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| STATE OF SOUTH CAROLINA | ) | COURT OF COMMON PLEAS |
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| COUNTY OF SPARTANBURG | ) | C.A. NO.: 2022-CP-42-01163 |



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| Timothy Hutley, Guardian for Jane Doe, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| THI of South Carolina at Magnolia Manor Inman, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC, Hunt Valley Holdings, LLC, THI of South Carolina at Inman, LLC, Murray Forman, and Kathy Scroggs, Individually, | ) | ORDER |
| | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

Hearing Date: March 1, 2023

Hearing Judge: Honorable Grace G. Knie

Counsel for Plaintiff: C. Daniel Pruitt

Counsel for Defendants: Russell G. Hines

This matter was before the Court on March 1, 2023 in Spartanburg County, South Carolina, the Seventh Judicial Circuit via Webex without objection upon Defendants' Motion to Dismiss and Compel Arbitration as well as a Motion to Stay the Court proceedings pending arbitration on the basis of Merger and Equitable Estoppel. Attorney C. Daniel Pruitt was present representing Plaintiff. Attorney Russell G. Hines was present representing all Defendants.

**PROCEDURAL BACKGROUND**

This action was commenced by the filing of a Summons and Complaint on March 31, 2022, alleging personal injury. Defendants Answered the Complaint and included a Motion to Compel Arbitration and to Stay Court Proceedings based on a separate document

containing an Arbitration Clause. Defendants filed a Memorandum in support of its Motion to Compel Arbitration and to Stay Court proceedings dated March 1, 2023. Plaintiff also filed a Memorandum in opposition to the Motions of Defendants. The parties appeared and presented arguments on March 1, 2023.

## FACTUAL BACKGROUND

Jane Doe, a Medicare recipient, was admitted to Magnolia Manor Inman (hereinafter Defendants' facility) on August 22, 2018. While a resident, Ms. Doe experienced a violent attack with resulting injury on or around September 8, 2018. Plaintiffs filed a Summons and Complaint alleging certain wrongful conduct and seeking a jury trial. Defendants filed an Answer and a Motion to Compel Arbitration and to Stay the Court proceedings.

The parties conceded that there was no Power of Attorney in place at the time of admission. Defendants had Jane Doe's son sign the admission agreement and a separate "Facility-Resident/Representative Arbitration Agreement" which was submitted for the Court's evaluation. Defendants conceded in their Memorandum that neither agreement is signed by Jane Doe. No affidavits were submitted.

The separate one-page Arbitration Agreement states:

> It is further understood that in the event of any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident, including but not limited to any alleged tort, personal injury, negligence or other claim; or any federal or state statutory or regulatory claim of any kind; or whether or not there has been a violation of any right or rights granted under State law (collectively "Disputes"), and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by

> arbitration, as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules.

The separate agreement purports to waive Jane Doe's right to Jury Trial and require that any controversy or dispute between the parties be submitted to binding arbitration in accordance with the South Carolina Alternate Dispute/ Resolution Rules.

At the hearing, Defendants based their arguments on merger and equitable estoppel. Defendants argued that both the admission agreement and the arbitration agreement were signed at the same time and there should be a merger of the two documents. Plaintiff strongly objected arguing that the agreement was invalid and unenforceable because Timothy Hutley lacked authority, either express or apparent, to waive Jane Doe's right to jury trial and to enter the agreement for binding arbitration.

**LAW & ANALYSIS**

South Carolina's policy is to favor arbitration of disputes. *Zabinski,* 346 S.C. at 596, 553 S.E.2d at 118. "Arbitration agreements, like other contracts, are enforceable in accordance with their terms." *Munoz v. Green Tree Fin. Corp.,* 343 S.C. 531, 539, 542 S.E.2d 360, 364 (2001). "To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim." *Zabinski,* 346 S.C. at 597, 553 S.E.2d at 118. "Unless a court can say with positive assurance that an arbitration clause is not susceptible to any interpretation that covers the dispute, arbitration should generally be ordered." *Gissel v. Hart,* 382 S.C. 235, 240-41, 676 S.E.2d 320, 323 (2009). "A broadly-worded arbitration clause applies to disputes that do

not arise under the governing contract when a `significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained." *Zabinski*, 346 S.C. at 598, 553 S.E.2d at 119 (quoting *Long v. Silver*, 248 F.3d 309, 316 (4th Cir. 2001)).

"However, 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." *Gissel*, 382 S.C. at 241, 676 S.E.2d at 323. "[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 omitted) (quoting *Carr v. Main Carr Dev., LLC*, 337 S.W.3d 489, 496 (Tex. App. 2011)). "[B]ecause 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 omitted). Nevertheless, "[w]ell-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012) (quoting *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416-17 (4th Cir. 2000)).

"Whether 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, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil

piercing/alter ego, and (5) estoppel." *Id.* at 338, 827 S.E.2d at 174. This court has held the theory of equitable estoppel precludes parties from asserting their nonsignatory status, compelling them to submit their claims to arbitration. *Id.* at 339, 827 S.E.2d at 174. Under this theory, "[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.'" *Pearson,* 400 S.C. at 290, 733 S.E.2d at 601 (quoting *Int'l Paper,* 206 F.3d at 418). "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." *Id.* (emphasis omitted) (quoting *Int'l Paper,* 206 F.3d at 418). Notably, in those opinions addressing equitable estoppel in the arbitration context, the nonsignatory's contractual benefit is not typically an alleged benefit of arbitration such as "avoiding the expense and delay of extended court proceedings" or being "capable of enforcing the [AA]," as touted by Appellants in the present case — rather, the contractual benefit typically arises from another provision of the same contract that includes the arbitration provision. *See Pearson,* 400 S.C. at 296-97, 733 S.E.2d at 605 (ability to work at the defendant's hospital facility and receive payment for work); *see also Int'l Paper Co.,* 206 F.3d at 418 (warranty provisions); *Jackson,* 524 F.Supp.2d at 750 (entitlement to retain a $150,000 payment pursuant to the contract's liquidated damages provision); *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.,* 170 F.3d 349, 353 (2d Cir.1999) (lower insurance rates on a yacht 60*60 and the ability to sail under the French flag); *Deloitte Noraudit A/S v. Deloitte Haskins & Sells, U.S.,* 9 F.3d 1060, 1064 (2d Cir.1993) (continuing use of a name).

Defendants argued the court should find the Arbitration Agreement merged with the Admission Agreement because merger is presumed when the instruments in question are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction.

In *Coleman v. Mariner Health Care, Inc.*, our Supreme Court held:

> In South Carolina, "[t]he 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 documents together. The theory is that the instruments are effectively one instrument or contract."

407 S.C. at 355, 755 S.E.2d at 455 (quoting *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)). The *Coleman* court found the documents in that case were executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction; thus, unless there was a contrary intention, there was a merger. *Id.* However, the court determined that "[b]y their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply." *Id.* And, even if a clause in the contract created 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. Thus, there was no merger in that case, and the appellants' equitable estoppel argument was properly denied. *Id.* at 356, 755 S.E.2d at 455.

Also, in *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, the Court held the admission agreement and arbitration agreement did not merge because: (1) the admission agreement indicated it was governed by South Carolina law, whereas the arbitration agreement stated it was governed by federal law; (2) like in *Coleman,* the arbitration agreement recognized the two documents were separate, stating "[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement"; (3) the arbitration agreement stated it could be revoked within thirty days, whereas the admission agreement contained no such indication and instead provided the admission agreement could only be amended; (4) each document was separately paginated and had its own signature page; and (5) the arbitration agreement stated signing it was not a precondition to admission. 422 S.C. at 562-63, 813 S.E.2d at 302.

Here, the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law. The Arbitration Agreement recognized the two documents were separate, stating the Arbitration Agreement "shall survive any termination or breach of this Agreement or the Admission Agreement." The Arbitration Agreement is silent as to whether it could be revoked, but the Admission Agreement provides, "Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility." The Admission Agreement and Arbitration Agreement were separately paginated and had their own signature pages. The Parties have conceded there was no Power of Attorney in effect at the time of admission. Thus, like the *Coleman* and *Hodge* courts, there was no merger in this case and Defendants' equitable estoppel argument is denied.

The *Coleman* court also considered whether the Adult Health Care Consent Act (Act)[7] gave a family member authority to execute an arbitration agreement on behalf of another. The court held:

> The scope of Sister's authority [under the Act] to consent to "decisions concerning Decedent's health care" extended to the admission agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future. Under the Act, Sister did not have the capacity to bind Decedent to this voluntary arbitration agreement. We therefore affirm the circuit court's holding that the Act did not confer authority on Sister to execute a document which involved neither health care nor financial terms for payment of such care.

407 S.C. at 353-54, 755 S.E.2d at 454. In *Thompson v. Pruitt Corporation*, this court also held the admission agreement did not merge with the arbitration agreement and the son's authority under the Act to execute the admission agreement did not cover the terms of the arbitration agreement. 416 S.C. at 52-53, 784 S.E.2d at 684-85.

Earlier this year our Court of Appeals issued an Order addressing the **precise** Resident/Representative Arbitration Agreement in the present case. Solesbee v. Fundamental (Op. 5963 Ct. App. Filed Jan. 25, 2023). In reviewing the agreement used in that case which is the same facility in question in the present case, the Court of Appeals found there was no express authority because in Solesbee, at the time her son signed the agreement, he was not operating under a Power of Attorney.

In Solesbee, the Court construed the agreement and relied on Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014); Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); and Thompson v. Pruitt

Corporation, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016) to rule the Arbitration Agreement in question in the present case was unenforceable. The critical circumstances are virtually identical and therefore the result is the same in the present case.

**Conclusion**

The arbitration agreement was not valid because Jane Doe did not sign it. In addition, Hutley did not have authority, express or apparent, to bind Jane Doe to an arbitration agreement. The Admission Agreement and the Arbitration Agreement were separate and did not merge. In addition, there was no evidence that Jane Doe did or said anything to mislead the Defendants so as to support an argument of equitable estoppel.

The Motions of the Defendants to Compel Arbitration and to Stay the Court Proceedings pending Arbitration are hereby DENIED.

AND IT IS SO ORDERED.

Spartanburg Common Pleas

**Case Caption:** Timothy Hutley, Guardian For Jane Doe VS Thi Of South Carolina At Magnolia Manor Inman, Llc , defendant, et al

**Case Number:** 2022CP4201163

**Type:** Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760