

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**CASE NO. 2020-CA-01355**

**SRHS AMBULATORY SERVICES, INC.**

**APPELLANT**

**V.**

**PINEHAVEN GROUP, LLC AND  
FIRST AMERICAN TITLE COMPANY**

**APPELLEES**

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**BRIEF OF APPELLEE  
PINEHAVEN GROUP, LLC**

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Appeal from the Circuit Court of  
Harrison County, Mississippi

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**ORAL ARGUMENT NOT REQUESTED**

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**APPELLEES**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualifications or recusal.

- |    |  |   |
|----|--|---|
| 1. | Honorable Lawrence P. Bourgeois, Jr.   | Circuit Judge   |
| 2. | SRHS Ambulatory Services, Inc.   | Appellant   |
| 3. | Singing River Health System, formerly known as Singing River Hospital System         |   |
| 4. | Pinehaven Group, LLC   | Appellee  |
| 5. | First American Title Insurance Company improperly named First American Title Company | Appellee  |
| 6. | G. Dewey Hembree   | Counsel for Appellee<br>First American Title<br>Insurance Company |
| 7. | Michael J. Bentley, Esq.<br>Christina M. Seanor, Esq.<br>Stevie F. Rushing, Esq.     | Appellant Counsel for<br>Appellant                                |
| 8. | Michael E. Bruffey, Esq.   | Trial Counsel for Appellant                                       |
| 9. | Patrick R. Buchanan, Esq.  | Trial Counsel for Appellant                                       |

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**M.R.A.P 34(b) STATEMENT REGARDING ORAL ARGUMENT**

This appeal involves the well reasoned granting of declaratory judgment by the trial court which should not be disturbed. It has been suggested by Appellant that Oral Argument will assist the Court in resolving any issues presented on appeal. This is not a case of first impression. This is a simple case involving Mississippi corporate law and corporate structure. Mississippi law is well established on these issues. Appellee, Pinehaven Group, LLC does not believe that oral argument is necessary, however, it does not object to oral argument should this Court wish it.

**STATEMENT OF THE ISSUES**

This Court lacks jurisdiction to hear this appeal. The real estate transaction, which is the subject of Appellant, SRHS Ambulatory Services, Inc.’s (hereinafter “Ambulatory Services”), Complaint against Appellee, Pinehaven Group, LLC, (hereinafter “Pinehaven”), occurred on December 17, 2007. (R. 55-58) The Complaint filed by Ambulatory Services against Pinehaven on March 9, 2017 and the Amended Complaint filed on June 7, 2017 were filed well outside the three year statute of limitations set forth under Miss Code Ann. § 15-1-49. (R. 48 & 104) Pinehaven raised statute of limitations as an affirmative defense in its Answer, Answer to Amended Complaint and reasserted in its Response to [Ambulatory Services’] Revised Motion for Summary Judgment and Response to [Ambulatory Services’] Second Revised Motion for Summary Judgment. Lack of Jurisdiction may be raised at any time. It is undisputed that this cause of action was filed well outside the statute of limitations.

Contrary to Ambulatory Services argument, this is not a case of first impression. The trial court correctly held that there was no genuine dispute of material fact and that Appellee, Pinehaven, was entitled to a Declaratory Judgment that the real estate transaction between Ambulatory Services, a Mississippi non-profit corporation, and Pinehaven, a Mississippi limited

liability company, that occurred on December 17, 2007, was valid. Ambulatory Services is a Mississippi non-profit entity. This transaction is governed by the Mississippi non-profit corporations act and Mississippi corporate case law.

Ambulatory services has raised four issues on appeal, two of which are relevant to Pinehaven:

1. Whether Ambulatory Services is a “community hospital,” as that term is defined in Miss. Code Ann. § 41-13-10(c), because it is a healthcare facility that was established by the Board of Trustees of Singing River Health; and
2. Whether, even if Ambulatory Services is not a “community hospital,” it is still bound by Miss. Code Ann. § 41-13-15(4)’s ratification requirement, just as its owner Singing River is bound, because it is a nonprofit healthcare facility created and owned by a community hospital.

The trial court correctly ruled on these issues raised by Ambulatory Services, specifically, Ambulatory Services is not a community hospital and ratification by the Jackson County Board of Supervisors of the real estate contract between Pinehaven and Ambulatory Services was not required.

### **STATEMENT OF THE CASE**

#### **A. Nature of Case and Court Proceedings.**

This action is brought before this Court more than a decade after a successful real estate transaction involving Pinehaven and Ambulatory Services. On July 26, 2007 Pinehaven and Ambulatory Services entered into a standard real estate contract (hereinafter “Purchase Contract”) wherein Ambulatory Services agreed to purchase and Pinehaven agreed to sell, a twelve acre tract

of land in Harrison County, Mississippi (hereinafter the “Property”) for a purchase price of \$3,600,000.00. (R. 60).

The agreed transaction was completed on December 17, 2007 by delivery of a warranty deed to Ambulatory Services. (R. 55) and the payment of the purchase price by Ambulatory Services to Pinehaven reflected in a Closing Statement signed by all parties. A lien release by the lender holding a first lien on the Property was properly filed.

On March 9, 2017, almost ten years after the closing of the purchase of the Property, and well outside the statute of limitations, Ambulatory Services filed a Complaint against Pinehaven in the Chancery Court of the Second Judicial District of Harrison County, Mississippi, attempting to void its purchase of the Property. (R. 48).

On May 12, 2017, Pinehaven filed its Answer and Defenses along with a Counterclaim for Declaratory Judgment. Pinehaven’s sixth defense asserted that any claim brought by Ambulatory Services was barred by the applicable Mississippi statute of limitations. (R. 68).

On June 7, 2017, Ambulatory Services filed a First Amended Complaint, adding First American Title Company (hereinafter “First American”) as a defendant, alleging several causes of action against Pinehaven and First American and seeking damages against First American for denying Ambulatory Services claim for coverage under a title insurance policy purchased by Ambulatory Services from First American. (R. 104).

On August 9, 2017, Pinehaven filed its Answer and Defenses to the Amended Complaint along with a Counterclaim for Declaratory Judgment. Pinehaven’s sixth defense asserted that any claim brought by Ambulatory Services was barred by the applicable Mississippi statute of limitations. (R. 172).

On August 22, 2017, Ambulatory Services filed a Revised Motion for Summary Judgment<sup>1</sup>. (R. 194).

On November 2, 2017, Pinehaven filed its Response to the Plaintiff's Revised Motion for Summary Judgment. Pinehaven reasserted its defense that the Mississippi statute of limitations was applicable in the case *sub judice*. (R. 306).

On November 2, 2017, Pinehaven filed its Motion for Declaratory Judgment. (R. 347).

Significant discovery was conducted.

On June 18, 2018, the Chancery Court of the Second Judicial District of Harrison County, Mississippi, *sua sponte*, ordered that this case be transferred to the Circuit Court of the Second Judicial District of Harrison County, Mississippi. (R. 993).

Numerous additional motions for summary judgment were filed by Ambulatory Services and First American.

On August 16, 2018, Pinehaven filed its Response to the Plaintiff's Second Revised Motion for Summary Judgment. Once again Pinehaven reasserted its defense that the Mississippi statute of limitations was applicable in this case. (R. 1989).

On November 13, 2020, the Trial Court denied Ambulatory Services' Second Revised Motion for Summary Judgment and granted First American's Motion for Summary Judgment. (R. 2355).

On December 2, 2020, the Trial Court granted Pinehaven's Motion for Declaratory Judgment and awarded it attorney's fees. (R. 2369). It did not address Pinehaven's affirmative defense that the Complaint and Amended Complaint filed by Ambulatory Services outside the

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<sup>1</sup>On May 15, 2017, Ambulatory Services filed a Motion for Summary Judgment. Before it could be answered, Ambulatory Services filed its Amended Complaint and subsequently its Revised Motion for Summary Judgment.

three year statute of limitations.

On December 9, 2020, Ambulatory Services filed its Notice of Appeal. (R. 2380) Ambulatory Services has raised several questions in hopes that this Court would grant it a reprieve. The Trial Court conducted oral arguments and reviewed all parties' pleadings and Proposed Findings of Facts and Conclusions of Law and properly ruled on the issues appealed by Ambulatory Services.

**B. Statement of Facts.**

The parties involved in the sale and purchase of a twelve (12) acre tract of land in Harrison County, Mississippi, in the 2007 land transaction are:

(a) Pinehaven Group, LLC is a Mississippi limited liability company whose certificate of formation was filed with the Mississippi Secretary of State on March 8, 2007. The original members of Pinehaven were (i) Miller Funding, LLC, a Mississippi limited liability company, consisting of three Mississippi Delta businessmen and (ii) JTL Pinehaven Joint Venture, a Texas Joint Venture, which subsequently conveyed its interest in Pinehaven to Miller Funding, LLC, which is now the sole member of Pinehaven.

(b) SRHS Ambulatory Services, Inc., is a Mississippi **non-profit corporation** whose articles of incorporation were filed with the Mississippi Secretary of State on August 23, 1998. (R. 372). (emphasis added) The statement of purpose of Ambulatory Service included an affirmation that the corporation "is organized under the Mississippi non-profit corporation law for charitable purposes" and has the authority "**to acquire property, real, personal, or mixed**". (R. 374). (emphasis added)

Ambulatory Services' ongoing businesses were supervised by a three member Board of Directors. (R. 808). Its Board of Directors meets on a regular basis. The sole member of

Ambulatory Services is the trustees of Singing River Health Services (hereinafter “SRHS”).

Ambulatory Services has its own bank account, tax identification number and files its own tax returns.

Glenn D. Miller (“Miller”), representing Pinehaven as a Managing Partner and Greg Shoemaker representing Ambulatory Services as its President, negotiated for a period of time regarding the sale and purchase of a valuable tract of land consisting of twelve acres situated east and adjacent to Mississippi State Highway 67. These negotiations led to a contract (the “Purchase Contract”) between the entities for the sale and purchase of the twelve acre tract for a price of \$3,600,000.00.

On July 25, 2007, the Trustees of SRHS voted to support Ambulatory Services’ purchase of the Property and authorized a contribution of fifty thousand dollars (\$50,000.00) to Ambulatory Services. (R. 431).

On July 30, 2007, the Board of Directors of Ambulatory Services voted to enter into a contract with Pinehaven to purchase the Property. (R. 407).

On August 28, 2007, Greg Shoemaker, as President of Ambulatory Services, executed the Purchase Contract on its behalf.

The Purchase Contract was contingent upon Ambulatory Services being able to obtain “all permits, licenses, variances, approvals, and easements pertaining to [Ambulatory Services’] intended development, signs, curb cuts, driveways, zoning, environmental control, utilities, etc. satisfactory to [Ambulatory Services]”.

Ambulatory Services was granted a seventy (70) day due diligence period for the purpose of making final determination that the purchase of the tract of land was in the best interest of

Ambulatory Services. Pinehaven fully complied with the terms of the Purchase Contract by delivery to Ambulatory Services written assurances of full compliance of all requirements by Ambulatory Services for its construction project. No representative of Ambulatory Services, including its attorneys and officers, ever notified Pinehaven of any involvement in the proposed transaction by the Board of Supervisors of Jackson County.

On October 31, 2007, the Trustees of SRHS, unanimously approved donating additional funds to Ambulatory Services to assist in the purchase of the Property. (R. 535). These funds entered the federal banking system and were deposited into Ambulatory Services' bank account. These funds became the property of Ambulatory Services.

The agreed Purchase Contract was closed on December 17, 2007. Ambulatory Services delivered good funds to its closing attorney where it was deposited in his account. Good funds were delivered from the closing attorney to Pinehaven in exchange for a warranty deed to Ambulatory Services. After payment of a real estate commission and closing costs, the sum of \$3,478,500.00 was paid to American Bank of Texas, which held a first deed of trust lien against the Property. In return for the payment, the American Bank of Texas executed and recorded a partial release of the subject twelve acre tract of land from the lien of its deed of trust.

There was no mention at any time over the ensuing ten years of a possible claim to void. Almost ten years later, these unsubstantiated and misplaced theories led to the current litigation by the filing of the original Complaint against Pinehaven by Ambulatory Services on March 9, 2017, well outside Mississippi's three year statute of limitations. See Miss Code Ann. § 15-1-49.

### **SUMMARY OF THE ARGUMENT**

This Court lacks jurisdiction to hear the case. The real estate transaction, which is the subject of Ambulatory Services' Complaint against Pinehaven Group, LLC occurred on December

17, 2007. (R. 55) The Complaint filed by Ambulatory Services against Pinehaven on March 9, 2017, and the Amended Complaint filed on June 7, 2017, alleged causes of action against Pinehaven subject to the three year statute of limitations set forth under Miss Code Ann. § 15-1-49. Pinehaven continuously and repeatedly raised statute of limitations as an affirmative defense in its Answer, Answer to Amended Complaint and other pleadings, including Response to [Ambulatory Services'] Revised Motion for Summary Judgment and Response to [Ambulatory Services'] Second Revised Motion for Summary Judgment. (R. 68, 172, 306 & 1989) Lack of Jurisdiction can be raised at any time. It is undisputed that this cause of action was filed well outside the statute of limitations.

The Trial Court's ruling that Ambulatory Services is not a community hospital, as it alleges, is well founded and supported by the facts and Mississippi case law. Ambulatory Services' corporate documents are unrebutted and speak for themselves. Ambulatory Services is a non-profit corporation organized under Mississippi law. It was organized for "charitable purposes" and "to acquire property, real, personal, or mixed". This is uncontradicted. Ambulatory Services has not provided a scintilla of evidence to support its claim that it is a community hospital. No organizational documents, by-laws, minutes or any other corporate documents that describe, conclude or confer that it is a community hospital under Miss Code Ann. § 41-13-10(c).

Ambulatory Services' argument that even if it is not a community hospital, the Purchase Contract between it and Pinehaven was still subject to ratification by the Jackson County Board of Supervisors since its lone member is SRHS, a government entity, is misplaced. Ratification is not required to acquire real property. As is an entity separate and distinct from its lone members, SRHS. The Mississippi Supreme Court has opined that trustees of a community hospital do not

need ratification by the board of supervisors for the acquisition of real property. *Green County v. Corporate Mgmt.*, 10 So. 3d 424, 430-31 (Miss. 2009).

Last, the “minute rule” argued by Ambulatory Services is not relevant in this case. As recited *infra*, ratification by the board of supervisors of a purchase contract to acquire real property is not required under Mississippi law.

There are no errors in the Trial Court’s opinion and its opinion should be affirmed.

### **STANDARD OF REVIEW**

“A declaratory judgment sets out the law and is binding as to the rights of parties.” *Hall v. Bowman*, 749 So. 2d 182, 183 (Miss. Ct. App. 1999). “Rule 57 of the Mississippi Rules of Civil Procedure ‘provides for declaratory judgment to determine questions of contractual validity and interpretation.’” *Cincinnati Ins. Co. v. Wilson*, 2021 Miss. App. LEXIS 220, ¶15, (quoting *Wood v. Safeway Ins. Co.*, 114 So. 3d 714, 717 (Miss. 2013)). Courts of record are authorized to declare the “rights, status and other legal relations of parties.” *UHS-Qualicare, Inc. v. Gulf Coast Community Hospital, Inc.*, 525 So. 2d 746, 753 (Miss. 1987). The Mississippi Supreme Court “applies a *de novo* standard of review to questions of law, including a motion for a declaratory judgment.” *S.C. Ins. Co. v. Keymon*, 974 So. 2d 226, 229 (Miss. 2008).

### **ARGUMENT**

#### **I. This Court lacks jurisdiction to hear this case as it was filed well outside Mississippi’s statute of limitations.**

This Court lacks jurisdiction to hear this case. “The question of jurisdiction may be raised at any time either by counsel or by the court of its own motion.” *Waits v. Black Bayou Drainage Dist.*, 186 Miss. 270, 283 (Miss. 1939). Furthermore, jurisdiction may be raised for the first time

on appeal. *Id.* Pinehaven has asserted throughout this litigation that the Court lacked jurisdiction because this case was filed outside the applicable statute of limitations. The facts and law clearly support Pinehaven's position.

Ambulatory Services' Complaint and Amended Complaint were filed well outside Mississippi's three year statute of limitations described in Miss. Code Ann. § 15-1-49. Ambulatory Services is a Mississippi non-profit corporation. Pinehaven is a Mississippi limited liability company. On July 26, 2007, Pinehaven and Ambulatory Services, two Mississippi business entities, entered into Purchase Contract. (R. 60). The Purchase Contract between the parties provided that all contingencies to closing will be deemed approved and satisfied by Ambulatory Services unless Ambulatory Services elects to terminate during the seventy (70) day due diligence period. (R. 55-58) On December 17, 2007, Ambulatory Services was satisfied with all terms of this transaction and proceeded to close by accepting Pinehaven's deed and paying the purchase price.

The first complaint by Ambulatory Services relative to the land transaction was made almost ten years after closing. On March 9, 2017, well outside the statute of limitations, Ambulatory Services filed a Complaint against Pinehaven in the Chancery Court of the Second Judicial District of Harrison County, Mississippi attempting to void its purchase of the Property. (R. 98). The first cause of action alleged against Pinehaven is that the Purchase Contract was not ratified by the Jackson County Board of Supervise. Ratification was not required and this issue will be addressed later. The second cause of action against Pinehaven was for an order of disgorgement.

On May 12, 2017, Pinehaven filed its Answer and Defenses along with a Counterclaim for

Declaratory Judgment. Pinehaven's sixth defense asserted that any claim brought by Ambulatory Services was barred by the applicable Mississippi statute of limitations. (R. 68).

On June 7, 2017, Ambulatory Services filed a First Amended Complaint against Pinehaven and added First American as a Defendant. It re-alleged the same causes of action in the Complaint but alleged a negligence action against Pinehaven.

On August 9, 2017, Pinehaven filed its Answer and Defenses to the Amended Complaint along with a Counterclaim for Declaratory Judgment. Pinehaven's sixth defense asserted that any claim brought by Ambulatory Services was barred by the applicable Mississippi statute of limitations. (R. 172).

On August 22, 2017, Ambulatory Services filed a Revised Motion for Summary Judgment. (R. 198).

On November 2, 2017, Pinehaven filed its Response to the Ambulatory Services' Revised Motion for Summary Judgment. Pinehaven reasserted its defense that the Mississippi statute of limitations was applicable in the case *sub judice*. (R. 306).

On August 16, 2018, Pinehaven filed its Response to the SRHS' Second Revised Motion for Summary Judgment. Once again Pinehaven reasserted its defense that the Mississippi statute of limitations was applicable in this case. (R. 1989).

Pinehaven never waived its defense that Ambulatory Services was barred by the three year Mississippi statute of limitations from seeking judgment of any nature in this case. It is recited under Miss. Code Ann. § 15-1-49:

- (1) All actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after,
- (2) In actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury....

Specifically, “the statute of limitations for a negligence claim in Mississippi is three years.”

*McNair v. J.F.M., Inc.*, 2021 Miss. App. LEXIS 303, ¶9 (Miss. Ct. App. 2021). All the facts and causes of action alleged in Ambulatory Services’ Complaint and First Amended Complaint occurred entirely in 2007. Ambulatory Services did not file its Complaint and Amended Complaint until 2017, clearly outside the three year Mississippi statute of limitations. See Miss. Code Ann. § 15-1-49. Therefore, this Court does not have jurisdiction to hear this case.

**II. The real estate transaction on December 17, 2007, between Pinehaven Group, LLC, a Mississippi limited liability company and SRHS Ambulatory Services, Inc., a Mississippi non-profit corporation, was legal, valid and not void under Mississippi jurisprudence.**

**A. Ambulatory Services is a non-profit corporation organized under laws of the State of Mississippi.**

The undisputed and un rebutted facts and evidence in this cause reflect that Ambulatory Services is a Mississippi non-profit corporation organized under Miss. Code Ann. §79-11-101 *et seq.* Ambulatory Services filed Articles of Incorporation effective on August 27, 1998, and Articles of Correction filed on September 14, 1998, correcting the spelling of Plaintiff’s corporate name. Attached to these filings is a statement of the corporate purpose of Ambulatory Services which included an affirmation that the corporation “is organized under the Mississippi non-profit corporation law for charitable purposes” and “**to acquire property, real, personal, or mixed**”. (R. 374). (Emphasis added.)

Mississippi non-profit corporations are authorized to purchase real property pursuant to Miss. Code Ann. §79-11-151, which recites general corporate powers for Mississippi nonprofit corporations as follows:

Each corporation shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized including, without limitation, power:

(d) to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(e) to sell, convey, mortgage, pledge, lease, exchange, transfer or otherwise dispose of all or any part of its property and assets.

Further, Ambulatory Services' bylaws authorize its officers to enter into contracts to purchase real property. According to the bylaws, "the board of directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances." (R. 382)

Ambulatory Services' sole member (stockholder) is SRHS. Chris Anderson, CEO of SRHS, testified under oath that Ambulatory Services was created "to operate businesses that involved other owners, joint ventures or partnerships or things like that, that it needed to be set up as a distinct entity to hold an interest in those ventures." (R. 811-812). It has its own board of directors, its own bank account, tax identification number and files its own tax returns. (R. 1934). Ambulatory Services is asking this Court to overlook all of its business filings with the Mississippi Secretary of State, its corporate documents and structure and reclassify it as a completely different entity, i.e. a community hospital, for the sole purpose of voiding one real estate transaction that occurred in 2007. This is illogical and conflicts with Mississippi corporate law.

It is uncontradicted that SRHS created Ambulatory Services as a distinct, separate entity from a community hospital. Its CEO, Chris Anderson, testified to this. (R. 811-812). The Purchase Contract involved two parties: the Seller, Pinehaven, a Mississippi limited liability company, and the Purchaser, Ambulatory Services, a Mississippi non-profit corporation. On

December 17, 2007, Pinehaven conveyed title to the Property to “SRHS Ambulatory Services, Inc., a Mississippi non-profit corporation.” (R. 55-56). Ambulatory Services is a Mississippi non-profit corporation and is the legal, record title owner to the Property.

**B. Ambulatory Services is not a community hospital under the laws of the state of Mississippi.**

Ambulatory Services argues that it is a community hospital as defined under Miss. Code Ann. § 41-13-10(c) and thus the real estate transaction between it and Pinehaven that occurred on December 17, 2007 is now void because it did not have the Purchase Contract ratified by the Jackson County Board of Supervisors. Per Miss. Code Ann. § 41-13-10(c):

(c) “Community hospital” shall mean any hospital, nursing home and/or related health facilities or programs, including, without limitation, ambulatory surgical facilities, intermediate care facilities, after-hours clinics, home health agencies and rehabilitation facilities, established and acquired by boards of trustees or by one or more owners which is governed, operated and maintained by a board of trustees.

Ambulatory Services is not a hospital, nursing home and/or related health care facility. Chris Anderson, CEO of SRHS, testified that Ambulatory Services was set up to be a charitable corporation, separate and distinct from SRHS. (R. 365 and 951). It was created to be a holding company as well. Chris Anderson testified that Ambulatory Services was created “to operate businesses that involved other owners, joint ventures or partnerships or things like that, that it needed to be set up as a distinct entity to hold an interest in those ventures.” (R. 811 and 812). Ambulatory Services holds interests in real property, including the twelve acres of undeveloped land which is the subject of this action, abandoned buildings, fitness centers and clinics.

Ambulatory Services has misapplied Miss. Code Ann. § 41-13-10(c) in its argument. Pinehaven submits that the statute is clear and unambiguous. “Where a statute is unambiguous, the Court must apply the statute according to its plain meaning, refraining from principles of

statutory construction.” *HWCC-Tunica, Inc. v. Miss Department of Revenue*, 296 So. 3d 668, 673 (Miss. 2020). The plain meaning of the statute is that a community hospital begins with the governing body of a county establishing a board of trustees. Miss. Code Ann. §§ 41-13-10(b) and 41-13-29. The board of trustees, once appointed, can establish and operate a hospital, nursing home or other health care facility described in Miss. Code Ann. § 41-13-10(c). SRHS is an example. The Trustees of SRHS own and operate two separate community hospitals. Chris Anderson, CEO of SRHS, testified that SRHS is a “large organization with two hospitals, dozen clinics, inside each hospital, there are numerous departments with multimillion dollar budgets. . . .” (R. 868). The board of trustees is the governing body appointed by the Jackson County Board of Supervisors. Ambulatory Services was not created by the Jackson County Board of Supervisors. It was established by SRHS. Ambulatory Services has its own real property, board of directors, officers and employees. It is clearly separate and distinct from SRHS.

Contrary to Ambulatory Services’ argument and the facts in this case, it is not an ambulatory surgical facility. Per Chris Anderson, Ambulatory Services was established “to operate businesses that involved other owners, joint ventures or partnerships or things like that, that it needed to be set up as a distinct entity to hold an interest in those ventures.” (R. 811 and 812). To accomplish this goal, Ambulatory Services was set up as a stand alone Mississippi non-profit corporation. SRHS is the sole member (stockholder) of Ambulatory Services. However, Ambulatory Services is separate from SRHS. “A corporation may retain its separate identity where its stock is owned partly or entirely by another corporation....” *Murdock Acceptance Corp. v. Adcox*, 245 Miss. 151, 165 (Miss. 1962). “A corporation . . . retains a separate identity for corporation purposes when stock is owned wholly or in part by another corporation or natural

person." *Tanfield Eng'g Sys. v. Thornton*, 97 So. 3d 694, 700 (Miss. 2012)(quoting, *Buchanan v. Ameristar Casino Vicksburg, Inc.*, 957 So. 2d 969, 978 (Miss. 2007)). Ambulatory Services' ongoing businesses were supervised by its own Board of Directors. Its Board of Directors meets on a regular basis. Ambulatory Services has its own bank account, tax identification number and files its own tax returns.

It is obvious through testimony of SRHS' CEO Chris Anderson, corporate documents and corporate structure of Ambulatory Services, that Ambulatory Services is not nor ever intended to be a community hospital as defined under Miss. Code Ann. § 41-13-10(c). It is a Mississippi non-profit corporation. Its purpose is to hold interests in various real property and/or business entities to support and improve SRHS.

**C. Ambulatory Services is not required to seek ratification of the Purchase Contract to purchase the Property because its owner is SRHS.**

Ambulatory Services argues in its brief that even if the Court does not find it is a community hospital, that the Court, in a "practical" manner, should interpret the statutes as requiring the ratification of the Purchase Contract because Ambulatory Services' owner, SRHS, is a community hospital. (See Appellant's Brief, pp. 24-30). It recites in its brief that "[Ambulatory Services] is an extension of [SRHS], created by [SRHS] to fulfill the community hospital's mission of providing healthcare. . . ." (*Id.* at p. 24). Arguing further "although [Ambulatory Services] made the purchase, it was-as a practical matter-an acquisition of real property by [SRHS]" (*Id.*) Ambulatory Services does not cite any testimony or evidence to support its assertion. There is none. Ambulatory Services is asking the Court to find that it is a de facto public entity even though **all of the uncontradicted evidence shows that it is a registered Mississippi non-profit corporation and that from its inception in 1998 to December 17, 2007,**

**it conducted its business and bought property as a separate and distinct non-profit corporation.**

Ambulatory Services is not an extension of SRHS. Mississippi jurisprudence is clear as to corporate identity, “[t]he corporate entity is distinct although all or a majority of its stock be owned by a single individual or corporation, or although the corporation is a so-called "family" or "closed" corporation. *Johnson & Higgins, Inc. v. Commissioner of Ins.*, 321 So. 2d 281, 284-85 (Miss. 1975)(quoting, 18 *Am.Jur.2d Corporations* §13 at 558-59 (1965)). Ambulatory Services is a separate non-profit entity distinct from SRHS. Historically, it bought and sold property as it saw fit, never seeking approval from the Jackson County Board of Supervisors.

The testimony and evidence reflect that Ambulatory Services never sought approval for any of its real estate transactions since its incorporation in 1998. Ambulatory Services bought, sold and mortgaged several properties. (R. 398-426). It never offered any evidence that it received approval from the Jackson County Board of Supervisors to purchase any other properties. In fact, Ambulatory Services’ attorney in the closing of the subject transaction testified that he could not find any reference in the minutes of the Jackson County Board of Supervisors that it had approved any Ambulatory Services’ transaction prior to 2007. (R. 1478-79). He further testified that he closed a purchase for Ambulatory Services in 2002 and he did not consider or even discuss obtaining ratification from the Jackson County Board of Supervisors. (R. 1039). Ratification was not necessary because Ambulatory Services is a non-profit corporation.

Greg Shoemaker, CEO of Ambulatory Services, at the time of the subject transaction testified that ratification never entered his mind because he reviewed Ambulatory Services’ Articles of Incorporation and they provided the authority to buy the Property. (R. 1935).

Chris Anderson, CEO of SRHS, testified that he did not recall ever getting approval from the Jackson County Board of Supervisors for projects. (R. 947-48). It is undisputed that Ambulatory Services never sought ratification from the Jackson County Board of Supervisors for any real property purchase because it is a distinct, non-profit entity that does not need ratification from any governing body to purchase real property.

Ambulatory Services cites a Mississippi Attorney General's opinion, *Magnolia Regional Health Center* 2008 WL 965691 (Miss. A.G.), as its main support that ratification is required. This opinion is not applicable to this case and concentrates on the formation of a corporation under §501(c)(2) of the Internal Revenue Code. A corporation formed under §501(c)(2) is "operated for the exclusive purpose of holding title to property." *Magnolia Regional Health Center* 200 WL 965691 (Miss. A.G.). The problem with this reliance on an AG opinion is that Ambulatory Services is a 501(c)(3) corporation, not a 501(c)(2) corporation. Also, Attorney General opinions are advisory only and not controlling.

A second opinion, *Magnolia Regional Health Center* 2008 WL 965692 (Miss. A.G.), issued by the same Assistant Attorney General, opines that a Board of Trustees of a community hospital may form a 501(c)(3) corporation of which the trustees of the community hospital may be the sole members. This second opinion also opines that the hospital trustees may contribute funds to an established non-profit entity pursuant to Miss. Code Ann. § 41-13-38(2) (2007). *Id.* at P. 1.

The court decision heavily cited by Ambulatory Services is *Green County v. Corporate Mgmt.*, 10 So. 3d 424 (Miss. 2009) which reversed a decision of the lower court ruling that Green County and the trustees of Green County Rural Health Center, which had created the local health center, had breached a contract entered into with Corporate Mgmt. The reasoning of the Supreme Court is that GCRHC, a community hospital, had not submitted the long term lease with CMI to

the Board of Supervisors for approval. In reaching this decision, the Court stated: “Although the statute grants the trustees **authority to acquire property**, we find nothing in its plain language that provides the trustees authority to alienate.” *Green County*, So. 3d at 431. (emphasis added.) Ambulatory Services disregards the Court’s finding that the trustees of a community hospital have authority to acquire real property.

Ambulatory Services’ argument fails because no community hospital was a party to the land transaction with Pinehaven. To the contrary, Ambulatory Services, a non-profit corporation organized under Mississippi law, was the party to the transaction. If this Court finds that Ambulatory Services is a community hospital, the Court in the *Green County* Case does not refute that a community hospital has no authority to acquire property but rather the law providing for the creation and powers to be exercised by a community hospital in fact allows authority “**to acquire property**”. *Green County*, So. 3d at 431. (emphasis added). Hence, even if the trustees of the SRHS had been a party to the purchase of the lands from Pinehaven, which it was not, the authority to do so was recognized by the Court.

Ambulatory Services has not identified any statutory authority, court opinions, or attorney general opinions that support the illogical theory that the transaction between Pinehaven and Ambulatory Services is void or should now be voided a decade after completion. Ambulatory Services attempts in these proceedings to identify itself as a public hospital are simply misplaced. The evidence, testimony of Chris Anderson, Greg Shoemaker, Daryl Dryden and all corporate documents recited support proposition that Ambulatory Services is a Mississippi non-profit corporation.

**D. Ambulatory Services is estopped from voiding its own purchase.**

“Estoppel forbids one from both gaining a benefit under a contract and then avoiding the

obligations of that same contract.” *Home Base Litter Control, LLC v. Claiborne County*, 183 So.3d 94 (Miss. Ct. App. 2015)(citations omitted). “Equitable estoppel applies where the following factual elements are proven: “(1) belief and reliance on some representation; (2) change of position, as a result thereof; (3) detriment or prejudice caused by the change of position.” *Id.* (citations omitted).

The Pinehaven/Ambulatory Services transaction was completed by two well informed businesses without a hint of either party wrongfully withholding any material facts surrounding any material factors under which both parties were bound. Ambulatory Services negotiated the purchase of the subject property. It determined ratification of the Purchase Contract was unnecessary and paid Pinehaven the agreed consideration. Pinehaven delivered a valid Warranty Deed to Ambulatory Services. The Warranty Deed was properly recorded. Ambulatory Services has had exclusive use of the subject property for the last ten (10) years to the exclusion of others. It is undisputed that Pinehaven agreed to grant Ambulatory Services a seventy (70) day period to undertake due diligence relative to the proposed land purchase and if Ambulatory Services did in fact fail to take any action or inquiry relating to the proposed land transaction, such failure is solely the responsibility of Ambulatory Services. Ambulatory Services is not allowed to void its own purchase.

### **III. Joinder.**

Brief of Appellant raises additional issues unrelated to Pinehaven. Appellee, Pinehaven, hereby joins in the entire brief of fellow Appellee First American pursuant to M.R.A.P. 28(j).

### **CONCLUSION**

In summary, the evidence is overwhelming that Appellant, SRHS Ambulatory Services, Inc., is a Mississippi non-profit corporation. Appellee, Pinehaven Group, LLC is a Mississippi

limited liability company. Ambulatory Services and Pinehaven entered into a valid and enforceable real estate contract. The real estate transaction between the two business entities, Ambulatory Services and Pinehaven, properly and without issue, closed on December 17, 2007. The land transaction is neither void nor voidable. Ambulatory Services is not a community hospital nor a public entity and ratification of the Purchase Contract by the Jackson County Board of Supervisors was not required. This cause of action brought ten years after the closing of the real estate transaction is outside of the three year statute of limitations.

For these reasons, the Court should affirm the decision of the Circuit Court of Harrison County, Mississippi, dismiss all claims asserted by Ambulatory Services against Pinehaven and remand the Cause for a hearing on Pinehaven's award of attorney's fees.

This the 15<sup>th</sup> day of October, 2021.

Respectfully, submitted,

PINEHAVEN GROUP, LLC

By: /s/ Charles J. Swayze III

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**CERTIFICATE OF SERVICE**

I, Charles J. Swayze III, attorney for Defendant, Pinehaven Group, LLC, do certify that I have electronically filed the foregoing Appellee's Brief with the Clerk of the Court using the MEC system which sent notification of such filing to all counsel of record.

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I, Charles J. Swayze III, do hereby further certify that I have this day mailed, Via First Class U.S. Mail, postage prepaid, a copy of the Appellee's Brief to the following:

The Honorable Lawrence P. Bourgeois, Jr.  
Circuit Court Judge  
Harrison County Circuit Court  
P.O. Box 1461  
Gulfport, Mississippi 39502

SO CERTIFIED on this the 15th day of October, 2021.

/s/ Charles J. Swayze III  
Charles J. Swayze III  
Certifying Attorney