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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County
Court of Common Pleas
H. Steven DeBerry IV, Circuit Court Judge

Case No. 2022-CP-33-00183
Appellate Case No. 2023-001712

Rebecca C. Hagood
as Personal Representative of the Estate of Frank D. Chavis, Sr.,

Respondent,

v.

Palmetto Faith Operating, LLC
d/b/a Faith Healthcare Center and
Brooks Arnette,

Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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

ARGUMENT IN REPLY

1. The Supreme Court's denial of the petition for a writ of certiorari in *Solesbee v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023), did not moot Appellants' argument regarding *Solesbee*.

As Plaintiff correctly notes, our Supreme Court denied the petition for a writ of certiorari in *Solesbee* earlier this year; however, Plaintiff is incorrect in asserting that this means "Appellants' argument is mooted . . . ." (Br. of Resp. p. 11.)

As explained in their principal brief, Appellants most respectfully contend that *Solesbee* was wrongly decided. The Supreme Court's denial of cert does not amount to its blessing of *Solesbee* as rightly decided. A writ of certiorari is not a matter of right but solely a matter of the Supreme Court's discretion. Rule 242(b), SCACR ("A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons."). In other words, even where there is error in the decision as to which a writ of certiorari is sought, the Supreme Court can still exercise its discretion to deny cert, and by doing so, the Supreme Court has only expressed its decision to

[1] Shorthand references already defined in Appellants' principal brief are continued in this reply brief (e.g., "Appellants" refers, collectively, to Defendants/Appellants, Palmetto Faith Operating, LLC d/b/a Faith Healthcare Center (the "Facility") and Brooks Arnette ("Arnette"); "Plaintiff" refers to Rebecca C. Hagood ("Mrs. Hagood") as Personal Representative of the Estate of Frank D. Chavis ("Mr. Chavis"); and the "FAA" refers to the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.).

exercise its discretion to not review the case. It has not implicitly vouched for the soundness of the decision as to which cert was sought.

In any event, and as also explained in Appellants' principal brief, Appellants' contention is not only that *Solesbee* was wrongly decided but also that *Solesbee* does not address all of the material issues/arguments regarding the question of merger (and as for estoppel, *Solesbee* does not reach it at all), leaving gaps in the *Solesbee* Court's analysis through which Appellants' position can still fit. The fact that the Supreme Court has now denied cert does not change this.

2. Our Supreme Court has already confirmed that, insofar as the question of merger is concerned, the Admission Agreement and the Arbitration Agreement constitute documents executed at the same time, by the same parties, for the same purposes, in the course of the same transaction, giving rise to the presumption of merger.

Plaintiff's contention that the Admission Agreement and the Arbitration Agreement serve different purposes[2] has already been debunked by our Supreme Court. *See Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 354–55, 755 S.E.2d 450, 455 (2014) (confirming the validity of the general proposition of law on which the arbitration proponents (the appellants) based their merger/equitable estoppel argument: "Appellants' equitable estoppel argument is premised on their contention that, under state law, the admission agreements and the [arbitration agreements] merged. . . . *[T]he documents were executed at the same time, by the*

[2] (Br. of Resp. pp. 13–14.)

same parties, for the same purposes, and in the course of the same transaction. Unless there is a contrary intention, appellants are correct that there was a merger.") (emphasis added). While the material facts of the instant case are different from *Coleman* as to whether the presumption of merger is upset by evidence of a contrary intention (the facts do not support such a conclusion in the instant case), the material facts (admission agreements and arbitration agreements signed in conjunction with a resident's admission to a skilled nursing facility) are the very same as to whether the presumption of merger arises in the first place, as *Coleman* confirms it does.

3. Contrary to Plaintiff's assertion otherwise,[3] the Facility expressly inquired as to Mrs. Hagood's authority and she expressly responded in the affirmative.

As an initial matter, the deposition testimony that Plaintiff cites for the proposition that "Appellants' representatives confirmed the Facility made no attempt to ascertain whether Mrs. Hagood had authority,"[4] does not in fact support the proposition and simply reads: "So, you know, I don't have to have any necessary power of attorney for a patient's family to be -- for me to be able to get

[3] (*See, e.g.,* Br. of Resp. p. 3 ("Testimony from Appellants' representatives confirmed the Facility made no attempt to ascertain whether Mrs. Hagood had authority.").)

[4] (Br. of Resp. p. 3 (citing the transcript of the deposition of the Admissions Director Kelly Dials, R. p. 207, lines 12–16).)

paperwork signed by a particular family member." (R. p. 207:12–16.) Ms. Dials simply explained that power of attorney is not mandatory, which is true.

And in any event, the Arbitration Agreement expressly reads, "By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident as well as the Representative." (R. p. 129.) Mrs. Hagood's signature on the Arbitration Agreement is direct proof that she was asked about her authority to sign for Mr. Chavis and expressly represented to the Facility that she was indeed duly authorized to sign for him. *See Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) ("[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms.").

4. The Arbitration Agreement applies with equal force to the wrongful death claim.

Conceptually, Plaintiff's argument here is completely separate and independent from any other challenge to the enforceability of the Arbitration Agreement. In effect, her contention is that an arbitration agreement—any arbitration agreement—is unenforceable with respect to a claim of wrongful death, even if it is in all other respects a valid and enforceable arbitration agreement under South Carolina's general contact law. The only way this could be true (i.e., legally correct) is if the claim of wrongful death (i.e., the substantive right of action) belongs to the wrongful death beneficiaries themselves. If this were the case, then general principles of contract law would indeed apply to prevent

wrongful death beneficiaries from having to arbitrate "their" claims if they themselves had not agreed to do so (or were not estopped from denying that they had). As explained in Appellants' principal brief, however, a wrongful death claim does not belong to the wrongful death beneficiaries. It belongs to the decedent's personal representative, and a specific rule prohibiting enforcement of otherwise valid agreements to arbitrate wrongful death claims would violate the FAA's requirement that arbitration agreements be placed on equal footing with other contracts,[5] as indeed our Supreme Court has already recognized in *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 389, 759 S.E. 727, 737 n.3 (2014) ("[C]ourts *may not* refuse to compel arbitration simply because a wrongful death claim is involved.") (emphasis added).

CONCLUSION

For the foregoing reasons, together with those already set forth in their principal brief, Appellants ask that the Court reverse the circuit court's denial of the Motions to Compel Arbitration and compel Plaintiff's claims to arbitration (or to remand this matter to the circuit court with instructions that it do so).

<SIGNED ON THE FOLLOWING PAGE>

[5] *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011).

Respectfully submitted,

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APPELLANTS' CERTIFICATION FOR FINAL REPLY BRIEF

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I, Russell G. Hines, do hereby certify that the **Final Reply Brief of Appellants** complies with Rule 211(b), SCACR, and the Supreme Court's order of April 15, 2014.

Respectfully submitted,

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I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that the **FINAL REPLY BRIEF OF APPELLANTS** and **APPELLANTS' CERTIFICATION FOR FINAL REPLY BRIEF** were served on Respondent on September 24, 2024, by emailing (see attached email) a copy of the same to Respondent's counsel of record:

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September 24, 2024

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Enclosed please find Appellants' Final Brief, Final Reply Brief, and Certifications for service upon you in the above-referenced matter.

Thank you,

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