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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Court of Common Pleas

Robert Bonds, Circuit Court Judge
R. Markley Dennis Jr., Circuit Court Judge

Case No. 2021-CP-18-01030
Appellate Case No. 2022-001807

Tammy China,
as Personal Representative of the
Estate of Emma Lee James, Respondent,

v.

Palmetto Hallmark Operating, LLC
d/b/a Hallmark Healthcare Center, and
Elite Patient Care of South Carolina, PC, Defendants,

Of which Palmetto Hallmark Operating, LLC
d/b/a Hallmark Healthcare Center is Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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Believing that Plaintiff's counterarguments are already amply rebutted by the analysis set forth in its principal brief, the Facility would underscore the following points in reply to Plaintiff's brief.[1]

<u>ARGUMENT IN REPLY</u>

1. Plaintiff's—and, indeed, the *Weaver* Court's—view of direct benefits estoppel is erroneous.

Citing this Court's decision in *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020), Plaintiff contends direct benefits estoppel is limited to situations where "(1) the nonsigner's claim arises from the contractual relationship, (2) the nonsigner has 'exploited' other parts of the contract by reaping its benefits, and (3) the claim relies solely on the contract terms to impose liability." (Br. of Respondent p. 11 (quoting *Weaver*, 431 S.C. at 230, 847 S.E.2d at 272).). The *Weaver* Court itself cites our Supreme Court's decision in *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019), for this proposition, specifically, *Wilson*, 426 S.C. at 340–44, 827 S.E.2d at 175–77. But *Wilson*—

[1] Shorthand references already defined in Appellant's principal brief are continued in this reply brief (e.g., the "Facility" refers to Defendant/Appellant, Palmetto Hallmark Operating, LLC d/b/a Hallmark Healthcare Center; "Plaintiff" refers to Plaintiff/Respondent, Tammy China ("Ms. China"), as personal representative of the Estate of Emma Lee James; "Ms. James" refers to the decedent, Emma Lee James; and "Ms. Dunham" refers to Ms. James's daughter Emma Dunham, who signed the Admission Agreement and the Arbitration Agreement on Ms. James's behalf).

which is binding on this Court as precedent[2]—does not actually support the proposition.

The *Weaver* Court cites *Wilson* as establishing the above-quoted three-part test for direct benefits estoppel, but *Wilson* simply does not do so. Rather, as explained in the Facility's principal brief, under *Wilson*, the key to determining when direct benefits estoppel may be applied is not whether the claims at issue rely on contract terms to impose liability but whether benefits to the nonsignatory are direct or indirect. *Wilson*, 426 S.C. at 340–41, 827 S.E.2d at 175 ("Under direct benefits estoppel, [a] nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a direct benefit from a contract containing an arbitration clause. In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him. Stated another way, [u]nder the direct benefits theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory knowingly exploits the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement . . . .") (internal citations/quotations and emphasis therein omitted); *id.* at 343, 827 S.E.2d at 176 ("It is important to

[2] S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall

distinguish direct benefits from indirect benefits because when the benefits to a nonsignatory are merely indirect, arbitration cannot be compelled. A benefit is direct if it flows directly from the agreement. In contrast, any benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.") (internal citations omitted). Direct benefits estoppel simply recognizes, and remedies, the patent inequity that would result if a party were able to enjoy direct benefits under an agreement containing an arbitration clause (which is the case here because the Admission Agreement and the Arbitration Agreement merge) while at the same time denying that the arbitration clause is enforceable. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012) ("To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.") (citation and internal quotation marks omitted).

As set forth in our Supreme Court's controlling decision in *Wilson*, and consistent with this Court's decision in *Pearson*, which the *Wilson* Court favorably cites, the essence of the test for direct benefits estoppel is simply number (2) quoted above (that "the nonsigner has 'exploited' other parts of the contract by

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bind the Court of Appeals as precedents.").

reaping its benefits"), and neither number (1) (that "the nonsigner's claim arises from the contractual relationship") nor number (3) (that "the claim relies solely on the contract terms to impose liability") is required. Indeed, to require more than number (2)—especially to require number (3)[3]—is to invite the very sort of have-your-cake-and-eat-it-too inequity that the doctrine aims to prevent in the first place. In other words, to find against direct benefits estoppel for want of number (3) even where, as here, numbers (1) and (2) are plainly satisfied, is affirmatively to allow a plaintiff to exploit and enjoy the direct benefits of an agreement containing an arbitration clause while simultaneously avoiding the obligation to arbitrate so long as the plaintiff sues for something other than breach of contract. Neither *Wilson* nor this Court's decision in *Pearson* nor general notions of equity countenance,[4] much less call for, such a result.

2. There is no question that Ms. James received direct benefits from the Admission Agreement with which the Arbitration Agreement merged.

Contrary to Plaintiff's contention that the Facility "failed to present any evidence that Ms. James or Respondent exploited the benefits of the Admission

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[3] Number (1) is plainly satisfied here in any event, as the Admission Agreement, i.e., the instrument with which the Admission Agreement merged, was essential to the establishment of the relationship between the Facility and Ms. James out of which Plaintiff's claims against the Facility arise.

[4] *See Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) ("Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.").

Agreement,"[5] there is in fact no question that Ms. James received direct benefits from the Admission Agreement.[6] As Plaintiff acknowledges, Ms. James was a resident of the Facility for months. (Br. of Respondent p. 18.) There is no question that, during this time, Ms. James received the benefit of her admission to the Facility, including, without limitation, the room, board, care, and treatment she received therein, all of which was provided to her per the terms of the Admission Agreement. (Admission Agreement.) To deny her receipt of such benefits is illogical and objectively unreasonable, as it would require wholly discrediting the entirety of her residency: every night's stay, every meal, every amenity/service provided, every instance of care/treatment, essentially every moment at the Facility—and even Plaintiff's own complaint does not go nearly so far as that. (*See* Compl.)

And to be clear, Plaintiff's contention that the *disputed allegations* underlying the claims at issue against the Facility prove the absence of a benefit to Ms. James is a nonstarter. Besides the obvious fact that Plaintiff's argument in this regard calls for improperly prejudging these disputed allegations in her favor, as

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[5] (Br. of Respondent p. 18.)

[6] Plaintiff's brief refers to an absence of evidence of "Ms. James *or Respondent*" (emphasis added) receiving benefits under the Admission Agreement, but the question of any benefits having been received by Respondent, i.e., Plaintiff, who brings this wrongful death and survival action as personal representative for Ms. James, is irrelevant. The only benefits that matter are those direct benefits that Ms. James herself received.

noted above, not even Plaintiff herself, in her complaint, complains about the entirety of Ms. James's residency.

CONCLUSION

For the foregoing reasons, together with those already set forth in its principal brief, Appellant asks this Honorable Court to reverse the circuit court's denial of the Motion to Compel Arbitration and to stay this lawsuit in favor of arbitration between Plaintiff and the Facility (or to remand this matter to the circuit court with instructions that it stay the lawsuit in favor of arbitration between Plaintiff and the Facility) or, alternatively, to reverse the circuit court's denial of the Motion to Compel Arbitration and remand this matter to the circuit court for the additional discovery requested by the Facility to be conducted; for additional briefing to be submitted to the circuit court in light of such discovery; and, with the benefit of the same, for the circuit court to hear and decide the Motion to Compel Arbitration anew.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

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