its interpretation of the Institutional Agreement by concluding that the second sentence of the Institutional Agreement's third-party beneficiary disclaimer creates an exception to the clear and unambiguous disclaimer of third-party beneficiaries.

The second sentence of the Institutional Agreement's third-party beneficiary disclaimer (Section 16.16) does not alter the direct expression of the parties' intent that there be no third-party beneficiaries. The second, and independent, sentence of the Institutional Agreement's third-party beneficiary disclaimer states:

Notwithstanding the preceding, nothing in this section shall affect Plan's rights under Article XV, or a Member's right to receive Covered Services pursuant to the Terms of this Agreement.

The second sentence does not provide third-parties, like Beverly, the right to enforce the terms of the Institutional Agreement. This sentence does not state or imply any contrary intent to the absolute third-party beneficiary disclaimer set forth in the preceding independent sentence. While the preceding sentence is clear and unambiguous, this second sentence is not so direct and clear as to its intent. This sentence, at most, serves to clarify that while the contracting parties' intent was to exclude third-party beneficiaries that intent does not otherwise alter the right of a BCBS policyholder to receive services that are covered by their BCBS policies. The Court of Appeals incorrectly construed this second sentence of Section 16.16 as to effectively delete the third-party beneficiary exclusion of the first sentence. The Court of Appeals created from whole

cloth the authorization for non-parties like Beverly to bring actions to enforce the Institutional Agreement as direct and intended third-party beneficiaries.

The Court of Appeals' improper interpretation of the second sentence of Section 16.16, renders moot the first sentence—which unambiguously states that Grand Strand and BCBS did not intend for the Institutional Agreement to have third-party beneficiaries. This interpretation violates a cardinal rule of contract interpretation in South Carolina: a court should interpret an agreement so as to give effect to all of its provisions. *See Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 498, 649 S.E.2d 494, 502 (Ct. App. 2007). The Court should enforce the Institutional Agreement as written and give meaning to all parts of the contract—including the clear disclaimer of third-party beneficiaries—rather than improperly render the third-party beneficiary disclaimer meaningless and superfluous. *See Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014).

The Court of Appeals had no authority to rewrite the contract and impose unwanted and unintended rights, obligations, and terms. *Lowcountry Open Land Tr. v. Charleston Southern Univ.*, 376 S.C. 399, 656 S.E.2d 775, 781 (2008); *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 171, 568 S.E.2d 361, 363 (2002) (“It is not the function of the court to rewrite contracts for parties.”). Thus, the Court of Appeals ignored well established law of contract interpretation and erred in finding the second sentence of Section 16.16 reestablishes an unspoken intent of the parties and permits third-parties, like Beverly, to sue to enforce the Institutional Agreement. Accordingly, the Court should grant Grand Strand’s Petition for a Writ of Certiorari, reverse the Court of Appeals, and affirm the circuit court’s finding that the Institutional Agreement does not contain a carve-out provision that allows Beverly to circumvent the Institutional Agreement’s express third-party beneficiary disclaimer.

C. The Court of Appeals ignored the controlling law of South Carolina and erroneously concluded that Beverly is a direct and intended third-party beneficiary of the Institutional Agreement.

The Court of Appeals' opinion fails to recognize the distinction between an intended and direct benefit on the one hand, and mere incidental or consequential benefit on the other hand. The primary distinguishing factor between an intended and direct benefit compared to a mere incidental or consequential benefit is the stated intent of the contracting parties. *See e.g. Pearson v. Gardere Wynne Sewell LLP*, 814 F. Supp. 2d 592, 601 (M.D.N.C. 2011) ("A person is a direct beneficiary of the contract if the contracting parties intended to confer a legally enforceable benefit on that person. It is not enough that the contract, in fact, benefits the plaintiff, if, when the contract was made, the contracting parties did not intend it to benefit the plaintiff directly." (internal citations and quotation marks omitted)). A third-party is an intended direct beneficiary of a contract when the contract contains a clear expression of the contracting parties' intent that the contract is for the direct benefit of a third-party. *See Cothran v. Rock Hill*, 211 S.C. 17, 20, 43 S.E.2d 615, 616-17 (1947) (stating that to overcome the general presumption that parties contract exclusively for their own benefit it must appear that the contracting parties intended (contrary to the presumption) to create a direct, not incidental or consequential, benefit to the third party). All other benefits should be considered indirect, incidental, or consequential. *See U.S. v. Chester Heights Assocs.*, 406 F.Supp. 600, 604 (D.S.C. 1975) ("It is not sufficient to show that one is only an incidental beneficiary under such an agreement or that one benefits through the mere operation of the contract.").

The Court of Appeals' order contains a conclusory statement that "the remaining twenty pages of the Agreement impose requirements on Grand Strand specifically intended to benefit Beverly and other Members." The Court of Appeals' opinion fails to identify where in those "remaining twenty pages" Grand Strand and Beverly intended to convey a direct benefit to

Beverly. In fact there are no such provisions in the Institutional Agreement indicating an intent by Grand Strand or BCBS to directly benefit Beverly or anyone else. Section 3.2 of the Institutional Agreement reiterates and emphasizes the third-party disclaimer when it states clearly that “this Agreement constitutes a contract solely between [Grand Strand and BCBS].” Any other benefits that are conveyed to Beverly or others are merely incidental or consequential benefits—not intended and direct benefits. Beverly’s claimed benefit from the Institutional Agreement derives merely by the operation of the contract. The incidental or consequential benefits that she derives from the operation of the contract are different and do not make her an intended direct beneficiary of the contract. To be an intended direct beneficiary of the contract Grand Strand and BCBS needed to include a direct expression of their intent for the contract to be for the direct benefit of Beverly. Grand Strand and BCBS’s contract states the opposite, and the Court of Appeals’ analysis of the Institutional Agreement fails in that it ignores the express intent of the contracting parties in favor of elevating incidental and consequential benefits to intended and direct benefits.

In *Windsor Green Owners Association, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 20, 605 S.E.2d 750, 754 (Ct. App. 2004), a condominium homeowners’ association (“Windsor”) sued to enforce a provision of the rental agreement between a tenant and the owner of the condominium that obligated the tenant to pay for damage to the property after the tenant’s son burned down the condominium and damaged the common area of the condominium complex. Windsor argued that it was a third-party beneficiary with the right to enforce the rental agreement between the condominium owner and the tenant because it was an intended and direct beneficiary of the rental agreement’s provision obligating the tenant to pay for damage to the “Property.” *Windsor*, 362 S.C. at 16-17, 605 S.E.2d at 752. The circuit court found that “Property” included the common areas that were damaged by the fire. *Id.* at 18, 605 S.E.2d at 753. The circuit court held that

Windsor was a third-party beneficiary to the contract because Windsor “is the entity which maintains and controls the ownership interests of the common elements and because [the tenant] agreed to be financially responsible for damage to the property caused by it or its guests, with the term ‘property’ encompassing the common elements.” *Id.* (internal quotation marks omitted). On appeal, the Court of Appeals reversed the circuit court’s finding that Windsor was an intended and direct third-party beneficiary to the rental agreement. *Id.* at 20, 605 S.E.2d at 754. In analyzing the issue of whether Windsor was a third-party beneficiary with the right to enforce the rental agreement the court stated:

We do not think a rental agreement between a condominium owner and the owner’s tenant by which the tenant voluntarily agreed to pay *the owner* for any property damage caused by the tenant, his family, or guests, goes so far as to make the homeowners association a third-party beneficiary of the contract, notwithstanding the fact that, by law, the tenant has the right to use the common areas. Under this rationale, a homeowners’ association could directly hold a tenant contractually responsible for assessments, association dues, or any other expenses even though the parties did not intend this result by virtue of entering into a rental agreement.

Id. (emphasis in original).

The rationale applied by the court in *Windsor* is applicable to the present case. Like the rental agreement in *Windsor*, what the Institutional Agreement provides to Beverly are merely indirect, incidental, or consequential benefits. However, any indirect, incidental, or consequential benefits flowing from operation of the Institutional Agreement do not provide Beverly with the right independently to enforce the Institutional Agreement as a third-party beneficiary. The Institutional Agreement does not contain a clear expression that Grand Strand and BCBS intended to provide such rights to Beverly; to the contrary, the Institutional Agreement contains a clear and unequivocal expression of their intent that neither Beverly, nor anyone else, should enjoy third-party beneficiary status. Therefore, the Court of Appeals erred in interpreting the Institutional Agreement to find Beverly is an intended and direct third-party beneficiary of the Institutional

Agreement with standing to pursue a claim for breach of contract. Accordingly, the Court should grant Grand Strand's Petition for a Writ of Certiorari, reverse the Court of Appeals, and affirm the circuit court's holding that Beverly is not a third-party beneficiary with the right to sue to enforce the Institutional Agreement.

II. The Court of Appeals ignored the controlling law of South Carolina and erred in reversing the circuit court's dismissal of Beverly's claim for unjust enrichment/*quantum meruit*.

The Court of Appeals' ruling that Beverly is a third-party beneficiary with the right to enforce the terms of the Institutional Agreement affirmatively determines that a contract governs the rights that Beverly is seeking to enforce. Therefore, the Court of Appeals erred in concluding that Beverly may also pursue a claim for unjust enrichment/*quantum meruit*.

In its opinion, the Court of Appeals expressly recognized that the facts upon which an alleged unjust enrichment claim might arise in this case are the very same facts upon which the breach of contract claim was purportedly based. The Court of Appeals stated that the basis of an unjust enrichment claim was that Grand Strand "is not permitted to bill a Member for its services at a higher payment rate than it contractually agreed to accept." (emphasis added). Additionally, the Court of Appeals based its conclusion that it was error to dismiss the *quantum meruit* claim on the grounds that when Grand Strand billed Beverly for covered services "it declined to bill her at the contracted for rate, and it sent her a bill in violation of its contract with BCBS." (emphasis added). Thus, it could not be more clear that the Court of Appeals opinion permits Beverly to pursue a contract claim and an unjust enrichment/*quantum meruit* claim for exactly the same alleged conduct and damages. Furthermore, it could not be more clear that the Court of Appeals recognizes that the purported foundation of the equitable claim is the terms of the express contract (a contract which the Court of Appeals already declared to be applicable and enforceable).

It is axiomatic under South Carolina law that “[i]f the tasks the plaintiff is seeking compensation for under a *quantum meruit* theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under *quantum meruit*.” See *Swanson v. Stratos*, 350 S.C. 116, 122, 564 S.E.2d 117, 120 (Ct. App. 2002); see also 66 Am.Jur.2d *Restitution and Implied Contracts* § 81 (2001) (“[I]t is a defense to an action in quantum meruit that there is an express contract covering the issue of compensation for services or materials furnished.”).

A careful exposition and summary of South Carolina law on this point was recently discussed in the consolidated multidistrict litigation *In re General Motors LLC Ignition Switch Litigation*, 399 F.Supp3d 262, 340 (2018). In that case, the United States District Court for the Southern District of New York correctly summarized, analyzed, and applied South Carolina law to find that a plaintiff is only permitted to pursue a claim for unjust enrichment as an alternative to a claim for breach of contract “where it is uncertain whether a valid and enforceable contract exists.” *General Motors*, 399 F.Supp3d at 340. When the existence and applicability of an express contract is not in question, or has already been determined, the equitable claim may not continue—even in the alternative. Under South Carolina law a claim for unjust enrichment is an equitable claim and “‘equity will not intervene’ where a plaintiff ‘possesses an adequate remedy at law.’” *Id.* at 341 (quoting *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430 (2009); *Van Robinson Ins. Agency, Inc. v. Harleysville Mut. Ins. Co.*, 272 S.C. 127, 128-29, 249 S.E.2d 744 (1978)). In South Carolina “to be adequate, a legal remedy need not guarantee success.” *Id.* (quoting *EllisDon Constr., Inc. v. Clemson Univ.*, 391 S.C. 552, 555, 707 S.E.2d 399 (2011)). Ultimately, under South Carolina law the plaintiff has an adequate remedy at law when she has the ability to pursue a claim for breach of an express contract and, therefore, the plaintiff cannot maintain a claim for unjust enrichment—even in the alternative. *Id.* at 342.

In *Charleston County School District v. Laidlaw Transit, Inc.*, 348 S.C. 420, 422-23, 559 S.E.2d 362, 363 (Ct. App. 2001), the Charleston County School District sought to recover alleged overpayments to a bus company under a transportation contract. The bus company counterclaimed under a *quantum meruit* theory for set-off and payment for extra services rendered. *Id.* at 423-24, 559 S.E.2d at 364. The circuit court dismissed the *quantum meruit* counterclaim and the Court of Appeals affirmed, agreeing that “there was a specific contract between the parties and they were limited to that contract.” *Id.* at 424-26, 559 S.E.2d at 364. The Court of Appeals explained:

By admitting the contract and its terms, . . . the parties have defined their relationship, and their rights and obligations are governed solely by the contract terms.

Id. at 425, 559 S.E.2d at 364.

Similarly, in *Swanson*, 350 S.C. at 118-21, 564 S.E.2d at 118-20, the court was asked to determine whether a forester was entitled to recover under *quantum meruit* against a property owner when the forester had an express written contract with the property owner. *Id.* at 119, 564 S.E.2d at 118. The court held that the forester was not entitled to the recover under *quantum meruit* because the work performed by the forester was within his obligations under the express contract. *Id.* at 123, 564 S.E.2d at 120. The court explained that a claim for *quantum meruit* fails in the face of an enforceable contract governing the relationship between the parties. *Id.*

In this case, the procedural history and setting may be novel; however, the Court of Appeals resolved that an enforceable contract exists and applies between the litigants, and it found that Beverly is a third-party beneficiary under the Institutional Agreement with the right to sue Grand Strand for breach of that express contract. Following the Court of Appeals’ ruling on the breach of contract claim, it recognized no dispute as to the existence of the express contract or its application to the current dispute. Having done that, the Court of Appeals ignores existing South

Carolina law when it nonetheless sanctioned an alternative equitable claim (unjust enrichment/*quantum meruit*) to continue as well.

Because the Court of Appeals' order validated the breach of contract claim and purports to end any dispute as to the existence or application of the express contract to the claims in issue, the unjust enrichment/*quantum merit* claim must be dismissed as a matter of law. *See Charleston County School District*, 348 S.C. at 422-23, 559 S.E.2d at 363; *Swanson*, 350 S.C. at 118-21, 564 S.E.2d at 118-20. Beverly's ability to pursue the claims in the alternative only existed when the existence of the express contract, or its applicability to the claims in issue, was in dispute. *See Boldt Co. v. Thomason Elec. & Am. Contractors Indem. Co.*, 820 F. Supp. 2d 703, 707 (D.S.C. 2007); *United States v. Savannah River Nuclear Sols., LLC*, No. 1:16-CV-00825-JMC, 2016 WL 7104823, at *26 (D.S.C. Dec. 6, 2016). When no such dispute remains based on the Court of Appeals' decision on the breach of contract claim, Beverly's ability to maintain even an alternative claim based on a theory of *quantum meruit* or quasi-contract ends. Therefore, upon the Court of Appeals' decision that Beverly is a third-party beneficiary with the right to pursue a claim for breach of an express contract (the Institutional Agreement), Beverly was foreclosed from pursuing an alternative claim for *quantum meruit*. Accordingly, the Court should grant Grand Stand's Petition for a Writ of Certiorari, reverse the Court of Appeals, and affirm the circuit court's dismissal of Beverly's claim for *quantum meruit*.

CONCLUSION

For the reason stated, Grand Strand respectfully urges that its Petition for a Writ of Certiorari be granted in this case, that the matter be reviewed by this Court, and that the Court overturn the Court of Appeals' reversal of the dismissal of Beverly's claims for breach of contract claim and unjust enrichment.

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James Lynn Werner; SC Bar No. 6029
William R. Thomas; SC Bar No. 16348
Katon E. Dawson Jr.; SC Bar No. 101167
PARKER POE ADAMS & BERNSTEIN LLP
1221 Main Street, Suite 1100
Post Office Box 1509 (29202)
Columbia, South Carolina 29201
Telephone: (803) 255-8000
Facsimile: (803) 255-8017
jimwerner@parkerpoe.com
willthomas@parkerpoe.com
katondawson@parkerpoe.com

Attorneys for Petitioner
Grand Strand Regional Medical Center, LLC

April 30, 2020
Columbia, South Carolina

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APR 30 2020

S.C. SUPREME COURT