IN THE SECOND DISTRICT COURT OF APPEAL
TAMPA, FLORIDA

Case No. 2D24-0475

MHC HOLDINGS, INC.,

Appellant,

v.

PHYSICIAN PARTNERS, LLC,

Appellee.

ON APPEAL FROM THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT MHC HOLDINGS, INC.

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INTRODUCTION

Appellant MHC Holdings, Inc. ("MHC") appeals the trial court's order granting appellee Physician Partners, LLC's ("Physician Partners") motion to confirm arbitration orders in a dispute that MHC never agreed to arbitrate.

Florida law uniformly holds that a party cannot be forced to arbitrate a dispute that it never agreed to arbitrate. The trial court's order, however, does exactly that. The arbitration provision at issue appears in an agreement between Physician Partners and Dr. Stephen C. Watry. MHC was never a party to the agreement between Dr. Watry and Physician Partners. Dr. Watry died in 2021 and the agreement containing the arbitration provision terminated upon his death. Physician Partners, however, contends that Dr. Watry's agreement with Physician Partners was somehow revived, assigned to MHC, and further amended three months after his death. There is no law or evidence to support Physician Partners' argument.

MHC repeatedly challenged the existence of any agreement to arbitrate between itself and Physician Partners. The trial court nonetheless confirmed the arbitration orders, explaining that it was for the arbitrator to decide whether the dispute was subject to

arbitration. But the trial court mistakenly conflated the question of arbitrability of a dispute—*i.e.,* whether the dispute falls within the scope of an agreement to arbitrate—with a challenge to the existence of an agreement to arbitrate in the first instance. The question of whether the parties formed an agreement to arbitrate is a question that must be resolved exclusively by the trial court. The trial court failed to decide that question in this case.

If the trial court had considered the issue, it would have been compelled to deny the motion to confirm the arbitration orders because MHC did not enter into any agreement to arbitrate with Physician Partners. MHC was not a party to the agreement between Physician Partners and Dr. Watry. Moreover, that agreement terminated upon Dr. Watry's death. Accordingly, it could not later be assigned to MHC. Even if the agreement could have been revived and assigned, there was no evidence presented that Mrs. Watry was authorized to assign the agreement.

Finally, the trial court erred by confirming the arbitration orders in favor of Physician Partners because MHC did not violate the right of first refusal. Physician Partners complains about Mrs. Watry's sale

of MHC stock held in her individual name. Importantly, MHC did not sell or transfer anything in violation of the right of first refusal.

The trial court also erred by confirming an injunction order entered by the arbitrator that awards relief which is invalid as a matter of law. The arbitrator's injunction order goes well beyond maintaining the status quo between the parties pending the resolution of the dispute. Instead, the injunction order requires the re-incorporation of an already dissolved entity and imposes an improper mandatory injunction against non-party individual employees by requiring them to continue to work for the dissolved entity. Further exacerbating the overreaching relief granted in the injunction order, the trial court also erred in confirming the arbitrator's injunction order because the arbitrator failed to comply with the substantive and procedural requirements under Florida law for awarding injunctive relief.

Accordingly, MHC respectfully request that this Court reverse the trial court's order granting Physician Partners' motion to confirm the arbitration orders and denying MHC's motion to vacate the arbitration orders. The Court should remand with instructions that the trial court vacate the arbitration orders and enter judgment in

favor of MHC because MHC did not enter into any agreement to arbitrate with Physician Partners. In the alternative, the Court should remand with instructions that the trial court vacate the arbitration orders and conduct further proceedings to determine whether the parties entered into an agreement to arbitrate.

STATEMENT OF THE CASE AND FACTS

Relevant Background and the Parties

Physician Partners is an independent practice association that contracts with physicians to develop a network of providers. (App. 5).[1] Physician Partners negotiates reimbursement rates or other risk-bearing reimbursement arrangements with Medicare Advantage or other insurance plans for its network of providers. (App. 5). Island Doctors, MSO ("Island Doctors") is a medical service organization that contracts with doctors to provide primary care for patients with specific insurance plans. (App. 201). Dr. Roy H. Hinman, II is the president of Island Doctors. (App. 207). Dr. Watry was an independent physician whose practice was located in Volusia

[1] All record cites are to the Appendix cited as "App."

County, Florida. (App. 26–27, 61). MHC was a medical service organization formed in 2012 by Dr. Watry.

Island Doctors and Dr. Watry's Agreement

On August 18, 2012, Island Doctors and Dr. Watry entered into a Physician Participation Agreement ("2012 Island Doctors Agreement"). (App. 201–207). Island Doctors had entered into a provider agreement with Humana Medical Plan, Inc. to provide services for patients covered by its insurance plan. (App. 201). Under the 2012 Island Doctors Agreement, Dr. Watry agreed to provide primary care services to the Island Doctors patients covered by Humana insurance plans. (App. 201). The 2012 Island Doctors Agreement granted Island Doctors a right of first refusal to purchase Dr. Watry's practice: "[i]f during the period of this Agreement and one (1) year after, [t]he practice is offered for sale or an offer to purchase is made by a third party, Island Doctors has the right of first refusal within fifteen business days." (App. 205).

Physician Partners and Dr. Watry's Agreement

On March 1, 2015, Physician Partners and Dr. Watry entered into a Physician Affiliate Agreement ("Agreement"). (App. 48–51). The Agreement defined Steven C. Watry, D.O. as the "Physician" and

Physician Partners as the "IPA" or the independent practice association. (App. 48). In the Agreement, Dr. Watry, as the "Physician," agreed to: (1) "provide or arrange for the provision of Covered Services to [patients with certain health insurance plans] within the scope of the Physician's practice"; (2) "maintain all licenses, permits and certifications required by state and federal laws to perform Physician's obligations hereunder"; (3) "render Covered Services to [patients with certain health insurance plans] in accordance with professionally recognized standards of care"; and (4) "participate in [Physician Partners'] marketing activities and that [Physician Partners] may use Physician's image, name, practice and other information for such." (App. 48). Physician Partners agreed in return to pay Dr. Watry the amounts set forth in the Payment Exhibit(s) attached to the Agreement. (App. 48).

In addition to the parties' respective obligations, the Agreement also provided general terms that governed the parties' intended relationship. Two of these provisions are relevant to this dispute. First, the Agreement includes a "Dispute Resolution" section, which states the following:

> Any dispute relating to this Agreement shall be settled exclusively by binding arbitration in Hillsborough County, Florida by a single arbitrator, chosen from a panel of licensed attorneys having at least ten years of managed care-related experience, pursuant to the American Health Lawyers Association's Dispute Resolution Rules then in effect. Judgement upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction and enforced accordingly. The arbitrator may grant injunctive relief in a form similar to that which a court of law would otherwise grant. The arbitrator shall be bound by applicable law and shall not award exemplary or punitive damages. . . .

(App. 49). Additionally, the Agreement provides Physician Partners with a right of first refusal to purchase Dr. Watry's practice in the event of a contemplated sale or transfer by Dr. Watry:

> In the event of a proposed sale or transfer of ownership interests or assets of Physician's practice ("Sale"), Physician will provide IPA written notice, including the proposed purchaser ("Purchaser"), terms of offer ("Offer") and other information reasonably requested by IPA, within five days of receipt of Offer, IPA, at its sole discretion, may either: (i) purchase the assets upon the terms and conditions set forth in the Offer; (ii) terminate the Agreement; or (iii) consent to the assignment of the Agreement to Purchaser. IPA shall provide such written notice to Physician within 30 days of IPA's receipt of Offer notice, and Physician will not close on Sale until receipt of such written notice from IPA.

(App. 50).

Island Doctors and MHC's Agreement

On June 21, 2016, MHC and Island Doctors entered into a separate provider agreement for patients insured by Humana Medical Plans ("Island Doctors Agreement"). (App. 209–215). Dr. Roy H. Hinman, II signed the Island Doctors Agreement on behalf of Island Doctors, and Dr. Watry signed on behalf of MHC. (App. 215). The Island Doctors Agreement provides Island Doctors with a right of first refusal to purchase MHC, which states the following: "If during the period of this Agreement and one (1) year after, the practice is offered for sale or an offer to purchase is made by a third party, Island Doctors has the right of first refusal within fifteen business (15) days." (App. 215).

The Relationships Between the Parties

For over six years, Dr. Watry and Physician Partners operated under the terms of the Agreement. Dr. Watry provided services to patients within Physician Partners' network, and Physician Partners paid Dr. Watry for the services he provided. (*See* App. 48–51). In April 2021, Dr. Watry passed away. Dr. Watry's death terminated the Agreement for the provision of health services between Dr. Watry

and Physician Partners, and no provision of the Agreement provides for the Agreement's survival after Dr. Watry's death. Upon his death, Dr. Watry's shares in MHC, a Florida corporation formed years before the Agreement, transferred to his surviving spouse, Mrs. Theresa Watry.

Nearly three months after Dr. Watry's death, Physician Partners and the now-deceased Dr. Watry purported to enter into two amendments to the terminated Agreement. Both amendments were executed on the same day. (App. 197, 199). The first amendment states that Physician Partners and Steven C. Watry, D.O. "mutually desire to amend the Agreement to allow the assignment of the Agreement." (App. 197). Physician Partners then "consent[ed]" in the first amendment to Dr. Watry's assignment of all "his rights, duties, and obligations under the Agreement" to MHC. (App. 197). Mrs. Watry signed the Agreement on behalf of MHC as the "President." (App. 197). Purporting to sign also for the deceased Dr. Watry, Mrs. Watry executed the first amendment as the "President" of a non-existent entity. (App. 197). The first amendment did not assign the Agreement to Mrs. Watry. Nor did the assignment to MHC purport to reserve in Mrs. Watry any rights or obligations under the

Agreement to the extent she acquired any such rights or obligations upon Dr. Watry's death.

In the second amendment, Physician Partners and MHC, as the purported assignee of the Agreement, sought to change the terms of the payment for patients covered by UnitedHealthcare or WellCare of Florida insurance plans. (App. 199). Without any mention of the dispute resolution provision, the second amendment simply states that "the Agreement remains in full force and effect." (App. 199). Again, Mrs. Watry purported to sign the second amendment as the "President" of MHC. (App. 199). Mrs. Watry did not sign the amendment in her individual capacity, nor did she undertake any obligations under the Agreement.

Approximately two years later, on March 31, 2023, Mrs. Watry entered into a stock purchase agreement under which she sold MHC stock held in her individual name to Roy H. Hinman, M.D., P.A. ("Hinman, P.A."). (App. 221–234). Mrs. Watry signed that stock purchase agreement in her individual capacity as seller. Dr. Roy H. Hinman, II signed the stock purchase agreement on behalf of Hinman, P.A. as the buyer. (App. 232). Following the sale of Mrs. Watry's stock, Physician Partners sent a letter to both Mr. Charles

Kohler, counsel for MHC, and Mrs. Watry claiming that Physician Partners had a right of first refusal under the Agreement with respect to Mrs. Watry's MHC stock and that it intended to enforce the Agreement. (App. 338–339, 341–342). In response, counsel for MHC informed Physician Partners that its purported right of first refusal had been extinguished upon the termination of the Agreement when Dr. Watry died. (App. 358). Mrs. Watry, who owned the stock after Dr. Watry's death, was not a party to the Agreement. (*See* App. 48–51). Even if the right of first refusal in the Agreement survived Dr. Watry's death, the obligation under the right of first refusal was purportedly assigned only to MHC. MHC, however, did not sell any stock to Hinman, P.A. or anyone else. (*See* App. 221–234). On May 18, 2023, MHC filed a declaratory judgment action in Volusia County, Florida challenging whether MHC was a proper party to the Agreement. (App. 170–173). The following day MHC filed a notice of voluntary dissolution with the Florida Secretary of State. (App. 379).

Arbitration Proceedings

On May 12, 2023, Physician Partners filed a demand for arbitration with the American Health Law Association ("AHLA") against MHC, alleging breach of contract, unjust enrichment,

promissory estoppel, and quantum meruit. (App. 60–70). In its demand, Physician Partners alleged that MHC breached the Agreement because MHC sold "all or part of its assets to Roy H. Hinman, P.A., or anyone else without providing notice to Physician Partners or the Right of First Refusal." (App. 65).

On May 23, 2023—just 11 days after Physician Partners initiated the arbitration proceeding—the arbitrator heard Physician Partners' petition for emergency relief. (App. 133–134). Even though MHC was not in attendance at the hearing, the arbitrator entered an order granting Physician Partners' requested injunctive relief ("Injunction Order"). (App. 133–147). In the Injunction Order, the arbitrator held that Physician Partners was likely to succeed on the merits of its claims because MHC was bound to the Agreement based on the July 2021 amendments signed by Mrs. Watry, and because MHC had received an offer for purchase without notifying Physician Partners pursuant to the Agreement. (App. 137–139). The arbitrator did not address the fact that the stock sold to Hinman, P.A. was owned by Mrs. Watry and not MHC. (*See* App. 137–139). Without taking any evidence, the arbitrator stated that Physician Partners had shown it would suffer irreparable harm because "counsel for

Physician Partners represented that their client is unaware of any other general practice medical practices for sale in New Smyrna Beach. Thus, the loss of MHC could effectively shut Physician Partners out of the New Smyrna Beach market." (App. 139–141). The arbitrator also found that the balance of harms and equities weighed in favor of emergency relief because Physician Partners would not be able to exercise its right of first refusal. (App. 142–143).

In the Injunction Order, the arbitrator enjoined the voluntary dissolution of MHC and the transfer of any MHC assets. (App. 143–146). The Injunction Order also stated that MHC "must continue operating in its current form," "must ensure no material changes in its operations," and "must ensure no material changes in its business plans." (App. 144). "For the avoidance of doubt," the arbitrator stated that the order was "binding on the parties to the action, their officers, agents, servants, employees, and attorneys." (App. 146).

On June 9, 2023, Physician Partners filed an amended petition for arbitration in the AHLA arbitration proceedings, adding an additional claim against MHC under the Florida Uniform Fraudulent Transfer Act. (App. 149–163). Then, Physician Partners filed a motion for entry of a default judgment on the issue of MHC's liability

in the arbitration proceedings. (App. 165). On July 21, 2023, the arbitrator entered an order holding MHC liable on the merits of Physician Partners' breach of contract claim and Florida Uniform Fraudulent Transfer claim. (App. 165–168).

Procedural History

While the arbitration proceedings were moving forward, Physician Partners filed a petition in the circuit court on May 24, 2023, to confirm the Injunction Order. (App. 4–7). Physician Partners asked the court to confirm the arbitrator's award of provisional injunctive relief because it satisfied the legal standards for awarding injunctive relief. (App. 6–7). Physician Partners followed its petition with a separate motion on May 26, 2023, to confirm the Injunction Order. (App. 24–25).

On August 21, 2023, MHC filed a response opposing Physician Partners' motion, asking the court to vacate the unlawfully entered arbitration orders, and asking the court to dismiss the petition. (App. 26–46). In its motion to vacate, MHC argued that there was no agreement to arbitrate between MHC and Physician Partners. (App. 30–37). The only Agreement was between Dr. Watry and Physician Partners for his personal services, which terminated at the time of

his death. (App. 32–35). MHC also argued that even if the Agreement (including the right of first refusal) were properly assigned to MHC, MHC made no transfer to Hinman, P.A. in violation of the right of first refusal. (App. 37–39). Mrs. Watry sold her MHC stock to Hinman, P.A. pursuant to a stock purchase agreement. (App. 38, 221–234). Mrs. Watry was not an assignee of the Agreement and was not subject to the right of first refusal. Thus, MHC never violated the right of first refusal because Mrs. Watry sold the shares, not MHC. (App. 37–39).

Further, MHC pointed out that the arbitrator's Injunction Order should be vacated because the trial court had not yet determined whether MHC could be compelled to arbitrate this dispute. (App. 36–37). MHC also argued that the Injunction Order failed to satisfy the legal standard for an award of injunctive relief and that MHC had never received proper notice of the arbitration proceedings. (App. 39–41). Finally, MHC argued that the arbitrator did not have authority under the Agreement to hear the dispute. (App. 44–45).

Physician Partners opposed MHC's motion to vacate, arguing that MHC's arguments all involved the question of arbitrability, which should be decided by the arbitrator. (App. 270–272).

Physician Partners argued that the trial court should confirm the arbitration award because MHC agreed to arbitrate any dispute and that it waived its right to dispute arbitration by not raising these arguments in the arbitration proceeding. (App. 274–276). Finally, Physician Partners asserted that MHC had triggered the right of first refusal and that the arbitrator applied the proper legal standards to award Physician Partners the requested injunctive relief. (App. 282–299).

In its reply, MHC pointed out that Physician Partners improperly conflated the scope of an agreement to arbitrate with the existence of an agreement to arbitrate. (App. 436–438). The trial court—not the arbitrator—was required to decide the threshold issue of whether there was an agreement to arbitrate in the first instance. (App. 436–438). MHC then argued that Physician Partners' attempts to assign the Agreement to MHC were invalid because the Agreement was with Dr. Watry and it terminated as a matter of law upon his death. (App. 438–440). Finally, MHC argued that, to the extent the second amendment could be construed as a separate agreement between MHC and Physician Partners, the second amendment never included an agreement to arbitrate. (App. 441–442).

On January 18, 2024, the trial court held a hearing on the competing motions filed by Physician Partners and MHC. (App. 444–539). On January 26, 2024, the trial court granted Physician Partners' motion to confirm, denied MHC's motion to vacate, and confirmed the arbitration orders. (App. 540–560). The trial court concluded that MHC waived the right to dispute arbitration because it should have raised its arguments in the arbitration proceeding. (App. 546–548). Further, the trial court found that the arbitrator sufficiently explained the grounds for enforcing the Agreement and that Mrs. Watry had the authority to assign and bind MHC to the Agreement. (App. 548–553). Finally, the trial court found that the arbitrator applied the proper legal standards and that MHC had received sufficient notice before the arbitration orders were entered. (App. 553–559). MHC timely appealed the trial court's order on February 23, 2024. (App. 561).

SUMMARY OF THE ARGUMENT

The trial court erred in granting Physician Partners' motion to confirm the arbitration orders and denying MHC's motion to vacate the arbitration orders. The trial court concluded that the Agreement provided the arbitrator the authority to resolve questions of

arbitrability. The trial court, however, missed the critical threshold issue. When a party challenges the existence of an arbitration agreement, the court—and not the arbitrator—has the exclusive authority and obligation to determine whether there is an agreement to arbitrate. The trial court failed to consider MHC's challenge to the existence of an agreement to arbitrate. If the trial court had considered the issue, it would have been forced to conclude that MHC was never a party to the original Agreement nor is it subject to the arbitration provision through any subsequent amendments. Further, the trial court would have been compelled to conclude that MHC did not violate the right of first refusal because MHC made no transfer of its assets. The stock transfer about which Physician Partners complains was made by Mrs. Watry in her individual capacity. Thus, the trial court erred in confirming the arbitration orders.

The trial court also erred in confirming the arbitrator's Injunction Order for the additional reason that it imposes relief that is invalid as a matter of law. The Injunction Order significantly altered the status quo by purporting to remedy an alleged harm that had already occurred. Indeed, the Injunction Order directs the

parties to unwind the stock transfer by Mrs. Watry to Hinman, P.A. The Injunction Order also requires the parties to revive the previously dissolved MHC. Finally, the Injunction Order impermissibly enjoins the actions of individual employees by forcing them to continue working for the dissolved entity based on a claim that arises out of a personal services contract already terminated by Dr. Watry's death. Compounding its error, the trial court erred in confirming the Injunction Order because the arbitrator failed to procedurally or substantively support the Injunction Order as required by Florida law.

ARGUMENT

In granting Physician Partners' motion to confirm the arbitration orders and denying MHC's motion to vacate the arbitration orders, the trial court erred by: (i) forcing MHC to arbitrate a dispute it never agreed to arbitrate, and (ii) confirming an injunction order that is invalid as a matter of law. The trial court erroneously concluded that the arbitrator was authorized to decide whether or not the parties had an enforceable agreement to arbitrate. Further, the trial court erred by confirming an injunction order that does not prevent any threatened harm but, instead, purports to

resurrect a defunct entity and unwind a transaction that had long since closed. Accordingly, this Court should reverse the trial court's order granting Physician Partners' motion to confirm the arbitration award, vacate the arbitrator's orders, and remand with instructions that the trial court dismiss Physician Partners' petition because MHC and Physician Partners never had an agreement to arbitrate in the first instance.

Standard of Review

A trial court's order determining a party's entitlement to arbitration is reviewed *de novo*. *4927 Voorhees Road, LLC v. Tesoriero*, 291 So. 3d 668, 670 (Fla. 2d DCA 2020), *rev. denied*, 2021 WL 50180 (Fla. Jan. 6, 2021) (reviewing *de novo* a trial court's ruling on a motion to compel arbitration). Additionally, a trial court's order granting an injunction has a "hybrid" standard of review. *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017). "To the extent the trial court's order is based on factual findings," the court's order is reviewed for abuse of discretion. *Id.* Any legal conclusions in the trial court's order, however, are reviewed *de novo*. *Id.*; *see also Agency for Persons with Disabilities v. Angel Heart*

Support Servs., Inc., -- So. 3d --, 2024 WL 818709, at *2 (Fla. 3d DCA Feb. 28, 2024).

I. MHC Never Agreed to Arbitrate the Dispute.

The trial court erred in granting Physician Partners' motion to confirm the arbitration orders and denying MHC's motion to vacate the arbitration orders. The trial court concluded that the Agreement provided the arbitrator with the authority to resolve questions of arbitrability without first deciding the threshold issue of whether the parties actually entered into an agreement to arbitrate. Before the trial court can allow the arbitrator to determine the scope of the arbitration agreement between the parties, the trial court must first determine whether or not there is an enforceable agreement. Physician Partners predicated its demand for arbitration on the Agreement to which MHC was never a party. Further, any purported assignment of the Agreement to MHC fails for two independent reasons: (1) the Agreement had already been terminated by Dr. Watry's death before the alleged assignment, and (2) Mrs. Watry had no authority to bind the deceased Dr. Watry to the amendments of the Agreement, including the purported assignment. Finally, notwithstanding that MHC was never made a party to the Agreement,

Physician Partners' claim for arbitration should fail on the merits because MHC never breached the right of first refusal under the Agreement.

A. The Trial Court Ignored Its Duty to Decide Whether There Is An Agreement to Arbitrate.

The trial court erred when it held that the arbitrator had the authority to decide whether the parties agreed to arbitrate. When a party challenges the existence of an arbitration agreement, the court has the exclusive obligation to determine whether there is an agreement to arbitrate. Not only is there no valid agreement to arbitrate between MHC and Physician Partners, the trial court ignored its duty to answer this dispositive question.

Before a party may be compelled to arbitrate a dispute, there must be a valid written agreement to arbitrate, an arbitrable issue, and no evidence of waiver. *Pezeshkan v. Manhattan Constr. Fla., Inc.*, 313 So. 3d 948, 951 (Fla. 2d DCA 2021). "Because arbitration is a matter of contract, a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Dea v. PH Fort Myers, LLC*, 208 So. 3d 1204, 1207 (Fla. 2d DCA 2017) (quoting *Rolls-Royce PLC v. Royal Caribbean Cruises Ltd.*, 960 So. 2d 768, 770 (Fla.

3d DCA 2007)). Florida law uniformly holds that courts—not arbitrators—must decide whether or not there is an agreement to arbitrate between the parties. *See, e.g., Seifert v. U.S. Home*, 750 So. 2d 633, 636 (Fla. 1999); *Basulto v. Hialeah Auto.*, 141 So. 3d 1145, 1154–56 (Fla. 2014); *Rowe Enters. LLC v. Int'l Sys. & Elecs. Corp.*, 932 So. 2d 537, 541–42 (Fla. 1st DCA 2006), *rev. denied,* 944 So. 2d 345 (Fla. 2006); *Stalley v. Transitional Hosps. of Tampa*, 44 So. 3d 627, 629 (Fla. 2d DCA 2010); *Lepisto v. Senior Lifestyle Newport Ltd. P'ship*, 78 So. 3d 89, 93 (Fla. 4th DCA 2012). Indeed, the Florida Supreme Court has stated that whether there is an agreement to arbitrate is a "threshold requirement" for the trial court to determine. *Basulto*, 141 So. 3d at 1154–55; *see also Acumen Constr., Inc. v. Neher*, 616 So. 2d 98, 99 (Fla. 2d DCA 1993) (stating that whether a party has entered an agreement containing the arbitration clause is always "a threshold question of law for the trial court"). This threshold requirement simply reflects the black letter proposition that a party cannot be forced to arbitrate when "the party did not intend and agree to arbitrate." *Seifert*, 750 So. 2d at 636.

Here, the trial court never answered the threshold question. Instead, the trial court incorrectly conflated whether the dispute was

within the scope of the purported arbitration provision with the separate question of whether there is an agreement between the parties at all. Relying on the language in the Agreement that states "any dispute relating to this Agreement shall be settled exclusively by binding arbitration . . . pursuant to the American Health Lawyers Association's Dispute Resolution Rules," the trial court found that MHC should have challenged the Agreement in arbitration. (App. 546–547). The trial court, however, missed the point. MHC was challenging not only whether the dispute was within the scope of the arbitration clause, but also whether the parties ever entered into the Agreement in the first place. Absent a determination by the trial court that the parties entered into the Agreement, there is no authority (which can arise solely under the Agreement) for the arbitrator to determine whether the dispute between the parties should be arbitrated. *See, e.g., CT Miami, LLC v. Samsung Elecs. Latinoamerica Miami, Inc.*, 201 So. 3d 85, 91–93 (Fla. 3d DCA 2015).

The cases cited in the trial court's order further demonstrate the trial court's error. In each of those cases, the courts were tasked with deciding whether the dispute fell within the scope of an arbitration agreement that undisputedly existed, or whether a non-

signatory to such an agreement could force a signatory to arbitrate. *See Airbnb, Inc. v. Doe*, 336 So. 3d 698 (Fla. 2022); *Isernia v. Danville Reg'l Med. Ctr.*, 615 F. Supp. 3d 434 (W.D. Va. 2022); *Ambulatory Servs. of Puerto Rico v. Sankar Neprhology Grp.*, No. 4:17-cv-230, 2017 WL 1954932 (N.D. Tex. May 9, 2017); *Montesino v. Advent Techs. Inc.*, 676 So. 2d 32 (Fla. 3d DCA 1996), *rev. denied*, 684 So. 2d 1350 (Fla. 1996). None of these cases involved the question of whether there was an agreement to arbitrate in the first instance. *See Airbnb, Inc.*, 336 So. 3d at 699; *Isernia*, 615 F. Supp. 3d at 439; *Ambulatory Servs. Of Puerto Rico*, 2017 WL 1954932, at *3; *Montesino*, 676 So. 2d at 33.

For example, in *Airbnb*, the Florida Supreme Court explained that its task was to decide who should decide arbitrability—*i.e.*, "whether a dispute is subject to a contract's arbitration provision." 336 So. 3d at 699. This question assumes that there is an enforceable contract between the parties. *Id.* at 705. The existence of an enforceable agreement, however, is exactly what MHC challenged. Thus, the cases cited by the trial court simply miss the point.

Where a party challenges the existence of an agreement to arbitrate, as MHC does here, it is imperative that the trial court first establish whether there is a valid agreement to arbitrate between the parties. The reason for this predicate determination is obvious: an arbitrator derives its authority solely from the parties' contract. Florida law is clear that an arbitrator exceeds his or her authority by arbitrating where no valid agreement to arbitrate exists. *See Schnurmacher Holding, Inc. v. Noreiga*, 542 So. 2d 1327, 1329 (Fla. 1989); *Boardwalk Props. Mgmt., Inc. v. Emerald Clinton, LLC*, 234 So. 3d 786, 789 (Fla. 4th DCA 2017); *City of Miami v. Fraternal Ord. of Police Lodge #20*, 248 So. 3d 273, 276 (Fla. 3d DCA 2018); *Davis v. Prudential Sec., Inc.*, 59 F.3d 1186, 1194 (11th Cir. 1995); *De Beers Centenary AG v. Hasson*, 751 F. Supp. 2d 1297, 1302–03 (S.D. Fla. 2010). *CT Miami, LLC v. Samsung Elecs. Latinoamerica Miami, Inc.*, illustrates why this is so. 201 So. 3d 85 (Fla. 3d DCA 2015).

In *CT Miami*, the Third District Court of Appeal explained that "[a]rbitrators have no inherent authority over a dispute or the parties to that dispute; the only authority vested in the arbitrator is that contractually designated in the parties' agreement." *Id.* at 92–93. The court held that "challenges to either party's agreement to the

contract in the first instance are ***exclusively to be determined by the trial court*** and that, when raised, such challenges must be decided by the trial court before arbitration can be compelled." *Id.* at 93 (emphasis added).

Because MHC challenged the existence of an agreement to arbitrate between itself and Physician Partners, the trial court was required to decide this question before compelling arbitration. In fact, it had the "exclusive" duty to do so given that the arbitrator had no authority to decide any issue without a valid contract to arbitrate. *See CT Miami*, 201 So. 3d at 92–93 (finding the trial court was "legally required" to resolve a challenge to the existence of an agreement to arbitrate). Thus, MHC's failure to appear in the arbitration proceeding did not (and could not) waive MHC's objection to arbitration because the trial court had the sole responsibility for making the predicate determination of whether there was a valid agreement to arbitrate.[2] Absent that determination, MHC had no

[2] MHC challenged whether it was a proper party to the Agreement in the declaratory judgment action filed in Volusia County. (App. 170–173). Physician Partners should have filed a motion to compel arbitration in that action. It did not. Instead, Physician Partners, the arbitrator, and the Hillsborough County circuit court all ignored that proceeding.

obligation to appear in any arbitration proceeding. *See Palmcrest Homes of Tampa Bay, LLC v. Bank of Am., N.A.*, 67 So. 3d 1169 (Fla. 2d DCA 2011) (reversing a trial court's order compelling arbitration because the trial court failed to address the "threshold issue" of whether the parties agreed to arbitrate); *see also Seifert*, 750 So. 2d at 636 (holding "no party may be forced to submit a dispute to arbitration that the party did not intend and agreed to arbitrate").

The trial court erred as a matter of law by failing to determine whether there was an enforceable arbitration agreement between MHC and Physician Partners. Instead, the trial court incorrectly held that the issue of whether an enforceable agreement to arbitrate exists was for the arbitrator to decide.

B. The Agreement Cannot Be Enforced Against MHC.

The trial court further erred in confirming the arbitrator's orders enforcing the Agreement against MHC for the simple reason that MHC was not a party to the Agreement. Moreover, any purported assignment of the Agreement to MHC or amendment to the Agreement was a legal nullity because the Agreement terminated at the time of Dr. Watry's death. Physician Partners could have entered into a contract with MHC after Dr. Watry's death if it wished to do so.

It did not. Instead, Physician Partners elected to pursue a purported assignment and amendment of the Agreement which had already been terminated by Dr. Watry's death. Finally, even if the Agreement survived Dr. Watry's death, the undisputed facts establish that MHC made no conveyance in violation of the right of first refusal. Instead, Mrs. Watry sold MHC stock held in her individual name to Hinman, P.A. Mrs. Watry, however, was not an assignee of the Agreement and was not subject to the right of first refusal.

1. *MHC Was Never a Party to the Agreement.*

The plain language of the Agreement shows that MHC was never a party to the Agreement. It is a black letter principle of law that a contract is interpreted based on its plain language. *See Hahamovitch v. Hahamovitch*, 174 So. 3d 983, 986 (Fla. 2015); *Emergency Assocs. of Tampa, P.A. v. Sassano*, 664 So. 2d 1000, 1003 (Fla. 2d DCA 1995); *Okeechobee Resorts, LLC v. EZ Cash Pawn, Inc.*, 145 So. 3d 989, 993 (Fla. 4th DCA 2014); *Baldwin v. Harris*, 309 So. 3d 293, 294–95 (Fla. 5th DCA 2020). When the court is "faced with an unambiguous contractual provision such as this one, a trial court cannot give it any other meaning beyond that expressed and must construe the provision in accord with its ordinary meaning." *Sassano*, 664 So. 2d

at 1003. Thus, "a court is powerless to rewrite the contract to make it more reasonable or advantageous for one of the contracting parties." *Id.*

The Agreement unambiguously stated that it was between Dr. Watry and Physician Partners—not MHC. The first line of the Agreement states that "This Physician Affiliate Agreement is entered on 3/1/2015 by Steven C. Watry, DO and Physician Partners, LLC." (App. 48). Dr. Watry, in fact, signed the Agreement, but never indicated that he signed on behalf of any entity. (App. 51). Instead, he signed it in his individual capacity as a "Physician." (App. 51). The Agreement makes no mention of MHC. At the time it entered into the Agreement, Physician Partners could have contracted with MHC rather than Dr. Watry, in his individual capacity. Indeed, MHC was in existence for at least three years before the Agreement was executed. Island Doctors did, in fact, contract with MHC as early as 2016. Physician Partners is bound by the plain language of the Agreement, which never mentions MHC at all. *See Sassano*, 664 So. 3d at 1003. Thus, MHC is not a party to the Agreement based on its plain language, and therefore is not subject to the arbitration provision.

2. *The Agreement Was Terminated Upon Dr. Watry's Death.*

The purported assignment of the Agreement to MHC after its termination is a legal nullity. Physician Partners could have entered into a new agreement with MHC following Dr. Watry's death. But it chose not to do so. Instead, Physician Partners elected to pursue a purported assignment and amendment of the Agreement which had already been legally terminated upon Dr. Watry's death. The assignment and the amendments necessarily fail because the Agreement was a contract for personal services and therefore terminated upon Dr. Watry's death.

In Florida, a personal services contract is only enforceable between "the original covenanting parties." *Alt. Networking, Inc. v. Solid Waste Auth. Of Palm Beach Cnty.*, 758 So. 2d 1209, 1211 (Fla. 4th DCA 2000). Accordingly, a personal services contract contains an implied condition that it dissolves at the time of the contractor's death. *See Gunderson v. Sch. Dist. of Hillsborough Cnty.*, 937 So. 2d 777, 779 (Fla. 1st DCA 2006); *CNA Int'l Reinsurance Co. v. Phoenix*, 678 So. 2d 378, 380 (Fla. 1st DCA 1996). The only way a personal services contract may survive the death of the contracting party is if

"the personal representative may perform as fully and as well as the decedent might have." *Bloom v. K & K Pipe & Supply Co.*, 390 So. 2d 770, 773 (Fla. 4th DCA 1980); *see also Frankel v. Bernstein*, 334 So. 2d 37, 39 (Fla. 3d DCA 1976) (explaining that "it would be illogical to assume, in the absence of a provision to the contrary in the contract," that a personal services contract would survive the death of the original contractor).

The Agreement was undoubtedly one for the personal services of Dr. Watry. In the Agreement, Dr. Watry, as the "Physician," agreed to: (1) "provide or arrange for the provision of Covered Services to Members within the scope of the Physician's practice"; (2) "maintain all licenses, permits and certifications required by state and federal laws to perform Physician's obligations hereunder"; and (3) "render Covered Services to Members in accordance with professionally recognized standards of care." (App. 48). Each of these actions requires Dr. Watry, as an individual physician, to provide medical treatment to patients. In fact, the Agreement required Dr. Watry to maintain *his* individual physician license so *he* could properly treat the patients sent to him for treatment. These provisions establish

that Physician Partners and Dr. Watry intended the Agreement to bind Dr. Watry to provide personal services under the Agreement.

No doubt realizing that the Agreement was necessarily one for personal services, Physician Partners repeatedly argued before both the trial court and the arbitrator that the term "Physician" referred to "Dr. Watry's practice" rather than Dr. Watry, individually. This contention is contrary to the plain language of the Agreement. The plain language of the Agreement demonstrates that it was executed by "Steven C. Watry, DO" in his individual capacity, and not on behalf of any practice entity. *See Sassano*, 664 So. 3d at 1003. Moreover, to the extent that a "practice" is referenced in the Agreement, the Agreement makes a clear distinction between the "Physician" and the "practice." In section 1.6, Dr. Watry as the "Physician" agreed to allow Physician Partners to use "***Physician's image***, name, [and] ***practice***" in marketing activities. (App. 48) (emphasis added). This provision explicitly distinguishes between the Physician and the practice. If, as Physician Partners now argues, "Physician" means "practice," then this provision would be redundant. The rights granted by the physician would necessarily include the rights of the practice because there is no difference between the two. Further, in

section 8.7, the Agreement states that "[i]n the event of a proposed sale or transfer of ownership interests or **assets of Physician's practice**, **Physician** will provide IPA written notice. . . ." (App. 50) (emphasis added). Again, there is a clear distinction between the Physician and the Physician's practice. The Agreement between Dr. Watry and Physician Partners clearly contemplated that Dr. Watry's practice was an individual asset of Dr. Watry. The plain language demonstrates that the Agreement was with Dr. Watry and not his practice.

Physician Partners could also have contracted in the Agreement for the contingency of Dr. Watry's death but it chose not to do so. In *CNA International Reinsurance Company*, a young actor entered into a contract to act in two films but unfortunately passed away before either film was completed. 678 So. 2d at 379. The film company's insurer sued the actor's estate for breach of contract. *Id.* On appeal, the First District held that it would not depart "from the clear and unambiguous rule that death renders a personal services contract impossible to perform." *Id.* at 380. It then stated that the "parties to the agreement could have provided specifically for the contingency of loss due to the use of illegal drugs, as they provided for other

hazardous or life threatening contingencies," but the parties failed to do so. *Id.* Given that the Agreement was with Dr. Watry, an individual, for his personal services in the form of the medical treatment of patients, Physician Partners could have (and perhaps should have) included a provision addressing the contingency of Dr. Watry's death. Physician Partners clearly understood that it could include provisions in the Agreement that would survive termination because it did so. (*See* App. 50 (listing sections that "shall survive termination of this Agreement")). Physician Partners, however, made no provision for the contingency of Dr. Watry's death. Thus, the Agreement terminated upon Dr. Watry's death.

The purported assignment and amendments made *after* Dr. Watry's death must fail because the underlying Agreement was already terminated and could not be revived because of its personal services nature. *See, e.g.*, *Gunderson*, 937 So. 2d at 779; *CNA Int'l Reinsurance Co.*, 678 So. 2d at 380. Once the Agreement was terminated, any subsequent assignment or amendment was a legal nullity and did not bind MHC to anything—including the arbitration provision or the right of first refusal. The trial court erred in holding

that the Agreement was not terminated upon Dr. Watry's death and that it could be amended to bind MHC to arbitrate the dispute.

3. *Even If the Agreement Survived, the Purported Amendments Must Fail.*

The purported assignment is invalid for another fundamental reason: the record reflects no evidence that Mrs. Watry had the authority to assign the rights or obligations of Dr. Watry under the Agreement. The trial court erred by concluding that it was MHC's burden to prove that Mrs. Watry could ***not*** assign the contract after Dr. Watry's death, rather than Physician Partners' burden to show that Mrs. Watry had the authority to do so. *See Miele v. Prudential-Bache Sec., Inc.*, 656 So. 2d 470, 473 (Fla. 1995) (explaining that the burden is supported only because "the parties themselves have chosen to go this route"). Putting this issue aside, the evidence presented to the trial court confirms that Mrs. Watry did not purport to assign the Agreement on behalf of Dr. Watry's estate even if she had the authority to so. Thus, to the extent the burden rested on MHC, it satisfied that burden based on the plain language of the assignment and first amendment.

Under Florida law, a personal representative typically has the sole authority to bind the estate. *See* § 733.608, Fla. Stat. (describing the general powers of the personal representative). In fact, Section 733.612(2) states that "[e]xcept as otherwise provided by the will or court order, . . . a personal representative, acting reasonably for the benefit of the interested persons, may properly: perform or compromise, or when proper, refuse to perform, the decedent's contracts." § 733.612(2), Fla. Stat.

The record includes no evidence establishing Mrs. Watry was the personal representative of Dr. Watry's estate. The arbitrator concluded only that Mrs. Watry "as Dr. Watry's surviving spouse, signed the First Amendment representing to Physician Partners that she had the authority to do so—whether as Dr. Watry's personal representative, through trust documents, or through an inherited right." (App. 138). This determination by the arbitrator (which he lacked the authority to make) is legally insufficient to establish that Mrs. Watry had the legal authority to assign or amend the Agreement on behalf of the deceased Dr. Watry. *See In re Snyder's Estate*, 333 So. 2d 519, 519–20 (Fla. 2d DCA 1976) (example of court determining who should be the estate's administrator); *see also Davis v. Shuler*,

14 Fla. 438, 446–47 (1874) (finding that the allegations did not support that the actor was the administrator of the estate, meaning "he [wa]s entirely without authority to perform any act to bind the estate").

Moreover, the way in which Mrs. Watry signed the assignment and the first amendment further undermines the arbitrator's and the trial court's determination that Mrs. Watry had the authority to bind Dr. Watry's estate, or even that she represented to Physician Partners that she had such authority. *Sovereign Healthcare of Tampa, LLC v. Estate of Yarawsky, ex rel. Yarawsky*, illustrates this point. 150 So. 3d 873 (Fla. 2d DCA 2014). In *Sovereign Healthcare*, this Court found that the estate of a deceased resident was not bound by an arbitration agreement signed by his wife. *Id.* at 876–77. The court concluded that because the wife "signed only in her individual capacity as the responsible party," the estate was not bound to the arbitration agreement. *Id.* at 876. The Court explained that "nobody signed the agreement on behalf of the resident or as the resident's legal representative." *Id.* at 877. Similarly, Mrs. Watry never signed the assignment or the first amendment as Dr. Watry's legal representative. Instead, she signed it as the "President" of Dr.

Watry—a non-existent position. (App. 197). There is no evidence to suggest that Mrs. Watry signed—or even purported to sign—the assignment or the first amendment as Dr. Watry's legal representative. *See supra* Section I.B.1, I.B.2; (App. 197). Mrs. Watry could only bind Dr. Watry's estate if she was the personal representative and intended to act in that capacity. She, however, never purported to be Dr. Watry's personal representative or act in that capacity in signing the first amendment. Just as this Court found that the estate was not bound to the arbitration agreement in *Sovereign Health*, the trial court (and the arbitrator) should have found that Mrs. Watry lacked authority to bind Dr. Watry's estate to the assignment or amendment and, in any event, the amendment makes clear she in fact did no such thing. 150 So. 3d at 877.

Because the assignment and first amendment failed, the second amendment must also necessarily fail. Dr. Watry (or his personal representative) never assigned his rights and obligations under the Agreement to MHC. In its own right, the second amendment does nothing more than establish a new payment schedule for patients covered by two different insurance plans. (App. 199). It does not reflect MHC's agreement to be bound by the terms and conditions of

the Agreement. (*Compare* App. 199 (no mention of being bound by the terms of the Agreement) *with* App. 197 (explicitly stating that "[a]ssignee agrees to abide and be bound by the terms and conditions of the Agreement throughout the term of the Agreement")). Thus, to the extent that the second amendment could be construed as a separate agreement between MHC and Physician Partners, the second amendment does not remotely suggest an intent to be bound by the terms of the Agreement nor does it mention any intent by the parties to arbitrate any disputes between them. *See, e.g., Santos v. Gen. Dynamics Aviation Servs. Corp.*, 984 So. 2d 658, 660 (Fla. 4th DCA 2008) ("[T]here must be sufficient proof that the parties agreed to arbitrate.").

4. *MHC Never Triggered the Right of First Refusal.*

Finally, even if the assignment and first amendment were valid (which they are not), MHC never triggered Physician Partners' right of first refusal under the Agreement. Mrs. Watry—not MHC— sold her individual shares of stock to Hinman, P.A.

Under Florida law, "[a] right of first refusal is a right to elect to take specified property at the same price and on the same terms and conditions as those contained in a good faith offer by a third person

if the owner manifests a willingness to accept the offer." *Castelli v. Castelli*, 159 So. 3d 271, 273 (Fla. 4th DCA 2015) (quoting *Old Port Cove Holdings, Inc. v. Old Port Cove Condo. Ass'n One, Inc.*, 986 So. 2d 1279, 1285 (Fla. 2008)). "[T]he right of first refusal generally presumes a voluntary sale by an owner who manifests a willingness to accept an offer from a third party." *Pecora v. Berlin*, 62 So. 3d 28, 34 (Fla. 3d DCA 2011), *rev. dismissed*, 75 So. 3d 1245 (Fla. 2011). Thus, the purpose of a right of first refusal "is to allow the holder of the right to be notified when the owner intends to sell, or has accepted an offer, which, in most cases, will be presumptively the fair market value of the property." *Id.* at 32.

Under the Agreement between Dr. Watry and Physician Partners, Dr. Watry agreed to provide Physician Partners with notice "[i]n the event of a proposed sale or transfer of ownership interests or assets of Physician's practice." (App. 50). Upon the receipt of notice, Physician Partners could then elect to "purchase the assets upon the terms and conditions set forth in the Offer." (App. 50). MHC never received any offer to purchase its interests or assets. Instead, Mrs. Watry agreed to sell her *individually-owned* shares of MHC stock to Hinman, P.A. This is not a distinction without a difference—Mrs.

Watry was not individually bound to the Agreement with Physician Partners; thus, any decision to transfer her individual stock is not subject to the right of first refusal under the plain language of the Agreement.

Moreover, Physician Partners' right of first refusal, even if it did survive Dr. Watry's death and even if it was properly assigned to MHC, is a secondary or junior right of first refusal and thus inferior to rights already held by Island Doctors. In *Hansen v. Five Points Guaranty Bank*, the First District held that an earlier option to purchase real property was superior to the rights of a later obtained mortgage. 362 So. 2d 962, 965 (Fla. 1st DCA 1978). Further, the Third District, when faced with a dilemma of multiple rights of first refusal, turned to the contract language and allowed the seller to select from the multiple buyers with the right of first refusal to whom they wished to sell the property. *See Oper v. Riverwood Condo. Ass'n*, 567 So. 2d 12, 13 (Fla. 3d DCA 1990) (enforcing the contractual language of the right of first refusal). Before the purported assignment and amendments to the Agreement were made, MHC had already provided Island Doctors, controlled by Dr. Hinman, with the right of first refusal in the 2016 Island Doctors Agreement. The plain

language clearly indicated that MHC intended to provide Island Doctors with the right of first refusal upon any transfer or sale of its assets. Thus, Island Doctors had a priority position with respect to any right of first refusal, even if that right survived Dr. Watry's death, was properly assigned by Mrs. Watry, and even if MHC was the seller of stock or assets implicated by that inferior right. *See Hansen*, 362 So. 2d at 965. Further, to the extent that there were multiple rights of first refusal, it would have been reasonable for MHC to select between the competing offers. *See Oper*, 567 So. 2d at 13.

In sum, the trial court erred in granting Physician Partners' motion to confirm the arbitration award and denying MHC's motion to vacate the arbitration award. The trial court failed to answer the threshold question of whether there was ever an agreement between MHC and Physician Partners to arbitrate. MHC never agreed to arbitrate any dispute between it and Physician Partners. MHC was not a party to the Agreement and was not made a party through any later assignment or amendments. Finally, to the extent the arbitrator's order and the trial court's order confirming it reflect a final determination that MHC is liable for violating the right of first refusal, that determination is contrary to the undisputed evidence.

The evidence established that Mrs. Watry conveyed to Hinman, P.A. stock in MHC that she owned in her individual capacity. MHC made no conveyance in violation of the right of first refusal.

Accordingly, this Court should reverse the trial court's order granting Physician Partners' motion to confirm the arbitration awards, vacate the arbitrator's orders, and remand with instructions that the court dismiss Physician Partners' petition because an arbitration agreement between MHC and Physician Partners never existed.

II. The Arbitrator's Purported Injunction Order Is Invalid as a Matter of Law.

The trial court also erred by confirming the arbitrator's Injunction Order because it imposes injunctive relief that is invalid as a matter of law. Exacerbating the fundamental defect in the Injunction Order, the trial court improperly confirmed the Injunction Order notwithstanding the complete lack of the requisite procedural and substantive support under Florida law.

A. The Injunction Order Awards Relief That Is Unavailable Under Florida Law.

The arbitrator's Injunction Order purports to remedy an alleged harm that has already occurred. First, the Injunction Order directs

MHC to unwind Mrs. Watry's sale of stock to Hinman, P.A.—a transaction that has already been consummated. Next, the Injunction Order directs that MHC, a dissolved entity, be revived and resume operations. Finally, the Injunction Order impermissibly imposes a mandatory injunction on numerous employees of MHC by forcing them to continue working for MHC once it is revived. The Injunction Order applies to at-will employees who are under no contractual or other obligation to continue working for MHC. Any one of these reasons is sufficient to require a reversal of the trial court's order confirming the Injunction Order.

Generally, injunctive relief is available only to prevent threatened harm; it is not available to redress harm which has already occurred. *Dolgencorp, Inc. v. Winn-Dixie Stores, Inc.*, 2 So. 3d 325, 327 (Fla. 4th DCA 2008); *see also Adv. Digit. Sys., Inc. v. Digit. Imaging Servs., Inc.*, 870 So. 2d 111, 116 (Fla. 2d DCA 2003) ("By its nature, an injunction restrains commission of a *future* injury; a court cannot prevent what has already occurred."). Thus, "the purpose of a temporary injunction is to preserve the status quo while final injunctive relief is sought." *Planned Parenthood of Greater Orlando, Inc. v. MMB Props.*, 211 So. 3d 918, 924 (Fla. 2017); *see also City of*

Jacksonville v. Naegele Outdoor Advert. Co., 634 So. 2d 750, 754 (Fla. 1st DCA 1994), *approved by* 659 So. 2d 1046 (Fla. 1995) ("The purpose of a temporary injunction is to preserve the status quo until a final hearing when full relief may be granted."). A court "cannot grant [a preliminary injunction] if the 'effect would be to change the status.'" *Byrd v. Black Voters Matter Capacity Building Inst., Inc.*, 339 So. 3d 1070, 1075 (Fla. 1st DCA 2022) (quoting *Bowling v. Nat'l Convoy & Trucking Co.*, 135 So. 541, 544 (Fla. 1931)).

A mandatory injunction, in contrast to a typical preliminary injunction, is an injunction that requires the defendant to act affirmatively and alters the status quo. *See Antoine ex rel. I.A. v. Sch. Bd. of Collier Cnty.,* 301 F. Supp. 3d 1195, 1202 (M.D. Fla. 2018). Florida law is clear that mandatory injunctions "are looked upon with disfavor, and the courts are even more reluctant to issue them than prohibitory ones." *Grant v. GHG014, LLC*, 65 So. 3d 1066, 1067 (Fla. 4th DCA 2010); *see also Johnson v. Killian*, 27 So. 2d 345, 346 (Fla. 1946). In fact, "[i]ssuance of mandatory injunctions before final hearing is disfavored and should be granted only in '***rare cases where the right is clear and free from reasonable doubt***.'" *Spradley v. Old Harmony Baptist Church*, 721 So. 2d 735, 737 (Fla.

1st DCA 1998) (quoting *Am. Fire & Cas. Co. v. Rader*, 36 So. 2d 270, 271 (Fla. 1948)) (emphasis added).

On its face, the Injunction Order here purports to unwind conduct that has already occurred. As a result, the Injunction Order materially changes the status quo. The Injunction Order requires MHC, an already dissolved entity, to (i) "continue operating in its current form as an independent, though wholly or partially owned, corporate entity," (ii) "ensure no material changes in its operations" or "its business plans," and (iii) "not hire any current or former employees . . . of any entity which [now] purports to control or own all or part of MHC." (App. 144). MHC was already dissolved when the arbitrator entered the Injunction Order. (App. 379). The Injunction Order does not prevent "threatened harm," but instead forces a defunct and dissolved entity to reincorporate and revive its operations. *Cf. Adv. Digital Sys., Inc.*, 870 So. 2d at 111.

Neither the arbitrator nor the trial court made any findings demonstrating that Physician Partners' right to mandatory injunctive relief was clear and free from doubt. Indeed, as discussed at *supra* section I.B.4, the evidence is undisputed that MHC did not violate the right of first refusal and Physician Partners' right to any relief is

subject to very grave doubt. It was Mrs. Watry, not MHC, who conveyed her individually owned stock to Hinman, P.A. After the stock sale, Hinman, P.A. dissolved MHC. It did so without causing MHC to transfer any of its assets. The imposition of an impermissible mandatory injunction renders the Injunction Order unlawful on its face and, standing alone, is sufficient for this Court to reverse the trial court's order confirming the Injunction Order. *See Byrd*, 339 So. 3d at 1073 (holding that preliminary injunction that went beyond preserving status quo "was an unauthorized exercise of judicial discretion, making the temporary injunction unlawful on its face").

Even more troubling, the Injunction Order forces MHC's former employees to return to work for the now-defunct entity. Specifically, the Injunction Order states that MHC "must ensure no material changes in its operations" and goes on to say that "[f]or avoidance of doubt," the Injunction Order is binding on "officers, agents, servants, employees, and attorneys" of MHC. (App. 146). Based on its plain language, the Injunction Order mandates that former at-will employees, including non-managerial employees, must return to MHC and continue working for MHC to "ensure no material changes" in MHC's operations. The mandatory injunction imposed by the

Injunction Order leads to a whole host of questions that neither the trial court nor the arbitrator properly considered. For example, would an MHC employee breach the Injunction Order if the employee decided to take a different job and stop working at MHC? Similarly, if a former MHC employee has accepted new employment, must that employee leave the employee's new job and return to MHC? Pursuant to the Injunction Order, the answer to both of these questions appears to be yes.

At a minimum, it is virtually impossible to determine which and how many employee departures would cause a material change in MHC's operations. This highlights one of the many reasons why Florida law is clear that mandatory injunctions are highly disfavored. *See Legakis v. Loumpos*, 40 So. 3d 901, 903 (Fla. 2d DCA 2010) (stating that mandatory injunctions are disfavored because courts are reluctant "to undertake responsibility for supervising future performance"). The trial court erred by confirming the Injunction Order that does not "prevent a threatened harm" but instead mandates MHC reincorporate and resume its operations, and that numerous employees return to work for MHC to ensure "no material changes" in its operations.

None of the cases cited by the arbitrator supports the imposition of this extraordinary remedy. The arbitrator relied on cases in which courts found it necessary to nullify a corporation's dissolution in unique circumstances that are not present here.[3] *See, e.g., Pension Benefit Guar. Corp. v. 20 SE 3rd St., LLC*, No. 18-81009-CIV, 2019 WL 2254820 (S.D. Fla. Feb. 22, 2019); *United States v. W. Pa. Sand & Gravel Ass'n*, 114 F. Supp. 158 (W.D. Pa. 1953). In each of the cited cases, the court was presented with clear facts establishing that the company pursued dissolution to escape liability. *See, e.g.*, *W. Pa. Sand & Gravel Ass'n*, 114 F. Supp. at 160 (preventing the dissolution of a company that was attempting to avoid prosecution for antitrust violations). For example, in *Pension Benefit*, the court found that the dissolution of the company was null and void because the company had allegedly evaded its requirements under ERISA for at least a decade and could not fraudulently avoid its actions through

[3] The arbitrator also cited to *Roche Diagnostics Corp. v. Medical Automation Systems, Inc.*, 646 F.3d 424 (7th Cir. 2011). *Roche*, however, is inapposite because the court in that case did not require the re-formation of a dissolved entity. *Id.* at 427. Instead, it simply held that certain entities had to maintain their separate status. *Id.* (stating that the "hold-separate order" successfully protected the interests without going too far).

dissolution. 2019 WL 2254820 at *8. There is nothing in the record here that suggests the dissolution of MHC was undertaken to avoid liability to any party nor could there be because MHC was faced with no relevant liabilities at the time it was validly dissolved. Thus, the Injunction Order imposes extraordinary and highly disfavored relief without any of the requisite legal support.

Finally, injunctive relief is not available in this case to enforce the Agreement between Dr. Watry and Physician Partners because the Agreement was one for personal services. In *SeaEscape, Ltd. v. Maximum Marketing Exposure*, the Third District reversed an injunction, holding the injunction should not have been entered in the first instance because contracts for personal services are "not enforceable by injunction or specific performance." 568 So. 2d 952, 954 (Fla. 3d DCA 1990). The appropriate mechanism for remedying a breach of a personal services contract is an action at law for damages. Injunctive relief is "simply not available" when there exists an "adequate remedy at law." *Shearson Lehman Hutton, Inc. v. Meyer*, 561 So. 2d 1331, 1332 (Fla. 5th DCA 1990). The Agreement was for the provision of personal services by Dr. Watry and, accordingly, terminated upon his death. To the extent the Agreement did survive,

it remained a contract for the personal services of treating patients. It cannot, as a matter of law, be enforced through injunctive relief imposed on the individual employees of MHC. The Injunction Order is invalid as a matter of law, and the trial court erred by confirming it.

B. The Injunction Order Failed to Comply with the Proper Standard Under Florida Law to Award Any Injunctive Relief.

The trial court also erred by confirming the Injunction Order because it fails to comply with the basic substantive and procedural safeguards under Florida law necessary for preliminary injunctive relief.

1. *The Injunction Order Fails to Satisfy the Substantive Requirements of Florida Law.*

The Injunction Order makes none of the required findings under Florida law for entry of a mandatory injunction against MHC. In Florida, a party is entitled to injunctive relief only upon an adequate showing of: "(1) a substantial likelihood of success on the merits, (2) the unavailability of an adequate remedy at law, (3) irreparable harm absent entry of an injunction, and (4) that the injunction would serve the public interest." *Fla. Dep't of Health v. Florigrown, LLC*, 317 So.

3d 1101, 1110 (Fla. 2021). The movant must establish each of these four elements. *Charlotte County v. Grant Med. Transp., Inc.*, 68 So. 3d 920, 923 (Fla. 2d DCA 2011).

The arbitrator never found any of the facts necessary to demonstrate that Physician Partners has a substantial likelihood of success on the merits. Instead, the Injunction Order simply concludes, without any factual findings in support, that Physician Partners is "likely to succeed on the merits." (App. 137–139). Florida law is clear, however, that the movant must make a significant showing that success on the merits is likely as "[i]t is not enough that a merely colorable claim is advanced." *City of Jacksonville v. Naegele Outdoor Advert. Co.,* 634 So. 2d 750, 753 (Fla. 1st DCA 1994), *approved by* 659 So. 2d 1046 (Fla. 1995). This is particularly so when the injunction seeks not to maintain the status quo, but rather to fundamentally alter the parties' current positions. In fact, to secure a mandatory injunction before a final hearing, Physician Partners was required to show that this is one of the "rare cases where the right is **clear and free from reasonable doubt**." *Spradley*, 721 So. 2d at 737 (internal quotations omitted) (emphasis added). The arbitrator made no findings supporting a conclusion that

Physician Partners' right to mandatory relief was "clear and free from reasonable doubt." Because the Agreement provides that "[t]he arbitrator shall be bound by applicable law," his failure to adhere to clear Florida precedent renders the Injunction Order defective and not subject to confirmation. (App. 49).

Further, the Injunction Order is supported by no evidence demonstrating that Physician Partners faced a threat of irreparable harm. Instead, the arbitrator improperly relied solely on counsel's representations that Physician Partners would suffer irreparable harm. In Florida, a verified complaint or motion, by itself, is inadequate to establish the necessary proof when the opposing party either appears or has received reasonable notice of the hearing. *See* Fla. R. Civ. P. 1.610(a)(2); *see also Charlotte County v. Grant Med. Transp., Inc.*, 68 So. 3d 920 (Fla. 2d DCA 2011). An injunction issued on this insufficient record constitutes error as a matter of law. *See Florigrown*, 317 So. 3d at 1110 (explaining that an injunction order must be supported by "competent, substantial evidence"). In *Charlotte County*, an unsuccessful bidder for a county contract sought a temporary injunction against the county, claiming that the county had not complied with the requirements to reject its bid. 68

So. 3d at 921–22. Based on the verified complaint and attorney argument at the hearing, the trial court entered a preliminary injunction against the county. *Id.* at 922. On appeal, this Court reversed the trial court's order granting a temporary injunction. *Id.* at 923. The Court explained that the company failed to present any evidence of irreparable harm beyond attorney argument and held that the trial court's reliance on attorney argument is simply "not enough." *Id.* at 922–23; *see also Orkin Extermination Co. v. Tfank*, 766 So. 2d 318, 319–20 (Fla. 4th DCA 2000) (affirming "trial court's finding that submission of the verified complaint alone was insufficient to justify granting a temporary injunction").

Similarly, the Injunction Order in this case explicitly states that the arbitrator relied solely on attorney argument for both proof of irreparable harm and support for the exceptional remedy of requiring MHC to be re-incorporated. (App. 140 ("At the hearing, counsel for Physician Partners represented that their client is unaware of any other general practice medical practices for sale in New Smyrna Beach . . . [t]hus, the loss of MHC could effectively shut Physician Partners out of the New Smyrna Beach market.")). This type of attorney argument, without any supporting evidence, is exactly what

this Court has rejected as legally insufficient to support the entry of a preliminary injunction.

Finally, the Court should reverse the Injunction Order because Physician Partners can be fully compensated through legal damages. In the Injunction Order, the arbitrator cites to a series of out-of-state cases for the proposition that the loss of a right of first refusal can never be remedied through legal damages. (App. 141). Each case is easily distinguishable. In each of the cases cited, the rights of first refusal were for unique items—such as space imaging technology, a unique trademark name, and a children's book series—unlike the right of first refusal at issue in this case. *See, e.g., Tom Doherty Assoc. v. Saban Ent'mt*, 60 F.3d 27, 37 (2d Cir. 1995) (children's book series); *Space Imaging Eur. Ltd. v. Space Imaging, LP*, No. 98 CIV 2291, 1998 WL 190356, at *2 (S.D.N.Y. Apr. 21, 1998) (space imaging technology); *Derma Pen LLC v. 4EverYoung Ltd.*, 737 F. App'x 396, 403–04 (10th Cir. 2018) (unique trademark and domain name). Similarly, in Florida, courts sometimes enforce in equity rights of first refusal involving purchases of real property—*i.e.*, a unique asset. *See, e.g., Allegro at Boynton Beach, LLC v. Pearson*, 227 So. 3d 1288 (Fla. 4th DCA 2017) (allowing a party to proceed on a specific

performance claim for a parcel of land); *Friedberg as Co-Tr. of Ervin & Susanne Bard Family Tr. v. O'Doyle Rules, LLC*, 320 So. 3d 837 (Fla. 2d DCA 2021) (reversing summary judgment to allow the specific performance claim for the sale of real property to proceed).

Here, Physician Partners presented no evidence that MHC's medical practice was the only medical practice available, or that it was unique in any of its features. Indeed, Physician Partners initially contracted for a right of first refusal to purchase Dr. Watry's practice. But Physician Partners offered no evidence that Dr. Watry's practice was identical to MHC's practice—nor could it possibly do so after Dr. Watry's death. Clearly, then Physician Partners could not establish that the right of first refusal was designed to protect its ability to purchase a unique asset. It apparently would have been satisfied to acquire either Dr. Watry's practice or MHC's practice. Because neither Dr. Watry's nor MHC's medical practice is a unique asset, the alleged violation of a right of first refusal involving that asset can be compensated by money damages (if proven).

Accordingly, this Court should reverse the Injunction Order because Physician Partners failed to satisfy the elements required for

entry of injunctive relief under Florida law, and the arbitrator's and the trial court's resulting orders are necessarily defective.

2. *The Arbitrator Violated Florida's Procedural Protections Attendant to an Award of Injunctive Relief.*

In addition to the substantive defects in the Injunction Order, the Injunction Order also violates the procedural protections afforded under Florida law. The arbitrator entered the Injunction Order with no discussion of Physician Partners' obligation to post an injunction bond. Likewise, the arbitrator did not adequately consider whether MHC had notice of the proceedings before entering such an extraordinary remedy.

Florida Rule of Civil Procedure 1.610(b) states that "[n]o temporary injunction shall be entered unless a bond is given by the movant." Indeed, "[t]he purpose of an injunction bond is to provide sufficient funds to cover the adverse party's costs and damages if the injunction is wrongfully issued." *Longshore Lakes Joint Venture v. Mundy*, 616 So. 2d 1047, 1047 (Fla. 2d DCA 1993). The Injunction Order is not conditioned on Physician Partners posting a bond, nor does it include any indication that the arbitrator even considered the requirement of a bond. In cases in which an injunction bond has not

been required, appellate courts will nonetheless reverse and remand the case to the trial court for an evidentiary hearing to determine the amount of the bond even in cases in which the appellate court finds that the injunction was otherwise correctly entered (which is not the case here). *Id.* Thus, at a minimum, the Court should reverse the trial court's order confirming the Injunction Order for the determination of an appropriate bond in an amount sufficient to compensate MHC under the unsupported Injunction Order.

Moreover, the Injunction Order was entered before MHC received proper notice of the arbitration proceedings. Florida law is clear that "parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing." § 682.06, Fla. Stat. In fact, the Florida Rules of Civil Procedure specifically state that a temporary injunction ***cannot be entered without notice*** to the adverse party unless "irreparable injury, loss, or damage will result to the movant before [MHC] could be heard in opposition." Fla. R. Civ. P. 1.610(a)(1)(A). "Although an arbitrator need not follow all the niceties observed in court proceedings, the arbitrator must grant the parties a fundamentally fair hearing." *Talel Corp. v. Shimonovitch*, 84 So. 3d

1192, 1194 (Fla. 4th DCA 2012). Thus, the failure of an arbitrator "to give notice and an opportunity to be heard is such misconduct or misbehavior as will vitiate an award, irrespective of the fact that there may have been no corrupt intention on the part of the arbitrators." *Cassara v. Wofford*, 55 So. 2d 102, 106 (Fla. 1951).

The arbitrator never found that MHC was properly served with the notice of the hearing under Section 682.032 or, in the alternative, that Physician Partners would suffer irreparable harm before notice could be given and MHC could be heard in opposition. In fact, the arbitrator could make neither of these findings because MHC was ***not*** properly served and Physician Partners could demonstrate no need for emergency relief. Indeed, the conduct about which it complains had already occurred.

Section 682.032(1) requires that "[a] person initiat[e] an arbitration proceeding by giving notice . . . by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action." Physician Partners never sent MHC a copy of the arbitration proceedings via certified or registered mail, nor did it serve MHC with legal process sufficient for the commencement of a civil lawsuit. Physician

Partners never served MHC's registered agent nor any person authorized to receive service in accordance with Section 48.081. Even if Physician Partners emailed individuals related to MHC, Physician Partners must also give legal notice to MHC consistent with Florida's statutory requirements of notice of an arbitration proceeding. Here, Physician Partners simply emailed a copy of the notice of arbitration to MHC, which does not meet the requirements for notice under Section 682.032. Thus, even if this Court were to determine arbitration is proper in this case, MHC should be afforded proper notice and an opportunity to defend itself. This is especially important given the highly disfavored and entirely unsupported mandatory injunction imposed by the arbitrator's Injunction Order.

The undisputed record is clear that MHC never triggered the right of first refusal under the Agreement which Physician Partners contends was breached. Physician Partners has not suffered any irreparable harm that supports the arbitrator's mandatory Injunction Order, which requires a dissolved entity to reform and forces at-will employees to return to their previous jobs. Further, the arbitrator—without any authority over MHC—failed to satisfy the procedural safeguards to allow for entry of such extraordinary, preliminary relief.

Thus, the Injunction Order is invalid as a matter of law, and the trial court erred by confirming it.

CONCLUSION

For all the foregoing reasons, MHC respectfully requests that this Court reverse the trial court's order confirming the arbitrator's orders, vacate the arbitrator's orders, and remand for dismissal of Physician Partners' petition because no arbitration agreement between MHC and Physician Partners existed. In the alternative, MHC respectfully requests that this Court remand with instructions that the trial court vacate the arbitration orders and conduct further proceedings to determine whether the parties entered into an agreement to arbitrate.

Respectfully submitted,

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I HEREBY CERTIFY that on April 25, 2024, I electronically filed the foregoing Initial Brief of the Appellant by using the Florida E-Portal system, which will transmit the foregoing document via email to:

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Counsel for appellant MHC Holdings, Inc. certifies that this Initial Brief is typed in 14 point (proportionately spaced) Bookman Old Style and includes 12,604 words.

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