THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2019-001413
Circuit Court Case No. 2018-CP-10-01251

Estate of Richard Ladson, Jr.,
by and through Personal Representative
Richard Miles Ladson, Sr., POA,

Respondent,

v.

THI of South Carolina at Charleston, LLC
d/b/a Riverside Health and Rehab,

Appellant.

APPELLANT'S REPLY TO RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING

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In further support of its petition for rehearing, the Facility makes the following points in reply to Plaintiff's return.[1]

ARGUMENT IN REPLY

1. Plaintiff is wrong to assert that the Admission Agreement and the Arbitration Agreement were not executed for the same purpose.

By virtue of its decision in *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014), our Supreme Court has already confirmed that the instant Admission Agreement and Arbitration Agreement constitute documents executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction, giving rise to the presumption of merger.

A case, like the present, arising out of alleged nursing home malpractice, *Coleman* had to do with the enforceability of an arbitration agreement against the estate of the decedent, Ms. Brinson, where the arbitration agreement, along with an admission agreement, had been signed on Ms. Brinson's behalf by her sister, Ms. Coleman, in conjunction with Ms. Brinson's admission. 407 S.C. at 352, 755

[1] Shorthand references already defined in the Facility's petition are continued in this reply (e.g., the "Facility" is Defendant/Appellant, THI of South Carolina at Charleston, LLC d/b/a Riverside Health and Rehab; "Plaintiff" is Plaintiff/Respondent, Estate of Richard Ladson, Jr., by and through Personal Representative Richard Miles Ladson, Sr., POA; "Mr. Ladson" is the decedent, Richard Ladson, Jr.; "Ms. Wright" is Julia Wright, Mr. Ladson's sister who handled the paperwork in conjunction with Mr. Ladson's admission to the Facility; etc.).

S.E.2d at 452.[2] Although the *Coleman* Court ultimately found an intention contrary to merger on the *particular facts* of the case,[3] it first expressly found that "the documents [(i.e., the arbitration and admission agreements Ms. Coleman signed for her sister)] were [in fact] executed *at the same time, by the same parties, for the same purposes, and in the course of the same transaction*[]" and that, "[u]nless there [wa]s a contrary intention, appellants [were] *correct* that there *was a merger*." *Id.* at 355, 755 S.E.2d at 455 (emphasis added). In this respect, the instant Arbitration Agreement and the Admission Agreement are no different from those at issue in *Coleman*. Just as in *Coleman*, they were executed in conjunction with the resident's admission, as even Plaintiff himself recognizes. (Return p. 1 ("In conjunction with Mr. Ladson's admission to Facility, Ms. Wright signed a number of documents, including an Admission Agreement and an Arbitration Agreement.") (internal footnote omitted).) So, just as in *Coleman*, they were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction, giving rise to the presumption of merger.

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[2] Technically, there were two arbitration agreements and two admission agreements in the *Coleman* record, because Ms. Coleman admitted Ms. Brinson to the facility in June 2006 and later readmitted her in December 2006 and signed arbitration and admission agreements on Ms. Brinson's behalf on both occasions. *Id.* The respective terms of both admission and arbitration agreements were identical, however. *Id.* at n.1.

[3] As explained in the Facility's petition, it is in this respect that the instant case materially differs from *Coleman*. The record in the instant case does *not* allow for a reasonable, non-speculative inference of an intention contrary to merger.

2. Contrary to Plaintiff's contention that it dooms the Facility's merger argument, the Admission Agreement's "Entire Agreement" provision is expressly pro-merger.

As explained in the Facility's petition, the Admission Agreement directly contradicts the idea of any "separatedness" (in the parlance of the *Coleman* Court[4]) between it and the Arbitration Agreement, with the Admission Agreement's "Entire Agreement" provision expressly stating that "other Admissions materials" are part of the Admission Agreement[5] and the Arbitration Agreement being among these materials. *See Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019) ("The same day as Decedent's admission to White Oak, Stott, acting as Decedent's authorized representative, signed White Oak's *admission documentation—including the Arbitration Agreement*.") (emphasis added) (internal footnote omitted); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 550, 813 S.E.2d 292, 295 (Ct. App. 2018) ("Her husband, Camille Hodge Sr., (Husband) executed various documents *related to her admission*, *including an Arbitration Agreement* and an Admission Agreement.") (emphasis added). Again, Plaintiff himself admits that Ms. Wright signed the Admission Agreement and the Arbitration Agreement "[i]n conjunction with Mr.

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[4] 407 S.C. at 356, 755 S.E.2d at 455 (explaining how, in *Coleman*—unlike the instant case—the "Entire Agreement" clause expressly referred to a separate arbitration agreement and, thus, "recognize[d] the '*separatedness*' of the [arbitration agreement] and the admission agreement, not a merger of the two contracts.") (emphasis added).

[5] (R. p. 70.)

Ladson's admission to the Facility." (Return p. 1.) Without question, the Arbitration Agreement is among the "other Admissions materials" that the "Entire Agreement" provision expressly makes part of the Admission Agreement.

3. Plaintiff himself implicitly recognizes the integrated nature of the Admission Agreement and the Arbitration Agreement.

Plaintiff himself describes the Arbitration Agreement as "provid[ing] for alternative dispute resolution for any claim a party may bring against another *arising out of Mr. Ladson's admission* . . . ." (Return p. 2 (emphasis added).) In other words, even while arguing for a separatedness between the Admission Agreement and the Arbitration Agreement, Plaintiff implicitly helps to make the Facility's point that, having been executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction, it only makes sense that the Admission Agreement and the Arbitration Agreement be considered and construed together as effectively one contract governing various interrelated aspects of the relationship between Mr. Ladson and the Facility. (*See* Return pp. 1–2 (implicitly acknowledging the hand-in-glove relationship between the Admission Agreement and the Arbitration Agreement, with the Admission Agreement providing for Mr. Ladson's admission to the Facility and "govern[ing] the type of care [he] would receive from [the Facility] and [his] financial obligation to pay for those services" and the Arbitration Agreement "provid[ing] for

alternative dispute resolution for any claim a party may bring against another *arising out of [his] admission . . . .*") (emphasis added).)

4. The formatting and structure of the Admission Agreement and the Arbitration Agreement provide no evidence of intention contrary to merger.

Essentially, Plaintiff's point here is that the fact that the Admission Agreement and the Arbitration Agreement are separate instruments evidences an intention contrary to merger. Respectfully, this reasoning is specious. As explained in the Facility's petition, for the issue of merger even to arise to begin with, there have to be separate instruments—logic demands that for there to be a *merger* there must be something to *merge* with something else. Obviously, such a logically inconsistent and self-destructive view of the doctrine of merger as Plaintiff urges cannot be correct. Moreover, regarding the "pro-merger" formatting/structure of the two instruments, as explained elsewhere, with the Admission Agreement and Arbitration Agreement having been executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction, it does not make sense to view them as separate contracts given that the Arbitration Agreement only makes sense together with the Admission Agreement, which is its (the Arbitration Agreement's) sole reason for being.

5. There nothing about the termination provisions of the Admission Agreement and the Arbitration Agreement that reasonably suggests an intention contrary to merger.

Plaintiff points to the survival of the Arbitration Agreement as evidence of separatedness. It is not. Again, the only reason for the Arbitration Agreement is the Admission Agreement, i.e., the Arbitration Agreement covers disputes relating to/arising out of the Admission Agreement. So, yes, the Arbitration Agreement would remain in effect after termination of the Admission Agreement, but all this means is that any claims relating to/arising out of the Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still connected to the Admission Agreement even after the termination of the Admission Agreement. This is simply how arbitration agreements work—and this is so even where multiple instruments are not involved, i.e., where a contract consists of a single document that includes an arbitration clause. *See Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582, 612–13(D.S.C. 1998) ("Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.").

CONCLUSION

For the foregoing reasons, together with those already set forth in its petition for rehearing (to include any other or further reason(s) set forth in its appellate

briefs already on file, the entirety of which were adopted and incorporated herein by reference therein), the Facility asks this Honorable Court to grant the instant petition, to rehear this matter, to withdraw the Subject Opinion, and to decide this appeal anew via an opinion that reverses the circuit court and stays this lawsuit in favor of arbitration or, alternatively, to remand the case to the circuit court with instructions for it to do so.

Respectfully submitted,
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June 24, 2022

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I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellant, hereby certify that **APPELLANT'S REPLY TO RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING** was served on Respondent, on June 24, 2022, by emailing (see attached) a copy of the same to Respondent's counsel of record:

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Respectfully submitted,

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June 24, 2022

Hines, Russell

From: Hines, Russell
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Subject: Ladson v. THI (Appellate Case No. 2019-001413) -- Appellant's Reply to Respondent's Return to Appellant's Petition for Rehearing
Attachments: Ladson v. THI (2019-001413) -- Reply to Return to Petition for Rehearing.pdf

Attached regarding the above-referenced matter please find **Appellant's Reply to Respondent's Return to Appellant's Petition for Rehearing**.

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