THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-42-00219
Appellate Case No. 2020-001613

Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr., individually and on behalf of all others similarly situated,

Respondents,

v.

Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; CHSPSC, LLC; Professional Account Services, Inc.,

Appellants,

APPELLANTS' REPLY TO RESPONDENTS' RETURN TO THE MOTION TO FILE DOCUMENTS UNDER SEAL

Appellants Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital ("Mary Black"); CHSPSC, LLC ("CHSPSC"); and Professional Account Services, Inc. ("PASI") (collectively, "Defendants") respectfully submit this Reply to the Return to Appellants' Motion to File Documents Under Seal filed by Respondents Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr. (collectively, "Plaintiffs").

INTRODUCTION

In their Return, Plaintiffs state that they have no objection to the filing of the CIGNA

Agreement under seal, and Plaintiffs only object to the filing of the MedCost Agreement under seal. Plaintiffs' arguments in opposition to filing the MedCost Agreement under seal should be rejected and the Court should permit Defendants to file the MedCost Agreement under Seal on the grounds that (1) Plaintiffs present no argument that the MedCost Agreement fails to satisfy the *U-Drive It* and Rule 41.1, SCRCP, factors for filing a document under seal; and (2) the MedCost Agreement was properly included in Defendants' Designation of Matter to be Included in the Record on Appeal because the MedCost Agreement was filed, under seal, as an exhibit to the motions and subsequent orders that are the subject of the above-captioned appeal.

ARGUMENTS

I. Plaintiffs make no argument that the MedCost Agreement fails to satisfy the *U-Drive It* and Rule 41.1 factors for filing a document under seal.

The Court is to consider the thirteen (13) factors and considerations established in *Ex parte Capital U–Drive–It, Inc.,* 369 S.C. 1, 630 S.E.2d 464 (2006) and Rule 41.1, SCRCP, when considering whether to grant a Motion to File Documents Under Seal. *See In re Revised Ord. Concerning Pers. Identifying Info. & Other Sensitive Info. in App. Ct. Filings*, 407 S.C. 607, 608-09, 757 S.E.2d 421, 422 (2014). Defendants' Motion to File Documents Under Seal properly addressed all of the necessary *U-Drive It* and Rule 41.1 factors and considerations for filing the MedCost Agreement and CIGNA Agreement under seal.

Plaintiffs' Return makes no argument in opposition to the application of *U-Drive It* and Rule 41.1 factors and considerations. With no substantive opposition to the required factors and considerations for filing the MedCost Agreement and CIGNA Agreement under seal, the Court should grant Defendants' Motion to File Documents Under Seal and permit the MedCost Agreement and the CIGNA Agreement to be filed under seal in a separately numbered volume of the Record on Appeal.

II. The MedCost Agreement was presented to the circuit court and is relevant to the pending appeal; therefore, the MedCost Agreement is properly designated as matter to be included in the Record on Appeal.

Plaintiffs' argument in opposition to Defendants' Motion to File Documents Under Seal is based upon the incorrect proposition that the MedCost Agreement should not be included in the Record on Appeal at all. Specifically, Plaintiffs argue the MedCost Agreement should not be filed under seal because the circuit court declined to consider the terms of the MedCost Agreement when ruling on Defendants' Motions to Dismiss or, in the alternative, to Stay the Case and Compel Arbitration. Contrary to Plaintiffs' assertions, the MedCost Agreement is a proper document to be include in the Record on Appeal.

The South Carolina Appellate Court Rules contain two basic requirements for including matter in the Record on Appeal: (1) the matter is relevant to the pending appeal, and (2) the matter was presented to the lower court. *See* Rule 210, SCACR; Rule 209, SCACR. The MedCost Agreement satisfies both of these requirements and the procedural history of this case demonstrates as much.

On June 8, 2020, Defendants filed their respective Motions to Dismiss or, in the alternative, to Stay the Case and Compel Arbitration.[1] Defendants' Motions identified the MedCost Agreement as Exhibit A and stated that the MedCost Agreement would be submitted to the circuit court following the issuance of an order allowing the MedCost Agreement to be filed under seal. In their Motions, Defendants argued that Plaintiff Blackwell's claims—which are dependent on her ability to enforce the MedCost Agreement—should be dismissed because she is not a signatory to the MedCost Agreement and the MedCost Agreement contains an express disclaimer of all third-party beneficiaries. Defendants also argued that Plaintiff Owens should be compelled to

[1] A copy of Mary Black's Motion to Dismiss or, in the alternative, to Stay the Case and Compel Arbitration is attached hereto as **Exhibit A**.

arbitrate his claims pursuant to the arbitration provision in the CIGNA Agreement, which was identified as Exhibit B to the Motions.

On July 2, 2020, Defendants filed a Consent Motion to File Exhibits under Seal requesting the circuit court's permission to file the MedCost Agreement and CIGNA Agreement under seal.[2] On July 8, 2020, the circuit court granted Defendants' Consent Motion to File Exhibits Under Seal and the MedCost Agreement and CIGNA Agreement were filed under seal with the circuit court and became a part of the record before the circuit court.

The circuit court subsequently issued an order denying Defendants' Motions to Dismiss or, in the alternative, to Stay the Case and Compel Arbitration and that order is the subject of the above-captioned appeal. Whether the circuit court erred in failing to compel Plaintiff Owens to arbitrate his claims against Defendants is immediately appealable. S.C. CODE ANN. § 15-48-200. The Court has the authority to exercise its discretion to review the other interlocutory issues raised by Defendants in their Motions—and ruled upon in the circuit court's order—because issues raised in an interlocutory order that are not directly appealable can be considered by the Court when raised in tandem with an immediately appealable issue. *See Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460,469, 556 S.E.2d 397, 402 (Ct. App. 2001); *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 413, 574 S.E.2d 228, 231 (Ct. App. 2002). Therefore, the Court has the discretion to consider whether Plaintiff Blackwell's claims fail as a matter of law because the express language of the MedCost Agreement bars third-parties—like Plaintiff Blackwell—from enforcing its terms.

Accordingly, the MedCost Agreement is a proper document to be included in the Record on Appeal because (1) the MedCost Agreement is relevant to the Defendants' appeal, and (2) the MedCost Agreement was presented to the lower court.

[2] A copy of Defendants' Consent Motion to File Under Seal is attached hereto as **Exhibit B**.

CONCLUSION

For the reasons set forth herein and in Defendants' Motion to File Documents Under Seal, Defendants request the Court GRANT the Motion to File Under Seal and order a separate volume of the Record on Appeal be created for the Contracts and filed under seal.

Respectfully submitted,

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September 2, 2021
Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr., individually and on behalf of all others similarly situated, Plaintiffs, v. Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; and CHSPSC, LLC; Professional Account Services, Inc., Defendants.	C.A. No. 2017-CP-42-00219 **DEFENDANT MARY BLACK HEALTH SYSTEM, LLCS' MOTION DISMISS PURSUANT TO RULE 12(B)(6) OR, IN THE ALTERNATIVE, TO STAY THE CASE AND COMPEL ARBITRATION**

Defendant Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital ("Mary Black"'), hereby moves to dismiss the Amended Complaint of each Plaintiff, Jo Ann Blackwell, Michelene Brooks and Samuel H. Owens's (collectively, "Plaintiffs"), pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Alternatively, Mary Black moves the Court to stay the case and compel Plaintiff Owens to arbitrate his claims against Mary Black.

I. The Amended Complaint of each Plaintiff fails to state facts sufficient to constitute a cause of action against Mary Black.

A. Failure to State a Claim for Tortious Interference with Contractual Relationship

The Court should dismiss Plaintiffs' claims for tortious interference with the contractual relationship between Plaintiffs and their health insurance carriers because the generic and conclusory allegations in the Amended Complaint fail to allege the essential elements of the claim that (1) Plaintiffs' contracts with their health insurance carriers were breached and (2) that Mary Black caused Plaintiffs' contracts with their health insurance carriers to be breached. *See Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305-06 (1993) (stating that a claim for tortious interference with contract requires a plaintiff allege the following: (1) the existence of

a valid contract, (2) the wrongdoer's knowledge thereof, (3) the intentional procurement of its breach, (4) the absence of justification, and (5) resulting damages). Without a breach of Plaintiffs' contracts with their health insurance carriers, there can be no recovery under a cause of action for tortious interference with a contractual relationship. *First Union Mortgage Corp. v. Thomas*, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994). Accordingly, Plaintiffs' claims for tortious interference with a contractual relationship must be dismissed as a matter of law.

II. Plaintiff Brooks

A. Plaintiff Brooks's claims fail under the Medicare Act.

All of Plaintiff Brooks's claims are based on the allegations that she had health insurance coverage through Medicare and that Mary Black is liable because it sought collections for her medical care costs by asserting a right to payment against the insurer for the at-fault driver in her automobile accident instead of immediately and directly submitting the claim for her medical care costs to Medicare. However, in accordance with 42 U.S.C.A. § 1395y(b)(2)(A)(ii) ("The Medicare Act"), Mary Black was required to seek payment from any applicable auto or liability policy coverage prior to seeking or obtaining any payment from Medicare. *See Parkview Hosp., Inc. v. Roese,* 750 N.E.2d 384, 389 (Ind. Ct. App. 2001) ("[W]e find that Congress's intent is clearly expressed in 42 U.S.C. § 1395y(b)(2)(A)(ii). It explicitly prohibits medical service providers from collecting payment from Medicare when payment can reasonably be expected to be made promptly under an automobile or liability insurance policy."); *Joiner v. Med. Ctr. E., Inc.*, 709 So. 2d 1209, 1221 (Ala. 1998) (holding that an Alabama hospital had a right under the Medicare Act to obtain full payment of its charges from the proceeds of the plaintiff patient's settlement with an automobile liability carrier, instead of filing a claim for reimbursement with Medicare). Therefore, Mary Black may not be held liable for acting in compliance with the Medicare Act and all of Plaintiff Brooks's claims must be dismissed as a matter of law.

B. Plaintiff Brooks's claims are barred by the voluntary payment doctrine.

Plaintiff Brooks's claims are barred by the voluntary payment doctrine. *Hardaway v. S. Ry. Co.*, 90 S.C. 475, 488-89, 73 S.E. 1020, 1025 (1912) (stating that it is an elementary principle of South Carolina law that no action will lie to recover money voluntarily paid); *Moody v. Stem*, 214 S.C. 45, 60, 51 S.E.2d 163, 169 (1948). Plaintiff Brooks alleges that "Defendants agreed to accept a 50% reduction on Plaintiff Brooks's account and settle for $4,991.22." [Amended Complaint ¶ 46]. Therefore, her claims to recover the funds she voluntarily paid are barred by the voluntary payment doctrine and must be dismissed as a matter of law. *See Cross v. Ciox Health, LLC*, No. 4:19-CV-7-FL, 2020 WL 534289, at *11 (E.D.N.C. Feb. 3, 2020) (applying similar North Carolina law and granting a motion to dismiss pursuant to Rule 12(b)(6) on the grounds that the voluntary payment doctrine barred the plaintiffs' purported class claims for unjust enrichment because the plaintiffs' attorneys voluntarily paid the requested amounts to a medical records provider).

III. Plaintiff Blackwell

A. Plaintiff Blackwell fails to state a claim for unjust enrichment

Plaintiff Blackwell's claim for unjust enrichment must be dismissed as a matter of law pursuant to Rule 12(b)(6). The Amended Complaint does not even allege that Plaintiff Blackwell, or anyone on her behalf or for her benefit, made any payment or provided any value to Mary Black for the medical care she received. *See Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994) (stating that South Carolina law requires that anyone seeking recovery for unjust enrichment must plead and prove: "(1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its

value"). Accordingly, Plaintiff Blackwell's claim for unjust enrichment must be dismissed as a matter of law.

B. The MedCost Agreement bars enforcement by non-signatory third-parties.

Plaintiff Blackwell's claims must be dismissed as a matter of law because all of her claims are derived from her alleged ability to enforce the negotiated rates for medical services in the Participating Hospital Agreement between her insurance provider (MedCost) and Mary Black, (Amended Complaint ¶¶ 28-31). The express language of that Agreement expressly denies non-signatory third-parties (like Plaintiff Blackwell) the right to sue to enforce its terms. (A copy of the Participating Hospital Agreement will be filed as **Exhibit A** to this Motion after the Court has entered an appropriate order permitting Defendants to file confidential contracts with insurance carriers under seal). Since Plaintiff Blackwell lacks standing to enforce the Participating Hospital Agreement as a third-party beneficiary, she lacks standing to enforce the terms of the agreement and pursue any of her alleged claims. Therefore, as a matter of law, Plaintiff Blackwell's claims fail and must be dismissed.

IV. Plaintiff Owens

A. Plaintiff Owens must arbitrate his claims against Mary Black.

If the Court allows Plaintiff Owens's claims against Mary Black to continue in any way based on the allegations that Plaintiff Owens is entitled to enforce the billing and payment terms of the Hospital Services Agreement between his alleged insurance provider (CIGNA) and Mary Black, then Mary Black moves to compel arbitration of Plaintiff Owens's claims pursuant to the arbitration requirements of the Agreement and to stay further proceedings in this action. (A copy of the Hospital Services Agreement between CIGNA and Mary Black will be filed as **Exhibit B** to this Motion after the Court has entered an appropriate order permitting Defendants to file confidential contracts with insurance carriers under seal). Section 6.2.2 of the CIGNA Hospital

Services Agreement states, "Arbitration shall be the exclusive remedy for the resolution of disputes arising under this Agreement." Plaintiff Owens is attempting to enforce the terms of agreement between Mary Black and CIGNA against Mary Black. If Plaintiff Owens is allowed to proceed on claims seeking to enforce terms of that Agreement against Mary Black, then Plaintiff Owens must individually arbitrate his claims against Mary Black pursuant to the terms of the arbitration agreement contained within the contract between Mary Black and CIGNA.

B. Plaintiff Owens's claims are barred by the applicable statutes of limitation.

If the Court finds that Plaintiff Owens's claims are not subject to the arbitration provision in the Hospital Services Agreement, then the Court should dismiss Plaintiff Owens's claims for tortious interference with contract and unjust enrichment on the grounds that those claims are barred by the applicable statutes of limitation. *See Graham v. Welch, Roberts & Amburn, LLP*, 404 S.C. 235, 239, 743 S.E.2d 860, 862 (Ct. App. 2013) (holding a claim for unjust enrichment was barred by the three-year statute of limitations); *Burgess v. Elliott*, No. 3:16-CV-3325-RBH, 2017 WL 1505421, at *3 (D.S.C. Apr. 27, 2017), *aff'd*, 696 F. App'x 125 (4th Cir. 2017) ("The applicable statute of limitations for civil actions of breach of contract, negligence, and tortious interference with contract is likewise three years."). In the Amended Complaint, Plaintiff Owens alleges he settled his bill with the Mary Black on October 14, 2016. [Amended Complaint ¶ 52]. Plaintiffs filed the Motion to Amend Complaint on October 18, 2019. Therefore, more than three (3) years have passed since Plaintiff Owens knew or should have known of his alleged claims. Accordingly, his claims are barred by the applicable statutes of limitation.

C. Plaintiff Owens's claims are barred by the voluntary payment doctrine.

If the Court finds that Plaintiff Owens's claims are not subject to the arbitration provision in the Hospital Services Agreement, then Plaintiff Owens's claims are barred by the voluntary payment doctrine. *See Hardaway v. S. Ry. Co.*, 90 S.C. 475, 488-89, 73 S.E. 1020, 1025 (1912)

(stating that it is an elementary principle of South Carolina law that no action will lie to recover money voluntarily paid); *Moody v. Stem*, 214 S.C. 45, 60, 51 S.E.2d 163, 169 (1948). Plaintiff Owens alleges that "Defendants agreed to accept a 50% reduction on Plaintiff Owens's account and settle for $4,543.38." [Amended Complaint ¶ 52]. Therefore, his claims to recover the funds he voluntarily paid are barred by the voluntary payment doctrine and must be dismissed as a matter of law. *See Cross*, 2020 WL 534289, at *11.

CONCLUSION

This Motion is based upon the allegations in the Amended Complaint, the controlling statutes and case law, and may be supported by such memoranda of law and arguments as are submitted to the Court and parties prior to a hearing hereon.

WHEREFORE, having shown the basis for the Motion to Dismiss or, in the alternative, compelling arbitration, Mary Black requests the Court dismiss Plaintiffs' Amended Complaint on the grounds that Plaintiffs have failed to allege facts sufficient to constitute a cause of action, or in the alternative, compel Plaintiff Owens to arbitrate his claims against Mary Black.

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EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr., individually and on behalf of all others similarly situated, Plaintiffs, v. Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; and CHSPSC, LLC; Professional Account Services, Inc., Defendants.	C.A. No. 2017-CP-42-00219 **DEFENDANTS' CONSENT MOTION TO FILE EXHIBITS UNDER SEAL**

Defendants Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital ("Mary Black"'), Professional Account Services, Inc. ("PASI") and CHSPSC, LLC ("CHSPSC") (collectively, "Defendants"), with the consent of Plaintiffs Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr. ("Plaintiffs"), hereby move the Court pursuant to Paragraph 6 of the applicable Protective Order in this Case and Rule 41.1 of the South Carolina Rules of Civil Procedure for an order permitting Defendants to file the Participating Hospital Agreement between Mary Black and MedCost (identified as **Exhibit A** in the Motion to Dismiss or, In The Alternative, to Compel Arbitration) and the Hospital Services Agreement between Mary Black and CIGNA (identified as **Exhibit B** in the Motion to Dismiss or, In the Alternative, to Compel Arbitration) (collectively, the "Confidential Agreements") under seal with the Court in order to maintain the confidentiality of those Confidential Agreements. In support of this Motion, Defendants state as follows:

1. The parties to this litigation previously agreed to maintain the confidentiality of certain documents pursuant to the Protective Order filed on April 11, 2019. The purpose of the

Court's Consent Protective Order is to protect the confidentiality of the Confidential Agreements and legitimate trade secrets contained therein.

2. The Participating Hospital Agreement contains confidential and proprietary information and trade secrets belonging to Mary Black and CIGNA. The Participating Hospital Agreement contains confidential commercial terms and the public disclosure of this information would be to the detriment of the contracting parties. Upon entering the Participating Hospital Agreement all parties had an expectation of confidentiality.

3. The Hospital Services Agreement contains confidential and proprietary information and trade secrets belonging to Mary Black and MedCost. The Hospital Services Agreement contains confidential commercial terms and the public disclosure of this information would be to the detriment of the contracting parties. Upon entering the Hospital Services Agreement all parties had an expectation of confidentiality.

4. The fairness of this litigation will not be impacted by protecting the confidentiality of the Hospital Services Agreement. *See* Rule 41.1(b), SCRCP. Under the terms of the Consent Protective Order the parties are presently subject to certain additional confidentiality requirements.

5. The public does not have a significant interest in the terms of a private contract that contains a confidentiality clause and the restriction of public access to a confidential contract containing trade secrets is appropriate. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006) ("Public access to court records may be restricted in certain situations, such as matters involving . . . legitimate trade secrets, or information covered by a recognized privilege.").

6. There is no public or professional significance of this lawsuit that would merit the disclosure of a confidential contract.

7. The Confidential Agreements are the best evidence of the terms of the respective agreements, and they should be filed under seal because the parties to the Confidential Agreements had an expectation of confidentiality when they entered their private contracts. The fact that Plaintiffs' lawsuit implicates certain terms of the Confidential Agreements should not dissolve the contracting parties' expectation of confidentiality.

Accordingly, Defendants request the Court issue an order allowing the Confidential Agreements to be placed under seal and that the Confidential Agreements will be used only for Court proceedings in this matter and will not be made available to the public, in order to protect the confidentiality of the information contained therein.

Respectfully Submitted,

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