IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

CHARLEETRA HORNES, Plaintiff, v. THOMAS O. SHANNON, MD BARTON AND ASSOCIATES, INC., ATLANTA AESTHETICS AND PLASTIC SURGERY CORP., ATLANTA MEDICAL CARE, P.C., GLS HOLDING, LLC, MG CAPITOL GROUP, INC., and MY GOALS SOLUTIONS, INC. Defendants.	CIVIL ACTION FILE NO. 24A03832

ORDER REGARDING DEFENDANTS' MOTION FOR RECONSIDERATION, AND IN THE ALTERNATIVE, APPLICATION FOR CERTIFICATE OF IMMEDIATE REVIEW OF ORDER DENYING DEFENDANTS' MOTION TO DISMISS

This matter comes before the Court on Defendants' Motion for Reconsideration of the Court's October 11, 2024, Order denying their Motion to Dismiss or, in the Alternative, to Compel Arbitration and Dismiss. After reviewing the Motion, Plaintiff's Response, the record, oral arguments of counsel, and the applicable law, the Court finds that reconsideration is appropriate.

It is well-established under Georgia law that "whether to grant a motion for reconsideration after ruling on an issue lies within the sound discretion of the trial court." *Claxton v. Adams*, 357 Ga. App. 762, 766 (2020) (quoting *Cochran v. Emory Univ.*, 251 Ga. App. 737 (2001)). While there is no formal standard under Georgia law for evaluating motions to reconsider a trial court's order, guidance from federal district courts within this state provides that a motion for reconsideration is not an opportunity to reargue matters previously resolved or to raise new theories that could have been presented earlier. *Belmont Holdings Corp. v. SunTrust Banks, Inc.*, 896 F. Supp. 2d 1210, 1223 (N.D. Ga. 2012). Rather, reconsideration is appropriate when there is

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newly discovered evidence, an intervening change in controlling law, or a need to correct a clear error of fact or law. *Id.* Here, the Court's prior Order denying Defendants' Motion to Dismiss did not contain any findings of fact or conclusions of law to support it, and the Court finds that clarification is necessary.

"A dismissal for insufficiency of service of process is a finding by the trial court that service was not perfected in a reasonable and diligent manner within the prescribed statute of limitation…" *Griffin v. Stewart*, 362 Ga. App. 669, 674 (2022) (internal cits. omitted). If the limitations period expires after the complaint is filed and before service is perfected, whether service is timely depends on whether the plaintiff acted diligently in perfecting service:

> The principle of law controlling whether service was timely is whether the plaintiff acted diligently. Where service is made after the expiration of the applicable statute of limitation, the timely filing of the complaint tolls the statute *only if the plaintiff shows that she acted in a reasonable and diligent manner in attempting to jat a proper service was made as quickly as possible.* A reasonable rule must be that in such case the trial judge should look at all the facts involved and ascertain whether the plaintiff was in any way guilty of laches. If she were, of course she would be barred, but if she acted in a reasonably diligent manner then she would not be.

Jackson v. Doe, 243 Ga. App. 210, 211 (2000). Plaintiff filed her Complaint on June 28, 2024; however, the record confirms that Defendants GLS Holding, LLC; My Goals Solutions, Inc.; Atlanta Aesthetics and Plastic Surgery Corp.; MG Capitol Group, Inc.; and Atlanta Medical Care, P.C. were not served until July 11, 2024—nine days after the statute of limitations had expired. Plaintiff has not presented any affidavit, timeline, or evidentiary support demonstrating that she acted with diligence to perfect timely service. Plaintiff has not offered any evidence detailing efforts or attempts to serve Defendants. In her briefing, Plaintiff merely reiterates her argument that she perfected service of Defendants Atlanta Aesthetics and Plastic Surgery Corp., Atlanta Medical Care, P.C., GLS Holding, LLC, MG Capital Group, Inc., and My Goals Solutions, Inc.,

nine (9) business days after the expiration of the statute of limitations. Filing alone does not toll the statute, and Plaintiff has presented no evidence establishing that she acted in a reasonable and diligent manner in attempting to ensure that a proper service was made as quickly as possible, only that she perfected service on Defendants nine (9) days later.

The Court further finds that Plaintiff's claims are subject to mandatory binding arbitration. Plaintiff signed a Cosmetic Surgery Agreement on May 10, 2022, which contains a broad arbitration clause encompassing all disputes arising out of or related to the Agreement, and expressly incorporates the Commercial Rules of the American Arbitration Association. The agreement, in pertinent part provides:

> **AGREEMENT TO ARBITRATE ANY CLAIMS. READ THE FOLLOWING ARBITRATION PROVISION CAREFULLY, IT LIMITS YOUR RIGHTS, INCLUDING THE RIGHT TO MAINTAIN A COURT ACTION.**
> The Parties to this Agreement agree to arbitrate any claim, dispute, controversy, including all statutory claims and any state or federal claims, that may arise out of relate to this Agreement including the enforcement, breach or interpretation of this Agreement. By agreeing to this Agreement, Patient and Goals understand and agree that Patient and Goals are waiving their rights to maintain other available resolution processes, such as a court action or administrate proceeding, to settle their disputes. The parties also agree to: (1) waive any right to pursue any claims arising under this agreement or related to any dispute between Patient and Goals, including statutory, state or federal claims, as a class or collective action arbitration; or (2) to have an arbitration under this agreement consolidated with any other arbitration or proceeding.

Plaintiff reaffirmed this commitment in the Pre-Op Instruction Booklet signed before her surgery in which also stated,

THIS ARBITRATION PROVISION LIMITS YOUR RIGHTS, INCLUDING YOUR RIGHT TO MAINTAIN A COURT ACTION. PLEASE READ IT CARFULLY PRIOR TO SIGNING.

Though the Defendants were not signatories to the arbitration agreement, the Court finds that they are entitled to enforce it under the doctrine of equitable estoppel. The doctrine is applied

to compel arbitration of a claim against a non-signatory "(1) when the claims relate to the contract or (2) when the claims against the signatory and the non-signatory arise out of interdependent and concerted misconduct by those parties." *Lankford v. Orkin Exterminating Co.*, 266 Ga. App. 228, 231 (2004). Plaintiff's claims arise from the Agreement and allege joint, interdependent conduct between the Defendants and the signatory, NYC Medical Practice, P.C. Georgia law permits non-signatories to compel arbitration where, as here, Plaintiff's claims are intertwined with the agreement and alleged concerted misconduct of Defendants. *See Lankford v. Orkin Exterminating Co.*, 266 Ga. App. 228, 231 (2004); *Order Homes, LLC v. Iverson*, 300 Ga. App. 332, 339 (2009); *Helms v. Franklin Builders, Inc.* 305 Ga. App. 863, 865-66 (2010). In *Tiburcio v. Shannon*, Civil Action No. 23A01619-4 (State Court of DeKalb County, July 19, 2023), the Honorable Judge Johnny Panos compelled arbitration on nearly identical facts, involving the same arbitration clause, Plaintiff's counsel, and related entities. This Court finds *Tiburcio* persuasive and applicable.

Plaintiff argues that "There is no evidence of any relationship between Defendants and NC Medical Practice, P.C. whatsoever, and there are no facts to demonstrate that Defendants are "inextricably intertwined" with NYC Medical Practice, P.C.", however that is inaccurate as Joshua Lurie, Esq., an attorney with Lurie Strupinsky, LLC, who was retained to serve as counsel for My Goal Solutions, Inc., previously provided a deposition in which he articulated the relationship between NYC Medical Practice, P.C. and Defendants.

Because Plaintiff's claims are both time-barred and subject to binding arbitration, there are no remaining issues for the Court to adjudicate. As the Georgia Court of Appeals held in *Simmons Co. v. Deutsche Fin. Servs. Corp.*, 243 Ga. App. 85, 90 (2000), "since all of the issues in the underlying suit were compelled to arbitration, there was nothing left for the trial court to resolve, and it was not error to dismiss the suit with prejudice rather than grant a stay."

IT IS HEREBY ORDERED that Defendants' Motion for Reconsideration is **GRANTED**. The Court's prior Order entered on October 11, 2024, is **VACATED**. Defendants' Motion to Dismiss is **GRANTED**, and this action is **DISMISSED WITH PREJUDICE.**

SO ORDERED this 2nd day of September, 2025.

The Honorable Yolanda R. Mack
State Court of Dekalb County

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