NORTH CAROLINA
BUNCOMBE COUNTY

SUPERIOR COURT DIVISION
FILE NO. 23-CV-5013

Jeff Jackson, Attorney General, *ex rel* Dogwood Health Trust, Plaintiff, vs. MH Master Holdings, LLLP, Defendant.	**Defendant's Brief in Support of its Motion to Bifurcate Trial**

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I. INTRODUCTION

This is a breach of contract case about one provision in the Amended and Restated Asset Purchase Agreement ("A&R APA") between MH Master Holdings LLLP ("Mission) and the Seller of Mission Health System, non-party ANC Healthcare ("Seller"). Throughout this litigation (and before it), Mission and Plaintiff—who is not a party to the A&R APA—have espoused vastly different interpretations of that key provision. After nearly four years of stop-and-start correspondence disagreeing about the interpretation of that contractual provision, Mission's and Plaintiff's differing interpretations resulted in this litigation.

Now, after nearly three years of litigation, the parties still have vastly different interpretations of the key contractual provision, and the outcome of this case depends upon how the Court interprets that provision. But until the parties know what the contract means, they cannot know what evidence is relevant to Plaintiff's allegations that Mission breached the A&R APA in 2023. Contractual interpretation is a key preceding step to any fact-finding on breach. To achieve efficiency and avoid hearing weeks of evidence that ultimately may prove to be

irrelevant, the Court should exercise its discretion under Rule 42(b)(1) and bifurcate the trial into two phases: first, on the interpretation of Section 7.13(a) of the A&R APA; second, on whether Mission breached that provision (as finally interpreted by the factfinder) in 2023.

II. BACKGROUND

On December 14, 2023, Plaintiff, the Attorney General of North Carolina, acting on behalf of and in the name of a private, non-profit entity, Dogwood Health Trust, filed a complaint alleging that Mission breached Section 7.13(a) of the A&R APA, the contract by which Mission acquired the assets of the Mission Health. ECF No. 3. The case was designated a mandatory complex business case and assigned to this Court. ECF Nos. 1, 2. Section 13.13 of the A&R APA provides that disputes arising from Section 7.13 may be resolved by bench trial in this Court. ECF No. 65 ¶ 30.

Section 7.13(a) of the A&R APA provides that Mission "shall not discontinue the provision of the services set forth on Schedule 7.13(a)" at Mission Hospital for the ten-year period following closing (the "Hospital Service Commitments"). Schedule 7.13(a) lists, among other things, "Emergency and Trauma services generally consistent with the current

Level II Trauma Program with emergency services for pediatrics and adults, ground/air medical transport services and forensic nursing services," and "Oncology Services – inpatient and outpatient cancer services, radiation therapy, surgery, chemotherapy, and infusion services."

With leave of Court, (ECF No. 49), Plaintiff filed the operative Amended Complaint on April 26, 2024, (ECF No. 50). The Amended Complaint pleads two counts of breach of contract—one concerning emergency and trauma services and one concerning oncology services—and seeks a declaration of breach, a permanent injunction, and an order of specific performance under Paragraph 10.10(a) of the A&R APA. Plaintiff's claims rest entirely on the operations of Mission Hospital in 2023.

Contract interpretation has been the central dispute between the parties since this case was filed—and even before the case was filed. On July 26, 2024, Mission moved for partial summary judgment on the proper construction of the words "shall not discontinue" in Section 7.13(a). ECF Nos. 69, 70. After full briefing and an extensive hearing on December 12, 2024, the Court denied that motion on April 16, 2025,

concluding that the words "shall not discontinue" are ambiguous, that the word "services" "lacks clarity," that "[a]dditional evidence is needed to determine the parties' intent," and that interpretation of the contractual term is accordingly "a question of fact." ECF No. 133 ¶¶ 23, 32–34.

After the close of fact and expert discovery, the parties filed cross-motions for summary judgment, which were fully briefed as of December 19, 2025. ECF Nos. 141–143, 145, 154, 157, 158. On July 27, 2026, and after another extensive hearing, the Court granted in part and denied in part the cross-motions. ECF No. 172. Despite a full discovery record, the Court again found that "[t]he phrase 'shall not discontinue' is ambiguous because this language is 'fairly and reasonably susceptible to either of the constructions' the parties assert," and held that, as a result, it "cannot interpret the term 'shall not discontinue' as a matter of law at this stage." *Id.* ¶¶ 44, 77.

Thus, the Court, as factfinder in a bench trial, must decide (1) the meaning of Section 7.13(a) and (2) whether Mission breached that provision in 2023. In the interest of judicial efficiency and to avoid undue delay and prejudice arising from a consolidated trial that would include

evidence of myriad topics potentially irrelevant to the alleged breach, Mission respectfully submits that the Court should try those issues separately, and in that order.

III. ARGUMENT

This is a textbook case for a court to exercise its discretion to bifurcate a trial based upon two discrete questions that involve different and unrelated witnesses and separate facts and where the answer to the first question will substantially narrow the scope of dispute over the second one.

Rule 42(b) of the North Carolina Rules of Civil Procedure provides that "[t]he court may in furtherance of convenience or to avoid prejudice . . . may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims." N.C. R. Civ. P. 42(b)(1). The plain language of subsection (b) "vests in the trial court broad . . . authority to determine when bifurcation is appropriate." *Roberts v. Young*, 120 N.C. App. 720, 724, 464 S.E.2d 78, 82 (1995). The decision to sever issues is in the discretion of the trial judge. *Pinner v. Southern Bell Tel & Tel. Co.*., 60 N.C. App. 257, 259, 298 S.E.2d 749, 751 (1983). Bifurcation is appropriate where the issues are

"separate, distinct, and compartmentalized." *In re Will of McFayden*, 179 N.C. App. 595, 602, 635 S.E.2d 65, 70 (2006). Here, each of the considerations that informs that discretion favors bifurcation.

A. The Court already has ordered that the meaning of Section 7.13(a) be tried, and that question logically must be answered before breach can be determined.

Twice now, the Court has held that the key language of Section 7.13(a) is ambiguous and that its meaning cannot be determined as a matter of law. ECF No. 133 ¶¶ 32–34; ECF No. 172 ¶¶ 44, 77. Under North Carolina law, that holding has a necessary consequence: "interpretation of the contract is no longer a question of law but is rather a question of fact" to be resolved by the factfinder on extrinsic evidence of the contracting parties' intent. ECF No. 133 ¶ 23. The Court has thus already ordered a bench trial on the meaning of the contractual provision at issue. The only question presented by this motion is whether that trial precedes or coincides with a trial of an alleged breach of Section 7.13(a), in which the parties trying the case do not know what the Court will determine that provision requires.

Because the contractual provision must be defined before compliance with it can be measured, that interpretive question ought to

be resolved first. That sequence is not merely logical; it is how contract cases proceed. As Mission observed early in this litigation, the first issue to be decided in a breach of contract case is "what does the contract say, what does it mean and as a result what facts might be relevant to determining whether there [wa]s a breach." Mot. to Intervene Hr'g Tr. 20:1–5 (June 11, 2024).

B. Neither the parties nor the Court can know what evidence is relevant to breach until they what Section 7.13(a) means.

The efficiency benefits of interpreting the A&R APA first are especially strong in this case, because the parties' interpretive dispute is not a narrow one. Plaintiff contends that Section 7.13(a) obligated Mission to continue providing the Schedule 7.13(a) services at the levels at which they were provided at the time of the sale in January 2019. ECF No. 143 at 8–9. Mission contends that it agreed not to cease the listed services entirely, and that the provision imposes no quantity or quality standards, so long as Mission Hospital continues to make available the facilities, equipment and ancillary staff necessary for any physician who chooses to use Mission to provide a service included on Schedule 7.13(a). ECF No. 145 at 26, 30; ECF No. 154 at 8–9. The gulf between those readings is the gulf between two entirely different liability trials.

Until the Court determines which interpretation governs, neither the parties nor the Court can know what evidence is relevant to breach. Whether nurse-to-patient ratios in the intensive care unit (both in 2019 and 2023), emergency department wait times (both in 2019 and 2023), the number of employed medical oncologists (both in 2019 and 2023), or the volume of chemotherapy and complex hematology treatments (both in 2019 and 2023) have any bearing on liability depends entirely on what the contract requires. Trying both issues together obligates the parties to present any potentially relevant evidence in the abstract and forces the Court to rule on relevance objections without an established benchmark. The practical consequence of this uncertainty is real: at the recent Case Management Conference, Plaintiff estimated that its case would take *at least three weeks to try*. If the Court first rules on what the contract means, that estimate could be shortened significantly and would necessitate a focus at trial on evidence that truly is relevant to the final and binding interpretation of Section 7.13(a). Without deciding the interpretive issue first, the Court will have to preside over a nearly month-long trial with the risk that it later determines that some (or much) of the evidence it heard is irrelevant to the ultimate issue.

C. There is no overlap in witnesses between the two proposed phases, so bifurcation will cause no duplication or inconvenience.

The two phases that Mission proposes would be tried on entirely separate proof. The interpretation phase turns on the intent of the contracting parties—Seller and Mission—and the witnesses are the people who negotiated and drafted Section 7.13(a) and Schedule 7.13(a) in 2018 and 2019, together with the contemporaneous negotiation record. ECF No. 133 ¶¶ 35–36; ECF No. 154 at 14–18. An ancillary issue to be determined in the first phase is whether Plaintiff should be estopped from pressing its litigation interpretation of Section 7.13(a), given its contemporaneous knowledge of Mission's understanding of the provision, its acknowledgment that Mission correctly understood the provision, and Mission's reliance thereon. On the present record, there are no more than four witnesses who could be called to testify on those issues: Chadd Tierney (Mission's chief negotiator), Seller's corporate representative, and Plaintiff's former employees, Jennifer Harrod and Blake Thomas. None of the four potential witnesses on contract interpretation and estoppel has any first-hand knowledge regarding the operations of Mission Hospital in 2023.

The breach phase, by contrast, turns on the provision of emergency, trauma, and oncology services at Mission Hospital during 2023, and the likely witnesses—based upon the affidavits Plaintiff attached to the operative complaint—are patients, clinicians, administrators, and experts who may have percipient knowledge of Mission Hospital's operations in 2023. None of those potential witnesses was involved in negotiating the A&R APA.

Because no witness would—or even could—be called in both phases, bifurcation would not require any witness to testify twice, would not require the Court to hear the same evidence twice, and would not inconvenience any party. The typical objection to bifurcation—duplication—simply is not present here.

D. Absent bifurcation, the Court will be required to hear a substantial amount of evidence that may prove irrelevant.

If the Court does not first resolve the dispute over the interpretation of Section 7.13(a), it will need to hear weeks of putative liability evidence; evidence that may ultimately have no bearing on the outcome. The point is readily illustrated. If the Court construes Section 7.13(a) as Mission contends—as a commitment not to cease the listed services, imposing no particular quantity or quality standards—then

Plaintiff's liability evidence concerning declines in patient volumes, changes in staffing levels, bed counts, variations in emergency department wait times, findings by governmental surveyors, and comparisons to pre-acquisition levels in each category, would not be relevant to the ultimate issue. There is no reason for the Court to expend its limited judicial resources to hear such evidence before it knows if the evidence even matters.

Rule 42(b) is designed for precisely this situation. Resolving the contractual interpretation issue first, whether in Mission's favor or Plaintiff's, will support judicial efficiency and may lead to a prompt resolution of the dispute, because the parties have always been far apart regarding what the A&R APA means, but have few factual disputes regarding the 2023 operations of Mission Hospital.

Bifurcation also avoids prejudice. Plaintiff's liability evidence consists largely of anecdotal accounts of care provided to individual patients at Mission Hospital in 2023. That evidence has no bearing on what Seller and Mission intended the words of Section 7.13(a) to mean in 2019, and Mission should not be required to defend the interpretation of a negotiated commercial contract against the backdrop of unrelated and

potentially charged testimony about 2023 events, many of which are not genuinely in dispute. Conversely, no party is prejudiced by proceeding in sequence.

Finally, these efficiencies are particularly available here because this matter will be tried to the Court rather than to a jury. ECF No. 65 ¶ 30. The Court can hear the interpretive evidence, construe Section 7.13(a), and then determine what evidence is relevant to breach of that provision without any risk of inconsistent findings or the complications that sometimes attend when a jury matter is bifurcated.

IV. CONCLUSION

Mission respectfully requests that the Court bifurcate the trial of this action pursuant to Rule 42(b) and order that (a) the Court will first try the proper interpretation of Section 7.13(a) and Schedule 7.13(a) of the A&R APA, and (b) the Court will thereafter try, as and if necessary, whether, in 2023, Mission breached Section 7.13(a) as construed in the first phase; and that the Court grant such other and further relief as it deems just and proper.

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