

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

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Appeal from Spartanburg County  
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

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Case No. 2019-CP-42-03236

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**RECEIVED**  
JUL 30 2020  
SC Court of Appeals

Rita St. Aubin,  
as Personal Representative of the Estate of Irene Ramsey,

Respondent,

v.

THI of South Carolina at Camp Care, LLC,  
d/b/a Lake Emory Post Acute Care; THI of South Carolina, LLC;  
Hunt Valley Holdings, LLC; THI of Baltimore, Inc.; and Casey Caddell,  
as Officer/Manager of THI of South Carolina at Camp Care, LLC,  
d/b/a Lake Emory Post Acute Care,

Appellants.

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**INITIAL BRIEF OF APPELLANTS**

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## STATEMENT OF ISSUES ON APPEAL

- I. When Ms. Ramsey<sup>1</sup> was admitted as a resident of the Facility<sup>2</sup>, her duly appointed attorney-in-fact, Ms. St. Aubin<sup>3</sup>, signed an Arbitration Agreement on her behalf. When Ms. St. Aubin brought this action for nursing home malpractice on behalf of Ms. Ramey's estate, the Facility and Caddell<sup>4</sup> moved to compel arbitration, and the Other Appellants<sup>5</sup> moved to stay the lawsuit pending the outcome of those motions and the completion of any arbitration proceedings compelled thereby. The circuit court found the subject Arbitration Agreement unenforceable for two reasons, (A) indefiniteness of material terms and (B) lack of consideration, and thus denied the motions to compel arbitration and, in turn, denied the motions to stay as moot. Did the circuit court err in denying the Facility and Caddell's motions to compel arbitration and the Other Appellants' corresponding motions to stay?
- A. Did the circuit court err in finding the Arbitration Agreement unenforceable for indefiniteness of material terms?
- B. Did the circuit court err in finding the Arbitration Agreement unenforceable for lack of consideration?

## STATEMENT OF THE CASE

With Ms. St. Aubin's help, Ms. Ramsey was admitted as a resident of the Facility on February 6, 2017. (Compl. ¶ 30; *see* Ex. A [Arbitration Agreement] to

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<sup>1</sup> "Ms. Ramsey" is the late Irene Ramsey.

<sup>2</sup> The "Facility" is Defendant/Appellant THI of South Carolina at Camp Care, LLC, d/b/a Lake Emory Post Acute Care. It is a skilled nursing facility in Spartanburg County

<sup>3</sup> "Ms. St. Aubin" is Plaintiff/Respondent, Rita St. Aubin, as Personal Representative of the Estate of Irene Ramsey.

<sup>4</sup> "Caddell" is Defendant/Appellant Casey Caddell, as officer/manager of the Facility.

<sup>5</sup> The "Other Appellants" are Defendants/Appellants THI of South Carolina, LLC, Hunt Valley Holdings, LLC, and THI of Baltimore, Inc. "Appellants" refers to the Facility, Caddell, and the Other Appellants, collectively.

Mem. in Supp. of MTCA.) In conjunction with Ms. Ramsey’s admission to the Facility, Ms. St. Aubin signed an Arbitration Agreement on her behalf. (Ex. A [Arbitration Agreement] to Mem. in Supp. of MTCA.) Without question, Ms. St. Aubin was authorized to sign the Arbitration Agreement for Ms. Ramsey as her duly appointed attorney-in-fact, pursuant to a durable power of attorney recorded in Spartanburg County on November 7, 2012 (the “Power of Attorney”). (Ex. B [Power of Attorney] to Mem. in Supp. of MTCA.)

In pertinent part, the Arbitration Agreement provides as follows:

***PLEASE READ CAREFULLY***

**FACILITY - RESIDENT/REPRESENTATIVE  
ARBITRATION AGREEMENT**

This Agreement is made between Lake Emory Post Acute Care<sup>6</sup> (“Facility”), its agents, employees and servants, and Irene Ramsey<sup>7</sup> (“Resident”) . . . . It is the intention of the parties to this Agreement to bind not only themselves, but also their successors, assigns, heirs, personal representatives, guardians or any persons deriving their claims through or on behalf of Resident.

It is understood by Resident/Representative that he/she is not required to use the aforesaid Facility for Resident’s healthcare needs and that there are numerous other health care providers in the State where Facility is located that are qualified to provide such care to Resident.

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<sup>6</sup> (Ex. A [Arbitration Agreement] to Mem. in Supp. of MTCA (“Lake Emory Post Acute Care” is handwritten in the original).)

<sup>7</sup> (*Id.* (“Irene Ramsey” is handwritten in the original).)

It is further understood that in the event of any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement<sup>[8]</sup>, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident, including but not limited to any alleged tort, personal injury, negligence or other claim; or any federal or state statutory or regulatory claim of any kind; or whether or not there has been a violation of any right or rights granted under State law (collectively "Disputes"), and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration, as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules.

The parties shall select an arbitrator from a panel having experience and knowledge of the health care industry. If the parties cannot reach a mutual decision on the selection of an arbitrator, the parties agree that an arbitrator shall be selected by the Court. The arbitrator shall hear and decide the controversy, and the decision shall be binding on all parties, and may be enforced by a court of competent jurisdiction.

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(Ex. A [Arbitration Agreement] to Mem. in Supp. of MTCA (emphasis in original).)<sup>9</sup>

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<sup>8</sup> Ms. St. Aubin also signed the Admission Agreement on Ms. Ramsey's behalf. (Pl.'s Mem. in Opp'n to MTCA p. 2 ("On admission [to the Facility], [Ms.] St. Aubin executed the Arbitration Agreement . . . and Admission Agreement . . . on [Ms.] Ramsey's behalf."))

<sup>9</sup> To be clear, the Arbitration Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the "FAA"). As an initial matter, the Arbitration Agreement expressly provides that it is governed by the FAA. (Ex. A [Arbitration Agreement] to Mem. in Supp. of MTCA.) Moreover, our state Supreme Court has held that skilled nursing facility admission agreements

Ms. St. Aubin filed this wrongful death and survival action in Spartanburg County on September 10, 2019, in the Court of Common Pleas,<sup>10</sup> asserting claims arising out of alleged deficiencies in the care/treatment Ms. Ramsey received while she was a resident of the Facility. (*See generally* Compl.)

Based on the Arbitration Agreement that Ms. St. Aubin signed for Ms. Ramsey when she was admitted to the Facility, both the Facility and Caddell moved to compel arbitration (the “Motions to Compel Arbitration”). (*See* Facility MTCA; Caddell MTCA; Mem. in Supp. of MTCA, including Exs. A [Arbitration Agreement] & B [Power of Attorney].)<sup>11</sup> The Other Appellants filed corresponding motions to stay the action until the arbitrability issue (i.e., the issue raised by the Motions to Compel Arbitration) was finally decided and any/all

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implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014). Further still, Ms. St. Aubin agrees “that the Arbitration Agreement is governed by the . . . FAA.” (Pl.’s Mem. in Opp’n to MTCA p. 3.)

<sup>10</sup> (*See generally* Summons; Compl.)

<sup>11</sup> Without question, Ms. St. Aubin’s claims against the Facility and Caddell are within the scope of the Arbitration Agreement. (*See* Ex. A [Arbitration Agreement] to Mem. in Supp. of MTCA (“This [Arbitration] Agreement is made between [the Facility] . . . , its agents, employees and servants, and [Ms. Ramsey] . . . .”); *id.* (“It is the intention of the parties to this [Arbitration] Agreement to bind not only themselves, but also their successors, assigns, heirs, personal representatives, guardians or any persons deriving their claims through or on behalf of [Ms. Ramsey].”); *id.* (“It is . . . understood that in the event of any controversy or dispute between the parties arising out of or relating to [the] Facility’s Admission Agreement, or breach thereof, or relating in any way to [Ms. Ramsey’s] stay at [the] Facility, or to the provisions of care or services to [Ms. Ramsey] . . . and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration . . . .”).

arbitration proceedings were completed (the “Motions to Stay”). (*See* THISC, HVH, and THIB Mots. to Stay.)

The circuit court heard the motions on December 18, 2019, the Honorable Grace Gilchrist Knie presiding. (*See generally* 12/18/19 Hr’g Tr.)<sup>12</sup> By order filed January 9, 2020, the court denied the Motions to Compel Arbitration, finding the Arbitration Agreement unenforceable for two reasons: (A) indefiniteness as to material terms<sup>13</sup> and (B) lack of consideration. (*Id.* at pp. 7–8.) Based on its denial of the Motions to Compel Arbitration, the court also denied the Motions to Stay as moot. (*Id.* at 9.)

Appellants timely moved for alteration, amendment, and/or reconsideration of the circuit court’s order on January 19, 2020. (Mot. to Alter, Amend, and/or Reconsider Order Regarding Defs.’ Mot. to Compel Arbitration and Stay Action, filed January 19, 2020.) The court denied Appellants’ motion by order filed February 14, 2020, without a hearing. (Order Regarding Defs.’ Mot. to Alter, Amend, and/or Reconsider the Court’s Order Denying Defs.’ Mot. to Compel Arbitration and Stay, filed February 14, 2020.)

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<sup>12</sup> At the conclusion of the hearing, the court requested, and thereafter received, competing proposed orders from Ms. St. Aubin and Appellants. (12/18/19 Hr’g Tr. pp. 34:16–35:11; Email from Pl.’s Counsel to Circuit Court with Pl.’s Proposed Order; Email from Defs.’ Counsel to Court with Defs.’ Proposed Order.)

<sup>13</sup> (Order Regarding Defs.’ Mot. to Compel Arbitration and Stay Action, filed January 9, 2020, pp. 5–7.)

This appeal timely follows.<sup>14</sup>

### **STANDARD OF REVIEW**

A circuit court's determination of whether a claim is subject to arbitration is reviewed de novo on appeal. *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009). This includes de novo review of the determination of whether an arbitration agreement is enforceable against a nonsignatory. *Wilson v. Willis*, 426 S.C. 326, 334, 827 S.E.2d 167, 172 (2019). "Under de novo review, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings." *Id.*

### **ARGUMENT**

#### **I. The circuit court erred in denying the Motions to Compel Arbitration and, in turn, in denying the corresponding Motions to Stay.**

As explained below, the circuit court erred in denying the Motions to Compel Arbitration and, *in turn*, in denying the corresponding Motions to Stay. The relationship between the Motions to Compel Arbitration and the Motions to Stay is such that the circuit court's denial of the former mooted the latter. Thus, although the circuit court did not grant the Other Appellants the relief they sought in their Motions to Stay, it also did not rule against them on the *merits*. The final the determination of the arbitrability issue in this appeal (i.e., the final

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<sup>14</sup> Appellants' notice of appeal was served and filed February 25, 2020. (Notice of Appeal, incl. Proof of Service.)

determination of the Facility and Caddell's appeals from the denial of their Motions to Compel Arbitration) will, if favorable to the Facility and Caddell, in turn, establish that the Motions to Stay are not moot and, indeed, that they should be granted. *See* 9 U.S.C. § 3 ("If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall* on application of one of the parties *stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement*, providing the applicant for the stay is not in default in proceeding with such arbitration.") (emphasis added); *see also Episcopal Housing Corp. v. Federal Ins. Co.*, 269 S.C. 631, 641, 239 S.E.2d 647, 652 (1977) ("The fact that Federal is not a party to an arbitration agreement does not prevent an order staying the judicial proceedings pending arbitration between those who are parties to such an agreement. However, the Circuit Court included in its order the requirement that all parties be included in one arbitration proceeding. Federal has signed no arbitration agreement and cannot be forced into compulsory arbitration. We feel it was erroneous to condition the relief to which respondents are plainly entitled upon the voluntary submission of Federal to arbitration proceedings. This provision has been deleted from the foregoing Order of the lower court.").

**A. The circuit court erred in finding the Arbitration Agreement unenforceable for indefiniteness of material terms.**

Referencing *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 678 S.E.2d 438 (2009), the circuit court found the Arbitration Agreement is vague, indefinite, and/or silent as to material terms and therefore unenforceable, as there was no “‘meeting of the minds’ as to the essential terms of arbitration.” (Order Regarding Defs.’ Mot. to Compel Arbitration and Stay Action, filed January 9, 2020, p. 5.) Specifically, the court found that the Arbitration Agreement lacks definiteness in two respects: (1) arbitrator selection and (2) who pays for arbitration. (*Id.* at p. 6.)

In *Grant*, an arbitration agreement *specifically required* a particular entity to serve as arbitrator and was silent as to any alternative, neither specifying an alternate arbitrator nor providing a mechanism to select an alternate. 383 S.C. at 128, 678 S.E.2d at 437. When the designated entity was no longer able to serve as arbitrator, a dispute arose. *Id.* Finding that the specification of the named arbitrator was a material term of the agreement and that it had been rendered ineffective, the *Grant* Court held arbitration was no longer required. *See Id.* at 128–132, 678 S.E.2d at 437–39 (“Where designation of a specific arbitral forum has implications that may substantially affect the substantive outcome of the resolution, we believe that it is neither ‘logistical’ nor ‘ancillary.’”). The Court also held that the default selection mechanism in FAA § 5 was inapplicable *when*

*the parties make a specific arbitrator an integral term. Id.* at 131, 678 S.E.2d at 438.<sup>15</sup>

Although *Grant* does require all material terms to exist within an arbitration agreement for a meeting of the minds to result, the terms that the circuit court found to be absent or unduly vague are distinguishable from the material terms required under *Grant*.

The lack of a specified arbitrator does not constitute the omission of a material term. *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 82, 749 S.E.2d 139, 147 (Ct. App. 2013) (“[T]he lack of a specified arbiter is not an omission of a material term.”). While the *Grant* Court held that a named arbitrator is a material

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<sup>15</sup> FAA § 5 provides as follows:

If in the [arbitration] agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

term *when one is specified within an agreement* and that FAA § 5 does not apply *when such a specification exists*, these holdings are inapplicable when, as here, the contract *does not specify* a particular arbitrator. *Id.*

With regard to arbitrator selection, the Arbitration Agreement states as follows: “The parties shall select an arbitrator from a panel having experience and knowledge of the health care industry. If the parties cannot reach a mutual decision on the selection of an arbitrator, the parties agree that an arbitrator shall be selected by the Court.” (*See* Ex. A [Arbitration Agreement] to Mem. in Supp. of MTCA.) The only reasonable interpretation of this plain language is that either the parties can agree on an arbitrator or the court will decide.<sup>16</sup>

According to the circuit court, the Arbitration Agreement “is silent as to what ‘panel’ the arbitrator is to be chosen from . . . ,” and “[w]ithout a designated process to select an arbitrator from a ‘panel’ to choose from, or any indication of what that ‘panel’ would be or who it includes, the Court would be forced to fill in the parties’ alleged contract with an arbitrator selection clause.” (Order Regarding

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<sup>16</sup> Beyond the alternative arbitrator selection process expressly provided for in the Arbitration Agreement, there is also the alternative provided by FAA § 5, which applies not only “if no method [of naming or appointing an arbitrator] [is] provided [in the arbitration agreement]” but also “if a method [is] provided and any party . . . fail[s] to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy . . . .” 9 U.S.C. § 5.

Defs.' Mot. to Compel Arbitration and Stay Action, filed January 9, 2020, p. 6.)

This is not so.

First off, the Arbitration Agreement does not say that the “panel” process must first be tried and fail before any alternative can be implemented. It simply says, “*If the parties cannot reach a mutual decision on the selection of an arbitrator, the parties agree that an arbitrator shall be selected by the Court.*” (See Ex. A [Arbitration Agreement] to Mem. in Supp. of MTCA (emphasis added).) This language in no way conditions implementation of this alternative method of arbitrator selection on the parties having first tried the “panel” process and failed, or indeed on there being any particular reason at all why the parties cannot agree on an arbitrator.<sup>17</sup> Moreover, to construe the Arbitration Agreement as doing so would be absurd and contrary to the rules of contract interpretation. See *Koon v. Fares*, 379 S.C. 150, 155, 666 S.E.2d 230, 233 (2008) (“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.”); *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 434 (1975) (“Where a construction of a contract makes it unusual or extraordinary and another

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<sup>17</sup> FAA § 5 has no such condition either. By its plain language, it applies “if for *any other reason* there shall be a lapse in the naming of an arbitrator . . . or in filling a vacancy . . .” (emphasis added). 9 U.S.C. § 5.

construction, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail.”).

As for the circuit court’s view that the Arbitration Agreement is unenforceable for indefiniteness because it does not indicate who is to pay for the arbitration, this, too, is erroneous. Cost allocations do not rise to the level of material terms but rather are mere “ancillary logistical concerns” that are “not required within an arbitration agreement.” *York*, 406 S.C. at 83, 749 S.E.2d at 147 (explaining that matters like discovery rules, *cost allocations*, or arbitration initiation procedures are not material terms but rather “ancillary logistical’ ones” that are “not required within an arbitration agreement”) (emphasis added) (citing *Grant*, 383 S.C. at 131–32, 678 S.E.2d at 439).

Moreover, and in any event, the Arbitration Agreement expressly states that arbitration shall be as provided by the South Carolina ADR Rules. (Ex. A [Arbitration Agreement] to Mem. in Supp. of MTCA.) Subsection (a) of Rule 9, SCADR, provides, “When the parties stipulate the neutral<sup>18</sup>, the parties and the neutral shall agree upon compensation.” Subsection (c) of Rule 9 further provides, “Unless otherwise agreed to by the parties or ordered by the court, fees and

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<sup>18</sup> Rule 2(g), SCADR, defines “Neutral” as “[a] mediator, arbitrator or evaluator.”

expenses for the ADR conference<sup>19</sup>] shall be paid in equal shares per party.” Moreover, Rule 13, SCADR, in subsection (a), expressly provides that “[t]he arbitrator shall at all times be authorized to control the [arbitration] hearing and the procedures to be followed, and in subsection (b)(3), states that “[t]he arbitrator shall set up the arbitration hearing . . . [and] define and describe . . . [t]he cost of the arbitration hearing.” Thus, even to the extent that payment for arbitration is a material term, it is adequately addressed via the South Carolina ADR Rules.

As for the circuit court’s dicta that, “had language regarding payment of arbitration fees been included in the Arbitration Agreement it could have potentially been considered additional consideration,”<sup>20</sup> it is of no moment. First off, it is—at most—dicta: it is not only not essential to the court’s holding but also equivocal. The court does not state that the inclusion of such language in the Arbitration Agreement would have constituted improper additional consideration, only that “it could have potentially been considered additional consideration.” (*Id.*) Moreover, earlier in its order, the court expressly ruled against Ms. St. Aubin’s argument that the Arbitration Agreement is unenforceable because it constitutes “other consideration” in violation of pertinent law regulating Medicare

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<sup>19</sup> Rule 2(i), SCADR, defines “Alternative Dispute Resolution (ADR) Conference” as “[a] mediator or arbitration[]” and further notes that “[a]rbitration conferences may also be referred to as hearings.”

<sup>20</sup> (Order Regarding Defs.’ Mot. to Compel Arbitration and Stay Action, filed January 9, 2020, p. 6.)

and Medicaid. (*Id.* at pp. 4–5 (“As a threshold matter, this Court notes that Plaintiff first argued the Arbitration Agreement was an involuntary precondition to admission in violation of federal law, because of language in the Admission Agreement coupled with the failure to state in the Arbitration Agreement that the agreement was voluntary and not a pre-condition to admission. *The Court finds this argument unpersuasive.*”) (emphasis added) (internal citations omitted).) Accordingly, the court affirmatively rejected Ms. St. Aubin’s contention that the Arbitration Agreement was a pre-condition to admission at the Facility, and given the court’s conclusion that the Arbitration Agreement was not a pre-condition to admission, it could not possibly have constituted any sort of improper additional consideration for admission.<sup>21</sup>

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<sup>21</sup> Further still, “the party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. at 379, 759 S.E.2d at 731 (quoting *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 91 (2000)). The Facility and Caddell maintain that the Arbitration Agreement is voluntary and not a pre-condition to admission. Ms. St. Aubin’s argument to the contrary has not support beyond surmise, conjecture, or speculation. *The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005) (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). Lastly, again, the Facility and Caddell maintain that the Arbitration Agreement is voluntary and *not* a pre-condition to admission. The circuit court’s principal order incorrectly states, “Defendant argued the Arbitration Agreement was not involuntary and instead made in consideration of admission.” (Order Regarding Defs.’ Mot. to Compel Arbitration and Stay Action p. 7.) To the extent this is material—Appellants do not believe it is—Appellants raise the circuit court’s error in this regard as an issue/argument in this appeal. Appellants’ contend the court’s error is manifest on the record. (*See, e.g.*, Hr’g Tr. pp. 11:1–15:13.)

The Arbitration Agreement does not lack any material term or suffer from any fatal ambiguity. Provided they meet their mutual obligations of good faith and fair dealing,<sup>22</sup> there is no good reason why the parties cannot arbitrate the instant dispute in accordance with the Arbitration Agreement. In addition to clearly stating the parties' mutual and concurrent promises to arbitrate, the Arbitration Agreement sets out the scope of the disputes that are subject to arbitration, how the arbitrator is to either be agreed upon or alternatively selected, the applicability of both the South Carolina ADR Rules (which provides substantive and procedural rules geared "to secure the just, speedy, inexpensive and collaborative resolution in every action to which they apply," Rule 1, SCADR; *see also* Rules 2, 9, 11, 12, 13, SCADR) and the FAA, and makes clear that the arbitrator's decision is binding and enforceable in a court of competent jurisdiction. (*See* Ex. A [Arbitration Agreement] to Mem. in Supp. of MTCA.) To require more just because the contract in issue is an arbitration agreement would violate the FAA's requirement that arbitration agreements be placed on equal footing with all other contracts. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011).

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<sup>22</sup> There is, of course, an implied covenant of good faith and fair dealing in every contract. *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 86 (1995).

**B. The circuit court erred in finding the Arbitration Agreement unenforceable for lack of consideration.**

The circuit court erroneously ruled that the Arbitration Agreement lacked valid, legal consideration, and, as a result, could not be enforced. It found that the parties' mutual and concurrent promises to forfeit their respective rights to a jury trial in favor of arbitration was not sufficient consideration despite clear precedent to the contrary. *See Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 304, 468 S.E.2d 292, 300 (1996) ("Valuable consideration for a contract may consist of some forbearance given or detriment suffered."); *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 274–75 (4th Cir. 1997) ("O'Neil first argues the contract to arbitrate was not supported by adequate consideration because the agreement was not binding on the hospital. O'Neil's argument fails because its premise is mistaken. . . . It is true that courts have refused to enforce arbitration agreements where the agreement specifically allows the employer to ignore the results of arbitration. That is not the case here, however. There is no such clause in the arbitration agreement signed by O'Neil, and we decline to read such a clause into the contract. *A mutual promise to arbitrate constitutes sufficient consideration for this arbitration agreement.*") (citing *Rickborn*, *supra*) (internal citation omitted) (emphasis added); *id.* at 275 ("O'Neil's argument is especially misplaced in the circumstances of this case. Not only has the hospital consistently argued that it is bound by the arbitration agreement, it has, by virtue of this suit, shown its commitment to the arbitration

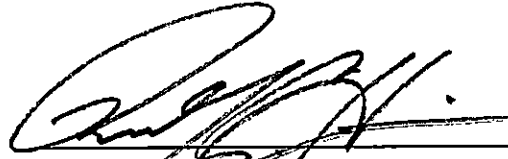
process. Indeed, the only party to this case who has shown a desire to avoid binding arbitration is O'Neil herself.") (applying South Carolina law); *Towles v. United HealthCare Corp.*, 388 S.C. 29, 40, 524 S.E.2d 839, 846 n.4 (Ct. App. 1999) (favorably citing *O'Neil* for the proposition that "a mutual promise to arbitrate constituted sufficient consideration to enforce an arbitration agreement where the employer proffered, and the employee signed, an employee handbook and acknowledgment form over three and one-half years after employment began."). Moreover, to require additional consideration for the Arbitration Agreement beyond the parties' mutual promises to arbitrate violates the FAA's requirement that arbitration agreements be placed on equal footing with all other contracts. *See Concepcion*, 563 U.S. at 339.

### **CONCLUSION**

For the foregoing reasons, Appellants ask this Honorable Court to reverse the circuit court and compel the instant claims against the Facility and Caddell to arbitration (or, alternatively, to remand the case to the circuit court with instructions that it do so) and to stay this action as to the Other Appellants (or, alternatively, remand the case to the circuit court with instructions that it either do so or conduct any further proceedings necessary to decide the Motions to Stay on the merits).

Respectfully submitted,  
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Charleston, South Carolina

Dated: 7/27/20

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

Appeal from Spartanburg County  
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Case No. 2019-CP-42-03236

**RECEIVED**  
JUL 30 2020  
SC Court of Appeals

Rita St. Aubin,  
as Personal Representative of the Estate of Irene Ramsey,

Respondent,

v.

THI of South Carolina at Camp Care, LLC,  
d/b/a Lake Emory Post Acute Care; THI of South Carolina, LLC;  
Hunt Valley Holdings, LLC; THI of Baltimore, Inc.; and Casey Caddell,  
as Officer/Manager of THI of South Carolina at Camp Care, LLC,  
d/b/a Lake Emory Post Acute Care,

Appellants.

**PROOF OF SERVICE**


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I, Russell G. Hines, of Young Clement Rivers, LLP, attorneys for Appellants, hereby certify that the **INITIAL BRIEF OF APPELLANTS and APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** was served on all other parties to this matter by depositing a copy of the same in the U.S. Mail on July 27, 2020, properly posted for delivery to the following addressees:

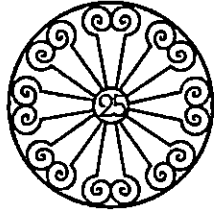
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July 27, 2020

**VIA US MAIL**

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

**RECEIVED**  
JUL 30 2020  
SC Court of Appeals

Re: Rita St. Aubin as Personal Representative of the Estate of Irene Ramsey Respondent v. THI of South Carolina at Camp Care, LLC d/b/a Lake Emory Post Acute Care; THI of South Carolina, LLC; Hunt Valley Holdings, LLC; THI of Baltimore, Inc.; and Casey Caddell as Officer/Manager of THI of South Carolina at Camp Care, LLC d/b/a Lake Emory Post Acute Care, Appellants.

Appellate Case no. 2020-000357

Case No.: 2020-000357

Claim No.: HBLM #: 1922072

YCR File: 14347-20190020

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of the Initial Brief of Appellants, Appellants' Designation of Matter to be Included in the Record on Appeal, and Proof of Service for filing in the above-referenced matter. Kindly return a court-stamped copy of each in the self-addressed envelope.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Pollyana Bell  
Project Assistant

/pbb

Enclosures

cc (via US mail):

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Stefan B. Feidler, Esquire, Anastopoulos Law Firm, LLC

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