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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Appellate Case No. 2024-000596

Thomas D. Kilpatrick
As Special Administrator for the Estate of Anthony Lemon, ...Respondent,

v.

Pruitthealth-Ridgeway, LLC f/k/a Unihealth Post-Acute Care-Tanglewood, LLC, United Health Services of South Carolina, Inc., Pruitthealth Consulting Services, Inc., Pruitthealth Therapy Services, Inc. f/k/a United Rehab, Inc., Pruitthealth, Inc., Neil Pruitt, Jr., THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC, Fundamental Long Term Care Holdings, Inc., Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC,.. Defendants,

Of which THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC are the .... Appellants.

RESPONDENT'S MOTION TO DISMISS APPEAL AND FOR SANCTIONS

Respondent Thomas D. Kilpatrick as Special Administrator for the Estate of Anthony Lemon respectfully moves the Court pursuant to Rule 269, SCACR, for an Order imposing sanctions on Appellants THI of South Carolina at Columbia, LLC

d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC because this Appeal is frivolous, has been taken solely for the purpose of delay, and is entirely unsupported by any South Carolina precedent substantiating Appellants' arguments concerning the purported merger of Appellants' Arbitration and Admission Agreements. For these and the following reasons, the Court should dismiss the Appeal, impose a fee on Appellants, and award costs and attorney's fees to Respondent as a sanction for Appellants' continued pattern of filing frivolous, vexatious appeals over a specific legal and factual issue that has already been conclusively decided by this Court numerous times.

FACTUAL/PROCEDURAL BACKGROUND

Appellants filed their Notice of Appeal on April 12, 2024, appealing an Order of the Circuit Court filed on March 14, 2024. (Ex. 1, Notice of Appeal). The Order denied Appellants' Motion to Compel Arbitration and Motions to Stay Respondent's wrongful death and survival claims arising from injuries the decedent, a 47-year old man suffering from multiple sclerosis, received while in Appellants' care before he passed away. (Ex. 2, Order; Ex. 3, Compl.). Appellants are part of a constellation of entities that operate, own, and profit from scores of skilled nursing, assisted living, and rehabilitation facilities located in a number of states, including South Carolina, Indiana, Maryland, Nevada, New Mexico, Texas, and Wisconsin.[1] This Appeal, and

[1] This group ("the Fundamental entities"), includes Appellants as well as Fundamental Long Term Care, Inc., THI of South Carolina at Charleston, LLC, THI of South Carolina at

all of the related appeals discussed below and included in Exhibit 4, essentially revolve around a single focused, dispositive issue: whether the Fundamental entities' Admission Agreement and Arbitration Agreement, which have remained identical since at least 2019, merge such that Appellants may avail themselves of an equitable estoppel argument to preclude Respondent, and other individuals representing the interests of vulnerable, elderly residents of the Fundamental entities' facilities, from denying that the subject Arbitration Agreement was signed by someone with actual or apparent authority at the time of admission.[2,3]

Astoundingly, at the time Appellants filed the instant Notice of Appeal, their position and argument regarding the merger of these Agreements had been

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Magnolia Manor-Inman, LLC, THI of South Carolina at Spartanburg, LLC, THI of South Carolina at Magnolia Manor-Spartanburg, LLC, THI of South Carolina at Greenville, LLC, THI of Baltimore, Inc., Lake Emory Post Acute Care, Oakbrook Healthcare, LLC, St. George Healthcare, LLC, Palmetto Prince George Operating, LLC, Palmetto Health Care, LLC, Palmetto Lake City-Scranton Operating, LLC, Palmetto Hallmark Operating, LLC, and Hallmark Longterm Care, LLC, amongst others. *See Healthcare Facility Locator*, Fundamental, https://fundltc.com/Healthcare%20Facility%20Locator/Facility_Locator.aspx. Appellants are believed to own and/or operate at least 20 facilities within South Carolina. For a brief review of the Fundamental entities and their origins, see *In re Fundamental Long Term Care, Inc.*, 569 B.R. 904 (Bankr. M.D. Fla. 2016).

[2] Appellants' Initial Brief also contains an additional argument that Respondent's wrongful death claim is subject to the Arbitration Agreement; however, this argument does not need to be reached by the Court as the merger argument is dispositive of all remaining arguments encompassed by the Appeal, as has been noted by this Court in numerous prior unpublished decisions. *See, e.g. Stroud for Stroud v. THI of S.C. at Greenville, LLC*, Unpublished Op. No. 2024-UP-084, 2024 WL 1192620, at *1 n.2 (S.C. Ct. App. filed March 20, 2024). An appeal is frivolous in its entirety when an issue or argument necessary to succeed on appeal is supported solely by frivolous arguments. *Thompson v. Ouellette*, 406 Wis.2d 99, 123, 986 N.W.2d 338, 350 (Ct. App. Wis. 2023).

[3] A review of the related appeals shows that it is not uncommon during the Fundamental entities' admissions process for the admissions paperwork and Arbitration Agreement to be signed by a family member or caregiver who is not the resident's attorney-in-fact, conservator, or guardian at the time of admission. It is a foregone legal conclusion that the authority bestowed upon a family member to act on the resident's behalf under the Adult Health Care Consent Act does not include authority to enter an arbitration agreement. *See Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014).

previously reviewed and rejected by this Court ***fourteen times***, in thirteen unpublished decisions and one published opinion, *Estate of Solesbee by Bayne v. Fundamental Clinical and Operational Servs., LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023). (Ex. 4, Spreadsheet of Appeals). These decisions reviewed the exact same Admission Agreement and Arbitration Agreement that are currently before the Court and entailed an analysis of the exact same applicable South Carolina law and general contract principles.[4] More importantly, at the time Appellants filed the instant Notice of Appeal, the Supreme Court of South Carolina had twice denied their petitions seeking certiorari to review those decisions. The Supreme Court has since gone on to deny certiorari to review this Court's binding decision in *Solesbee*.

All told, at the time of the filing of their Notice of Appeal in this action, the Fundamental entities had previously asked this Court and the Supreme Court to review the subject Agreements ***thirty times*** to determine whether they merge such that a plaintiff would be estopped from denying their validity, all without a single successful result. The Court has since filed three more unpublished decisions affirming that the subject Agreements do not merge, and the Supreme Court has denied certiorari on the exact same issue twelve more times, including nine times on the date of this Motion. Previous to the date of the filing of this Motion, the Fundamental entities, on the other hand, had gone on to file two more notices of appeal to this Court, and four more petitions for a writ of certiorari to the Supreme

[4] The merger analysis solely focuses on the language of the agreements that have purportedly merged. *See Solesbee*, 438 S.C. at 648, 885 S.E.2d at 149 ("[B]y their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply.")

Court, totaling ***thirty-seven*** requests over five years (not including petitions for rehearing) for the appellate courts of this State to review a factually identical argument. These protracted appeals, which to a legal certainty are destined for failure, typically delay the underlying litigation for multiple years, and needlessly consume the parties', the Court's, and the Supreme Court's resources and time.

ARGUMENT

Rule 269, SCACR, sets forth the Court's discretionary authority to impose sanctions for frivolous appeals:

> Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case *and discouragement of like conduct in the future may require*.

Rule 269, SCACR (emphasis added). "An appeal is frivolous *if the result is obvious* or the arguments of error are wholly without merit." *Coghlan v. Starkey*, 852 F.2d 806, 811 (5th Cir. 1988) (emphasis added). The dispositive argument that is being raised to the Court in this Appeal is whether the Circuit Court erred in finding that the subject Agreements did not merge pursuant to *Solesbee* as well as the numerous other unpublished decisions of this Court affirming *Solesbee*'s conclusion that the subject Agreements do not merge.

Appellants are likely to take the position that until the Supreme Court publishes an opinion affirming the reasoning of *Solesbee* that any repetitive appeals of the merger issue are not frivolous and have some chance of succeeding on their merits. This ignores that by repeatedly denying certiorari to review the outcome of

Solesbee (a binding, published Opinion), the Supreme Court has essentially conveyed that under these identical facts and Agreements, it does not see a clear legal error that necessitates reversal or an issue of sufficient importance to grant judicial review. After denying certiorari fourteen times, it is no longer reasonable or realistic to expect that things might be different with the Supreme Court on the next go-round.

Additionally, while Appellants' arguments may also incorporate the doctrine of equitable estoppel, which would generally require the Court in each appeal to weigh all the attendant circumstances and equities unique to each case, here, the threshold, dispositive issue is whether the Agreements merged in the first place. Without merger, the Fundamental entities are deprived of the ability to use the estoppel doctrine offensively as a sword against their residents, and the merger analysis in this Appeal and all twenty-one other matters that are or have been before the Courts has been identical in every respect in every appeal and is solely predicated on the contents of the same two documents. *Solesbee*, 438 S.C. at 646-48, 885 S.E.2d at 148-49.

As to the merger argument, Appellants cannot factually distinguish between the issue's presentation in this Appeal and the nineteen others that have come before it. It should be patently obvious to Appellants, the Court, and any other observer of these matters over the past five years that the Fundamental entities' perpetual appeals of the merger issue are entirely without merit or any hope of success. The inescapable conclusion is that at this point, Appellants' efforts are not

made with a good faith belief in a favorable outcome, but are only designed to delay, frustrate, and hopefully demoralize any resident who commences a tort claim against them in circuit court into submission, without any consideration for the accompanying waste of judicial resources.

Appellate courts have inherent power to dismiss appeals that are "manifestly and palpably frivolous and without merit." *Johnson v. St. Paul City Ry. Co.*, 68 Minn. 408, 409, 71 N.W. 619 (Minn. 1897); *Buckner v. Jenkins*, 122 Okla. 105, 251 P. 81 (Okla. 1926); *MacArthur v. San Juan Cnty.*, 495 F.3d 1157, 1161 (10th Cir. 2007). Rule 269, SCACR grants the Court broad and sweeping authority to impose any sanctions called for by the circumstances of the case and necessary to act as a deterrent to further frivolous appeals. *See also Walker v. Health Int'l Corp.*, 845 F.3d 1148, 1157 (Fed. Cir. 2017) ("Sanctions are awarded to compensate the victimized party for the burden of continued litigation in what long ago [was] a settled matter, as well as to discourage frivolous appeals which unnecessarily clog our docket.").

Under these circumstances, dismissal of this Appeal is clearly an appropriate sanction. There is no need for further briefing on a dispositive issue that has already been ruled upon by this Court seventeen times under factually identical circumstances. *See McKinzy v. Kansas City Power & Light Co.*, 367 Fed. App'x 912, 913 (10th Cir. 2010) ("Mr. McKinzy's appeal meets this standard. Not only have we considered and rejected his arguments on two occasions within the last six months, Mr. McKinzy never mentions these decisions, and thus, makes no attempt to

distinguish them."). The Supreme Court should not be required to set aside its limited resources, grant certiorari, require the parties to further brief an issue that has already been argued dozens of times, hold oral arguments, and draft its own published opinion to put an end to Appellants' willful abuse of the Court and its Rules.

While dismissal is called for in this instance, Respondent expects it will not be enough to deter the Fundamental entities' future conduct. All respondents in the related appeals have thus far been eligible to ask for attorney's fees and costs pursuant to Rule 222, SCACR, after remittitur. However, the looming taxing of costs against the Fundamental entities under Rule 222 has done nothing to faze them or discourage their abuse of the appealability statutes and Appellate Court Rules, and in the meantime, the respondents impacted by Appellants' and the Fundamental entities' manipulation of the appellate process have collectively had their right to a speedy resolution of their claims delayed by dozens of years.

A stronger sanction is warranted. The Court should award attorney's fees and costs to Respondent, without the cap imposed by Rule 222, to compensate Respondent for the burden of participating in this frivolous Appeal. Additionally, the Court should treble the attorney's fees and costs to serve as a deterrent to any further, vexatious appeals that are certain to follow if Appellants and the remaining Fundamental entities are permitted to continue to appeal from every order filed by a circuit court in this State denying their motions to compel arbitration based on the merger issue, which has already been adequately addressed by *Solesbee*.

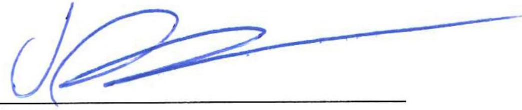
Lastly, the Court should order Appellants to pay a reasonable fine to the Court. These appeals have likely cost the Court itself hundreds of hours of unnecessary work that could have and should have been devoted to appeals that had some likelihood of success, and they surely have added considerable strain to the Court's and Supreme Court's busy appellate docket. Thus, not only has Respondent's and the Court's time and resources been wasted, but also the parties to the numerous other unrelated appeals pending before the Court have had the resolution of their cases unreasonably delayed by the burden placed on the Court by Appellants and the remaining Fundamental entities.

CONCLUSION

The Appellants and other Fundamental entities' continuous pattern of appealing the dispositive merger issue is in reality no different than if a losing party petitioned the Court for rehearing on the same legal issue, based on the same facts, over thirty times in a row. For the foregoing reasons, Respondent respectfully requests that the Court dismiss this Appeal and impose pecuniary sanctions on Appellants. Respondent also requests that the Court hold the remaining briefing deadlines in abeyance until the Court has ruled on Respondent's Motion.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

By: 

October 30, 2024
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EXHIBIT
1

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Fairfield County
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Case No. 2023-CP-20-00268

Thomas D. Kilpatrick
as Special Administrator for the Estate of Anthony Lemon,

Respondent,

v.

Pruitthealth - Ridgeway, LLC f/k/a Unihealth Post-Acute Care - Tanglewood, LLC, United Health Services of South Carolina, Inc., Pruitthealth Consulting Services, Inc., Pruitthealth Therapy Services, Inc. f/k/a United Rehab, Inc., Pruitthealth, Inc., Neil Pruitt, Jr., THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC, Fundamental Long Term Care Holdings, Inc., Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC,

Defendants,

Of whom THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC, are

Appellants.

NOTICE OF APPEAL

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Defendants/Appellants THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC (collectively, "Appellants"), hereby appeal the following order of the Honorable Patrick C. Fant, III, Circuit Court Judge:

- **Order Denying Motion to Compel Arbitration & Motions to Stay,** filed March 14, 2024.

A copy of the appealed order is attached hereto and incorporated herein by reference. Appellants received written notice of entry of the order on March 14, 2024.

Respectfully submitted,

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April 12, 2024

EXHIBIT
2

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STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2023-CP-20-00268

THOMAS D. KILPATRICK AS SPECIAL ADMINISTRATOR FOR THE ESTATE OF ANTHONY LEMON,

Plaintiff,

v.

PRUITTHEALTH - RIDGEWAY, LLC F/K/A UNIHEALTH POST-ACUTE CARE - TANGLEWOOD, LLC, UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC., PRUITTHEALTH CONSULTING SERVICES, INC., PRUITTHEALTH THERAPY SERVICES, INC. F/K/A UNITED REHAB, INC., PRUITTHEALTH, INC., NEIL PRUITT, JR., THI OF SOUTH CAROLINA AT COLUMBIA, LLC D/B/A MIDLANDS HEALTH AND REHABILITATION CENTER, THI OF SOUTH CAROLINA, LLC, FUNDAMENTAL CLINICAL AND OPERATIONAL SERVICES, LLC, FUNDAMENTAL CLINICAL CONSULTING, LLC, FUNDAMENTAL LONG TERM CARE HOLDINGS, INC., FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC, AND HUNT VALLEY HOLDINGS, LLC,

Defendants.

ORDER DENYING MOTION TO COMPEL ARBITRATION & MOTIONS TO STAY

This matter came before the Court on February 29, 2024, on a Motion to Compel Arbitration filed by Defendant THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center ("Midlands") pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("FAA") and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure and related motions to stay this litigation pending the outcome of the arbitration that Midlands seeks to compel by Defendants THI of South Carolin, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental

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Administrative Services, LLC, and Hunt Valley Holdings, LLC (collectively, the "Motions to Stay").[1] Present at the hearing and arguing on behalf of the moving parties was Russell G. Hines. Appearing and arguing on behalf of Plaintiff was Neil E. Alger. After reviewing the submissions of the parties, the pleadings, and hearing the arguments of counsel, the Court denies Midlands' Motion to Compel Arbitration for the reasons set forth herein[2] and, in turn, denies the Motions to Stay.

The Court notes that in oral argument, there was no mentionable dispute as to the facts presented by either Plaintiff or Midlands; even to the extent that Plaintiff presented facts that Midlands had not, Midlands did not present competent evidence to dispute Plaintiff's evidence. The Court adopts the following undisputed facts for its ruling. The Plaintiff in this wrongful death and survival action is Thomas D. Kilpatrick, an attorney appointed by Probate who is an unrelated and uninvolved person in the underlying dispute. Mr. Kilpatrick commenced this action by filing a Notice of Intent on April 3, 2023, followed by a Summons and Complaint on August 31, 2023, alleging wrongful death and survival claims as a result of the care and treatment provided to Mr. Lemon while he was a resident at Midlands' assisted living facility. Specifically, Mr. Lemon developed serious pressure injuries and bedsores between June and July of 2020 after being assessed as a high-risk for pressure injuries by Midlands. Mr. Lemon passed away on July 30, 2021. On January 2, 2024, Midlands filed a Motion to

[1] Midlands' Motion to Compel Arbitration and the Motions to Stay were all filed on January 2, 2024, and heard together on February 29, 2024. The Motions to Stay are based on Section 3 of the FAA. 9 U.S.C. § 3 ("If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration."); *see also Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) ("[The] FAA clearly requires a court stay 'any suit or proceeding' pending the arbitration of 'any issue referable to arbitration under an agreement in writing for such arbitration' upon the application of one of the parties."). Accordingly, the success of the Motions to Stay is tied to the success of Midlands' Motion to Compel Arbitration, and the denial of Midlands' Motion to Compel Arbitration requires the denial of the Motions to Stay.

[2] Plaintiff submitted with his Memorandum in Opposition twelve unpublished opinions of the Court of Appeals. The arguments presented to the Court by Midlands' motion are in large part analogous to those presented in the unpublished opinions. The unpublished opinions denied arbitration based on well-established precedent from other published opinions of the S.C. appellate courts which are referenced herein.

Compel Arbitration, relying on an Arbitration Agreement that was signed individually by the mother of Mr. Lemon, Ms. Minnie Gamble dated January 9, 2012. As noted above, Ms. Gamble held no power of attorney for Mr. Lemon and is not a party to the present action.

The basis of Midlands' Motion is that a valid and enforceable arbitration agreement exists between the parties. The Arbitration Agreement relied upon by Midlands was signed by the decedent's mother, Minnie Gamble, at the time of his admission to Midlands' facility, and it appears that no valid power of attorney was relied on by Midlands. No power of attorney of any sort has been presented in this matter. Evidence presented by Plaintiff indicates that the decedent was suffering from multiple sclerosis which impacted him physically, but the records indicated that he had the mental capacity to sign the facility's Admission Agreement or Arbitration Agreement at the time he was admitted. While the Court recognizes the arguments offered by Midlands for presumptions in favor of arbitration, this Court's analysis begins and ends by answering the threshold inquiry that there is not a legally enforceable arbitration agreement.

At the outset, Ms. Gamble did not have any authority to enter the Admission Agreement and Arbitration Agreements on the decedent's behalf under the South Carolina Adult Health Care Consent Act, S.C. Code Ann. § 44-66-10 *et seq* because it is indicated that Decedent had his cognitive ability. Under the Act, an individual is only authorized to make health care decisions on behalf of an ***incapacitated*** adult. S.C. Code Ann. § 44-66-30. Therefore, based on the evidence before the Court, it appears that Ms. Gamble did not even have authority to make health care decisions on behalf of the decedent at the time of admission, much less the authority to waive his estate's right to a jury trial.

Even if Ms. Gamble had authority under the Act to enter the Admission Agreement in furtherance of the decedent's 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

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Arbitration Agreement merged with and was a part of the Admission Agreement such that Plaintiff in her capacity as personal representative would be equitably estopped from denying the Arbitration Agreement's validity, and (2) if Ms. Gamble had actual or apparent authority to enter the Arbitration Agreement on behalf of the decedent. The Court finds 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 the decedent's mother, Ms. Gamble, did not have any authority to execute the Arbitration Agreement at the time it was entered by the parties. When an individual is incapacitated, a family member may be authorized to make decisions concerning **health care** under the Adult Health Care Consent Act. S.C. Code Ann. § 44-66-30(A). In contrast, 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).

Therefore, even if the Act was applied, it only would have given Ms. Gamble authority to consent on behalf of the decedent to the provision of medical care, including placement in Midlands' facility, as well as authority to make certain financial decisions on behalf of the decedent which he would be obligated to pay. This authority "extends primarily to traditional health care decisions, and only secondarily to the financial decisions necessitated by those decisions." *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 353, 755 S.E.2d 450, 454 (2014). Most jurisdictions, including South Carolina, have ruled execution of an arbitration agreement is not a health care decision. *See Johnson v. Kindred Healthcare, Inc.*, 466 Mass. 779, 789-90, 2 N.E.3d 849, 857-58 (Mass. 2014).

Midlands' Arbitration Agreement is admittedly 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", is paginated as "Page 1

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of 1", and contains its own signature lines. The agreement is signed by Ms. Gamble 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., Midlands. *See Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

In sum, the Act provides statutory authority for family members to make an incapacitated loved one's health care decisions. Thus, the only authority to enter into agreements to arbitrate is reserved for powers of attorney or other legal instruments outlined in the probate code which are not present in this case. As previously stated, the Act is not applicable because it is apparent that Decedent maintained his cognitive ability, but even if it is determined that the Act was applicable, then it is doubtful in this case that there ever was a valid conferral of authority under the Act for executing this Arbitration Agreement. Aside from the Act, Ms. Gamble in her individual capacity had no legal authority to sign the Arbitration Agreement in a representative capacity for the Decedent as she apparently did not possess or present Midlands with documentation demonstrating power of attorney or guardianship. This lack of documentation is clearly indicative that Midlands knew or should have known that Ms. Gamble lacked authority, and there is no evidence in the record that indicates that Midlands made any effort to verify or validate the authority that Midlands is now asserting Ms. Gamble possessed. Since Ms. Gamble lacked legal authority, the Arbitration Agreement is void and unenforceable.

Further, Plaintiff 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

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burden of proving all of its elements." *Kelly v. Logan, Jollev & Smith*, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). Without any further analysis, Midlands has not carried its burden by presenting this Court with any evidence aside from the Arbitration Agreement and Admission Agreement. Midlands has not submitted any affidavits or competent evidence that carries its burden of proof to factually satisfy this argument asserting equitable estoppel. As a legal matter, Midlands has not and cannot meet its burden to establish these elements, primarily because Midlands cannot prove it lacked the means of knowledge of the truth of the facts in question. Equitable doctrines such as estoppel favor diligent parties who actively endeavor to protect their rights. A person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-09 (Ct. App. 2001).

In this case, Midlands had the ability to determine whether Ms. Gamble had authority to sign an arbitration agreement on Decedent's behalf. In fact, Midlands is a residential care facility that regularly engages in the admission and contract process. First, under the Adult Healthcare Consent Act, Midlands had a duty to undertake and document its efforts to ascertain whether Ms. Gamble or someone else had priority and authority under the Act to make Decedent's health care decisions, and it failed to do so. Second, Decedent had his mental capacity and according to the evidence in the record, he was capable of providing his own acquiescence to these agreements which he did not and Midlands circumvented his own authority by having Ms. Gamble act as a signatory. Midlands is a sophisticated business entity frequently interacting with residents and their families during the rehabilitation center admission process. Midlands is or should be familiar with the legal concepts of guardianship and powers-of-attorney. Midlands had the ability to ask Ms. Gamble whether she was Decedent's attorney-

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in-fact, to determine if Decedent had his mental capacity, to determine if some other legal authority existed, and it had the ability to request supporting documentation proving authority. No evidence is in the record that Midlands appropriately complied with these inquiries. Since Midlands has not cited or provided evidence on this element of equitable estoppel, Plaintiff is not equitably estopped from denying the Arbitration Agreement. 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.

Midlands' assertion that Plaintiff 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 benefited from the terms of the Admission Agreement, the personal representative of his estate 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 Midlands 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 her lawsuit under a negligence theory arising from common law duties. *See Wilson*, 426 S.C. at 342, 827 S.E.2d at 176. Incidentally, Plaintiff's claims are indirectly related to the Arbitration Agreement, as it was optional, ancillary to, and separate from the Admission Agreement. *See id.*

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(stating that under direct benefits estoppel a non-signatory's claim must be directly, not just indirectly, based on the contract containing the arbitration agreement).

Additionally, Plaintiff did not have any authority to enter the Arbitration Agreement. The legal consequences of an agent's actions can only be attributed to the principal 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). Once again, Midlands has not provided this Court with any competent evidence that is persuasive for establishing common law agency. The simple fact that Ms. Gamble signed the agreements so that her son could be admitted to Midlands' facility and receive health care in no way indicates a manifestation of authority by Decedent to waive his right to a jury trial or agree to arbitration. Neither the Admission Agreement, nor the Arbitration Agreement, offer any probative evidence indicating Decedent's intention. Midlands has not come forward with any evidence that Decedent ever manifested any form of assent establishing Ms. Gamble as his agent and accordingly, Midlands has failed to meet its burden of proof.

Midlands' assertion that Plaintiff held "inherent agency powers" to act on behalf of the decedent is unsupported by South Carolina law. South Carolina law is clear that an individual does not have inherent agency powers concerning health care, financial, and other affairs of their spouse, much less a mother or extended family member. *Hinson v. Roof*, 128 S.C. 470, 475, 122 S.E. 488, 490 (1924) ("The marriage relation of the parties . . . is not necessarily enough to establish the fact that the one is the agent of the other. There must be other proof."); S.C. Jur. *Agency* § 6 (1994) ("No presumption arises from the fact of the marital relationship, without more, that [a spouse] is the agent of [the other spouse].") (footnote omitted).

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Based on the tenants of contract law, this Court is not convinced that this agreement is enforceable. The necessary elements of a contract are an offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. Of S.C.*, 354 S.C. 397, 406 (2003). Consideration is a promise to do something that a party has no legal obligation to do or to forbear from doing something it has a legal right to do. This Arbitration Agreement has no direct mention of consideration. Midlands has argued that the arbitration agreement is a bilateral contract and consideration is provided through the exchanging of promises to enter into arbitration. The S.C. Supreme Court held long ago:

> A promise may constitute the consideration for another promise. But a promise is not a good consideration for a promise unless there is absolutely ***mutuality of the engagement***, so that each party has the right to hold the other to a positive agreement. ***In case the promise of one of the parties impose no legal duty upon the party making it, such promise furnishes no consideration for a promise.***

Int'l Shoe Co. v. Herndon, 135 S.E. 202, 205 (1926) (emphasis added) (*citing* Elliott on Contracts, vol. 1, § 231). Although Midlands has argued that both parties are forfeiting their right to trial by jury for binding arbitration, the reality is that the obligation and detriment falls almost exclusively on the resident. *Id.* The reality is that no duty is owed by the resident to the nursing home facility other than to pay one's bills which happens to be exclusively related to the admission agreement, not the arbitration agreement; the two agreements do not merge. Midlands is unable to articulate or provide this court with any evidence of consideration for the Arbitration Agreement, and therefore, the arbitration agreement fails as a matter of law.

Lastly, it is doubtful that the scope of the Arbitration Agreement, even if it was valid, would cover wrongful death claims asserted on behalf of a decedent's statutory beneficiaries. That is because the wrongful death claim belongs solely to the wrongful death beneficiaries, and is brought only on

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their behalf by the personal representative of the estate. S.C. Code Ann. §§ 15-51-10 and -20; *Self v. Goodrich*, 300 S.C. 349, 351, 387 S.E.2d 713, 714 (Ct. App. 1989). The statutory beneficiaries are non-signatories to the Arbitration and Admission Agreements, regardless of whether the Arbitration Agreement purports to include "any alleged tort, personal injury, negligence, or other claim" "arising out of or relating to Facility's Admission Agreement." Therefore, if the Arbitration Agreement were valid, which it is not, the wrongful death beneficiaries would only be bound to its terms as third-party beneficiaries.

A third-party beneficiary may only be bound by an arbitration agreement if it is attempting to enforce the contract containing the arbitration agreement. *Thompson*, 426 S.C. at 57, 784 S.E.2d at 687. Here, the Arbitration Agreement is a standalone document not contained within the Admission Agreement, and the wrongful death beneficiaries are not attempting to enforce the Admission Agreement or Arbitration Agreement. Instead, they are seeking to recover under the wrongful death scheme for Midlands' breach of common law duties arising from its care for Decedent. Thus, even if the Arbitration Agreement is valid and enforceable, it would only reach the survival claim of the estate, and not any wrongful death claims brought on behalf of the statutory beneficiaries. This conclusion comports with the law of other state jurisdictions. *See FutureCare NorthPoint, LLC v. Peeler*, 143 A.3d 191, 209-10, 213 (Md. App. 2016); *Taylor v. Extendicare Health Facilities, Inc.*, 147 A.3d 490, 494 n. 1 (Pa. 2016) (citing *Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 660 (Pa. Super. 2013)); *Boler v. Sec. Health Care, LLC*, 336 P.3d 468, 477 (Okla. 2014); *Estate of Decamacho ex rel. Guthrie v. La Solana Care & Rehab, Inc.*, 316 P.3d 607, 614 (Ariz. Ct. App. 2014); *Daniels v. Sunrise Sr. Living, Inc.*, 212 Cal. App. 4th 674, 151 Cal. Rptr. 3d 273 (2013); *Carter v. SSC Odin Operating Co, LLC*, 976 N.E.2d 344, 355-58 (Ill. 2012); *Ping v. Beverly Enters., Inc.*, 376 S.W.3d 581 (Ky. 2012); *Woodall v. Avalon Care Center-Federal Way, LLC*, 231 P.3d 1252 (Wash. App. 2010); *Lawrence v.*

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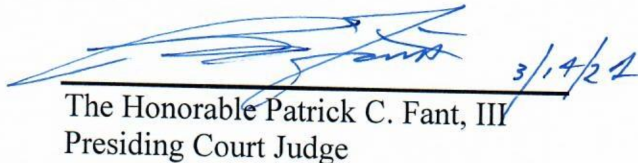
Beverly Manor, 273 S.W.3d 525 (Mo. 2009); *Bybee v. Abdulla*, 189 P.3d 40 (Utah 2008); *Peters v. Columbus Steel Castings Co.*, 873 N.E.2d 1258, 1262 (Ohio 2007); *Chapman v. Cardiac Pacemakers, Inc.*, 673 P.2d 385 (Idaho 1983); *see also Strickholm v. Evangelical Lutheran Good Samaritan Soc'y*, Case No. 4:11-CV-00059-BLW, 2011 WL 2532395 (D. Idaho June 24, 2011). However, since it is not valid, this Court will not compel arbitration of the wrongful death or survival claims in this action.

Based on the foregoing authorities and findings, the Court denies Midlands' Motion to Compel Arbitration. This Court's denial of Midlands' motion is based entirely on South Carolina law and the failure of Midlands to meet its burden of persuasion for the enforceability of the contract that has been presented to this Court. In recognition of its contractual origins and limitations, Section 2 of the FAA dictates that arbitration agreements "shall be valid, irrevocable, and enforceable, ***save upon such grounds as exist at law or in equity for the revocation of any contract***." 9 U.S.C. § 2. (emphasis added). This Court's ruling in no way relies on or contravenes any presumption or the auspices of the FAA, but rather, as the FAA directs on the basis of law and equity, the Court finds that this Arbitration Agreement is not valid or enforceable.

And having thus determined that Midlands' Motion to Compel Arbitration should be denied, the Motions to Stay must be denied, too.

THEREFORE, IT IS ORDERED that the Midlands' Motion to Compel Arbitration and the Motions to Stay are DENIED.

IT IS SO ORDERED.



The Honorable Patrick C. Fant, III
Presiding Court Judge

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Fairfield Common Pleas

Case Caption: Thomas D Kilpatrick , plaintiff, et al VS Pruitthealth Ridgeway L L C , defendant, et al

Case Number: 2023CP2000268

Type: Order/Other

So Ordered

Patrick C. Fant, III

Electronically signed on 2024-03-14 16:02:19 page 12 of 12

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STATE OF SOUTH CAROLINA COUNTY OF FAIRFIELD	)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2023-CP-20-
THOMAS D. KILPATRICK AS SPECIAL ADMINISTRATOR FOR THE ESTATE OF ANTHONY LEMON, Plaintiff, v. PRUITTHEALTH - RIDGEWAY, LLC F/K/A UNIHEALTH POST-ACUTE CARE - TANGLEWOOD, LLC, UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC., PRUITTHEALTH CONSULTING SERVICES, INC., PRUITTHEALTH THERAPY SERVICES, INC. F/K/A UNITED REHAB, INC., PRUITTHEALTH, INC., NEIL PRUITT, JR., THI OF SOUTH CAROLINA AT COLUMBIA, LLC D/B/A MIDLANDS HEALTH AND REHABILITATION CENTER, THI OF SOUTH CAROLINA, LLC, FUNDAMENTAL CLINICAL AND OPERATIONAL SERVICES, LLC, FUNDAMENTAL CLINICAL CONSULTING, LLC, FUNDAMENTAL LONG TERM CARE HOLDINGS, INC., FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC, AND HUNT VALLEY HOLDINGS, LLC, Defendants.	)	**SUMMONS** (Jury Trial Requested)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at 690 North Green Street, Post Office Box 2530, Ridgeland, SC 29936, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

PARKER LAW GROUP, LLP

BY: _s/Neil E. Alger_
Neil E. Alger, Esquire
Bar # 100530
P.O. Box 2530
Ridgeland, SC 29936

ATTORNEY FOR PLAINTIFF

August 31, 2023
Ridgeland, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF FAIRFIELD THOMAS D. KILPATRICK AS SPECIAL ADMINISTRATOR FOR THE ESTATE OF ANTHONY LEMON, Plaintiff, v. PRUITTHEALTH - RIDGEWAY, LLC F/K/A UNIHEALTH POST-ACUTE CARE - TANGLEWOOD, LLC, UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC., PRUITTHEALTH CONSULTING SERVICES, INC., PRUITTHEALTH THERAPY SERVICES, INC. F/K/A UNITED REHAB, INC., PRUITTHEALTH, INC., NEIL PRUITT, JR., THI OF SOUTH CAROLINA AT COLUMBIA, LLC D/B/A MIDLANDS HEALTH AND REHABILITATION CENTER, THI OF SOUTH CAROLINA, LLC, FUNDAMENTAL CLINICAL AND OPERATIONAL SERVICES, LLC, FUNDAMENTAL CLINICAL CONSULTING, LLC, FUNDAMENTAL LONG TERM CARE HOLDINGS, INC., FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC, AND HUNT VALLEY HOLDINGS, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2023-CP-20- **COMPLAINT** *(Jury Trial Demanded)*

The Plaintiff alleges:

1. That the Decedent, Anthony Lemon, was a citizen and resident of the County of Richland, State of South Carolina.

2. That Thomas D. Kilpatrick, an estate planning attorney, has been appointed the Special Administrator of the Estate of Anthony Lemon and brings this action pursuant to the S.C. Code Ann. 15-51-10, the Wrongful Death Act, and other applicable statutory and/or common law.

3. That upon information and belief, Defendant, Pruitthealth – Ridgeway, LLC f/k/a Unihealth Post-Acute Care – Tanglewood, LLC, is a limited liability corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in the County of Fairfield, South Carolina.

4. That upon information and belief, Defendant, United Health Services of South Carolina, Inc., is a limited liability corporation organized and existing pursuant to the laws of the State of South Carolina and provides services in the County of Fairfield, South Carolina.

5. That upon information and belief, Defendant, Pruitthealth Consulting Services, Inc., is a foreign corporation believed to be organized under the laws of the State of Georgia and provides services in the County of Fairfield, South Carolina.

6. That upon information and belief, Defendant, Pruitthealth Therapy Services, Inc. f/k/a United Rehab, Inc., is a foreign corporation believed to be organized under the laws of the State of Georgia and provides services in the County of Fairfield, South Carolina.

7. That upon information and belief, Defendant, Pruitthealth, Inc., is a foreign corporation believed to be organized under the laws of the State of Georgia and provides services in the County of Fairfield, South Carolina.

8. That upon information and belief, Defendant, Neil Pruitt, Jr., is a resident of Georgia and is the licensee responsible for the overall management and operation of the Pruitthealth – Ridgeway facility.

9. That collectively, the Defendants named in numbers 3 through 8, own, control, operate, and manage the Defendants' business and facilities including Pruitthealth - Ridgeway (hereinafter referred to as "Pruitt") where some of the allegations contained herein occurred; that these Defendants

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controlled the care and treatment services that were provided, and were responsible for the operational outcomes that occurred

10. That upon information and belief, Defendant THI of South Carolina at Columbia, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and doing business as Midlands Health and Rehabilitation Center with its principal place of business in the County of Richland, South Carolina.

11. That upon information and belief, Defendant THI of South Carolina, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

12. That upon information and belief, Defendant, Fundamental Clinical and Operational Services, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

13. That upon information and belief, Defendant, Fundamental Clinical Consulting, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

14. That upon information and belief, Defendant, Fundamental Long Term Care Holdings, Inc., is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

15. That upon information and belief, Defendant, Fundamental Administrative Services, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

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16. That upon information and belief, Defendant, Hunt Valley Holdings, LLC, is a foreign corporation believed to be organized under the laws of the State of Delaware and provides services in the County of Richland, South Carolina.

17. That collectively, the Defendants named in numbers 10 through 16, own, control, operate, and manage the Defendants' business and facilities including Midlands Health and Rehabilitation Center (hereinafter referred to as "Midlands") where some of the allegations contained herein occurred; that these Defendants controlled the care and treatment services that were provided, and were responsible for the operational outcomes that occurred.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS, THI OF SOUTH CAROLINA AT COLUMBIA, LLC D/B/A MIDLANDS HEALTH AND REHABILITATION CENTER, THI OF SOUTH CAROLINA, LLC, FUNDAMENTAL CLINICAL AND OPERATIONAL SERVICES, LLC, FUNDAMENTAL CLINICAL CONSULTING, LLC, FUNDAMENTAL LONG TERM CARE HOLDINGS, INC., FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC, AND HUNT VALLEY HOLDINGS, LLC
(Negligence/Gross Negligence)

18. That Mr. Lemon was admitted into Defendants' facility, Midlands, on or around May 8, 2017; that Mr. Lemon was 47 years old and had a diagnosis of Multiple Sclerosis.

19. That while a resident at the Defendants' facility, Mr. Lemon required skilled nursing care from the staff at the nursing home as well as assistance with daily living activities, including assistance with eating.

20. That Mr. Lemon was at risk for falls, skin breakdown and aspiration.

21. That upon entry into the Defendants' facility, Mr. Lemon was without compromise to his skin or tissue; that during his stay he was supposed to have been cared for by the Defendants, yet Mr. Lemon developed avoidable pressure sores.

22. That between the months of July and September 2017, Mr. Lemon developed two unstageable pressure sores to his right and left heels. These sores eventually healed.

23. That Defendants knew or should have known that Mr. Lemon was high risk for pressure sores.

24. That Defendants knew or should have known that skin assessments for Mr. Lemon were required by the standard of care.

25. That according to the skin assessments contained within the chart, staff of Midlands stopped performing skin assessments on or around July 2020.

26. That on multiple occasions, Mr. Lemon was noted to choke on his food; however, staff of Midlands failed to assess his lungs, failed to update his care plan and failed to alert his physician.

27. That on or around July 31, 2020, Mr. Lemon's temperature was elevated and was given Tylenol by the staff of Midlands.

28. That on or around July 31, 2020, Mr. Lemon was admitted into Providence Hospital in Columbia, located in the County of Richland, South Carolina, presenting hypotension, tachycardia and dehydration.

29. Upon his admittance into the hospital, the staff at Providence Hospital discovered that Mr. Lemon had developed sepsis due to a sacral wound infection.

30. That on or around August 3, 2020, Mr. Lemon was discharged from Providence Hospital and admitted into Pruitthealth – Ridgeway.

31. While in the Defendants' care, custody and control, Mr. Lemon did suffer grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendant, combining and concurring:

a. In failing to provide proper and adequate medical attention;

b. In failing to provide adequate assessments and monitoring of Mr. Lemon's skin condition;

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c. In failing to properly document changes in Mr. Lemon's condition;

d. In failing to implement appropriate skin prevention measures;

e. In failing to turn and reposition Mr. Lemon;

f. In failing to properly monitor Mr. Lemon;

g. In failing to complete a timely assessment;

h. In failing to have sufficient nursing and nursing assist time to provide the care that was needed for Mr. Lemon;

i. In failing to manage its revenue and income such that appropriate care may be rendered to Mr. Lemon;

j. In failing to exercise reasonable care for the well-being of Mr. Lemon under the circumstances;

k. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and

l. In such other particulars as the evidence may establish.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS, PRUITTHEALTH - RIDGEWAY, LLC F/K/A UNIHEALTH POST-ACUTE CARE - TANGLEWOOD, LLC, UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC., PRUITTHEALTH CONSULTING SERVICES, INC., PRUITTHEALTH THERAPY SERVICES, INC. F/K/A UNITED REHAB, INC., PRUITTHEALTH, INC., AND NEIL PRUITT, JR.
(Negligence/Gross Negligence)

32. Upon his admittance to Pruitt, staff treated Mr. Lemon's sacral wound.

33. That on or around September 1, 2020, Mr. Lemon's sacral wound resolved.

34. That Mr. Lemon remained a resident of PruittHealth – Ridgeway; that as a result of repeated neglect, he was transferred to Prisma Health Richland hospital.

35. That on or around July 30, 2021, Mr. Lemon died while a patient at Prisma Health Richland in Columbia, located in the County of Richland, South Carolina.

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36. While in the Defendants' care, custody and control, Mr. Lemon did suffer grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendant, combining and concurring:

a. In failing to provide proper and adequate medical attention;

b. In failing to provide adequate assessments and monitoring of Mr. Lemon's skin condition;

c. In failing to properly document changes in Mr. Lemon's condition;

d. In failing to implement appropriate skin prevention measures;

e. In failing to turn and reposition Mr. Lemon;

f. In failing to properly monitor Mr. Lemon;

g. In failing to complete a timely assessment;

h. In failing to have sufficient nursing and nursing assist time to provide the care that was needed for Mr. Lemon;

i. In failing to manage its revenue and income such that appropriate care may be rendered to Mr. Lemon;

j. In failing to exercise reasonable care for the well-being of Mr. Lemon under the circumstances;

k. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and

l. In such other particulars as the evidence may establish.

37. That by reason and in consequence of the aforesaid negligent, careless, reckless, willful, wanton and grossly negligent conduct of the Defendants, Mr. Lemon sustained serious and severe injuries; that the above injuries were of such a nature as to require him to spend money for hospitalization, doctor's care and other medical necessities; that Mr. Lemon suffered great pain, humiliation and mental anguish.

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38. That by reason for the foregoing, Plaintiff is informed and believes that Mr. Lemon's estate is entitled to judgment against the Defendants for both actual and punitive damages; all of which damages which proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

WHEREFORE, Plaintiff prays for judgment against Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

PARKER LAW GROUP, LLP

BY: *s/Neil E. Alger*
Neil E. Alger, Esquire
Bar # 100530
P.O. Box 2530
Ridgeland, SC 29936

ATTORNEY FOR PLAINTIFF

August 31, 2023
Ridgeland, South Carolina

EXHIBIT 4

Case Name	Appellate Case No.	NOA Date	COA Decision	Decision Date	Cert Petition/Extension Date	Cert Denied	P Attorney
Ladson	2019-001413	8/22/2019	2022-UP-169	4/6/2022	9/15/2022	4/18/2023	Pierce Sloan
Solesbee	2019-001731	10/14/2019	885 S.E.2d 144	1/25/2023	5/15/2023	4/16/2024	Matt Christian
Nanney	2020-000500	3/18/2020	2023-UP-299	8/23/2023	11/21/2023	9/11/2024	Ray Mullman
Daniels	2020-000501	3/18/2020	2022-UP-313	7/27/2022	10/24/2022	5/24/2023	Hughey Law Firm
Estate of Owens	2020-001107	8/12/2020	2023-UP-272	7/19/2023	10/13/2023	4/16/2024	Ray Mullman
Greene	2020-001167	8/19/2020	2023-UP-396	12/13/2023	3/5/2024	10/30/2024	Pro Se
Tisdale	2021-000586	6/2/2021	2024-UP-005	1/3/2024	4/17/2024	10/30/2024	McGowan Hood
Walker	2021-000594	6/4/2021	2023-UP-400	12/13/2023	3/5/2024	10/30/2024	McGowan Hood
White	2021-000700	7/1/2021	2023-UP-393	12/13/2023	3/5/2024	10/30/2024	Strom Law Firm
Dawkins	2021-000707	7/1/2021	2023-UP-392	12/13/2023	3/5/2024	10/30/2024	Jordan Law Center
Stroud	2022-000398	3/30/2022	2024-UP-084	3/20/2024	6/20/2024	10/30/2024	Dan Pruitt
Pace	2022-001059	7/27/2022	2024-UP-261	7/17/2024	10/17/2024	PENDING	Harbin & Burnett
Rahn	2022-001242	9/2/2022	2023-UP-397	12/13/2023	3/5/2024	10/30/2024	PLG
China	2022-001807	12/29/2022	2023-UP-394	12/13/2023	3/5/2024	10/30/2024	Strom Law Firm
Estate of Rice	2023-000432	3/14/2023	2024-UP-083	3/20/2024	6/20/2024	10/30/2024	Matt Christian
Washington	2023-001282	8/10/2023	2024-UP-319	9/25/2024	Pet. for Rehearing	N/A	PLG
McCarson	2023-001371	8/28/2023	2024-UP-320	9/25/2024	Pet. for Rehearing	N/A	PLG
Hutley	2023-001612	10/12/2023	PENDING	N/A	N/A	N/A	Dan Pruitt
Hagood	2023-001712	11/1/2023	PENDING	N/A	N/A	N/A	Kip McAlister
Kilpatrick	2024-000596	4/12/2024	PENDING	N/A	N/A	N/A	PLG
White	2024-000914	6/3/2024	PENDING	N/A	N/A	N/A	PLG
Calloway	2024-000910	6/3/2024	PENDING	N/A	N/A	N/A	PLG

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Appellate Case No.: 2024-000596

Thomas D. Kilpatrick
as Special Administrator for the Estate of Anthony Lemon,..................Respondent,

v.

Pruitthealth - Ridgeway, LLC f/k/a Unihealth Post-Acute Care – Tanglewood, LLC, United Health Services of South Carolina, Inc., Pruitthealth Consulting Services, Inc., Pruitthealth Therapy Services, Inc. f/k/a United Rehab, Inc., Pruitthealth, Inc., Neil Pruitt, Jr., THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC, Fundamental Long Term Care Holdings, Inc., Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC,..................................... Defendants,

Of whom THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC, are.. Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Respondent's Motion to Dismiss has been served upon the following counsel of record by emailing a copy of the same, this 31st of October 2024.

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Respectfully submitted,

PARKER LAW GROUP, LLP

By:

October 31, 2024
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