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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-CP-23-01728
Appellate Case No. 2022-000398

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,

Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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Appellants[1] make the following points in reply to Plaintiff's responsive brief.

ARGUMENT IN REPLY

1. Like the circuit court,[2] Plaintiff is mistaken in viewing the Power of Attorney as dispositive of the Motion to Compel Arbitration.[3]

As explained in Appellants' principal brief, the Facility duly raised its merger/equitable estoppel argument to the circuit court in support of the Motion to Compel Arbitration,[4] and this argument is unscathed by the language in the Power of Attorney disallowing Mrs. Stroud authority to agree to arbitration on Mr. Stroud's behalf. Conceptually, the Facility's merger/equitable estoppel argument is not an argument for the *enforceability* of the Arbitration Agreement but rather

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[1] Shorthand references already defined in Appellants' principal brief are continued in this reply brief (e.g., the "Facility" refers to Defendant/Appellant THI of South Carolina at Greenville, LLC d/b/a Magnolia Manor-Greenville; the "Other Appellants" are Defendants/Appellants THI of Baltimore, Inc., and THI of South Carolina, LLC, collectively; "Appellants" are the Facility and the Other Appellants, collectively; and "Plaintiff" is Plaintiff/Respondent, Debbie Stroud ("Mrs. Stroud") as guardian ad litem for her husband, James C. Stroud ("Mr. Stroud")).

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

[3] (*See* Br. of Respondent p. 7 ("The arbitration agreement is invalid and unenforceable if the Attorney-in-Fact had no authority to waive the right to a jury trial or enter an arbitration agreement."); *id.* at p. 8 ("The plain language of the Power of Attorney controls. The Arbitration Agreement is not valid or enforceable because it is expressly beyond the scope of authority granted to Mrs. Stroud by her husband."); *id.* at p. 8 ("[B]ecause the language of the Power of Attorney is dispositive, Appellants' arguments about merger simply do not apply.").

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 v. Mariner Health Care, Inc.*, 407 S.C. 346, 354, 755 S.E.2d 450, 455 (2014) ("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 respectfully, the Facility did so. Indeed, Plaintiff's responsive brief contains no

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

argument to the contrary, only the mistaken contention that the Power of Attorney "is dispositive, [so] Appellants' arguments about merger simply do not apply,"[5] which, again, is simply not so.

205–211.)

[5] (*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).)

2. Like the circuit court, Plaintiff is mistaken in viewing the Arbitration Agreement as a "mandatory" agreement that "Defendants' representative" "required" Mrs. Stroud to sign as a "condition" of Mr. Stroud's residency at the Facility and, in turn, as running afoul of federal law governing Medicare and Medicaid reimbursements.[6] [7]

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[6] (R. p. 5 ("As part of the admissions process, Defendants' representative required Mrs. Debbie Stroud, Mr. Stroud's wife, to sign the Facility-Resident/Representative Arbitration Agreement . . . ."), p. 10 (referring to "Defendants' representative['s] . . . obligation of due diligence"), p. 10 (referring to the Arbitration Agreement as a "mandatory agreement") (bold print in original omitted), p. 10 (finding that "the purported agreement for binding arbitration which the facility mandated that Mrs. Stroud sign is not valid or enforceable because by its terms it violates federal law," specifically, federal law regarding Medicare and Medicaid reimbursements, which prohibits the Facility from "'charg[ing], solicit[ing], accept[ing], or receiv[ing] . . . any other consideration as a precondition of admitting (or expediting the admission of) [a resident] . . . or as a requirement for the [resident's] continued stay . . .'") (quoting 42 U.S.C. § 1396r(c)(5)(A)(iii)), p. 11("The clear language of the purported arbitration agreement makes clear that Defendants required Mrs. Stroud to sign as [a] condition of admission to the [F]acility. As such, this requirement was a clear violation of Federal Law. 42 U.S.C. Section 1396r(c)(5)(A)(iii) prohibits a facility such as Defendants' from soliciting or accepting 'any other consideration' as a condition to admission outside of the Medicare payments when admitting a patient in Mr. Stroud's position.").)

[7] (*See* Br. of Respondent p. 4 ("As a precondition to his admission there, Defendants' representative required Mrs. Debbie Stroud, Mr. Stroud's wife, to sign the Facility-Resident/Representative Arbitration Agreement on March 3, 2017."); *id.* at p. 8 ("The circuit court properly held that the arbitration agreement was mandatory and therefore without consideration.") (bold print in original omitted)); *id.* at p. 10 ("The clear language of the purported arbitration agreement makes clear that the Defendants required Mrs. Stroud to sign as [a] condition of admission to their facility.").)

As explained in Appellants' principal brief, as an initial matter, it is erroneous to refer to the Facility's personnel as "Defendants'" representative.[8] Defendants are separate and distinct entities. The Facility's personnel are the Facility's personnel and not the Other Defendants' personnel, and there is no evidence otherwise.

Additionally, it is erroneous to state that Mrs. Stroud was "required" to sign the Arbitration Agreement—or other words to that effect, to include specifically, but without limitation, reference to the Arbitration Agreement as a "mandatory" agreement that Mrs. Stroud had to sign as a "condition" of Mr. Stroud's residency. The Facility denies that the Arbitration Agreement was required—for Mr. Stroud or any other resident—to gain admission to the Facility (or to remain admitted therein), and there is zero evidence in the record to the contrary.[9]

Lastly, the idea that the Arbitration Agreement is founded on illegal consideration in violation of federal law governing Medicare and Medicaid reimbursements is plainly without merit. The essential premise of this idea is that the Arbitration Agreement was required as a precondition of Mr. Stroud's residency and,

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[8] To be clear, this goes not only for this specific instance but also for all other instances where Defendants' separate and distinct nature is unduly disregarded or blurred.

[9] And to be clear, the record provides no support for the idea that the Facility required that Mrs. Stroud be the one who signed the Arbitration Agreement (or any other document). Rather, the record shows that, in acting on her husband's behalf, Mrs. Stroud expressly represented to the Facility that she was authorized to do so in the Arbitration Agreement itself and that Mrs. Stroud further represented her

therefore, constitutes improper additional consideration in violation of federal law that prohibits the Facility from "charg[ing], solicit[ing], accept[ing], or receiv[ing] . . . any other consideration as a *precondition* of admitting (or expediting the admission of) [a resident] . . . or as a requirement for the [resident's] continued stay . . . ." 42 U.S.C. § 1396r(c)(5)(A)(iii) (emphasis added). This notion fails of its essential premise because, again, the Facility denies that the Arbitration Agreement was "required" for, or otherwise a condition of, Mr. Stroud's residency, and there is nothing in the Arbitration Agreement itself or anywhere else in the record to support a reasonable conclusion otherwise.

CONCLUSION

For the foregoing reasons, along with those already set forth in their principal brief, Appellants ask this Honorable Court to reverse the circuit court's denial of the Underlying Motions and to stay this lawsuit in favor of arbitration between Plaintiff and the Facility (or to remand this matter to the circuit court with instructions that it stay the lawsuit in favor of arbitration between Plaintiff and the Facility) or, alternatively, to reverse the circuit court's denial of the Underlying Motions and remand this matter to the circuit court for the additional discovery requested by the Facility to be conducted; for additional briefing to be submitted to the circuit court in

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authority to act on Mr. Stroud's behalf by presenting the Power of Attorney to the Facility.

light of such discovery; and, with the benefit of the same, for the circuit court to hear and decide the Underlying Motions anew.

Respectfully submitted,

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APPELLANTS' CERTIFICATION FOR FINAL REPLY BRIEF

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Attorneys for Appellants

I, Russell G. Hines, do hereby certify that the Final Reply Brief of Appellants complies with Rule 211(b), SCACR. Additionally, the undersigned hereby certifies that this filing complies with the Supreme Court order of April 15, 2014.

Respectfully submitted,

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