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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Court of Common Pleas

The Honorable Grace Gilchrist Knie, Circuit Court Judge

Case No.: 2020-CP-42-03593
Appellate Case No. 2021-000707

Trina Dawkins,
as Personal Representative of the Estate of William Dawkins,
Respondent,

v.

Fundamental Clinical and Operational Services, LLC;
Fundamental Administrative Services, LLC;
THI of South Carolina, LLC;
THI of South Carolina at Spartanburg, LLC;
THI of South Carolina at Magnolia Manor-Spartanburg, LLC
d/b/a Magnolia Manor-Spartanburg,
Appellants.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. THE COURT OF APPEALS PROPERLY AFFIRMED THE CIRCUIT COURT'S FINDING THAT NO MERGER OCCURRED.

II. THE DOCTRINE OF EQUITABLE ESTOPPEL DOES NOT ALLOW THE APPELLANTS TO PREVAIL ON A MERGER THEORY.

III. APPELLANTS ARE NOT ENTITLED TO RELIEF BECAUSE THERE WAS NEVER A VALID CONTRACT TO ARBITRATE.

STATEMENT OF THE CASE

In the Spring of 2017, William Dawkins was discharged from the hospital for rehabilitation following major surgery. (R. p. 2). He was discharged to a Skilled Nursing facility operated by the Appellants in this case, Magnolia Manor of Spartanburg (hereinafter "Facility"). *Id.* According to the allegations in the Complaint, over the ensuing weeks, the Appellants and their agents failed to properly treat Mr. Dawkins, leading to severe injuries and multiple surgeries. (R., p. 24-25, ¶ ¶ 12 – 20).

The process of admitting Mr. Dawkins to the facility is at issue in this case, and the following is undisputed: There is no evidence that Mr. Dawkins had executed a Power of Attorney and thus appointed an attorney-in-fact; Mr. Dawkins had never been deemed incompetent during the course of any judicial proceeding, nor had a Guardian been appointed for him; no physician had ever certified that Mr. Dawkins lacked the mental capacity to make his own decisions; Mr. Dawkins did not sign any paperwork at the time of admission, including either the Admission Agreement or the Arbitration Agreement (R. pp. 105, 157-168). There is no evidence that Mr. Dawkins was ever even presented with or consulted about any of the paperwork signed by his daughter, Melissa Dawkins (hereinafter "Melissa"), at the time of admission to the Appellants' facility.

Melissa did sign an Admission Agreement and a separate Arbitration Agreement at the time of her father's admission and signed both documents under a signature block that read: "Durable Power of Attorney for Health Care / Legal Guardian / Responsible Party." (R. p. 105, 168). Appellants do not dispute that Melissa did not offer a written Power of Attorney, a written Probate Court order, or any other legal document purporting to grant the authority to sign such documents. Appellants do not dispute that Melissa lacked any express legal authority to sign such documents.

The Respondent filed a Notice of Intent to File Suit in April of 2020, and after an impasse at the mandatory mediation, filed a Summons and Complaint on October 14, 2020, along with serving discovery requests. (R. p. 2, 92-101). The Defendants filed the Motions to Compel Arbitration and Motions to Stay this case on February 12, 2021 and February 21, 2021 (R. pp. 102-111). A hearing was held before the Honorable Judge Knie on March 16, 2021. The Court denied the Motion to Compel Arbitration and the Motions to Stay in an April 8, 2021 Order. (R. pp. 1-14). The central finding of the Circuit Court was that "there is no valid and enforceable contract. William Dawkins signed no Arbitration Agreement nor did he sign any other document giving Melissa the express authority to sign for him." *Id.* at 5. The Court further held that:

> when a healthcare facility attempts to bind a patient to an Arbitration Agreement signed by a family member, the facility must make a clear showing that the family member was a legal agent of the patient. . . . In this case, the Defendants have presented no evidence to show that Ms. Dawkins held herself out as her father's agent in any way . . . .
>
> *Id.* at 8.

Following a denied motion to alter, amend, and/or reconsider the decision, the Appellants filed a notice of Appeal on July 1, 2021. (R. pp. 15-20, 331-334). The Court

of Appeals decided the appeal without oral argument via the unpublished Subject Opinion, filed December 13, 2023. Following a denial of their petition for rehearing, Petitioners filed a petition for a writ of certiorari on March 28, 2024.

STANDARD OF REVIEW

Whether a claim is arbitrable "is an issue for judicial determination, unless the parties provide otherwise." *Zabinski v. Bright Acres Assocs.,* 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). The appellate court reviews the circuit court's determination of whether a claim is arbitrable under a de novo standard. *Chassereau v. Global Sun Pools, Inc.,* 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007). "However, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings." *Timmons v. Starkey,* 380 S.C. 590, 595, 671 S.E.2d 101, 104 (Ct. App. 2008).

ARGUMENTS

I. The Court of Appeals properly affirmed the Circuit Court's finding that no merger occurred.

In the Subject Opinion, the Court of Appeals held that "the circuit court did not err in denying the Facility's motion to compel arbitration because the Admission Agreement and the Arbitration Agreement did not merge." (Subject Opinion, citations omitted). This holding is consistent with South Carolina precedent and mirrors the holdings in several cases cited in the Subject Opinion, namely *Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC,* 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023), *cert. pending*, *Coleman v. Mariner Health Care, Inc.,* 407 S.C. 346, 755 S.E.2d 450 (2014), and *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC,* 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018).

Appellants are reliant on this argument because Melissa, who lacked actual authority to act on her father's behalf, signed an admission agreement and Mr. Dawkins supposedly benefited from this agreement. However, because the law is so clear that she lacked the ability to bind him to an arbitration agreement, the Facility is left with the merger argument to bootstrap its way to a binding arbitration agreement. This argument has been rejected repeatedly by our Appellate Courts and was properly rejected here. The evidence of the record does not support merger, and the Circuit Court found that the two agreements had not merged. This finding should not be disturbed on appeal. Particularly, the Court found that the two agreements were separate documents; contemplated interpretation under different bodies of law; were separately paginated, titled, and named; and had separate signature blocks. (R. p. 11). These findings were in line with well-established South Carolina law on this issue.

Merger does not occur where the documents recognize the "separatedness" of the arbitration agreement, which is indicative of an intent that the common law doctrine of merger not apply. *See Coleman* at 355, 755 S.E.2d at 455. In *Coleman,* Ann Coleman signed several documents, including arbitration agreements, when admitting her sister to a health care facility, and the facility made a similar merger/estoppel argument that the Appellants make in this case. *Id.* The circuit court denied the motion to compel in *Coleman*. *Id.* On appeal, the *Coleman* court found the language in the section titled "Entirety of Agreement" "recognizes the 'separatedness' of the [arbitration agreement] and the admission agreement, not a merger of the two contracts." *Coleman,* 407 S.C. at 355, 755 S.E.2d at 455. Furthermore, the court noted that the "Entirety of Agreement" clause creates an ambiguity as to merger, and "the law is clear that any ambiguity…is

construed against the drafter…." *Id.* at 355-56, 755 S.E.2d at 455. The *Coleman* court ruled the circuit court properly denied [the health care facility's] equitable estoppel arguments because no merger occurred. *Id.* at 356, 755 S.E.2d at 455.

Additionally, merger does not occur where an arbitration agreement and admission agreement are governed by different law, reference each other separately, provide different mechanisms by which they can be revoked, are separately paginated, and have their own signature page. *See Hodge*, 422 S.C. at 562-563, 813 S.E.2d at 302. In *Hodge*, 422 S.C. at 550, 813 S.E.2d at 295, Mable Hodge entered a rehabilitation facility. *Id.* Mable's husband executed various documents related to her admission, including an arbitration agreement and an admission agreement. *Id.* Mable was not present at the time her husband signed these documents on the day before her admission because she was still in the hospital. *Id.* However, Mable was competent at the time of her admission. *Id.* 422 S.C. at 550, 813 S.E.2d at 296. The circuit court denied [the facility's] motion to dismiss or compel arbitration. *Id.* The facility appealed arguing the circuit court erred in finding the arbitration agreement was separate from the admissions agreement because the two documents were merged. *Id.* 422 S.C. at 556, 813 S.E.2d at 299. The Court of Appeals upheld the circuit court, finding the admissions agreement and arbitration agreement did not merge. *Id.* 422 S.C. at 563, 813 S.E.2d at 302.

The *Hodge* Court based its rulings in part on the fact that the "Admissions Agreement indicated it was governed by South Carolina law, whereas the Arbitration Agreement stated it was governed by federal law." *Id.* 422 S.C. at 562, 813 S.E.2d at 302. Additionally, similar to *Coleman*, the Arbitration Agreement recognized separatedness because it referenced the two documents separately, "stating '[a]ny and all claims or

controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement.'" *Id.* Furthermore, the arbitration agreement stated it could be revoked within thirty days, while the admission agreement did not contain such an indication; rather, it provided the admissions agreement could only be amended by the patient with written agreement executed by the facility and the patient. *Id.* The Court noted that each document was separately paginated and had its own signature page. *Id.* Finally, signing the arbitration agreement was not a precondition to admission. *Id.* at 562-63, 813 S.E.2d at 302. Based on this, the Court of Appeals found the admissions agreement and arbitration agreement did not merge. *Id.* at 563, 813 S.E.2d at 302. Therefore, because Mable received no benefit from the arbitration agreement, equitable estoppel did not bar Mable's claims. *Id.*

The instant case has many similarities to *Coleman* and *Hodge:* the Admission Agreement and the Arbitration Agreement are two separate documents; the Admission Agreement contemplates interpretation under state law while the Arbitration Agreement states that it is solely to be interpreted under federal law; the documents are separately paginated; the documents are titled separately; the documents have separate filenames; and, the documents have separate signature and date blocks. (R. p. 105, 168). The Admission Agreement also contains an Integration Clause, which states: "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 may not be amended except by written agreement of the parties." (R. p. 168). The words "arbitration," or "alternative dispute resolution," or other similar terms are not mentioned a single time in the Admission Agreement. One must strain logic beyond

anything comprehensible to be able to make the argument that a contract with an Integration Clause, *which explicitly states that it contains the entire understanding between the parties and that other writings are not part of the agreement,* actually contemplated and included an entirely separate document which is never referenced a single time. In their Petition, the Appellants argue that binding precedent from *Hodge* and *Solesbee* should be overturned on their way to the claim that "merger is the default position" and should be presumed (Appellants' Petition for a Writ of Certiorari, p. 17). This assertion ignores the fact that purpose of the two agreements was different (an exchange of services for money versus a binding dispute resolution procedure for any and all claims) and that the documents clearly indicate a contrary intention (the Integration clause).

II. The Doctrine of Equitable Estoppel does not allow the Appellants to prevail on a merger theory.

Assuming *arguendo* that the Court of Appeals was in error by holding that the agreements did not merge, the Appellants must still make a showing that the doctrine of equitable estoppel should apply to prevent the Respondent from arguing that the arbitration agreement is enforceable. The Appellants' argument clearly fails on this issue as well.

"Equitable estoppel is a contract defense and the party asserting this defense bears the burden of proving all of its elements." *Kelly v. Logan, Jolley & Smith*, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). This defense requires proof that the party to be estopped **(1) acted in a way amounting to a false representation;** (2) intended that such conduct be acted on by the other party; and, (3) had actual or constructive knowledge of

the real facts. *Strickland v. Strickland,* 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007) (emphasis added). The party asserting the 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 of the conduct of the party to be estopped. *Id.* Equitable doctrines such as estoppel favor diligent parties who actively endeavor to protect their rights. As person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. *Binkley v. Rabon Creek Watershed Conservation Dist. Of Fountain Inn,* 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-09 (Ct. App. 2001).

By its own admission, the facility in this case is a skilled nursing facility which provides medical services to large numbers of medically complex patients simultaneously. It is a sophisticated corporate entity which operates under the law of South Carolina and is aware of the impact that state and federal rules and laws have in this heavily regulated industry. The estoppel argument in this case fails because the Appellants are unable to show any false representation made by Melissa during the admission process, much less to show that they lacked the means to uncover that Melissa did not have the legal authority to act on her father's behalf.

A Power of Attorney does not exist in South Carolina unless there exists a "writing or other record that grants authority to an agent to act in place of the principal . . . ." S.C. Code Ann. § 62-8-102 (7) (2017). "A power of attorney must be: signed . . . . attested . . . [and] acknowledged or proved." S.C. Code Ann. § 62-8-105 (2017). A Guardian is "a person appointed by the court as guardian." S.C. Code Ann. § 62-5-101

(9) (2017). A Guardianship only exists where the Probate Court has entered "an appropriate order" appointing a Guardian, after making specific findings of facts as to the nature of the individual's incapacity. S.C. Code Ann. §§ 62-5-303D, 304 (2019). Perhaps most critically, the Admission Agreement required that Facility obtain proof of "any power of attorney, durable power of attorney, durable power of attorney for health care, or other legal documentation permitting the [Representative] to act on Resident's behalf." (R. p. 167). It is undisputed that the Facility did not do this at the time of admission, but this language shows that the Facility understood the complexities of dealing with agency issues under South Carolina law.

There is no evidence that Melissa made any kind of false representation to the facility regarding her agency status in relation to her father. There is strong evidence that the facility and its representatives fully understood who was and who was not a valid legal agent. Indeed, these questions are vital to the everyday functioning of that particular industry. These are sophisticated corporate entities who regularly admit legally incapacitated individuals to their facility, and they cannot credibly claim to have been the 'victims' of a false representation here. Throughout the course of this case, Appellants have never addressed either the false representation requirement and the knowledge requirement of South Carolina's longstanding estoppel case law. Given that Appellants have no evidence that Melissa made a false representation and no credible argument that they would have done something different otherwise, the argument clearly fails as to any doctrine of estoppel which requires a showing of fraud-like behavior.

This has led the Appellants to a final fallback position, the Direct Benefits Test to support an estoppel finding. In *Wilson,* the Direct Benefits Test cited requires that the

non-signatory "may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him ." *Wilson v. Willis*, 426 S.C. 326, 340, 827 S.E.2d 167, 175 (2019). "Stated another way, '[u]nder the direct benefits theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory 'knowingly exploits' the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement'" *Wilson* at 340, 827 S.E.2d 175-76 (citing *Belzberg v. Verus Invs. Holdings Inc.*, 21 N.Y.3d 626, 977 N.Y.S.2d 685, 999 N.E.2d 1130, 1134 (2013).

"Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." *Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 206, 687 S.E.2d 714, 718 (Ct. App. 2009) (quoting *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship.*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998). Where a contract lacks valuable consideration, the contract will be deemed unenforceable. Courts have held that where there is a mutual promise to arbitrate, there must be additional consideration. However, in determining whether adequate consideration exists in a contract, or in an arbitration agreement under the FAA guided by principles of contract law, our courts must examine and stay within the confides of the four corners of the instrument. *State Acc. Fund v. S.C. Second Injury Fund*, 388 S.C. 67, 76, 693 S.E.2d 441, 445 (Ct. App. 2010) (quoting *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). Therefore, our courts

must assess whether the arbitration agreement itself contains sufficient consideration in the form of a mutual exchange of promises to arbitrate; it does not.

There is no direct benefit to nursing home residents from a pre-admission arbitration contract separate from the admission agreement. Admission can be the 'direct benefit' that forces Respondent to arbitrate only if admission and arbitration are governed by the same contract. In the case at hand, even assuming Melissa had authority, there is no valuable consideration in agreeing to the Arbitration Agreement. The agreement contains no benefit or detriment to the parties. Therefore, where the Arbitration Agreement lacks consideration the court should not compel arbitration. Facility was prohibited from asking or receiving any consideration from Mr. Dawkins or any patient. Facilities must "not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the state plan…any other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay at the facility." 42 U.S.C. § 1396r(c)(5)(A)(iii)(2021). Any nursing home facility that accepts Medicare or Medicaid funds for resident care is *expressly forbidden* from accepting any other money, benefit or other consideration as a precondition for admitting a patient to the facility or as a requirement for continued stay in a facility.

Finally, the Appellants cannot credibly point towards any attempt on behalf of Mr. Dawkins to 'exploit' any of the provisions of the arbitration agreement. He and his estate have always done the exact opposite.

III. Appellants are not entitled to relief because there was never a valid contract to arbitrate.

In determining whether a particular dispute can be compelled into arbitration, the Court must first determine whether a valid contractual agreement to arbitrate exists between the parties. The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. *See Aiken v. World Finance Corp. of S.C.*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); *MBNA America Bank, N.A. v. Christianson*, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008). In determining whether an agreement to arbitrate exists, "the court should apply 'ordinary state-law principles that govern the formation of contracts.'" *Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (Ct. App., 1999). Arbitration is available only when the parties involved contractually agree to arbitrate. *Id.* South Carolina common law requires that in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989). Arbitration will be denied if a court determines no agreement to arbitrate existed. S.C. Code Ann. § 15-48-20(a) (1978).

Appellants are effectively attempting a motion to enforce a contract. In the ordinary course, a nursing home resident who alleges injury would bring his claims before the Court as Respondent has done here and the nursing home would mount its defense in the same forum. A valid contract to arbitrate their disputes is the only way for the parties to opt out of the judicial process. Appellants had no such contract with Mr. Dawkins. The "Arbitration Agreement" on which Appellants' argument relies is invalid because, under bedrock contract principles, there can be no contract without the mutual

assent of its proposed parties. Mr. Dawkins never signed the Arbitration Agreement and he did not empower Melissa to enter into such an agreement on his behalf. All of this is undisputed. The Appellants in this case cannot point to any evidence in the record which shows that Melissa had the legal authority bind her father to a contract of which he had no knowledge, much less to waive Mr. Dawkins' Constitutional right to a jury trial.

This case is on all fours with several recent South Carolina cases. Perhaps the case most analogous to the instant case is *Coleman v. Mariner Health Care, Inc*., 407 S.C. 346, 353, 755 S.E.2d 450, 454 (2014). *Coleman* clearly stands for the proposition that South Carolina's Adult Health Care Consent Act allows for certain individuals, under certain conditions, to make health care conditions for patients who are unable to consent, *but that this authority absolutely does not extend to the execution of an arbitration agreement.*

The South Carolina Adult Health Care Consent Act provides the order of priority of persons who have authority make health care decisions for patients who are unable to consent. S.C. Code Ann. § 44-66-30 (2019). An inability to consent is a specific situation defined by statute, where "two licensed physicians, each of whom has examined the patient" certify that the patient lacks the ability to consent. S.C. Code Ann. § 44-66-20 (2014). This authority extends to health care decisions, and secondarily to financial decisions necessitated by those decisions. *Coleman v. Mariner Health Care, Inc*., 407 S.C. 346, 353, 755 S.E.2d 450, 454 (2014). "An arbitration agreement is not considered to be a health-care decision when admission is not contingent upon its execution." *Thompson v. Pruitt Corp.*, 416 S.C. 43, 56, 784 S.E.2d 679, 686 (Ct. App. 2016) (citing *Cook v. GGNSC Ripley, LLC*, 786 F.Supp.2d 1166, 1171).

In *Coleman*, decedent's sister did not have power of attorney – she was authorized by the Act to make medical decisions for her sister – and when placing decedent in health care facility, executed both an admission agreement and arbitration agreement on behalf of decedent. *Coleman* at 350, 755 S.E.2d at 451-52. The court held that the scope of the Act is to ensure that the patient's wishes concerning her medical treatment are honored whenever possible, and that it does not confer authority to execute a document which involves neither health care nor financial terms for payment of such care. *Id.* at 352, 755 S.E.2d at 454.

Further, the court noted the importance of the "separatedness" of the arbitration agreement and admission agreement; specifically, there was a "Residential Admission and Financial Agreement" and an "Agreement for Arbitration." *Id.* at 355, 755 S.E.2d at 454-55.

> The scope of Sister's authority to consent to 'decisions concerning Decedent's health care' extended to the admission agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future. We therefore affirm the circuit court's holding that the Act did not confer authority on Sister to execute a document which involved neither health care nor financial terms for payment of such care.

Id. at 353-54, 755 S.E.2d at 454. Because admission to the facility for health-related needs was not contingent upon execution of the arbitration agreement, it could not be said that the signatory had any authority to bind the patient as to the separate, voluntary arbitration agreement. *Id.*

In the *Hodge* case, the Resident was admitted to a nursing facility while competent and without any Power of Attorney. *Hodge v. UniHealth Post-Acute Care of*

Bamberg, LLC, 422 S.C. 544, 550, 813 S.E.2d 292, 295 (Ct. App. 2018). Her husband signed all paperwork on her behalf, including an arbitration agreement. *Id.* at 550, 813 S.E.2d at 296. The Court of Appeals affirmed the Circuit Court's finding that:

> Husband's signing of the Arbitration Agreement, Admissions Agreement, and other forms does not make him [wife]'s agent. [Wife] did not have a health care power of attorney. Additionally, the Facility knew she was competent at the time of admission as indicated by the doctor's examination and allowed her to sign other forms. The record contains no evidence from the Facility that [Wife], as the principal, represented Husband was her agent.

Hodge at 573-74, 813 S.E.2d at 308. The Court found that even if the Husband did have the authority to make some decisions on her behalf, this did not extend to waiving the Constitutional right to a jury trial:

> Moreover, even if Husband had authority to handle finances or make health care decisions, as Appellants contend is evidenced by Husband signing past healthcare documents, this court has held 'the authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial.

Id. at 547, 813 S.E.2d at 308 (citing *Thompson*, 416 S.C. at 55, 784 S.E.2d at 686).

When Melissa signed the Arbitration Agreement and the Admission Agreement, she signed a signature block that identified her as either a "Durable Power of Attorney for Health Care," a "Legal Guardian" for her father, or her father's "Responsible Party." (R. p. 105, 168). There is no evidence that she was any of these things. Mr. Dawkins certainly did not sign either of the documents. Given that the Appellants are unable to show that Mr. Dawkins or a legally authorized representative signed the agreements, the

Appellants cannot show that a meeting of the minds occurred to form a valid state law contract.

This Court should follow the well-established law and rationale from *Coleman*, *Hodge*, and *Thompson.* In these cases, the Courts denied the nursing home defendants' motion to stay the action and compel arbitration because the loved one of the resident who signed the arbitration and/or admission agreements lacked capacity to bind the Resident to the arbitration agreement. In these cases, the person signing the agreement was not an authorized agent of the Resident of the facility and lacked the authority to bind that individual to an arbitration agreement, even if that individual did have the authority to make healthcare decisions for the Resident. That same result should follow in this case.

CONCLUSION

The Court of Appeals properly affirmed the Circuit Court's finding that the Admission Agreement and the Arbitration Agreement did not merge, and thus, no contract to Arbitrate was ever formed. Because this was a dispositive consideration, it was proper to decline to reach the Appellant's remaining arguments. However, even if this finding is overruled on appeal, the doctrine of equitable estoppel does not prevent Respondent from bringing her claims before a jury. As a final matter, pursuant to well-established South Carolina case law, agency considerations also preclude a finding that a valid and binding arbitration contract was formed here.

For these reasons, Respondent respectfully requests that this Court deny the instant petition, affirm the Subject Opinion, and remand this case to the Circuit Court for further proceedings.

Respectfully submitted,

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Date: April 17, 2024

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Court of Common Pleas

The Honorable Grace Gilchrist Knie, Circuit Court Judge

Case No. 2020-CP-42-03593
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Unpublished Opinion No. 2023-UP-392 (S.C. Ct. App. filed December 13, 2023)
Supreme Court Case No. 2024-000304

Trina Dawkins,
as Personal Representative of the Estate of William Dawkins,

Respondent,

v.

Fundamental Clinical and Operational Services, LLC;
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THI of South Carolina at Spartanburg, LLC;
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Petitioners,

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I, William A. Jordan, of JORDAN LAW CENTER, attorney for Respondent, hereby certify that Respondent's **RETURN TO PETITION FOR A WRIT OF CERTIORARI** was served on Petitioners on April 18, 2024, by emailing (see attached email) a copy of the same to Petitioners' counsel of record:

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I also certify that Respondent's **RETURN TO PETITION FOR A WRIT OF CERTIORARI and PROOF OF SERVICE** were filed with the South Carolina Court of Appeals on April 18, 2024, via email to ctappfilings@sccourts.org.

Respectfully submitted,

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Dawkins v. Fundamental (Sup. Ct. 24-304; Ct. App. 21-707) -- Return to Petition for a Writ of Certiorari

1 message

Leanne Hanna <leanne@jordanlawcenter.com> Thu, Apr 18, 2024 at 12:11 PM
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Attached for service in the above-referenced matter please find our **Return to Petition for a Writ of Certiorari.**

Thank you.

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