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SC Court of Appeals

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

Appeal from Greenville County
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2018-CP-23-01934
Appellate Case No. 2022-000080

James Boyd Jr.,

Appellant,

v.

THI of South Carolina at Magnolia Place at Greenville, LLC;
Fundamental Clinical and Operational Services, LLC; and
Fundamental Administrative Services, LLC,

Respondents.

MOTION TO DISMISS APPEAL

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NOW COME Defendants/Respondents, THI of South Carolina at Magnolia Place at Greenville, LLC (the “Facility”); Fundamental Administrative Services, LLC (“FAS”); and Fundamental Clinical and Operational Services, LLC (“FCOS”) (collectively, “Defendants”), by and through their undersigned counsel, and, on the grounds set forth below, hereby move this Honorable Court to dismiss this appeal.

BACKGROUND

Plaintiff/Appellant, James Boyd (“Mr. Boyd”), filed this nursing home malpractice action in the Greenville County Court of Common Pleas on March 27, 2018. Mr. Boyd’s operative complaint, namely, his Second Amended Complaint, filed September 19, 2018, asserts a number of claims against Defendants for money damages based on his contention that he received deficient care during his residency at the Facility¹. (*See* 2d Am. Compl. [a copy of which is attached hereto as **Exhibit A**].)

By order filed August 20, 2019, the circuit court, the Honorable Perry H. Gravely presiding, granted the Facility’s motion to compel Mr. Boyd’s claims to arbitration, as well as accompanying motions by FAS and FCOS to stay this action pending the completion of arbitration between Mr. Boyd and the Facility. (*See* Order Granting the Facility’s Mot. to Compel Arbitration & Granting FAS and FCOS’s Mots. to Stay [a copy of which is attached hereto as **Exhibit B**].) By

¹ The Facility is a skilled nursing facility in Greenville County.

order filed October 17, 2019, the circuit court affirmed its order of August 20, 2019, denying Mr. Boyd's motion to reconsider. (*See* Order Denying Pl.'s Mot. to Reconsider [a copy of which is attached hereto as **Exhibit C**].) Mr. Boyd's claims against the Facility then proceeded in arbitration before a single arbitrator, D.A. Early, III, Esquire (the "Arbitrator").

The arbitration hearing was conducted in late October 2021, and the Arbitrator issued his Final Order of Arbitration (the "Arbitration Award") about two months later, concluding that the Facility was not liable to Mr. Boyd. (*See* Arbitration Award [a copy of which is attached hereto as **Exhibit D**].) The Arbitration Award is dated December 20, 2021; Defendants received a copy of it on or about December 22, 2021; and a copy of it was filed with the circuit court on December 29, 2021. (*See* Arbitration Award [**Ex. D**].)²

Filed February 14, 2022, Defendants' Motion for Order Confirming Arbitration Award and Granting Judgment for Defendants (the "Motion for Confirmation") has not been acted on by the circuit court. (*See* Motion for Confirmation [a copy of which (minus the exhibits attached thereto) is attached hereto as **Exhibit F**].) Indeed, because of the pendency of this appeal, the circuit court has advised Defendants that, in its view, it lacks jurisdiction to act on the

² To be clear, the copy of the Arbitration Award filed with the circuit court was filed by Greenville County ADR Coordinator CJ Noblitt. A copy of the NEF for the filing is attached hereto as **Exhibit E**. The Arbitration Award has not been confirmed (or otherwise addressed) by order of the circuit court.

Motion for Confirmation. A copy of email correspondence from the clerk's office in this regard is attached hereto as **Exhibit G**.³

ARGUMENT

1. **This appeal should be dismissed because the controlling statute, S.C. Code Ann. § 15-48-200, does not give Mr. Boyd the right to appeal the orders his notice of appeal purports to appeal; nor, indeed, has any order appealable under § 15-48-200 been filed in this action.**

“The right of appeal arises from and is controlled by statutory law.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). The controlling statute here is § 15-48-200 of South Carolina's Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 to -240 (the “SCAA”). *See Toler's Cove Homeowners Assoc., Inc. v. Trident Constr. Co., Inc.*, 355 S.C. 605, 611, 586

³ Defendants respectfully disagree with the circuit court's position that it lacks jurisdiction to act on the Motion for Confirmation, as, of course, as explained in the instant motion, Defendants contend that this appeal is improper and, thus, does not affect the circuit court's jurisdiction. *S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 536 (1986) (“Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, nor does it stay further proceedings in the lower court.”); *id.* at 585–86, 340 S.E.2d at 536 (holding “the [trial court] never lost jurisdiction and properly proceeded to trial” notwithstanding “[t]he trial was completed five days before the remittitur was issued” because the Supreme Court dismissed the appeal on the basis that the order appealed from “was interlocutory, and not appealable”); *see also Brown v. Greenwood Sch. Dist. 50 Bd. of Trustees*, 344 S.C. 522, 524, 544 S.E.2d 642, 643 (Ct. App. 2001) (citing *Arnold*, 287 S.C. at 586, 340 S.E.2d at 536, for the proposition that notice of appeal of an unappealable order does not transfer jurisdiction away from the trial court).

S.E.2d 581, 585–86 (2003) (holding that, even in cases where the FAA⁴ applies to preempt substantive state law, it does not preempt state procedural law regarding the appealability, or lack thereof, of orders regarding arbitration).⁵

Section 15-48-200 provides as follows:

- (a) An appeal may be taken from:
 - (1) An order denying an application to compel arbitration made under Section 15-48-20;
 - (2) An order granting an application to stay arbitration made under Section 15-48-20(b);
 - (3) An order confirming or denying confirmation of an award;
 - (4) An order modifying or correcting an award;
 - (5) An order vacating an award without directing a rehearing; or

⁴ The “FAA” is the Federal Arbitration Act, 9 U.S.C §§ 1–16.

⁵ To be clear, the Arbitration Agreement involved here is covered by the FAA. For one reason, it expressly states that the FAA applies, and this must be enforced like any other contract term. *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 196, 844 S.E.2d 66, 70 (Ct. App. 2020). Moreover, the FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction,” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001), and, as our state Supreme Court has recognized, nursing home residency agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014). Accordingly, the FAA applies to preempt any provision of state law that would subject the Arbitration Agreement to disfavored treatment relative to other contracts, but as explained by the *Toler’s Cove* Court, South Carolina’s procedural rule on the appealability of arbitration orders (§ 15-48-200) is not preempted by the FAA and, thus, applies.

- (6) A judgment or decree entered pursuant to the provisions of this chapter.
- (b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Dated January 17, 2022, Mr. Boyd's notice of appeal appeals the two circuit court orders attached to the instant motion as **Exhibits B** and **C**, respectively, i.e.:

- [Judge Gravely's] **Order Granting Defendant THI of South Carolina at Magnolia Place at Greenville, LLC's Motion to Compel Arbitration and Granting Fundamental Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC's Motions to Stay**, filed August 20, 2019; and
- [Judge Gravely's] **Order denying Plaintiff's Motion to Reconsider and Affirming its previous Order granting Defendant's Motion to Dismiss and Compel Arbitration**, filed October 17, 2019.

(Notice of Appeal (emphasis in original) [a copy of which (minus the appealed orders attached thereto) is attached hereto as **Exhibit H**].)

As explained above, the first (and principal) of these orders, the order filed August 20, 2019, granted the Facility's motion to compel Mr. Boyd's claims to arbitration and FAS and FCOS's motions to stay this action pending the completion of arbitration between Mr. Boyd and the Facility,⁶ and the second

⁶ (See Order Granting the Facility's Mot. to Compel Arbitration & Granting FAS and FCOS's Mots. to Stay [**Ex. B**].)

order, filed October 17, 2019, denied reconsideration of the first. (*See* Order Denying Pl.'s Mot. to Reconsider [Ex. C].)

The orders do not fall within subsection (a)(1) of § 15-48-200, because neither of them *denies* an application to compel arbitration made under § 15-48-20. To the contrary, the first order *granted* such an application and the second order affirmed the first.

The orders do not fall within subsection (a)(2) of § 15-48-200, because neither of them grants an application to stay arbitration made under § 15-48-20(b). Indeed, there was no such application in the first place.

The orders do not fall within subsections (a)(3), (a)(4), or (a)(5) of § 15-48-200, because neither of them confirms or denies confirmation of an arbitration award or modifies or corrects an arbitration award or vacates an arbitration award without directing a rehearing. Again, Defendants' Motion for Confirmation is pending, and there is/has been no motion to modify or correct or vacate the Arbitration Award.

The orders do not fall within subsection (a)(6) of § 15-48-200, because neither of them is a judgment or decree entered pursuant to the provisions of the

SCAA. Such a judgment or decree is what is sought via Defendants' pending Motion for Confirmation.⁷

Again, the right to appeal is statutory, and the controlling statute here is § 15-48-200. It does not give Mr. Boyd the right to appeal the orders his notice of appeal purports to appeal; nor, indeed, has any order appealable under § 15-48-200 been filed in this action. Accordingly, this appeal should be dismissed.

CONCLUSION

For the foregoing reasons, Defendants ask for this appeal to be dismissed.

<SIGNED ON THE FOLLOWING PAGE>

⁷ To be clear, as reflected in subsections (a)(1) to (a)(5), which refer to different types of immediately appealable “orders,” § 15-48-200 distinguishes between a “judgment” or “decree” and an “order.” What the SCAA means by “judgment” or “decree” in this context is a judgment or decree entered in accordance with a circuit court order confirming an arbitration award. *See* § 15-48-120 (“Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 15-48-130 and 15-48-140.”); § 15-48-150 (“*Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.*”) (emphasis added).

Respectfully submitted,
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March 8, 2022

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-23-01934

JAMES BOYD, JR.,

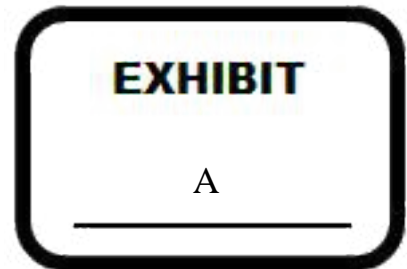
Plaintiff,

v.

THE STATE OF SOUTH CAROLINA AT
MAGNOLIA PLACE AT GREENVILLE,
LLC; FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC;
and FUNDAMENTAL CLINICAL AND
OPERATIONAL SERVICES, LLC,

Defendant(s).

**SECOND AMENDED COMPLAINT
(Jury Trial Demanded)**



The Plaintiff, complaining of the Defendant, alleges and says as follows:

CASE SYNOPSIS

1. James C. Boyd, Jr. was born and raised in Chapin, South Carolina. After high school, James made his living through hard work and manual labor. Before June 3, 2016, James was working for a refrigeration company. James moved in with his mother to help her with daily chores and give her some financial assistance. Unfortunately, James life has changed forever and he is now dependent on others for every aspect of his life.
2. On the morning of June 3, 2016, James was riding his bicycle when he was violently hit by an unidentified driver. James lay helpless in the ditch, eventually being rushed to Richland Memorial. Once at Richland Memorial, a MRI of James' cervical spine showed both cord contusion and compression at the C4-C5 level with asymmetrical disk bulging at the C5-C6 level. Emergency surgery was conducted, but unfortunately it was determined that James was permanently paralyzed because of this accident.
3. On June 30, 2016, James was admitted into Defendants' facility. By August 5, 2016,

James had developed a sacral stage III/IV pressure wound(s), pressure ulcer of right and left heel - unstageable. On August 17, 2016, James was admitted into a hospital with fever, sacral wound, and sacral osteomyelitis and eventually diagnosed with sepsis, sacral wound, and stage IV pressure ulcer. By December 12, 2016, James was diagnosed with a stage III pressure ulcer of sacral region and unstageable pressure ulcer of left heel. By February 2, 2017, James was diagnosed with sepsis due to infected stage IV decubitus ulcer. James continues to struggle with these injuries. Liability is clear in this case.

PARTIES & JURISDICTION

4. That the Plaintiff, James Boyd, Jr., is a citizen and resident of Greenville County, State of South Carolina.
5. That upon information and belief, Defendant THI of South Carolina at Greenville at Magnolia, LLC, (hereinafter "Defendant Magnolia") is incorporated in the State of Delaware with its principal place of business in Greenville County, and Corporation Service Company is the representative agent who can be served with process at 1703 Laurel Street, Columbia, State of South Carolina 29201.
6. That the Defendant Fundamental Administrative Services, LLC (hereinafter "FAS") is a business organized and existing under the laws of the State of Delaware providing payroll, general accounting, accounts payable, accounts receivable, nursing home management and administration, direction, operation and purchasing services as well as oversight in the hiring and firing of suppliers and vendors. This Defendant, through its provision of services, maintains agents and transacts business, deriving substantial revenue therefrom, in Greenville County, South Carolina. Upon information and belief, through its individual actions and in concert with its affiliates, parent corporations and

subsidiaries, this Defendant engaged in oversight, management, and direction and operation of nursing home facilities in Greenville County, South Carolina, deriving substantial revenue therefrom, and by virtue of it transacting business in Greenville County, South Carolina, owning and/or leasing property directly or indirectly in Greenville County, South Carolina, maintaining agents and employees in Greenville County, South Carolina, and committing tortious acts both outside and inside South Carolina causing injury to the Plaintiff in Greenville County.

7. That the Defendant Fundamental Clinical and Operational Services, LLC (hereinafter “FCOS”) is a business organized and existing under the laws of the State of Delaware providing clinical services to nursing home facilities by employing physicians, nurses, dietary, therapy, administrative, nursing aide, and other related staff to provide health services to patients and who represented itself to the Plaintiff and the public at large as being highly skilled in providing clinical consulting services to skilled nursing healthcare centers and to the residents of such skilled nursing healthcare centers such as James Boyd. This Defendant owns property, advertises, maintains agents, and/or transacts business, deriving substantial revenue therefrom in Greenville County, South Carolina, both through its individual actions and through its affiliates and subsidiaries. At all times relevant herein FCOS was and is a wholly owned subsidiary of FAS and provides nursing, dietary, therapeutic, administrative, and other related services on behalf of Magnolia place. The acts of FCOS were directed by one or more of the above named parent and/or affiliated companies. Furthermore, at all times relevant herein, agents, employees, servants and apparent agents of FCOS acted on behalf of themselves and on behalf of FCOS, and FCOS acted on behalf of Magnolia Place. That this Court further

has jurisdiction over FCOS by virtue of its transacting business in Greenville County, South Carolina, owning and/or leasing property directly or indirectly in Greenville County, South Carolina, maintaining agents and employees in Greenville County, South Carolina, and committing tortious acts both outside and inside South Carolina causing injury to the Plaintiff in Greenville County.

8. That Defendant Magnolia, FAS, and shall hereinafter be collectively referred to as “Nursing Home Defendants” or “Defendants”.
9. That the Nursing Home Defendants collectively were aware of failures to provide adequate care as described both above and below and were aware of residents such as James Boyd and knew that the failures that existed at the facility resulted from the decisions made by the Nursing Home Defendants to purposefully under-staff and underfund the facility in a way that would maximize corporate profits for the Nursing Home Defendants rather than to provide adequate and proper care to residents such as James Boyd. Furthermore, the acts, omissions, and decisions of the Nursing Home Defendants directly affected resident care such that of James Boyd and directly caused her injuries. That further all of the Nursing Home Defendants, even those aside from the licensee, used their position to directly or indirectly control or manage the budget, staff, and level of care at the facility which directly affected and caused injury to James Boyd. These Defendants acted as each other’s alter ego, acted in a joint enterprise, acted in a common business purpose, and with an amalgamation of interest. Further, these Defendants are each directly liable for their own acts of negligence. The acts of the Nursing Home Defendants were negligent, willful, wanton, grossly negligent, and in reckless disregard for the safety and wellbeing of patients such as James Boyd.

10. That Plaintiff filed Notice of Intent, Expert Affidavit, and Plaintiff's Responses to Standard and First Interrogatories. Pursuant to S.C. Code Ann § 15-36-100.
11. That the parties conducted pre-suit mediation and an ADR Report was filed with the Court. Pursuant to S.C. Code Ann § 15-36-10.
12. "[N]ot every action taken by a medical professional in a hospital or doctor's office necessarily implicates medical malpractice and, consequently, the requirements of [S.C. Code Ann.] [S]ection 15-79-125." Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).
13. "However, at all times, the medical professional must 'exercise ordinary and reasonable care to ensure that no unnecessary harm [befalls] the patient.'" Id. at 178, 758 S.E.2d at 504 (further citations omitted).
14. "The statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care." Id. (further citation omitted).
15. "Thus, medical providers are still subject to claims sounding in ordinary negligence." Id. (further citations omitted).
16. That the nursing home abuse and neglect that is the subject of this action occurred in Greenville County, State of South Carolina.
17. That this court has jurisdiction over the parties and subject matter of this cause of action and venue is proper in Greenville County, State of South Carolina.

BACKGROUND FACTS

18. That on or about June 30, 2016, James Boyd was admitted to Defendants' nursing home and/or long-term care facility, Magnolia Place, in Greenville, State of South Carolina.

19. That while residing at Defendants’ facility, James Boyd was improperly cared for and/or abused and/or neglected by Defendants’ staff.
20. That James Boyd’s health rapidly declined while he was relying on Defendants’ care at Defendants’ facility.
21. That James Boyd was admitted to the hospital on multiple occasions from August 2016 to December 2016, while residing at Defendants’ facility, for multiple injuries, including but not limited to sacral stage III/IV pressure wound, pressure ulcer of right and left heel – unstageable, high fever, sacral wounds, sacral osteomyelitis, sepsis, septic shock, urinary tract infection (“UTI”), and his condition worsened upon each hospital admission.
22. That sometime between James Boyd’s hospital visits of August 2016, and December 2016, while at Defendants’ facility, James Boyd sustained serious injuries including, but not limited to infected pressure wounds and Defendants’:
 - a. failed to prevent said injuries;
 - b. caused said injuries;
 - c. never acknowledged said injuries;
 - d. never documented said injuries;
 - e. failed to assist Plaintiff’s decedent; and
 - f. failed to timely assist James Boyd in obtaining treatment for said injuries.
23. That upon information and belief, the Department of Health and Human Resources (hereinafter “DHEC”) conducted a survey of Defendants’ facility shortly after James Boyd’s residency and found multiple deficiencies, including, but not limited to:
 - a. Providing care by qualified persons according to each resident’s written plan of care;

- b. Assisting those residents who need total help with eating/drinking, grooming and personal and oral hygiene;
 - c. Making sure that residents with reduced range of motion get proper treatment and services to increase range of motion;
 - d. Making sure that the nursing home area is free from accident hazards and risks and provide supervision to prevent avoidable accidents; and
 - e. Setting up an ongoing quality assessment and assurance group to review quality deficiencies quarterly, and develop corrective plans of action.
24. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to provide care by qualified persons according James Boyd's written plan of care.
25. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to assist James Boyd total help with eating/drinking, grooming and personal and oral hygiene.
26. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to make sure James Boyd received proper treatment and services to increase his range of motion.
27. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to set up an ongoing quality assessment and assurance group to review quality deficiencies quarterly, and develop corrective plans of action as it pertains to James Boyd. During his residency at Defendants' facility while under Defendants' care.

28. That between August 2016 and December 2016, James Boyd was admitted to the hospital with serious injuries, which caused his to have to endure an extended stay at the hospital for several days and/or weeks as a result of Defendants' lack of care.

FOR A FIRST CAUSE OF ACTION
(Negligence / Gross Negligence)

29. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

30. That Defendants owed a duty to the Plaintiff as providers to act in a reasonable fashion, provide a safe and adequate facility and provide timely care to the Plaintiff in that of similar providers.

31. That the resulting injuries and damages to Plaintiff were caused proximately by one or more of the following negligent, grossly negligent, careless, reckless, willful, wanton, and unlawful acts, and/or omissions and/or breach of duty of Defendants in any one or more of the following respects:

- a. In deviating from the standard of care for medical and long-term care providers.
- b. In violating the Omnibus Adult Protection Act for South Carolina §43-35-25 which requires that any "physician, nurse, dentist, optometrist, medical examiner, coroner, other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or intellectual disability specialist, social or public assistance worker, caregiver, staff or volunteer of an adult day care center or of a facility, or law enforcement officer having reason to believe that a

vulnerable adult has been or is likely to be abused, neglected, or exploited shall report the incident.”

- c. In violating the Nurse Practice Act of South Carolina §40-33-80 by failing to thoroughly investigate complaints and violations.
- d. In violating South Carolina Department of Health & Environmental Control (SC DHEC) Regulation Number 61-17, § 800 et. Seq., which requires that all entries in the medical record for each resident are to be adequate and complete.
- e. In violating 42 CFR §483.75 which requires that:
 - i. Medical records be maintained in accordance with acceptable professional standards and practices that are “complete, accurately documented, and readily accessible.”
 - ii. The facility be administered in a matter that allows the resident to maintain his/her highest level of physical well-being.
 - iii. The facility be operated and provide services in compliance with all applicable Federal, State, and local laws, regulations, and code and with accepted professional standards and principles that apply to professionals providing services in such a facility.
- f. In violating 42 CFR §483.10 regarding the Plaintiff’s right to a dignified existence including, but not limited to notification of changes, which required the Defendants to immediately consult with a resident’s physician and notify a resident’s legal representative when there is a significant change in the

resident's physical, mental, or psychosocial status or need to alter treatment significantly due to adverse consequences.

- g. In violating 42 CFR §483.25 regarding quality of care, which requires that:
 - i. Each resident must receive and the facility must provide necessary care and services in accordance with the comprehensive assessment and plan of care.
 - ii. "A resident who is unable to carry out activities of daily living received the necessary services to maintain good nutrition, grooming, and personal and oral hygiene."
 - iii. The facility ensure a resident maintains acceptable parameters of nutritional status such as body with and protein levels and receives a therapeutic diet when there is a nutritional problem.
 - iv. "Each resident receives adequate supervision and assistance devised to prevent accidents."
 - v. The facility provide the resident with sufficient fluids to maintain proper hydration and health.
- h. In violating 42 CFR §483.30, regarding nursing services, which requires nursing homes to have sufficient staff to provide nursing related services to attain or maintain the highest practicable physical well-being.
- i. In failing to provide James Boyd with the reasonably required care expected of and typically exercised by similarly situated professional medical care providers.

- j. In failing to acknowledge and/or properly document and/or record James Boyd's injuries and/or physical conditions while in Defendants' care.
- k. In causing James Boyd and/or Plaintiff to incur medical costs associated with numerous visits and extended stays at the hospital.
- l. In causing James Boyd and/or Plaintiff to incur the costs of transferring James Boyd to another facility.
- m. In causing and/or refusing to alleviate James Boyd's severe pain and suffering.
- n. In causing James Boyd to suffer from anxiety and/or mental anguish and/or emotional and/or psychological pain and suffering as a result of Defendants' abuse and/or neglect during and/or after James Boyd resided at Defendants' facility.
- o. In causing Plaintiff's emotional and/or psychological pain and suffering and/or mental anguish;
- p. Failure to develop a plan of care for James Boyd at any time prior to or during his stay at Defendants' facility;
- q. Failure to conduct accurate assessments of James Boyd during his time at Defendants' facility;
- r. Failure to provide goods and services to prevent the development of UTI infection;
- s. Failure to provide sufficient fluids to maintain health and adequate hydration and/or develop a plan for provision of the same;

- t. Failure to provide the care, goods, and/or services necessary to maintain the health or safety of a vulnerable adult;
- u. Failure to properly and/or adequately and/or timely record and/or document and/or monitor patient's blood pressure and/or intake of fluids;
- v. Failure to properly and/or adequately and/or timely record and/or document patient's severe injuries;
- w. In any such other particulars as may be ascertained through discovery or shown at trial.
- x. Additionally, James Boyd's injuries were caused by the Defendants' deviations from the acceptable standards of care.

All of which were direct and proximate cause of the injuries and damages suffered by the Plaintiff, said acts being in violation of the Laws of the State of South Carolina.

32. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of Defendants, as is set forth more fully above, James Boyd and his beneficiaries were injured, endured pain and suffering, have suffered mentally and emotionally, have incurred various expenses, and have otherwise been damaged and injured.
33. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of all Defendants, as is set forth more fully above, James Boyd suffered in various ways and wrongfully died because of receiving inadequate medical care while in Defendants' care.

34. That upon information and belief, Plaintiff is entitled to judgment against the Defendants for actual, compensatory, and exemplary or punitive damages for his personal injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that he may be entitled, to be determined by a jury.
35. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, as is set forth more fully above, James Boyd and his beneficiaries have been damaged and injured in the following respects:
- a. James Boyd endured physical pain and suffering as a result of the serious injuries he sustained while in Defendants' care.
 - b. James Boyd endured physical pain and suffering as a result of his dehydration and dangerously low blood pressure which Defendant caused and/or exacerbated and/or failed to appropriately address and/or failed to properly monitor.
 - c. James Boyd suffered from anxiety, mental anguish, and emotional and/or psychological pain and suffering as a direct result of Defendants' breach of duty and/or neglect and/or abuse.
 - d. James Boyd incurred medical costs for the hospital visits and extended stay James Boyd endured.
 - e. James Boyd incurred costs associated with transferring James Boyd to another facility.

- f. Plaintiff suffered from emotional and/or psychological pain and suffering as a result of the Defendants' neglect and/or abuse.

36. Notwithstanding undertaking that duty and while James Boyd was under the care of the Defendants, the Defendants departed from prevailing and acceptable professional standards of care and treatment of James Boyd and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to James Boyd, and they are liable for one or more of the following acts of omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care.

37. The Defendants deviated from the standard of care and skill exercised by nurses generally and under similar conditions and like surrounding circumstances as those presented by James Boyd. In particular, without limitation, they deviated from the standard of care as set forth above.

38. That Defendants knew or should have known that James Boyd would suffer foreseeable financial injury, including hospital and/or medical expenses and costs of transfer to another health care facility, as a result of Defendants' failure to exercise ordinary care as set forth more fully above.

39. The Defendants further deviated:

- a. In failing to properly monitor the resident's physical well-being while residing at the Defendants' facility;
- b. In failing to properly train and supervise the personnel and staff and employees at the Defendants' facility with regard to James Boyd's care;
- c. In failing to relieve incompetent and/or improperly trained and/or negligence staff and employees at the Defendants' facility;

- d. In failing to properly revise and modify plans of care for James Boyd in response to James Boyd's needs;
- e. In failing to properly utilize equipment, including medications and devices to prevent and to minimize or reduce injuries resulting from improper care;
- f. In violating state and/or federal regulations requiring actions to protect the safety and health of James Boyd, so as to constitute negligence per se;
- g. In failing to ensure that the Defendants' personnel and employees had sufficient, adequate, and current training, credentials and skills to properly prevent James Boyd from suffering injury and pain;
- h. In failing to have in place proper and adequate policies, protocols, procedures, rules and regulations for the care and treatment of nutritional and infection control issues and fall prevention issues at the Defendants' facility, of if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them;
- i. In failing to properly and adequately assess, monitor and update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to proper nutritional and infection control procedures and fall prevention procedures;
- j. In failing to ensure that manuals, instructions and warnings relating to appropriate nutrition and infection control procedures and fall prevention procedures were available to agents, servants and employees of the Defendant;

- k. In failing to properly train and educate its employees or, if properly trained and educated, in failing to allow its employees to exercise independent judgment and skill;
 - l. In failing to ensure that James Boyd had proper care;
 - m. In failing to properly document the medical records of James Boyd;
 - n. In failing to properly document significant clinical findings; and
 - o. In any such other particulars as may be ascertained through discovery or shown at trial.
40. That as a direct and proximate cause of the Defendants' conduct, as aforesaid, James Boyd, for whom this action is brought, has experienced economic loss associated with medical expenses and is entitled to relief for the same.

FOR A SECOND CAUSE OF ACTION
Negligence per se

41. Plaintiff restates and re-alleges every allegation set forth above as if states herein verbatim.
42. The Defendants' facility is a long term health care provider who has a duty to abide by certain state regulations in the care and treatment of their residents.
43. The state regulations combine to form a minimum standards of care which the Defendants must meet and exceed in order to ensure proper treatment of patients, including, specifically, James Boyd.
44. The Defendants failed to abide by said standards, rules and regulations promulgated by the State of South Carolina in their treatment and care of James Boyd.

45. The standards, rules and regulations promulgated by the state of South Carolina were specifically enacted for the benefit of the class of persons for which James Boyd was a member.

46. As a direct and proximate result of the Defendants' negligence, recklessness, carelessness, willfulness and wantonness in failing to abide by the standards of care, rules and regulations promulgated by the State of South Carolina, James Boyd suffered severe injuries as described above, constituting negligence *per se*.

FOR A THIRD CAUSE OF ACTION
Breach of Contract

47. The Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

48. James Boyd entered into a contract with Defendants for the adequate provision of his care, treatment, and safety.

49. Pursuant to such agreement, the Defendants promised to care for James Boyd, exercise due care, and follow all state and federal laws and regulations relating to care of residents of long-term health care facilities.

50. In exchange for such promises, James Boyd agreed to compensate the Defendants for such care.

51. This bargained-for exchange constitutes a contract.

52. The Defendants breached the contract by not exercising due care, by not following state or federal laws and regulations relating to care of patients/residents of long-term health care facilities, and by its acts and omissions as described in the Complaint or as may be proven through discovery or at trial.

53. James Boyd was deprived of the benefit of the bargain, and suffered damages which directly and proximately flowed from the breach, and were of the kind to arise and flow from such breach.

FOR A FOURTH CAUSE OF ACTION
(Fraud / Misrepresentation / Spoliation)

54. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

55. The Defendants, through deception, artifice and circumvention, successfully defrauded James Boyd, who trustingly submitted to Defendants' care and on the basis of explicit and implicit representations:

- a. That the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure James Boyd received safe and adequate care;
- b. That the Defendants would adequately staff the long-term care facility and James Boyd would be served by adequately trained employees;
- c. That the Defendants would provide high quality professional care and would accurately and truthfully document the condition of James Boyd and the care rendered to her; and
- d. Such other misrepresentations as are set forth more fully above in this Complaint or may be ascertained through further discovery or proven at trial.

56. At the time of James Boyd's admission to care, the Defendants promoted and disseminated the above representations and information which would lead James Boyd, his family, and other similarly situate consumers to believe the above representations were true.

57. The Defendants purposefully disseminated such representations and promotions in order to induce James Boyd, his family and others like them into placement of themselves and/or of their relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.
58. The Defendants fraudulently concealed Defendants' inability to care for James Boyd according to acceptable standards required by law and represented by the Defendants, and the representations made were false.
59. The representations made and concealments done by the Defendants were material to James Boyd and his family.
60. At the time the Defendants made such representations, they knew such affirmative claims of service were false.
61. James Boyd and his family were unaware of the falsity of the representations made by the Defendants.
62. James Boyd and his family had a right to rely on the representations and concealments made by the Defendants.
63. As a result of the Defendants' fraud, misrepresentations, and concealments, James Boyd subsequently suffered damages and injuries while living at Defendants' facility.
64. As a proximate cause of the Defendants' fraud and misrepresentation, James Boyd suffered physical injuries, pain and suffering as previously alleged.

FOR A FIFTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

65. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

66. James Boyd and Defendants are “persons” within the meaning of Section 39-5-10(a), Code of Laws of South Carolina, 1976, as amended.
67. The Defendants, by conducting business in the state of South Carolina, is engaged in commerce within the meaning of Code Section 39-5-10(b).
68. The Defendants’ actions described in this Complaint constitute unfair and deceptive practices within the meaning of Code Section 39-5-20(a), including but not limited to:
- a. Representing to the general public and to James Boyd and his family that the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure James Boyd received safe and adequate care; that the Defendants would adequately staff the long-term care facility and James Boyd would enjoy adequately trained employees; that they would provide high quality professional care and would accurately and truthfully document the condition of James Boyd and the care rendered to her; and such other particulars as are set forth above in this Complaint or may be shown through discovery or at trial;
 - b. Further, at the time of James Boyd’s admission to care, the Defendants promoted and disseminated the above representations and information which would lead James Boyd, his family, and other similar situated consumers to believe the above representations were true. The Defendants purposefully disseminated such representations and promotions in order to induce James Boyd, his family and others like them into placing himself or his relatives in

the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.

- c. The Defendants fraudulently concealed their inability to care for James Boyd according to acceptable standards required by law and represented by the Defendants, and the representations made were false.
- d. The representations made and concealments done by Defendants were material to James Boyd and his family.
- e. At the time the Defendants made such representations, he/she/they knew such affirmative claims of service were false.
- f. James Boyd and his family were unaware of the falsity of the representations made by Defendants.
- g. James Boyd and his family had a right to rely on the representations and concealments made by the Defendants.
- h. As a result of the Defendants' fraud, misrepresentations and concealments and deceptive and unfair representations, James Boyd subsequently suffered damages and injuries while a patient/resident at Defendants' facility.

69. The Defendants' acts are capable of repetition and, upon information and belief, have been repeated with other residents.

70. The Defendants' conduct adversely affects the public interest of South Carolina.

71. The Defendants knew or reasonably should have known Defendants' conduct violated the Unfair Trade Practices Act.

72. As a direct, foreseeable, and proximate result of Defendants' unfair and deceptive practices, James Boyd suffered an ascertainable loss of money, physical injuries, and pain and suffering as previously alleged.

73. The Plaintiff is entitled to recover actual damages, which amount should be tripled, pursuant to South Carolina law together with interest and attorneys' fees.

FOR A SEVENTH CAUSE OF ACTION
(Elder Abuse)

74. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

75. Pursuant to §45-35-10(11) of the South Carolina Omnibus Adult Protection Act, a "vulnerable adult" means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for their own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical mental or emotional dysfunction.

76. Given James Boyd's age and health, the latter of which included, but is not limited to his quadriplegic state, at the time he was under the supervision and care of the Defendant(s), James Boyd met the classification for "vulnerable adult" under the South Carolina Omnibus Protection Act §45-35-10(11).

77. Pursuant to §45-35-10(2) of the South Carolina Omnibus Protection Act a "caregiver" is defined as a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is

not limited to day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.

78. The Defendants were and are caregivers under the South Carolina Omnibus Adult Protection Act §45-35-10(2) and were responsible for James Boyd's care and well-being.
79. Under the South Carolina Omnibus Adult Protection Act §45-35-10(6), "neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult.
80. The Defendants as caregiver(s), neglected James Boyd within the meaning of the South Carolina Omnibus Adult Protection Act §45-35-10(6). The neglect of James Boyd was negligent, reckless, and malicious. The Defendants knew or should have known James Boyd's advanced age required an increased level of care.
81. Defendants knew or should have known that a heightened level of observation was necessary and critical to James Boyd's well-being, health and prognosis.
82. The Defendants knew or should have known that the patient care environment lacked the number of qualified staff necessary for proper observation and care critical to James Boyd's health and recovery.
83. The Defendants' knew or should have known that James Boyd's was left in a patient care environment where the resources that were critical for recovery and to prevent injury were unavailable constituting neglect under South Carolina Omnibus Adult Protection Act §45-35-10(6).

84. The neglect caused serious personal injuries resulting in conscious pain and suffering.
85. The Defendants' negligent, reckless, and malicious acts were a direct and proximate result of the damages herein.
86. As a result, punitive damages and attorneys' fees are appropriate pursuant to South Carolina Omnibus Adult Protection Act §43-35-80(A), which allows for private civil causes of action to be brought against a person or facility based on an action or failure to act that otherwise constitutes abuse, neglect or exploitation.

FOR AN EIGHTH CAUSE OF ACTION
(Civil Conspiracy)

87. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
88. The Defendants deliberately and knowingly participated in civil conspiracy in that they agree and conspired to provide inadequate care in order to maximize profits over patient care. Moreover, the Defendants have demonstrated consciousness of their actions and conspiracy in taking calculated and elaborate steps to obscure the true ownership of the corporations held which hold control of the facility and hide their involvement. The wrongful acts identified hereinabove were carried out by the Defendants pursuant to the conspiracy and of this they are jointly and severally liable.
89. As a direct and proximate result of the conspiracy as alleged herein, James Boyd suffered the following special damages:
 - a. Loss of dignity;
 - b. Mental anguish;
 - c. Pain, suffering, humiliation;
 - d. Injuries to his body;

- e. Infections;
 - f. Compromise to muscular system and tendons;
 - g. Compromise to mental status;
 - h. Severe physical injury and other damages outlined hereinabove;
 - i. Have incurred legal fees and costs; and
 - j. In such other and further as discovery and trial shall prove.
90. As a result, Plaintiff is entitled to an award of actual, special, and punitive damages in the amount to be determined by the jury.

FOR A NINTH CAUSE OF ACTION
(Corporate Negligence)

91. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
92. That Defendants had a duty of due care to residents; to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.
93. That the facility was negligently managed by Defendants, who were working together to manage and operate the facility.
94. That the facility was negligently administered in violation of 42 C.F.R. 483.75 by Defendants who were working together to govern, administer, control, manage and operate the facility.
95. The Defendants by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of James Boyd. More particularly the Defendants were negligent in the following particulars:

- a. Failing to properly supervise as required, and as promised to the family upon admission;
- b. Failing to provide the care, supervision and monitoring of patients, residents, and in particular James Boyd, which was required by law and which was necessary for her health and safety;
- c. Failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, James Boyd;
- d. Failing to provide sufficient numbers of qualified personnel including nurses, nurses assistants, medication aides, and/or orderlies to meet the total needs of James Boyd;
- e. Failing to abide by applicable federal and state laws governing long term care facilities and nursing care;
- f. Failing to hire a sufficient number of trained and competent staff;
- g. Failing to follow the licensing and regulatory rules of the State of South Carolina;
- h. Failing to develop and follow an appropriate Plan of Care;
- i. Failing to properly train employees to deal with residents who were unable to care for themselves;
- j. Failing to follow physicians' orders;
- k. Failing to prevent decubitus ulcers from developing and/or failing to provide necessary and proper treatment of the ulcers;
- l. Failing to properly monitor James Boyd;
- m. Failing to appropriately diagnose James Boyd's condition;

- n. Failing to provide James Boyd with appropriate medications and/or nutrition which would promote the healing and resolve infection to the wound areas;
- o. Failing to turn and reposition James Boyd to prevent pressure ulcers from forming and to promote healing;
- p. Failing to ensure that James Boyd and her wounds were kept clean and dry;
- q. Failing to provide adequate nutrition and hydration;
- r. Failing to conduct weekly body audits to discover pressure ulcers;
- s. Failing to ensure that a pressure-relieving mattress was immediately provided for James Boyd;
- t. Failing to update the written plan of care to include necessary interventions to promote wound healing;
- u. Failing to include necessary interventions to monitor for signs and/or symptoms of infection in the written plan of care;
- v. Failing to consult with and/or report to the physician and/or the Registered Dietitian in a timely manner James Boyd's decrease in dietary intake;
- w. Failing to assist James Boyd with her meals in order to maintain her highest practicable level of physical well-being;
- x. Failing to keep James Boyd properly hydrated and nourished;
- y. Failing to keep James Boyd from suffering significant weight loss;
- z. Failing to keep a proper record of James Boyd's weight;
- aa. Failing to keep James Boyd's chart free of fraudulent documentation;
- bb. Failing to prevent James Boyd's multiple hospitalizations;
- cc. Failing to monitor and assess James Boyd adequately for pain and discomfort;

dd. Failing to treat James Boyd with dignity and respect;

ee. Failing to exercise due care; and

ff. By other negligent acts and/or omissions yet to be determined or defined.

96. That as a result, James Boyd experienced prolonged conscious pain and suffering, mental anguish and incurred substantial medical bills.

97. That the aforesaid acts and delicts were a contributing cause of James Boyd's damages, injuries, and were the sole and proximate cause of the damage and injuries sustained by James Boyd.

FOR A TENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

98. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

99. That as a result of such intentional acts and omissions, James Boyd was inflicted with severe emotional distress.

100. That as a result of such extreme and outrageous conduct, James Boyd was also stripped of his dignity.

101. That as a result of Defendants' abusive and authoritative actions, James Boyd suffered emotional distress.

102. That as a result of Defendants' abusive and authoritative actions, James Boyd suffered severe distress which no reasonable person could be expected to endure.

103. That as a result of said behavior by Defendants, James Boyd alleges that Defendants did not act in good faith or in a reasonable manner, and so James Boyd was subjected to considerable distress and embarrassment.

FOR AN ELEVENTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)

104. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
105. That as a result of such negligent acts and omissions, James Boyd was inflicted with severe emotional distress.
106. That as a result of such negligent conduct, James Boyd was also stripped of his dignity.
107. That as a result of Defendants' negligent actions, James Boyd suffered emotional distress.
108. That as a result of Defendants' negligent actions, James Boyd suffered severe distress which no reasonable person could be expected to endure.
109. That as a result of said behavior by Defendants, James Boyd alleges that Defendants did not act in good faith or in a reasonable manner, and so James Boyd was subjected to considerable distress and embarrassment.

FOR A TWELTH CAUSE OF ACTION
(Alter Ego/Piercing the Corporate Veil)

110. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
111. That upon information and belief, Magnolia Place of Greenville, as it has been known for many years under various corporate names, was dominated and controlled by Defendants and Magnolia Place, before, during, and after James Boyd's residency. These Defendants siphoned profits from the nursing homes chain through self-dealing between the entities, excessively compensated themselves and other

executives, and participated in other methods of divesting the licensee entities of needed capital and assets, while allowing the chain to suffer financial losses and provide uniformly poor care across the country as a result of inadequate capitalization and consequently inadequate supplies, resulting in untold numbers of unnecessary injuries and suffering, including that of James Boyd at Magnolia Place of Greenville.

FOR A THIRTEENTH CAUSE OF ACTION
(Amalgamation of Interests)

112. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
113. That the Defendants are and have been operating as an amalgamation of interest creating a blurred corporate identity through an integrated enterprise and/or joint venture.
114. That upon information and belief, the Defendants share a common internet website and intranet site.
115. That upon information and belief, the Defendants share a common location; common headquarters; common policies and procedures; and common in-house counsel.
116. That upon information and belief, Defendants share a common executives and officers.
117. That upon information and belief, Defendants participate in the commingling of funds and revenue and file one tax return for all Magnolia Place entities.

FOR A FOURTEENTH CAUSE OF ACTION
(Conversion)

118. Plaintiff restates and re-alleges every allegation set forth above as if fully stated in verbatim herein.
119. That James Boyd has a right to obtain copies of his medical treatment records.
120. That these records belong to James Boyd, not to Defendants, and James Boyd has a right to obtain a copy of these records.
121. That James Boyd hired Anastopoulo Law Firm (“Firm”) to represent him.
122. That Firm required medical records from Defendants in order to prosecute a possible lawsuit.
123. That James Boyd executed a HIPAA release giving Defendant(s) permission to release the records to Firm.
124. That Firm requested the records, in writing, on November 9, 2016.
125. That Firm offered to pay the costs of copying and mailing the records.
126. That upon information and belief, Defendant(s) did not produce James Boyd’s entire medical chart and records as requested.
127. That Defendants assumed and exercised the unauthorized right of ownership over the medical records of James Boyd to the exclusion of Plaintiff’s rights.
128. That as a result of Defendant’s conversion of Plaintiff’s medical file, Plaintiff has suffered:
 - a. The loss of use of these records for impending litigation;
 - b. Consequential and incidental damages;
 - c. Aggravation;
 - d. Inconvenience; and

e. Embarrassment.

129. That Defendants' conduct, as described above evidences a flagrant disregard of legal rights as to warrant the imposition of actual and punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC

 /s/ Stefan B. Feidler
Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

Dated at Charleston, South Carolina

This 19 day of September, 2018.

Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC be held in abeyance pending a final decision of Defendant's Motion.

The parties conducted additional discovery and procured deposition testimony from Plaintiff; Leola Burt, Admissions Coordinator for the Defendant's facility; Peggy Fields, case manager for Palmetto Health Baptist Hospital; and Wilda Boyd, Plaintiff's mother. Additionally, Defendant procured a sworn declaration from Ms. Fields that was submitted to this Court. After this additional discovery was completed, both parties submitted supplemental memoranda in support of their respective positions along with supporting exhibits and a second hearing was held on May 20, 2019. Eric Poulin was present for Plaintiff and Perry M. Buckner, IV was present for Defendants. After careful consideration of the arguments of counsel, the memoranda and exhibits submitted, and the record before the Court, the Court GRANTS Defendant's Motion to Compel Arbitration and Stay for the reasons set forth below.

FINDINGS OF FACT

Defendant THI of South Carolina at Magnolia Place at Greenville, LLC operates a skilled nursing facility located in Greenville County known as Magnolia Place. On June 30, 2016, Plaintiff James Boyd was admitted to Magnolia Place for skilled nursing care. Prior to Plaintiff's admission, Plaintiff was involved in a car accident leaving him injured. As a result of the accident, Plaintiff was hospitalized at Palmetto Baptist Hospital where he remained until he was transferred to Magnolia Place.

As part of the admissions process to Magnolia Place, certain admissions paperwork, including an Admission Agreement itself, is presented to the patient or a representative on the patient's behalf. Included within the admissions paperwork for Mr. Boyd's residency was a separate, stand-alone Arbitration Agreement. By its terms, the Arbitration Agreement was not a

precondition to admission to the Facility and Plaintiff or a representative on his behalf could choose to whether to accept or refuse it.

To facilitate the admissions process, the Admissions Coordinator for Magnolia Place, Leola Burt, contacted Peggy Fields, case manager at Palmetto Health Baptist to inquire who would be completing Plaintiff's admissions paperwork prior to his arrival at the Defendant's facility. Regarding her conversations with Ms. Fields, Ms. Burt testified as follows:

Q: Ms. Burt, in responding to a couple of plaintiff's counsel's questions about conversations with Ms. Fields at Palmetto Baptist, you had indicated that you spoke with Ms. Fields on a couple of occasions; is that correct?

A: Yes.

Q: Okay. And that one of those conversations or phone calls was a phone call that you initiated to her inquiring about who should handle James Boyd's admissions paperwork, correct?

A: Yes.

Q: And you testified that Ms. Fields got back to you and indicated that Wilda Boyd would be the person who would be handling it; is that correct?

A: Yes.

Q: All right. Do you know why you were informed that Wilda Boyd would be the person who would be doing it?

A: She had to check with James.

Q: Okay. And when you say she, you mean Ms. Fields had to check with James?

A: Yes.

Q: Okay. And is it your understanding that Mr. Boyd directed Ms. Fields to his mother for admissions paperwork to Magnolia Place?

A: Yes.

Q: Okay. And did Ms. Fields tell you that?

A: Yes.

Q: All right. Ms. Fields told you that James Boyd indicated that Wilda Boyd, his mother, would be the appropriate person to handle the admissions paperwork?

A: Yes.

Q: When Mr. Boyd -- and that conversation occurred while he was at Palmetto Baptist prior to June 30th, 2016?

A: Correct.

Q: And Mr. Boyd then comes to Magnolia Place, I believe, on by June 30th, 2016?

A: Yes.

After her initial conversation with Ms. Burt, Ms. Fields, per her sworn declaration and deposition testimony, confirmed that she spoke with Plaintiff, who directed her to his mother for the handling of all the admissions paperwork. After speaking with Plaintiff, Ms. Fields contacted Ms. Burt to inform her that Ms. Boyd would be handling the paperwork. In pertinent part, Ms. Fields testified as follows:

Q: Okay. Did Mr. Boyd ever make a representation to you that his Mother could handle the admission paperwork for Magnolia Place?

A: Yes.

Q: Okay. And what did he say?

A: Yes. Mother.

Q: He just said, yes, mother?

A: His mother.

Q: Okay. What did you ask him?

A: I asked him -- it is a requirement that a patient be signed in prior to the arrival to a facility. So in that case I asked him who would be that person that would be signing paperwork on his behalf...

Q: Did you tell Ms. Burt that she would need to contact James Boyd's mother?

A: Yes.

Q: Okay. Did you tell Ms. Burt that James Boyd's mother would be responsible for the admission paperwork?

A: We identified the mother as the responsible party.

Q: Okay. And you would have told Ms. Burt that she needed to contact Mr. Boyd's mother?

A: Yes. She would be his responsible party.

Q: Okay. And did you tell Ms. Burt that Mr. Boyd specifically told you that his mother would handle the paperwork?

A: Yes.

Q: Okay. Did you ever have a conversation with Ms. Boyd, who is Mr. Boyd's mother, about her signing the admission paperwork?

A: That was the – yes, that she had been identified.

Q: Okay. Did you tell Mr. Boyd that his mother would be filling out the admission paperwork for Magnolia Place?

A: He identified her as the contact for Magnolia Place.

Q: Did he know that his mother would be filling out the admission paperwork to Magnolia?

A: To the best of my knowledge.

After Ms. Burt spoke with Ms. Fields for a second time and confirmed that Ms. Boyd would be executing the admissions documents, Ms. Boyd executed the necessary admissions documents, including the Arbitration Agreement. Ms. Boyd testified she never gave Ms. Burt any reason to believe that she did not have the authority to sign the Arbitration Agreement. Ms. Boyd testified about her interaction with Ms. Burt as follows:

Q: And would you agree with me that you certainly gave Miss Coco Burt no indication that you couldn't sign [the arbitration agreement]?

A: No.

Q: [...] So you didn't say anything to Miss Burt that would make her believe that you lacked authority to sign [the arbitration agreement]?

A: No.

Q: All right. And as far as – and I realize that you can't put yourself entirely in her shoes, but as far as Miss Burt would have known based on this agreement you were authorized to enter it on your son's behalf?

A: I guess. Yeah...

Q: You represented to Magnolia Place of Greenville that you had the authority to enter into all admissions paperwork on behalf of your son, correct?

A: Yeah.

Ms. Burt even spoke with Plaintiff when he arrived at the Defendant's facility on June 30, 2016. According to Ms. Burt, Plaintiff knew his mother had executed the Arbitration Agreement on his behalf, did not object, and even authorized her to complete the remaining paperwork. Ms. Burt testified about this conversation with Plaintiff as follows:

Q: Okay. And during that conversation, I understood your testimony that you informed [Plaintiff] that his mother had already signed three separate agreements on his behalf, including the Arbitration Agreement, correct?

A: Yes.

Q: All right. At that time, on June 30th, 2016 when you were with him in person, did he raise any objection to her doing that?

A: No. He told me that she would finish the rest of it.

Further, Ms. Burt testified she had no doubt that Plaintiff authorized his mother to execute all of the admission paperwork, including the Arbitration Agreement and that she even provided the signed agreements to Mr. Boyd after his arrival to Magnolia Place.

Q: Okay. And what does that file include? And you can be comprehensive in telling me.

A: It includes the admission handbook, the resident's rights, channel guide, facility abuse policies, and all of the signed admissions paperwork.

Q: All right. And the signed admission paperwork includes the Arbitration Agreement?

A: Yes.

Q: Does it include the Admission Agreement?

A: Yes.

Q: And where – what do you do with that – the admissions file folder I'll call it for lack of a better term?

A: I give it to the resident.

Q: Okay. And in this case, that would be James Boyd?

A: Yes.

Q: So James Boyd was provided with a written copy of all of the agreements that his mother entered into on his behalf?

A: Yes.

Q: Okay. And you personally provided him with that file folder?

A: Yes.

Plaintiff filed the present action asserting claims for injuries he allegedly sustained while a resident at Defendant's Facility. Defendant filed the instant Motion maintaining that Plaintiff's claims must be submitted to arbitration pursuant to the Arbitration Agreement signed by Ms. Boyd. Defendant asserts that Ms. Boyd possessed the apparent authority to bind Plaintiff to the Arbitration Agreement. As set forth below, the Court agrees and finds that Ms. Boyd possessed the apparent authority to bind Plaintiff to the Arbitration Agreement.

DISCUSSION

Based on the above and a comprehensive review of all materials in the record before the Court, the Court finds that Wilda Boyd possessed the apparent authority to execute the Arbitration Agreement on Plaintiff's behalf. The doctrine of apparent authority provides that a principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation. *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996). Thus, the concept of apparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal. *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). While actual authority is that which is expressly conferred upon the agent by the principal, apparent authority is that which, though not actually granted, the principal knowingly permits the agent to exercise, or which the principal holds the agent out as possessing." *Id.* If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as his agent, "either **generally** or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances." *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000)(emphasis added).

Courts in South Carolina have found that even when an agent does not possess the actual authority to bind a principal, the agent can still possess the apparent authority to bind a principal based on a third party's reasonable interpretation of the agent's authority and its scope. *Horton v.*

Pyramid Masonry Contractors, Inc., No. 2008-UP-208, 2008 WL 9841237, at *6 (S.C. Ct. App. Mar. 27, 2008). An ancillary issue in *Horton* was whether an employee of a company who hired another employee had the apparent authority to negotiate company transportation as a specific condition of the other employee's employment. There, although the hiring employee did not have the actual authority to offer company transportation as a condition of employment, he expressly represented to the employee that company transportation would be provided with his position. The court found that while the hiring employee did not have the actual authority from the employer to offer company transportation as a term of employment, the employee reasonably believed the hiring employee had such authority. *Id.* at *6. Specifically, the court stated the following:

While [hiring employee's] offer of transportation may have exceeded the scope of the actual authority Employer conferred upon him, there is sufficient evidence in the record to support [employee's] belief that [hiring employee] had apparent authority to negotiate the terms of his employment, including Employer's provision of transportation. Employer is bound by [hiring employee's] representations to Employee concerning the conditions of his employment.

Id., at *6 (S.C. Ct. App. Mar. 27, 2008). Thus, while the hiring employee did not have the actual authority to make transportation a condition of employment specifically, the court found he had the broad authority to negotiate terms of employment. That broad authority necessarily encompassed the authority to make transportation a condition of employment.

In *Bookman v. Britthaven, Inc.*, a case involving facts substantially similar to the case at the bar, the North Carolina Court of Appeals found that there was sufficient evidence in the record to support a finding that a nursing home resident's representatives possessed the apparent authority to bind the resident to an arbitration agreement signed by the representatives upon the her admission to a nursing home. 233 N.C. App. 454, 460, 756 S.E.2d 890, 895 (2014). There, a

woman's husband, through his daughter, signed twelve documents, including an arbitration agreement on the woman's behalf prior to her admission to a nursing home *Id.*, at 455, 756 S.E.2d at 892. The admissions coordinator for the nursing home signed an affidavit averring that the husband and daughter presented themselves as having the authority to sign all documents needed on the woman's behalf prior to her admission. *Id.*

After the woman passed away, the daughter brought a wrongful death action against the nursing home. The nursing home filed a motion to compel arbitration and the trial court denied the motion finding that neither the daughter or father had the actual authority to sign the arbitration agreement on the woman's behalf. *Id.*, at 456, 756 S.E.2d at 892.

In reversing the trial court, the North Carolina Court of Appeals noted that the trial court failed to consider whether the woman conferred the authority to conduct the admissions process "in general" on her behalf and that the fact that the woman was admitted, showed "that at the very least, there may have been actual or apparent authority conferred on the husband or daughter to execute some or all of the contracts that were needed in order to complete the admissions process," including the arbitration agreement. *Id.* 233 N.C. App. at 460, 756 S.E.2d at 895. The court went on to note that under North Carolina law, a principal is liable "when the agent acts within the scope of his apparent authority, unless the third person has notice that the agent is exceeding his actual authority," and concluded that because the daughter and husband signed all of the admissions documents, including the arbitration agreement without objection or any indication to the admissions coordinator that their authority to sign the documents was limited in any way, there was evidence that the woman and daughter possessed the apparent authority to sign the arbitration agreement on her behalf. *Id.* at 460–61, 756 S.E.2d at 895 (2014).

Although *Bookman* is not controlling precedent, the Court finds it to be instructive and persuasive with regard to the case at bar.

Based on the record, including the testimony of Ms. Burt, Ms. Fields, and Ms. Boyd, the Court finds that Ms. Boyd possessed the apparent authority to execute the Arbitration Agreement on Mr. Boyd's behalf. The deposition testimony of and Peggy Fields and Leola Burt demonstrates that both reasonably understood that Plaintiff gave his mother the authority to sign all documents related to admission, including the Arbitration Agreement. Indeed, Ms. Burt's sworn testimony indicates that she inquired as to who should be executing the admissions paperwork, including the Arbitration Agreement, and Plaintiff explicitly confirmed to Ms. Fields and Ms. Burt that his mother would be responsible. In light of the near identical accounts offered by Ms. Fields and Ms. Burt, the Court is persuaded by their recollection of events as opposed to Plaintiff's more general denial about any and all conversations about admissions paperwork.

In effect, Plaintiff argues that Ms. Boyd possessed only the authority to execute to the other admissions paperwork but not the Arbitration Agreement. Plaintiff appears to conflate actual authority with apparent authority in that regard. As clearly indicated by authority from South Carolina and other states, apparent agency is derived from a principle's manifestations and a third party's reasonable understanding of those manifestations. When Plaintiff, the principal, authorized his mother to execute admissions paperwork on his behalf, he effectively placed her in a position where third parties, and in particular Ms. Burt, would believe she had authority to bind Plaintiff to all admissions documents, including the Arbitration Agreement. This belief was derived from Ms. Burt's conversations with Ms. Fields, Ms. Boyd, and ultimately Plaintiff himself.

While as in *Horton*, Ms. Boyd may not have possessed the actual authority to sign the arbitration agreement in particular, she possessed the apparent authority to complete and sign all necessary admissions paperwork, including the Arbitration Agreement. Furthermore, Plaintiff was expressly made aware that his mother signed the arbitration agreement on his behalf and like in *Bookman*, neither he nor his mother voiced any objection or indicated that his mother was not permitted to sign the Arbitration Agreement on his behalf as opposed to the other documents. Based on the record before the Court, Ms. Boyd possessed the apparent authority to sign the Arbitration Agreement on Plaintiff's behalf.

Because the court concludes that Ms. Boyd possessed the apparent authority to bind Mr. Boyd to the Arbitration Agreement, the Court declines to address whether Plaintiff subsequently ratified the Arbitration agreement.

Based on the foregoing, the Court finds that a valid arbitration agreement exists between the Plaintiff, Mr. Boyd, and Defendant Magnolia Place. As such, a stay of all state court proceedings is warranted until all arbitration proceedings are completed. This stay should not be limited solely to Defendant Magnolia Place and Plaintiff's claims against it. As asserted by Defendants Fundamental Clinical and Operational Services, LLC and Fundamental Administrative Services, LLC, § 3 of the Federal Arbitration Act ("FAA") provides that a stay of court proceedings can also be applicable to non-signatories who request such relief. 9 U.S.C. § 3; *Subway Equip. Leasing Corp. v. Forte*, 169 F.3d 324, 329 (5th Cir. 1999), citing *Kroll v. Doctor's Associates, Inc.*, 3 F.3d 1167, 1171 (7th Cir. 1993). This Court finds that these Defendants are similarly entitled to a stay under the above provisions of the FAA.

CONCLUSION

For the reasons set forth herein, Defendant Magnolia Place's Motion to Compel Arbitration and Stay Court Proceedings is hereby **GRANTED**. Defendants Fundamental Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC Motions to Stay are also **GRANTED** such that all state court proceedings in this case should be stayed until the arbitration between Plaintiff and Defendant Magnolia Place is completed.

IT IS SO ORDERED!

Honorable Perry H. Gravely
Presiding Judge

Greenville, South Carolina

August _____, 2019



Greenville Common Pleas

Case Caption: James Boyd Jr vs. THI Of South Carolina At Magnolia Place At
Greenville LLC, defendant, et al
Case Number: 2018CP2301934
Type: Order/Stay

So Ordered

s/ Honorable Perry H. Gravely, #2755

James Boyd, Jr
PLAINTIFF(S)

Fundamental Administrative Services LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (*CHECK REASON*): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN** (*CHECK REASON*): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

See following page.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/17/2019 .

EXHIBIT

C

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

This matter comes before the Court upon Plaintiff's Motion to Reconsider. The Court granted Defendant's Motion to Dismiss and Compel Arbitration in an Order dated August 20, 2019. The Court has addressed all relevant issue in the underlying Order and does not see any basis for amending the previous Order. Furthermore, a Hearing is not necessary for the issuance of this Order. Therefore, the Court DENIES Plaintiff's Motion to Reconsider and Affirms its previous Order granting Defendant's Motion to Dismiss and Compel Arbitration.



Greenville Common Pleas

Case Caption: James Boyd Jr vs. THI Of South Carolina LLC , defendant, et al

Case Number: 2018CP2301934

Type: Order/Electronic Form 4

So Ordered

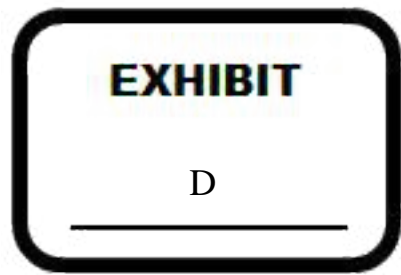
s/ Honorable Perry H. Gravely, #2755

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
)	
JAMES BOYD, JR.,	)	CASE NO. 2018-CP-23-01934
)	
)	
PLAINTIFF,)	
)	
vs.	)	FINAL ORDER OF ARBITRATION
)	
THI OF SOUTH CAROLINA AT)	
MAGNOLIA PLACE AT GREENVILLE,)	
LLC,)	
)	
DEFENDANTS.)	
)	

By consent of the parties I was ordered to arbitrate the above matter. The arbitration was conducted on October 26 and 27, 2021 in Greenville, South Carolina.

This is a medical malpractice action. Plaintiff alleges he sustained damage as a result of the substandard care he received by the Defendant's medical workers during his admission to their facility in 2016. He was transferred to this facility from Palmetto Health Richland Hospital where he had received emergent care for injuries he suffered in an accident on June 3, 2016. He was operating a bicycle that collided with a vehicle. This resulted in massive trauma, he underwent cervical decompression surgery and ended up with a central cord syndrome with quadriparesis. He was unable to fully move both of his upper and lower extremities. Unfortunately, he faced a host of medical complications generally associated with immobility such as incontinence, blood clots, pneumonia, infections and pressure ulcers. He was noted to be at high risk for pressure ulcers. He presented with a sacral wound that appeared to be a shear. He was discharged in late 2016 to the care of his family.

me
#1



The Plaintiff's legal claim is straightforward; the Defendant failed to prevent pressure ulcers and once faced with a pressure ulcer they were inadequate in the intervention to heal the pressure ulcer.

As the Arbitrator, I must determine the credible facts in the case and then apply them to the applicable law to determine if the Plaintiff has proven his case by the preponderance or greater weight of the evidence.

I find the Plaintiff's assertion that the pressure ulcer first manifested itself at the Defendant's facility is not credible. The Plaintiff's admission records at Defendant's facility and discharge records of Palmetto Health note the Plaintiff has a small skin tear with a medical dressing in place at the time he was transferred. The Defendant on July 11, 2016 called in a wound care specialist, Dr. Violette, to manage the pressure ulcer. On his first visit, July 11, 2016, he identified a Stage 2 pressure ulcer on the sacrum with a duration of greater than 14 days. Dr. Davis, Defendant's expert, who has been a full time wound care physician since 2004 and is presently the medical director at Pardee Wound and Hyperbaric Medicine Center in Hendersonville, North Carolina, agreed with the treating physician's opinion that the wound was at least 14 days old. Dr. Violette continued to provide wound care/management of the pressure ulcer until Plaintiff's discharge. Dr. Saba, plaintiff's expert, who is a board certified Internal Medicine physician, testified all treatment ordered by Dr. Violette and administered by the nurses was within the standard of care. Plaintiff's nurse expert, Rebecca McCarthy, RN, BSN, did not disagree with Dr. Violette's opinion the pressure ulcers had existed for greater than 14 days when he first saw him. She said the record did not support his opinion, but she would not opine against him.

MRE
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Based on a review of the medical records and testimony of the witnesses I find as a fact the pressure ulcers were more than 14 days old when Dr. Violette first saw the Plaintiff on July 11, 2016 and thus existed at the time of his admission to Defendant's facility.

The Plaintiff further asserts the Defendant breached the standard of care by providing inadequate interventions to heal the pressure ulcers. All experts agreed the Plaintiff came to Defendant's facility with a very high risk of pressure ulcers because of his immobility. Dr. Saba testified that once the barrier (pressure ulcer) falls down, then it is downhill from there. As earlier found, the pressure ulcer had begun its development before Plaintiff arrived at Defendant's facility. Dr. Davis testified that the pressure ulcer issue is a big medical problem, he stated there's never been any firm evidence that there's any intervention which can completely prevent the incidence and prevalence of a pressure ulcer. He goes on to say when we lose the ability to move our bodies or take care of our bodies, things start to break down. Pressure ulcers are one manifestation of it, its reality. The Defendant utilized Dr. Violette, a wound care specialist, who is a member of Vohra, a group of specialists in wound care, who provide doctors for nursing homes to have the specialist go into the homes, rather than transporting the patient for treatment. Dr. Violette continued to see, examine, counsel with patient and his family and managed through treatment plans the Defendant until his discharge. All experts agreed the Defendant's staff performed each treatment in accordance with the doctor's orders and the orders were appropriate and met the standard of care.

I find the Plaintiff failed to meet his burden of proof that the Defendant breached the standard of care in their treatment and management of the Plaintiff's pressure ulcer.


I further find as a fact the Plaintiff failed to prove by the preponderance of the evidence any proximate cause of his injuries that was attributable to the Defendant. Nurse McCarthy stated

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she was not able to testify to any medical causation. Dr. Saba was asked his opinion of what caused Mr. Boyd's pressure ulcer to develop. He replied 90 percent of the battle is to basically prevent those wounds from happening. He said you can do everything after a wound has occurred and still some of those people do not get better. The testimony of the Plaintiff's two experts fails to prove any causation.

Based on the above findings of fact, and applying these findings to the applicable law on medical malpractice law in South Carolina, I conclude that a verdict in favor of the Defendant is just and proper.

AND IT IS SO ORDERED.


D. A. Early, III
Arbitrator

Charleston, South Carolina

Dated: Dec 20, 2021

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP2301934

Official File Stamp: 12-29-2021 08:30:38 AM

Court: CIRCUIT COURT

Common Pleas

Greenville

Case Caption: James Boyd Jr vs. THI Of South Carolina LLC ,
defendant, et al

Document(s) Submitted: Final Order of Arbitration

Filed by or on behalf of: C J Noblitt

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Janek Christopher Kazmierski for James Boyd, Jr

James E. Parham, Jr. for Elizabeth Bradley

Roy T. Willey, IV for James Boyd, Jr

Donald Jay Davis, Jr. for Thi Of South Carolina At
Magnolia Place At Greenville LLC, Fundamental
Administrative Services LLC, Fundamental
Clinical And Operational Services LLC

Stefan Bjorn Feidler for James Boyd, Jr

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	CASE NO. 2018-CP-23-01934
 JAMES BOYD, JR.,)	
)	
Plaintiff,)	
)	
vs.	)	MOTION FOR ORDER
	)	CONFIRMING ARBITRATION AWARD
	)	AND GRANTING JUDGMENT
	)	FOR DEFENDANTS
THI OF SOUTH CAROLINA AT)	
MAGNOLIA PLACE AT GREENVILLE,)	
LLC; FUNDAMENTAL ADMINISTRATIVE)	
SERVICES, LLC; and FUNDAMENTAL)	
CLINICAL AND OPERATIONAL)	
SERVICES, LLC.)	
)	
Defendants.)	

TO: THE COURT and Plaintiff, JAMES BOYD, JR., by and through his attorneys of record

NOW COME Defendants, THI of South Carolina at Magnolia Place at Greenville, LLC (the “Facility”); Fundamental Administrative Services, LLC (“FAS”); and Fundamental Clinical and Operational Services, LLC (“FCOS”) (collectively, “Defendants”), pursuant to the Federal Arbitration Act, 9 U.S.C §§ 1–16 (the “FAA”), and/or, to the extent applicable, South Carolina’s Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 to -240 (the “SCAA”); Rule 56, SCRCP; and any other applicable substantive or procedural law, and, on the grounds set forth below, hereby move this Honorable Court for an order confirming the attached Final Order of Arbitration (the “Arbitration Award”)¹ and, in accordance therewith, granting judgment for the Facility and, in turn, for FAS and FCOS, as to all claims in this action.



¹ Made by arbitrator D.A. Early, III, Esquire (the “Arbitrator”), the Arbitration Award is dated December 20, 2021; Defendants received a copy of it on or about December 22, 2021; and it was filed with the Court on December 29, 2021. A copy of the filed Arbitration Award is attached hereto as **Exhibit A**.

BACKGROUND

Plaintiff, James Boyd (“Mr. Boyd”), filed this nursing home malpractice action on March 27, 2018. (*See* Summons & Compl.) The operative complaint, namely, Mr. Boyd’s Second Amended Complaint, filed September 19, 2018 (the “Complaint”)², asserts a number of claims against Defendants for money damages premised on Mr. Boyd’s contention that he suffered injuries because of deficient care he received during his residency at the Facility³. (*See* 2d Am. Compl. [Ex. B].) The Complaint asserts the same claims against all Defendants, in other words, all of the claims asserted in the Complaint are asserted against all Defendants,⁴ all of whom are collectively referred to as the “Nursing Home Defendants” or the “Defendants” from the eighth paragraph on. (2d Am. Compl. [Ex. B] ¶ 8 (“That Defendant Magnolia, FAS, and [FCOS⁵] shall hereinafter be collectively referred to as ‘Nursing Home Defendants’ or ‘Defendants.’”))

By order filed August 20, 2019, this Court, the Honorable Perry H. Gravely presiding, granted the Facility’s motion to compel Mr. Boyd’s claims to arbitration and FAS and FCOS’s related motions to stay this action pending the completion of arbitration between Mr. Boyd and the Facility. (*See* Order Granting the Facility’s Mot. to Compel Arbitration & Granting FAS and FCOS’s Mots. to Stay.⁶) By order filed October 17, 2019, the Court affirmed its order of August

² A copy of the Complaint is attached hereto as **Exhibit B**.

³ The Facility is a skilled nursing facility in Greenville County.

⁴ (*See* 2d Am. Compl. [Ex. B] ¶¶ 29–129 (asserting all claims against the “Defendants,” plural); *see also id.* at Prayer for Relief (“pray[ing] for judgment against *the Defendants*” as to all claims) (emphasis added).)

⁵ Context makes clear that FCOS’s omission from this sentence is mere scrivener’s error and that FCOS is intended to be included in the collective references the “Nursing Home Defendants” and the “Defendants.” Indeed, there is no separate reference to FCOS in the remainder of the Complaint. (*See* 2d Am. Compl. [Ex. B] ¶¶ 9–129.)

⁶ A copy of this order is attached hereto as **Exhibit C**. A copy of the Arbitration Agreement is attached hereto as **Exhibit D**.

20, 2019, denying Mr. Boyd’s motion to reconsider. (See Order Denying Pl.’s Mot. to Reconsider.⁷) Mr. Boyd’s claims against the Facility then proceeded in arbitration.

The arbitration hearing was conducted in late October 2021, and the Arbitrator issued the Arbitration Award about two months later, concluding that the Facility was not liable to Mr. Boyd. (See Arbitration Award [**Ex. A**].) In so doing, the Arbitrator expressly found that Mr. Boyd did not carry his burden of proof on two critical issues: (1) he failed to prove breach of the standard of care (the “Breach Issue”) and (2) he failed to prove proximate cause as to his alleged injuries (the “Proximate Cause Issue”). (Arbitration Award [**Ex. A**] pp. 3–4.)

Defendants now ask that the Arbitration Award be confirmed as an order of this Court and that, in accordance therewith, judgment be granted to the Facility and, in turn, to FAS and FCOS, such that this action is, and all claims herein are, fully and finally adjudicated in favor of Defendants.

ARGUMENT

1. **The Arbitration Award should be confirmed pursuant to FAA § 9 and/or SCAA § 15-48-120; judgment thereon should be granted to the Facility pursuant to FAA § 13 and/or SCAA §§ 15-48-150 and -160; and, in turn, judgment should be granted to FAS and FCOS pursuant to res judicata and/or collateral estoppel.**

First off, a word about the applicability of the FAA and/or the SCAA: “[T]he basic purpose of the [FAA] is to overcome courts’ refusals to enforce agreements to arbitrate,”⁸ by “ensur[ing] that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement.” *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012). Without question, the FAA applies here to preempt any provision of state law

⁷ A copy of this order is attached hereto as **Exhibit E**.

⁸ *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 270 (1995).

that would subject the Arbitration Agreement to disfavored treatment relative other contracts. The Arbitration Agreement expressly states that the FAA applies, and this must be enforced like any other contract term. *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 196, 844 S.E.2d 66, 70 (Ct. App. 2020). Moreover, the FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction,”⁹ and, as our state Supreme Court has recognized, nursing home residency agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014). All that said, however, in *Toler’s Cove Homeowners Association, Inc. v. Trident Construction Company, Inc.*, our Supreme Court ruled that, even in cases where the FAA applies to preempt substantive state law, it does not preempt state procedural law that disallows an immediate appeal from the grant of a motion to compel arbitration. 355 S.C. 605, 611, 586 S.E.2d 581, 585–86 (2003). So, perhaps, to the extent they are considered in the same vein as the procedural law distinguished by the *Toler’s Cove* Court, SCAA §§ 15-48-120, -150, and -160 could apply here. But as a practical matter, any question about the applicability of the FAA and/or the SCAA is immaterial, because the relief requested herein (confirmation of the Arbitration Award and judgment in accordance therewith) is proper under either (or both) the FAA and the SCAA.

(a) The Arbitration Award should be confirmed pursuant to FAA § 9 and/or SCAA § 15-48-120.

In pertinent part, FAA § 9 provides:

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the

⁹ *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001).

arbitration, and shall specify the court^[10], then at any time within one year after the award is made^[11] any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10^[12] and 11^[13] of this title.

Similarly, SCAA § 15-48-120 provides: “Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 15-48-130^[14] and 15-48-140^[15].”

There being no cause to vacate, modify, or correct the Arbitration Award (and no motion for any such relief having been made), the Facility is entitled to an order confirming the Arbitration Award under FAA § 9 and/or SCAA § 15-48-120, if not immediately, then upon the expiration of the three-month/90-day deadline (running from the date of delivery of the Arbitration Award to Mr. Boyd) for Mr. Boyd to move to vacate, modify, and/or correct the Arbitration Award under

¹⁰ The Arbitration Agreement expressly states that “[t]he 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.” (Arbitration Agreement [**Ex. D**].)

¹¹ Dated December 20, 2021, the Arbitration Agreement is not yet two months old.

¹² FAA § 10 allows a party to the arbitration to move to vacate an arbitration award on certain narrow grounds. FAA § 12 requires such a motion to be served within three months after the award is filed or delivered.

¹³ FAA § 11 allows a party to the arbitration to move to modify or correct an arbitration award on certain narrow grounds. FAA § 12 requires such a motion to be served within three months after the award is filed or delivered.

¹⁴ SCAA § 15-48-130 allows a party to the arbitration to move to vacate an arbitration award on certain narrow grounds and requires such a motion, except where predicated on corruption, fraud, or other undue means (in which case it must be made within 90 days after such grounds are known or should have been known to the movant), to be made within 90 days after a copy of the award is delivered to the movant.

¹⁵ SCAA § 15-48-140 allows a party to the arbitration to move to modify or correct an arbitration award on certain narrow grounds and requires such a motion to be made within 90 days after a copy of the award is delivered to the movant.

the FAA and/or the SCAA or, in the event that Mr. Boyd makes such a motion within the aforementioned deadline, then pending the Court's decision on the motion.

(b) Judgment should be granted to the Facility pursuant to FAA § 13 and/or SCAA §§ 15-48-150 and -160.

FAA § 13 provides:

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

- (a) The agreement^[16]; the selection or appointment, if any, of an additional arbitrator or umpire^[17]; and each written extension of the time, if any, within which to make the award^[18].
- (b) The award^[19].
- (c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award^[20], and a copy of each order of the court upon such an application^[21]. The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

Essentially, the SCAA breaks the provisions of FAA § 13 into two sections, SCAA §§ 15-48-150 and -160. In pertinent part, SCAA § 15-48-150 provides: "Upon the granting of an order

¹⁶ Again, a copy of the Arbitration Agreement is attached hereto as **Exhibit D**.

¹⁷ As stated on the first page of the Arbitration Award [**Ex. A**], the Arbitrator was selected by consent of the parties. There was no "additional arbitrator or umpire."

¹⁸ There was no such extension.

¹⁹ Again, a copy of the Arbitration Award is attached hereto as **Exhibit A**.

²⁰ The instant motion is the only such application and, along with its attachments, it comprises all such papers.

²¹ The order requested by the instant motion would be the only such order.

confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree.” And SCAA § 15-48-160 provides:

- (a) On entry of judgment or decree, the clerk of court shall prepare the judgment roll consisting, to the extent filed, of the following:
 - (1) The agreement^[22] and each written extension of the time within which to make the award^[23];
 - (2) The award^[24];
 - (3) A copy of the order confirming, modifying or correcting the award^[25]; and
 - (4) A copy of the judgment or decree^[26];
- (b) The judgment or decree may be docketed as if rendered in an action.

The Facility being entitled, as explained above, to an order confirming the Arbitration Award under both FAA § 9 and/or SCAA § 15-48-120, and the instant motion either providing to or requesting from the Court all relevant papers for entry/enrollment of the judgment, the Facility is entitled to judgment in its favor as to all claims asserted against it in this action under FAA § 13 and/or SCAA §§ 15-48-150 and -160.

- (c) **Judgment should be granted to FAS and FCOS pursuant to res judicata and/or collateral estoppel.**

As explained above, the Facility is entitled to judgment in its favor as to all claims. Under FAA § 13, the judgment to which the Facility is entitled “shall have the same force and effect, in

²² Again, a copy of the Arbitration Agreement is attached hereto as **Exhibit D**.

²³ Again, there was no such extension.

²⁴ Again, a copy of the Arbitration Award is attached hereto as **Exhibit A**.

²⁵ Again, the order requested by the instant motion would be the only such order.

²⁶ The judgment or decree that the Court is now asked to render in favor of the Facility (and, in turn, in favor of FAS and FCOS) would be such judgment or decree.

all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.” Likewise, the SCAA provides, in § 15-48-150, that such judgment “shall . . . be enforced as any other judgment or decree” and, in § 15-48-160(b), that “[t]he judgment or decree may be docketed as if rendered in an action.”

“Under the doctrine of res judicata, a final judgment on the merits rendered by a court of competent jurisdiction, without fraud or collusion, is conclusive as to the rights of the parties and their privies.” *Griggs v. Griggs*, 214 S.C. 177, 184, 51 S.E.2d 622, 626 (1949). To establish res judicata, three elements must be shown: (1) the parties must be the same as a prior litigation or their privies; (2) the subject matter must be the same as the prior litigation; and (3) there must have been a prior adjudication of the issue by a court of competent jurisdiction. *Pye v. Aycock*, 325 S.C. 426, 432, 480 S.E.2d 455, 458 (Ct. App. 1997). Where it applies, the doctrine of res judicata bars a litigant from raising any issues that were adjudicated in the former suit and any issues that might have been raised in the former suit. *Id.*

To be clear, and as more fully set forth in their respective filings in the case, Defendants deny the alter ego/amalgamated etc. relationship Mr. Boyd alleges between them; however, *Mr. Boyd himself* is bound by those allegations. *See Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020) (“However, ‘[i]t is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise.’”) (quoting *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992)); *see also Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015) (“Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions.”); *Postal*, 308 S.C. at 387, 418 S.E.2d at 323 (“The allegations, statements, or

admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.”).

As against Mr. Boyd himself, all the elements of *res judicata* are present here. By virtue of his own averments, Mr. Boyd cannot deny that FAS and FCOS are the same as the Facility or its privies; nor can he deny that the subject matter at issue is the same (Mr. Boyd having alleged the same claims against all Defendants and all of his claims having been compelled to arbitration); and, of course, because, as explained above, the Arbitration Award must be confirmed pursuant to FAA § 9 and/or SCAA § 15-48-120 and judgment must be granted to the Facility pursuant to FAA § 13 and/or SCAA §§ 15-48-150 and -160, this Court’s confirmation of the Arbitration Award and judgment for the Facility thereon (which, under both the FAA and the SCAA, must be given the same force and effect as any other judgment entered in an action) constitutes adjudication by a court of competent jurisdiction. *Res judicata* thus bars Mr. Boyd from relitigating all claims that were, as well as any claims that could have been, so adjudicated, which claims, of course, include not only Mr. Boyd’s claims against the Facility but also (since they are the same claims) his claims against FAS and FCOS, and accordingly, FAS and FCOS, too, are entitled to judgment as a matter of law as to all claims.

But even assuming, *arguendo* that, FAS and FCOS are not entitled to judgment as a matter of law pursuant to *res judicata*, they are nonetheless entitled to such a judgment pursuant to collateral estoppel.

Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was previously decided, even if the “new” litigation involves different claims. *Judy v.*

Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009); *see also Pye*, 325 S.C. at 436, 480 S.E.2d at 460 (“[C]ollateral estoppel bars relitigation of the same facts or issues necessarily determined in [a] former proceeding.”). The party asserting collateral estoppel must demonstrate that the issue in question was: (1) actually litigated previously, (2) directly determined previously, and (3) necessary to support the prior judgment. *Beall v. Doe*, 281 S.C. 363, 369, 315 S.E.2d 186, 189–90 n.1 (Ct. App. 1984). “While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” *Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008).

Here, the issues in question are the Breach Issue and the Proximate Cause Issue, both of which the Arbitrator determined in favor of the Facility and against Mr. Boyd. Because, as explained above, the Arbitration Award must be confirmed pursuant to FAA § 9 and/or SCAA § 15-48-120 and judgment must be granted to the Facility pursuant to FAA § 13 and/or SCAA §§ 15-48-150 and -160 and, under both the FAA and the SCAA, such judgment must be given the same force and effect as any other judgment entered in an action, the Breach Issue and the Proximate Cause Issue have thus been actually litigated. It is clear from the face of the Arbitration Award that the Breach Issue and the Proximate Cause Issue were directly determined and that, because these issues go to necessary elements of Mr. Boyd’s claims, the Arbitrator’s findings as to them provide necessary support for the Arbitration Award and, in turn, the confirmation thereof and judgment thereon. And, of course, to be clear, the party against whom collateral estoppel is asserted, Mr. Boyd, is the very same party who had a full and fair opportunity to litigate these

issues by virtue of his participation in the arbitration and court proceedings leading up to the Arbitration Award and, in turn, the confirmation thereof and judgment thereon.

Therefore, because, as explained, the Arbitration Award must be confirmed and judgment must be granted to the Facility thereon and, in turn, Mr. Boyd is collaterally estopped to relitigate the Breach Issue and the Proximate Cause Issue against FAS and FCOS, which issues, between them, go to and preclude Mr. Boyd from meeting his burden of proof as to at least one essential element of all his claims against FAS and FCOS, judgment must be granted to FAS and FCOS, too. (See 2d Am. Compl. [**Ex. B**] ¶¶ 29–40 (asserting a cause of action for Negligence/Gross Negligence and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 41–46 (asserting a cause of action for Negligence *Per Se* and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 47–53 (asserting a cause of action for Breach of Contract and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 54–64 (asserting a cause of action for Fraud/Misrepresentation/Spoliation²⁷ and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 65–73 (asserting a cause of action for violation of the South Carolina Unfair Trade Practice Act and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 74–86 (asserting a cause of action for Elder Abuse²⁸ and

²⁷ Defendants would note that spoliation is not even a recognized cause of action. *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 151, 714 S.E.2d 537, 541 (2011) (“We hold that while Hobbs may continue to assert Cole Vision’s failure to maintain the document at issue as a defense to its claim for indemnification, the circuit court properly held that South Carolina does not recognize an independent tort for the negligent spoliation of evidence, third-party or otherwise.”).

²⁸ Defendants do not concede that this is even a recognized cause of action.

alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 87–90 (asserting a cause of action for Civil Conspiracy and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 91–97 (asserting a cause of action for Corporate Negligence²⁹ and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 98–103 (asserting a cause of action for Intentional Infliction of Emotional Distress and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 104–109 (asserting a cause of action for Negligent Infliction of Emotional Distress and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 110–111 (asserting a cause of action for Alter Ego/Piercing the Corporate Veil³⁰ and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 112–117 (asserting a cause of action for Amalgamation of Interests³¹ and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 118–129 (asserting a cause of action for Conversion and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim).

²⁹ Defendants do not concede that this is even a recognized cause of action.

³⁰ Defendants would note that, by itself, an attempt such as this to disregard the corporate form is not even a recognized cause of action “but rather a means of imposing liability on an underlying cause of action.” *Drury Dev. Corp. v. Foundation Ins. Co.*, 380 S.C. 97, 103, 668 S.E.2d 798, 801 (2008) (quoting 1 William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of Private Corporations* § 41.10 (per. ed., rev. vol. 2006)).

³¹ Here again, Defendants would note that, by itself, an attempt such as this to disregard the corporate form is not even a recognized cause of action. *Drury*, 380 S.C. at 103, 668 S.E.2d at 801.

CONCLUSION

WHEREFORE, for the foregoing reasons, Defendants ask the Court to confirm the Arbitration Award and, in conformity with the express language and necessary implications of thereof, to grant and direct the entry of judgment thereon for the Facility as to all claims in this action and, in turn, grant and direct the entry of judgment thereon for FAS and FCOS as to all claims in this action, such that the action is, and all claims asserted herein are, fully and finally adjudicated in favor of Defendants.

PLEASE NOTE: Defendants reserve all rights to provide further support for this motion via such briefing, argument (to include oral argument), and/or additional submissions as the Court may permit or require.

Respectfully submitted,
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Charleston, South Carolina

Date: February 14, 2022

From: Caldwell, Teresa <TCaldwell@greenvillecounty.org>
Sent: Tuesday, February 15, 2022 11:23 AM
To: Davis, Jay <jdavis@ycrlaw.com>
Cc: stefan@akimlawfirm.com; roy@akimlawfirm.com; janekk@akimlawfirm.com; jparham@jparhamlaw.com
Subject: 2018CP2301934 James Boyd Jr vs. THI Of South Carolina LLC , defendant, et al
Importance: High

Good morning,

The above referenced case is on Appeal to South Carolina Court of Appeals. The Court takes the position that it would not have jurisdiction to hear this Motion pursuant to Appellate Court Rule 205.

Therefore, the Defs/Fundamental Admin Serv Motion/Approve Arbitration Award will not be scheduled as originally planned unless the parties have authority to the contrary. **The Motion has been removed from the April 19th Motions roster.**

Thank you,

Teresa Caldwell
Motions/Non-Jury Coordinator
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JAN 24 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable Perry H. Gravely, Circuit Court Judge

Case No. 2018-CP-23-01934

James Boyd,

Appellant,

v.

THI of South Carolina at Magnolia Place at Greenville, LLC;
Fundamental Administrative Services, LLC; and
Fundamental Clinical and Operational Services, LLC,

Respondents.

NOTICE OF APPEAL

Appellant, James Boyd, hereby appeals the following orders of the Honorable Perry H. Gravely:



ANASTOPOULO LAW FIRM, LLC
Roy T. Willey, IV (SC Bar No.: 101010)
Eric M. Poulin (SC Bar No.: 100209)
Stefan B. Feidler (SC Bar No.: 101918)
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Attorney(s) for Appellant

ELECTRONICALLY FILED - 2022 Jan 17 12:40 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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Attorney(s) for Respondent(s)

Plaintiff, James Boyd, hereby appeals the following orders of the Honorable Perry H. Gravley, Circuit Court Judge:

- His Honor's **Order Granting Defendant THI of South Carolina at Magnolia Place at Greenville, LLC's Motion to Compel Arbitration and Granting Fundamental Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC's Motions to Stay**, filed August 20, 2019; and
- His Honor's **Order denying Plaintiff's Motion to Reconsider and Affirming its previous Order granting Defendant's Motion to Dismiss and Compel Arbitration**, filed October 17, 2019.

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellant received written notice of the Arbitrator's Final Order of Arbitration on or about December 22, 2022.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

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Charleston, South Carolina

Dated: January 17, 2022

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Mar 08 2022

SC Court of Appeals

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

Appeal from Greenville County
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2018-CP-23-01934
Appellate Case No. 2022-000080

James Boyd Jr.,

Appellant,

v.

THI of South Carolina at Magnolia Place at Greenville, LLC;
Fundamental Clinical and Operational Services, LLC; and
Fundamental Administrative Services, LLC,

Respondents.

PROOF OF SERVICE

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Attorneys for Respondents

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Respondents, hereby certify that the foregoing **MOTION TO DISMISS APPEAL** was served on the other party(ies) to this matter on March 8, 2022, via email (see attached) to their counsel of record:

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Attorneys for Appellant

Respectfully submitted,

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March 8, 2022

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Subject: Appellate Case No. 2022-000080 ; Boyd v. THI
Attachments: 2022-000080 (Boyd v. THI) -- Motion to Dismiss Appeal.pdf; 2022-000080 (Boyd v. THI) -- Exhibits to Motion to Dismiss Appeal.pdf

Enclosed please find Respondents' Motion to Dismiss Appeal and the exhibits referenced therein in the above-referenced matter which will be filed today.

Thank you,

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