

Hallmark was signed by Emma Dunham, decedent's daughter and one of her three children. Palmetto Hallmark attached to its motion a health care power of attorney document that purported to nominate Emma Dunham as power of attorney, but that healthcare power of attorney form was not executed by decedent. Further, Palmetto Hallmark provided an Arbitration Agreement and an Admission Agreement that was signed by Emma Dunham. There is no evidence that at the time these documents were executed by Emma Dunham that she had valid healthcare power of attorney. Further, Emma Dunham did not have legal authority to enter the Admission Agreement on her behalf under the South Carolina Adult Health Care Consent Act, S.C. Code Ann. § 44-66-10 *et seq.*, as she was a minority of the children of decedent. Because Emma Dunham lacked legal authority to enter into legal agreements on behalf of her mother, neither the Arbitration Agreement nor the Admission Agreement can be considered to be valid.

In *Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69 (2021), the South Carolina Supreme Court held that a general durable power of attorney for decisions regarding all types of personal and real property, including “choses in action,” does not provide the agent the authority to sign pre-dispute arbitration agreements requiring arbitration of certain claims by a resident against a facility. *Arredondo*, 433 S.C. at 78-79. The Supreme Court further held that the provision of a general durable power of attorney permitting the agent to enter agreements concerning transfers of property also did not authorize the signing of an arbitration agreement. In this regard, the Supreme Court noted the difference between a property right and a constitutional right. *Arredondo*, 433 S.C. at 79. Thus, unless the general durable power of attorney permitted decisions related to constitutional rights, it would appear that a durable power of attorney does not convey the right to the holder or agent to waive constitutional rights, including the right to a jury trial

under the Seventh Amendment. However, it is clear in this case, Ms. Dunham did not have durable power of attorney.

Moreover, Ms. Dunham did not have healthcare power of attorney, as it was not signed by Decedent. In fact, the signature for principal reflects Ms. Dunham's signature, witnessed by Veronica Gee. Nonetheless, even if this healthcare power of attorney was valid, which it is not, it still would not convey authority to Ms. Dunham to waive Decedent's constitutional rights. *Arredondo* sets forth the standard regarding whether a healthcare power of attorney can convey the authority to waive a principal's constitutional rights. In *Arredondo*, the Supreme Court held that language in a healthcare power of attorney giving the holder the right to make necessary healthcare decisions could not give the right to sign an arbitration agreement unless the arbitration agreement was necessary to the implantation of a health care decision. *Arredondo*, 433 S.C. at 81-84. Further, a healthcare power of attorney authorizing the holder or agent to pursue legal action does not grant the agent the authority to execute an arbitration clause. *Arredondo*, 433 S.C. at 85. Thus, *Arredondo* implies that courts can consider whether the arbitration agreement is necessary for the facility to provide care in making the determination as to the effect of an arbitration agreement.

However, here, Palmetto Hallmark cannot make this argument, as its Memorandum in Support of its Motion to Compel Arbitration states that “[t]he Arbitration Agreement by its plain language was not a precondition of admission to the Facility and simply could not have been an adhesion or “take it or leave it” contract. Ms. Dunham had the option not to enter into the Arbitration Agreement on behalf of her mother”. Because Ms. Dunham did not have healthcare power of attorney or general power of attorney conveying the authority to waive constitutional rights, the Arbitration Agreement has no effect as to Decedent, her estate, or her heirs.

Even if Ms. Dunham had authority under the Act to enter the Admission Agreement as an act in furtherance of Decedent James' health care needs, it does not necessarily follow that she had authority to enter a separate Arbitration Agreement under the Act. Therefore, the Court must determine (1) if the Arbitration Agreement merged with and was a part of the Admission Agreement such that Decedent James' estate would be equitably estopped from denying the Arbitration Agreement's validity, and (2) if Ms. Dunham had actual or apparent authority to enter the Arbitration Agreement on behalf of Decedent James. The answer to both inquiries is "no".

While a signed Arbitration Agreement exists in this case, it is not a valid, enforceable agreement for the simple reason that Decedent's daughter, Emma Dunham, did not have any authority to execute the Arbitration Agreement at the time it was entered by the parties. Only a majority of children are authorized to make decisions concerning health care under the Adult Health Care Consent Act. S.C. Code Ann. § 44-66-30(A)(4). Ms. Dunham was only a minority and could not bind Decedent James under the Act. Further, arbitration is a means of resolving a legal dispute outside of the typical civil litigation process – a definition unrelated to physical or mental condition. *See Black's Law Dictionary*, 125 (10th ed. 2014).

Palmetto Hallmark's Arbitration Agreement is optional and separate from its Admission Agreement and contains no provision for medical, nursing, or health care services to be provided to residents, nor does it require any financial commitment to pay for such services. The agreement is separately titled "Facility – Resident/Representative Arbitration Agreement", and is a one-page document and contains its own signature lines. The agreement is signed by Ms. Dunham as "Resident/Representative." Further, the Arbitration Agreement by its very language distinguishes between itself and the Admission Agreement, stating that the Arbitration Agreement will survive any "breach of this Agreement or the Admission Agreement." While the Admission Agreement

purports to incorporate admissions materials into itself “by reference herein”, when viewed alongside the other details of the agreements, it creates at best an ambiguity as to merger when taken in context of the totality of the circumstances, and “the law is clear that any ambiguity in such a clause is construed against the drafter”, i.e., Palmetto Hallmark. *Coleman v. Mariner Health Care Inc.*, 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014). Since Ms. Dunham lacked legal authority, the Arbitration Agreement is void and unenforceable.

Further, the Estate of Emma James cannot be equitably estopped from denying enforcement of the Arbitration Agreement. “Equitable estoppel is a contract defense and the party asserting this defense bears the burden of proving all of its elements.” *Kelly v. Logan, Jolley & Smith*, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). Equitable estoppel requires proof that the party to be estopped acted in a way amounting to a false representation. *Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). Palmetto Hallmark cannot meet its burden to establish this element. There is no evidence Decedent James herself acted in a way amounting to a false representation to Palmetto Hallmark regarding Ms. Dunham's status or that Decedent James intended for Palmetto Hallmark to act in reliance on her conduct. If anything, the evidence shows that, more likely than not, Decedent James was not consciously aware of anything that was occurring at the time of his admission. Further, the Admission Agreement and Arbitration Agreement are separate contracts that do not merge. *See Hodge v. UniHealth Post-Acute Care of Bamberg LLC*, 422 S.C. 544, 561-63, 813 S.E.2d 292, 308 (Ct. App. 2018); *Thompson v. Pruitt Corp*, 416 S.C. 43, 50, 784 S.E.2d 679, 683 (Ct. App. 2016); *Coleman*, 407 S.C. at 352, 755 S.E.2d at 450.

Palmetto Hallmark’s assertion that the Estate of Emma James is equitably estopped from denying the validity of the Arbitration Agreement seems to hinge on a direct benefits theory of

estoppel, i.e., that since Decedent James benefited from the terms of the Admission Agreement, she should be estopped from denying the validity of the Arbitration Agreement. *See Wilson v. Willis*, 426 S.C. 326, 340, 827 S.E.2d 167, 175 (2019). Virtually all of the Circuit Court orders filed by Palmetto Hallmark in support of its Motion rely in some form or another on this theory. However, as the Supreme Court explained in *Wilson*, to successfully assert direct benefits estoppel, the arbitration agreement must be a clause within the larger admissions agreement, and the plaintiff must be seeking to assert causes of action that arise from and are created by the contract. Here, as explained above and below, the Admission Agreement and optional Arbitration Agreement are separate documents that did not merge. Second, Plaintiff does not assert breach of contract, or a violation of contractual duties, and instead has brought his lawsuit under a negligence theory arising from common law duties. *See Wilson*, 426 S.C. at 342, 827 S.E.2d at 176. If anything, Plaintiff's claims are indirectly related to the Arbitration Agreement, as it was optional, ancillary to, and separate from the Admission Agreement. *See id.* (stating that under direct benefits estoppel a nonsignatory's claim must be directly, not just indirectly, based on the contract containing the arbitration agreement).

Additionally, Ms. Dunham did not have any legal authority to enter the Arbitration Agreement. The legal consequences of an agent's actions can only be attributed to the principle when the agent has actual or apparent authority. *Charleston Registry v. Young Clement*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). South Carolina law requires that to prove apparent authority, the defendant must show that the purported principal consciously or impliedly represented another to be his agent. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). For the reasons mentioned above, the healthcare power of attorney document that Decedent never signed did not provide Ms. Dunham with the authority to enter the Agreement.

The simple fact that Ms. Dunham erroneously and without authority signed the agreements so that her mother could be admitted to Palmetto Hallmark and receive health care in no way indicates a manifestation of authority by Ms. Dunham waive her mother's right to a jury trial or agree to arbitration. There is no evidence that Decedent James ever manifested any form of assent establishing Ms. Dunham as her agent.

Palmetto Hallmark's assertion that Ms. Dunham held "inherent agency powers" to act on behalf of Decedent James is unsupported by South Carolina law or Palmetto Hallmark's brief. Palmetto Hallmark concedes that its inherent agency argument requires some authorized conduct on the part of the agent. Here, as explained above, Decedent James did not convey to Ms. Dunham any authority to transact business, healthcare or otherwise, for Decedent James. A simple review of the healthcare power of attorney attached to Palmetto Hallmark's motion easily shows that Decedent James never signed it.

In the alternative, Palmetto Hallmark has requested that the Court grant additional discovery on the nature of Ms. Dunham's agency relationship with her mother. Here, the only relevant and necessary evidence for the Court to make its determination is already available for the Court's review. Any further discovery with the goal of revisiting the arbitrability of this case would only serve to protract this litigation, waste judicial resources, and increase costs for both parties unnecessarily.

Based on the foregoing authorities and findings, the Court denies Defendant's Motion to Compel Arbitration.

THEREFORE, it is ORDERED that the Defendant's Motion to Compel Arbitration is DENIED.

IT IS SO ORDERED.

The Honorable R. Markley Dennis, Jr.

_____, 2022.
Moncks Corner, South Carolina



Dorchester Common Pleas

Case Caption: Tammy China , plaintiff, et al VS Palmetto Hallmark Operating Llc ,
defendant, et al
Case Number: 2021CP1801030
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