

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
C.A. No.: 2021-CP-42-03439

The Estate of Mary Ellen Williams, through
the duly appointed Personal Representative,
Benjamin Meador, Individually and on behalf
of statutory beneficiaries,

Plaintiffs,

**ORDER DENYING MOTION TO
RECONSIDER**

vs.

Pacifica Skylyn, LLC, d/b/a/ Pacifica Senior
Living Skylyn, and James A. Clements in his
capacity as Administrator of Pacifica Skylyn,
LLC,

Defendants.

RECEIVED
Aug 15 2022
SC Court of Appeals

This matter came before the Court on **June 30, 2022** on Defendants’ Motion to Reconsider the Court’s Order denying Defendants’ Motion to Dismiss pursuant to SCRCF Rules 12(B)(1) and 12(B)(6), or in the alternative to Stay and Compel Arbitration. After receiving the oral arguments remotely and reviewing the materials submitted by the attorneys, the motion is **DENIED**. The prior Order denying arbitration shall remain.

Motions to reconsider “are limited in” scope and are not to be used to ‘rehash’ the same arguments and facts previously presented.¹ The Court in Dockins stated:

Furthermore a motion to reconsider cannot appropriately be granted where the moving party simply seeks to have the Court rethink what the Court has already thought through-rightly or wrongly. [*cites omitted*]

None of the recognized grounds for granting a motion to reconsider exist. Defendants failed to meet the burden of proof for an Order dismissing the case and compelling arbitration. As clarification to the issues raised by Defendants in its present motion, the Court offers the following observations.

¹ Dockins v. Benchmark Communications, 180 F.R.D. 294 (D.S.C. 1998).

The reference to the deceased as a “vulnerable adult” in the prior Order was proper. This Court cannot find that this characterization was challenged during the prior hearing. The Complaint described Mary Williams as a vulnerable adult as defined by the South Carolina Omnibus Adult Protection Act.² The standard of review mandates this Court view the allegations contained in the Complaint as true and to view those allegation in a light most favorable to the non-moving party. Also, at the time of the prior hearing, no Answer had been filed by the Defendants and no affidavit challenging the statement that the deceased was a vulnerable adult was submitted.

Plaintiffs contend Ms. Williams was competent and able to communicate but did not sign the admission paperwork. The purpose of requiring a signature is to secure the objective manifestation of a proposed party’s assent to a contract’s terms.³ Under long-standing South Carolina law, when a contract demands all parties’ signatures, it is ineffective until all parties have signed.⁴ The statement that the deceased did not sign the arbitration agreement (or the admission agreement) was properly included in the Order. The language in the Order is accurate and not misleading. It is undisputed that the arbitration agreement was never signed by Defendants. Therefore, this Court declines to remove the reference that the deceased had not signed the arbitration agreement.

Defendants did not rely on the execution of the Arbitration Agreement to provide services to Mary Williams. Defendants did not produce any evidence to support such reliance. The Arbitration Agreement specifically states that the execution of the agreement is not a condition of admission. Defendants failed to present evidence of consideration for Mary Williams to waive her constitutional right to a jury trial. No mutuality exists. This is accurate and included in the Order.

² See S.C. Code Section 43-35-10(11) defines vulnerable adult as: (11) “**Vulnerable adult**” means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person’s own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. **A resident of a facility is a vulnerable adult.** (4) “**Facility**” means a nursing care facility, **community residential care facility**, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

³ Mosely v. WAM, Inc., 606 S.E.2d 140, 143 (N.C. App. 2004) (quoting Burden Pallet Co., Inc. v. Ryder Truck Rental, Inc., 271 S.E.2d 96, 97 (N.C. App. 1980) (“The object of a signature to a contract is to show assent”)).

⁴ Dean, 229 S.C. at 436, 93 S.E.2d at 208.

It is Defendants' burden to show an enforceable contract to arbitrate. They failed to meet the burden of proof. Under South Carolina law, whether parties mutually assented or reached the required "meeting of the minds" for a proposed contract is a question of fact.⁵ None of the issues in Defendants' Motion to Reconsider overcomes the undisputed fact that Defendants did not sign the contract that they now claim is valid and enforceable. It is not.

It is so ORDERED.

⁵ Jaffe v. Gibbons, 290 S.C. 468, 471, 351 S.E.2d 343, 345 (Ct. App. 1986).



Spartanburg Common Pleas

Case Caption: Mary Ellen Williams , plaintiff, et al VS Pacifica Skylyn, Llc ,
defendant, et al
Case Number: 2021CP4203439
Type: Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132