

**THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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Appeal from Spartanburg County  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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Case No. 2018-CP-42-03421

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Court of Appeals No. 2020-001146  
Unpublished Opinion No. 2023-UP-281 (S.C. Ct. App. filed August 2, 2023)

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Supreme Court Case No. 2023-001644

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Armando J. Acevedo,  
through his Attorney-in-Fact,  
Marianne Acevedo,

Respondent,

v.

Hunt Valley Holdings, LLC;  
THI of South Carolina, LLC; and  
THI of South Carolina at Camp Care, LLC,  
d/b/a Lake Emory Post Acute Care,

Petitioners.

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**REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI**

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**Dec 28 2023**

**S.C. SUPREME COURT**

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1. Plaintiff conceded Mrs. Acevedo’s authority to sign the Arbitration Agreement for Mr. Acevedo in the circuit court. The Motion to Compel Arbitration was presented to and decided by the circuit court on the explicit basis that Mrs. Acevedo had authority to execute the Arbitration Agreement on Mr. Acevedo’s behalf pursuant to the HCPOA, without Plaintiff raising any objection or argument whatsoever to the contrary. ....1

CONCLUSION.....5

In further support of their petition, Petitioners make the following point in reply to Plaintiff's return.<sup>1</sup>

### ARGUMENT IN REPLY

- 1. Plaintiff conceded Mrs. Acevedo's authority to sign the Arbitration Agreement for Mr. Acevedo in the circuit court. The Motion to Compel Arbitration was presented to and decided by the circuit court on the explicit basis that Mrs. Acevedo had authority to execute the Arbitration Agreement on Mr. Acevedo's behalf pursuant to the HCPOA, without Plaintiff raising any objection or argument whatsoever to the contrary.**

The last of the appealed orders in this appeal was filed on July 10, 2020, and Petitioners timely took this appeal by notice served/filed on Monday, August 10, 2020. (R. pp. 257–261.)

Although the HCPOA is a health care power of attorney,<sup>2</sup> it was not until March 10, 2021, that this Court filed its decision in *Arredondo v. SNH SE Ashley River Tenant, LLC*, reversing the Court of Appeals' determination that the health care power of attorney in issue in that case granted the holder authority to agree to arbitration on the principal's behalf. 433 S.C. 69, 85, 856 S.E.2d 550, 559 (2021) (“We hold the court of appeals erred in holding the HCPOA granted Arredondo authority to execute the arbitration agreement.”).<sup>3</sup>

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<sup>1</sup> Shorthand references already defined in Petitioners' petition are continued in this reply (e.g., the “Facility” refers to Defendant/Appellant/Petitioner THI of South Carolina at Camp Care, LLC, d/b/a Lake Emory Post Acute Care; “THISC” refers to Defendant/Appellant/Petitioner THI of South Carolina, LLC; “HVH” refers to Defendant/Appellant/Petitioner Hunt Valley Holdings, LLC; collectively, the Facility, THISC, and HVH are referred to as “Petitioners;” “Plaintiff” refers to Plaintiff/Respondent, Armando J. Acevedo (“Mr. Acevedo”), through his Attorney-in-Fact, Marianne Acevedo (“Mrs. Acevedo”); the “Subject Opinion” refers to the Court of Appeals' opinion in this matter.)

<sup>2</sup> (R. pp. 199–204.)

<sup>3</sup> In an unpublished opinion filed August 14, 2019, the Court of Appeals had held that the health care power of attorney in issue was sufficiently broad in its grant of authority to authorize the holder to agree to arbitration on the principal's behalf. *Arredondo v. SNH SE Ashley River Tenant, LLC*, 2019 WL 3814725 (S.C. Ct. App. 2019).

Accordingly, this Court's decision in *Arredondo* did not exist when this matter was before the circuit court, and it played no part in the circuit court's determination of the Motion to Compel Arbitration.

When Plaintiff opposed the Motion to Compel Arbitration in the circuit court, her opposition did not include any challenge to Mrs. Acevedo's authority to execute the Arbitration Agreement for Mr. Acevedo pursuant to the HCPOA. Indeed, her written memo in opposition did not challenge Mrs. Acevedo's authority at all, but rather argued against enforcement of the Arbitration Agreement only on the bases that (a) the Arbitration Agreement lacks consideration and mutuality, (b) the Arbitration Agreement is missing material terms, and (c) the Arbitration Agreement is unconscionable. (R. pp. 208–234.)

When the circuit court heard the Motion to Compel Arbitration, Petitioners' counsel framed the motion to the circuit court as follows:

So the only -- the only substantive legal issue before the Court . . . is regarding the validity of an arbitration agreement which was signed by plaintiff's client's wife, Marianne Acevedo, who had a power of attorney over her husband at the time of the execution of the arbitration agreement -- Armando Acevedo.

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Your Honor, obviously, I know that many arbitration motions are before the Court and more recently in our appellate courts, most of those having to do with authority and who can bind a loved one and whether or not they have sufficient legal authority to waive the constitutional right to a jury trial.

**Those issues are not before the Court, because Ms. Acevedo had a power of attorney over her husband. The plaintiff is not challenging authority.**

There are only three issues. Obviously, unlike most motions, until we get the plaintiff's memorandum in opposition we don't know what they're going to argue. We simply have a valid signed contract.

My understanding after reviewing plaintiff's memo that was filed this week is that there are three basic arguments for lack of enforcement here, that being, the first being, a lack of consideration.

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The second grounds for opposition to the enforcement of the agreement is that the agreement's lacking in material terms such that it should be deemed unenforceable.

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The last argument the plaintiff makes is regarding unconscionability.

(R. pp. 128:22–132:1 (emphasis added).)

Faced with Petitioners' counsel's explicit framing of the Motion to Compel Arbitration in this way—i.e., with Petitioners' counsel expressly advising the circuit court that the issue of whether Mrs. Acevedo had authority under the HCPOA to sign the Arbitration Agreement for Mr. Acevedo was not before the Court because Plaintiff was not challenging Mrs. Acevedo's authority—Plaintiff's counsel did not object or disagree with Petitioners' counsel in any way. Indeed, besides briefly raising one additional argument based on the way the Facility was named in the Arbitration Agreement,<sup>4</sup> Plaintiff's counsel expressly agreed that Petitioners' counsel had correctly identified all of Plaintiff's arguments in opposition to the Motion to Compel Arbitration, explaining, “we believe [the Arbitration Agreement] is unenforceable for several reasons, and those reasons, as [Petitioners' counsel] indicated, are lack of consideration, lack of mutuality and unconscionability and missing material terms. And they all kind of play into each other.” (R. p. 137:5–9.) Nowhere did Plaintiff's counsel in any way argue that Mrs. Acevedo lacked authority to execute the Arbitration Agreement for Mr. Acevedo. (R. pp. 136:17–149:10.)

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<sup>4</sup> (R. pp. 136:18–137:14.)

Consistent with the way in which the Motion to Compel Arbitration was argued to it—with it being conceded that Mrs. Acevedo had authority to execute the Arbitration Agreement for Mr. Acevedo pursuant to the HCPOA—the circuit court’s order denying the motion simply stated the fact that Mrs. Acevedo was Mr. Acevedo’s “power of attorney”<sup>5</sup> and never addressed any issue as to whether her power of attorney authorized her to agree to the Arbitration Agreement on Mr. Acevedo’s behalf,<sup>6</sup> because, of course, as Petitioners’ counsel had expressly advised the circuit court without complaint from Plaintiff’s counsel, there was in fact no such issue “before the Court, because Ms. Acevedo had a power of attorney over her husband,” and “[t]he plaintiff is not challenging authority.” (R. p. 129:12–14.)

When the circuit court heard Petitioners’ motion to alter, amend, and/or reconsider, Petitioners’ counsel again expressly advised the circuit court that Mrs. Acevedo’s authority under the HCPOA to agree to the Arbitration Agreement on Mr. Acevedo’s behalf was not in question:

You’ve likely heard instances where there’s an effort to enforce an arbitration agreement where it was signed by somebody -- the arbitration agreement that is -- that did not have authority or did not have an expressed basis of authority to sign it for the person being bound. In this case we’re talking about the resident, Mr. Acevedo.

**In this case the arbitration agreement was signed by his spouse, and it was signed pursuant to Mrs. Acevedo’s status as his attorney-in-fact, duly filed recorded power of attorney. There is no dispute here as to whether or not the power of attorney covered the ability to sign an arbitration agreement on Mr. Acevedo’s behalf. There’s no question there about her authority.**

(R. pp. 159:17–160:5 (emphasis added).) And here again, Plaintiff’s counsel did not object to or in any way whatsoever dispute Petitioners’ counsel’s express statement to the circuit court that it

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<sup>5</sup> (R. p. 1 (“Marrianna Acevedo is Armando’s wife and power of attorney.”).)

<sup>6</sup> (R. pp. 1–12.)

was undisputed that Mrs. Acevedo had authority to sign the Arbitration Agreement for Mr. Acevedo pursuant to the HCPOA. (R. pp. 169:13–170:15.)

Petitioners recognize that the doctrine of additional sustaining grounds allows the respondent—the “winner” in the lower court—to raise on appeal additional reasons why the appellate court should affirm the lower court’s ruling even though those reasons were not raised to and ruled on by the lower court in the first instance. *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419–20, 526 S.E.2d 716, 723 (2000). But this doctrine does not allow the respondent to raise on appeal an issue that was in fact already raised to the circuit court for the explicit purpose of disposing of the issue by establishing it as undisputed—as was done here with the issue, or rather lack thereof, of Mrs. Acevedo’s authority under the HCPOA to execute the Arbitration Agreement for Mr. Acevedo, which was expressly raised by Petitioners to the circuit court for the purpose of establishing that there was in fact no issue before the circuit court in this regard because Plaintiff did not dispute Mrs. Acevedo’s authority under the HCPOA, and indeed Plaintiff literally did not dispute such authority before the circuit court. In other words, it does not allow the respondent to resurrect an issue that was confirmed to be undisputed—and thus conceded—in the lower court. *TNS Mills, Inc. v. S.C. Dep’t of Revenue*, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) (“An issue conceded in a lower court may not be argued on appeal.”). And as such, Mrs. Acevedo’s supposed lack of authority to sign the Arbitration Agreement for Mr. Acevedo was/is not a valid ground for affirmance of the circuit court.

### **CONCLUSION**

For the foregoing additional reason, along with those set forth in their petition, as well as any other or further reason(s) set forth in their appellate briefs already on file, the entirety of which they hereby adopt and incorporate herein by reference and reiterate/reassert in support hereof,

Petitioners ask this Honorable Court to grant the instant petition, reverse the Subject Opinion, and to decide this appeal anew via an opinion that reverses the circuit court, specifically, an opinion compelling Plaintiff's claims against the Facility to arbitration (or, alternatively, an opinion remanding the case to the circuit court with instructions that it do so); staying this action until any and all arbitration proceedings are completed (or, alternatively, an opinion remanding the case to the circuit court with instructions that it either do so or conduct any further proceedings necessary to decide the Motion to Stay on the merits); and, to the extent that it constitutes error that HVH must seek to correct on appeal, as opposed to a matter that HVH may address in the circuit court directly (via Rule 60 or any other appropriate procedural vehicle for relief), vacating the circuit court's denial of the Motion to Dismiss (or, alternatively, an opinion remanding the case to the circuit court with instructions that it do so).

**<SIGNED ON THE FOLLOWING PAGE>**

Respectfully submitted,  
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