

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

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**Apr 18 2024**

APPEAL FROM DORCHESTER COUNTY  
In the Court of Common Pleas

S.C. SUPREME COURT

The Honorable Robert Bonds, Circuit Court Judge  
The Honorable R. Markley Dennis Jr., Circuit Court Judge

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Unpublished Opinion No. 2023-UP-394 (S.C. Ct. App. filed Dec. 13, 2023)  
Supreme Court Case No. 2024-000302

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Tammy China  
as Personal Representative of the  
Estate of Emma Lee James,

Respondent,

v.

Palmetto Hallmark Operating, LLC  
d/b/a Hallmark Healthcare Center, and  
Elite Patient Care of South Carolina, PC

Defendants,

Of which Palmetto Hallmark Operating, LLC  
d/b/a Hallmark Healthcare Center is

Petitioner.

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**RETURN TO PETITIONER'S  
PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

1. Did the Court of Appeals properly affirm the circuit court’s conclusion that the Admission Agreement and the Arbitration Agreement did not merge?
2. Has Petitioner abandoned its argument that the Court of Appeals erred in not reaching its equitable estoppel argument and, if not, did the Court of Appeals properly decline to rule on an issue not affecting the outcome of the appeal?
3. Should Petitioner’s argument regarding equitable estoppel be denied where that section of Petitioner’s Petition does not comply with the South Carolina Appellate Court Rules and, if not, did the circuit court properly determine that Respondent was not estopped from denying the enforceability of the Arbitration Agreement?
4. Does the circuit court’s unchallenged finding that Ms. Dunham did not have authority to sign the Admission Agreement constitute a sufficient additional sustaining ground on which to affirm the Court of Appeals’ conclusion that Petitioner is not entitled to the application of equitable estoppel?

## **STATEMENT OF THE CASE**

Petitioner Palmetto Hallmark Operating, LLC d/b/a Hallmark Healthcare Center (“Petitioner”) operates a for-profit long term and skilled nursing facility located in Summerville, South Carolina. (R. 25, ¶ 8). Respondent’s grandmother, Emma Lee James, was admitted to Petitioner’s facility on August 1, 2018, for long-term care and rehabilitation following a hospitalization at Summerville Medical Center. (R. 28, ¶ 27). Ms. James’s daughter, Emma Dunham, was presented with the Admission Agreement and the Arbitration Agreement at issue on appeal. (R. 156; R. 190–201). Ms. Dunham signed both documents. She did not have power of attorney for her mother. Instead, Petitioner opted to rely on a facially invalid healthcare power of attorney which purported to nominate Ms. Dunham as Ms. James’s power of attorney, but the document was not executed by Ms. James and only included Ms. Dunham’s signature on the line designated for the principal. (R. 208).

The Admission Agreement signed by Ms. Dunham outlined the nature of services Petitioner would provide to Ms. James, insurance considerations, and methods of payment. (R.

190–201). Notably, the Admission Agreement did not contain any reference to the Arbitration Agreement and established South Carolina law as the governing law.<sup>1</sup> (R. 199, Section IX).

Additionally, the Admission Agreement included an Entire Agreement clause providing:

I/we hereby acknowledge that I/we have read this page and all preceding pages and acknowledge that this Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understandings or agreements, oral or written, between the parties and may not be amended except by written agreement of the parties.

...

The undersigned further acknowledges that he/she has received and read the *Admission Handbook* and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.

(R. 201, Section XVIII).

The Arbitration Agreement signed by Ms. Dunham was separate and distinct from the Admission Agreement. The Arbitration Agreement bore its own title, was separately paginated, and, by its terms, is governed by federal law.<sup>2</sup> (R. 156). Additionally, the last paragraph provided, “This Agreement shall remain in effect for all care rendered at Facility and shall survive any termination or breach of this Agreement or the Admission Agreement.” (R. 156).

At the time of her admission, a body audit revealed that Ms. James had a healed right leg wound and an active left leg wound. (R. 28, ¶ 28). On September 11, 2018, Ms. James was

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<sup>1</sup> Specifically, the Admission Agreement provided it was governed by “applicable Federal regulations and those laws of the State in which [the] Facility is located.” (R. 199, Section IX).

<sup>2</sup> The Arbitration Agreement Established that

because the services and reimbursement thereof effects a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any contrary provision of this Agreement or contrary state law.

(R. 156).

admitted to the emergency department of Roper Hospital with gangrene of the left leg, severe malnutrition, and an electrolyte imbalance. (R. 29, ¶¶ 38–39). The next day, a dietician and a nurse at Roper Hospital noted that Ms. James had a large, unstageable sacral pressure ulcer. (R. 29, ¶¶ 40–41). Thereafter, Ms. James underwent left leg amputation, received care for her sacral wound, and was discharged back to Petitioner’s facility on September 18, 2018. (R. 29–30, ¶ 42).

Ms. James remained at Petitioner’s facility until her admission to Roper Hospital on October 15, 2018. (R. 31, ¶¶ 52–53). Ms. James was inconsolable, in excruciating pain, and, upon admission, found to have sepsis, a urinary tract infection, and severe malnutrition. (R. 31, ¶¶ 52–53). Ms. James’s sacral wound, which was the size of a grapefruit, required surgical debridement to the bone, and she was subsequently admitted to Roper Hospice for palliative care on October 22, 2018. (R. 31, ¶¶ 54 & 56). Ms. James died on November 4, 2018, as a result of sepsis secondary to the sacral pressure ulcer. (R. 31, ¶¶ 57–58).

Ms. James’s granddaughter, Respondent Tammy China, as Personal Representative of Ms. James’s Estate, subsequently filed a complaint against Petitioner alleging, *inter alia*, negligence, gross negligence, and wrongful death. (R. 23–37). Petitioner filed a motion to compel arbitration on January 21, 2022. (R. 154–56). The circuit court heard the motion on April 13, 2022, the Honorable R. Markley Dennis, Jr. presiding, and entered an order denying the motion on May 4, 2022. (R. 5–15). Petitioner timely filed a motion for reconsideration on May 16, 2022. (R. 226–44).

However, prior to ruling on the motion, Judge Dennis retired from the bench and went into the private practice of law. On October 24, 2022, the Honorable Diane Schafer Goodstein, Chief Judge for Administrative Purposes for the First Judicial Circuit (Court of Common Pleas), convened a status conference and determined the proper procedure would be for a different circuit

court judge to rehear Petitioner’s motion to reconsider. (R. 96, l. 21–98, l. 2). On November 17, 2022, the circuit court held a hearing on Petitioner’s motion to reconsider, the Honorable Robert Bonds presiding, and denied the motion in a November 28, 2022 order. (R. 16–18). Petitioner filed another motion to reconsider, which was denied by the circuit court in a December 28, 2022 order. (R. 19–21).

Petitioner subsequently filed its Notice of Appeal on December 28, 2022. (R. 266–68). Following briefing, the Court of Appeals decided the appeal without argument and ruled in favor of Respondent in a December 13, 2023 unpublished opinion. *See China v. Palmetto Hallmark Operating, LLC*, Op. No. 2023-UP-394 (S.C. Ct. App. filed Dec. 13, 2023). Petitioner timely petitioned for rehearing, which the Court of Appeals denied in a February 5, 2024 order.

Petitioner’s petition for a writ of certiorari follows.

### **STANDARD OF REVIEW**

“Whether an arbitration agreement may be enforced against a nonsignatory to the agreement is a matter subject to de novo review by an appellate court.” *Wilson v. Willis*, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019). “Under de novo review, a circuit court’s factual findings will not be reversed on appeal if any evidence reasonably supports those findings.” *Id.* Moreover, “an appellant is not relieved of his burden to demonstrate error in the [circuit] court’s findings of fact.” *Lewis v. Lewis*, 392 S.C. 381, 392, 709 S.E.2d 650, 655 (2011).

### **ARGUMENT**

#### **I. The Court of Appeals properly affirmed the circuit court’s conclusion that the Admission Agreement and the Arbitration Agreement did not merge.**

Petitioner’s argument regarding merger of the Admission Agreement and the Arbitration Agreement arises in the context of its argument that Respondent should be equitably estopped from denying the enforceability of the Arbitration Agreement. However, the plain language of both

agreements reveals an intention that they be construed separately, and the Court of Appeals properly reached that conclusion.

“Notably, in those opinions addressing equitable estoppel in the arbitration context, the nonsignatory’s contractual benefit is not typically an alleged benefit of arbitration[,] . . . rather, the contractual benefit typically arises from another provision of the *same contract that includes the arbitration provision.*” *Thompson v. Pruitt Corp.*, 416 S.C. 43, 59, 784 S.E.2d 679, 688 (Ct. App. 2016) (emphasis added). Thus, because the Admission Agreement and Arbitration Agreement at issue are two separate documents, there must be a merger of the two agreements before estoppel can apply. *See Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 356, 755 S.E.2d 450, 455 (2014) (“Since there was no merger here, appellants’ equitable estoppel argument was properly denied by the circuit court.”); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 563, 813 S.E.2d 292, 302 (Ct. App. 2018) (“Because Mable, Husband, and the Estate received no benefit from the Arbitration Agreement, equitable estoppel would only apply if documents were merged.”).

“The general rule is that, *in the absence of anything indicating a contrary intention*, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together.” *Klutts Resort Realty, Inc. v. Down’Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977) (emphasis added). In *Coleman*, *Thompson*, and *Hodge*, our courts identified several factors which evidence an intent to treat separate admission and arbitration agreements, signed at the same time and during the same transaction, as individual documents.

In *Coleman*, the admission agreement contained an “Entirety of Agreement” clause providing:

This Agreement, including all Exhibits hereto, and the Arbitration Agreement between the Facility and the Resident, if the parties sign one, supersede all other agreements, either oral or in writing between the parties, and contain all of the promises and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, or promises have been made by any party or anyone acting on behalf of any party, that are not contained in this Agreement or in the Arbitration Agreement. This Agreement may be amended only by a written agreement signed on behalf of the Facility and the Resident.

407 S.C. at 355, 755 S.E.2d at 455. This Court noted that on its face, this clause recognized the “separatedness” of the two agreements rather than a merger. *Id.* Additionally, this Court pointed to the fact that the arbitration agreement could be disclaimed within thirty days while the admission agreement could not. *Id.* Finally, this Court explained “[e]ven if the ‘Entirety’ clause create[d] an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter.” *Id.* at 355–56, 755 S.E.2d at 455.

Similarly, in *Thompson*, the Court of Appeals found that separate admission and arbitration agreements did not merge because the arbitration agreement could be disclaimed within thirty days while the admission agreement could not, and the execution of the arbitration agreement was not a condition precedent for admission to the nursing facility. 416 S.C. at 53, 784 S.E.2d at 685.

In *Hodge*, the Court of Appeals again found no merger between separate admission and arbitration agreements. 422 S.C. at 563, 813 S.E.2d at 302. In reaching its conclusion, the Court noted that the admission agreement was governed by South Carolina law, but the arbitration agreement was governed by federal law. *Id.* at 562, 813 S.E.2d at 302. Additionally, like the agreements in *Coleman*, the arbitration agreement recognized the “separatedness” of the documents by referring to them separately as “this Agreement” and “the Patient/Resident’s Admission Agreement.” *Id.* The Court further relied on the facts that each document was separately paginated, each had its own signature space, and the arbitration agreement was not required for admission to the facility. *Id.* at 562–63, 813 S.E.2d at 302.

Recently, in *Estate of Solesbee by Bayne v. Fundamental Clinical and Operational Servs., LLC*,<sup>3</sup> the Court of Appeals reaffirmed the applicability of the factors identified in *Coleman, Thompson, and Hodge*. In the case, a nursing facility argued that a decedent’s estate should be estopped from denying the enforceability of an arbitration agreement because it merged with the facility’s admission agreement. *Id.* at 647, 885 S.E.2d at 149. In analyzing this issue, the Court of Appeals noted that the arbitration agreement was governed by federal law while the admission agreement was governed by state law, the language of the arbitration agreement recognized the two documents as separate, each document was separately paginated and had its own signature page, and the facility’s attorney acknowledged that the arbitration agreement was not required for decedent to be admitted to the facility. *Id.* at 648–49, 885 S.E.2d at 149. Accordingly, in reliance on *Coleman, Thompson, and Hodge*, the Court of Appeals determined the circuit court properly denied the facility’s equitable estoppel argument because the admission agreement and arbitration agreement did not merge. *Id.* at 649, 885 S.E.2d at 149.

Like the documents in *Coleman, Thompson, Hodge, and Solesbee*, the following factors evidenced an expressed intention that the Admission Agreement and the Arbitration Agreement be construed separately. The documents bore separate titles, were separately paginated, and each had its own signature space. (R. 156; R. 190–201). The Admission Agreement was governed by South Carolina law while the Arbitration Agreement was governed by federal law.<sup>4</sup> (R. 156; R.

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<sup>3</sup> 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).

<sup>4</sup> Petitioner asserts that there is no discrepancy in the governing law provisions in the Admission Agreement and Arbitration Agreement because “South Carolina law applies to both except where displaced by federal law.” Notably, however, the Arbitration Agreement explicitly provided that it was controlled by the FAA “notwithstanding any . . . contrary state law.” (R. 156). Petitioner further acknowledges in its petition that federal arbitration law would supersede state law in regard to enforcement of the Arbitration Agreement. Finally, Petitioner argues the Arbitration Agreement is governed by state law because it expressly calls for arbitration proceedings to be conducted pursuant to the South Carolina Alternate Dispute Resolution Rules. However, while the

199, Section IX). The Admission Agreement made no reference to the Arbitration Agreement and contained an “Entire Agreement” clause. (R. 201, Section XVIII). Petitioner acknowledged the Arbitration Agreement was not required for Ms. James’s admission to its facility. (R. 113, l. 2–7; R. 133, l. 20–25; R. 186, 233, 254). Moreover, the “separatedness” of the documents was acknowledged on the face of the Arbitration Agreement itself, as the last paragraph provided, “This agreement shall remain in effect for all care rendered at Facility and shall survive any termination or breach of this Agreement *or the Admission Agreement*.” (R. 156) (emphasis added). Ultimately, the Admission Agreement and Arbitration Agreement plainly evidence an intent to remain separate on their face, and the Court of Appeals properly affirmed the circuit court’s determination that the documents did not merge.

Petitioner argues the fact that the Arbitration Agreement was voluntary does not provide a reasonable inference of an intent contrary to merger of the agreements. However, Petitioner fails to recognize that the voluntary nature of the Arbitration Agreement renders the presumption of merger inapplicable. It goes without saying that the purpose of the Admission Agreement was to facilitate Ms. James’s admission to Petitioner’s facility and control the terms of her residency. However, because the Arbitration Agreement was not required for admission, its purpose was not to facilitate Ms. James’s admission to Petitioner’s facility. Rather, the purpose of the Arbitration Agreement was to insulate Petitioner from liability by providing an alternate forum to litigate claims against Petitioner. Consequently, because the optional nature of the Arbitration Agreement demonstrates that its purpose was separate and distinct from that of the Admission Agreement, the

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Arbitration Agreement provided that the *form of arbitration* was governed by the South Carolina ADR Rules, these procedural rules do not supplant the FAA as the governing law. Rather, when a conflict between state procedural rules and the FAA arises, procedural rules must yield to the substantive law of the FAA. *See Bean v. S.C. Cent. R.R. Co.*, 392 S.C. 532, 545, 709 S.E.2d 99, 105 (Ct. App. 2011) (“[A] local form of practice may not defeat a federal right.”).

Court of Appeals properly relied on this factor in determining the documents did not merge. *See Klutts Resort Realty, Inc.*, 268 S.C. at 88, 232 S.E.2d at 24 (“The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, *for the same purpose*, and in the course of the same transaction, the courts will consider and construe the instruments together.” (emphasis added)).

Petitioner further argues the documents should be construed together because the “Entire Agreement” clause in the Admission Agreement refers to “other Admission materials.” This argument is unavailing. Such language, at most, creates an ambiguity as to merger. In *Coleman*, the entire agreement clause in a facility admission agreement made express reference to an “Arbitration Agreement between the Facility and the Resident, if the parties sign one.” 407 S.C. at 355, 755 S.E.2d at 455. In its analysis, this Court acknowledged the possibility that this language could create an ambiguity as to merger, and concluded “the law is clear that *any ambiguity in such a clause is construed against the drafter.*” *Id.* at 355–56, 755 S.E.2d at 455 (emphasis added). Consequently, the vague reference to “other Admission materials” creates an ambiguity at best, and such ambiguity must be construed against Petitioner.

Petitioner complains that construing any ambiguity against it as the drafter creates a logical inconsistency. However, doing so is fully supported by South Carolina law and common sense. Petitioner ignores the fact that, as the party who drafted both the Admission Agreement and the Arbitration Agreement, it could have utilized any number of options to ensure that the documents would be construed as one without any ambiguity. *See Myrtle Beach Lumber Co. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981) (“The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning more than one with whom he is dealing, and that he who

has brought the agreement into existence and is thus primarily responsible for its inadequacy should justly suffer for its shortcomings.” (quoting 17A C.J.S. *Contracts* § 324)). Petitioner could have made express reference to the Arbitration Agreement in the Admission Agreement, referred to both documents as part of the same overall document, or otherwise expressly indicated that the two were meant to be construed together. Moreover, Petitioner could have simply included the Arbitration Agreement as a clause of the Admission Agreement. Because Petitioner could have easily expressed its intent for the documents to merge, it is only logical to construe undefined terms and vague references against it.

Ultimately, this Court should deny Petitioner’s petition for writ of certiorari because the Court of Appeals properly determined the Admission Agreement and Arbitration Agreement did not merge.

**II. Petitioner has abandoned its argument that the Court of Appeals erred in not reaching Petitioner’s equitable estoppel argument, and the Court of Appeals properly declined to rule on an issue not affecting the outcome of the appeal.**

At the outset, Petitioner has failed to cite any authority for the proposition that the Court of Appeals erred in failing to reach its equitable estoppel argument. Accordingly, Petitioner has abandoned this issue in its Petition. *See Glasscock, Inc. v. U.S. Fid. and Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (“South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”).

Moreover, Petitioner likely cites no authority in support of its argument because South Carolina case law is clear that appellate courts should not decide issues when a ruling on a prior issue is dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (indicating that an appellate court need not address remaining issues when

disposition of prior issue is dispositive). Here, the Court of Appeals' conclusion that the Admission Agreement and Arbitration Agreement did not merge is dispositive of Petitioner's equitable estoppel argument. As discussed above, because the Admission Agreement and Arbitration Agreement at issue are two separate documents, estoppel cannot apply unless there is a merger of the two agreements. *See Coleman*, 407 S.C. at 356, 755 S.E.2d at 455 ("Since there was no merger here, appellants' equitable estoppel argument was properly denied by the circuit court."); *Hodge*, 422 S.C. at 563, 813 S.E.2d at 302 ("Because Mable, Husband, and the Estate received no benefit from the Arbitration Agreement, equitable estoppel would only apply if documents were merged."). Accordingly, because the Court of Appeals determined the documents did not merge, it properly refused to reach Petitioner's estoppel argument.

**III. Petitioner's argument regarding equitable estoppel should be denied, as that section of Petitioner's Petition does not comply with the South Carolina Appellate Court Rules, and the circuit court properly determined that Respondent was not estopped from denying the enforceability of the Arbitration Agreement.**

Initially, Petitioner's argument regarding equitable estoppel should be denied because that section of Petitioner's Petition does not comply with Rule 242(d)(3) of the South Carolina Appellate Court Rules. Pursuant to the rule, "[t]he petition for writ of certiorari *shall contain [a] direct and concise argument* in support of the petition. The argument *on each question* shall include citation of authority and specific reference to pertinent portions of the Record on Appeal." Rule 242(d)(3), SCACR (emphases added). Notably, "[f]ailure of a petitioner to present with accuracy, brevity, and clarity the information and arguments that are essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition." *Id.*

Here, Petitioner attempts to avoid Rule 242(d)(3)'s page limitation by incorporating by reference its appellate briefs. However, there is nothing in Rule 242 indicating that a Petitioner

may incorporate such briefs by reference into a petition for writ of certiorari.<sup>5</sup> To the contrary, such practice would negate the requirements of Rule 242(d)(3), as a party could simply file a barebones petition and incorporate by reference its appellate briefs in lieu of argument and citation to authority. Moreover, such practice would not provide this Court with “[a] direct and concise argument in support of the petition[.]” as this Court would instead be forced to access and sift through appellate briefs to determine the merits of a petition. *Id.* Ultimately, Petitioner’s attempt to incorporate by reference its appellate briefs in lieu of a direct and concise argument openly flouts Rule 242(d)(3). Consequently, Petitioner’s argument regarding equitable estoppel should be rejected for failure to comply with the South Carolina Appellate Court Rules.<sup>6</sup>

Assuming, arguendo, that this issue has been properly raised and that the Admission Agreement and Arbitration Agreement merged, there is not sufficient evidence in the record to satisfy the elements of estoppel. Direct benefits estoppel applies when (1) the nonsignatory’s claim arises from the contractual relationship, (2) the nonsignatory has exploited other parts of the contract by reaping its benefits, and (3) the claim relies only on the contract terms to impose liability. *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 230, 847 S.E.2d 268, 272 (Ct. App. 2020). Crucially, because equitable estoppel is “[b]orn of equity, the heart of the theory ‘is that the party entitled to invoke the principle was misled to his injury.’” *Id.* at 233, 847 S.E.2d at

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<sup>5</sup> Conversely, the drafters of the South Carolina Appellate Court Rules included language expressly allowing incorporation by reference where such practice is permissible. *See, e.g.*, Rule 208(b)(6), SCACR (“In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief, and *any party may adopt by reference all or any part of the brief of another.*” (emphasis added)). Accordingly, the failure to include such language in Rule 242 is cogent evidence that the drafters did not intend to allow parties to incorporate their appellate briefs into a petition for a writ of certiorari.

<sup>6</sup> As an alternative argument, Petitioner has abandoned this argument by failing to cite any supporting authority in its Petition. *See Glasscock*, 348 S.C. at 81, 557 S.E.2d at 691 (“South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”).

274 (quoting *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 601, 799 S.E.2d 912, 916 (2017)). Accordingly, “[e]stoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001) (quoting *Evins v. Richland Cty. Historic Pres. Comm’n*, 341 S.C. 15, 20, 532 S.E.2d 876, 878 (2000)). Because “[e]quitable estoppel is, ultimately, a theory designed to prevent injustice,[] it should be used sparingly.” *Wilson*, 426 S.C. at 345, 827 S.E.2d at 177.

First, Petitioner failed to present any evidence that Ms. James or Respondent exploited the benefits of the Admission Agreement. Within three months of Ms. James’s admission to Petitioner’s facility for what was supposed to be a temporary stay, Petitioner caused her injuries that led to her death. South Carolina courts have previously found that a party received no benefit from an admission agreement under similar circumstances. *See Hodge*, 422 S.C. at 563, 813 S.E.2d at 302 (“The only agreement from which Respondents even arguably received a benefit was the Admission Agreement because Mable was admitted to the Facility as a result of it. However, *because the Facility allegedly caused Mable’s injuries that later led to her death, we find it difficult to find she benefited even from being admitted.*” (emphasis added)). Similarly, Petitioner presented no evidence indicating that Respondent exploited the benefits of the Admission Agreement.

Second, Petitioner failed to demonstrate that Respondent’s claims arose solely from the Admission Agreement. “[D]irect benefits estoppel is not implicated simply because a claim relates to or would not have arisen ‘but for’ a contract’s existence.” *Wilson*, 426 S.C. at 343, 827 S.E.2d at 176. Rather, direct benefits estoppel applies only when the claim is dependent on the existence of a contract. *See id.* (“When a claim depends on the contract’s existence and cannot stand independently—that is, the alleged liability ‘arises solely from the contract or must be determined

by reference to it’—equity prevents a person from avoiding the arbitration clause that was part of that agreement.” (quoting *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 637 (Tex. 2018))). Stated differently, if a claim is based on general duties imposed by law, direct benefits estoppel does not apply. *See id.* (“[W]hen the substance of the claim arises from general obligations imposed by state law, including statutes, torts and other common law duties, or federal law,’ direct-benefits estoppel is not implicated even if the claim refers to or relates to the contract *or would not have arisen ‘but for’ the contract’s existence.*” (quoting *Jody James Farms, JV*, 547 S.W.3d at 637)).

Here, Respondent brought claims for negligence, gross negligence, and wrongful death against Petitioner. These claims arise from the general duties of care imposed on Petitioner by South Carolina tort law. *See Weaver*, 431 S.C. at 231, 847 S.E.2d at 272 (“[N]ursing home contracts [do not] supplant common law duties imposed by the law of ordinary negligence.”). Therefore, Respondent’s claims do not rely on the Admission Agreement and could stand independently. As such, the mere existence of the Admission Agreement is not sufficient to support the application of estoppel. *See Wilson*, 426 S.C. at 343, 827 S.E.2d at 176 (“[D]irect benefits estoppel is not implicated simply because a claim relates to or would not have arisen ‘but for’ a contract’s existence.”).

Finally, Petitioner failed to present any evidence demonstrating that it was misled by Ms. James, Ms. Dunham, or Respondent. *See Weaver*, 431 S.C. at 233, 847 S.E.2d at 274 (“Born of equity, the heart of the theory ‘is that the party entitled to invoke the principle was misled to his injury.’” (quoting *Rodarte*, 419 S.C. at 601, 799 S.E.2d at 916)). Any allegation that Ms. James misled Petitioner is directly contradicted by the circuit court’s finding that that Ms. James was not consciously aware of anything that was occurring at the time of her admission. (R. 9). *See*

*Thompson*, 416 S.C. at 60, 784 S.E.2d at 689 (“Here, Mother had dementia prior to being admitted to UniHealth. Therefore, *her incapacity prevented her from forming the intent or having the requisite knowledge to mislead Appellants.*” (emphasis added)). Similarly, as to Respondent, Petitioner did not present any evidence demonstrating that the two parties had any contact prior to the institution of the case at bar.

As to Ms. Dunham, the record reveals that she presented Petitioner with an unexecuted power of attorney prior to signing the Admission Agreement and Arbitration Agreement. However, Petitioner presented no evidence that it requested or sought documentation clarifying what authority to act on behalf of Ms. James, if any, Ms. Dunham possessed at the time of admission.<sup>7</sup> Moreover, Petitioner produced no evidence that Ms. Dunham had a better understanding of the authority necessary to sign documents on Ms. James’s behalf than Petitioner. To the contrary, as a corporate entity specializing in long-term care and skilled nursing, Petitioner was significantly more sophisticated and experienced with regard to the authority necessary to execute such documents. *See Zabinski*, 346 S.C. at 589, 553 S.E.2d at 114 (“Estoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other.” (quoting *Evins*, 341 S.C. at 20, 532 S.E.2d at 878)). Accordingly, any misunderstanding as to whether an

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<sup>7</sup> Notably, the section of the Admission Agreement titled “Miscellaneous” included the following requirements regarding authority:

3. A copy of any court order appointing a guardian for the Resident’s person or estate must be supplied to the Facility. This court order must appoint the legal guardian to sign contracts on behalf of Resident. The legal guardian will only be given such rights under this Agreement as are set out in that court order. . . .

4. Representative will supply Facility with a copy of any power of attorney, durable power of attorney, and durable power of attorney for health care or other legal documentation permitting him or her to act on Resident’s behalf. . . .

(R. 200, Section XVII).

unexecuted power of attorney gave Ms. Dunham authority to make decisions on Ms. James's behalf was the result of Petitioner's own failures to determine whether such authority existed and to require documentation of such authority as required by the Admission Agreement. *Cf. McCall v. Finley*, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987) (“[I]t is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority.” (alteration in original) (quoting *Justus v. Universal Credit Co.*, 189 S.C. 487, 495, 1 S.E.2d 508, 511 (1939))).

Ultimately, the record is devoid of evidence supporting the application of estoppel in favor of Petitioner. The circuit court's refusal to do so should be affirmed.

**IV. As an additional sustaining ground, the Court of Appeals' opinion should be affirmed because the circuit court's unchallenged finding that Ms. Dunham did not have the authority to sign the Admission Agreement precludes a finding of merger and the application of equitable estoppel.**

A respondent may raise “any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.” *I'on, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). “The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment.” *Id.* at 420, 526 S.E.2d at 723.

Here, the circuit court found in its May 4, 2022 order that (1) the healthcare power of attorney presented to Petitioner by Ms. Dunham was not executed by Ms. James, (2) there was no evidence that Ms. Dunham held a valid healthcare power of attorney, (3) Ms. Dunham did not have the legal authority to enter the Admission Agreement on Ms. James's behalf under the South Carolina Adult Health Care Consent Act, S.C. Code Ann. § 44-66-10 *et seq.*, because she constituted a minority of Ms. James's children, and (4) Ms. James was not consciously aware of anything that was occurring at the time of her admission. (R. 6, 9). Based on these findings, the

circuit court concluded that “[b]ecause Emma Dunham lacked legal authority to enter into legal agreements on behalf of her mother, neither the Arbitration Agreement nor the Admission Agreement can be considered to be valid.” (R. 6). These findings and conclusions of law were further relied on and incorporated into the circuit court’s November 28, 2022 order and December 28, 2022 order. (R. 16, 19). Notably, Petitioner did not challenge any of these findings while before the Court of Appeals, so they have become the law of the case. *See Walters v. Canal Ins. Co.*, 294 S.C. 150, 151, 363 S.E.2d 120, 121 (Ct. App. 1987) (“Where no exception is taken to findings of fact or conclusions of law, they become the ‘law of the case.’” (quoting *Ashy v. WeCare Distributions, Inc.*, 289 S.C. 526, 528, 347 S.E.2d 123, 125 (Ct. App. 1986))).

The circuit court’s unchallenged rulings are dispositive of the issues raised in Petitioner’s petition. The circuit court’s finding that Ms. Dunham did not have authority to sign the Admission Agreement renders Petitioner’s merger argument moot. Because the circuit court concluded that the Admission Agreement was invalid, whether it “merged” with the invalid Arbitration Agreement is irrelevant because there is no valid or enforceable contract. *See Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.”). Similarly, Ms. James’s estate cannot be estopped from avoiding the Arbitration Agreement because there was no contractual relationship between Petitioner and Ms. James, Ms. James did not have the mental capacity to exploit the benefits of any contract, and there are no valid contractual terms to be relied on to impose liability. *See Weaver*, 431 S.C at 230, 847 S.E.2d at 272 (providing that direct benefits estoppel applies when (1) the nonsignatory’s claim arises from the contractual relationship, (2) the nonsignatory has exploited other parts of the contract by reaping its benefits, and (3) the claim relies only on the contract terms to impose liability).

Ultimately, because the circuit court's conclusion that both the Admission Agreement and Arbitration Agreement were invalid is dispositive, this Court may rely on those findings as an additional sustaining ground in affirming the Court of Appeals' opinion. *See Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996) (indicating that where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case (citing *Biales v. Young*, 315 S.C. 166, 432 S.E.2d 482 (1993))).

### CONCLUSION

Based on the foregoing, Petitioner's Petition for a Writ of Certiorari should be denied.

Respectfully submitted:



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April 18, 2024