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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2023-001126
Circuit Court Case No. 2022-CP-43-00355

Stanley Dale Floyd and Stephanie Floyd, Respondents,

v.

SSC Sumter East Operating Company, LLC
d/b/a Sumter East Health and Rehab Center,
SSC Equity Holdings, LLC, SavaSeniorCare,
LLC, SavaSeniorCare Administrative and
Consulting, LLC, SavaSeniorCare Consulting,
LLC, SMV Sumter East, LLC, and Natasha
Nadkarni, Appellants.

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STATEMENT OF THE ISSUE ON APPEAL

- I. Whether Stephanie Floyd is bound by the arbitration agreement she signed in connection with the admission of her husband to a nursing home facility, thereby requiring her to arbitrate the loss of consortium claim she brought against the facility in Circuit Court.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

On or about May 6, 2019, Stanley Dale Floyd (hereinafter “Dale Floyd”) was admitted to Sumter East Health Rehab Center (hereinafter “the facility”) for rehabilitation. (Order p. 3). Near the time of admission, Dale Floyd’s wife, Stephanie Floyd, signed an admission agreement and an arbitration agreement (hereinafter “the agreement”) with the facility. (Order pp. 3, 7; Admission Agreement; Arbitration Agreement).

The arbitration agreement states that, “[w]e have a program to resolve disagreements with residents **and their families** or legal representatives called the Dispute Resolution Program (‘DRP’).” (Arbitration Agreement p. 1, emphasis added). “DRP is valuable to all parties because it offers a streamlined process to settle disagreements.” (Arbitration Agreement p. 1). “By agreeing to have all disagreements resolved through the dispute resolution program, the parties agree to waive the right to a judge or jury trial and to have the dispute resolved through various steps, culminating in a decision by an arbitrator.” (Arbitration Agreement p. 1). “Your participation in DRP is voluntary. By signing this agreement, you agree to participate in the Dispute Resolution Program.” (Arbitration Agreement p. 1).

Under the “definitions” section of the agreement, the agreement provides that the parties to the agreement include any “person that may have a cause of action arising out of or relating in any way to the resident’s stay and the facility . . .” (Arbitration Agreement p. 2). On the signature page that bears Mrs. Floyd’s signature, the agreement states that “[i]n signing this Agreement, the Legal Representative or Family Member binds both the Resident and **themselves individually.**” (Arbitration Agreement p. 10, emphasis added).

II. NATURE OF THE PROCEEDINGS

On March 4, 2022, Dale and Stephanie Floyd filed a lawsuit against the Appellants. (Complaint pp. 1-30). In their complaint, Dale Floyd brought various causes of action and Stephanie Floyd brought a claim for loss of consortium. (Complaint pp. 1-30).

Appellants timely answered the Complaint and then filed motions to dismiss, stay the proceedings, and compel arbitration. (Appellants' Answers; Appellants' Motion to Compel Arbitration; Appellants' Motions to Stay). Respondents filed a memorandum in opposition with affidavits from Dale and Stephanie Floyd attached as exhibits. (Respondents' Memo in Opposition; Affidavit of Dale Floyd; Affidavit of Stephanie Floyd).

In her affidavit, Stephanie Floyd stated that "I was unaware that I had signed an arbitration agreement at the time of my husband's admission to Sumter East Health and Rehab" and "[t]hat at the time that the Arbitration Agreement was signed. I possessed no guardianship, conservatorship, power of attorney or any other authority to sign an arbitration agreement on behalf of my husband." (Stephanie Floyd's affidavit p. 1, paragraph 1; p. 2, paragraph 7).

On September 7, 2022, a hearing was held before the Honorable Benjamin H. Culbertson via Webex. Appellants argued that Stephanie Floyd should be compelled to arbitrate her loss of consortium claim because she signed the arbitration agreement. (Hearing Transcript pp. 8-9, 36). Appellants also argued that Dale Floyd should be compelled to arbitrate his claims, despite never signing the arbitration agreement, under theories of apparent authority, merger, and equitable estoppel.

Respondents argued that Dale Floyd could not be bound by the arbitration agreement because Stephanie Floyd had no authority to sign the agreement on Mr. Floyd's behalf. Respondents' counsel explained, "[s]o they had her sign, and she signed. Underneath her

signature it says signature of legal representative or family member, which she was a family member. That doesn't mean she had any authority to sign an arbitration agreement on his behalf." (Hearing Transcript p. 29). Respondents also argued against Appellants' theories of merger and equitable estoppel.

After hearing argument from both sides, the Circuit Court stated, "Mr. Christian, if I could get you to prepare an order that's going to deny the motion to compel arbitration, grant it as to Ms. Floyd. She signed the agreement. I grant it as to her. Deny it as to the plaintiff, Mr. Floyd." (Hearing Transcript, p. 45). Respondents' counsel continued to argue his position, however, by claiming that the language of the arbitration agreement indicated that only individuals authorized to sign on behalf of the resident could sign it, and by arguing that any agreement between Mrs. Floyd and the facility would not be supported by consideration. (Hearing Transcript, pp. 45-46). The Circuit Court replied, "I see what you're saying. So I'm going to deny the motion to compel arbitration and the motion to stay" and instructed Respondents' counsel to draft an order. (Hearing Transcript, pp. 47, 49).

On September 8, 2022, the Circuit Court entered a Form 4 order denying Appellants' motions to stay the proceedings and to compel arbitration. (Form 4 order dated September 8, 2022). On October 4, 2022, the Circuit Court entered a lengthier order denying Appellants' motions. (Order). In its order, the Circuit Court held that Dale Floyd was not bound by the arbitration agreement because "Dale Floyd was not present when the Spouse signed the Arbitration Agreement as he was in an ambulance being transported to the Facility. Affidavit of Spouse. Dale Floyd was never aware that the Spouse had signed the Arbitration Agreement." (Order p. 7). After comparing the language of the admission agreement with that of the arbitration agreement, the Circuit Court also found that the two documents did not merge

and that therefore Mr. Floyd could not be bound by the arbitration agreement under the doctrine of equitable estoppel. (Order pp. 9-11).

The Circuit Court found that Mrs. Floyd was not bound by the arbitration agreement she signed because only Mr. Floyd was entitled to sign the agreement and because there was no consideration to support an agreement between the facility and Mrs. Floyd. (Order pp. 13-14). As an “additional sustaining ground,” the Circuit Court also held that Appellants had failed to adequately authenticate the arbitration agreement. (Order pp. 12-13).

Appellants filed a Rule 59(e) motion to alter, amend, and reconsider on October 14, 2022, which was denied on June 5, 2023. (Rule 59(e) motion; Form 4 order dated June 5, 2023). This appeal followed.

STANDARD OF REVIEW

An order denying a motion to compel arbitration is immediately appealable. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 35, 524 S.E.2d 839, 843 (Ct. App. 1999); 9 U.S.C.A. § 16(a)(1)(C) (1999); S.C. Code Ann. § 15-48-200(a)(1) (1976). “Appeal from the denial of a motion to compel arbitration is subject to de novo review.” *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 631, 611 S.E.2d 305, 307 (Ct. App. 2005).

ARGUMENT

I. STEPHANIE FLOYD IS BOUND BY THE ARBITRATION AGREEMENT

Stephanie Floyd is bound by the arbitration agreement. Mrs. Floyd signed the agreement, and the language of the agreement indicates an intent to bind Mrs. Floyd in her individual capacity. Because the agreement is valid and supported by consideration, the agreement should be enforced.

A. Stephanie Floyd Signed the Arbitration Agreement.

There is no dispute that Mrs. Floyd signed the arbitration agreement. Respondents' counsel admitted as much in the motion hearing. (*See* Hearing Transcript p. 29 (“So they had her sign, and she signed. Underneath her signature it says signature of legal representative or family member, which she was a family member.”)). The Circuit Court also made the factual finding in its order that Mrs. Floyd had signed the arbitration agreement. (*See* Order p. 7 (“Dale Floyd was not present when the Spouse signed the Arbitration Agreement as he was in an ambulance being transported to the Facility. Affidavit of Spouse. Dale Floyd was never aware that the Spouse had signed the Arbitration Agreement.”)). Mrs. Floyd, in her affidavit, also admitted to signing the arbitration agreement. (*See* Stephanie Floyd’s affidavit p. 1, (“I was unaware that I had signed an arbitration agreement at the time of my husband’s admission to Sumter East Health and Rehab.”); Stephanie Floyd’s affidavit p. 2 (“That at the time that the Arbitration Agreement was signed. I possessed no guardianship, conservatorship, power of attorney or any other authority to sign an arbitration agreement on behalf of my husband.”)).

The Circuit Court’s factual finding that Mrs. Floyd signed the arbitration agreement and Mrs. Floyd’s and her counsel’s admissions of the same are inconsistent with the Circuit Court’s holding that the arbitration agreement was not properly authenticated. (*See* Order p. 12-13).

Furthermore, the appearance, content, substance, internal patterns, and distinctive characteristics of the admission agreement and arbitration agreement, which both bear Mrs. Floyd’s signature, when taken in conjunction with the circumstances of this case and Mrs. Floyd’s affidavit testimony, allow a jury to reasonably infer that the arbitration agreement produced by Appellants is the same one that Mrs. Floyd signed in May of 2019. *See Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015)

("[T]he burden to authenticate . . . is not high and requires only that the proponent offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic." (quoting *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir.2014)) (internal quotation marks omitted)); Rule 901(b)(4), SCRE (providing that a document may be authenticated based upon "[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.").

Accordingly, Appellants respectfully request that this Court reverse the Circuit Court's determination that the arbitration agreement signed by Mrs. Floyd was not authenticated.

B. The Language of the Agreement Indicates an Intent to Bind Mrs. Floyd In her Individual Capacity.

"Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001). "The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully." *Id.*

The agreement states, "[w]e have a program to resolve disagreements with residents **and their families** or legal representatives called the Dispute Resolution Program ("DRP"). (Arbitration Agreement p. 1 (emphasis added)). Under the "definitions" section of the agreement, the agreement provides that the parties to the agreement include any "person that may have a cause of action arising out of or relating in any way to the resident's stay and the facility . . ." (Arbitration Agreement p. 2). On the signature page that Mrs. Floyd signed, the agreement states that "[i]n signing this Agreement, the Legal Representative or Family Member

binds both the Resident and **themselves individually.**” (Arbitration Agreement p. 10 (emphasis added)).

Under the plain language of the agreement, by signing the agreement, Mrs. Floyd agreed to arbitrate any claims she may have in her individual capacity against the facility that relate to her husband’s stay at the facility. *See York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 81, 749 S.E.2d 139, 146 (Ct. App. 2013) (“[A] party who signed a contract is deemed to have read and understood the effect of the contract.”) (internal quotation marks omitted); *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (“A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it.”).

B. The Arbitration Agreement is Supported by Consideration.

The arbitration agreement “is valuable to all parties because it offers a streamlined process to settle disagreements.” (Arbitration Agreement p. 1). Under the agreement, the facility is just as bound by its promise to arbitrate as is Mrs. Floyd. Mutual promises have long been held to constitute adequate consideration. *See Furman Univ. v. Waller*, 124 S.C. 68, 117 S.E. 356, 362 (1923) (providing that a “[p]romise for promise is a sufficient consideration” to support a bilateral contract (quoting *Rice v. Sims*, 8 Rich. 416 (1832))); *Evatt v. Campbell*, 234 S.C. 1, 8, 106 S.E.2d 447, 451 (1959) (“Mutual promises also constitute a good consideration.”); *O’Neil v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997) (“A mutual promise to arbitrate constitutes sufficient consideration for this arbitration agreement.”).

By signing the arbitration agreement, Mrs. Floyd agreed to arbitrate any claims she may have against the facility in her individual capacity, such as the loss of consortium claim she brought in Circuit Court. In exchange, the facility agreed to arbitrate any claims it may have

against Mrs. Floyd in her individual capacity, such as defamation or medical debt collection claims. *See Trident Reg'l Med. Ctr. v. Evans*, 317 S.C. 346, 348, 454 S.E.2d 343, 344 (Ct. App. 1995) (Finding that under the gender-neutral necessities doctrine, husbands could be held liable for the costs of medical services provided to wives, even when husbands did not sign the payment guarantees.). This exchange of promises to arbitrate is adequate consideration to support the agreement.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Honorable Court reverse the judgment of the Circuit Court and grant Appellants' motions to compel Stephanie Floyd to arbitrate her loss of consortium claim and to stay the proceedings until that arbitration is complete.

Respectfully Submitted,

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Nadkarni, Appellants.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellants on all attorneys of record, by sending it
via email on December 11, 2023, to the following:

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