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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

The Honorable Robert Bonds, Circuit Court Judge
The Honorable 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

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. The circuit court properly determined Respondent was not equitably estopped from denying arbitration because there was no merger of the Admission Agreement and Arbitration Agreement, and the evidence presented by Appellant was insufficient to establish the elements of estoppel.

2. The circuit court properly denied Appellant's request to conduct limited discovery regarding an agency relationship between Emma Lee James and Emma Dunham because Appellant had a duty to ascertain whether Ms. Dunham possessed authority to act on behalf of Ms. James before admitting Ms. James into its facility, and the circuit court's finding regarding Ms. James's mental capacity precludes the establishment of an agency relationship.

STATEMENT OF THE CASE

On November 4, 2018, Emma Lee James died from sepsis secondary to a massive sacral bedsore which developed while she was in the care of Appellant Palmetto Hallmark Operating, LLC d/b/a Hallmark Healthcare Center ("Appellant"). Thereafter, Respondent Tammy China, individually and as Personal Representative of the Estate of Emma Lee James ("Respondent"), filed a notice of intent to file suit and a complaint against Appellant. Appellant timely filed its answer denying liability, raising affirmative defenses, and reserving its right to compel arbitration.

On January 21, 2022, Appellant filed a motion to compel arbitration and subsequently filed a memorandum in support on April 8, 2022. Respondent filed a memorandum in opposition to the motion three days later. The Circuit Court held a hearing on the motion to compel on April 13, 2022, the Honorable R. Markley Dennis, Jr. presiding, and entered an order denying the motion on May 4, 2022. Appellant timely filed a motion for reconsideration on May 16, 2022. Judge Dennis determined he could decide the motion without a hearing based on the evidence before him. However, no order on the motion to reconsider was ever entered.

On October 24, 2022, the Honorable Diane Schafer Goodstein, Chief Judge for Administrative Purposes for the First Judicial Circuit (Court of Common Pleas), convened a status conference. She advised the parties that Judge Dennis had retired from the bench to return to private practice. She further determined the proper procedure would be for a different circuit court judge to rehear Appellant's motion to reconsider.

On November 17, 2022, the circuit court held a hearing on Appellant's motion to reconsider, the Honorable Robert Bonds presiding. Judge Bonds ruled against Appellant, denying the motion in an order filed November 28, 2022. Appellant timely filed another motion to

reconsider, which was denied by the circuit court in a December 28, 2022 order. This appeal followed.

FACTS

Appellant operates a for-profit long term and skilled nursing facility located in Summerville, South Carolina. (R. 25, ¶ 8). Respondent's grandmother, Emma Lee James, was admitted to Appellant's facility on August 1, 2018, for long-term care and rehabilitation following a hospitalization at Summerville Medical Center. (R. 28, ¶ 27). Ms. James's daughter, Emma Dunham, was presented with the Admission Agreement and the Arbitration Agreement at issue on appeal. (R. 156; R. 190–201). Ms. Dunham signed both documents. She did not have power of attorney for her mother. Instead, Appellant opted to rely on a facially invalid healthcare power of attorney which purported to nominate Ms. Dunham as Ms. James's power of attorney, but the document was not executed by Ms. James and only included Ms. Dunham's signature on the line designated for the principal. (R. 208).

The Admission Agreement signed by Ms. Dunham outlined the nature of services Appellant would provide to Ms. James, insurance considerations, and methods of payment. (R. 190–201). Notably, the Admission Agreement did not contain any reference to the Arbitration Agreement and established South Carolina law as the governing law.[1] (R. 199, Section IX). Additionally, the Admission Agreement included an Entire Agreement clause providing:

> I/we hereby acknowledge that I/we have read this page and all preceding pages and acknowledge that this Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understandings or agreements, oral or written, between the parties and may not be amended except by written agreement of the parties.
>
> . . .
>
> The undersigned further acknowledges that he/she has received and read the *Admission Handbook* and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.

[1] Specifically, the Admission Agreement provided it was governed by "applicable Federal regulations and those laws of the State in which [the] Facility is located." (R. 199, Section IX).

(R. 201, Section XVIII).

The Arbitration Agreement signed by Ms. Dunham was separate and distinct from the Admission Agreement. The Arbitration Agreement bore its own title, was separately paginated, and, by its terms, is governed by federal law.[2] (R. 156). Additionally, the last paragraph provided, "This Agreement shall remain in effect for all care rendered at Facility and shall survive any termination or breach of this Agreement or the Admission Agreement." (R. 156).

At the time of her admission, a body audit revealed that Ms. James had a healed right leg wound and an active left leg wound. (R. 28, ¶ 28). A little over a month later, Ms. James was scheduled to undergo an elective above-the-knee amputation of the left leg. (R. 29, ¶ 37). On September 11, 2018, the day before her scheduled procedure, Ms. James was admitted to the emergency department of Roper Hospital with gangrene of the left leg, severe malnutrition, and an electrolyte imbalance. (R. 29, ¶¶ 38–39). On September 12, 2018, a dietician and a nurse at Roper Hospital noted that Ms. James had a large, unstageable sacral pressure ulcer. (R. 29, ¶¶ 40–41). Thereafter, Ms. James underwent her left leg amputation, received care for her sacral wound, and was discharged back to Appellant's facility on September 18, 2018. (R. 29–30, ¶ 42).

Ms. James remained at Appellant's facility until her admission to Roper Hospital on October 15, 2018. (R. 31, ¶¶ 52–53). Ms. James was inconsolable, in excruciating pain, and, upon

[2] The Arbitration Agreement Established that

> because the services and reimbursement thereof effects a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any contrary provision of this Agreement or contrary state law.

(R. 156).

admission, found to have sepsis, a urinary tract infection, and severe malnutrition. (R. 31, ¶¶ 52–53). Ms. James's sacral wound, which was the size of a grapefruit, required surgical debridement to the bone, and she was subsequently admitted to Roper Hospice for palliative care on October 22, 2018. (R. 31, ¶¶ 54 & 56). Ms. James died on November 4, 2018, as a result of sepsis secondary to the sacral pressure ulcer. (R. 31, ¶¶ 57–58).

Ms. James's granddaughter, Respondent Tammy China, individually and as Personal Representative of Ms. James's Estate, subsequently filed a complaint against Appellant alleging, *inter alia*, negligence, gross negligence, and wrongful death. (R. 23–37). Appellant ultimately filed a motion to compel arbitration pursuant to the Arbitration Agreement signed by Ms. Dunham. In its motion, Appellant solely argued that Respondent's claims were required to be submitted to arbitration pursuant to the terms of a valid and binding arbitration agreement signed at the time of Ms. James's admission and attached the Arbitration Agreement as its exclusive exhibit. (R. 154–56).

On April 8, 2022, Appellant filed a Memorandum in Support of its Motion to Compel raising several arguments, two of which are relevant on appeal. First, Appellant argued the Admission Agreement and Arbitration Agreement merged, and that Respondent should be estopped from denying the enforceability of the Arbitration Agreement. (R. 174–187). Appellant alternatively argued that, should the circuit court deny its motion, it should be permitted to conduct discovery regarding the nature of Ms. Dunham's agency relationship with Ms. James. (R. 187–88). On April 11, 2022, Respondent filed a Memorandum in Opposition denying Appellant's arguments.

On April 13, 2022, the circuit court held a hearing on the motion to compel, which was presided over by the Honorable R. Markley Dennis, Jr. The circuit court entered an order denying

Appellant's motion to compel arbitration on May 4, 2022. As to Appellant's merger argument, the circuit court found the documents did not merge, citing several factors, including: that the Arbitration Agreement was optional and separate from the Admission Agreement; that the agreements bore separate titles; and that the Arbitration Agreement's language distinguished between itself and the Admission Agreement. (R. 8). The court also determined that while the Admission Agreement purported to incorporate admissions materials into itself "by reference herein," it created an ambiguity as to merger when taken in context of the totality of the circumstances, and that the law requires such ambiguities to be construed against the drafter. (R. 8–9).

The circuit court further found that equitable estoppel was not applicable because Appellant could not establish the existence of any false representations. (R. 9). The court explained Ms. James could not have engaged in any misleading conduct because the evidence demonstrated she was not consciously aware of anything occurring at the time of her admission. (R. 9). Additionally, the court determined direct benefits estoppel did not apply because the Admission Agreement and Arbitration Agreement did not merge and Respondent was not seeking to assert causes of action that arose under the contract, but instead brought a lawsuit under a negligence theory arising from common law duties. (R. 10). Finally, the circuit court determined Appellant was not entitled to additional discovery regarding the agency relationship between Ms. James and Ms. Dunham because "the only relevant and necessary evidence for the Court to make its determination [wa]s already available for the Court's review." (R. 11).

Following the circuit court's denial of Appellant's motion to compel, Appellant timely filed a motion to reconsider. (R. 226–44). However, during the pendency of the motion, Judge Dennis retired from the bench. Thereafter the Chief Administrative Judge for the First Judicial Circuit,

the Honorable Diane Schafer Goodstein, held a status conference and advised the parties that Appellant's motion to compel would have to be reheard by another circuit court judge.

On November 17, 2022, the circuit court held a hearing on Appellant's motion to reconsider, which was presided over by the Honorable Robert Bonds. The circuit court denied Appellant's motion to reconsider in a November 28, 2022 order, indicating that it agreed with Judge Dennis's findings, conclusions of law, and Order. (R. 16). Following this order, Appellant timely filed another motion to reconsider on December 8, 2022. (R. 245–65). The circuit court similarly denied this motion, reaffirming its denial of the motion to compel and motions to reconsider, and relying on the rationales in Judge Dennis's May 4, 2022 order for support. (R. 19). This appeal followed.

STANDARD OF REVIEW

"Whether an arbitration agreement may be enforced against a nonsignatory to the agreement is a matter subject to de novo review by an appellate court." *Wilson v. Willis*, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019). "Under de novo review, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings." *Id*. Moreover, "an appellant is not relieved of his burden to demonstrate error in the [circuit] court's findings of fact." *Lewis v. Lewis*, 392 S.C. 381, 392, 709 S.E.2d 650, 655 (2011).

ARGUMENT

The circuit court properly refused to compel arbitration because the federal and state policies favoring arbitration of disputes cannot overcome the absence of an agreement to arbitrate that is enforceable under South Carolina law.

"The basic purpose of the [Federal Arbitration Act] is to overcome state courts' refusal to enforce arbitration agreements." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590–91, 553

S.E.2d 110, 115 (2001). "[F]ederal policy favoring arbitration, as expressed in the FAA, is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate arbitration agreements." *Id*. at 590, 553 S.E.2d at 115. As such, it is well established that "[t]he policies of the United States and this State favor arbitration of disputes." *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 630, 667 S.E.2d 1, 6 (Ct. App. 2008).

While viewed favorably by the courts, arbitration "is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts." *Wilson*, 426 S.C. at 337, 827 S.E.2d at 173. Thus, "[t]he purpose of the FAA is 'to make arbitration agreements as enforceable as other contracts, *but not more so*.'" *Id*. at 336, 827 S.E.2d at 173 (emphasis added) (quoting *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n. 12 (1967)). In other words, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." *Aiken v. World Fin. Corp. of S.C.*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); *see also Wilson*, 426 S.C. at 337, 827 S.E.2d at 173 ("Even the exceptionally strong policy favoring arbitration cannot justify requiring litigants to forego a judicial remedy when they have not agreed to do so." (quoting *Carr v. Main Carr Dev., LLC*, 337 S.W.3d 489, 496 (Tex. App. 2011))). Accordingly, "[t]he presumption in favor of arbitration applies to the scope of an arbitration agreement; *it does not apply to the existence of such an agreement or to the identity of the parties who may be bound to such an agreement*." *Wilson*, 426 S.C. at 337, 827 S.E.2d at 173 (emphasis added) (quoting *Carr*, 337 S.W.3d at 496). Rather, "[a] party seeking to compel arbitration under the FAA must establish that (1) there is a valid agreement [to arbitrate], and (2) the claims fall within the scope of the agreement." *Id*. at 336, 827 S.E.2d at 173.

"Moreover, because arbitration, while favored, exists solely by agreement of the parties, *a presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate*." *Id*. at 337–38, 827 S.E.2d at 173 (emphasis added). Ultimately, because determining the "enforceability of an arbitration agreement is guided by general principles of contract law[,]" *Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 573, 828 S.E.2d 82, 85 (Ct. App. 2019) (citation omitted), "[w]hether an arbitration agreement may be enforced against nonsignatories, and under what circumstances, is an issue controlled by state law." *Wilson*, 426 S.C. at 338, 827 S.E.2d at 173–74. "South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law." *Id*. at 338, 827 S.E.2d at 174. Appellant raises only merger and estoppel in the instant appeal.

I. The circuit court properly determined Respondent was not equitably estopped from denying arbitration because there was no merger of the Admission Agreement and Arbitration Agreement, and the evidence in the record did not support the application of estoppel.

The plain language of both agreements reveals an intention that they be construed separately, and the record is devoid of any evidence demonstrating bad faith conduct or exploitation of contractual benefits necessary to support the application of equitable estoppel.

a. The Admission Agreement and Arbitration Agreement each evidenced an expressed intention that the documents be construed separately.

Respondent should not be estopped from denying arbitration because the Admission Agreement and Arbitration Agreement were separate documents that did not merge.

> Equitable estoppel,
>
> known also as direct benefits estoppel in the arbitration realm, estops a nonsigner from refusing to comply with an arbitration provision of a contract if
>
> (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.

Weaver v. Brookdale Senior Living, Inc., 431 S.C. 223, 230, 847 S.E.2d 268, 272 (Ct. App. 2020). "Notably, in those opinions addressing equitable estoppel in the arbitration context, the nonsignatory's contractual benefit is not typically an alleged benefit of arbitration[,] . . . rather, the contractual benefit typically arises from another provision of the *same contract that includes the arbitration provision*." *Thompson v. Pruitt Corp*., 416 S.C. 43, 59, 784 S.E.2d 679, 688 (Ct. App. 2016) (emphasis added).

Here, because the Admission Agreement and Arbitration Agreement at issue are two separate documents, there must be a merger of the two agreements before estoppel can apply. *See Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 356, 755 S.E.2d 450, 455 (2014) ("Since there was no merger here, appellants' equitable estoppel argument was properly denied by the circuit court."); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 563, 813 S.E.2d 292, 302 (Ct. App. 2018) ("Because Mable, Husband, and the Estate received no benefit from the Arbitration Agreement, equitable estoppel would only apply if documents were merged.").

"The general rule is that, *in the absence of anything indicating a contrary intention*, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together." *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977) (emphasis added). In *Coleman*, *Thompson*, and *Hodge*, our courts identified several factors which evidence an intent to treat separate admission and arbitration agreements, signed at the same time and during the same transaction, as individual documents.

In *Coleman*, the admission agreement contained an "Entirety of Agreement" clause providing:

> This Agreement, including all Exhibits hereto, and the Arbitration Agreement between the Facility and the Resident, if the parties sign one, supersede all other agreements, either oral or in writing between the parties, and contain all of the promises and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, or promises have been made by any party or anyone acting on behalf of any party, that are not contained in this Agreement or in the Arbitration Agreement. This Agreement may be amended only by a written agreement signed on behalf of the Facility and the Resident.

407 S.C. at 355, 755 S.E.2d at 455. The Supreme Court noted that on its face, this clause recognized the "separatedness" of the two agreements rather than a merger. *Id*. Additionally, the Court pointed to the fact that the arbitration agreement could be disclaimed within thirty days while the admission agreement could not. *Id*. Finally, the Court explained "[e]ven if the 'Entirety' clause create[d] an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter." *Id*. at 355–56, 755 S.E.2d at 455.

Similarly, in *Thompson*, this Court found that separate admission and arbitration agreements did not merge because the arbitration agreement could be disclaimed within thirty days while the admission agreement could not, and the execution of the arbitration agreement was not a condition precedent for admission to the nursing facility. 416 S.C. at 53, 784 S.E.2d at 685.

In *Hodge*, this Court again found no merger between separate admission and arbitration agreements. 422 S.C. at 563, 813 S.E.2d at 302. In reaching its conclusion, this Court noted that the admission agreement was governed by South Carolina law, but the arbitration agreement was governed by federal law. *Id*. at 562, 813 S.E.2d at 302. Additionally, like the agreements in *Coleman*, the arbitration agreement recognized the "separatedness" of the documents by referring to them separately as "this Agreement" and "the Patient/Resident's Admission Agreement." *Id*. The Court further relied on the facts that each document was separately paginated, each had its own signature space, and the arbitration agreement was not required for admission to the facility. *Id*. at 562–63, 813 S.E.2d at 302.

Recently, in *Estate of Solesbee by Bayne v. Fundamental Clinical and Operational Servs., LLC.*,[3] this Court reaffirmed the applicability of the factors identified in *Coleman*, *Thompson*, and *Hodge*. In the case, a nursing facility argued that a decedent's estate should be estopped from denying the enforceability of an arbitration agreement because it merged with the facility's admission agreement. *Id*. at 647, 885 S.E.2d at 149. In analyzing this issue, this Court noted that the arbitration agreement was governed by federal law while the admission agreement was governed by state law, the language of the arbitration agreement recognized the two documents as separate, each document was separately paginated and had its own signature page, and the facility's attorney acknowledged that the arbitration agreement was not required for decedent to be admitted to the facility. *Id*. at 648–49, 885 S.E.2d at 149. Accordingly, in reliance on *Coleman*, *Thompson*, and *Hodge,* this Court determined the circuit court properly denied the facility's equitable estoppel argument because the admission agreement and arbitration agreement did not merge.[4] *Id*. at 649, 885 S.E.2d at 149.

Like the documents in *Coleman*, *Thompson*, *Hodge*, and *Solesbee*, the following factors evidenced an expressed intention that the Admission Agreement and the Arbitration Agreement be construed separately. The documents bore separate titles, were separately paginated, and each had its own signature space. The Admission Agreement was governed by South Carolina law while the Arbitration Agreement was governed by federal law.[5] The Admission Agreement made no

[3] 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).

[4] Appellant contends this Court erroneously decided *Solesbee*, but does not take issue with the *Coleman*, *Thompson*, and *Hodge* Opinions. Thus, because *Solesbee* relied on the factors identified in these cases, *Solesbee* was correctly decided. Moreover, Respondent will address Appellant's challenges to *Solesbee* in its analysis of the Admission Agreement and Arbitration Agreement at bar, as Appellant acknowledges these documents are the same form documents at issue in *Solesbee*.

[5] Appellant asserts that there is no discrepancy in the governing law provisions in the Admission Agreement and Arbitration Agreement because both instruments provide "that South Carolina law applies except where it is displaced by federal law." Notably, however, the Arbitration Agreement

reference to the Arbitration Agreement and contained an "Entire Agreement" clause. Appellant acknowledged the Arbitration Agreement was not required for Ms. James's admission to its facility. Moreover, the "separatedness" of the documents was acknowledged on the face of the Arbitration Agreement itself, as the last paragraph provided, "This agreement shall remain in effect for all care rendered at Facility and shall survive any termination or breach of this Agreement *or the Admission Agreement*." (R. 156) (emphasis added). Ultimately, the Admission Agreement and Arbitration Agreement plainly evidence an intent to remain separate on their face, and the circuit court properly determined the documents did not merge.

Appellant argues the fact that the Arbitration Agreement was voluntary does not provide a reasonable inference of an intent contrary to merger of the agreements. However, Appellant fails to recognize that the voluntary nature of the Arbitration Agreement renders the presumption of merger inapplicable. It goes without saying that the purpose of the Admission Agreement was to facilitate Ms. James's admission to Appellant's facility and control the terms of her residency. However, because the Arbitration Agreement was not required for admission, its purpose was not to facilitate Ms. James's admission to Appellant's facility. Rather, the purpose of the Arbitration Agreement was to insulate Appellant from liability by providing an alternate forum to litigate claims against Appellant. Consequently, because the optional nature of the Arbitration Agreement

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explicitly provided that it was controlled by the FAA "notwithstanding any . . . contrary state law." (R. 156). Moreover, Appellant acknowledges in its brief that federal arbitration law would supersede state law in regard to enforcement of the Arbitration Agreement. (Appellant's Initial Brief, pg. 22). Finally, Appellant argues the Arbitration Agreement is governed by state law because it expressly calls for arbitration proceedings to be conducted pursuant to the South Carolina Alternate Dispute Resolution Rules. However, while the Arbitration Agreement provided that the *form of arbitration* was governed by the South Carolina ADR Rules, these procedural rules do not supplant the FAA as the governing law. Rather, when a conflict between state procedural rules and the FAA arises, procedural rules must yield to the substantive law of the FAA. *See Bean v. S.C. Cent. R.R. Co.*, 392 S.C. 532, 545, 709 S.E.2d 99, 105 (Ct. App. 2011) ("[A] local form of practice may not defeat a federal right.").

demonstrates that its purpose was separate and distinct from that of the Admission Agreement, the circuit court properly relied on this factor in determining the documents did not merge. *See Klutts Resort Realty, Inc.*, 268 S.C. at 88, 232 S.E.2d at 24 ("The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, *for the same purpose*, and in the course of the same transaction, the courts will consider and construe the instruments together." (emphasis added)).

Appellant further argues the documents should be construed together because the "Entire Agreement" clause in the Admission Agreement refers to "other Admission materials." This argument is unavailing. Such language, at most, creates an ambiguity as to merger. In *Coleman*, the entire agreement clause in a facility admission agreement made express reference to an "Arbitration Agreement between the Facility and the Resident, if the parties sign one." 407 S.C. at 355, 755 S.E.2d at 455. In its analysis, the Supreme Court acknowledged the possibility that this language could create an ambiguity as to merger, and concluded "the law is clear that *any ambiguity in such a clause is construed against the drafter*." *Id*. at 355–56, 755 S.E.2d at 455 (emphasis added). Consequently, the vague reference to "other Admission materials" creates an ambiguity at best, and such ambiguity must be construed against Appellant.

Appellant complains that construing any ambiguity against it as the drafter "does not make sense." However, doing so is fully supported by South Carolina law and common sense. Appellant ignores the fact that, as the party who drafted both the Admission Agreement and the Arbitration Agreement, it could have utilized any number of options to ensure that the documents would be construed as one without any ambiguity. Appellant could have made express reference to the Arbitration Agreement in the Admission Agreement, referred to both documents as part of the same overall document, or otherwise expressly indicated that the two were meant to be construed

together. Moreover, Appellant could have simply included the Arbitration Agreement as a clause of the Admission Agreement. Because Appellant could have easily expressed its intent for the documents to merge, it is only logical to construe undefined terms and vague references against it.

Appellant's argument regarding ambiguities further ignores the reason that nursing home facilities have chosen to separate their admission agreements and arbitration agreements. In short, South Carolina courts routinely invalidated admission agreements containing arbitration clauses seeking to insulate such facilities from liability, finding such contracts presented to infirm parties and their families were unconscionable contracts of adhesion. Consequently, nursing home facilities, as habitual tortfeasors, now present vulnerable parties and their families with arbitration agreements containing the same unconscionable terms that are separate from their admission agreements. *See Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 357, 755 S.E.2d 450, 456 (2014) (Toal, C.J., dissenting) ("Using a separate contract for arbitration agreements . . . better protects the nursing home from a contention that the arbitration contract is unconscionable."). As such, these facilities, in an effort to enforce separate arbitration agreements, insert ambiguous terms into their admission agreements and seek to have courts construe the documents together under the guise of equity. Accordingly, ambiguities in such agreements must be construed against these facilities because such facilities could easily include arbitration provisions or express references to arbitration agreements in their admission agreements if the same were written to comply with South Carolina law. *See Shotts v. OP Winter Haven, Inc.*, 86 So.3d 456, 478 (Fla. 2011), *cited with approval in Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 622, 879 S.E.2d 746, 760–61 (2022) ("Given the nature of the relationship between a nursing home and its patient, the courts ought to expect nursing homes to proffer form contracts that fully comply with [the law],

not to revise them when they are challenged to make them compliant. *Otherwise, nursing homes have no incentive to proffer a fair form agreement*.").

Ultimately, because the Admission Agreement and Arbitration Agreement did not merge, the circuit court properly refused to estop Respondent from denying arbitration. *See Coleman*, 407 S.C. at 356, 755 S.E.2d at 455 ("Since there was no merger here, *appellants' equitable estoppel argument was properly denied by the circuit court*." (emphasis added)); *Hodge*, 422 S.C. at 563, 813 S.E.2d at 302 ("Because Mable, Husband, and the Estate received no benefit from the Arbitration Agreement, *equitable estoppel would only apply if documents were merged*." (emphasis added)).

b. Appellant presented no evidence demonstrating that Respondent reaped the benefits of the Admission Agreement or that her claims arise solely from the contract, nor did Appellant present any evidence suggesting that Respondent or Ms. James misled the facility.

Assuming, arguendo, that the Admission Agreement and Arbitration Agreement merged, there is not sufficient evidence in the record to satisfy the elements of estoppel. As noted above, direct benefits estoppel applies when: (1) the nonsignatory's claim arises from the contractual relationship, (2) the nonsignatory has exploited other parts of the contract by reaping its benefits, and (3) the claim relies only on the contract terms to impose liability. *Weaver*, 431 S.C at 230, 847 S.E.2d at 272. Crucially, because equitable estoppel is "[b]orn of equity, the heart of the theory 'is that the party entitled to invoke the principle was misled to his injury.'" *Id*. at 233, 847 S.E.2d at 274 (quoting *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 601, 799 S.E.2d 912, 916 (2017)). Accordingly, "[e]stoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other." *Zabinski*, 346 S.C. at 589, 553 S.E.2d at 114 (quoting *Evins v. Richland Cty. Historic Pres. Comm'n*, 341 S.C. 15, 20, 532 S.E.2d 876, 878 (2000)). Because

"[e]quitable estoppel is, ultimately, a theory designed to prevent injustice,[] it should be used sparingly." *Wilson*, 426 S.C. at 345, 827 S.E.2d at 177.

First, Appellant failed to present any evidence that Ms. James or Respondent exploited the benefits of the Admission Agreement. Within three months of Ms. James's admission to Appellant's facility for what was supposed to be a temporary stay, Appellant caused her injuries that led to her death. This Court has previously found that a party received no benefit from an admission agreement under similar circumstances. *See Hodge*, 422 S.C. at 563, 813 S.E.2d at 302 ("The only agreement from which Respondents even arguably received a benefit was the Admission Agreement because Mable was admitted to the Facility as a result of it. However, *because the Facility allegedly caused Mable's injuries that later led to her death, we find it difficult to find she benefited even from being admitted*." (emphasis added)). Similarly, Appellant presented no evidence indicating that Respondent exploited the benefits of the Admission Agreement.

Second, Appellant failed to demonstrate that Respondent's claims arose solely from the Admission Agreement.[6] "[D]irect benefits estoppel is not implicated simply because a claim relates to or would not have arisen 'but for' a contract's existence." *Wilson*, 426 S.C. at 343, 827 S.E.2d at 176. Rather, direct benefits estoppel applies only when the claim is dependent on the existence of a contract. *See id*. ("When a claim depends on the contract's existence and cannot

[6] Appellant argues the Circuit Court misapprehended the law regarding direct benefits estoppel, asserting that the analysis should focus on whether Ms. James received any direct benefits from the Admission Agreement rather than determining whether the claims at issue rely on contractual terms. However, the proper analysis for direct benefits estoppel requires a court to determine whether a party received direct benefits from the contract *and* whether the claims rely on solely on contractual terms. *Weaver*, 431 S.C. at 230, 847 S.E.2d at 272. Thus, a failure by Appellant to demonstrate either one of these elements precludes the application of estoppel. *See id*. at 232, 847 S.E.2d at 273 (finding the respondent was not estopped from denying the enforceability of a nursing home arbitration agreement, in part, because "Weaver's claims rely on general tort duties owed by Appellants to everyone, not any provision of the residency agreement").

stand independently—that is, the alleged liability 'arises solely from the contract or must be determined by reference to it'—equity prevents a person from avoiding the arbitration clause that was part of that agreement." (quoting *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 637 (Tex. 2018))). Stated differently, if a claim is based on general duties imposed by law, direct benefits estoppel does not apply. *See id*. ("'[W]hen the substance of the claim arises from general obligations imposed by state law, including statutes, torts and other common law duties, or federal law,' direct-benefits estoppel is not implicated even if the claim refers to or relates to the contract *or would not have arisen 'but for' the contract's existence*." (quoting *Jody James Farms, JV*, 547 S.W.3d at 637)). South Carolina law does not allow a party to act in a tortious manner while shielding itself from a jury trial with an arbitration clause agreed to only by the offending party.[7]

Here, Respondent brought claims for negligence, gross negligence, and wrongful death against Appellant. These claims arise from the general duties of care imposed on Appellant by South Carolina tort law. *See Weaver*, 431 S.C. at 231, 847 S.E.2d at 272 ("[N]ursing home contracts [do not] supplant common law duties imposed by the law of ordinary negligence."). Therefore, Respondent's claims do not rely on the Admission Agreement and could stand independently. As such, the mere existence of the Admission Agreement is not sufficient to support the application of estoppel. *See Wilson*, 426 S.C. at 343, 827 S.E.2d at 176 ("[D]irect benefits estoppel is not implicated simply because a claim relates to or would not have arisen 'but for' a contract's existence.").

[7] *Cf. Wilson*, 426 S.C. at 342, 827 S.E.2d at 176 ("General principles of South Carolina law form the basis for most of Petitioners' claims. For example, Petitioners' allegation that Respondents possibly conspired with Willis and others to commit fraud is misconduct that does not arise from the contract. *To hold otherwise would arguably allow Respondents to commit unfair trade practices and conspire to destroy the businesses of other insurance agencies while shielding themselves from the possibility of a jury trial with an arbitration clause agreed to only by the conspiring parties*." (emphasis added)).

Finally, Appellant failed to present any evidence demonstrating that it was misled by Ms. James, Ms. Dunham, or Respondent. *See Weaver*, 431 S.C at 233, 847 S.E.2d at 274 ("Born of equity, the heart of the theory 'is that the party entitled to invoke the principle was misled to his injury.'" (quoting *Rodarte*, 419 S.C. at 601, 799 S.E.2d at 916)). Any allegation that Ms. James misled Appellant is directly contradicted by the circuit court's finding that that Ms. James was not consciously aware of anything that was occurring at the time of her admission. (R. 9). *See Thompson*, 416 S.C. at 60, 784 S.E.2d at 689 ("Here, Mother had dementia prior to being admitted to UniHealth. *Therefore, her incapacity prevented her from forming the intent or having the requisite knowledge to mislead Appellants*." (emphasis added)). Similarly, as to Respondent, Appellant did not present any evidence demonstrating that the two parties had any contact prior to the institution of the case at bar.

As to Ms. Dunham, Appellant only argues that she signed the Arbitration Agreement and, that by signing, she represented that she had the authority to sign on Ms. James's behalf. However, Appellant presents no evidence that it requested or sought documentation demonstrating such authority required to execute the Agreement at the time of admission.[8] Moreover, Appellant produced no evidence that Ms. Dunham had a better understanding of the authority necessary to

[8] Notably, the section of the Admission Agreement titled "Miscellaneous" included the following requirements regarding authority:

> 3. A copy of any court order appointing a guardian for the Resident's person or estate must be supplied to the Facility. This court order must appoint the legal guardian to sign contracts on behalf of Resident. The legal guardian will only be given such rights under this Agreement as are set out in that court order. . . .
>
> 4. Representative will supply Facility with a copy of any power of attorney, durable power of attorney, and durable power of attorney for health care or other legal documentation permitting him or her to act on Resident's behalf. . . .

(R. 200, Section XVII).

sign documents on Ms. James's behalf than Appellant. To the contrary, as a corporate entity specializing in long-term care and skilled nursing, Appellant was significantly more sophisticated and experienced with regard to the authority necessary to execute such documents. *See Zabinski*, 346 S.C. at 589, 553 S.E.2d at 114 ("Estoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other." (quoting *Evins*, 341 S.C. at 20, 532 S.E.2d at 878)). Accordingly, any misunderstanding as to Ms. Dunham's authority to make decisions on Ms. James's behalf was the result of Appellant's own failures to determine whether such authority existed and to require documentation of such authority as required by the Admission Agreement. *Cf. McCall v. Finley*, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987) ("[I]t is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority." (alteration in original) (quoting *Justus v. Universal Credit Co.*, 189 S.C. 487, 495, 1 S.E.2d 508, 511 (1939))).

Ultimately, the record is devoid of evidence supporting the application of estoppel in favor of Appellant. The circuit court's refusal to do so should be affirmed.

II. The circuit court properly refused to permit discovery regarding the agency relationship between Ms. James and Ms. Dunham, as this argument has been abandoned on appeal, Appellant had a prior duty to ascertain Ms. Dunham's authority, and Ms. James's mental capacity prevented her from creating an agency relationship.

Appellant has abandoned this argument on appeal by failing to cite to supporting authority specific to its position on appeal. Regardless, the circuit court properly denied Appellant's request for limited discovery as Appellant had a duty to determine Ms. Dunham's authority well before litigation in this matter arose, and the circuit court's findings regarding Ms. James's mental state precludes a finding that agency existed.

a. Appellant has abandoned this argument on appeal.

Appellant argues the circuit court erred by refusing to allow it to engage in limited discovery regarding the agency relationship between Ms. James and Ms. Dunham. Appellant contends such limited discovery should entitle it to depose Ms. Dunham and follow up on any evidentiary leads revealed by her deposition. In support of its argument, Appellant cites generally to case law explaining basic principles of agency law, contract law, and federal policy placing arbitration agreements on "equal footing" with other contracts. Notably, however, Appellant fails to cite any authority in support of its contention that a circuit court errs by failing to allow a party seeking to compel arbitration to engage in discovery.

Thus, because the general case law cited by Appellant, which only demonstrates basic principles of law, does not support Appellant's specific position on appeal, Appellant has abandoned this issue. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("Appellant fails to provide arguments or supporting authority *for his assertion*. Thus, he is deemed to have abandoned this issue." (emphasis added)); *State v. Howard*, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (holding an argument was abandoned when defendant failed to cite any authority *in specific support of his assertion* that the trial court erred in denying his motion for a mistrial); *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) ("Billy failed to cite any authority *in support of his assertion* the special referee erred in ordering him to repay proceeds from the sale of property. Therefore, Billy abandoned this issue on appeal, and we decline to consider the argument." (emphasis added)).

b. Appellant had a duty to determine whether Ms. Dunham had authority to make agreements on Ms. James's behalf and consent to treatment before her admission to its facility.

Appellant should not be permitted to further delay litigation by engaging in limited discovery to determine whether Ms. Dunham had authority to act on Ms. James's behalf. This is

because Appellant was required to do so before admitting Ms. James to its facility without her own signature.

As a skilled nursing facility, two significant policy considerations mandate that Appellant was required to determine whether Ms. Dunham had authority to act on Ms. James's behalf prior to her admission. First, "[i]t is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority." *McCall*, 294 S.C. at 6, 362 S.E.2d at 29 (quoting *Justus*, 189 S.C. at 495, 1 S.E.2d at 511). Such a duty exists for the protection of the party dealing with the agent, as well as the protection of the purported principal. Appellant was seemingly aware of this obligation, as the Admission Agreement required a purported agent to provide Appellant with documentation establishing the existence and scope of the agent's authority. *See supra* note 8.

Second, it was incumbent upon Appellant to determine whether Ms. Dunham had authority to act on Ms. James's behalf before providing Ms. James with medical treatment. Without determining the existence of such authority, Appellant was unaware of whether Ms. James desired such treatment or whether it was committing battery against her. *See Harvey v. Strickland*, 350 S.C. 303, 312, 566 S.E.2d 529, 534 (2002) ("[W]e have recognized that there may be a viable cause of action for medical battery as the result of failing to obtain proper consent.").

However, by asserting that it should be permitted to engage in discovery to determine if an agency relationship existed between Ms. James and Ms. Dunham, Appellant is tacitly admitting that it did not determine whether Ms. Dunham had authority to act on Ms. James's behalf before admitting Ms. James into its facility and providing her with medical treatment. Rather, Appellant disregarded any potential harm to Ms. James by admitting her without the proper due diligence and immediately billing her for services. Appellant should not be permitted to delay litigation because it failed to do that which was incumbent upon it as a skilled nursing facility. Instead,

Appellant should have sought to establish the nature of the relationship between Ms. James and Ms. Dunham before seeking to profit off Ms. James's admission. *See McCall*, 294 S.C. at 6, 362 S.E.2d at 29 ("[I]t is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority." (alteration in original) (quoting *Justus*, 189 S.C. at 495, 1 S.E.2d at 511)).

Moreover, Respondent's argument above regarding the rationale behind the current practice of nursing homes separating their arbitration agreements from their admission agreements[9] actually has a link here, as well. Essentially, Appellant has made a conscious business decision to separate arbitration provisions from its Admission Agreement in order to better preserve its goal to avoid jury trials for harm caused to its residents. In doing so, it has created a situation where it is never in its best interest to ascertain, upon admission, whether there is actual or apparent authority for a family member to sign the agreements presented to them by Appellant. But Appellant cannot then claim to have been misled, and thus cannot rely on equitable estoppel, if, by the exercise of reasonable diligence, it could have acquired knowledge to determine the truth of the facts in question. *See Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 70, 558 S.E.2d 902, 908 (Ct. App. 2001) ("The first element that a party seeking to assert equitable estoppel must prove is a lack of knowledge *and of the means of knowledge of the truth regarding the facts in question*." (emphasis added)).

c. An agency relationship between Ms. James and Ms. Dunham cannot be established in light of the circuit court's findings regarding Ms. James's mental capacity.

The circuit court properly determined the only necessary and relevant evidence was available for its review, and the court's finding regarding Ms. James's mental capacity precludes the need for additional discovery. However, Appellant suggests that discovery is necessary to

[9] *See supra* Section I(a).

determine four potential theories of agency: 1) actual authority; 2) apparent authority; 3) authority by estoppel; and 4) ratification.

Initially, to establish that the Arbitration Agreement was enforceable, Appellant would have to establish that Ms. Dunham had the specific authority to sign it. Because, even if she possessed the authority to make medical decisions for Ms. James, such authority would not include the authority to waive Ms. James's legal rights. *See Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 81, 856 S.E.2d 550, 557 (2021) ("The only health care decision in play when Arredondo signed the arbitration agreement was Arredondo's decision to seek Whaley's admission into the facility."); *Coleman*, 407 S.C. at 353–54, 755 S.E.2d at 454 ("The scope of Sister's authority to consent to 'decisions concerning Decedent's health care' extended to the admission agreement . . . . *The separate arbitration agreement concerned neither health care nor payment*." (emphasis added)); *Hodge*, 422 S.C. at 569–70, 813 S.E.2d at 306 ("*[A] health care power of attorney granted for medical decisions does not confer authority to sign an arbitration agreement waiving legal rights*." (emphasis added)); *Thompson*, 416 S.C. at 55, 784 S.E.2d at 686 ("[T]he authority conveyed by a principal to an agent to handle finances or make health care decisions *does not encompass executing an agreement to resolve legal claims by arbitration*, thereby waiving the principal's right of access to the courts and to a jury trial." (emphasis added)). However, Ms. James could not have bestowed such authority upon any purported agent, as the circuit court concluded she was not consciously aware of anything that was occurring at the time of her admission,[10] which is defective to the establishment of an agency relationship. (R. 9).

Actual Authority

[10] Appellant does not challenge this finding on appeal.

"[A]ctual authority is expressly conferred upon the agent by the principal." *Roberson v. S. Fin. Of S.C., Inc.*, 365 S.C. 6, 11, 615 S.E.2d 112, 115 (2005). Here, the circuit court determined that Appellant did not present any evidence that Ms. James had recorded any such conferral of authority to Ms. Dunham. Moreover, Ms. James could not have provided express authority at the time of her admission because the circuit court determined she was not consciously aware of anything that was occurring at that time. Thus, discovery is not necessary to determine that Ms. Dunham did not have actual authority to sign the Arbitration Agreement on Ms. James's behalf.

Apparent Authority

"Apparent authority . . . is created as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him." *R & G Constr., Inc. v Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000). "The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent, *but on that between the principal and the third party*." *Id*. at 432–33, 540 S.E.2d at 118 (emphasis added). Accordingly, "apparent authority depends upon manifestations by the principal to a third party" and "may not be established solely by the declarations and conduct of an alleged agent." *Id*. at 432, 433, 540 S.E.2d at 118.

Pursuant to South Carolina law, the establishment of Ms. Dunham's apparent authority would not be based on her statements or conduct. Rather, the existence of such authority turns on whether Ms. James held Ms. Dunham out as her agent such that Appellant could reasonably believe Ms. Dunham had authority to sign the Arbitration Agreement on her behalf. *See id*. at 432, 540 S.E.2d at 118 ("[A]pparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal.").

However, since it was found that Ms. James was not consciously aware of what was going on at the time of her admission, she could not have held Ms. Dunham out as her agent. Further, Appellant presented no evidence that Ms. James had previously held Ms. Dunham out as her agent prior to the time of her admission. Because Appellant cannot establish that Ms. James made any representations regarding Ms. Dunham's agency, Appellant cannot establish that Ms. Dunham had apparent authority to sign the Arbitration Agreement. Accordingly, any representations made by Ms. Dunham during a deposition, like any made during Ms. James's admissions process, would be irrelevant to determining apparent agency. *See id*. at 433, 540 S.E.2d at 118 ("An agency may not be established solely by the declarations and conduct of an alleged agent.").

Authority by Estoppel

As to whether Ms. James indicated to anyone that Ms. Dunham had authority to act as her agent and should thus be estopped from denying the same through her estate after her death, it has been held that:

> When a principal, by any such acts or conduct, has knowingly caused or permitted another to appear to be his agent, either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances.

Id. A party seeking to establish agency by estoppel must demonstrate "(1) ignorance of the party invoking it of the truth as to the facts in question; (2) representations or conduct of the party estopped which misled; (3) reliance upon such representation or conduct; and (4) prejudicial change of position as a result of such reliance." *Anthony v. Padmar, Inc.*, 320 S.C. 436, 452, 465 S.E.2d 745, 754 (Ct. App. 1995).

Here, Appellant cannot establish authority by estoppel for the same reason it cannot demonstrate that Ms. Dunham possessed apparent authority. Specifically, Appellant cannot

demonstrate that Ms. James had the mental capacity to knowingly mislead Appellant regarding Ms. Dunham's status as her agent because Ms. James was not consciously aware of what was going on at the time of her admission. Further, any argument that Ms. Dunham could be found to have held herself out as having authority fails under the long-standing law of agency. Consequently, discovery would not lead to the production of any relevant evidence on this issue.

Ratification

"Ratification as it relates to the law of agency may be defined as the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent." *Barber v. Carolina Auto Sales*, 236 S.C. 594, 599, 115 S.E.2d 291, 294 (1960) (quoting *Mebane v. Taylor*, 164 S.C. 87, 162 S.E. 65, 67 (1932)). "One asserting ratification must establish the following three elements: (1) acceptance by the principal of the benefits of the agent's acts, (2) the principal's full knowledge of the facts, and (3) circumstances or an affirmative election demonstrating the principal's intent to accept the unauthorized arrangements." *Stiltner v. USAA Cas. Ins. Co.*, 395 S.C. 183, 191, 717 S.E.2d 74, 78 (Ct. App. 2011). Crucially, "[o]ne can scarcely be said to have ratified an act until he knows what the act is." *Sibley v. Young*, 26 S.C. 415, 2 S.E. 314, 318 (1887).

Appellant cannot establish that Ms. James ratified the Arbitration Agreement for two reasons. First, Appellant presented no evidence that Ms. James ever communicated her acceptance of the Arbitration Agreement or that she acted in a manner confirming an intention to enter the Arbitration Agreement. Second, Appellant cannot demonstrate that Ms. James had full knowledge of the facts regarding the Arbitration Agreement because Ms. James was not consciously aware of

anything happening at the time of her admission.[11] As a result, discovery would not produce any evidence relevant to this issue that was not already known by the circuit court at the time of its order refusing to compel arbitration.

CONCLUSION

Based on the foregoing, the circuit court's orders refusing to compel arbitration should be affirmed.

Respectfully submitted:

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[11] As an additional note, even if Appellant could demonstrate that Ms. James ratified the Admission Agreement, the Arbitration Agreement would still be unenforceable because the Admission Agreement and Arbitration Agreement did not merge. *See supra* Section I(a).

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Dorchester County
Court of Common Pleas

The Honorable Robert Bonds, Circuit Court Judge
The Honorable 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

CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent's Final Brief complied with Rule 211(b), SCACR.

Signature included on following page

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