THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2021-000594

Paulette Walker as Personal Representative of the Estate of Albert Walker	……..	Respondent
v.		
Hallmark Longterm Care, LLC, d/b/a Hallmark Healthcare Center and Durena Stinson,	……..	Defendants.
Of whom Hallmark Longterm Care, LLC, d/b/a Hallmark Healthcare Center	…….	Appellant.

RESPONDENT'S FINAL BRIEF

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1. Whether the Facility failed to meet its burden to prove Wife acted as Mr. Walker's agent when the Facility offered no evidence to show Mr. Walker was aware of the Arbitration Agreement or that he represented Wife had authority to sign it on his behalf.
2. Whether the Facility failed to meet its burden to prove Mr. Walker ratified Wife's unauthorized signature on the Arbitration Agreement when Mr. Walker's later power of attorney indicated Wife did not have authority when the Arbitration Agreement was signed.
3. Whether the circuit court correctly applied South Carolina precedent in holding there was no merger of the Admission Agreement and Arbitration Agreement and, as a result, Mr. Walker was not equitably estopped from opposing arbitration.

STATEMENT OF THE CASE

Respondent Paulette Walker ("Wife") filed this action on behalf of her husband Albert Walker in the Dorchester County Court of Common Pleas on July 7, 2020, alleging Appellant Hallmark Longterm Care, LLC, d/b/a Hallmark Healthcare Center ("the Facility") provided Mr. Walker substandard nursing home care between January and June 2019. (See generally R. pp. 21-35). Wife filed suit in her role as Mr. Walker's agent-in-fact which had been established in a Durable Power of Attorney Mr. Walker executed on January 16, 2019, two weeks after his admission to the Facility. (R. p. 21; R. pp. 169-80). The Complaint alleged causes of action for negligence, negligence per se, fraud/misrepresentation, and violation of the South Carolina Unfair Trade Practices Act. (R. pp. 28-34 ¶¶ 38-67). The bulk of these claims stemmed from a series of falls Mr. Walker suffered while a Facility resident, the most serious of which was a June 16, 2019, incident where Mr. Walker suffered compression spinal fractures. (R. p. 27 ¶¶ 29-30). The suit alleged the Facility had insufficient and underqualified staff members assigned to Mr. Walker's care and that a lack of proper supervision proximately caused his falls. (R. p. 28 ¶¶ 35-36). After Mr. Walker passed away from his injuries, Wife amended her complaint to add a wrongful death claim and to update her status to personal representative of Mr. Walker's estate. (R. p. 52; R. pp. 65-66 at ¶¶ 68-69).

Mr. Walker was competent with full contractual capacity at the time of his admission on January 2, 2019. (Appellant's Br. at 7). Yet, the Facility chose to present the contract governing his admission ("Admission Agreement") to Wife. On that date, Mr. Walker's Durable Power of Attorney had not yet been created, and Wife had no legal authority to act on Mr. Walker's behalf. The Admission Agreement covered the Facility's obligation to provide nursing services to Mr. Walker and Mr. Walker's obligation to pay for those services. (R. pp. 142-47). On "Page 12 of

12" of the Admission Agreement, the Facility included an "Entire Agreement" provision stating that the Admission Agreement's terms "represent[] the entire agreement and understanding between the parties." (R. p. 152). Also on January 2, 2019, the Facility presented Wife with a contract called "Facility-Resident/Representative Arbitration Agreement" ("Arbitration Agreement"). The Arbitration Agreement was limited to the single, distinct topic of outlining an alternative dispute resolution process. (R. p. 98).

The Facility filed a motion to dismiss the Complaint, compel arbitration, and stay court proceedings on October 2, 2020. (R. pp. 95-97). The Honorable Maite Murphy heard oral arguments on February 8, 2021, and denied the Facility's motion in an order entered on March 19, 2021. (R. pp. 5-15). The order specifically found the Arbitration Agreement was not a valid contract because Wife lacked authority to sign it on Mr. Walker's behalf. (R. p. 7). The circuit court also rejected the Facility's assertions that the Admission Agreement and Arbitration Agreement merged into a single contract and that Respondent is equitably estopped from opposing arbitration. (R. pp. 8-14). The Facility then filed a motion to alter or amend judgment on March 29, 2021, which the circuit court denied on May 5, 2021. (R. p. 194-214; R. pp. 17-19). The Facility served its notice of appeal on June 4, 2021. (R. pp. 218-23).

STANDARD OF REVIEW

Appellate courts apply a *de novo* review to a circuit court's finding on whether a nonsignatory is bound to an arbitration contract. Wilson v. Willis, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019) (citing Aiken v. World Fin. Corp. of S.C., 373 S.C. 144, 148, 644 S.E.2d 705, 707 (2007) and Pearson v. Hilton Head Hosp., 400 S.C. 281, 286, 733 S.E.2d 597, 599 (Ct. App. 2012)). However, under a *de novo* review, the circuit court's factual findings will not be reversed so long as "any evidence reasonably supports those findings." Wilson, 426 S.C. at 335, 827 S.E.2d

at 172. While the Federal Arbitration Act ("FAA") imposes a presumption favoring arbitration, the presumption does not apply to the "identity of the parties who may be bound to such an agreement." Id. at 337-38, 827 S.E.2d at 173. In fact, there is a presumption against arbitration when enforcement is sought against a non-signatory. Id.[1] Moreover, the FAA does not displace state law contract formation rules or generally applicable contract defenses. 9 U.S.C. § 2 (stating that arbitration contract is enforceable "save under such grounds as exist at law or in equity for the revocation of any contract").

ARGUMENT

Mr. Walker did not agree to arbitrate his legal claims against the Facility. The Facility never even asked him to. As the parties agree, Mr. Walker had the capacity to consider and decide whether to enter contracts on his own when he became the Facility's resident. (Appellant's Br. at 7). Yet, the Facility chose to present the Arbitration Agreement to Wife, and she had no authority to act on Mr. Walker's behalf. The circuit court correctly concluded the Arbitration Agreement is invalid because it lacks the core requirement of mutual assent to form a binding agreement. (R. pp. 7-10). The Facility's insistence that Wife's signature means Mr. Walker's claims must be arbitrated is a serious distortion of contract law.

To challenge the circuit court's finding of no valid contract, the Facility relies on a series of unsupported assertions: (1) Wife had some form of unspecified authority to sign a separate

[1] The Facility appears to challenge Wilson directly, arguing its discussion of a presumption against enforcement of arbitration against parties who did not sign an arbitration contract violates the FAA by failing to treat arbitration contracts equally with contracts governing other matters. (Appellant's Br. at 24-26). The Facility asserts that there is no South Carolina law considering this presumption outside of the arbitration context. (Appellant's Br. at 25). That assertion is false. See e.g., Touchberry v. City of Florence, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988) (discussing "presumption that the contract is not enforceable" by third party to utility contract between city and county).

Admission Agreement for Mr. Walker; (2) the Arbitration Agreement and Admission Agreement merged to form a single contract; and (3) Respondent is somehow estopped from opposing arbitration as a result of Wife's actions. The Facility even argues for a merger "presumption"[2] that no South Carolina court has ever recognized and claims one well-recognized contract interpretation rule applied by the South Carolina Supreme Court "makes no sense." (Appellant's Br. at 20). The Facility's arguments would be flawed even if the issues were novel. But, South Carolina's appellate courts have been here before and three times rejected the agency, merger, and estoppel theories the Facility needs to prevail. Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014); Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016); Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018).

Recently, this Court rejected the Facility's estoppel argument for a *fourth* time, reinforcing that a nursing home resident is not equitably barred from suing the home for negligent care based on a family member's signature on an admission contract. Weaver v. Brookdale Senior Living, Inc., 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020). For the reasons discussed below, the Court should reject the Facility's attempts to distinguish this growing body of precedent and the multiple instances where the Facility implicitly asks the Court to overrule these cases. In the end, the Facility's pursuit of arbitration should fail for the same reason as the nursing homes in Coleman, Thompson, Hodge, and Weaver: Neither Mr. Walker nor anyone with legal authority to act on his behalf agreed to arbitration, and Mr. Walker/Respondent have taken no action that would prevent them from insisting on a judicial forum for their claims.

[2] Appellant's Br. at 14, 15, 17, 20.

1. The Facility did not establish a principal-agent relationship between Mr. Walker and Wife.

Agency is a legal relationship allowing an individual (principal) to choose a trusted person (agent) to act in the principal's stead and to interact with third parties on the principal's behalf. Principals control agency. They decide when an agent is appointed and how far his/her authority extends. Fronberger v. Smith, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013) (holding that an agent is always "subject to the principal's control"). Even where the law recognizes apparent agency or apparent authority, the relationship cannot exist without the purported principal doing something intentional or knowing to sanction it. The Facility presents no evidence to show Mr. Walker appointed Wife as his agent to sign away his jury trial rights. Instead, the Facility relies on apparent authority, arguing Mr. Walker took some unspecified action at the time the Arbitration Agreement was presented to make the Facility believe Wife was his agent. However, since the Facility never specifies what action Mr. Walker supposedly took and provides no evidence of what took place when the Arbitration Agreement was presented, the Facility failed to meet its burden to establish a principal-agency relationship.

An agency relationship may be established with clear evidence of actual or apparent authority conferred by the purported principal on the purported agent. Cowburn v. Leventis, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is "expressly conferred upon the agent by the principal." Richardson v. PV, Inc., 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). Apparent authority is based on "representations made by the principal to the third party and reliance by the third party on those representations." Young v. S.C. Dep't of Disabilities & Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). To prove apparent authority, a party must show (1) the purported principal consciously or impliedly represented another to be his agent; (2) reliance on the representation by a third party; and (3) change in position by the third party in

reliance on the representation. Cowburn, 366 S.C. at 39-40, 619 S.E.2d at 448. For apparent authority to exist, "[e]ither the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize his conduct is likely to create such belief." 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 Facility cannot point to any actual agency relationship between Mr. Walker and Wife as the Facility acknowledges Mr. Walker's Durable Power of Attorney was not executed until two weeks after the Arbitration Agreement was presented to Wife. (Appellant's Br. at 7). Accordingly, the Facility must resort to apparent agency and must prove how Mr. Walker's words or conduct knowingly represented Wife as his agent to make decisions on possible future legal claims. Thompson and Hodge both rejected agency arguments to enforce arbitration contracts signed by a nursing home resident's family member, and these cases show the flaws in the Facility's arguments. First, a family member's act in signing an arbitration contract cannot alone create an agency relationship even if the contract specifically says the signer is representing herself to have legal authority. Hodge, 422 S.C. at 573-74, 813 S.E.2d at 308. Apparent authority cannot be based solely on representations of the purported agent. Cowburn, 366 S.C. at 39-40, 619 S.E.2d at 448. The Facility points to the fact that the Arbitration Agreement Wife signed indicated she was Mr. Walker's "representative." (Appellants' Br. at 8). However, the Facility cannot prevail by relying on what Wife represented. Hodge, 422 S.C. at 573-74, 813 S.E.2d at 308; Cowburn, 366 S.C. at 39-40, 619 S.E.2d at 448.

Beyond that, the Facility does not offer any evidence of representations Mr. Walker made. Instead, the Facility asks the Court to draw the unsubstantiated inference Mr. Walker represented Wife as his agent based on two facts: (1) Mr. Walker was competent at the time of his admission;

(2) Mr. Walker was present in the room when the Arbitration Agreement was presented to Wife. (Appellant's Br. at 7-8). But, Hodge rejected the notion that apparent authority may be inferred from the fact that a nursing home resident was competent at the time of admission. 422 S.C. at 573-74, 813 S.E.2d at 308 (rejecting apparent authority argument where "the Facility knew [the resident] was competent at the time of admission"). Noting Mr. Walker's competence is the Facility's way of arguing Mr. Walker conveyed apparent authority for the Arbitration Agreement simply because he allowed Wife to procure his admission. (Appellants' Br. at 16-17). That precise argument was rejected in Hodge. Id. (affirming circuit court's rejection of argument claiming family member was authorized to sign arbitration contract because resident "allow[ed] him to procure her admission").

Moreover, the Facility errs in suggesting apparent authority should be presumed from Mr. Walker's presence when the Arbitration Agreement was presented. As the Facility admits in the opening line of its argument, agency must be "established by evidence." (Appellant's Br. at 6) (citing R&G Constr. Co., 343 S.C. at 432, 540 S.E.2d at 117). That admission is consistent with this Court's ruling in Hodge, where a nursing home asserting an agency argument bore the burden of showing the agency relationship exists and that showing must be "clearly established by the facts." 422 S.C. at 565, 813 S.E.2d at 304 (quoting McCall v. Finley, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987)). It is not enough to simply point to a family member's signature on the contracts or to ask a court to infer agency from a close familial relationship. Hodge, 422 S.C. at 565, 813 S.E.2d at 304 (citing Golinger v. AMS Props., Inc., 123 Cal. App. 4th 374 (2004) (finding no proof of agency without some evidence beyond a daughter merely signing contract on her mother's behalf); Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 242, 597 S.E.2d 165, 168 (Ct. App. 2004) (no presumption of agency arises from marital relationship). The Facility does not

offer any evidence to support the conclusion that Mr. Walker made express or implied representations that Wife was his agent when she signed the Arbitration Agreement on January 2, 2019.[3]

The crucial evidence would begin with testimony from the two (or more) other people in the room when the Arbitration Agreement was presented. The Facility had a representative of its own in the room that day who signed the Arbitration Agreement as its agent. (R. p. 98). Yet, this individual did not submit an affidavit and has not otherwise provided testimony as to what supposed representations Mr. Walker made or why it would be reasonable to interpret those purported representations as conferring authority on Wife. This individual would also be key for determining whether he/she or Wife even made Mr. Walker aware of the Arbitration Agreement. While the Facility faults Mr. Walker for his supposed failure to object to Wife's signature (Appellant's Br. at 8), the Facility has not taken the crucial step of showing someone told Mr. Walker about the Arbitration Agreement—a contract the parties agree was not essential to his admission.

Appellants rely heavily on R & G Construction but that case included evidence to support a finding of apparent authority. There, the designated executive director of a regional

[3] The Facility later argues that to require it to determine the existence and scope of Wife's authority is an arbitration-specific rule barred by the FAA's equal treatment rule. (Appellant's Br. at 26-27) (citing AT&T Mobility, Inc. v. Concepcion, 563 U.S. 333, 339 (2011)). However, under generally applicable South Carolina law governing agency relationships, "[i]t is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority." Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996). Moreover, the generally applicable contract defense of equitable estoppel—which the Facility asks the Court to apply here—requires proof that the party asserting estoppel lacks knowledge and the means for learning the truth about the purported agent and her relationship to the principal she supposedly represents. Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). Thus, even for a contract unrelated to arbitration, the Facility would have to show due care in dealing with Wife to prevail on an agency or equitable estoppel theory.

transportation company entered a contract with a construction contractor for work on premises operated by the transportation company. 343 S.C. at 434, 540 S.E.2d at 118-19. The circuit court found there was some evidence the executive director had apparent authority to enter into contracts on the transportation company's behalf. Id. Unlike Appellant's arguments, the R & G Construction court found that the transportation company (i.e. the purported principal) "represented to others that [purported agent] had the authority to enter into the contract." Id. at 435, 540 S.E.2d at 119. The transportation company conceded that it expressly named the purported agent as the company's executive director and the transportation company's employee confirmed the executive director's position to the third party. Id.

Appellants also cite language from R & G Construction indicating apparent authority may be conferred "where the principal passively permits the agent to appear" to have authority. 343 S.C. at 434, 540 S.E.2d at 118. This language is taken from Genovese v. Bergeron, 327 S.C. 567, 490 S.E.2d 608 (Ct. App. 1997), which is also distinguishable from the present case. In Genovese, a tenant who failed to pay her rent argued that a property manager, acting with authority granted by the landlord, agreed to permit the tenant to terminate her lease without penalty. Id. at 571, 490 S.E.2d at 610. This Court found evidence of apparent authority since the parties agreed that the property manager was the landlord's agent. Id.

In conclusion, the Court should affirm the circuit court's ruling that the Facility failed to demonstrate Wife had actual or apparent authority to act as Mr. Walker's agent when the Arbitration Agreement was presented for Wife's signature. The Facility produced no evidence to suggest Mr. Walker consciously or impliedly represented Wife had authority to act on his behalf.

2. Mr. Walker did not ratify the Arbitration Agreement.

The Facility also failed to prove Mr. Walker ratified the Arbitration Agreement. Ratification requires a principal's knowing acceptance of a purported agent's act. Lincoln v. Aetna Cas. & Sur. Co., 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989). None of the three circumstances cited by the Facility meet this standard and each is rejected by South Carolina precedent or key evidence in this case.

Ratification is 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." Lincoln, 300 S.C. at 191, 386 S.E.2d at 803 (citing Barber v. Carolina Auto Sales, 236 S.C. 594, 115 S.E.2d 291 (1960)). The Facility can prevail on its ratification theory only by proving: (1) the principal's acceptance of benefits of alleged agent's acts; (2) full knowledge of the facts; and (3) circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangement. Lincoln, 300 S.C. at 191, 386 S.E.2d at 803.

The Facility first argues Mr. Walker ratified the Arbitration Agreement (signed on January 2, 2019) by executing a "Durable Power of Attorney for Financial Management" ("DPOA") two weeks after his admission (January 16, 2019). (Appellant's Br. at 9). However, ratification's third element would require proof Mr. Walker intended through the DPOA to adopt the Arbitration Agreement. The DPOA's plain language shows the Facility cannot meet this element. Rather than adopting actions taken earlier, the DPOA is unambiguously and exclusively forward-looking. The DPOA expressly states that it covers only actions taken by Wife January 16, 2019 or later. (R. p. 170 ¶ 6) ("This Power of Attorney will start immediately and will continue . . ."). Right above his signature, Mr. Walker reaffirmed Wife's authority "will become effective" only as of January 16th, i.e. the DPOA's execution date. (R. p. 177 ¶ 15(d)). By speaking in the future tense and designating

January 16, 2019 as the first day of Wife's authority, Mr. Walker unambiguously stated his intent *not* to ratify the Arbitration Agreement Wife signed on January 2nd.

Second, the Facility contends Mr. Walker ratified the Arbitration Agreement because Wife made health care decisions on his behalf including the choice to decline resuscitative efforts in the event of a medical emergency. (Appellant's Br. at 10). But, the Facility never explains how allowing Wife to make medical decisions retroactively approved a contract covering the distinct issue of arbitrating legal disputes. As the South Carolina Supreme Court recently recognized, an arbitration contract presented to a nursing home resident, but not required for his admission, is not a health care matter. Arredondo v. SNH SE Ashley River Tenant, LLC, 433 S.C. 69, 83, 856 S.E.2d 550, 558 (2021) (citing Miller v. Life Care Ctrs. of Am., Inc., 478 P.3d 164, 172-74 (Wyo. 2020) (ruling that optional arbitration contract was unrelated to resident's health care) and Miss. Care Ctr. of Greenville, LLC v. Hinyub, 975 So.2d 211, 218 (Miss. 2008) (finding execution of an arbitration contract is not a health care issue when contract is not required for admission)). Arredondo simply reaffirmed earlier South Carolina Supreme Court precedent recognizing that a nursing home arbitration contract under these circumstances cannot be deemed a "health care" matter for statutory or other purposes. Coleman, 407 S.C. at 354, 755 S.E.2d at 454.

Finally, the Facility insists the Court should imply ratification from Mr. Walker's inaction. Appellant's Br. at 9 (arguing there was no "evidence of objection from Mr. Walker"). The South Carolina Supreme Court has also rejected that argument. Carolina Power & Light Co. v. Darlington Co., 315 S.C. 5, 11, 431 S.E.2d 580, 583 (1993) (holding that ratification "cannot be implied from mere inaction, or from a mere failure to disaffirm the contract within a reasonable time"). The Facility's failure to present any evidence on the circumstances under which the Arbitration Agreement was presented also undermines their ratification argument. The second element of

ratification requires that Mr. Walker had "full knowledge of the facts." Lincoln, 300 S.C. at 191, 386 S.E.2d at 803. No evidence has been presented to suggest Mr. Walker was ever aware of the Arbitration Agreement's existence. The Facility did not offer testimony from its representative who presented and signed the Arbitration Agreement to suggest he/she discussed arbitration with Mr. Walker. Instead, the Facility simply asks the Court to assume from Mr. Walker presence his awareness of the Arbitration Agreement and his approval of Wife's signature on it.

That assumption is not only inconsistent with the Facility's evidentiary burden, it is also unreasonable under the circumstances. By the Facility's own admission, agreeing to arbitration was not required to obtain or maintain Mr. Walker's admission to the Facility. (Appellant's Br. at 16). Thus, without evidence that the Facility or Wife made Mr. Walker aware of a proposed arbitration contract, he could not have had the "full knowledge of the facts" required to ratify the Arbitration Agreement. In sum, the Court should reject the Facility's argument that Mr. Walker ratified the Arbitration Agreement because the Facility failed to produce evidence to support this contention and cannot meet the three elements established by South Carolina law to prove ratification.

3. The independently-invalid Arbitration Agreement does not merge with the Admission Agreement.

The Facility next argues Respondent must arbitrate Mr. Walker's claims against the Facility even though there is no valid contract requiring her to do so. Mr. Walker never signed or otherwise assented to the Arbitration Agreement on which the Facility relies to support its motion. Wife's signature on the Arbitration Agreement is ineffective because she did not have authority to bind Mr. Walker to a dispute resolution contract. Moreover, as the circuit court concluded, the fact that Mr. Walker lived at the Facility as a resident does not estop him or Respondent from contesting arbitration under South Carolina or federal equitable estoppel principles.

This appeal centers on core components of contract formation. Since the Facility points only to the Arbitration Agreement as a basis for dismissing Respondent's claims, it cannot prevail without first establishing the Arbitration Agreement is a properly formed, binding contract. However, while the Facility offered the Arbitration Agreement as an alternative means for settling disputes, neither Mr. Walker nor anyone with legal authority accepted that offer. Moreover, as established in South Carolina precedent, even if Wife had possessed authority to admit Mr. Walker to the Facility, it would not confer authority to enter the Arbitration Agreement, a document the Facility drafted as a separate and distinct contract offered for a completely different purpose.

a. The Facility cannot show the core requirements to form a contract.

A contract is formed only when one party makes an offer, the other manifests acceptance, and the contract's promises are supported by valuable consideration. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). Acceptance requires an "objective manifestation of . . . assent at the time the contract was made." Laser Supply & Services, Inc. v. Orchard Park Assoc., 382 S.C. 326, 334, 676 S.E.2d 139, 143-44 (Ct. App. 2009). The Arbitration Agreement was not signed by Mr. Walker or offered to him even though he had contractual capacity at the time of his admission. (R. p. 7). The Facility argues Wife's signature assented on Mr. Walker's behalf, but the Facility presents nothing to show Wife had authority to contract for Mr. Walker. Instead, the Facility now seems to argue Wife had some unspecified authority to sign the Admission Agreement for Mr. Walker and that authority either carries over to the Arbitration Agreement or equitably estops Mr. Walker/Respondent from opposing arbitration. The circuit court correctly refused both of these arguments because they have been rejected by South Carolina appellate courts multiple times over the last few years.

South Carolina's Adult Health Care Consent Act ("the Act") empowers designated family members of some vulnerable adults to sign a contract admitting the vulnerable adult to a skilled nursing facility and agree to pay the fees imposed by that facility for its services. S.C. Code Ann. § 44-66-60(A); Coleman, 407 S.C. at 352, 755 S.E.2d at 453. But, since the Act is limited to "health care" decisions, it provides no authority for separate contracts like the Arbitration Agreement. Id. at 354, 755 S.E.2d at 454; Thompson, 416 S.C. at 51, 784 S.E.2d at 684 (Ct. App. 2016) (citing Coleman and agreeing an "Arbitration Agreement does not deal with healthcare decisions"). Additionally, a family member signing a nursing home admission contract pursuant to authority derived from the Act does not estop a later argument that the same family member lacked authority to sign a separate arbitration contract. Coleman, 407 S.C. at 354-56, 755 S.E.2d at 455; Thompson, 416 S.C. at 60, 784 S.E.2d at 688. The Act was never meant to affect anything other than "health care" decisions, and the Arbitration Agreement was not a health care decision because Mr. Walker could get all the health care services covered in the Admission Agreement without agreeing to arbitrate. Appellant's Br. at 16 (admitting Arbitration Agreement was unnecessary to gain admission to the Facility).

Coleman did acknowledge the possibility equitable estoppel could be invoked if the disputed arbitration language was actually or effectively part of the same admission contract. 407 S.C. at 355, 755 S.E.2d at 455. This narrow path to a successful estoppel argument requires several steps. Preliminarily, the Facility must establish the Act empowered Wife to enter the Admission Agreement on Mr. Walker's behalf. See Hodge, 422 S.C. at 574, 813 S.E.2d at 308 (finding that there can be no estoppel argument where signatory family member lacked authority under Act to enter admission contract). Then, the Facility must link the admission and arbitration contracts by meeting multiple requirements to apply a common-law contract law interpretation principle by

which courts interpret multiple writings as a single contract. Coleman, 407 S.C. at 355, 755 S.E.2d at 455. This "merger" principle cannot apply unless the writings in question were executed "at the same time, by the same parties, for the same purpose, and in the course of the same transaction." Id. (quoting Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)). Even then, merger does not apply if there is "*anything* indicating a contrary intention." Id. (emphasis added). Thus, simultaneously executed writings relating to the same general subject matter will not be viewed as a single or merged agreement if either their language or the circumstances even hint that the parties actually intended the writings to be distinct, separate contracts. Three nursing homes have previously attempted but failed to meet these requirements, and South Carolina's appellate courts have never applied merger to nursing home admission and arbitration contracts. See generally Coleman, Thompson, and Hodge.

b. The Facility cannot show Wife had authority to act for Mr. Walker under the Adult Health Care Consent Act.

The Facility cannot meet any of the requirements to support its equitable estoppel argument. First, the Facility cannot show Wife had authority to enter the Admission Agreement. As Coleman and Thompson demonstrate, the Facility's merger and estoppel arguments could only be relevant to this appeal if Wife had authority under the Act. Coleman, 407 S.C. at 355, 755 S.E.2d at 455 (noting estoppel argument "is premised on [nursing home's] contention that, under state law, the admissions agreements and the [arbitration contract] merge"); Thompson, 416 S.C. at 49-50, 784 S.E.2d at 683 (finding merger argument depended on notion that family member who signed contract "was authorized to execute [admission contract] under the Act"). The circuit court found Wife had no authority under the Act (R. p. 9), and the Facility offers no evidence to challenge that finding.

Moreover, the circuit court's finding is well supported by the record. The Act confers limited authority on a limited group for the limited purpose of making another person's health care decisions. The Act effectively separates critical medical decision making power from the individual receiving medical care and, as a result, the Act must be read narrowly with its requirements construed strictly. Coleman, 407 S.C. at 353, 755 S.E.2d at 454 (holding that AHCCA's purpose is to "insure the patient's wishes are honored . . . whenever possible" and that "decision making by the surrogate is a ***last resort***") (emphasis added). To ensure the Act is properly limited, the authority it grants only applies when the individual whose health care is at stake is "unable to consent," a defined term requiring substantial incapacitation and physician verification. S.C. Code Ann. § 44-66-20(8); § 44-66-30(A). "Unable to consent" means an individual cannot "appreciate the nature and implications" of his condition such that he either cannot (1) "make a reasoned decision concerning the proposed health care"; or (2) "communicate that decision in an unambiguous manner." S.C. Code Ann. § 44-66-20(8). Whether these criteria are met is not to be determined by a court, the individual, a proposed surrogate, or any other lay person. Instead, two physicians[4] who have examined the patient must certify his inability to consent. Id. The physician certification must offer details on the medical condition causing the incapacity as well as its extent and likely duration. Id.

Mr. Walker did not meet these requirements when he was admitted to the Facility as the Facility does not present the required physician certifications. In fact, Mr. Walker demonstrated his competency two weeks after his admission when he executed a durable power of attorney

[4] In emergency situations, a single "health care provider responsible for the care of the patient" may make the required certification but only after stating in writing that the emergency conditions would make the standard two physician certification process harmful to the patient's health. S.C. Code Ann. § 44-66-20(8).

naming Wife as her agent. (R. pp. 169-80). Since the circuit court correctly determined the Act does not apply, the Facility's merger and estoppel arguments fail at their initial hurdle.[5]

c. The Admission Agreement and Arbitration Agreements serve different purposes.

Second, the Facility cannot show the Admission Agreement and Arbitration Agreement were executed for the same purpose. The Admission Agreement was formed to enumerate the nursing services the Facility would provide and to define Mr. Walker's obligation to pay for those services. (R. pp. 142-43). That purpose is borne out in the Admission Agreement's twelve pages. The Facility agreed to provide Mr. Walker with basic room and board as well as nursing and personal care. (R. p. 142 § (A)(3)). In turn, Mr. Walker agreed to pay the fees the Facility charged for its services. (R. p. 143 § (B)(4)). The Admission Agreement's provisions referred to insurance matters, bed hold policies, late fees for unpaid service charges, etc. The Arbitration Agreement covered a completely different issue. It was solely devoted to directing an alternative dispute resolution method and purporting to eliminate its parties' right to seek relief through the courts. (R. p. 98). The Admission Agreement's sole recital states that the contract's purpose is to "admit [Mr. Walker] to [the] Facility." (R. p. 141). Thus, the Admission Agreement and Arbitration Agreement cannot have the same purpose because, as the Facility admits, the Arbitration

[5] Without the authority granted by the Act, the Facility's only remaining argument to support Wife alleged authority to execute the Admission Agreement is a double-layer estoppel argument. In short, the Facility claims (1) Mr. Walker is equitably estopped from denying the Admission Agreement because he was in fact admitted; (2) the Admission Agreement and Arbitration Agreement merged; and (3) Mr. Walker was then estopped from denying the Arbitration Agreement because it was part of the Admission Agreement. Appellant's Br. at 23 n. 23. Here again, however, the Facility's estoppel argument as to the Admission Agreement has been rejected by this Court. Hodge, 422 S.C. at 563, 813 S.E.2d at 302 (finding it difficult to conclude a nursing home resident "benefited" from a nursing home admission marked by negligent care that caused her death).

Agreement was not a pre-condition for admission. Appellants' Br. at 16 ("agreeing to arbitration was not required to gain admission to the Facility").

d. The terms and context show the parties intended the Admission Agreement and Arbitration Agreement to be separate contracts.

Third, even if the Facility could show the required authority under the Act and even if the prerequisites to merger were present, the Facility's argument fails because the language and circumstances of the Admission Agreement and Arbitration Agreement show the parties intended they be construed as separate contracts. Coleman, Thompson, and Hodge are the key precedent here because they illustrate the type of contract language or structure showing parties do not intend multiple agreements to be interpreted as one. For example, an arbitration contract does not merge with an admission contract in which a nursing home and its resident chose to insert an "entire agreement" or integration provision (aka "merger clause") limiting its parameters and excluding other writings. Coleman, 407 S.C. at 355, 755 S.E.2d at 455. Coleman held one such provision proved "on its face" that merger does not apply. Id. Also, admission and arbitration contracts cannot merge if they contain inconsistent terms, especially provisions related to how each contract may be terminated. Id.; Thompson, 416 S.C. at 53, 784 S.E.2d at 685. Moreover, courts look at the way the contracts are structured, finding it is unlikely parties intended two contracts to be treated as one if they chose separate titles, required separate signatures, and numbered each contract's pages differently. Thompson, 416 S.C. at 53 n. 1, 784 S.E.2d at 685 n. 1; Hodge, 422 S.C. at 562, 813 S.E.2d at 302. Finally, Hodge held a nursing home cannot argue for merger when it chose to separate arbitration and admission into two agreements while taking the position that agreeing to the former was not required to obtain the benefits of the latter. 422 S.C. at 562-63, 813 S.E.2d at 302.

The Facility preemptively dismisses all of these factors, arguing none of them suggest the parties intended the Admission Agreement and Arbitration Agreement stand on their own. (Appellant's Br. at 14-21). However, by rejecting or discounting these factors, the Facility is arguing against well-established, recent precedent (Coleman, Thompson, and Hodge) without offering the Court any reason why it should so dramatically and quickly reverse course. All four of these factors apply to the Admission Agreement and Arbitration Agreement and provide extensive evidence to support the circuit court's finding that the contracts do not merge.

i. The Admission Agreement's "Entire Agreement" provision

The Admission Agreement concludes with an "Entire Agreement" provision identifying the contract's limited scope. (R. p. 152 § XVIII). Specifically, this provision states "this Agreement represents the entire . . . understanding between the parties." "Agreement" is capitalized because it is a defined term, which the Admission Agreement's opening line limits to "THIS ADMISSION AGREEMENT." (R. p. 141) (emphasis in original). The Facility argues the Admission Agreement's "Entire Agreement" provision is different than its counterparts in Coleman, Thompson, and Hodge because it does not specifically reference the Arbitration Agreement. (Appellants' Br. at 9-10). However, the Admission Agreement's "Entire Agreement" provision is just as probative against merger as those in earlier cases. It specifically limits the contract's interpretation to the "Agreement" and then defines that term narrowly in a way that does not include the Arbitration Agreement or any other writing. To argue the "Entire Agreement" provision must specifically reference a separate writing to exclude that writing from the common law merger rule is to overlook the fundamental purpose an integration provision serves in a contract. See Palmetto State Sav. Bank of S.C. v. Barr, 293 S.C. 252, 253-54, 359 S.E.2d 531, 532 (Ct. App. 1987) (finding purpose of integration provision is to create "strong implication the whole

intentions of the parties has been expressed" in the writing containing the clause); Wilson v. Landstrom, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984) (citing Armour Fertilizer Works v. Hyman, 120 S.C. 375, 113 S.E. 330 (1922) (the terms of a completely integrated contract "cannot be varied or contradicted by parol evidence of prior or contemporaneous agreements not included in the writing")).

Plus, there is contract language here that tracks Coleman and progeny almost word for word. In Coleman, the court focused on the fact that the admission contract's "Entire Agreement" provision referenced "[t]his Agreement . . . and the Arbitration Agreement." Referencing the two writings distinctly was "the admission agreement's recognition of the arbitration agreement as a separate document." Thompson, 416 S.C. at 52, 784 S.E.2d at 684 (citing Coleman, 407 S.C. at 355, 755 S.E.2d at 455). Hodge applied the same principle using language from an arbitration contract that referenced an admission contract in distinct terms. 422 S.C. at 562, 813 S.E.2d at 302. If an arbitration contract explains its scope extends to disputes arising from "this Agreement or the . . . Admission Agreement," then the parties "recognized a separateness" between the two contracts. Id. The Arbitration Agreement in this case does exactly what Coleman, Thompson, and Hodge identify as proof that defeats the Facility's merger argument. In describing its term, the Arbitration Agreement states that its effect will continue even after the termination of "this Agreement ***or the Admission Agreement***." (R. p. 98) (emphasis added).

Finally, the Facility hints that the "Entire Agreement" provision supports an Admission Agreement-Arbitration Agreement merger because it incorporates "other Admissions Materials." Appellants' Br. at 15-16 (quoting R. p. 152 § XVIII). To the extent the Facility implies the Arbitration Agreement was incorporated by reference into the Admission Agreement, the Facility has offered nothing in either contract to support this conclusion. "Admissions Materials" is not a

defined term and there is nothing to suggest the Arbitration Agreement was intended to be included within it.[6] Plus, since the Facility admits agreeing to arbitration was not required for admission, it would be counterintuitive to conclude the Arbitration Agreement was an "admissions material." Thompson rejected a similar argument when a nursing home argued its admission contract's "entire agreement" provision incorporated a separate arbitration contract by referring broadly to "exhibits." Since "exhibit" was undefined and not referenced elsewhere in either contract, the term was ambiguous and was interpreted against the nursing home who drafted it. 416 S.C. at 53-54, 784 S.E.2d at 685 (citing Coleman, 407 S.C. at 355-56, 755 S.E.2d at 455).

ii. Inconsistent termination provisions

Two contracts executed at the same time do not merge if they contain inconsistent terms. The parties likely did not intend for the two be read as one if they chose to, for example, apply different substantive law to the two agreements. Hodge, 422 S.C. at 562, 813 S.E.2d at 302. Coleman, Thompson, and Hodge made special note of inconsistent provisions in admission and arbitration contracts regarding when each contract may be cancelled at the resident's urging. Coleman, 407 S.C. at 355, 755 S.E.2d at 455; Thompson, 416 S.C. at 53, 784 S.E.2d at 685; Hodge, 422 S.C. at 551, 813 S.E.2d at 296. In each instance, the arbitration contract allowed the resident to disclaim or revoke its provisions within thirty days but the admission contract did not include a similar right. Id. Here, the Arbitration Agreement does not have a disclaimer provision, and the

[6] Appellant argues this Court previously recognized an arbitration contract is an "admission material." (Appellant's Br. at 16) (quoting Stott v. White Oak Manor, Inc., 426 S.C. 568, 828 S.E.2d 82 (Ct. App. 2019)). However, Stott actually affirmed a circuit court's ruling that a nursing home resident's family member *did not* have authority to bind the resident to arbitration. Id. at 578, 828 S.E.2d at 88. Stott focused on the execution requirements for a durable power of attorney, a matter that is not at issue here. Id. at 576-77, 828 S.E.2d at 86-87.

Facility positions this fact as its primary argument for distinguishing Coleman, Thompson, and Hodge. (Appellants' Br. at 19).

However, the contracts' termination provisions are just as inconsistent here as in those cases. The Arbitration Agreement states that its effect on disputes between the parties would survive even if both the Admission Agreement and Arbitration Agreement are cancelled. (R. p. 98). As structured by the Facility, there does not seem to be any means by which a resident could unilaterally cancel the Arbitration Agreement. The Admission Agreement is very different in that it allows a resident to unilaterally terminate that contract "at any time." (R. p. 146 § IV, ¶ 1). Thus, while the Facility is correct the Arbitration Agreement is technically different than Coleman and progeny because it lacks a disclaimer provision, that distinction makes no difference because the Arbitration Agreement and Admission Agreement still have inconsistent termination provisions that rebut any argument the parties intended these two separate contracts merge into one.

iii. Contract formatting and structure

Thompson and Hodge prove it is not just specific contract language that shows a nursing home and its resident did not intend for admission and arbitration contracts to merge. Intent can be derived from the way a contract is formatted or structured. Rather than adding an arbitration provision to the admission contract or attaching that language as an exhibit, the nursing home in Thompson chose to place it in an entirely separate document with its own, distinct "Arbitration Agreement" label. 416 S.C. at 53 n. 1, 784 S.E.2d at 685 n. 1. That choice was in itself further proof of "the parties' intent for [the arbitration contract] to stand by itself as an independent contract." Id. The Facility did the same here, and the Arbitration Agreement announces itself as a distinctive contract from its very title. Hodge also noted the importance of formatting choices a nursing home makes when constructing its admission and arbitration contracts. 422 S.C. at 562,

813 S.E.2d at 302. An arbitration contract looks more and more like its own independent document if entering it requires a separate signature than the admission contract and the documents have separate pagination. Id. Here, the Admission Agreement required separate signatures and signaled its separateness as it ran from page 1 to 12 while the Arbitration Agreement was on its own separate single page.

iv. Admission is not dependent on Arbitration Agreement

The Facility's merger argument is also rebutted by its admissions. The purported interaction between two separate contracts can be judged not only by their language but also by how their parties treat each contract. An arbitration contract is far less likely to merge with an admission contract if the nursing home admits arbitration is not required for admission. The Facility argues the fact that admission does not depend on consent to arbitrate somehow supports merger. (Appellants' Br. at 16-17). But, in Hodge, this Court cited as further evidence against merger an arbitration contract provision stating that arbitration was not a precondition to a resident's acceptance into the nursing home. 422 S.C. at 562-63, 813 S.E.2d at 302. Similarly, the Facility does not treat the Admission Agreement and Arbitration Agreement as if they are interdependent or even as related to the same purpose. The Facility admits that executing the Arbitration Agreement was not mandatory and not a precondition to admission. Appellants' Br. at 16.

In sum, the Arbitration Agreement and Admission Agreement have the same four indicators South Carolina courts have cited in the past to find simultaneously-executed contracts were not intended to merge into one. Moreover, contrary to the Facility's arguments, any uncertainty about these four indicators must be resolved in Respondent/Mr. Walker's favor, not to their detriment. The Facility argues merger is the default position and must be applied absent an

affirmative showing of contrary intent. (Appellants' Br. at 14-15). But, that argument overlooks key holdings from Coleman. First, while the Facility several times refers to a "presumption" of merger, South Carolina courts have never presumed merger of any two contracts. Nowhere in Coleman, Thompson, and Hodge does a court refer to a merger "presumption" for nursing home admission and arbitration contracts. In fact, neither does the case Coleman cites in support of the merger doctrine. 407 S.C. at 355, 755 S.E.2d at 455 (citing Klutts, 268 S.C. at 88, 232 S.E.2d at 24). There is simply no textual support for the notion that the court should "presume" merger applies.

Second, even if merger was a presumption, it is an easily rebuttable one because "***anything*** indicating a contrary intention" means a court will not apply merger. 407 S.C. at 355, 755 S.E.2d at 455 (quoting Klutts, 268 S.C. at 88, 232 S.E.2d at 24) (emphasis added). Thus, the Facility's task on appeal is not to successfully oppose one of the four indicators discussed above but to prove all four are absent here. Third, since the Facility drafted these form contracts of adhesion, any ambiguities must be construed against it. The Facility argues that applying the ambiguity rule here "makes no sense" (Appellants' Br. at 20), but does not acknowledge the Facility's argument effectively asks the Court to reverse its own ruling on the issue and to overrule Supreme Court precedent. Coleman applied the "presumption against drafter" rule to a nursing home's quibbles over the effect of an "entire agreement" clause, and Thompson used it to reject a nursing home's argument that an arbitration contract was incorporated into an admission contract. Coleman, 407 S.C. at 355, 755 S.E.2d at 455; Thompson, 416 S.C. at 53-54; 784 S.E.2d at 685.

Accordingly, the Facility's merger argument is flawed not only in the specific ways described above but also in its very conception of when and how the merger doctrine operates. The

circuit court properly applied extensive South Carolina law in this field and rejected the Facility's contention that the Arbitration Agreement and Admission Agreement merged.

4. Respondent is not equitably estopped from opposing arbitration.

Mr. Walker did not sign the Arbitration Agreement or authorize anyone to sign for him. Yet, the Facility argues South Carolina Supreme Court precedent suggests Mr. Walker/Respondent are equitably estopped from opposing arbitration. (Appellants' Br. at 21-23) (citing Wilson). However, the Facility does not cite or attempt to apply the elements of equitable estoppel imposed by South Carolina law.[7] Plus, Wilson actually refused to compel arbitration against a non-signatory, holding there is a presumption *against* forcing someone to arbitrate based on a contract he did not sign. 426 S.C. at 338, 827 S.E.2d at 173. Wilson even went on record to say equitable estoppel is rarely appropriate to force arbitration. Id. at 345, 827 S.E.2d at 177 (finding equitable estoppel "should be used sparingly"). Finally, as this Court recently reaffirmed in Weaver, the Facility cannot meet the "direct benefits" test considered in Wilson because Mr. Walker's claims

[7] As Wilson recognized, whether a non-signatory may be bound to an arbitration contract is a state law issue. 426 S.C. at 348, 827 S.E.2d at 174 (citing Arthur Andersen LLP v. Carlisle, 556 U.S. 624, 630-31 n. 5 (2009)). Under South Carolina law, equitable estoppel requires proof that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conducted be acted on by the other party; and (3) had actual or constructive knowledge of the real facts. Strickland, 375 S.C. at 84, 650 S.E.2d at 470. The party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; and (3) make a prejudicial change in position in reliance on conduct of the party to be estopped. Id. Wilson did not dismiss or eliminate this test for equitable estoppel but only found its application was an issue that had not been preserved for appellate review. 426 S.C. at 341 n. 9, 827 S.E.2d at 175 n. 9. The Facility argues Wilson concluded this test only applies to "non-arbitration cases." (Appellant's Br. at 22) (citing Wilson, 426 S.C. at 340 n. 9, 827 S.E.2d at 175 n. 9). However, that could not have been Wilson's meaning because applying different rules to arbitration and non-arbitration contracts would violate the U.S. Supreme Court's equal-treatment principle. See Prima Paint Corp. v. Flood Conklin Mfg. Co., 388 U.S. 395, 404 n. 12 (1967) (finding intent of FAA was "to make arbitration agreements as enforceable as other contracts, but not more so").

in no sense rely on the Arbitration Agreement's terms, and the Facility's argument to the contrary expressly links its estoppel claim to its fatally flawed merger argument.

The Facility wholly omits the fact that the "direct benefits estoppel" discussed in Wilson could only apply if Respondent had "consistently maintained that other provisions of the same contract should be enforced to benefit" her. 426 S.C. at 340, 827 S.E.2d at 175 (quoting Pearson, 400 S.C. at 290, 733 S.E.2d at 601). In other words, the Facility's burden is to show (1) Mr. Walker's claims arise from the purportedly merged Admission Agreement-Arbitration Agreement; (2) Mr. Walker/Respondents have "exploited" other parts of the contract by reaping its benefits; and (3) Mr. Walker's claims rely solely on the contract terms to impose liability. Weaver, 431 S.C. at 230, 847 S.E.2d at 272 (citing Wilson, 426 S.C. at 340-44, 827 S.E.2d at 175-77). The Facility makes no attempt to meet this burden and cannot do so. Mr. Walker's claims do not cite or rely on the Arbitration Agreement. Instead, the Facility argues Mr. Walker's alleged direct benefit was admission itself and the nursing home services he received while a Facility resident. Appellants' Br. at 13-14.

But, this argument has two key flaws. For one, the Facility expressly links its estoppel claim to a merger argument it cannot prove. (Appellants' Br. at 22) (arguing estoppel applies because Admission Agreement and Arbitration Agreement merged). As discussed in Argument 3 above, there is no merger here because (1) Wife lacked statutory authority to enter the Admission Agreement; (2) the contracts were created for different purposes; and (3) there are many indications from the contracts' language that they were not intended to be construed as one. Second, Mr. Walker has not obtained a "direct benefit" from the Admission Agreement as that term is used for estoppel purposes. The complaint does not allege a breach of contract claim based on the Admission Agreement or otherwise rely on that contract to assert liability against the

Facility. The mere fact that Mr. Walker's relationship with the Facility underlying the claims was memorialized in the Admission Agreement is not sufficient for the Facility to invoke estoppel. Wilson, 426 S.C. at 343, 827 S.E.2d at 176 ("direct benefits estoppel is not implicated simply because a claim relates to or would not have arisen 'but for' a contract's existence").

Weaver applied this principle to reject the argument that a nursing home resident receives the required "direct benefit" through her admission or "exploits" either the admission or arbitration contracts by suing for poor nursing home care. 431 S.C. at 232-33, 847 S.E.2d at 273-74. In Weaver, a granddaughter brought wrongful death and survival claims based on a nursing home's failure to supervise a resident who wandered away from the home and was killed by a wild animal. Id. at 271. Equitable estoppel did not apply because the granddaughter's claims "rely on general tort duties . . . not any provision of the residency agreement." Id. at 232, 847 S.E.2d at 273. Weaver did not create new law; it followed Hodge's lead in holding that a nursing home resident or her family members do not "exploit" an admission contract by alleging common law negligence claims. Id. (citing Hodge, 422 S.C. at 563, 813 S.E.2d at 302).

Thompson also rejected a nursing home's attempt to use direct benefits estoppel to compel a non-signatory nursing home resident to arbitrate. 416 S.C. at 58-59, 784 S.E.2d at 687-88. After surveying state and Fourth Circuit precedent, Thompson rejected this form of estoppel because it generally requires proof of some benefit to the party opposing estoppel in "*the contract that includes the arbitration provision*." 416 S.C. at 59, 784 S.E.2d at 688 (emphasis added). The Facility, therefore, cannot build an estoppel argument by citing benefits Mr. Walker supposedly gained in the Admission Agreement. Thompson also rejected any effort to argue Mr. Walker gained a "direct benefit" from the Arbitration Agreement. Id. at 60, 784 S.E.2d at 688 ("any

possible benefit emanating from the [Arbitration Agreement] alone is offset by the [Arbitration Agreement's] requirement that [resident] waive her right of access to the courts . . .").

In sum, the circuit court correctly rejected the Facility's equitable estoppel argument because the Facility has not cited or applied the proper elements, cannot show Mr. Walker obtained any "direct benefit," and bases its estoppel claim on a flawed merger argument. As it did in Thompson, Hodge, and Weaver, this Court should reject this equitable estoppel argument.

CONCLUSION

Based on the arguments stated above, Respondent respectfully requests the Court affirm the circuit court's ruling that denied the Facility's motion to stay this action and to compel arbitration.

Respectfully submitted,

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Rock Hill, SC
January 28, 2022

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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

Maite Murphy, Circuit Court Judge

Appellate Case No. 2021-000594

Paulette Walker as Personal Representative of the Estate of Albert Walker	……..	Respondent
v.		
Hallmark Longterm Care, LLC, d/b/a Hallmark Healthcare Center and Durena Stinson,	……..	Defendants.
Of whom Hallmark Longterm Care, LLC, d/b/a Hallmark Healthcare Center	…….	Appellant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 211(a), SCACR, Respondent's counsel hereby certifies that her final brief complies with Rule 211(b), SCACR.

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