

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No.: 2018-CP-37-00271

Opinion No. 5866 (S.C. Ct. App. Filed October 6, 2021)

Appellate Case No. 2022-000100

Stephanie Underwood, as Personal  
Representative of the Estate of Betty  
Herrington,

Petitioner,

v.

SSC Seneca Operating Company,  
LLC, d/b/a Seneca Health &  
Rehabilitation Center;  
SavaSeniorCare, LLC; SSC Equity  
Holdings, LLC; SavaSeniorCare  
Administrative Services, LLC;  
SavaSeniorCare Consulting Services,  
LLC

Defendants,

Of Whom SSC Seneca Operating  
Company, LLC, d/b/a Seneca Health  
& Rehabilitation Center;  
SavaSeniorCare, LLC;  
SavaSeniorCare Administrative  
Services, LLC; SavaSeniorCare  
Consulting Services, LLC

Respondents.

**RECEIVED**

**Mar 30 2022**

**S.C. SUPREME COURT**

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**PETITION FOR WRIT OF CERTIORARI**

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on January 11, 2022. The Supreme Court granted an extension for Petitioner to file her Petition until April 5, 2022.

s/Raymond T. Wooten

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March 30, 2022

**QUESTION PRESENTED**

- 1. DID THE COURT OF APPEALS ERR IN FAILING TO ENFORCE THE PLAIN LANGUAGE OF THE DISPUTE RESOLUTION PROGRAM CONTRACT AND INSTEAD LOOKING TO THE PURPORTED INTENT OF THE PARTIES TO FIND THAT THE DISPUTE RESOLUTION PROGRAM APPLIES TO DISPUTES FOR OVER \$50,000.00**

## STATEMENT OF THE CASE

This case presents the extraordinary situation where the Court of Appeals failed to enforce the plain language of a contract, and instead looked to the purported intent of the parties. The Court of Appeals' Opinion is even more striking as it construes a contract against the non-drafting unsophisticated party, and in favor of the drafting sophisticated party. In doing so, the Court of Appeals turns years of precedent on its head, and opens the door to the drafting party changing the meaning of a contract when it is unhappy with the results of the contract it drafted.

Petitioner Betty Herrington was admitted to Seneca Health and Rehabilitation Center ("SHRC") on or about February 27, 2016, after having been treated at Oconee Medical Center for a wound on her left foot, among other medical conditions. Petitioner was a resident of SHRC from her admission until she was transferred to Oconee Medical Center on March 28, 2016. While at SHRC, Respondents failed to regularly monitor and treat Petitioner's left foot wound as prescribed by her doctors. Because of this lack of proper monitoring and treatment, the wound on Petitioner's left foot deteriorated and the infection spread, ultimately leading to a left foot transmetatarsal amputation with left tendon Achilles lengthening. After the amputation, Petitioner was readmitted to SHRC on April 5, 2016.

Petitioner filed a Notice of Intent alleging malpractice by Respondents on August 3, 2017, and, after pre-suit mediation was unsuccessful, filed this suit on April 25, 2018. Petitioner filed suit against SSC Seneca Operating Company, LLC, d/b/a Seneca Health & Rehabilitation Center, SavaSeniorCare, LLC, SSC Equity Holdings, LLC, SavaSeniorCare Administrative Services, LLC, and SavaSeniorCare Consulting Services, LLC. The Respondents are a web of related companies owned by SavaSeniorCare, LLC ("Sava"). (*See A. pp. 23-27*). According to its website, Sava is "one of the largest providers of skilled nursing, memory care and

rehabilitative services in the nation.” (See <https://www.savaseniorcare.com/company.html>). SSC Seneca Operating Company, LLC, d/b/a Seneca Health & Rehabilitation Center, is a Delaware limited liability company operating within the State of South Carolina, and was the Licensee of SHRC during Petitioner’s stay. (A. p. 24). SSC Equity Holdings, LLC, SavaSeniorCare Administrative Services, LLC, and SavaSeniorCare Consulting Services, LLC, are all Delaware limited liability companies operating within the state of South Carolina, but are not registered to do business in South Carolina. (See A. pp. 23-25). On September 6, 2018, a Consent Order to Stay was entered as to SavaSeniorCare, LLC and SSC Equity Holdings, LLC, staying the proceedings as to these two defendants. (A. pp. 5-10).

On June 25, 2018, SSC Seneca Operating Company, LLC, SavaSeniorCare Administrative Services, LLC, and SavaSeniorCare Consulting Services, LLC, moved to compel arbitration (collectively “Motions to Compel Arbitration”). (A. pp. 84-112). All three Respondents moved to compel arbitration based on a document entitled “Dispute Resolution Program” (“DRP”). (A. pp. 88-96). On February 27, 2016, Petitioner signed the DRP among various other admissions documents when she was being admitted to SHRC. The DRP and other admissions documents were drafted by Respondents. (A. pp. 11-15) The DRP defines a “Dispute” as:

“**Dispute**” means (a) any claim or dispute totaling \$50,000.00 individually or in the aggregate that would constitute a cause of action that either party could bring in a court of law (b) this agreement does not prevent either party from initiating a grievance proceeding, complaint, to survey agencies, appeal proceedings with the appropriate state or federal entity regarding an involuntary transfer or discharge, or any such claim or dispute involving solely a monetary claim in an amount less than \$50,000.00 Any such claim shall not be deemed a dispute under this agreement.”

At the hearing, Respondents argued that the DRP was meant to apply to claims equal to or greater than \$50,000.00, even though the document does not state this. The Circuit Court found

that, by its own unambiguous terms, the DRP only applied to claims or disputes of exactly \$50,000.00. (A. pp. 11-15). The Circuit Court refused to adopt Respondents' desired reading of the DRP, as to do so would require the Court to add additional language that is not present in the DRP. Respondents filed Motions to Reconsider on October 22, 2018. (A. pp. 246-254). Their Motion was denied via order dated October 26, 2018, and they filed a Notice of Appeal on November 21, 2018. (A pp. 16-23; A. pp. 283-287).

On October 6, 2021, the Court of Appeals issued an Order finding that the Circuit Court erred in interpreting the DRP as only applying to claims for exactly \$50,000.00. (A. pp. 334-339). Petitioners timely filed a Petition for Rehearing and Petition for Rehearing *En Banc* which were denied via an Order dated January 11, 2022. (A. pp. 340-349; A. pp. 350-352). During the pendency of the Appeal, Betty Herrington passed away. On March 16, 2022, Herrington's daughter and the Personal Representative of her estate, Stephanie Underwood, was substituted as a party in this case.

## ARGUMENTS

### 1. THE COURT OF APPEALS ERRED IN FAILING TO ENFORCE THE PLAIN LANGUAGE OF THE DISPUTE RESOLUTION PROGRAM CONTRACT AND INSTEAD LOOKING TO THE PURPORTED INTENT OF THE PARTIES TO FIND THAT THE DISPUTE RESOLUTION PROGRAM APPLIES TO DISPUTES FOR OVER \$50,000.00

The plain language of the DRP provides that it does not apply to disputes for over \$50,000.00. Specifically, the DRP applies to “disputes” and defines a “dispute” as “any claim or dispute *totaling \$50,000.00 individually or in the aggregate* that would constitute a cause of action that either party could bring in a court of law[.]” (A. pp. 90-91) (*emphasis added*). In its Order, the Court of Appeals does not disagree with the Circuit Court’s reading of what the DRP actually says. Instead, the Court of Appeals concluded that when read as a whole, the DRP should be interpreted to apply to disputes for \$50,000.00 or more. The Court of Appeals erred in coming to this conclusion as it violates numerous rules of contractual interpretation. Further, the Court of Appeals erred in taking the extraordinary step of construing a contract against the non-drafting unsophisticated party, and in favor of the drafting sophisticated party. In doing so, the Court of Appeals has opened up a giant loophole that will be used by drafting parties, including sophisticated ones, to change contracts they drafted to benefit themselves, should a dispute involving the contract arise.

#### a) The Court of Appeal erred in finding that the DRP had a meaning other than what it says.

The DRP applies to “disputes” and defines a “dispute” as “any claim or dispute *totaling \$50,000.00 individually or in the aggregate* that would constitute a cause of action that either party could bring in a court of law[.]” (A. pp. 90-91) (*emphasis added*). In its Opinion, the Court of Appeals did not find that the plain language of DRP actually applied to disputes over

\$50,000.00. Instead, the Court found that the parties intended for the DRP to apply to disputes over \$50,000.00 when reading the DRP as a whole. To do so, the Court had to insert the words, “or more” after \$50,000.00 in the definition of dispute. The Court of Appeals erred in not enforcing the plain language of the DRP and instead attempting to discern the parties’ intention. “When the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect. The court’s duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties’ failure to guard their rights carefully.” Ellis v. Taylor, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (S.C. 1994) (internal citations omitted). “The court is without authority to consider parties’ secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed.” Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (S.C. App. 2009). Because the definition of dispute was plain and capable of legal interpretation the Court of Appeals should have enforced the language of the DRP and affirmed the Circuit Court’s Order. By not enforcing the plain language of the contract, the Court of Appeals looks away from years of precedent for contractual interpretation, and opens up a new avenue whereby parties will attempt to ignore the plain language of contracts and instead argue that their purported intentions should control.

**b) The Court of Appeals erred in taking the extraordinary step of construing a contract against the non-drafting unsophisticated party, and in favor of the drafting sophisticated party.**

In finding that the DRP applies to disputes over \$50,000.00, the Court of Appeals took the extraordinary step of construing a contract against the non-drafting unsophisticated party, and

in favor of the drafting sophisticated party. The DRP was drafted by Respondents.<sup>1</sup> Respondents are sophisticated entities. (A. p. 13). According to Respondents' website, they are "one of the largest providers of skilled nursing, memory care and rehabilitative services in the nation." See <https://www.savaseniorcare.com/company.html>. Further, Respondents are sophisticated enough to set up a web of at least five related entities to handle various parts of running a nursing home. (A. pp. 23-28). Conversely, Petitioner was an unsophisticated individual. If a court finds that a contract is ambiguous, then any doubts and ambiguities in a contract must be construed against the drafter. See Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 309, 698 S.E.2d 773, 778 (S.C. 2010).<sup>2</sup> Further, "[w]here a contract evidences care in its preparation, it will be presumed that its words were employed deliberately and with intention." Hellams v. Harnist, 284 S.C. 256, 259, 325 S.E.2d 569, 571 (S.C. App. 1985). While the language of the DRP is clear that it only applies to disputes for \$50,000.00, even if it were found that the DRP were ambiguous, the Court is required to construe that ambiguity against Respondents who drafted the contract. This is especially true in the present case where Respondents are sophisticated companies, and Petitioner was an unsophisticated individual. See Impac Mortg. Holdings, Inc. v. Timm, 226 A.3d 323, 342 (Md. Spec. App. 2020), cert. granted, 232 A.3d 257 (Md. 2020), and aff'd, 255 A.3d 89 (Md. 2021)("There are sophisticated parties on both sides of this preferred stock relationship, and they are bound by the unambiguous terms of the documents memorializing that relationship."); see also Progressive Intern. Corp. v. E.I. Du Pont de Nemours & Co., C.A. 19209, 2002 WL 1558382, at 1 (Del. Ch. July 9, 2002)("Sophisticated parties are bound by the unambiguous language of the contracts

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<sup>1</sup> It is important to note that the DRP does not contain a provision stating that the contract will not be construed against the drafter.

<sup>2</sup> The Court of Appeals did not find that the DRP or its definition of dispute was ambiguous. Instead, it found that the plain meaning of the DRP was unreasonable.

they sign.”). It is unprecedented to construe a contract against the non-drafting unsophisticated party, and in favor of the drafting sophisticated party. By ruling the way it did, the Court of Appeals turns years of precedent on its head, and opens the door to the drafting party attempting to change the meaning of a contract when it is unhappy with the results of the contract it drafted. If left standing, one can envision the Court of Appeals’ Opinion in this case being cited in every forthcoming case where a bank is unhappy with the foreclosure terms in its note and mortgage or an insurance company is unhappy with the terms of coverage in its insurance policy. They will argue that the plain language of the contract is not what they meant to say, and that their purported intention should prevail.

**c) The Court of Appeals erred in looking to general language in the DRP instead of the specific defined terms.**

The Court of Appeals erred in interpreting the DRP based on general language included in the DRP, instead of using the specific defined terms. In its opinion, the Court of Appeals states that:

“[t]he agreement begins by stating the parties’ desire to ‘have all disagreements resolved through the dispute resolution program.’ In similar fashion, the agreement closes with a reference to the parties ‘agreeing to have all disagreements resolved through the dispute resolution program.’ The obvious intention is that most disputes will go through arbitration—claims of lesser value are defined to not even be ‘disputes’—and one cannot come away from the agreement without the idea that the parties intended for the agreement to comprehensively describe how they would handle all of their disputes and disagreements.” (A. p. 338).

In looking to general language to divine Respondents’ intent, instead of looking to the specific language actually used by Respondents, the Court of Appeals’ Opinion violates two rules of contract construction. First, “[p]arties to a contract may, by agreement, attribute to a word used in the contract any meaning they may desire, and if such meaning is clear the courts will give

effect to it.” Stand. Oil Co. of New Jersey v. Powell Paving & Contracting Co., 139 S.C. 411, 138 S.E. 184, 193 (S.C. 1927). “[W]here the parties define the words or terms which they propose using, as was done in the contract before us, the contract will be interpreted according to such definitions if free from ambiguity.” C.A.N. Enterprises, Inc. v. S.C. Health and Human Services Fin. Commn., 292 S.C. 556, 559, 357 S.E.2d 714, 715 (S.C. App. 1987), aff’d, 373 S.E.2d 584 (S.C. 1988). The specific language which the Court of Appeals chose to not enforce was not found in some boilerplate section at the end of the DRP, but was instead included in the “Definition” section of the DRP. A definition is defined as “[t]he meaning of a term as explicitly stated in a drafted document such as a contract, a corporate bylaw, an ordinance, or a statute; a definiens.” Black’s Law Dictionary, Eighth Edition. When Respondents drafted the DRP, they clearly intended for its definition of “dispute” to control and the Court of Appeals erred in looking instead to general language in the DRP to determine the parties’ purported intent. Second, it is well settled that “[a] proper construction of a contract requires the court to give effect to specific terms over any general language.” Crenshaw v. Erskine College, 850 S.E.2d 1, 15 (S.C. 2020), reh’g denied (Nov. 30, 2020). The Court of Appeals flips this rule on its head, and gives effect to general language over the specific terms defined by Respondent when it drafted the DRP. In doing so, the Court of Appeals upsets years of precedent and creates greater confusion in interpreting contracts.

## **CONCLUSION**

For reasons stated, Petitioner asks that the Supreme Court grant Certiorari in this case so as to enforce the plain language of the DRP, and conform with the existing precedent regarding contractual interpretation. Allowing this decision to stand will create a giant loophole in contractual interpretation whereby parties will look to the purported intentions at the time of

drafting instead of the actual language of the contract, and where drafting parties, including sophisticated ones, will attempt to change contracts when it benefits them.

RESPECTFULLY SUBMITTED,

s/Raymond T. Wooten  
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