THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-CP-23-01728

Court of Appeals Case No. 2022-000398
Unpublished Opinion No. 2024-UP-084 (S.C. Ct. App. filed March 20, 2024)

Supreme Court Case No. 2024-001034

Debbie Stroud,
Guardian ad Litem for James C. Stroud,

Respondent,

v.

THI of South Carolina at Greenville, LLC
d/b/a Magnolia Manor-Greenville,
THI of Baltimore, Inc., and
THI of South Carolina, LLC,

Petitioners.

PETITION FOR A WRIT OF CERTIORARI

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Petitioners

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A. Like the circuit court, the Court of Appeals mistakenly viewed the Power of Attorney as dispositive of the Motion to Compel Arbitration and, in turn, the Motions to Stay, and the Court of Appeals erred by not addressing (a) Petitioners' threshold argument that the circuit court erred in finding the language of the Power of Attorney dispositive and (b) Petitioners' other arguments, including especially, but not limited to, the merger/equitable estoppel argument, which is a standalone argument that should prevail regardless of whether Mrs. Stroud had the authority under the powers granted to her in the Power of Attorney to bind Mr. Stroud to arbitration. 6

B. Had the Court of Appeals reached the Facility's remaining arguments, including especially, but not limited to, its merger/equitable estoppel argument, as, respectfully, it should have, the Court of Appeals should have found that the circuit court erred in not granting the Underlying Motions. More specifically, it should have found (1) that the Admission Agreement and the Arbitration Agreement merged and (2) that, because Mr. Stroud effectively embraced and directly benefitted from the Admission Agreement, Plaintiff is estopped to deny the enforceability of the Arbitration Agreement merged therewith. And in turn, the Court of Appeals should have reversed the circuit court's denial of the Motions to Stay. 9

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CERTIFICATION OF COUNSEL

Pursuant to Rule 242(d)(1), SCACR, the Facility[1] and the Other Defendants[2] (collectively, "Petitioners"), by and through their undersigned counsel, certify that the Court of Appeals filed its opinion in this matter on March 20, 2024 (the "Subject Opinion"), affirming the circuit court's denial of the Facility's motion to compel arbitration of Plaintiff's[3] claims and the Other Defendants' corresponding motions for a stay; that Petitioners timely petitioned for rehearing; and that the Court of Appeals denied rehearing by order filed May 21, 2024.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in affirming the circuit court's denial of the Motion to Compel Arbitration and, in turn, the Motions to Stay?

A. Did the Court of Appeals mistakenly view the Power of Attorney as dispositive of the Motion to Compel Arbitration and, in turn, the Motions to Stay, and therefore err by not addressing (a) Petitioners' threshold argument that the circuit court erred in finding the language of the Power of Attorney dispositive and (b) Petitioners' other arguments, including especially, but not limited to, the merger/equitable estoppel argument?

B. Had the Court of Appeals reached the Facility's remaining arguments, including especially, but not limited to, its merger/equitable estoppel argument, as, respectfully, it should have, should the Court of Appeals have found that the circuit court erred in not granting the Underlying Motions. More specifically, should the Court of Appeals have found (1) that the Admission Agreement and the Arbitration Agreement merged and (2) that, because Mr. Stroud effectively embraced and directly benefitted from the Admission Agreement, Plaintiff is estopped to deny the enforceability of the Arbitration Agreement merged therewith. And in turn, should the Court of Appeals have reversed the circuit court's denial of the Motions to Stay?

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[1] The "Facility" refers to Defendant/Petitioner THI of South Carolina at Greenville, LLC d/b/a Magnolia Manor-Greenville. It is a skilled nursing facility in Greenville County.

[2] The "Other Defendants" refers to Defendants/Petitioners THI of Baltimore, Inc., and THI of South Carolina, LLC, collectively.

[3] "Plaintiff" refers to Plaintiff/Respondent, Debbie Stroud ("Mrs. Stroud"), as guardian ad litem for her husband, James C. Stroud ("Mr. Stroud").

STATEMENT OF THE CASE

With Mrs. Stroud's help, Mr. Stroud was admitted as a resident of the Facility in March of 2017 and later readmitted to the Facility in October of 2018, following a two-week hospital stay. Mrs. Stroud handled the paperwork both times, and both times she signed an Admission Agreement[4] and an Arbitration Agreement[5] [6]on Mr. Stroud's behalf.

Representing to the Facility that she was authorized to act on behalf of Mr. Stroud, Mrs. Stroud identified herself as Mr. Stroud's attorney-in-fact pursuant to a Durable Power of Attorney (the "Power of Attorney"), a copy of which she provided to the Facility at the time of Mr. Stroud's admission. (R. p. 83:2–3, pp. 96–115, p. 189.) But unbeknownst to the Facility—and although it grants Mrs. Stroud broad authority over Mr. Stroud's affairs, to expressly include over his legal affairs, indeed, to expressly include the power to "arbitrate" on his behalf—the Power of Attorney

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[4] (R. pp. 163–186.) The Admission Agreement that Mrs. Stroud signed in 2017 is the same as the one she signed in 2018. Hereinafter, for the sake of convenience, this petition simply refers to "the" Admission Agreement, in the singular.

[5] (R. p. 95, p. 187.) The Arbitration Agreement that Mrs. Stroud signed in 2017 is the same as the one she signed in 2018. Hereinafter, for the sake of convenience, this petition simply refers to "the" Arbitration Agreement, in the singular.

[6] Without question, the Federal Arbitration Act, 9 U.S.C. §§ 1–16 (the "FAA"), applies to the Arbitration Agreement. The FAA applies "to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001); *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress's power under the Commerce Clause); *id.* at 273–77 (1995) (explaining that unless the parties specifically contract otherwise, the FAA applies whenever an arbitration agreement involves interstate commerce). Here, the Arbitration Agreement expressly states that the FAA applies. (R. p. 95, p. 187.) And this Court has expressly held that skilled nursing facility admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

contains a provision, located near the end, that prohibits Mrs. Stroud from entering into arbitration agreements on Mr. Stroud's behalf and disavows any other provision to the contrary.[7]

Besides the Power of Attorney, Mrs. Stroud also represented herself to the Facility as authorized to act for Mr. Stroud via the Admission Agreement and the Arbitration Agreement. Mrs. Stroud signed both the Admission Agreement and the Arbitration Agreement as "'Resident's[8] Durable Power of Attorney for Health Care'/'Resident's Legal Guardian'/'Resident's Responsible Party.'" (R. p. 95, p. 163, p. 175, p. 187.) In signing the Admission Agreement, Mrs. Stroud "verifie[d] that all information submitted to [the] Facility . . . is true and correct"[9] and expressly acknowledged that the "promises and representations [she made therein were] in order to induce [the] Facility to enter into this Agreement" and that the "Facility

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[7] All told, the Power of Attorney is 20 pages long. (R. pp. 96–115.) The provision that prohibits Mrs. Stroud from entering into arbitration agreements on Mr. Stroud's behalf and disavows any other provision to the contrary does not begin until page 14. It is in Article VII(6), and it states, "[n]otwithstanding any provision herein to the contrary . . . I reserve unto myself and do not grant unto my Attorney in Fact the power to waive my right to jury trial and enter into Arbitration Agreements. I do not favor Arbitration, and for that reason I do not grant unto my Attorney in Fact the power to enter Arbitration Agreements." (R. pp. 109–110.) Earlier, however, on page 5, in Article I(12), headed "Power with Respect to Legal and Other Actions" (R. p. 100 (original bold print and underlining omitted)), the Power of Attorney expressly states that Mrs. Stroud has the power to "arbitrate" on Mr. Stroud's behalf. (R. p. 100 (granting Mrs. Stroud the power "[t]o institute, supervise, prosecute, defend, intervene in, abandon, compromise, *arbitrate*, settle, dismiss, and appeal from *any and all* legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments, arrests or distresses, *involving [Mr. Stroud] in any way* . . . .") (emphasis added).) Additionally, on page 3, in Article I(6), headed "Power to Operate Businesses" (R. p. 98 (original bold print and underlining omitted)), the Power of Attorney expressly states that Mrs. Stroud has the power "to defend, *submit to arbitration*, settle or compromise any action or other legal proceeding to which [Mr. Stroud is] a party because of [his] membership in [a] partnership." (R. p. 98 (emphasis added).) Also on page 3, in Article I(8), headed "Power to Demand and Receive" (R. p. 98 (original bold print and underlining omitted)), the Power of Attorney expressly states that Mrs. Stroud has the power "[t]o demand, *arbitrate*, settle, sue for, collect, receive, deposit, expend for [Mr. Stroud's benefit] benefit, reinvest or make such other appropriate disposition of as [Mrs. Stroud] deems appropriate, all cash, rights to the payment of cash, property . . . rights and/or benefits to which [Mr. Stroud is] now or may in the future become entitled . . . ." (R. p. 98 (emphasis added).)

[8] Mr. Stroud is the referenced "Resident."

[wa]s relying upon the truthfulness of the promises and representations [she] made." (R. p. 174, p. 186.) And in signing the Arbitration Agreement itself, Mrs. Stroud expressly "represent[ed] that . . . she ha[d] authority to sign on [Mr. Stroud's] behalf so as to bind [him] as well as [herself]." (R. p. 95, p. 187.)

Plaintiff commenced this action in the Greenville County Court of Common Pleas on March 19, 2020, alleging Petitioners are liable for money damages because of deficient care/treatment Mr. Stroud received during his residency at the Facility. (R. pp. 15–25.)

On February 12, 2021, the Facility moved to compel Plaintiff's claims against it to arbitration based on the Arbitration Agreement (the "Motion to Compel Arbitration"),[10] and the Other Defendants moved to stay this lawsuit pending the outcome of the Motion to Compel Arbitration and of any resulting arbitration between Plaintiff and the Facility, i.e., until the issue of arbitrability is finally determined and any arbitration proceedings resulting from that determination are themselves finally concluded (collectively, the "Motions to Stay"). (R. pp. 116–119.)[11]

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[9] (R. p. 163, p. 175.)

[10] (R. pp. 93–94, pp. 125–162.) Without question, Plaintiff's claims against the Facility are within the scope of the Arbitration Agreement. (R. p. 95, p. 187 ("[A]any controversy or dispute between the parties arising out of or relating to [the] Facility's Admission Agreement, or breach thereof, or relating in any way to [Mr. Stroud's] stay at [the] Facility, or to the provisions of care or services to [Mr. Stroud], including but not limited to any alleged tort, personal injury, negligence or other claim; or any federal or state statutory or regulatory claim of any kind; or whether or not there has been a violation of any right or rights granted under State law (collectively 'Disputes'), and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration . . . .").) This plain language clearly embraces the subject matter of Plaintiff's claims against the Facility, but even if there were "any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor of arbitration . . . ." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.").

[11] Prior to making the Motion to Compel Arbitration, the Facility timely answered Plaintiff's complaint, denying the alleged liability, raising a number of affirmative defenses, and

Together, the Motion to Compel Arbitration and the Motions to Stay are referred to collectively as the "Underlying Motions."

Following a hearing on the Underlying Motions on June 29, 2021, the circuit court, the Honorable Alex Kinlaw, Jr., presiding, directed counsel (i.e., all counsel, Plaintiff's and Petitioners') to submit proposed orders, which they did. (R. pp. 1–3, pp. 52–92, pp. 188–213.) The circuit court then denied the Underlying Motions by order filed August 17, 2021. (R. pp. 4–13.) On August 27, 2021, pursuant to Rule 59(e), SCRCP, Petitioners timely moved the circuit court to alter, amend, and/or reconsider its decision. (R. pp. 214–228.) The circuit court denied the motion by order filed March 1, 2022. (R. p. 14.)

By notice served and filed March 30, 2022, this appeal timely followed. (R. pp. 229–235.) In due course, the appeal was briefed and made ready for decision and decided without oral argument via the Subject Opinion, filed March 20, 2024.

As certified above, Petitioners timely petitioned for rehearing, and the Court of Appeals denied rehearing by order filed May 21, 2024.

This petition for a writ of certiorari timely follows.

STANDARD OF REVIEW

A circuit court's determination of whether a claim is subject to arbitration is reviewed de novo on appeal. *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009). This includes de novo review of the determination of whether an arbitration agreement is enforceable against a nonsignatory. *Wilson v. Willis*, 426 S.C. 326, 334, 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.* Issues of law, however, are reviewed without any particular deference

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expressly reserving its right to compel arbitration. (R. pp. 26–35.) The Other Defendants likewise

to the circuit court. *See, e.g., Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 782 S.E.2d 590 (2016). Even where a ruling is on a matter within circuit court's discretion, if the ruling is based on a misunderstanding of the law, rather than upon the exercise of discretion, the question presented on appeal is one of law. *See Bain v. Self Mem'l Hosp.*, 281 S.C. 138, 152, 314 S.E.2d 603, 611 (Ct. App. 1984).

ARGUMENT

I. The Court of Appeals erred in affirming the circuit court's denial of the Motion to Compel Arbitration and, in turn, the Motions to Stay.

A. Like the circuit court,[12] the Court of Appeals mistakenly viewed the Power of Attorney as dispositive of the Motion to Compel Arbitration and, in turn, the Motions to Stay,[13] and the Court of Appeals erred by not addressing (a) Petitioners' threshold argument that the circuit court erred in finding the language of the Power of Attorney dispositive and (b) Petitioners' other arguments, including especially, but not limited to, the merger/equitable estoppel argument,[14] which is a standalone argument that should prevail regardless of whether Mrs. Stroud had the authority under the powers granted to her in the Power of Attorney to bind Mr. Stroud to arbitration.

The Facility duly raised its merger/equitable estoppel argument to the circuit court in support of the Motion to Compel Arbitration,[15] and it is standalone argument that does not depend on any showing of authority (actual or apparent or otherwise) on the part of Mrs. Stroud or otherwise on the existence of any per se valid and enforceable agreement and thus is unscathed by the language in the Power of Attorney disallowing Mrs. Stroud authority to agree

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timely answered Plaintiff's complaint before making the Motions to Stay. (R. pp. 36–51.)

[12] (R. p. 12 ("The actual language of the Power of Attorney . . . is dispositive.").)

[13] (Subject Opinion ("We hold the circuit court did not err by denying the Facility's motion to compel arbitration because the power of attorney document expressly reserved the power to waive a jury trial to James, thus restricting Debbie Stroud (Debbie) from entering into arbitration agreements on James's behalf. Thus, the arbitration agreement Debbie signed as power of attorney for James is not valid or enforceable.").)

[14] (Subject Opinion ("Based on the foregoing, we also hold the circuit court did not err by failing to grant Appellants' motions to stay. Moreover, because we find the Arbitration Agreement not valid or enforceable, we decline to reach the Facility's remaining arguments.").)

to arbitration on Mr. Stroud's behalf. *See Wilson v. Willis*, 426 S.C. 326, 334, 338, 827 S.E.2d 167, 172, 174 (2019) (observing that South Carolina has recognized numerous theories that can bind nonsignatories to arbitration agreements, including estoppel); *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 354–55, 755 S.E.2d 450, 455 (2014) (acknowledging the possibility of enforcing an arbitration agreement against a nonsignatory via merger and equitable estoppel). Conceptually, the Facility's merger/equitable estoppel argument is not an argument for the *enforceability* of the Arbitration Agreement but rather for Mr. Stroud and, in turn, Plaintiff, his guardian ad litem, who is proceeding on his behalf, to be *estopped to deny the enforceability* of the Arbitration Agreement. *See Coleman*, 407 S.C. at 354, 755 S.E.2d at 455 ("Appellants contend that *even if* Sister lacked capacity to execute the [arbitration agreement] under the [Adult Health Care Consent] Act, she is *nevertheless equitably estopped to deny* the [arbitration agreement's] enforceability.") (emphasis added).

In short, the idea is that the Admission Agreement and the Arbitration Agreement merged, and because Mr. Stroud effectively embraced and directly benefitted from the Admission Agreement, Plaintiff (who stands in place of Mr. Stroud) is estopped to deny the enforceability of the Arbitration Agreement merged therewith. Accordingly, any contention about the Arbitration Agreement's supposed lack of enforceability (whether because of Mrs. Stroud's lack of authority per the language of the Power of Attorney or because of another alleged defect in contract formation) is beside the point and unavailing to refute the Facility's merger/equitable estoppel argument, which, again, turns not on the question of whether the Facility showed that the Arbitration Agreement is enforceable but whether it showed that Plaintiff should be estopped to deny that the Arbitration Agreement is enforceable—and, most

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[15] (R. pp. 58:12–59:14, pp. 64:19–77:7, pp. 84:18–89:19, pp. 146–156, pp. 205–211.)

respectfully, the Facility did so. Indeed, Plaintiff's responsive brief contains no argument to the contrary, only the mistaken contention that the Power of Attorney "is dispositive, [so] Appellants' arguments about merger simply do not apply,"[16] which, again, is simply not so.

Like the circuit court, the Court of Appeals mistakenly viewed the Power of Attorney as dispositive of the Motion to Compel Arbitration and, in turn, the Motions to Stay.[17] Indeed, the Court of Appeals erred in not addressing Petitioners' threshold argument that the circuit court erred in finding the language of the Power of Attorney dispositive.[18] And based upon the mistaken view that the Power of Attorney is dispositive, the Court of Appeals erred by not

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[16] (*See* Br. of Respondent p. 8; *see also id.* pp. 4–11 (revealing no argument against the Facility's merger/equitable estoppel argument other than the mistaken contention that the Facility's merger/equitable estoppel argument does not apply because the Power of Attorney is dispositive).)

[17] As explained in the Subject Opinion, the Court of Appeals affirmed the circuit court's denial of the Motions to Stay on the basis of its affirmance of the circuit court's denial of the Motion to Compel Arbitration. (Subject Opinion ("Based on the foregoing, we also hold the circuit court did not err by failing to grant Appellants' motions to stay.").) The relationship between the Motion to Compel Arbitration and the Motions to Stay is such that, insofar as the circuit court was concerned, the denial of the former mooted the latter. The fates of these motions are likewise intertwined on appeal: If the Motion to Compel Arbitration was properly denied, so too were the Motions to Stay, but if the Motion to Compel Arbitration should have been granted—and, respectfully, it should have—so too should the Motions to Stay. *See* 9 U.S.C. § 3 ("If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, *upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement*, providing the applicant for the stay is not in default in proceeding with such arbitration.") (emphasis added); *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) ("[The] FAA clearly requires a court stay 'any suit or proceeding' pending the arbitration of 'any issue referable to arbitration under an agreement in writing for such arbitration' upon the application of one of the parties."); *see also Episcopal Housing Corp. v. Federal Ins. Co.*, 269 S.C. 631, 641, 239 S.E.2d 647, 652 (1977) ("The fact that Federal is not a party to an arbitration agreement does not prevent an order staying the judicial proceedings pending arbitration between those who are parties to such an agreement."). Accordingly, to show that the circuit court erred in denying the Motion to Compel Arbitration is also to show that the circuit court erred in denying the Motions to Stay, which are not properly viewed as moot but rather should have been granted along with the Motion to Compel Arbitration.

addressing Petitioners' other arguments, including especially, but not limited to, the merger/equitable estoppel argument.

B. Had the Court of Appeals reached the Facility's remaining arguments, including especially, but not limited to, its merger/equitable estoppel argument, as, respectfully, it should have, the Court of Appeals should have found that the circuit court erred in not granting the Underlying Motions. More specifically, it should have found (1) that the Admission Agreement and the Arbitration Agreement merged and (2) that, because Mr. Stroud effectively embraced and directly benefitted from the Admission Agreement, Plaintiff is estopped to deny the enforceability of the Arbitration Agreement merged therewith. And in turn, the Court of Appeals should have reversed the circuit court's denial of the Motions to Stay.

As explained in the Subject Opinion, the Court of Appeals did not reach the Facility's remaining arguments, including especially, but not limited to, its merger/equitable estoppel argument, because of its finding that the language of the Power of Attorney was dispositive. (Subject Opinion ("We hold the circuit court did not err by denying the Facility's motion to compel arbitration because the power of attorney document expressly reserved the power to waive a jury trial to James, thus restricting Debbie Stroud (Debbie) from entering into arbitration agreements on James's behalf. Thus, the arbitration agreement Debbie signed as power of attorney for James is not valid or enforceable. . . . Based on the foregoing, Debbie did not have the authority under the powers granted to her in the power of attorney document to bind James to arbitration. . . . [B]ecause we find the Arbitration Agreement not valid or enforceable, we decline to reach the Facility's remaining arguments.").)

As explained above, the Court of Appeals erred in not addressing these arguments, all of which are set forth in Petitioners' briefing to the Court of Appeals, including their petition for rehearing, and all of which are adopted and incorporated herein by reference. Had the Court of Appeals reached these arguments, as, respectfully, it should have, the Court of Appeals should

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[18] (*See* Final Br. of Appellants pp. 1, 9–10; Final Reply Br. of Appellants pp. 1–3.)

have found that the circuit court erred in not granting the Underlying Motions, because it should have found (1) that the Admission Agreement and the Arbitration Agreement merged and (2) that, because Mr. Stroud effectively embraced and directly benefitted from the Admission Agreement, Plaintiff is estopped to deny the enforceability of the Arbitration Agreement merged therewith. And in turn, because the Motion to Compel Arbitration should have been granted, so too should the Motions to Stay.

CONCLUSION

For the foregoing reasons, along with any other or further reason(s) set forth in their appellate briefs and petition for rehearing already on file, the entirety of which they hereby adopt and incorporate herein by reference and reiterate/reassert in support hereof, Petitioners ask this Honorable Court to grant the instant petition, reverse the Subject Opinion, and decide this appeal anew via an opinion that reverses the Court of Appeals and the circuit court and stays Plaintiff's claims against the Facility in favor of arbitration and stays Plaintiff's claims against the Other Defendants pending the outcome of arbitration between Plaintiff and the Facility (or, alternatively, that reverses the Court of Appeals and the circuit court and remands the case to the circuit court with instructions that it stay Plaintiff's claims against the Facility in favor of arbitration and stay Plaintiff's claims against the Other Defendants pending the outcome of arbitration between Plaintiff and the Facility, or, alternatively, that reverses the Court of Appeals for mistakenly viewing the Power of Attorney as dispositive and remands the case to the Court of Appeals to address the arguments that it did not reach previously to determine whether the circuit court's denial of the Motion to Compel Arbitration and the Motions to Stay Should be reversed).

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

CLEMENT RIVERS, LLP

By: s/Russell G. Hines

Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Petitioners

Charleston, South Carolina

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