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To: Paul Dulberg pdulberg@icloud.com, Paul Dulberg Paul_Dulberg@comcast.net, T Kost tkost999@gmail.com

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Petition for Leave to Appeal of SSC Odin Operating Company, LLC d/b/a Odin Healthcare Center

2008 WL 8236091 | Sue CARTER, Special Administrator, the Estate of Joyce Gott, Deceased, Respondent, v. SSC ODIN OPERATING COMPANY, LLC d/b/a Odin Healthcare Center, Petitioner. | Supreme Court of Illinois.

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2008 WL 8236091 (Ill.) (Appellate Petition, Motion and Filing)
Supreme Court of Illinois.

Sue CARTER, Special Administrator, the
Estate of Joyce Gott, Deceased, Respondent,
v.
SSC ODIN OPERATING COMPANY, LLC
d/b/a Odin Healthcare Center, Petitioner.

No. 106511.
May 9, 2008.

On Petition for Leave to Appeal from the Illinois Appellate Court
Fifth District, No. 5-07-0392, There Heard on Appeal from the
Circuit Court of the Fourth Judicial Circuit, Marion County, Illinois
Honorable David Sauer, Circuit Judge Circuit Court, No. 06-L-75

Petition for Leave to Appeal of SSC Odin Operating Company, LLC d/b/a Odin Healthcare Center

Lashly & Baer, P.C., W. Jeffrey Muskopf - #6244703, Mark R. Feldhaus - #6292796, 714 Locust Street, St. Louis, MO 63101-1699, Telephone: 314-436-8326, Facsimile: 314-621-6844, E-mail: jmuskopf@lashlybaer.com, mfeldhaus @lashlybaer.com, Attorneys for Defendant-Petitioner, SSC Odin Operating, Company, LLC D/b/a Odin, Healthcare Center.

*1 *PRAYER FOR LEAVE TO APPEAL*

Pursuant to Supreme Court Rule 315, Defendant SSC Odin Operating Company, LLC d/b/a Odin Healthcare Center ("Odin Healthcare Center") petitions this Court for leave to appeal from the judgment of the Appellate Court entered on April 4, 2008.

JURISDICTION

The Appellate Court issued its opinion in this case on April 4, 2008. A154-A161.[1] No petition for rehearing was filed in the Appellate Court. This Court has jurisdiction pursuant to Supreme Court Rule 315.

POINTS RELIED UPON IN REQUESTING REVIEW

Section 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 2, establishes that a "written provision in any... contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." As the Supreme Court of the United States confirmed earlier this year, the FAA "establishes a national policy favoring arbitration when the parties contract for that mode of dispute resolution." *Preston v. Ferrer*, 128 S. Ct. 978, 981 (2008). Moreover, the FAA, "which rests on Congress' authority under the Commerce Clause, supplies not simply a procedural framework applicable in federal courts; it also calls for the application, in state as well as federal courts, of federal substantive law regarding ***2** arbitration." *Id*. (citing *Southland Corp. v. Keating*, 465 U.S. 1, 16 (1984)). For example, "when parties agree to arbitrate all questions arising under a contract, state laws lodging primary jurisdiction in another forum, whether judicial or administrative, are superseded by the FAA." *Id*. at 987.

Section 3-607 of the Illinois Nursing Home Care Act, 210 ILCS 45/3-607 (West 2006), is one such law. Section 3-607 provides that "[a]ny party to an action brought under Sections 3-601 through 3-607 [relating to actions to enforce certain rights of long-term care facility residents] shall be entitled to a trial by jury and any waiver of the right to a trial by jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect." In application, Section 3-607 nullifies otherwise valid arbitration agreements to resolve a narrow category of disputes (i.e., those "brought under Sections 3-601 through 3-607"). For that reason, Section 3-607 is clearly preempted by the FAA as interpreted by *Preston* and *Southland*.

In spite of unambiguous precedent and the "well-established principle that arbitration is a favored alternative to litigation by state, federal, and common law" (*Bd. of Managers of Courtyards at Woodlands Condo. Ass'n v. IKO Chicago, Inc*. 183 Ill 2d 66, 71 (1998)), in this case the Fifth District held that Section 3-607 and a related provision are not preempted by the FAA because they do not expressly mention arbitration, and as such the plaintiff's claims under the Nursing Home Care Act are not arbitrable. Without any substantive explanation, the Fifth District also held that the plaintiff's wrongful death claims--which arise under a separate statutory scheme--were not arbitrable because of Section 3-607.

The Fifth District's ruling conflicts with binding precedent issued by the Supreme Court of the United States, the Supremacy Clause of the United States Constitution, the FAA, ***3** and the many decisions by the courts of this state in which the preemptive effect of

the FAA is recognized. If allowed to stand, the Fifth District's decision would prohibit at least 100,000 Illinois residents and 1,200 long-term care facilities from choosing arbitration as the forum for the resolution of their disputes. Moreover, the rationale employed by the Fifth District would permit the wholesale evisceration of arbitration agreements in this state regardless of the setting. Based on the foregoing, this case presents two distinct questions, each of which warrants this Court's review under the criteria specified in Rule 315(a):

First, the Fifth District's decision conflicts with at least two decisions issued by the Supreme Court of the United States: *Preston* and *Southland*. Because the Fifth District ignored binding precedent issued by the Supreme Court of the United States recognizing the preemptive effect of the FAA on statutes such as Section 3-607 of the Illinois Nursing Home Care Act, there is a clear conflict with settled judicial authority that is based on the Supremacy Clause of the United States Constitution. Consequently, this Court's review is warranted to conform the decision of the Fifth District to the preemption principles firmly rooted in the jurisprudence of this state's highest court and that of the Supreme Court of the United States.

Second, the question of whether the FAA preempts state statutes such as those at issue here presents a pure question of law that is of significant, reoccurring importance to businesses of all types *and* consumers, both of whom benefit from agreements that ensure a speedy, informal, and relatively inexpensive procedure for resolving controversies arising out of commercial transactions. This fact is evidenced by, among other things, the repeated willingness of this Court and the Supreme Court of the United States to grant review in cases ***4** addressing the enforceability of arbitration agreements and federal preemption issues related thereto.

STATEMENT OF FACTS

The facts relevant to this appeal are undisputed Plaintiff Sue Carter is the Special Administrator of the Estate of Joyce Gott. Ms. Gott was a resident of Odin Healthcare Center, a nursing facility in Odin, Illinois. Upon Ms. Gott's initial admission to the facility, Ms. Carter and Odin Healthcare Center executed a written Health Care Arbitration Agreement. C50-C53; A24-A27. Ms. Gott was discharged from the facility and was later readmitted. Upon her re-admission, Ms. Gott and Odin Healthcare Center executed a second Health Care Arbitration Agreement identical to the first agreement. C54-C56; A28-A30.

In both Agreements, the parties agreed to submit to binding arbitration “all disputes with each other and their representatives arising out of or in any way related or connected to

the Admission Agreement and all matters related thereto including matters involving the Resident's stay and care provided at the Facility." C51, C54; A25, A28. The Agreements made clear that the parties agreed to waive their rights to a jury trial. C53, C56; A27, A30. The parties also expressly provided that their Agreements were governed by the FAA. C51, C54; A25, A28.

Ms. Gott passed away several weeks following her second admission to Odin Healthcare Center. Despite her promise to resolve any disputes in an arbitral instead of a judicial forum, Ms. Carter filed suit against Odin Healthcare Center in the Circuit Court of Marion County, Illinois. C5-C9; A5-A9. Ms. Carter alleged that Odin Healthcare Center failed to provide adequate and properly supervised care as needed by Ms. Gott, and that Odin Healthcare Center's acts or omissions resulted in Ms. Gott's death. C5-C9; A5-A9. Ms. ***5** Carter brought her suit as a survival action pursuant to the Illinois Nursing Home Care Act in one count, and pursuant to the Illinois Wrongful Death Act in a second count. C5, C8; A5, A8.

In response to the lawsuit, Odin Healthcare Center moved to compel arbitration. C36-C38; A10-A12. Odin Healthcare Center filed an affidavit in support of its motion setting forth facts that established the Agreements involved interstate commerce within the meaning of the FAA. C57-C59; A31-A33. Ms. Carter neither challenged this evidence nor produced any evidence to the contrary.

Instead, Ms. Carter argued that the arbitration agreements were void and unenforceable under the Illinois Nursing Home Care Act[2] and the Illinois Health Care Arbitration Act.[3] Odin Healthcare Center replied that these statutes were preempted by the ***6** FAA. Ms. Garter also argued that the arbitration agreements were unenforceable due to lack of mutuality and that the agreements to arbitrate Ms. Gott's claims did not preclude Ms. Carter from bringing her claim under the Illinois Wrongful Death Act. Ms. Carter did not contend or produce evidence in the Circuit Court that the Arbitration Agreements were unconscionable, nor did she argue that they were the product of fraud, duress, or undue influence.

Without conducting an evidentiary hearing, the Circuit Court denied Odin Healthcare Center's motion to compel arbitration. C92-C93; A34-A35. With respect to the wrongful death action, the Circuit Court reasoned that, although the decedent, Ms. Gott, was bound by the agreements with regard to her own claims, a plaintiff such as Ms. Carter bringing a wrongful death claim on behalf of an estate was not bound by the Agreements. C92, A34. With regard to the survival action, the Circuit Court concluded that the Agreements were unenforceable because they were "in direct violation of emphatically

stated public policy and for lack of mutuality" and because, with regard to interstate commerce, "in the aggregate the economic activity does not represent general practice subject to federal control." C92-C93; A34-A35.

The Fifth District affirmed the Circuit Court's decision. A154-A161. In so doing, the Fifth District based its decision on one narrow issue: whether the "public policy" expressed in the Nursing Home Care Act was an ordinary state-law contract defense applicable to all contracts, and thus beyond the preemptive effect of the FAA. A158-A160. ***7** "[B]ecause the public policy expressed in sections 3-606 and 3-607 [of the Illinois Nursing Home Care Act] concerns the validity, revocability, and enforceability of contracts generally and does not specifically target arbitration agreements," the Fifth District explained, "it presents a legitimate state law contract defense of a violation of public policy to the agreements and so voids the agreements." A160-A161. Without any substantive discussion, the Fifth District also held that the same "emphatic public policy" embodied in the Nursing Home Care Act rendered Ms. Carter's claims under the Illinois Wrongful Death Act not subject to arbitration. *Id*.

ARGUMENT

I. This Court's Review Is Warranted Because The Fifth District's Holding Conflicts With Weil-Established Precedent Recognizing The Preemptive Power Of The FAA.

A. The FAA's displacement of conflicting state law is "now well-established" and has been "repeatedly affirmed." *Preston*, 128 S. Ct. at 983 (citations omitted); *accord Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 142 (2006) ("Section 2 of the FAA compels judicial enforcement of arbitration agreements 'in any contract evidencing a transaction involving commerce.' "); *Bishop v. We Care Hair Dev. Corp.*, 316 Ill. App. 3d 1182, 1190 (1st Dist. 2000) ("Where a contract involving interstate commerce contains an arbitration clause, federal law preempts state statutes even in state courts.").

In *Preston*--a case that was decided after briefing and oral argument in the Fifth District below--the Supreme Court of the United States held that the FAA allows parties to choose an arbitral forum to decide their disputes and that the FAA supersedes any state law that lodges primary jurisdiction in a judicial or administrative forum. 128 S. Ct. at 981. The parties in *Preston* had agreed to arbitrate disputes that arose under a management contract. ***8** *See id*. at 982-83. The plaintiff claimed that he was owed fees as a personal manager under the contract, but the defendant claimed the contract was void because the plaintiff was acting as an unlicensed talent agent in violation of a state statute. *See id*. Following the procedures prescribed by state law,

the defendant petitioned the state labor commissioner to decide whether the contract was unenforceable because it violated a law requiring licensing of talent agents. *See id.*[4] The plaintiff moved to compel arbitration, but the state court refused to do so because it believed the FAA did not preempt actions before an administrative agency with exclusive jurisdiction over a dispute. *Id*

The Supreme Court of the United States reversed, saying that the issue was simply "who decides whether [petitioner] acted as personal manager or as a talent agent." *Id*. at 987. In reversing the California Supreme Court, the Court found that the motion to compel arbitration raised solely the question of which forum would hear the parties' dispute, and that the parties had not forfeited any substantive claims under the statute. *Id*. They were merely submitting to resolution in an arbitral, rather than judicial or administrative, forum. *Id*. In other words, the parties had not waived causes of action under the state statute; instead, they had agreed *who* would decide such issues, and that "who" was an arbitrator.

***9** The same is true here. Like in *Preston*, Odin Healthcare Center, Ms. Carter, and Ms. Gott entered into agreements whereby "all disputes with each other and their representatives arising out of or in any way related or connected to the Admission Agreement and all matters related thereto including matters involving [Ms. Gott]'s stay and care provided at" Odin Healthcare Center would be subject to arbitration. C51, C54; A25, A28. By entering into these agreements, Ms. Carter and Ms. Gott did not waive their right to assert potential claims under the Illinois Nursing Home Care Act. Instead, they agreed to have such claims decided in an arbitral forum, not by a court. As *Preston* makes clear, such agreements must be enforced under the FAA even if state law would prescribe a different result.

B. The holding of *Preston* is hardly groundbreaking. Almost twenty-five years earlier, the Supreme Court of the United States faced a similar issue in *Southland*. There, the Court held that the FAA preempted a state statute virtually identical to that at issue here. In *Southland*, a California statute designed to protect franchisees provided that "[a]ny condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this law or any rule or order hereunder is void." *See* 465 U.S. at 10 (citation omitted). Like the Illinois Nursing Home Care Act and the statute at issue in *Preston*, the statute in *Southland* did not mention arbitration. Despite that fact, the *Southland* Court reversed a California Supreme Court decision refusing to compel arbitration, finding that the FAA withdraws the "power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Id* at 12.

***10** Moreover, in rejecting a dissenting colleague's argument strikingly similar to the public-policy defense adopted by the Fifth District in the case below, Chief Justice Burger explained:

Justice Stevens dissents in part on the ground that § 2 of the [FAA] permits a party to nullify an agreement to arbitrate on "such grounds as exist at law or in equity for the revocation of any contract." We agree, of course, that a party may assert general contract defenses such as fraud to avoid enforcement of an arbitration agreement. We conclude, however, that the defense to arbitration found in the California Franchise Investment Law is not a ground that exists at law or in equity "for the revocation of *any* contract" but merely a ground that exists for the revocation of arbitration provisions in contracts subject to the California Franchise Investment Law. Moreover, under this dissenting view, "a state policy of providing special protection for franchisees... can be recognized without impairing the basic purposes of the federal statute." If we accepted this analysis, states could wholly eviscerate Congressional intent to place arbitration agreements "upon the same footing as other contracts,"... simply by passing statutes such as the Franchise Investment Law. We have rejected this analysis because it is in conflict with the [FAA] and would permit states to override the declared policy requiring enforcement of arbitration agreements.

Southland, 465 U.S. at 16 n.11 (citations omitted).

Despite decisions like *Southland*, the Fifth District in the case below held that "because the public policy expressed in sections 3-606 and 3-607 [of the Illinois Nursing Home Care Act] concerns the validity, revocability, and enforceability of contracts generally and does not specifically target arbitration agreements, it presents a legitimate state law ***11** contract defense of a violation of public policy to the agreements and so voids the agreements." A160-A161. This was clear error. The Fifth District's reasoning was considered--and expressly rejected--by *Southland*, which instructs that the mere fact that the Illinois Nursing Home Care Act does not expressly mention arbitration is irrelevant to FAA preemption analysis. *See also Preston*, 128 S. Ct at 985 (holding that state statute, which did not expressly mention arbitration, was nonetheless preempted by the FAA).

The "defense to arbitration found in the [Illinois Nursing Home Care Act] is not a ground that exists at law or in equity 'for the revocation *of any* contract' but merely a ground that exists for the revocation of arbitration provisions in contracts subject to the [Illinois Nursing Home Care Act]." *Southland*, 465 U.S. at 16 n.l 1. As a result, the Fifth District committed plain error in the face of unambiguous precedent when it found that the FAA

does not preempt those provisions of the Illinois Nursing Home Care Act that preclude the enforcement of otherwise valid arbitration agreements such as those at issue here.

II. This Court's Review Is Warranted Because The Questions Presented Are Of Significant Importance To Consumers And Businesses Of All Types.

The Fifth District's patently erroneous ruling will have ramifications far beyond the parties to this appeal. As the Fifth District itself acknowledged, arbitration agreements are widely prevalent in today's economy. *See* A158. If the Fifth District's ruling is allowed to stand, the right of Illinois residents and businesses of all types to agree to arbitrate future disputes will be severely jeopardized.

This Court, like the Supreme Court of the United States, has consistently recognized the importance of arbitration agreements by addressing questions regarding their enforceability in a variety of economic settings. *See, e.g., Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1, 46 (2006) (cellular phone contracts); ***12** *Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135 (2006) (agreements to arbitrate employment disputes); *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376 (2004) (computer sale and service contracts); *IKO Chicago*, 183 Ill. 2d 66 (architectural services contracts); *Hall Street Assocs. v. Mattel, Inc.*, 128 S. Ct. 1396 (2008) (real estate); *Preston*, 128 S. Ct. 978 (professional management agreements); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006) (deferred-payment transactions); *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 57 (2003) (per curiam) (banking); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265 (1995) (personal-services agreements); *Southland*, 465 U.S. 1 (franchise agreements); *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983) (construction); 14 *Penn Plaza LLC v. Pyett*, No. 07-581 (U.S.), *cert, granted*, 128 S. Ct. 1223 (2008) (collective bargaining agreements).

Likewise, the preemptive effect of the FAA is an issue that has been recognized as important and upheld in many Illinois appellate decisions and opinions issued by the Supreme Court of the United States. *See, e.g., Kinkel*, 223 Ill. 2d 1; *Melena*, 219 Ill. 2d 135; *Zobrist v. Verizon Wireless*, 354 Ill. App. 3d 1139 (5th Dist. 2004); *Bishop*, 316 Ill. App. 3d 1182; *Cusamano v. Norrell Healthcare, Inc.*, 239 Ill. App. 3d 648 (4th Dist. 1992); *Preston*, 128 S. Ct. 978; *Buckeye*, 546 U.S. 440; *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681 (1996); *Allied-Bruce*, 513 U.S. 265; *Perry v. Thomas*, 482 U.S. 483 (1987); *Southland*, 465 U.S. 1.

The foregoing makes clear that issues affecting the enforceability of arbitration agreements and FAA preemption are important issues worthy of this Court's consideration. Moreover, the Fifth District's ruling has no limits. Under the logic

adopted by the Fifth District, any state statute that creates a cause of action and provides a judicial forum to resolve that cause of action states an "emphatic public policy" that allows contracting parties ***13** to circumvent otherwise valid arbitration agreements that, under the well-established national policy in favor of arbitration, should be enforced as written. As the Court recognized in *Southland*, the logic of the Fifth District's ruling will gut the FAA because arbitration agreements in any type of contract-would be voided. *See Southland*, 465 U.S. at 16 n.11 ("If we accepted this analysis, states could wholly eviscerate Congressional intent to place arbitration agreements upon the same footing as other contracts ... simply by passing statutes such as the [Illinois Nursing Home Care Act].") (citation omitted).

III. Odin Healthcare Center Fully Preserved Its Right To Argue FAA Preemption Of The Nursing Home Care Act And The "Emphatic Public Policy" Which It Allegedly Embodies.

The Fifth District found that "[n]owhere in its opening brief or reply brief, and at no time during oral argument, has the defendant contended that a violation of public policy is not a legitimate generally applicable defense to all contracts in Illinois." A157. Thus, it concluded that Odin Healthcare Center had "waived the consideration of any argument on that issue." A157. Indeed, Odin Healthcare Center freely admitted in its opening brief that "generally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening § 2 [of the FAA]." Defendant's Opening Brief, p. 13. Odin Healthcare Center's opening brief and reply brief, however, make clear that Odin Healthcare Center was anything but silent as the Fifth District has said. To the contrary, Odin Healthcare Center strenuously and repeatedly argued that the public policy defense asserted by Ms. Carter in this case does not apply to all contracts generally, and that it is squarely within the preemptive scope of the FAA. The following excerpts from Odin Healthcare Center's briefs are but a few examples of these arguments:

***14** • Because those Illinois statutes [relied upon by Ms. Carter] target arbitration agreements and do not apply generally to the enforcement of all contracts, they do not avoid preemption under the FAA. Opening Brief, p: 14.

• [Ms. Carter] erroneously believes that the FAA preempts only state statutes, not state public policy. However, it is well-established that the FAA preempts both statutes and public policy that [are] hostile to arbitration. Reply Brief, p. 6.

• Thus, the FAA preempts the Illinois statutes and public policy on which [Ms. Carter] relies to resist enforcement of the arbitration agreements. Opening Brief, p. 13.

• Here, [Ms. Carter]'s illegality defense is not one that is applicable to contracts generally, but rather, is a defense based on state statutes and public policy that are specifically designed to restrict arbitration. Therefore, [Ms. Carter]'s state law defense is preempted by the FAA. Reply Brief, p. 9.

The Fifth District also found that Odin Healthcare Center did not contend that Sections 3-606 and 3-607 of the Nursing Home Care Act are not "emphatically stated public policy." A158. Odin Healthcare Center readily admitted that "[i]t is axiomatic that the public policy of a state is reflected in its statutes." Opening Brief, p. 15. Odin Healthcare Center did not and does not take issue with this proposition; however, it is unclear to Odin Healthcare Center how the public policy of a state can be stated more or less "emphatically" in one statute as compared to another.

*15 IV. The Nursing Home Care Act Does Not Apply To Ms. Carter's Claims Under The Wrongful Death Act

Perhaps the strongest evidence counseling in favor of this Court granting review is found in the second-to-last paragraph of the Fifth District's decision, in which it held that "[a]lthough the trial judge limited his preemption analysis to the survival action, denying the defendant's motion on the wrongful death action on different grounds, we conclude that the foregoing analysis applies equally to both counts of the plaintiff's complaint and precludes the enforcement of the agreements with regard to the plaintiff's entire complaint." A161. Evidently, the Fifth District concluded that the state public policy evinced in Sections 3-606 and 3-607 of the Nursing Home Care Act was also effective in voiding enforcement of the Arbitration Agreements with respect to a cause of action brought pursuant to an *entirely different statute*--the Illinois Wrongful Death Act.

Not only did the Fifth District fail to provide any reasoning for its extraordinary logical leap, its holding stands in direct conflict with this Court's decision in *Varelis v. Northwestern Memorial Hospital*, 167 Ill. 2d 449 (1995)--namely, that a wrongful death action is subject to the contractual limitations accepted by the decedent. Because the Wrongful Death Act conditions an heir's claim on the right of the decedent to maintain an action "if death had not ensued," 740 ILCS 180/1, and because Ms. Gott (as well as Ms. Carter) signed a valid arbitration agreement, Ms. Carter cannot now bring a judicial action that Ms. Gott herself would have been precluded from bringing had she not passed away. *Varelis*, 167 Ill. 2d at 454.

V. The Appellate Court Erred In Failing To Consider Other Grounds For Reversal

Because of its conclusion with respect to Ms. Carter's public-policy argument, the Fifth District found it "unnecessary to consider the defendant's arguments with regard to the ***16** alternative baseson which the trial court denied the defendant's motion [to compel arbitration]: a lack of mutuality, a lack of interstate commerce." A161. Although not discussed by the Fifth District, these are additional grounds for reversal of the decisions of both the Circuit Court and the Fifth District. Odin Healthcare Center incorporates by reference its arguments on these points as found in its opening and reply briefs, but outlines those issues below in order to preserve them for review by this Court. *Hansen v. Baxter Healthcare Corp.*, 198 Ill. 2d 420, 429-30 (2002).

First, without discussion in its Order, the Circuit Court found the arbitration agreements to be unenforceable for lack of mutuality. C93 at ¶ 2; A35. However, on their face, the Arbitration Agreements involve mutual and reciprocal consideration because both Ms. Carter and Odin Healthcare Center are required to arbitrate any claims against one another that exceed $200,000 in value. Accordingly, lack of mutuality serves as no defense to void the arbitration agreement at issue.

Second, the Circuit Court wrongly held that the Arbitration Agreements did not involve interstate commerce, and ignored Odin Healthcare Center's uncontroverted evidence to the contrary. C93 at ¶ 3; A35. In this case, the federal Medicare program paid for Ms. Gott's nursing care at Odin Healthcare Center. C58 at ¶4; A32. Furthermore, in caring for Ms. Gott, Odin Healthcare Center used various goods purchased from vendors outside of Illinois and transported across state lines into Illinois. C58-C59 at ¶ 6-7; A32-A33. Thus, the Arbitration Agreements clearly implicated interstate commerce, and as such they are subject to the protections afforded by the FAA. *See Alafabco*, 539 U.S. at 57 (summarily reversing Alabama Supreme Court decision that had interpreted the FAA's interstate-commerce requirement narrowly).

***17** *CONCLUSION*

For the foregoing reasons, Odin Healthcare Center respectfully requests that the Court grant this Petition for Leave to Appeal. Alternatively, the Court should grant the petition, vacate the Fifth District's ruling, and remand for proceedings consistent with *Southland* and *Preston*.

Footnotes

1 Citations to the Appendix required by Rule **315**(**c**)(**6**) are noted as A ___. No abstract was filed in the Appellate Court. Pursuant to Rule 318(c), copies of the briefs of the parties filed in the Appellate Court are included in the Appendix.

2 Ms. Carter cited three sections of the Nursing Home Care Act in support of her argument. Section 3-606 provides that any waiver by a resident or his legal representative of the right to commence an action shall be null and void and without legal force or effect. Section 3-607 provides that any party to an action under the Act shall be entitled to a trial by jury and any waiver of the right to a trial by jury, prior to the commencement of an action, shall be null and void and without legal force or effect. Section 3-602 provides that a nursing home shall pay the actual damages and costs and attorney's fees to a facility resident whose rights are violated. 210 ILCS 45/3-606, 3-607, 3-602 (West 2006).

3 Ms. Carter cited a provision in the Health Care Arbitration Act that provides specific language concerning cancellation of an arbitration agreement affecting health care must appear in any such agreement and sets forth requirements for the format of such language. *See* 710 ILCS 15/9 (West 2006).

4 The statute at issue in *Preston* read: "In cases of controversy arising under this chapter, the parties involved shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo." *Preston*, 128 S. Ct. at 985 (quoting Cal. Lab. Code Ann. § 1700.44(a) (West 2003)).

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