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S.C. SUPREME COURT

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

Supreme Court Case No. 2024-001034

Debbie Stroud,
Guardian of 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.

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II. Did the Court of Appeals properly uphold the Circuit Court's holding that the arbitration agreement was mandatory and therefore without consideration?

III. Did the Court of Appeals properly uphold the Circuit Court's denial of the Appellants' request for additional discovery on the issue of the arbitration agreement?

STATEMENT OF THE CASE

James C. Stroud, a Medicare recipient, was admitted to Magnolia Manor of Greenville (hereinafter Appellants' facility) on March 6, 2017. While a resident, Mr. Stroud experienced a series of falls with resulting injury and other circumstances that deviated from the accepted standard of care.

At the time of admission, the Facility received a copy of a Power of Attorney naming Debbie Stroud as his Attorney in Fact at the time of admission. This Power of Attorney set forth in detail the scope of authority conveyed to the Attorney in Fact. The circuit court had a copy of this Power of Attorney at the time it issued its ruling here. As a precondition to his admission there, Appellants'

representative required Mrs. Debbie Stroud, Mr. Stroud's wife, to sign the Facility-Resident/Representative Arbitration Agreement on March 3, 2017.

The agreement purports to waive Mr. Stroud's right to Jury Trial and require that any controversy or dispute between the parties be submitted to binding arbitration in accordance with the South Carolina Alternate Dispute/ Resolution Rules. Respondent subsequently filed a lawsuit in Greenville County in the Court of Common Pleas seeking compensation on account of Mr. Stroud's injuries. Appellants' filed a Motion to Compel Arbitration. The circuit court held the agreement was unenforceable and denied the request for discovery on the issue. The Court of Appeals upheld the ruling of the Circuit Court.

STANDARD OF REVIEW

The parties agree that the de novo review is the correct standard of review to determine whether the circuit court properly held an arbitration agreement was unenforceable. When the circuit court exercises its discretion, for example in denying discovery, the circuit court's decision should not be reversed absent a finding of abuse of discretion.

ARGUMENT

I. The Court of Appeals properly upheld the Circuit Court's properly denial of Appellants' Motion to Compel Arbitration by holding that the language of the Power of Attorney was dispositive.

In deciding a motion to compel arbitration, the Court looks to contract law to determine whether a valid and enforceable contract to arbitrate has been entered by the parties. "[A]rbitration is a matter of contract, and our evaluation of the enforceability of an arbitration agreement is guided by general principles of contract law." *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 130, 678 S.E.2d 435, 438 (2009). A person possessing contractual capacity, acting as grantor, can authorize another to contract on the grantor's behalf under the specific terms of a power of attorney. *See* *Gaddy v. Douglass*, 359 S.C. 329, 344-45, 597 S.E.2d 12, 20 (Ct. App. 2004). "A power of attorney is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal. The written authorization itself is the power of attorney." *Watson v. Underwood*, 407 S.C. 443, 454, 756 S.E.2d 155, 161 (Ct. App. 2014) (quoting *In re Thames*, 344 S.C. 564, 569, 544 S.E.2d 854, 856 (Ct. App. 2001) "Our courts have looked to contract law when reviewing actions to set aside or interpret a

power of attorney." *Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 577, 828 S.E.2d 82, 87 (Ct. App. 2019).

"The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties, and, in determining that intention, the court looks to the language of the contract." *Id.* (quoting *Watson v. Underwood*, 407 S.C. 443, 454-55, 756 S.E.2d 155, 161 (Ct. App. 2014)). "When the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect." *Id.* (quoting *Watson*, 407 S.C. at 455, 756 S.E.2d at 161). Accordingly, here, the specific language of the Power of Attorney determines whether Mr. Stroud authorized his attorney-in-fact to execute an agreement for binding arbitration. Arredondo v. SNH Ashley River Tenant, LLC, 856 SE 2d 550, 433 SC 69, (SC 2021). Absent the grant of such authority, his Attorney-in-Fact had no authority or legal capacity to enter the arbitration agreement in question. The arbitration agreement is invalid and unenforceable if the Attorney-in-Fact had no authority to waive the right to jury trial or enter an arbitration agreement. Arredondo at 2.

Article VII of the Power of Attorney signed by Mr. Stroud in favor of his wife on November 22, 2016 contains specific restrictions on the authority granted by Mr. Stroud to his attorney-in-fact. Section (6) provides as follows:

Reservation of Right to Trial by Jury. 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.

Durable Power of Attorney of James C. Stroud, Article VII, paragraph (6)(emphasis in original).

The present case is an even stronger case for denial than the one at issue in the recent Supreme Court reviewed in Arredondo cited above. Here, the Power of Attorney specifically states that the Attorney in Fact is not granted the power to waive the right to jury trial or enter into arbitration agreements. 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.

Appellants' have argued that a general passage in the Power of Attorney purports to allow the Attorney in Fact to enter an agreement for arbitration. The more specific clause prevents the Attorney in Fact from entering an agreement for "binding arbitration" or waiver of trial by jury. The Court must read the entire agreement in a way that gives effect to the entire agreement and does not render null the provisions contained therein. Arbitration can be either binding or non-binding. In the present case, the Power of Attorney allows for non-binding

arbitration but **expressly forbids** binding arbitration and waiver of trial by jury. There is no conflict in the language of the document.

Further, because the language of the Power of Attorney is dispositive, Appellants' arguments about merger simply do not apply. There is no evidence in the record that James Stroud did or said anything to mislead Appellants about the Power of Attorney.

The Appellants had a duty to read the Power of Attorney and to understand the rights granted to the Attorney in Fact and those rights which were specifically reserved unto the Grantor. A party is deemed to have read the documents and to have understood their legal meaning. The failure of the Appellants to read the relevant documents does not equate to estoppel.

II. The Court of Appeals properly upheld the Circuit Court holding that the arbitration agreement was mandatory and therefore without consideration.

An illegal contract is unenforceable. Berkebile v. Outen, 311 S.C. 50,53 n.2, 426 S.E.2d 760, 762 n.2 (1993). "The general rule is that courts will not enforce a contract is violative of public policy, statutory law, or provisions of the Constitution." Id. Federal regulations require Medicare and Medicaid certified facilities to accept Medicare reimbursement rates as payment in full. See 42 C.F.R Section 489.30; 42 C.F.R. Section 447.15 Moreover, such facilities, in the case of

an individual who is entitled to medical assistance, 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. Section 1396r(c)(5)(A)(iii).

Clearly here, it is undisputed that Mr. Stroud was a recipient of Medicare at the time of his admission and throughout his stay at Appellants' facility and the Appellants' facility was billing and accepting payment from Medicare for Mr. Stroud's care. As such, 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.

It is well settled that to be valid and enforceable, a contract must be supported by valuable consideration. Benya v. Gamble, 282 S.C. 624, 628, 321 S.E.2d 57, 60 (Ct. App. 1984) ("a contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act"). Consideration may consist of "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." Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship, 331 S.C. 385, 389,503 S.E.2d 184, 186 (Ct. App. 1998).

The clear language of the purported arbitration agreement makes clear that the Appellants required Mrs. Stroud to sign as condition of admission to their facility. 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 Appellants 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. By requiring Mrs. Stroud to sign the document attempting to require waiver of the right to jury trial as a condition of admission, Appellants were requiring and accepting consideration in addition to Medicare payments. Therefore, the arbitration agreement in question is not valid or enforceable.

III. The Court of Appeals properly upheld the Circuit Court's denial of the Appellants' request for additional discovery on the issue of the arbitration agreement

Here, Cort of Appeals upheld the circuit court's exercise of its discretion in denying the Appellants additional time for discovery. At no time during the proceedings have the Appellants served any written discovery or sought any depositions. To have delayed the decision further to order discovery would have been an unreasonable delay. The Court of Appeals properly held that circuit court did not abuse its discretion in denying the Appellants a delay for discovery. In addition, Appellants could have submitted Affidavits from its agents or employees

who were involved in the admissions process. No such affidavits were filed with the circuit court.

Conclusion

The arbitration agreement was not valid because the Principal, Mr. Stroud, decided not to grant the power to waive his right to jury trial or enter arbitration agreements to his Attorney-in-Fact. He specifically reserved that right solely for himself. In addition, the agreement used by Appellants is also not valid or enforceable because it is illegal and without consideration. As such, Respondent respectfully asks the Court to uphold the order of the Court of Appeals.

Respectfully Submitted,

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Dated: August 9, 2024
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