

THE DEVIL IS IN THE DETAILS: WHAT’S IN A CONTRACT DOES MATTER

Raphael O. Boyd
Clark Atlanta University

Lila L. Carden
University of Houston-Main

A nursing home patient was allegedly attacked by another patient at that same nursing home and allegedly sustained an injury as a result. The allegedly attacked patient sued the nursing home claiming a number of actions which included negligence. As a part of its response to these allegations, the nursing home included a motion to compel arbitration. Effectively, this action required the case to be removed from the trial court and held before arbitration. The determination of whether the nursing home would be granted this action went to the Mississippi Appellate Court (Community Care Center of Vicksburg, LLC v. Mason, 2005). The names of the parties, certain locations and certain facts have been changed in order to protect various individuals. This case is appropriate for graduate and undergraduate business law, business management, human resource management, and risk management classes.

BACKGROUND

The use of nursing facilities has become essential in the United States and has become an integral part of the healthcare system (U Compare Health Care, n.d.). It is estimated that approximately “3 million elderly and disabled Americans receive care in more than 17,000 nursing homes in the United States” (U Compare Health Care, n.d.). The Community Care Center of Vicksville, LLC d/b/a Heritage House Nursing and Rehabilitation Center and Legacy Healthcare Services, Inc., (hereafter known as the Nursing Center) is a nursing home facility located in Vicksville, Mississippi. It provides healthcare services for assisted living (Community Care Center of Vicksburg, LLC, n.d.).

As part of its contractual agreements with its residents, the Nursing Center required them to sign documents pertaining to their stay in their facility. Accordingly, these documents contained a provision pertaining to the use of arbitration if a dispute arose (Community Care Center of Vicksburg, LLC v. Mason, 2005). The use of an arbitration requirement is not unique to the Nursing Center. A number of business entities have emerged with contractual

language requiring parties to that contract to settle possible future disputes in arbitration rather than a traditional jury trial system (Sternlight, 2005). The Federal Arbitration Act (FAA) (9 U.S.C. § 2) states that arbitration agreements in valid contracts are “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” The Mississippi Supreme Court has ruled that clauses contained within a nursing home contract fall within the purview of the FAA (Community Care Center of Vicksburg, LLC v. Mason, 2005) and the United States Supreme Court supported position (Sternlight, 2005). The use of the FAA in the workplace has caused many challenges. Individuals supporting the use of the FAA noted that it is cost effective and provides a faster forum to resolve disputes (Hernandez, 2000). Those in opposition to the FAA state that the process is unfair and may favor the employer (Glover, 2006).

THE CASE

Mrs. Karen Mansion resided in Vicksville, Mississippi. She was approximately seventy years old and experienced many health challenges. She had cerebral palsy and required personal care in her home as well as private persons to sit with her. The month of February 2003 was especially difficult for her. She had to spend time in the hospital for a viral stomach issue. To further complicate matters, her husband had passed away during this time period (Community Care Center of Vicksburg, LLC v. Mason, 2005).

According to the home health care personnel records, Mrs. Mansion was making the best of this challenging situation. She was described as being able to eat her meals and recovering during the early part of April of 2003. However, on April 17, 2003, she had a very unfortunate situation occur. Through a chance incidence, while seeking to move about in her residence, her robe became caught on the door where she tripped and fell. At the time, the fall did not appear to have any lasting effects. Mrs. Mansion informed the private care person, Faye Branch, that evening that she was doing well. However, during the night her condition continued to decline. The next morning when Ms. Branch returned, Mrs. Mansion’s arm had enlarged and was damaged (Community Care Center of Vicksburg, LLC v. Mason, 2005).

As a result of this unfortunate accident, Mrs. Mansion initially requested to be taken to the Nursing Center by Ms. Branch. Mrs. Mansion had inquired about this option earlier. However, Ms. Branch took Mrs. Mansion to the primary care physician. Upon examination by the physician, it was determined that Mrs. Mansion had a fractured wrist (Community Care Center of Vicksburg, LLC v. Mason, 2005).

LEGAL DILEMMA

After the visit to the primary care physician, on April 18, 2003, Mrs. Mansion was taken to the Nursing Center where she completed the admissions process. Ms. Branch stayed with Mrs. Mansion until the process for admission was completed. This process included Mrs. Mansion reading and signing numerous documents while in her room. There was also a representative from the Nursing Center who witnessed the signature. Ms. Branch also stayed with Mrs. Mansion until she was completely settled in her room. Ms. Branch noted

in her records that Mrs. Mansion appeared at ease (Community Care Center of Vicksburg, LLC v. Mason, 2005).

Mrs. Mansion stayed at the Nursing Center until the end of the month without incident. However, on April 26, 2003, Mrs. Mansion allegedly encountered a very difficult and frightening situation. Mrs. Mansion alleged that another resident came into her room while she was by herself and attacked her. In a probable effort to escape the attack, Mrs. Mansion fell. However, her challenges did not end there. Mrs. Mansion was taken to the hospital and it was determined by the physician that she had sustained a fractured hip (Community Care Center of Vicksburg, LLC v. Mason, 2005).

On May 14, 2003, Mrs. Mansion personally checked herself into the Green Grove Nursing Home. The admission documents noted that she was personally accountable for herself and that she did not secure a power of attorney (Community Care Center of Vicksburg, LLC v. Mason, 2005).

THE DECISION TO SUE AND ARBITRATION

Mrs. Mansion sought legal recourse against the Nursing Center for her alleged injuries on May 6, 2004. The case was filed in the Circuit Court of Warren County. Mrs. Mansion alleged “negligence, negligence per se, premise liability, and gross negligence pertaining to the incident that occurred on April 26, 2003” (Community Care Center of Vicksburg, LLC v. Mason, 2005, p. 4).

In response, the Nursing Center filed its answer as well as various defenses (Community Care Center of Vicksburg, LLC v. Mason, 2005). These responses included a motion to compel arbitration. Arbitration is “a method of dispute resolution involving one or more neutral third parties who are usu[ally] agreed to by the disputing parties and whose decision is binding” (Black’s Law Dictionary, 2010, p. 1034). This motion to compel arbitration sought to have the case heard in arbitration and not in a traditional trial court. This motion was based in part on the fact that Mrs. Mansion had signed certain documents during the admissions process which purportedly agreed to this course of action (Community Care Center of Vicksburg, LLC v. Mason, 2005).

Mrs. Mansion had two affidavits put forward as a result of this motion to compel arbitration. The first affidavit was from Mrs. Mansion and stated that she had been given a sizeable number of documents from the Nursing Center requiring her signature, but a proper understanding of any of the documents was not provided to her. Further, she stated that she was trying to get better from a viral illness which was due to pneumonia and she felt very exhausted. Thus, she was not as able to mentally comprehend the documents. The second affidavit was from Ms. Branch, the private care person. Ms. Branch stated that she could not recall the term arbitration used during the dialogue with Mrs. Mansion, that she was not aware of the meaning of the word arbitration, and a proper explanation about each document was not provided by the Nursing Center representative so that she could understand each

one (Community Care Center of Vicksburg, LLC v. Mason, 2005).

Upon examining the documents in question, which also contained the arbitration provision, several items were noted. First, Mrs. Mansion signed a number of admissions documents in her room. The seven page admission agreement was properly executed by Mrs. Mansion on page six. “Directly above her signature on this page, in bold-faced and all capital letters,” it stated: “ANY RESPONSIBLE PARTY OR PARTIES EXECUTING THIS AGREEMENT REPRESENT AND WARRANT THAT THEY HAVE AUTHORITY, EITHER EXPRESS, IMPLIED OR APPARENT, TO ACT AS AGENT FOR THE RESIDENT AND TO EXECUTE THIS AGREEMENT ON RESIDENT’S BEHALF” (Community Care Center of Vicksburg, LLC v. Mason, 2005, p.2).

Furthermore, on the following page, Mrs. Mansion provided a proper execution on this part of the contract. The wording in which Mrs. Mansion executed was in bold print and the letters were capitalized. It stated that the party to this contract had read and understood this contract. The provision especially noted the arbitration provision. Lastly, the provision noted that the party to this agreement entered into this agreement voluntarily and agreed to the terms (Community Care Center of Vicksburg, LLC v. Mason, 2005).

There was a part of the agreement which was of note to Mrs. Mansion. In particular, Mrs. Mansion’s initials were not provided at the top of page five of this contract dealing with the arbitration provision. A space with a line was made available for initials and was preceded by words identifying that this part pertained to arbitration and the reader should pay special attention to it (Community Care Center of Vicksburg, LLC v. Mason, 2005, p.3).

This part of the contract noted the arbitration provision stating that “any legal dispute which might arise shall be resolved exclusively by binding arbitration” (Community Care Center of Vicksburg, LLC v. Mason, 2005, p.3). There was additional language continued onto page six stating: “The Resident and/or Responsible Party understand that (1) he/she has the right to seek legal counsel concerning this agreement, (2) the execution of this Arbitration is not a precondition to the furnishing of services to the Resident by the Facility, and (3) this Arbitration Agreement may be rescinded by written notice to the Facility from the Resident within 30 days of signature” (Community Care Center of Vicksburg, LLC v. Mason, 2005, p.3).

There was one other interesting note. This agreement was executed even though Mrs. Mansion arranged for Attorney Charles Mansfield to handle her legal matters through a power of attorney in the event that she was not able. Mr. Mansfield was neither present nor was his advice sought (Community Care Center of Vicksburg, LLC v. Mason, 2005).

LEGAL ACTION SUMMARY

The trial court ruled in favor of Mrs. Mansion, not allowing the case to be dismissed and moved to arbitration (Community Care Center of Vicksburg, LLC v. Mason, 2005). This decision was ruled in part due to the lack of initials from Mrs. Mansion noted in the area identifying arbitration. These initials would have indicated that Mrs. Mansion knew about the arbitration clause and understood its meaning. (Community Care Center of Vicksburg, LLC v. Mason, 2005). The court also expressed a concern about the lack of signatures of all of the attesting witnesses. Further, the court expressed concern that Attorney Mansfield, whom Mrs. Mansion had given power of attorney when she was not capable, was not with her during this process (Community Care Center of Vicksburg, LLC v. Mason, 2005).

The case is now with the appellate court of Mississippi.

REFERENCES

- Community Care of Vicksburg, LLC v. Mason, 2006-CA-00599-COA (Miss Ct App. 2007).
- Community Care Center of Vicksburg, LLC v. Mason. (2005). Retrieved from <http://www.mslawyer.com/mssc/ctapp/20071009/0600599.html>
- Community Care Center of Vicksburg, LLC (n.d.) Retrieved from <http://companies.findthecompany.com/1/5542046/Community-Care-Center-Of-Vicksburg...>
- Cross, F.B. & Miller, R.L. (2009, 2007). *The legal environment of business* (7th ed.). Mason, OH: South-Western, Cengage Learning.
- East Ford, 826 So. 2d at 714 (¶13) (citing Pridgen v. Green Tree Fin Servicing Corp., 88 F. Supp. 2d 655, 657 (S.D. Miss. 2000)).
- Eric A. Hernandez, Mandatory Arbitration and Employment Discrimination: The Unfair Law, 2 CARDOZO ONLINE J. CONFLICT RESOL. 96 (2000).
- Garner, B. A. (Eds.) (2009). *Black's law dictionary*, (9th ed). Eagan, MN: West, A Thomson Reuters Business.
- Heritage House. (n.d.). Retrieved from <http://www.heritagehouseofms.com>
- Heritage House Nursing Center. (n.d.). Retrieved from <http://www.powerprofiles.com/profile/0005144899084/COMMUNITY+CARE+CENT...>J. Maria Glover, Beyond Unconscionability: Class Action Waivers and Mandatory Arbitration Agreements, 59 VAND. L. REV. 1735, 1743 (2006).
- Sternlight, J. R. (2005). *Creeping Mandatory Arbitration: Is It Just?*, 57 STAN. L. REV. 1631, 1631-33.
- U Compare Health Care. (n.d.). Retrieved from http://www.ucomparehealthcare.com/nursinghome_start.html
- Vicksburg Partners, 911 So. 2d at 507 (Miss.2005).
- Vicksburg Partners, 911 So. 2d at 521 (¶35) (citing *Bank of Ind. V. Holyfield*, 476 F. Supp. 104, 110 (S.D. Miss. 1079)).
- Vicksburg Partners, 911 So. 2d at 515 (¶16).
- Vicksburg Partners, 911 So. 2d at 513 (¶10) (citing *Pass Termite & Pest Control, Inc. v. Walker*, 904 so. 2d 1030, 1032-33 (¶7) (Miss. 2004)).
- Wellness.com. (n.d.). Retrieved from http://www.wellness.com/dir/2944912/nursing_home/ms/Vicksburg/heritage-house-nursin...

APPENDIX

EXHIBIT 1

Contract:

A contract may be generally defined as “a legally binding agreement between two or more parties who agree to perform or to refrain from performing some act now or in the future.”

Source: Cross, F.B. & Miller, R.L. (2009, 2007) p. 195. *The legal environment of business* (7th ed.). Mason, OH: South-Western, Cengage Learning.

Basic Elements of a Contract:

Agreement – An agreement to form a contract includes an offer and an acceptance.

Consideration – Any promises made by the parties to the contract must be supported by legally sufficient and bargained-for consideration (something of value received or promised, such as money, to convince a person to make a deal).

Contractual capacity – Both parties entering into the contract must have the contractual capacity to do so; the law must recognize them as possessing characteristics that qualify them as competent parties.

Legality – The contract’s purpose must be to accomplish some goal that is legal and not against public policy.

Source: Cross, F.B. & Miller, R.L. (2009, 2007) p. 195. *The legal environment of business* (7th ed.). Mason, OH: South-Western, Cengage Learning.

Defenses:

Genuineness of assent – The apparent consent of both parties must be genuine. (no fraud or duress)

Form – The contract must be in whatever form the law requires; for example, some contracts must be in writing to be enforceable.

Source: Cross, F.B. & Miller, R.L. (2009, 2007) p. 195. *The legal environment of business* (7th ed.). Mason, OH: South-Western, Cengage Learning.

EXHIBIT 2

Arbitration:

“A method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding.”

Source: BLACK’S LAW DICTIONARY 94 (9th ed. 2010).

Unconscionable Contracts:

Contracts considered “Unscrupulous or grossly unfair as to be void of conscience.” The

two types of unconscionable contracts are procedural unconscionability and substantive unconscionability.

Sources: (a) Cross, F.B. & Miller, R.L. (2009, 2007), p. 220. The legal environment of business (7th ed.). Mason, OH: South-Western, Cengage Learning.
(b) Garner, B. A. (Eds.) (2010). Black's law dictionary, (9th ed), 1313. Eagan, MN: West, A Thomson Reuters Business.
(c) East Ford, 826 So. 2d at 714 (¶13) (citing Pridgen v. Green Tree Fin Servicing Corp., 88 F. Supp. 2d 655, 657 (S.D. Miss. 2000)).

Procedural Unconscionability

(a) "Unconscionability resulting from improprieties in contract formation (such as oral misrepresentations or disparities in bargaining position) rather than from the terms of the contract itself."

(b) "May be proved by showing a lack of knowledge, lack of voluntariness, inconspicuous print, the use of complex legalistic language, disparity in sophistication or bargaining power of the parties and/or a lack of opportunity to study the contract and inquire about the contract terms."

Sources: (a) Garner, B.A. (Eds.) (2010). Black's law dictionary, (9th ed.), 1313. Eagan, MN: West, A Thomson Reuters Business.
(b) Cross, F.B. & Miller, R.L. (2009, 2007), p. 220. The legal environment of business (7th ed.). Mason, OH: South-Western, Cengage Learning.
(c) East Ford, 826 So. 2d at 714 (¶13) (citing Pridgen v. Green Tree Fin Servicing Corp., 88 F. Supp. 2d 655, 657 (S.D. Miss. 2000)).

Substantive Unconscionability

(a) "Unconscionability resulting from actual contract terms that are unduly harsh, commercially unreasonable, and grossly unfair given the existing circumstances.

(b) An example is "when there is a one-sided agreement whereby one party is deprived of all the benefits of the agreement or left without a remedy for another party's nonperformance or breach."

(c) "Look to the four corners of the agreement in order to find abuses within specific terms of the agreement which would violate the expectations of, or cause gross disparity between, contracting parties."

Sources: (a) Garner, B.A. (Eds.) (2010). Black's law dictionary, (9th ed.), 1313. Eagan, MN: West, A Thomson Reuters Business.
(b) Cross, F.B. & Miller, R.L. (2009, 2007), p. 220. The legal environment of business (7th ed.). Mason, OH: South-Western, Cengage Learning.
(c) East Ford, 826 So. 2d at 714 (¶13) (citing Pridgen v. Green Tree Fin Servicing Corp., 88 F. Supp. 2d 655, 657 (S.D. Miss. 2000)). Mason, OH: South-Western Cengage Learning.