THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. 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Unpublished Opinion No. 2024-UP-084 (S.C. Ct.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.

REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

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Petitioners[1] make the following points in reply to Plaintiff's return.

ARGUMENT IN REPLY

1. Like the circuit court and the Court of Appeals,[2] [3] Plaintiff is mistaken in viewing the Power of Attorney as dispositive of the Motion to Compel Arbitration.[4]

As explained in Petitioners' petition, the Facility duly raised its merger/equitable estoppel argument to the circuit court in support of the Motion to Compel Arbitration,[5] 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 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]

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[1] Shorthand references already defined in Petitioners' petition are continued in this reply (e.g., the "Facility" refers to Defendant/Petitioner THI of South Carolina at Greenville, LLC d/b/a Magnolia Manor-Greenville; the "Other Defendants" are Defendants/Petitioners THI of Baltimore, Inc., and THI of South Carolina, LLC, collectively; "Petitioners" are the Facility and the Other Defendants, 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] (Subject Opinion p. 2 ("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.") (emphasis added).)

[4] (*See* Return 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. 9 ("[B]ecause the language of the Power of Attorney is dispositive, Appellants' arguments about merger simply do not apply.").

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 return 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,"[6] which, again, is simply not so.

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

[6] (*See* Return p. 9; *see also id.* pp. 6–11 (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. Plaintiff is wrong in stating that "[t]he Court of Appeals . . . upheld the Circuit Court holding that the arbitration agreement was mandatory and therefore without consideration,"[7] and in any event, like the circuit court,[8] 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.[9]

As an initial matter, it is erroneous to refer to the Facility's personnel as "Defendants'" representative.[10] Petitioners 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

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[7] (*See* Return p. 9 (original bold print omitted).)

[8] (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.").)

[9] (*See* Return pp. 4–5 ("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."); *id.* at p. 9 ("The Court of Appeals properly upheld the Circuit Court holding that the arbitration agreement was mandatory and therefore without consideration.") (original bold print omitted)); *id.* at p. 11 ("The clear language of the purported arbitration agreement makes clear that the Appellants required Mrs. Stroud to sign as [a] condition of admission to their facility.").)

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.[11]

The idea that the Court of Appeals upheld the circuit court's denial of the Motion to Compel Arbitration on the basis that the Arbitration Agreement was mandatory and therefore without consideration is plainly erroneous. As explained elsewhere, the Court of Appeals affirmed the denial of the Motion to Compel Arbitration on the basis of its conclusion that the Power of Attorney was dispositive and, having done so, proceeded no further. (Subject Opinion p. 3 n.2 ("[B]ecause we find the Arbitration Agreement not valid or enforceable, we decline to reach the Facility's remaining arguments.").)

Lastly, and in any event, as duly explained Petitioners principal brief to the Court of Appeals,[12] 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, 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)

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[10] To be clear, this goes for all instances where Defendants' separate and distinct nature is unduly disregarded or blurred.

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

[12] (Final Brief of Appellants pp. 25–26.)

(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 additional 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,

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