

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)
 Steven McC Carson, as Personal)
 Representative of the Estate of Louie)
 Arches,)
)
 Plaintiff,)
)
 v.)
)
 THI of South Carolina at Magnolia)
 Manor- Inman, LLC d/b/a)
 Magnolia Manor-Inman, THI of)
 South Carolina at Inman, LLC, THI)
 of South Carolina, LLC, Hunt)
 Valley Holdings, LLC,)
 Fundamental Administrative)
 Services, LLC, Fundamental)
 Clinical and Operational Services,)
 LLC, THI of Baltimore, LLC, and)
 James H. Mack,)
)
 Defendant(s).)
)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2022-CP-42-02595

**ORDER DENYING DEFENDANTS’
 MOTIONS TO DISMISS AND
 COMPEL ARBITRATION
 OR PARTICIPATE IN DISCOVERY**

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Aug 28 2023
SC Court of Appeals

This matter was before the Court on Thursday, June 1, 2023, at 9:30 a.m. upon the Defendants’ Motion to Compel Arbitration and six Motions to Stay State Court proceedings filed with the Court on February 3, 2023. The Motions were made pursuant to the Federal Arbitration Act, and Rules 12(b)(1) and 12(b)(6) of the SCRCF. Present representing the Plaintiff was John E. “Jay” Parker, Jr., Esq. Russell G. Hines, Esq. was present representing the Defendants. The Court Reporter was Linda D. Moffitt. Having listened to oral arguments from Counsel and having reviewed the parties’ legal memoranda with attached exhibits, the Court respectfully denies the Defendants’ Motions as more fully explained herein.

Background

This matter arises out of two civil actions – a survival action and a wrongful death action. Both actions involve allegations of nursing home negligence and corporate negligence resulting in the death of Louie Arches, Decedent (hereinafter “Decedent”). Steven McCarson grandson of the Decedent (hereinafter “Grandson”) is the Plaintiff in the wrongful death and survival actions. Grandson commenced this action on July 14, 2022, alleging wrongful death and survival claims as a result of the care and treatment provided to Decedent while he was a resident at Defendants’ assisted living facility. Specifically, Decedent fell numerous times between May and December of 2019 after being assessed as a high fall risk by Defendants. Decedent passed away on May 18, 2020. On February 3, 2023, Defendants filed a Motion to Compel Arbitration, relying on an Arbitration Agreement that was signed individually by Grandson on May 6, 2019, and also based upon durable financial and health care powers of attorney that were signed by Decedent on April 24, 2019, designating Grandson as his agent for the purposes of financial and health care decisions. Grandson signed the Arbitration Agreement instead of Decedent due to Decedent’s documented history of Alzheimer’s disease and dementia and inability to communicate, understand and manage the ordinary affairs of life. The durable financial power of attorney was not recorded at the time Grandson signed the Arbitration Agreement. The health care power of attorney was never recorded.

Arguments

Counsel for Plaintiff argues as follows: that while a signed Arbitration Agreement exists in this case, it is not a valid, enforceable agreement because Grandson did not have authority to execute the Arbitration Agreement at the time it was entered by the parties.

Further, that the presumption in favor of arbitration only applies to the scope of an arbitration agreement. He argues that neither of the executed powers of attorney were sufficient to authorize Grandson to enter into an arbitration agreement on behalf of Decedent or his Estate. Plaintiff argues that Grandson did not have authority to waive Decedent's and/or the Estate's right to a jury trial. The durable financial power of attorney was not effective when the Arbitration Agreement was signed. Additionally, the power of attorney must be recorded in the county where Decedent resided at the time of recordation to be effective. On July 29, 2019, when the power of attorney was recorded, Decedent was residing at Defendants' facility located at 63 Blackstock Road, Inman, South Carolina, in Spartanburg County. Decedent had been residing there since his admission on May 6, 2019. However, the durable financial power of attorney was recorded in Cherokee County. The health care power of attorney did not grant Grandson authority to make unnecessary decisions that were incidental to Decedent's medical care, such as entering the Arbitration Agreement. The Adult Health Care Consent Act grants authority to make health care decisions, and not the decision to waive Decedent's, and his Estate's, right to a jury trial. He further contends that, to the extent that Defendants may maintain that Grandson is equitably estopped from denying the validity of the Arbitration Agreement due to his execution of an Admission Agreement, there was no merger of the agreements, as the language of the Arbitration Agreement indicates it to be a separate agreement. Plaintiff argues additionally, there was no evidence that Grandson had actual or apparent authority to act on Decedent's behalf at the time he entered the Arbitration Agreement, as there was no evidence that Decedent ever consciously represented or implied to Defendants that Grandson was his agent for the purposes of entering an

arbitration agreement. The scope of the Arbitration Agreement does not cover wrongful death claims by Decedent's statutory beneficiaries. Additional discovery on the issue of authority is unnecessary and would violate S.C. Code Ann. § 15-48-20. Counsel for Plaintiff argues in conclusion that for these reasons, Defendants' motions should be denied.

Defendants argue that the FAA governs the arbitration agreement. The FAA requires arbitration agreements to be placed on equal footing with all other contracts under South Carolina Law. The arbitration agreement is valid on its face. Plaintiff's claims against the facility are within the scope of the arbitration agreement. Plaintiff should be estopped to deny the enforceability of the arbitration agreement and the admission agreement. The arbitration agreement and the admission agreement merged and should be construed together as a single contract. Plaintiff should be estopped from denying the enforceability of the arbitration agreement. And alternatively, the parties should be permitted to conduct additional discovery.

Applicable Law

The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 644 S.E.2d 705 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008). It is well established that "where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. If no agreement is found to exist, the court must deny any application to arbitrate. Whether the parties agreed to arbitration is a question of substantive state law. Simpson v. MSA of

Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007). Whether a valid arbitration agreement exists is a matter for judicial determination. York v. Dodgeland of Columbia, Inc., 406 S.C. 67,749 S.E.2d 139 (Ct. App. 2013). The courts, not arbitrators, are charged with deciding certain “gateway matters” including whether the parties have a valid arbitration agreement or whether the arbitration clause applies to a certain type of controversy. New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008).

In the applicable caselaw of Coleman v. Mariner Health Care, Inc., 407 S.C. 346,755 S.E.2d 450 (2014); Hodge v. UniHealth Post-Acute Care of Bamberg, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); and Thompson v. Pruitt Corp., 416 S.C. 43,784 S.E.2d 679 (Ct. App. 2016); Solesbee v. Fundamental Clinical and Operational Services, LLC, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023), S.C. courts have found Arbitration Agreements to be unenforceable where a family member signed an Arbitration Agreement near the time of admission to a skilled nursing facility whom did not have actual authority to do such. In all three cases, the Court found that no implied authority and that no estoppel applied. Further, the Court refused to apply the doctrine of merger to admission and arbitration agreements because language in the contracts recognized the separateness of the admission and arbitration agreements.

A general health care power of attorney grants the attorney -in-fact authority to take actions incidental to the principal’s health care if they are necessary and required for admission. Arredondo v. SNH SE Ashley River Tenant, LLC, 433 S.C. 69, 856 S.E.2d 550 (2021);

South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries and that such claims are distinct and separate from those brought under survival claims. Bennett v. Spartanburg Railway Gas and Electric Co., 97 S.C. 27, 81 S.E. 189 (1914).

Wrongful death claims are separate claims apart from the Decedent's claims. According to South Carolina's Wrongful Death Act:

“Whenever the death of a person shall be caused by the wrongful act, negligent or the fault of another and the act, negligent or the fault is such as would, if death had not ensued, had entitled party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued shall be liable to an action for damages.”

S. C. Code Ann. §15-51-10 (1977).

The wrongful death beneficiaries are as follows:

“Every such action shall be for the benefit of the wife, or husband and child or children of the person whose death shall have been so caused, and, if there be no such wife, husband, child or children, then for the benefit of the parent or parents, and if there be none, for the benefit of the heirs or the person whose death shall have been so caused.”

S. C. Code Ann. §15-51-20 (Supp. 2001).

The general element of damages recoverable are pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and deprivation of the use and comfort of the Decedent, society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries. Self v. Goodrich, 300 S.C. 349, 387 S.E.2d. 713 (Ct. App. 1989).

The wrongful death claim is a separate claim than the claims a decedent might bring on his own behalf under the survival statute. In Bennett v. Spartanburg Railway Gas and Electric Company, 97 S.C. 27, 81 S.E. 189 (1914), the Supreme Court held that wrongful death and survival actions are different claims for different injuries. The Court stated “necessarily, therefore, there must be separate verdicts and separate judgments, there should be separate actions.” Id.

While dealing with a separate arbitration issue in a nursing home case and finding the arbitration agreement to be unenforceable, the Court of Appeals in Hodge v. Uni-Health Post-Acute Care of Bamberg, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018), recognized the separateness of the statutory beneficiaries/estate’s claims from those of the patient/resident.

In Wilson v. Willis, 426 S.C. 326, 827 S.E.2d 167 (2019) the South Carolina Supreme Court held the non-signatories could not be bound by the arbitration agreement. “Equitable estoppel is ultimately a theory designed to prevent injustice, and it should be used sparingly.”

S.C. Code Ann. § 15-48-20 permits a court to “summarily” proceed to the determination of whether arbitration is appropriate when an agreement to arbitrate has been contested.

Conclusion

The Court acknowledges and appreciates the amount of research and preparation for the hearing by Counsel, as well as, the professionalism of Counsel in their presentations to the Court. Having considered oral arguments from Counsel, the Court’s review of the record and the parties’ legal memoranda with attached exhibits, and the

applicable law, the Court hereby respectfully denies Defendants' Motions to Compel Arbitration and Stay State Court Proceedings. Further, the Defendants are not entitled to conduct discovery as to the Arbitration issues.

IT IS SO ORDERED.

The Honorable Grace Gilchrist Knie
Court of Common Pleas, Spartanburg County

Date: July 7th, 2023
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Steven Mccarson , plaintiff, et al VS Thi Of South Carolina At
Magnolia Manor-Inman Llc , defendant, et al
Case Number: 2022CP4202595
Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760