THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Greenville County
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2019-CP-23-00473

Court of Appeals Case No. 2019-001955
Unpublished Opinion No. 2022-UP-203 (S.C. Ct. App. filed May 18, 2022)

Supreme Court Case No. 2022-001406

Estate of Patricia Royston, by and through
the appointed Personal Representative, Marianne McCoig,
Individually, and on behalf of the statutory beneficiaries, Respondent,

v.

Hunt Valley Holdings, LLC
a/k/a Fundamental Long Term Care Holdings, LLC;
Fundamental Clinical and Operational Services, LLC;
Fundamental Administrative Services, LLC; and
THI of South Carolina at Magnolia Place at Greenville, LLC,
d/b/a Magnolia Place-Greenville, Petitioners.

REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

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In further support of their petition for a writ of certiorari, Petitioners[1] make the following points in reply to Plaintiff's return to the petition.

ARGUMENT IN REPLY

1. **According to Plaintiff, with respect to the Facility's supposed failure to meet its burden to prove the mutual assent required to form a valid contract, "the circuit court made two key factual findings: (1) 'There is no evidence the Arbitration Agreement was signed by Patricia Royston during the admission process and provided to [the Facility]'; and (2) Petitioners 'acknowledge the copy [of the Arbitration Agreement] at issue was not signed by any Facility representative.'"[2] The first finding is incorrect, and the second is ultimately inconsequential.**

As explained in Petitioners' petition, there is in fact evidence that Ms. Royston signed the Arbitration Agreement during the admission process and provided it to the Facility. Indeed, the only reasonable conclusion capable of being drawn from the evidence is that, although the Facility has been unable to locate it in its files, Ms. Royston provided the *original* Arbitration Agreement bearing her signature to the Facility at the time of her admission and was provided a *copy* for her own records, which she then kept among her personal effects. (*See* Petition pp. 9–12.) As also explained in Petitioners' petition, and indeed as Plaintiff herself has recognized in

[1] Shorthand references already defined in Petitioners' petition are continued in this reply (e.g., the "Facility" is Defendant/Petitioner THI of South Carolina at Magnolia Place at Greenville, LLC, d/b/a Magnolia Place-Greenville; the "Other Defendants" are Defendants/Petitioners Hunt Valley Holdings, LLC, a/k/a Fundamental Long Term Care Holdings, LLC, Fundamental Clinical and Operational Services, LLC, and Fundamental Administrative Services, LLC; and "Petitioners" are the Facility and the Other Defendants, collectively).

[2] (Return p. 3.)

general principle (though she denies its applicability in this instance),[3] the absence of the Facility's signature on the Arbitration Agreement does not preclude its assent thereto. (*See* Petition pp. 12–14.)

2. According to Plaintiff, "When asked by the circuit court whether the Facility's failure to retain the Arbitration Agreement could mean Ms. Royston intentionally chose not to deliver it, the Facility deemed the possibility a 'worthy point'[4] for which he could offer only inferences, not evidence, to rebut."[5] Plaintiff misapprehends the relationship between evidence and inferences: Where, as here, inferences are properly supported by direct evidence, such inferences amount to circumstantial evidence and are every bit as competent as direct evidence to prove any fact in issue.

"Inferences drawn from physical facts . . . may be as strong as direct evidence. *Such inferences amount to circumstantial evidence* and circumstantial evidence, when sufficiently strong, is as competent as positive evidence to prove a fact." *McCready v. Atlantic Coast Line R. Co.*, 212 S.C. 449, 455, 48 S.E.2d 193, 196 (1948) (emphasis added); *see also St. Paul Fire & Marine Ins. Co. v. American Ins. Co.*, 251 S.C. 56, 59–60, 159 S.E.2d 921, 923 (1968) ("Any fact in issue may be proved by circumstantial evidence as well as direct evidence, and circumstantial evidence is just as good as direct evidence if it is equally as convincing to the trier of

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[3] (Br. of Resp. p. 5 ("The Facility's appeal depends on the notion that a party can sometimes assent to a contract even without signing it. While that is true as a general statement of law, it does not apply here."); *see also id.* at p. 8 (acknowledging that "the Facility is correct [that] South Carolina allows a party to assent by means other than a signature . . .").)

[4] To be clear, counsel's respectful reference to the court's question as a "worthy point" should not be confused for conceding the point.

[5] (Return p. 3.)

the facts."); *Marks v. Industrial Life & Health Ins. Co.*, 212 S.C. 502, 505–06, 48 S.E.2d 445, 446–47 (1948) ("The attending circumstances along with the direct testimony may be taken into account by the jury in arriving at its decision as any fact in issue may be established by circumstantial evidence, if the circumstances, which must themselves be proven[,] lead to the conclusion with reasonable certainty. A well connected train of circumstances is as cogent of the existence of a fact as any array of direct evidence and may even outweigh opposing direct testimony. It is sufficient if there is evidence from which the fact can properly be inferred.").

3. *Dean v. Dean*, 229 S.C. 430, 93 S.E.2d 206 (1956), is distinguishable from the present case, and in any event, it does not account for the proposition, which Plaintiff herself has acknowledged to be "true as a general statement of law,"[6] "that a party can sometimes assent to a contract even without signing it."[7]

Plaintiff cites *Dean* for the proposition that, "*when a contract demands all parties' signatures*, it is ineffective until all parties have signed."[8] But unlike in *Dean*, the contract at issue here (the Arbitration Agreement) does *not* "demand all parties' signatures." Plaintiff tries to analogize the instant case to *Dean* because the Arbitration Agreement has a blank for the Facility's signature. The contract at issue in *Dean*, however, did not merely have a blank for another party's signature; rather, it expressly "recited that [it] is executed by the parties in five counterparts, each of

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6 (Br. of Resp. p. 5.)

7 (*Id.*)

8 (Return p. 9 (emphasis added).)

which shall be deemed an original." 229 S.C. at 433, 93 S.E.2d at 208. Because the contract was not in fact executed by each of the five intended parties to it, but only by four of them, the *Dean* Court concluded the parties did not intend the contract to be effective until it was signed by all parties. *Id.* at 210, 93 S.E.2d at 438 ("We conclude that the [contract at issue] was not effective because it was the *manifest intent* of all parties thereto that it would not become effective unless signed by all intended parties.") (emphasis added). As explained in Petitioners' petition, such intent is not manifest here. Indeed, the only intent that reasonably can be ascribed to the Arbitration Agreement is that the Facility assented to it. (*See* Petition pp. 12–14.)

Moreover, *Dean* does not account for the proposition, which, again, Plaintiff herself has acknowledged to be "true as a general statement of law,"[9] "that a party can sometimes assent to a contract even without signing it."[10] As explained in Petitioners' petition, "It has long been a paradigm of South Carolina law that when a contract signed by one party only is accepted by the other party, it becomes binding upon both just as if it were signed by both." (Petition p. 13 (quoting *Jaffe v. Gibbons*, 290 S.C. 468, 473, 351 S.E.2d 343, 346 (Ct. App. 1986)).)

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[9] (Br. of Resp. p. 5.)

[10] (*Id.*)

4. Plaintiff makes too much of the Facility not "holding" the Arbitration Agreement, and contrary to Plaintiff's assertion, the Facility did indeed manifest its assent to the Arbitration Agreement.

Citing *Peddler, Inc. v. Rikard*, 266 S.C. 28, 221 S.E.2d 115 (1975), Plaintiff contends that without holding a copy of the Arbitration Agreement the Facility cannot prove its assent. (*See* Return pp. 8–9.) Such a myopic focus on holding the Arbitration Agreement is why the Facility contends, as explained in Petitioners' petition, that to conclude it did not assent to the Arbitration Agreement is absurd. (*See* Petition pp. 12–14..)

While it is true that *Peddler* speaks of holding a contract, it does not speak of holding the contract in terms of some rigid, mechanically applied test. Indeed, what it says is as follows:

> The rule stated in *Gladden v. Keistler*, 141 S.C. 524, 140 S.E. 161, is here applicable. We quote therefrom the following:
>
> 'It is not always necessary, in order to give validity to a contract, that it should be signed by both parties; it may be sufficient if it be signed by one party and accepted, held, and acted upon by the other. *See Bulwinkle v. Cramer*, 27 S.C. 376, 3 S.E. 776, 13 Am. St. Rep. 645. In 6 R.C.L. at page 641, it is said:
>
> 'But the fact that one of the parties has signed the contract does not require that the other party should do likewise. A written contract, not required to be in writing, is valid if one of the parties signs it and the other acquiesces therein. Acceptance of a contract by assenting to its terms, holding it and acting upon it, may be equivalent to a formal

> execution by one who did not sign it. . . . If a person accepts and adopts a written contract, even though it is not signed by him, he is deemed to have assented to its terms and conditions and to be bound by them.'

Peddler, 266 S.C. at 32, 221 S.E.2d at 117.

Respectfully, to view *Peddler* as narrowly as Plaintiff does is to miss the forest for the trees. The above-quoted language in *Peddler* is aimed at answering a question of fact—and the question is *not* whether the party who did not sign the contract at issue held it or not, *but rather* whether they assented to the contact. And here, where the contract at issue is one that the Facility deliberately chose to prepare and present to Ms. Royston, where the Facility (even before obtaining the Arbitration Agreement from Plaintiff) took care to preserve its rights therein by filing its answer to Plaintiff's complaint expressly "subject to and without waiving" those rights, and where the Facility immediately acted to exercise those rights by moving to compel arbitration upon Plaintiff's production of the Arbitration Agreement, how can it seriously be questioned whether the Facility assented to the Arbitration Agreement?

5. Plaintiff offers no rebuttal on the merits of Question/Argument I.B. in Petitioners' petition.

Question/Argument I.B. in Petitioners' petition challenges the circuit court's finding that the Arbitration Agreement is not a valid and enforceable agreement because "[t]he parties on the Arbitration Agreement are not those parties specifically

listed in this lawsuit." (*See* Petition pp. 2, 14–18.) Petitioners would simply note that Plaintiff's return contains no rebuttal on the merits of this question/argument. (*See* Return p. 11 (merely stating that "[t]he Court of Appeals' proper evaluation of the contract formation evidence mooted the remaining issues raised by the parties").) Obviously, for the reasons set forth in Petitioners' petition and herein in support of their position as to Question/Argument I.A., Petitioners disagree that the Court of Appeals properly evaluated Question/Argument I.A., and Petitioners maintain that both Question/Argument I.A. and Question/Argument I.B. should be addressed and decided in their favor.

CONCLUSION

For the foregoing reasons, in addition to those already set forth in their petition, Petitioners ask this Honorable Court to grant the instant petition, reverse the Subject Opinion, and directly determine that Plaintiff's claims against the Facility should be stayed in favor of arbitration between Plaintiff and the Facility and that Plaintiff's claims against the Other Defendants should be stayed pending the conclusion of the arbitration of Plaintiff's claims against the Facility or, alternatively, remand the matter with instructions that such arbitration and stay be ordered or, alternatively, remand the matter with instructions for such further proceedings to be conducted (consistent with the reversal of the Subject Opinion)

as may be needed to effectuate the reversal of the Subject Opinion and the proper determination of the Motion to Compel Arbitration and the Motions to Stay.

Respectfully submitted,

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