

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Maite Murphy, Circuit Court Judge

Supreme Court Case No. 2024-000310

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

.....

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Table of Authorities.....	iii
Counterstatement of Questions Presented.....	1
Statement of the Case.....	2
Argument.....	3
1. The Court of Appeals correctly applied <u>Coleman</u> and <u>Hodge</u> to reject Petitioners’ merger argument.....	5
a. Inconsistent governing law provisions.....	6
b. Separate pagination and signature pages.....	7
c. Inconsistent termination provisions.....	7
d. Arbitration not required to obtain admission.....	8
2. The Court of Appeals correctly applied <u>Coleman</u> and <u>Hodge</u> to reject Petitioners’ estoppel argument.....	8
Conclusion.....	10

TABLE OF AUTHORITIES

Cases

<u>Coleman v. Mariner Health Care, Inc.</u> , 407 S.C. 346, 755 S.E.2d 450 (2014).....	3-5, 8
<u>Hodge v. UniHealth Post-Acute Care of Bamberg, LLC</u> , 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018).....	3-8, 10
<u>Klutts Resort Realty, Inc. v. Down’Round Development Corp.</u> , 268 S.C. 80, 232 S.E.2d 20 (1977).....	5
<u>Walker v. Hallmark Longterm Care, LLC</u> , Op. No. 2023-UP-400 (S.C. Ct. App. Dec. 13, 2023).....	<u>passim</u>
<u>Solesbee v. Fundamental Clinical & Operational Services, LLC</u> , 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).....	4
<u>Thompson v. Pruitt Corp.</u> , 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016).....	3-5, 8
<u>Weaver v. Brookdale Senior Living, Inc.</u> , 431 S.C. 223, 847 S.E.2d 223 (Ct. App. 2020).....	9, 10
<u>Wilson v. Willis</u> , 426 S.C. 326, 827 S.E.2d 167 (2019).....	9

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly applied precedent by finding no merger of a nursing home's admission and arbitration contracts that contain inconsistent terms and otherwise affirmatively identify themselves as distinct legal instruments.
2. Whether the Court of Appeals properly refused to address Petitioner's estoppel argument that was wholly dependent on its flawed merger argument.

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 Petitioner Hallmark Longterm Care, LLC, d/b/a Hallmark Healthcare Center (“Petitioner”) 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 resident at Petitioner’s facility, 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 Petitioner 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, Petitioner 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 Petitioner’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, Petitioner 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, Petitioner 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).

Petitioner 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 Petitioner’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 Petitioner’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). Petitioner 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). Petitioner served its notice of appeal on June 4, 2021. (R. pp. 218-23). In an unpublished opinion on December 13, 2023, the Court of Appeals affirmed. Walker v. Hallmark Longterm Care, LLC, Op. No. 2023-UP-400 (S.C. Ct. App. Dec. 13, 2023).

ARGUMENT

On three prior occasions, South Carolina’s appellate courts have rejected the arguments Petitioner offers in support of merger and estoppel involving a purported nursing home arbitration contract. 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). Each time, the court recognized an arbitration contract does not merge with a nursing home’s admission agreement when the contracts include any of a number of textual or contextual indications of “separateness.” See e.g. Coleman, 407 S.C. at 355, 755 S.E.2d at 455. Coleman, Thompson, and Hodge also rejected any form of equitable estoppel as a means for binding a nursing home resident to an arbitration contract she did not sign. Coleman, 407 S.C. at 355, 755 S.E.2d at 455; Thompson, 416 S.C. at 58-59, 784 S.E.2d at 687-88; see also Hodge, 422 S.C. at 556-57, 813 S.E.2d at 299-300 (applying Thompson). The Court of Appeals rejected all of Petitioners’ merger and estoppel arguments again just last year. Solesbee v. Fund. Clinical & Op. Servs., LLC, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023). This Court denied certiorari in Solesbee on April 16, 2024.

The Court of Appeals was correct in relying on this recent, unbroken, and directly applicable line of precedent to find no binding arbitration contract in this case. Solesbee, 438 S.C. at 649, 885 S.E.2d at 149 (“like in Coleman and Hodge, we find there was no merger in this case and Magnolia’s equitable estoppel argument was properly denied”). Petitioner fails to state any sufficient grounds for further review. In fact, in addition to Solesbee, ***the Court has denied nearly identical cert petitions by similarly-situated nursing homes in Columbia and Charleston in just the last year.*** Daniels v. THI of S.C. at Columbia, Case No. 2022-001503, *cert denied* May 24, 2023; Ladson v. THI of S.C. at Charleston, Case No. 2022-001286, *cert denied* Apr. 18, 2023.

Just like those cases, Petitioner’s arguments here are at odds with a long standing and well-reasoned line of precedent. First, Petitioner claims the Arbitration Agreement here is different from the contracts at issue in Coleman and Hodge, but the truth is the contracts are functionally indistinguishable for purposes of the merger and estoppel analysis. Second, Petitioner implicitly asks the Court to overrule Coleman, Thompson, Hodge, and Solesbee by baldly asserting that the

evidence against merger identified in those cases should not count. None of these arguments are supported by the law or the record, and the petition for writ of certiorari should be denied. At this point, the petitions nursing homes like Petitioner's Facility continue to file in this Court amount to little more than copying-and-pasting the same oft-rejected arguments from old briefs in unsuccessful appeals over the last few years. There is no South Carolina law to support their arguments, and no basis for devoting further appellate court resources to this matter.

1. The Court of Appeals correctly applied Coleman and Hodge to reject Petitioner's merger argument.

Two contracts do not "merge" if their text, context, or any of the circumstances surrounding their formation indicate the parties intended they remain distinct documents. Coleman, 407 S.C. at 355, 755 S.E.2d at 455 (quoting Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977) (stating that there is no merger if there is "*anything* indicating a contrary intention.") (emphasis added)). Starting with Coleman, South Carolina's appellate courts have identified five attributes of nursing home admission and arbitration contracts as evidence against merger:

- When one of the contracts refers to the other as a distinct document;¹
- Inconsistent governing law provisions;²
- When the contracts are titled and paginated separately and call for separate signatures.³
- Inconsistent termination provisions;⁴ and
- Admission by nursing home that agreeing to arbitration is not required to obtain a resident's admission to the facility.⁵

¹ Coleman, 407 S.C. at 355, 755 S.E.2d at 455; Hodge, 422 S.C. at 562, 813 S.E.2d at 302.

² Hodge, 422 S.C. at 562, 813 S.E.2d at 302.

³ Hodge, 422 S.C. at 562, 813 S.E.2d at 302.

⁴ 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 562, 813 S.E.2d at 302.

⁵ Thompson, 416 S.C. at 53, 784 S.E.2d at 685; Hodge, 422 S.C. at 562-63, 813 S.E.2d at 302.

At least four of these are present here. Walker, Op. No. No. 2023-UP-400, at 4. There is no legal basis for Petitioner’s attempts to distinguish or reject the Court of Appeals’ accurate application of these precedents.

a. Inconsistent governing law provisions

Two contracts should not be considered as one when the parties chose to apply different governing law for each contract. As the Court of Appeals recognized, the Arbitration Agreement (R. p. 98) and Admission Agreement (R. pp. 141-52) do not apply the same substantive law. Walker, Op. No. 2023-UP-400, at 4. The Admission Agreement adopts South Carolina law. (R. p. 150) (“those laws of the State in which Facility is located”). In contrast, the Arbitration Agreement is to be interpreted consistently with substantive federal law. (R. p. 98) (“governed by the Federal Arbitration Act” (“FAA”)). Petitioner argues these governing law provisions are not inconsistent (Pet. at 9-10), but Hodge rejected that argument based on functionally identical contract language. 422 S.C. at 562, 813 S.E.2d at 302. The Hodge arbitration contract was different than its admission contract because the arbitration contract not only adopted the FAA but also specifically declined to apply the South Carolina Uniform Arbitration Act (“SCUAA”). Id. at 552, 813 S.E.2d at 296. That is precisely what the Arbitration Agreement does here. It both affirmatively states that it is governed by the FAA and specifically declines to apply the SCUAA. (R. p. 98) (“the enforcement of this Arbitration Agreement is not subject to the” SCUAA). The Arbitration Agreement goes on to reiterate its choice not to use South Carolina substantive law. Id. (choosing FAA “notwithstanding any . . . contrary state law”). Thus, the Court of Appeals correctly applied Hodge in finding the Admission Agreement and Arbitration Agreement do not merge because they contain inconsistent termination provisions.

b. Separate pagination and signature pages

Following the precedent set in Hodge, the Court of Appeals cited the Admission Agreement and Arbitration Agreement’s varying structure and formatting as further evidence against merger. Walker, Op. No. 2023-UP-400, at 4; see also Hodge, 422 S.C. at 562, 813 S.E.2d at 302 (noting “each document was separately paginated and had its own signature page”). On this point, Petitioner simply asks the Court to ignore or even overrule Hodge. Notwithstanding Hodge’s clear holding, Petitioners insist this factor “provides no reasonable inference of an intent contrary to merger.” (Pet. at 12). An unsubstantiated argument against precedent is not a valid ground for Supreme Court review. Moreover, this factor does provide evidence of the parties’ intent. The Facility did not just choose to give the Admission Agreement and Arbitration separate pagination, it also used the pagination to define each document’s limits. The Admission Agreement, consisting of 12 pages, ended not just with page 12 but with page “12 of 12.” (R. p. 152). The Arbitration Agreement’s single page was “Page 1 of 1.” (R. p. 98). These formatting choices offer further support for the many other indicators that these two contracts do not merge.

c. Inconsistent termination provisions

This factor is based on the commonsense notion that parties likely did not intend for two contracts to merge if they specifically stated that one will live on even when the other ends. Here, the Arbitration Agreement claims it will “remain in effect” even after the “termination” of the Admission Agreement. (R. p. 98). Plus, while the Arbitration Agreement contains no option for revocation, the Admission Agreement plainly states Mr. Walker could revoke its terms at any time. (R. p. 146). It is hard to imagine a clearer rebuttal to merger than for the drafter of the contracts to give the contracts different and inconsistent lifespans. Since the Arbitration Agreement supposedly

lives on even after the Admission Agreement ends, the Court correctly considered this factor as further evidence against merger.

d. Arbitration not required to obtain admission

As a final indicator against merger, the Court of Appeals faithfully adhered to precedent by citing the Facility's concession that Mr. Walker did not have to agree to arbitration to gain admission to the Facility. Walker, Op. No. 2023-UP-400, at 4. In other words, these two contracts were not tied together because Mr. Walker could gain the benefit of one without accepting the burden of the other. By conceding this was true, Petitioner was admitting evidence that the Court has twice deemed as strong evidence against merger. Thompson, 416 S.C. at 53, 784 S.E.2d at 685 (“[t]his demonstrates the parties’ intent that the two agreements retain their separate identities”); Hodge, 422 S.C. at 562, 813 S.E.2d at 302. Here again, Petitioner’s only argument is one that is effectively against precedent. Notwithstanding the holding of Thompson (that was bolstered by Hodge), Petitioners contend this factor provides no reasonable inference of an intent contrary to merger. (Pet. at 13). This argument is procedurally improper and substantively flawed for the reasons discussed above. This factor, like the two others cited above, is probative on the merger question and was properly applied to reject Petitioners’ merger argument.

2. The Court of Appeals correctly applied Coleman and Hodge to reject Petitioners’ estoppel argument.

Petitioner’s estoppel argument fails both because it is inextricably linked to its flawed merger argument and for independent reasons. Petitioner effectively acknowledges its estoppel assertion depends on a court first accepting the merger argument. (Pet. at 17). Petitioner does not argue Mr. Walker received some benefit from the Arbitration Agreement that would estop him estate from opposing arbitration. Instead, Petitioner argues he received some “direct benefit” from the Admission Agreement that estops the estate from contesting the Arbitration Agreement. That

argument could only prevail if the Court first found the Admission Agreement and Arbitration Agreement merged. Since the Court of Appeals correctly determined there was no merger, it was also correct in finding no substantive analysis of estoppel was necessary. Walker, Op. No. 2023-UP-400, at 4-5 (“Because we find the documents did not merge . . . we decline to reach [Petitioner’s] remaining arguments”).

Moreover, even if Petitioner could prove merger, it still could not make the necessary showing to prevail on equitable estoppel. Petitioner completely overlooks the governing standard for applying the “direct benefit” form of equitable estoppel in nursing home arbitration cases. While South Carolina law recognizes the possibility that a nonsignatory may be required to arbitrate under a contract she did not sign, the party asserting estoppel must make three distinction showings. Weaver v. Brookdale Sr. Living, Inc., 431 S.C. 223, 230, 847 S.E.2d 223 (Ct. App. 2020). Petitioner would have to show (1) Mr. Walker’s claim arose from a contractual relationship; (2) Mr. Walker “exploited” other parts of the contract by reaping its benefits; and (3) his claim “relies solely on the contract terms to impose liability.” Id. (citing Wilson v. Willis, 426 S.C. 326, 340-44, 827 S.E.2d 167, 175-77 (2019)).

Applying these elements, Weaver found a nursing home’s resident does not gain a “direct benefit” for estoppel purposes simply by accepting the services obtained upon admission to the home. 431 S.C. at 230-31, 847 S.E.2d at 272-73. The estate’s personal injury claims also do not “arise from” the Admission Agreement. There is no breach of contract claim, and the Admission Agreement is not referenced at all in the Complaint. Id. at 231, 847 S.E.2d at 272 (finding “arising from” requirement is not met just because claim would not exist “but for” a contract’s existence). Instead, the estate grounds its claims in duties arising from common law with no reference to any contract. Id. at 232, 847 S.E.2d at 273 (finding nursing home resident’s claims “rely on general

tort duties . . . not any provision of the residency agreement”). Under those circumstances, estoppel cannot apply because the claims do not “arise from” a contract and certainly do not “rely solely” on a contract’s terms. Id. at 232-33, 847 S.E.2d at 273 (citing Hodge as further support to show “direct benefit” estoppel does not apply to nursing home resident’s common law tort claim). Petitioner points to nothing to distinguish Weaver or to address its holding which forecloses Petitioner’s estoppel argument. Thus, the Court correctly rejected Petitioner’s attempt to apply equitable estoppel because Petitioner cannot first prove merger to then pursue estoppel. Even if the Court were to consider the merits of estoppel, Weaver is strong precedent against applying estoppel in this context.

CONCLUSION

Based on the arguments stated above, Respondent respectfully requests the Court deny the petition for writ of certiorari.

Respectfully submitted,

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