**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

| | | |
|---|---|---|
| MIDDLESEX HOSPITAL, | : | |
| | : | |
| Plaintiff, | : | Civil No. 3:14-cv-1138(AWT) |
| | : | |
| v. | : | |
| | : | |
| ON ASSIGNMENT STAFFING, | : | |
| | : | |
| | : | |
| Defendant. | : | |

**RULING ON MOTION FOR STAY OF PROCEEDINGS**
**AND TO COMPEL ARBITRATION**

Middlesex Hospital ("Middlesex") brings a claim for indemnification against On Assignment Staffing ("On Assignment"), a staffing agency. On Assignment placed a nurse, Gary Hinds, at Middlesex on temporary assignment beginning on August 8, 2011. On October 11, 2011, a patient under Hinds's care committed suicide. On or about September 17, 2013, the patient's estate sued Middlesex and On Assignment, alleging negligence and spoliation of evidence. On or about December 11, 2013, Middlesex settled with the estate for $500,000. Middlesex commenced this action on July 14, 2014 in Connecticut Superior Court. Middlesex brought three claims against On Assignment: contractual indemnification, breach of contract and common law indemnification.

## I. FACTUAL BACKGROUND

When Hinds was placed at Middlesex, On Assignment sent Middlesex a "Confirmation of Acceptance" ("COA"), which confirmed Hinds's assignment. The COA stated, in pertinent part: "This correspondence confirms the placement of Gary Hinds for the position of Registered Nurse at your facility pursuant to the Agreement between On Assignment Healthcare Staffing and Middlesex Hospital dated 4/22/2005." (Motion for Stay of Proceedings and to Compel Arbitration (Doc. No. 19) ("Motion for Stay") at 15 (emphasis added)). The assignment period was from 8/8/2011 to 11/5/2011. The 4/22/2005 agreement referenced in the COA is the "Temporary Staffing Agreement" ("2005 Temporary Staffing Agreement") between Middlesex and On Assignment, which outlines their contractual relationship. Relevant to this motion are the following provisions of the 2005 Temporary Staffing Agreement:

> **7.1 Arbitration.** Any and all claims and controversies between the Parties arising out of or in connection with this Agreement will be subject to binding arbitration by a single arbitrator in accordance with the commercial arbitration rules of the American Arbitration Association.
>
> **7.3 Complete Agreement and Amendment.** This Agreement, including all Attachments, constitutes the complete and integrated understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, with respect to the same subject matter. This Agreement may only be amended (including amendments to the pricing set forth in the Attachments) by a written agreement duly

> signed by persons authorized to sign agreements on behalf of each Party.
>
> **7.9 Survival.** Neither expiration nor termination of this Agreement will terminate those obligations and rights of the Parties pursuant to provisions of this Agreement which by their express terms are intended to survive and such provisions will survive the expiration or termination of this Agreement. Without limiting the foregoing, the respective rights and obligations of the Parties under Section 5 (Indemnification and Insurance); Section 6 (Limitation of Liability); and Section 7 (Miscellaneous) will survive the expiration or termination of this Agreement regardless of when such termination or expiration becomes effective.

(Motion for Stay at 9-10.) The COA was signed by On Assignment on July 19, 2011 and by Middlesex on July 20, 2011.

On June 30, 2011, On Assignment emailed Middlesex a new staffing agreement entitled "Staffing Agreement" ("2012 Staffing Agreement"). Middlesex responded that it "will sign the new staffing agreement." (Opposition of On Assignment Staffing Services Inc. to Motion for Stay of Proceedings and to Compel Arbitration (Doc. No. 23) ("Opposition") at 3.) Middlesex executed the 2012 Staffing Agreement on August 1, 2012, and On Assignment executed the 2012 Staffing Agreement on October 3, 2012. Above the acceptance block, the document reads: "Whereas, the Parties have caused this Staffing Agreement to be duly executed as of the last date below." (Motion for Stay at 18.) No change was made to the first line of the 2012 Staffing Agreement, which stated that the terms "are agreed to on June 30, 2011." (Motion for Stay at 17.)

The 2012 Staffing Agreement ("2012 Staffing Agreement") states, in pertinent part:

> **7.2 Complete Agreement and Amendment.** This Agreement, including all Attachments, constitutes the complete and integrated understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, with respect to the same subject matter. This Agreement may only be amended (including amendments to the pricing set forth in the Attachments) by a written agreement duly signed by persons authorized to sign agreements on behalf of each Party.

(Motion for Stay at 17.)

## II. DISCUSSION

The issue presented by the instant motion is whether (a) Middlesex's claim for indemnification is covered by the arbitration provision in the 2005 Temporary Staffing Agreement, or (b) that claim is covered by the 2012 Staffing Agreement, which does not have an arbitration clause.

Middlesex contends that the 2005 Temporary Staffing Agreement governs Middlesex's claim for indemnification because it was in full force and effect on the date of the underlying incident and because the COA explicitly stated that Hinds was placed at Middlesex "pursuant to" the 2005 Temporary Staffing Agreement. Middlesex argues that because the 2012 Staffing Agreement was not executed by Middlesex until August 1, 2012 and by On Assignment until October 3, 2012, "the operative agreement controlling the obligations of the parties during the relevant

term is the Temporary Staffing Agreement dated April 21, 2005." (Motion for Stay at 4.)

On Assignment argues that the 2012 Staffing Agreement governs because it superseded the 2005 Temporary Staffing Agreement. On Assignment bases its argument on the part of Clause 7.2 of the 2012 Staffing Agreement stating: "This Agreement . . . supersedes all prior understandings and agreements, whether written or oral with respect to the same subject matter." (Opposition at 11.) According to On Assignment,

> [i]n the present case, the parties expressly gave retroactive effect to the 2012 Staffing Agreement, and the retroactive date upon which they agreed was June 30, 2011. Thus, at the very latest, by October 3, 2012, which was the date when the 2012 Staffing Agreement was fully executed, through to the present, the 2012 Staffing Agreement provisions – not those of the "Temporary Staffing Agreement"– have governed all rights and responsibilities of the parties for two distinct periods of time: (1) October 3, 2012 to the present; and (2) the agreed-to preceding time period from June 30, 2011 to October 3, 2012.

(Opposition at 14-15.)

"[I]n deciding whether a contractual obligation to arbitrate exists, 'courts should generally apply state-law principles that govern the formation of contracts.'" Applied Energetics, Inc. v. NewOak Capital Markets, LLC, 645 F.3d 522, 526 (2d Cir. 2011). Under Connecticut Law,

> It is the general rule that a contract is to be interpreted according to the intent expressed in its language and not by an intent the court may believe existed in the minds of the parties. . . . When the intention conveyed by the terms

> of an agreement is clear and unambiguous, there is no room for construction. . . . [A] court cannot import into [an] agreement a different provision nor can the construction of the agreement be changed to vary the express limitations of its terms.

Yellow Book Sales & Distribution Co. v. Valle, 311 Conn. 112, 119 (2014) (alterations in original) (quoting Levine v. Massey, 232 Conn. 272, 278 (1995)).

> In determining whether a contract is ambiguous, the words of the contract must be given "their natural and ordinary meaning." Kelly v. Figueiredo, 223 Conn. at 31, 35, 610 A.2d 1296 (1992). A contract is unambiguous when its language is clear and conveys a definite and precise intent. Levine, 232 Conn. at 272. "The court will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity." (Internal quotation marks omitted.) Id., at 279, 654 A.2d 737. "Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous." (Internal quotation marks omitted.) Stephan v. Pennsylvania General Ins. Co., 224 Conn. at 758, 764, 621 A.2d 258 (1993).

United Illuminating Co. v. Wisvest-Connecticut, LLC, 259 Conn. 665, 670 (2002).

The COA unambiguously states that Hinds was to be placed at Middlesex for the period from 8/8/2011 to 11/5/2011, "pursuant to the Agreement between On Assignment Healthcare Staffing and Middlesex Hospital dated 4/22/2005." (Motion for Stay at 15.) This language is clear and conveys a definite and precise intent that Hinds's placement was to be governed by the 2005 Temporary Staffing Agreement. Thus, the 2005 Temporary Staffing Agreement

governed Hinds's placement at Middlesex at the time he was placed there.

Consequently, the dispute between the parties over the claim related to the death of the patient under Hinds's care arose out of or in connection with the 2005 Temporary Staffing Agreement. Thus, the arbitration clause in the 2005 Temporary Staffing Agreement covered that dispute. Although the 2012 Staffing Agreement provides that it supersedes all prior understandings and agreements between Middlesex and On Assignment, and thus terminates the 2005 Temporary Staffing Agreement, certain provisions of the 2005 Temporary Staffing Agreement survive the termination of that agreement. Section 7.9 provides that, among other provisions, "Section 7 (Miscellaneous)"--which includes the arbitration provision in Section 7.1--survives the termination of the 2005 Temporary Staffing Agreement. Therefore, because the dispute between the parties was within the scope of the arbitration provision while the 2005 Temporary Staffing Agreement was in effect, and the arbitration provision survives the termination of that agreement, the arbitration provision still governs that dispute.

On Assignment argues that the 2012 Staffing Agreement superseded all prior agreements and understandings, including the arbitration clause. However, though a literal reading of the 2012 Staffing Agreement clause might lead to that conclusion,

see Bank Julius Baer & Co., Ltd. V. Waxfield Ltd., 424 F.3d 278, 283 (2d Cir. 2005), such a reading misconstrues the nature of a merger clause. In Bank Julius, the Second Circuit explained:

> [A] merger clause acts only to require full application of the parol evidence rule to the writing in question-here, the Pledge Agreements. See Albany Sav. Bank, FSB v. Halpin, 117 F.3d 669, 672 (2d Cir.1997). But "enforcement of the parties' obligations to arbitrate disputes ... does not implicate the parol evidence rule in connection with the [Pledge Agreements] and, hence, is not precluded by the merger clause in that writing." Primex Int'l Corp. v. Wal-Mart Stores, 89 N.Y.2d 594, 600, 679 N.E.2d 624, 627, 657 N.Y.S.2d 385, 388 (1997).

Id. The same principle applies in this case. Here, the merger clause provides that the 2012 Staffing Agreement "constitutes the complete and integrated understanding of the Parties with respect to the subject matter of [the 2012 Staffing Agreement] and supersedes all prior understandings and agreements, whether written or oral, with respect to the same subject matter." (Motion for Stay at 18.) Section 1.1. of the 2012 Staffing Agreement states: "On Assignment will refer to Client qualified and skilled personnel meeting the requirements set forth in the Attachments ('Personnel')." (Motion for Stay at 17.) Thus, the subject matter of that agreement is the provision of staffing services by On Assignment to Middlesex. The subject matter of the agreement is not all dealings between the parties, regardless of when they occurred or may occur. Nor is arbitration of disputes between the parties included in the

subject matter of the 2012 Staffing Agreement. The 2012 Staffing Agreement is silent on the topic of arbitration, and, in fact, silent on the topic of disputes between the parties except for Section 7.4, which provides that Connecticut law shall govern.

Also, as the court in Bank Julius noted, "the existence of a broad agreement to arbitrate creates a presumption of arbitrability which is only overcome if it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." Id. at 284 (alterations in original) (quoting WorldCrisa Corp. v. Armstrong, 129 F.3d 71, 74 (2d Cir.1997)). There is no such positive assurance here. The 2005 Temporary Staffing Agreement contains a broad arbitration clause, and the 2012 Staffing Agreement did not rescind this provision as to matters within the scope of that clause, either explicitly or implicitly, e.g., by means of a contradictory forum selection clause. See Applied Energetics, 645 F.3d at 525 (finding earlier arbitration clause was superseded by later forum selection clause where "[b]oth provisions [were] all-inclusive, both [were] mandatory, and neither admit[ted] the possibility of the other").

Therefore, notwithstanding the language in the merger clause in the 2012 Staffing Agreement, all claims and controversies between the parties arising out of or in

connection with the 2005 Temporary Staffing Agreement, including the instant dispute between the parties, are subject to binding arbitration in accordance with Section 7.1 of that agreement.

**III. CONCLUSION**

Because the court concludes that the instant dispute between the parties must be submitted to arbitration pursuant to Section 7.1 of the 2005 Temporary Staffing Agreement, the plaintiff's Motion for Stay of Proceedings and to Compel Arbitration (Doc. No. 19) is hereby GRANTED. The parties shall proceed forthwith to binding arbitration by a single arbitrator in accordance with the commercial arbitration rules of the American Arbitration Association.

This case is hereby STAYED.

It is so ordered.

Signed this 3rd day of February 2016, at Hartford, Connecticut.

/s/
Alvin W. Thompson
United States District Judge