

entered into an Arbitration agreement with the Facility.” This Agreement does not contain Plaintiff’s signature.

APPLICABLE STANDARD

“Unless the parties otherwise provide, the question of the arbitrability of a claim is an issue for judicial determination. Determinations of arbitrability are subject to de novo review, but if any evidence reasonably supports the circuit court’s factual findings, this court will not reverse those findings.” *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 554 (Ct. App. 2018) (internal citations omitted).

The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. *See Aiken v. World Finance Corp. of S.C.*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); *MBNA America Bank, N.A. v. Christianson*, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008).

Arbitration agreements are governed by the Federal Arbitration Act (“FAA”). While there is a presumption in favor of Arbitration Agreements, this presumption only applies where there is a valid Arbitration Agreement. 9 U.S.C. § 4 (“The court shall make an order directing the parties to proceed to arbitration” but only “upon being satisfied that the making of the agreement...is not in issue”); *see also EEOC v. Waffle House*, 534 U.S. 279 (2002); *Toler’s Cove Homeowners Ass’n, Inc. v. Trident Constr. Co., Inc.*, 355 S.C. 605, 612, 586 S.E. 2d 581 (2003).

“Arbitration is available only when the parties involved contractually agree to arbitrate [. . .] In determining whether an agreement to arbitrate exists, the court should apply ‘ordinary state-law principles that govern the formation of contracts.’” *Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (Ct. App. 1999). These principles include the axiom that, “in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all

essential and material terms of the agreement. *Player v. Chandler*, 299 S.C. 101, 105 382 S.E.2d 891, 893 (1989).

“Whether an arbitration agreement may be enforced against a non-signatory to the agreement is a matter subject to de novo review by an appellate court.” *Wilson v. Willis*, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019). The South Carolina Court of Appeals has recognized that five theories "aris[ing] out of common law principles of contract and agency law could provide a basis for binding nonsignatories to arbitration agreements: 1) incorporation by references; 2) assumption; 3) agency; 4) veil piercing/alter ego; and 5) estoppel. *Malloy v. Thompson*, 409 S.C. 557, 561-62, 762 S.E.2d 690, 692 (2014) (internal quotations omitted).

FINDINGS

1. Plaintiff's Son Lacked Legal Authority to Sign the Arbitration Agreement.

At the time of his admission to Defendant's Facility, Plaintiff had just suffered a stroke. According to Defendant's own medical records, Plaintiff did not have capacity to make medical decisions or follow commands, was nonverbal, and was a poor historian due to cognitive/psychiatric impairment. Defendant's employees had Plaintiff's son, Michael, sign all of Plaintiff's admissions paperwork, despite Michael's lack of authority to do so. Because the purported Arbitration Agreement was not signed by Plaintiff or anyone with legal authority to sign documents on his behalf, it is unenforceable, and Plaintiff cannot be bound by its terms.

South Carolina Courts have consistently ruled against compelling arbitration in similar cases. See *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016) (estate of a dementia patient could not be compelled to arbitrate when patient's son signed the purported Arbitration Agreement along with the Admission Agreement to a nursing home); *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014) (decedent's sister's authority to make decisions for his health care under the Adult Health Care Consent Act extended to the Admission Agreement, but not the separate Arbitration

Agreement); and *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 550, 813 S.E.2d 292, 295 (Ct. App. 2018) (husband did not have authority to sign Arbitration Agreement on his wife's behalf when she was competent and did not represent that he was her agent). Recently, a South Carolina Circuit Court discussed *Coleman, Hodge, and Thompson* and concluded as follows:

This precedent clearly stands for the proposition that when a healthcare facility attempts to bind a patient to an Arbitration Agreement signed by a family member, the facility must make a clear showing that the family member was a legal agent of the patient. Our Courts have indicated that without a Power of Attorney, or some other express delegation of authority by the principal, there is no actual legal authority for an alleged agent to bind the principal to any agreement, or to do anything beyond making healthcare decisions for an incompetent patient.

Order Regarding Defendants' Motions to Stay and Motion to Compel Arbitration, *Trina Dawkins, as Personal Representative of the Estate of William Dawkins* (2020-CP-42-03593) (affirmed in *Dawkins v. Clinical*, 2023 S.C. App. Unpub. LEXIS 462).

It is undisputed that Michael did not hold a Power of Attorney for his father, that he had not been appointed as Plaintiff's guardian, and that he did not have any express authority to make healthcare decisions on his father's behalf. Michael did not have authority to enter into the Agreement on Plaintiff's behalf.

2. The Common Law Principles in *Malloy* do not Support Binding Plaintiff to the Agreement as a Non-Signatory.

Having established Michael's lack of authority to enter into the Agreement on his father's behalf, we turn to whether Plaintiff can nonetheless be bound by the Agreement despite his status as a non-signatory. Because Defendant has failed to satisfy any of the five common law theories listed in *Malloy* (409 S.C. 557, 561-62 (2014)), the answer is no. The first theory, incorporation by reference, is inapposite because there is no indication that any document signed by Plaintiff referred to the purported Arbitration Agreement. Similarly, Defendant has not set forth any evidence to support an argument for assumption or veil piercing/alter ego liability.

To the extent Defendant relies on a purported agency relationship between Plaintiff and Michael, that argument also fails. There was no express agency between the two at the time of Michael's signature, and nothing in South Carolina law supports a presumption of apparent agency between an adult child and a parent. *Cf. Hodge*, 422 S.C. 544, 550 (Ct. App. 2018). Even if there were an agency relationship based on apparent authority to make health care decisions for Plaintiff, an incompetent person, it would not result in Plaintiff being bound by the Arbitration Agreement. South Carolina case law is clear that authority to make health care decisions does not extend to the ability to enter into arbitration agreements. "[T]he authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial." *Thompson*, 416 S.C. at 45 (Ct. App. 2016).

Finally, Plaintiff is not estopped from bringing his claims. As discussed in *Coleman* and later in *Hodge*, equitable estoppel only applies to Plaintiff in this context if the Arbitration Agreement is merged with the Admission Agreement. "The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents together. The theory is that the instruments are effectively one instrument or contract." *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 355.

However, the courts in both *Coleman* and *Hodge* pointed out several relevant factors for determining merger in the context of admission agreements and purported arbitration agreements, and those factors weigh heavily against merger in the present case. As in *Hodge*, the Admission Agreement and other admission paperwork in this case indicate it is governed by South Carolina law, while the purported Arbitration Agreement states that it is governed by the FAA. Like in *Hodge*, Defendant's purported Arbitration agreement case also contains a separate reference to the Admission Agreement. The purported Arbitration Agreement in this case also has its own signature line, and is contained on its

own page. Based on these factors, the Admissions Agreement, other admission paperwork, and purported Arbitration Agreement do not merge.

Because there was no merger between the two purported agreements, Plaintiff is not estopped from asserting that the lack of his signature precludes enforcement of the arbitration agreement. This same rationale extends to any potential claim of equitable estoppel. *See Hodge*, 422 S.C. at 563 (noting that equitable estoppel arguments are also “premised on the[] contention that, under state law, the admission agreements and the arbitration agreements merged”).

CONCLUSION

For the foregoing reasons, Defendant’s Motion to Dismiss and Motion to Compel Arbitration are DENIED.

AND IT IS SO ORDERED.

[electronic signature page to follow]



Charleston Common Pleas

Case Caption: Joe Bryan VS Thi Of South Carolina At Charleson Llc , defendant, et al
Case Number: 2024CP1003732
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764