

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO: 2022-CP-38-00525

BEVERLY VAUGHN AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF LORIS PARIS,

Plaintiff,

v.

SAINT MATTHEWS HEALTHCARE,
LLC; MELISSA KIZER; MELISSA
DAVIS; AND ANGELA SMITH
TELIHA

Defendants.

ORDER

RECEIVED

Feb 18 2025

SC Court of Appeals

This matter is before the Court on Defendants’ Motion to Compel Arbitration and Motion to Stay Proceedings. For the following reasons, the Court DENIES the Defendants’ Motions.

FACTUAL BACKGROUND

On or about April 12, 2019, Loris Paris was admitted to Defendant’s facility for skilled nursing and rehabilitative. Prior to the date of admission, Loris Paris executed a Power of Attorney for naming her daughter, Beverly Vaughn, as her agent. It is undisputed that at no time did Loris Paris or Ms. Vaughn review or sign the arbitration agreement, nor did either one at any time consent to the arbitration agreement or authorize the signing of the agreement.

On April 8, 2022, Plaintiff filed a Summons and Complaint alleging negligent care on the part of the Defendants of behalf of her mother, Loris Paris. In lieu of providing a response to the pleadings, Defendants filed a Motion to Compel Arbitration and a Motion to Stay Litigation and Discovery pending the arbitration.

BURDEN OF PROOF

The Defendant facility seeks to compel arbitration. Defendant carries the burden to prove that a valid and enforceable arbitration agreement exists. The party seeking to establish contractual waiver of jury bears the burden of proof to establish that the waiver was signed in a “knowing, voluntary and intentional” capacity. Of those courts that have decided this question, most have held that it is the proponent of the waiver who bears the burden, reasoning that the jury trial right is fundamental, and should not be waived absent clear evidence.¹ In interpreting a jury trial waiver narrowly, some courts have also emphasized “the basic principle that ambiguities in a contract are construed against the drafting party.”² Whether the parties agreed to arbitrate is a question of substantive state law. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007) (“General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.”). *In Chassereau v. Global Sun Pools, Inc.*, 644 S.E.2d 718 (S.C. 2007), the Supreme Court stated:

Although we are constrained to resolve all doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis. While actions taken in an arrangement such as the one entered into by these parties might have the potential to generate several legal claims and causes of action, we have no doubt that Chassereau did not intend to agree to arbitrate the claims she asserts in the instant case. Accordingly, we

¹ See e.g., *Leasing Serv. Corp. v. Crane*, 804 F.2d 828, 833 (4th Cir. 1986) (“Where waiver is claimed under a contract executed before litigation is contemplated, we agree with those courts that have held that the party seeking enforcement of the waiver must prove that consent was both voluntary and informed.”); *Nat’l Equip. Rental Ltd. v. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977) (implying that party defending waiver bears burden of proof); *Luis Acosta, Inc. v. Citibank, N.A.*, 920 F.Supp. 15, 18 (D.P.R. 1996) (rejecting a waiver, after concluding that “the burden of proving the waiver of such a fundamental right properly rests upon the party seeking to enforce such a waiver”); *Phoenix Leasing Inc. v. Sure Broadcasting, Inc.*, 843 F.Supp. 1379, 1384 (D.Nev. 1994) (“An informal survey indicates the majority of courts having considered this question followed the approach in *Leasing Service* [and placed burden of proof on proponent of waiver.]”); *Smyly v. Hyundai Motor Am.*, 762 F.Supp. 428, 429 (D.Mass. 1991) (concluding that “since it is a waiver of a constitutional right,” proponent of waiver bears burden of showing agreement was made knowingly and intentionally).

² *Nat’l Acceptance Co.*, 381 F.Supp. at 271).

hold that these claims are not covered by the arbitration agreement at issue in the instant case.

While there is a presumption in favor of arbitration agreements, this presumption only applies after the court finds there is a valid enforceable arbitration agreement. *EEOC v. Waffle House*, 534 U.S. 279, 293-294, 122 S.Ct. 754, 764, 151 L.Ed.2d 755 (4th Cir. 2014); *Toler's Cove Homeowners Ass'n v. Trident Constr. Co., Inc.*, 355 S.C. 605, 612, 586 S.E.2d 581 (2003). Plaintiff does not dispute the mandatory language in the Federal Arbitration Agreement (“FAA”). However, it is important to note that this mandatory language only applies in instances where a valid arbitration agreement has been established. This is evident from the FAA provisions: “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.” 9 U.S.C. § 4. While it is true that the U.S. Supreme Court has held that the FAA “leaves no place for the exercise of discretion,” the Court also cited the FAA’s savings provision that denies enforcement of agreements susceptible to the general contract defenses of fraud, duress, and unconscionability. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985); 9 U.S.C. § 2.

However, not all arbitration clauses are enforceable. While federal law preempts state laws that would invalidate arbitration agreements on most public policy grounds, the FAA looks to state law to decide the threshold questions of contract formation. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360, 364 (2001); *Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) (“the court should apply 'ordinary state-law principles that govern the formation of contracts.'”). Therefore, arbitration agreements guided by the FAA are subject to the same defenses applicable to all other contracts. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 130 S. Ct 2772, 2776, 177 L.Ed.2d 403 (2010); *Simpson*, 373 S.C at 14, 644 S.E.2d at 663

("general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.").

The judicial inquiry may include an examination of contractual defects such as lack of mutual assent and want of consideration, as well as other grounds existing at law or equity, including fraud, duress, and unconscionability. *See Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d.302, 205 (4th Cir.2001). 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 (S.C. Ct. App. 2008). Pro-arbitration policy does not validate a contract that lacks the building blocks of a binding contract.

LEGAL ANALYSIS

A. Neither Mrs. Paris, nor her power of attorney, signed the arbitration agreement.

On February 6, 2015, Mrs. Loris Paris executed a Power of Attorney giving her daughter, Beverley Vaughn, authority to act on her behalf, being effective “upon, and only during, any period of mental incompetence or incapacity.” On April 11, 2019, as a part of the admissions process, Mrs. Vaughn was presented with and signed numerous other documents including healthcare consent forms, advanced healthcare directives, resident fund account authorizations, Medicare screening questionnaire, and other authorizations, consents, and acknowledgements; however, she was not provided a copy of and did not sign the facility’s arbitration agreement.

On April 12, 2019, Loris Paris was admitted to Defendant’s facility for skilled nursing and rehabilitative care, and her son, George Paris, signed off on the admissions paperwork at his sister’s direction.

On April 15, 2019, Mrs. Paris' son, George Paris, was told by the facility that he needed to come back in to the facility to sign more paperwork. At that time, the Defendant's staff made him sign the facility's arbitration agreement for his mother, however, he did not have any authority to do so because the Power Attorney executed by his mother only granted Beverley Vaughn the power to act on behalf of her mother in times of incapacity. Mrs. Vaughn was never presented with a copy of the arbitration agreement and never directed her brother to sign the agreement on his mother's behalf. Therefore, the arbitration agreement is unenforceable.

i. The Parties dispute whether Plaintiff was unable to make decisions for herself.

As a threshold matter, Plaintiff argues that there is no evidence in the record that Mrs. Paris could not make decisions for herself at the time of her admission to the facility. The power of attorney executed by her gave her daughter (only) the power to make certain business decisions "upon, and only during, any period of mental incompetence or incapacity." During her deposition, Mrs. Vaughn testified that her mother was typically able to sign medical forms when she went to her doctor's office and that if she needed her daughter to sign something she would on her mother's behalf but that no one else would sign things for her mother. Dep. Vaughn 10:15-11:11. When asked about her mother's cognitive ability, Mrs. Vaughn testified that she was unaware of any physician ever deeming her mother unfit to manage her own personal affairs or make decisions for herself. Dep. Vaughn 21:2-7.

Defendant argues that medical records for Mrs. Paris just prior to her admission suggest that she was incapacitated or at least experiencing cognitive issues.

Regardless of the parties' contentions, there is no evidence to suggest that the arbitration agreement was ever actually provided to Mrs. Paris or Mrs. Vaughn, or that either one instructed anyone to sign it on their behalf.

ii. George Paris was only given the authority to admit his mother to the facility.

On April 15, 2019, three days after Mrs. Paris was admitted to the facility, George Paris was presented with the arbitration agreement and told that he needed to sign it. Despite the fact that Defendant knew that his sister was the person with the power of attorney, and who had just signed numerous documents just days prior, she was not provided a copy of the arbitration agreement. Mrs. Vaughn testified that she gave her brother the authority to sign the admission paperwork in order to admit her mother into the facility but that she never gave him the authority to agree to arbitration.

2 Q. Okay. So just George?

3 A. Yes. I gave him permission to have her
4 admitted.

5 Q. Okay. So you gave her -- you gave him
6 the authority to act for you because you weren't
7 there?

8 MR. CANTWELL: Object to the form.

9 THE WITNESS: I gave him the authority
10 to have her -- have him sign her in. I gave the --
11 the convalescent home okay for him to sign her --
12 admit her because she was already there. She had
13 already arrived at the convalescent home before the
14 paperwork was signed.

15 BY MR. DOTTERER:

16 Q. Okay. So you were relying on him to
17 execute all the paperwork in connection with
18 admission to the nursing facility; is that right?

19 MR. CANTWELL: Object to the form.

20 THE WITNESS: **With admission to the**
21 **nursing facility only.**

Vaughn Dep. 18:2-21 (emphasis added).

B. The Arbitration Agreement is Unconscionable

“In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so

oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007).

i. Lack of Meaningful Choice

In determining whether a party lacks meaningful choice, courts look to (1) the injuries the party suffered; (2) whether the party is a substantial business concern; (3) the relative disparity in the parties' bargaining power; (4) the parties' relative sophistication; (5) whether there is an element of surprise in the inclusion of the challenged clause; and (6) the conspicuousness of the clause.

In this case, Mr. Paris was not provided with any information to allow him to make a meaningful choice concerning the arbitration agreement. He did not have any experience with arbitration. He was provided with the boilerplate arbitration agreement without any information about its contents and the ramifications of what would happen if he agreed to it. He testified in his deposition that he was not provided with any explanation of what the arbitration agreement was, only that it was something he needed to sign with all the other paperwork for his mother's admission. He had no bargaining power over any terms or conditions of the agreement.

15 Q. Let me ask that again. So no one at
16 the Calhoun Convalescent Center talked with you
17 about the issue of arbitration; is that correct?

18 A. No, sir.

19 Q. And they didn't explain to you what an
20 arbitration agreement was?

21 A. I never even knew what an arbitration
22 agreement was until you guys brought it up today.

Dep. George Paris 39:15-22. When Defendant's admissions director, Cindy Reck, was asked about the arbitration process during her deposition, she testified that it was her understanding that in the event of a dispute, the Defendant would pick an arbitrator from the facility to handle any resident grievances to work between the parties to come to an agreement.

3 Q So what did you tell him about the

4 arbitration agreement?

5 A The arbitration agreement is an
6 agreement between the facility and the person
7 signing it that they waive their right to a jury
8 trial; and if they have any grievances, that we
9 can assign an arbitrator from the facility to work
10 between the two parties to come to an agreement.

11 If that cannot be done, the
12 Court will assign an arbitrator to work with the two
13 parties to come to an agreement.

14 Q Okay. So it's your understanding that the
15 facility will assign an arbitrator, and if the
16 parties don't agree, then a Court will pick an
17 arbitrator?

18 A Yes.

19 Q And –

20 A No, the corporate has the arbitrator.

21 If that's not agreed upon, the courts assign an
22 arbitrator.

23 Q Okay. But it's your understanding the
24 corporate -- are you talking about Calhoun
25 Convalescent Center?

1 A Yes.

2 Q They pick the arbitrator, and that's your
3 understanding, right?

4 A Yes, that's what's in the document.

5 Q And then if the parties don't agree, then
6 a Court will pick the arbitrator?

7 A Yes.

Depo. Reck 23:3-24:7. Her description of the process seems to conflate the mediation and arbitration process, which could confuse a family member trying to find a nursing facility for a loved one. Additionally, during her deposition, she could not provide any details about the costs, payment terms, location, or what panel of arbitrators would potentially decide any dispute. Her testimony showed that she had no experience with arbitration.

25Q All right. Do you know how the arbitrator
is paid?

2 A No, I don't.

3 Q Did Mr. Paris ask about if it would cost
4 anything to arbitrate the matter?

5 A No, he did not.

6 Q Okay. Do you know whether the arbitration
7 would take place in South Carolina?

8 A I can't answer that.

9 Q As the admissions director for the
10 facility, have you ever been involved in any
11 arbitrations?

12 A No.

13 Q Have you ever been involved in an
14 arbitration outside of the context of a nursing
15 home?

16 A No.

17 Q It says in this document, the parties
18 shall select an arbitrator from a panel having
19 experience and knowledge of the health care
20 industry. What panel is that?

21 A I can't answer that.

Depo. Reck 24:25-25:21. Plaintiff was not given a copy of the South Carolina Alternate Dispute Resolution Rules with the agreement. As such, the evidence in this case shows that Plaintiff did not have a meaningful choice in agreeing to arbitrate, and George Paris only signed the documents because he was told it was required as a part of the admission process.

ii. Unconscionable Terms

The Arbitration Agreement also contains unconscionable terms. First, the arbitration agreement states it is irrevocable and “shall survive any termination or breach of this Agreement or the Admissions Agreement.” In some cases, arbitration agreements can include a process for revoking such an agreement to arbitrate or timeframe in regards to the same. Here, the agreement is irrevocable from the point of admission, with no exceptions.

The agreement is also excessively broad by including language to address any and all disputes amongst the parties, including violations of any rights granted under State law or any federal or state statutory or regulatory claim. Effectively, it potentially attempts to encompass complaints to administrative agencies such as SC DHEC and other regulatory bodies.

Further, the agreement makes the arbitration binding with no appeal process and fails to set forth any guidance or terms with respect to the “panel” of which arbitrator is to be chosen, the location or jurisdiction of the proceeding, the costs of the party, the availability of discovery.

The agreement purports that its enforcement is not subject to the South Carolina Uniform Arbitration Act, yet the decision of the arbitrator may be enforced by a court of competent jurisdiction. Plaintiff was stripped of her right to a jury trial without receiving any benefit.

C. No Agency Relationship Exists

There is no evidence that George Paris was granted the authority to sign off on the arbitration agreement. Defendant did not inquire with Mrs. Paris whether her son could sign on her behalf. Defendant knew that Beverly Vaughn was her mother’s power of attorney, as they had received all of the medical authorizations from her the day before her admission. “[A]n agency may not be established solely by the declarations and conduct of an alleged agent.” *Frasier v. Palmetto Homes*, 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct. App. 1996). In the present case, the testimony suggests that George Paris was there only to help admit his mother and not to make any medical or business decisions regarding her care or legal rights concerning the same. By Defendant’s own admissions, Plaintiff had already been admitted to the facility and its admissions director called Mr. Paris back out to the facility because additional paperwork needed to be sign.

In order to bind a principal to a legal contract, the agent who signs on the principal’s behalf must be an agent of the principal. *See generally Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018) reh'g denied (May 2, 2018), cert. denied (Aug. 21, 2018). A person may become the agent of a principal by express appointment or implied from the words and conduct of the parties and the circumstances of the particular case. *Bruce v. Leatherwood, Walker, Todd and Mann*, 283 S.C. 408, 423, 323 S.E.2d 523, 532 (Ct. App. 1984)

(citations omitted). An express appointment of agency may be conferred by power of attorney. “[A] power of attorney should be evidenced by an instrument in writing.” *Matter of Celsor*, 330 S.C. 497, 501, 499 S.E.2d 809, 811 (1998).

The South Carolina Supreme Court has held that a signatory without proper legal authority cannot bind a person to arbitration.

The scope of Sister's authority to consent to "decisions concerning Decedent's health care" extended to the Admission Agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. The separate Arbitration Agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future. Under the Act, Sister did not have the capacity to bind Decedent to this voluntary Arbitration Agreement. We therefore affirm the circuit court's holding that the Act did not confer authority on Sister to execute a document which involved neither health care nor financial terms for payment of such care.

Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014).

The Court of Appeals addressed these issues in the *Hodge* case, where the Resident was admitted to a nursing facility while competent and without any Power of Attorney. *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 550, 813 S.E.2d 292, 295 (Ct. App. 2018). In *Hodge*, the decedent's husband signed all paperwork on her behalf, including an Arbitration Agreement. *Id.* at 550, 813 S.E.2d at 296. The Court of Appeals affirmed the Circuit Court's finding that "Husband's signing of the Arbitration Agreement, Admission Agreement, and other forms does not make him [wife]'s agent. [Wife] did not have a health care power of attorney. Additionally, the Facility knew she was competent at the time of admission as indicated by the doctor's examination and allowed her to sign other forms. The record contains no evidence from the Facility that [Wife], as the principal, represented Husband was her agent." *Hodge* at 573-74, 813 S.E.2d at 308.

In the present case, there is no evidence that Mrs. Paris lacked the capacity to review and sign the arbitration agreement at the precise time of her admission or that she allowed or directed George Paris to sign on her behalf. Additionally, there is no evidence that supports the Defendant's argument that Beverley Vaughn gave George Paris any authority to sign off on the arbitration agreement pursuant to the power of attorney.

D. The Arbitration Agreement is not a valid and enforceable agreement because of lack of consideration.

The necessary elements of a contract are an offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. of S.C.*, 581 S.E.2d161, 166 (S.C. 2003) "Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." *Plantation A.O., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 206, 687 S.E.2d 714, 718 (Ct. App. 2009) (quoting *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship.*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998)). Where a contract lacks valuable consideration, the contract will be deemed unenforceable.

In determining whether adequate consideration exists in a contract, or arbitration agreement under the FAA guided by principles of contract law, our courts must examine and stay within the confines of the four corners of the instrument. *State Acc. Fund v. S.C. Second Injury Fund*, 388 S.C. 67, 76, 693 S.E.2d 441, 445 (Ct. App. 2010) (quoting *McPherson v. J.E. Serrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). Therefore, our courts must assess whether the arbitration agreement itself contains sufficient consideration in the form of a mutual exchange of promises to arbitrate.

In the present case, there is insufficient consideration associated with the arbitration agreement, and therefore, the contract is unenforceable. Defendant maintained its own rights to have all disputes heard by an arbitrator of its own selection without benefit to the Plaintiff.

E. Mrs. Paris is not a Third-Party Beneficiary of the Agreement

“A third-party beneficiary is a party that the contracting parties intend to directly benefit.” *Helms Realty, Inc. v. Gibson–Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). However, there can be no third-party beneficiary unless a valid contract exists. *See Dickerson*, 995 A.2d at 742 (“Before one can enforce a contract, however, whether as a party to the contract or as a third-party beneficiary, there must be a contract to enforce.”). Here, George Paris was not authorized to execute the arbitration agreement on Mrs. Paris’ behalf. Therefore, she could not be the third-party beneficiary of the agreement.

F. Plaintiff received no benefit from the Arbitration Agreement

Any potential argument that Plaintiff is estopped from arguing against the enforcement of the arbitration agreement fails because she received no benefit from the arbitration agreement. The arbitration agreement is not a condition of residency, and therefore, the residency cannot be a benefit she purportedly received. Since admission is unavailable as a “direct benefit” to support estoppel, Defendants would be required to point to some benefit Plaintiff received from the Arbitration Agreement alone. However, any such attempt to find a benefit would have been futile given the Court of Appeals’ unambiguous ruling in *Thompson* which held that “any possible benefit emanating from the [arbitration agreement] alone is offset by the [arbitration agreement’s] requirement that [resident] waive her right to access the courts and her right to a jury trial.” 416 S.C. at 60, 784 S.E.2d at 688.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration or Alternatively, to Compel Arbitration and Stay Proceedings, is DENIED.



Orangeburg Common Pleas

Case Caption: Beverley Vaughn VS Saint Matthews Healthcare, Llc , defendant, et al
Case Number: 2022CP3800525
Type: Order/Other

So Ordered

s/ Maite Murphy 2166