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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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

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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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# REPLY BRIEF OF APPELLANTS

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### I. Stephanie Floyd is Bound by the Arbitration Agreement.

Under the plain language of the agreement, by signing, Mrs. Floyd agreed to arbitrate any claims she may bring against Appellants related to her husband's stay at the facility, such as the loss of consortium claim she brought in Circuit Court. Nothing in Respondents' brief changes this conclusion.

#### A. The Agreement's Plain Language Indicates an Intent to Bind Mrs. Floyd in Her Individual Capacity.

Respondents argue that because Mr. Floyd was mentally competent, only Mr. Floyd was capable of assenting to the arbitration agreement, and that therefore "there was no basis for the DRP to ever be presented for Ms. Floyd's signature." (Respondents' Brief p. 8).

The plain language of the agreement, however, clearly indicates otherwise. The introduction section of 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"). (R. 198 (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 . . . ." (R. 199). And finally, 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**." (R. 206 (emphasis added)).

Under the plain language of the agreement, a resident or family member who signs the agreement thereby assents to arbitrate any disputes that may arise between themselves and the facility that relate to the resident's stay. On appeal, Appellants do not argue that Mr. Floyd is bound by the agreement because it is undisputed that Mr. Floyd did not sign the agreement. It

is equally undisputed, however, that Mrs. Floyd did sign the agreement. Signing a contract is an objective manifestation of assent and a person who signs a contract "is deemed to have read and understood the effect of the contract." *York v. Dodgeland of Columbia, Inc*., 406 S.C. 67, 81, 749 S.E.2d 139, 146 (Ct. App. 2013). Appellants ask this Court to enforce the contract that Mrs. Floyd signed.

**B. The Agreement is not Ambiguous.**

Respondents emphasize the significance of a few words that appear on the signature page of the agreement and argue that they render the entire agreement ambiguous. (Respondents' Brief pp. 9-10). However, "[w]hether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 242, 672 S.E.2d 799, 803 (Ct. App. 2009).

First, Respondents point to the fact that the signature block that bears Mrs. Floyd's signature states, "Signature of Legal Representative or Family Member." (Respondents' Brief p. 9). Appellants, frankly, fail to understand how the presence of the word "or" in the signature block creates any sort of ambiguity. Mrs. Floyd was indeed a family member. Next, Respondents refer to the first sentence that appears on the signature page, which states, in full, that, "I am the spouse, responsible party, legal guardian or power of attorney of the resident and have the authority to sign the agreement on his/her behalf." (R. 206). There is nothing in this sentence that is ambiguous either. Mrs. Floyd was the spouse of the resident. That Mrs. Floyd apparently misrepresented to the facility that she had the authority to sign on Mr. Floyd's behalf does not render the language of the agreement ambiguous.

Indeed, Respondents appear to tie themselves in knots in this portion of their brief. Respondents state that "[i]t is reasonable for any individual who signs for a resident on this

page to assume her signature is in a representative, not personal, capacity." (Respondents Brief p. 9). And that "[a] reasonable interpretation of 'representative' is that the person signing on that line is not assuming personal responsibility for the proposed contract terms." (Respondents' Brief p. 9). Finally, and rather incredibly, Respondents then claim, for the first time in the course of this litigation, that Mrs. Floyd signed the agreement on behalf of Mr. Floyd. (See Respondents' Brief p. 10 "[the facility representative], like Ms. Floyd, signed on behalf of someone else . . . .").

In her affidavit, Mrs. Floyd testified that when she signed the agreement, she knew she did not have any authority from her husband to do so. (R. 155-56). Taking this position before the Circuit Court was strategically advantageous because it allowed the Circuit Court to find that Mr. Floyd was not bound by the arbitration agreement that Mrs. Floyd signed. Now, however, Respondents appear to be trying to take the opposite position and to now argue for the first time on appeal that Mrs. Floyd believed herself to be signing the agreement merely on behalf of her husband and that therefore she cannot be bound by the agreement either. Respondents cannot have it both ways. Given Mrs. Floyd's sworn affidavit testimony, and her counsel's argument, representations, and conduct before the Circuit Court, Mrs. Floyd should be estopped from arguing now on appeal that she believed she was signing the agreement on behalf of Mr. Floyd.

As previously argued, the plain language of the agreement also clearly indicates an intent to bind Mrs. Floyd in her individual capacity. The arbitration agreement is not ambiguous.

### C. Arguendo, Even if The Agreement is Ambiguous, Appellants' Interpretation is the Most Plausible.

Even if this Court should find that the agreement is ambiguous, this Court must still endeavor to interpret the contract and, to the extent possible, give effect to the intention of the parties memorialized therein. "Where an agreement is ambiguous, the court should seek to determine the intent of the contracting parties." *Ebert v. Ebert*, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995). "The purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract." *Koon v. Fares*, 379 S.C. 150, 155, 666 S.E.2d 230, 233 (2008). "An interpretation which establishes the more reasonable and probable agreement of the parties should be adopted while an interpretation leading to an absurd result should be avoided." *Id*. "An agreement capable of an interpretation which will make it valid will be given such an interpretation if the agreement is ambiguous." *Osteen v. T.E. Cuttino Const. Co.*, 315 S.C. 422, 428, 434 S.E.2d 281, 284 (1993).

"Where there is an apparent repugnancy or conflict between two clauses or provisions of a contract, it is the province and duty of the court to find harmony between them and to reconcile them if possible." 17A Am. Jur. 2d Contracts § 374. "In other words, and as a corollary of the rule that the entire contract and each and all of its parts and provisions must be given effect if that can consistently and reasonably be done, all clauses and provisions of a contract should, if possible, be so construed as to harmonize with one another." *Id*.

When taken as a whole, the most plausible understanding of the arbitration agreement is that it seeks to bind any resident or resident family member who signs it. Respondents' interpretation, conversely, would lead to the absurd conclusion that only a resident is capable of signing and being bound by the agreement, despite the agreement's plain language repeatedly

stating otherwise.

**D. The Agreement is Supported by Consideration.**

Respondents argue the arbitration agreement was not supported by consideration because the facility "had no legal claims against [Mrs. Floyd] and no reasonable expectation to expect to ever have such claims." (Respondents' Brief p. 12). This is simply untrue. By signing the agreement, the facility agreed to arbitrate any claims it may have against Mrs. Floyd, such as defamation claims or medical debt collection claims arising out of contract or from the necessaries doctrine. In exchange, Mrs. Floyd agreed to arbitrate any claims she may have against the facility, such as the loss of consortium claim at issue here. Promise for promise has long been held to be sufficient consideration. *See Furman Univ. v. Waller*, 124 S.C. 68, 117 S.E. 356, 362 (1923).

**E. The Agreement is Authentic.**

Finally, Respondents argue that Appellants failed to authenticate the arbitration agreement. (Respondents' Brief p. 12). However, "[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." *See Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (quoting *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir.2014)) (internal quotation marks omitted)). "[A] party need not rule out any possibility the evidence is not authentic. In the realm of authentication, the law, like science, is content with probabilities." *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019), aff'd as modified, 432 S.C. 97, 851 S.E.2d 440 (2020).

"By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule . . . [a]ppearance,

contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." Rule 901(b)(4), SCRE. "Rule 901(b)(4), SCRE, meshes with prior South Carolina law, which has long endorsed authentication by circumstantial proof." *Green*, 427 S.C. at 232, 830 S.E.2d at 715. "Most writings meet the authenticity test through Rule 901(b)(4), SCRE . . . ." *Id.*

In *Green*, this Court determined that Facebook messages were properly authenticated through circumstantial evidence under Rule 901(b)(4), SCRE. This Court held that:

> Numerous facts link the Facebook messages to Galarza and, consequently, Green: the use of the screen name "Ruby Rina," which Holman testified was Galarza's; reference to "Julissa" on the messages, which testimony showed was Galarza's sister's name; Ruby Rina's invitation to her home, which she stated was at 108 Queens Circle; Victim's reference to Ruby Rina as "Karina," Galarza's real first name; comments throughout the messages about Ruby Rina's erstwhile boyfriend that were consistent with her relationship with Green; the timing of the messages; and the tragic fact that Victim disappeared shortly after Ruby Rina invited him to 108 Queens Circle, where his blood was later discovered. Taken together, these circumstances serve as sufficient authentication to meet the low bar Rule 901(b)(4), SCRE, sets.

*Id*. at 233, 830 S.E.2d at 715-16.

Here, the admission and arbitration agreements bear the names of the resident, Stanley Floyd, and his wife, Stephanie Floyd, and were signed on May 6, 2019, which, according to the Complaint, is the same day that Mr. Floyd was admitted to Appellants' facility. (R. 194-96, 206, 44). Mrs. Floyd testified that she signed an arbitration agreement at the time of her husband's admission. (R. 155-56). Mrs. Floyd's signature on the arbitration agreement also matches the one on her affidavit. (R. 206, 156).

As in *Green*, when taken together, these circumstances serve as sufficient authentication to meet the low bar Rule 901(b)(4), SCRE, sets.

## CONCLUSION

For the reasons set forth in the Brief of Appellants and this Reply Brief, Appellants respectfully request that this 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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## CERTIFICATE OF COUNSEL

I certify that the Final Reply Brief of Appellants complies with Rule 211(b), SCACR..

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