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



Appeal from Spartanburg County
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2018-CP-42-03421
Appellate Case No. 2020-001146

Armando J. Acevedo,
through his Attorney-in-Fact,
Marianne Acevedo,

Respondent,

v.

Hunt Valley Holdings, LLC;
THI of South Carolina, LLC; and
THI of South Carolina at Camp Care, LLC,
d/b/a Lake Emory Post Acute Care,

Appellants.

# FINAL BRIEF OF APPELLANTS

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**D. Assuming, *arguendo*, it constitutes a material finding, did the circuit court err in finding that the Facility is insufficiently named in the Arbitration Agreement?**

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[1] 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.

[2] "Plaintiff" is Plaintiff-Respondent, Armando J. Acevedo ("Mr. Acevedo"), through his Attorney-in-Fact, Marianne Acevedo ("Mrs. Acevedo").

[3] "THISC" is Defendant-Appellant THI of South Carolina, LLC.

[4] "HVH" is Defendant-Appellant Hunt Valley Holdings, LLC. Collectively, the Facility, THISC, and HVH are "Appellants."

## STATEMENT OF THE CASE

With the help of his wife and duly appointed attorney-in-fact, Mrs. Acevedo,[5] Mr. Acevedo was admitted to the Facility on July 12, 2017. (R. p. 43 ¶ 50.) In conjunction with Mr. Acevedo's admission, Mrs. Acevedo signed an Arbitration Agreement on his behalf. (R. p. 183.)[6] [7]

Plaintiff commenced this nursing home malpractice action in Spartanburg County on October 3, 2018, in the Court of Common Pleas, asserting various claims for damages arising out of allegedly deficient care/treatment Mr. Acevedo received during his residency at the Facility. (*See* R. pp. 32–90.)

The Facility moved to compel Plaintiff's claims against it to arbitration (the "Motion to Compel Arbitration"). (R. pp. 180–82.)[8] THISC moved to stay the

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[5] (*See* R. p. 183, pp. 199–204, pp. 205–07 ¶¶ 2–3, 8–14, p. 240 ¶¶ 1, 6–7.)

[6] It is undisputed that Mrs. Acevedo was duly authorized to sign the Arbitration Agreement for Mr. Acevedo as his attorney-in-fact. (*See, e.g.,* R. p. 209 ("[Mrs. Acevedo] . . . has power of attorney over [Mr. Acevedo] who was admitted into [the Facility] on July 12, 2017.").)

[7] It is undisputed that the Arbitration Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1–16 (the "FAA"). (*See, e.g.,* R. p. 2 ("The FAA applies to [the] [A]rbitration [A]greement."), p. 19 (same).) The Arbitration Agreement expressly states that the FAA applies. (R. p. 183.) Moreover, the Supreme Court of South Carolina has held that skilled nursing facility admission agreements 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).

[8] Without question, Plaintiff's claims against the Facility are within the scope of the Arbitration Agreement. Its plain language clearly embraces the subject matter of Plaintiff's claims. (*See* R. p. 183 ("It is the intention of the

action until the arbitrability issue, i.e., the issue raised by the Motion to Compel Arbitration, was finally decided and any and all arbitration proceedings were completed (the "Motion to Stay"). (R. pp. 184–85.) HVH moved to be dismissed from the action for lack of personal jurisdiction (the "Motion to Dismiss"). (R. pp. 178–79.)

Following the parties' submission of briefs[9] and a hearing held February 1, 2019,[10] the circuit court, the Honorable J. Derham Cole presiding, denied the Motion to Compel Arbitration by order filed October 21, 2019. (R. pp. 1–13.) The order was silent as to the Motion to Stay. (*Id.*) The order was silent as to the Motion to Dismiss, too, but unlike the Motion to Stay, the Motion to Dismiss had been withdrawn—with Plaintiff's consent and without prejudice to HVH refiling

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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 [Mr. Acevedo]."), *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 [Mr. Acevedo's] stay at [the] Facility, or to the provisions of care or services to [Mr. Acevedo] . . . and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration . . . .").) But even if there were "any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor of arbitration . . . ." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999). And to be clear, there is no contention from Plaintiff that her claims are outside the scope of the Arbitration Agreement.

[9] (R. pp. 186–98, pp. 208–34.)

[10] (R. pp. 124–56.)

it—on the record at the outset of the February 1, 2019, hearing. (R. pp. 126:1–129:5.)[11]

On October 31, 2020, pursuant to Rule 59(e), SCRCP, Appellants timely moved the circuit court to alter, amend, and/or reconsider its decision (the "Motion to Reconsider"). (R. pp. 242–52.) The bulk of the Motion to Reconsider took issue with the court's denial of the Motion to Compel Arbitration and sought rulings from the court on every distinct issue/argument the Facility raised in support thereof;[12] however, out of an abundance of caution, the Motion to Reconsider also asked the court to clarify the scope of its October 21, 2019, order, specifically, to clarify whether it disposed of the Motion to Compel Arbitration only or if it also disposed of the Motion to Stay and/or the Motion to Dismiss. (R. p. 243.)

Following a hearing on January 22, 2020,[13] the circuit court filed a Form 4 order on June 9, 2020, granting the Motion to Reconsider "to the extent that clarification is needed for the benefit of defendant's counsel" and directing Plaintiff's counsel to submit a proposed formal order "separately addressing each

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[11] Indeed, consistent with the withdrawal of the Motion to Dismiss, shortly after the February 1st hearing, on February 12, 2019, HVH answered Plaintiff's complaint, "*specifically reserving its right to move to dismiss Plaintiff's Complaint for lack of personal jurisdiction*." (R. pp. 105–23 (emphasis in original).)

[12] (*See generally* R. pp. 242–52.)

[13] (R. pp. 157–71.)

defendant's motion(s) and its grounds presented in support of the relief requested and to specifically state that [the Motion to Dismiss] is denied, [the Motion to Compel Arbitration is] denied, and [the Motion to Stay] is denied." (R. pp. 14–16.) The court filed its formal order to this effect on July 10, 2020. (R. pp. 17–31.)

By notice served August 10, 2020, this appeal timely follows. (R. pp. 257–61.)

## 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.* Issues of law, however, are reviewed without any particular deference to the lower court. *See, e.g., Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 782 S.E.2d 590 (2016). Even where a ruling is on a matter within trial court's discretion, if the ruling is based on a misunderstanding of the law, rather than upon the exercise of discretion, the question presented on

appeal is one of law. *See Bain v. Self Mem'l Hosp.*, 281 S.C. 138, 152, 314 S.E.2d 603, 611 (Ct. App. 1984).

## ARGUMENT

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

The relationship between the Motion to Compel Arbitration and the Motion to Stay is such that, insofar as the circuit court was concerned, the denial of the former mooted the latter. The fates of these motions (or, more precisely, the fates of the appeals taken from the circuit court's rulings thereon) are likewise intertwined in this Court: whether the Motion to Stay is properly viewed as moot depends on whether the Motion to Compel Arbitration was properly denied—which, most respectfully, the Facility contends it was not.

Accordingly, in showing that the circuit court erred in denying the Motion to Compel Arbitration, the argument below also shows the court's error in denying the Motion to Stay, which is not properly viewed as moot and should have been (or, alternatively, on remand 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); *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) ("[The] FAA clearly requires a court stay 'any suit or proceeding' pending the arbitration of 'any issue referable to arbitration under an agreement in writing for such arbitration' upon the application of one of the parties."); *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 that the Arbitration Agreement lacks consideration and mutuality.

The Arbitration Agreement clearly reflects the parties' mutual and concurrent promises to give up their respective litigation rights in favor of arbitration. Without question, this is adequate consideration. *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).

Moreover, the FAA mandates that arbitration agreements be placed on equal footing with other contracts and that, while a court may set aside arbitration agreements by state-law defenses that govern the validity, revocability, and

enforceability of contracts generally, it may not do so "by defenses that apply only to arbitration or derive their meaning from the fact that an agreement to arbitrate is at issue." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). To require additional consideration for the Arbitration Agreement beyond the parties' mutual and concurrent promises (to give up their respective litigation rights in favor of arbitration) is to require additional consideration to support the Arbitration Agreement beyond what South Carolina law requires to support other contracts and, thus, to violate the FAA.

Likewise, and besides the fact that it has nothing to do with the issue of consideration, the quote the circuit court cites from *Thompson v. Pruitt Corporation*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016)—"any possible benefit emanating from the [Arbitration Agreement] alone is offset by the [Arbitration Agreement's] requirement that [the resident] waive her right to access the courts and her right to a jury trial"[14]—cannot properly support the court's decision because it places arbitration agreements on unequal footing from other contracts.[15] Under the FAA, it simply cannot be the case that mutual promises constitute sufficient consideration to form a binding agreement except in the case of arbitration agreements.

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14 (R. p. 6 (emphasis omitted), p. 22 (same) (emphasis omitted).)

15 *See Concepcion*, 563 U.S. at 339.

Further still, the idea that mutual promises to arbitrate do not effect an exchange of benefits to both sides is irreconcilable with the strong presumption *in favor of* arbitration agreements and the state and federal policy *favoring* arbitration of disputes. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007) ("There is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes."). There is no way to square the logic of the quote from *Thompson*—and its negative view of arbitration—with the policy preference in favor of arbitration under both South Carolina and federal law. The whole point of arbitration is to make use of an alternative—i.e., outside the traditional litigation process—form of dispute resolution. The giving up—on both sides—of this process (and all that comes along with it) in favor of the alternative of arbitration is the benefit.

Regarding the circuit court's reference to Plaintiff's argument that *if* the Arbitration Agreement is a *precondition* of admission it constitutes an improper benefit or other consideration under federal law relating to Medicare/Medicaid reimbursements, this argument fails of its essential premise: namely, that the Arbitration Agreement was such a *precondition*, which it was *not*,[16] as indeed the circuit court itself recognized. (R. p. 1 ("A separate contract called 'Arbitration

[16] (*See also* R. p. 207, ¶ 9.)

Agreement' was also signed on July 12, 2019 during the admission process but was not a condition of admission."); R. p. 18 (same).)

Lastly, the circuit court conflates the question of whether the Arbitration Agreement is a precondition of admission with the question of whether there is consideration to support the Arbitration Agreement. (*See* R. p. 6 ("If the jury waiver was not a precondition to admission, then it fails for lack of consideration. Here, Defendants cannot have it both ways. They cannot, on the one hand, argue that the waiver was not consideration for the admission, but on the other, argue that the admission was valuable consideration for the waiver."), p. 23 (same).) The fact that the Arbitration Agreement is *not a precondition of admission* means that it cannot possibly violate any federal rule against the Facility accepting additional consideration *as a precondition of admission*. It does not, however, mean that there was no consideration to support the Arbitration Agreement, which there certainly was (as explained above). It just means that the Arbitration Agreement itself did not constitute any form of unlawful consideration to the Facility.

### B. The circuit court erred in finding that the Arbitration Agreement lacks material terms.[17]

The circuit court erroneously found that the Arbitration Agreement is indefinite and/or silent as to material terms and therefore unenforceable, as there

was no meeting of the minds. (R. pp. 7–9, pp. 24–25.) Specifically, the court found that the Arbitration Agreement lacks definiteness as to: (1) arbitrator selection, (2) the rules of evidence, and (3) allowance of pre-hearing discovery. (*Id.*) This was error.

In *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 678 S.E.2d 438 (2009), the arbitration agreement at issue *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

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[17] There is some overlap between Issues/Arguments I.B. and I.C. To the extent relevant, Issue/Argument I.B. is incorporated by reference into Issue/Argument I.C. and vice versa.

438.[18]

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 term *when one is specified within an agreement* and that FAA § 5 does not apply

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[18] 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.

9 U.S.C. § 5.

*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." (R. p. 183.) The only reasonable interpretation of this plain language is that either the parties can agree on an arbitrator or the court will decide.[19] And to be clear, if the parties cannot agree and the court is called upon to decide, this is not the court supplying omitted terms, this is the court giving effect to the agreed-upon terms.

The other matters cited by the circuit court 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"

[19] 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.

that are "not required within an arbitration agreement") (citing *Grant*, 383 S.C. at 131–32, 678 S.E.2d at 439).

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,[20] 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 either to be agreed upon or alternatively selected, the applicability of both the South Carolina ADR Rules (which contain 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* R. p. 183.) And, here again, 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 Concepcion*, 563 U.S. at 339.

[20] 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).

### C. The circuit court erred in finding that the Arbitration Agreement is unconscionable.

Unconscionability requires *both* (1) an absence of meaningful choice on the part of one party due to one-sided contract provisions *and* (2) terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668. Neither is present here.

The first part of the unconscionability test (absence of meaningful choice) is undermined by the express acknowledgement in the Arbitration Agreement itself that the "Resident/Representative is not required to use the . . . Facility for Resident's healthcare needs and . . . there are numerous other health care providers in the State where Facility is located that are qualified to provide such care to Resident." (R. p. 183.) Moreover, as explained above, the Arbitration Agreement was *not a precondition of admission*. In other words, *it did not have to be agreed to* for Mr. Acevedo to be admitted to the Facility, but it was agreed to on his behalf by Mrs. Acevedo, his duly appointed attorney-in-fact, who, having signed it, is legally presumed to have read it, understood it, and agreed to its terms. *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) ("[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms.").

As for the second part of the test (unreasonably oppressive terms), the Arbitration Agreement simply binds the parties (both sides) to submit to arbitration. Not only is this not oppressive, again, "both state and federal policy favor arbitration of disputes." *Simpson*, 373 S.C. at 24, 644 S.E.2d at 668. And there is nothing about the Arbitration Agreement that suggests it is not geared towards achieving an unbiased decision by a neutral decision-maker. *Id.* at 25, 644 S.E.2d at 668 ("In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker.").

Regarding the supposed incongruity between the arbitration process and the discovery needs in nursing home malpractice cases, first off, this amounts to a wholesale attack on the enforceability of arbitration agreements in the nursing home malpractice context, which violates the FAA. *See Concepcion*, 563 U.S. at 339. In any event, however, the South Carolina ADR Rules (*see* Rule 12) and the FAA itself (*see* § 7[21]) provide all the tools necessary for the proceedings, including

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[21] FAA § 7 provides:

> The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be

discovery therein, to be conducted in a way that affords Plaintiff a fair and meaningful opportunity to present her case in arbitration, with no more limitation thereon than that which is inherent in the arbitration process generally as an alternative to litigation, an alternative, which, again, "both state and federal policy favor . . . ." *Simpson*, 373 S.C. at 24, 644 S.E.2d at 668. Indeed, by their express terms, the South Carolina ADR Rules must ("shall") be "construed to secure the just, speedy, inexpensive and collaborative resolution" of disputes. (Rule 1, SCADR.)

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> deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

9 U.S.C. § 7.

### D. Assuming, *arguendo*, it is both (1) a finding and (2) material, the circuit court erred in finding that the Facility is insufficiently named in the Arbitration Agreement.

By way of "Background," the circuit court stated, "The alleged Arbitration Agreement, purportedly a contract between the Facility and Armando, does not contain the legal name of the Defendant but rather references a name of a nonexistent entity not registered with the South Carolina Secretary of State called 'Lake Emory Post-Acute Care." (R. p. 2, p. 18 (same).) The significance, if any, of this language is not clear, but assuming, *arguendo*, it is both (1) a finding and (2) material, the circuit court erred in finding that the Facility is insufficiently named in the Arbitration Agreement.

Of course, as an arbitration agreement covered by the FAA, the Arbitration Agreement "must [be] place[d] . . . on equal footing with other contracts . . . and enforce[d] . . . according to [its] terms[.]" *Concepcion*, 563 U.S. at 339. The purpose of South Carolina's 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). Indeed, "[a]n 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). Also, for a contract to be ambiguous, "the terms of the contract [must be] *reasonably* susceptible of more than one interpretation." *See S.C. Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001) (emphasis added); *see also Rodarte v. University of South Carolina,* 419 S.C. 592, 604, 799 S.E.2d 912, 918 (2017) ("[A]n unambiguous contract is by definition capable of only one *reasonable* interpretation.") (citation omitted) (emphasis added).

There is no ambiguity about the identification of the contracting parties here. The Arbitration Agreement is not *reasonably* susceptible of more than one interpretation in this regard. The circuit court itself recognized that the Arbitration Agreement was "signed . . . during the admission process . . . ." (R. p. 1, p. 18 (same).) Who else but the Facility, i.e., the facility into which Mr. Acevedo was then being admitted, would be the other party to the contract? Moreover, "[a] contract is good between the parties, no matter how incorrect the names used in the paper may be, if it appears they were intended as the names of the parties to be bound by the contract or to receive its benefits." *Cobb & Seal Shoe Store v. Aetna*

*Ins. Co.*, 78 S.C. 388, 58 S.E. 1099 (1907). Without question, the names of the parties to be bound to the contract at issue, i.e., the Arbitration Agreement, were sufficiently stated/identified here, and refusal to enforce the Arbitration Agreement cannot properly be based on the (supposed) discrepancy at issue.

**II. To the extent that it constitutes error that HVH must seek to correct on appeal, as opposed to a matter that HVH may address in the circuit court directly (via Rule 60 or any other appropriate procedural vehicle for relief), the circuit court erred in ruling on the Motion to Dismiss after the motion had already been withdrawn with Plaintiff's consent and without prejudice to HVH refiling it.**

By the time that the circuit court ruled on it, the Motion to Dismiss had already been withdrawn with Plaintiff's consent and without prejudice to HVH refiling it. (R. pp. 126:1–129:5.) Indeed, by the time that the circuit court ruled on it, the Motion to Dismiss had already been marked completed by the Clerk of Court[22] and, accordingly, was not in fact on the docket. *See* Rule 40(a)(1), SCRCP ("The Clerk of Court shall maintain . . . a Nonjury Docket of all nonjury matters including all motions filed in the Circuit Court."); Rule 40(h), SCRCP ("All motions on the Motions Calendar and motions filed in any case shall be immediately placed on the Nonjury Docket."). Thus, to the extent that it constitutes error that HVH must seek to correct on appeal, as opposed to a matter that HVH may address in the circuit court directly (via Rule 60 or any other appropriate procedural vehicle for relief), the circuit court erred in ruling on the

Motion to Dismiss after it had already been withdrawn with Plaintiff's consent and without prejudice to HVH refiling it, as the Motion to Dismiss was not properly before the court for decision—indeed, at the time the court ruled on the Motion to Dismiss, the motion was nonexistent.

## CONCLUSION

For the foregoing reasons, Appellants ask this Honorable Court to reverse the circuit court, specifically, to compel Plaintiff's claims against the Facility to arbitration (or, alternatively, to remand the case to the circuit court with instructions that it do so); to stay this action until any and all arbitration proceedings are completed (or, alternatively, to remand the case to the circuit court with instructions that it either do so or conduct any further proceedings necessary to decide the Motion to Stay on the merits); and, to the extent that it constitutes error that HVH must seek to correct on appeal, as opposed to a matter that HVH may address in the circuit court directly (via Rule 60 or any other appropriate procedural vehicle for relief), to vacate the circuit court's denial of the Motion to Dismiss (or, alternatively, to remand the case to the circuit court with instructions that it do so).

**<SIGNED ON THE FOLLOWING PAGE>**

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[22] (*See* R. pp. 253–56.)

Respectfully submitted,

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