THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Apr 07 2025

S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Mark Hayes, II, Circuit Court Judge

C.A. No. 2017-CP-42-00219

Appellate Case No. 2025-000346

Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr., individually and on behalf of all others similarly situated, ... Respondents,

v.

Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; CHSPSC, LLC; and Professional Account Services, Inc., ... Petitioners.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

John S. Simmons (S.C. Bar No. 10260)
Rachel G. Peavy (S.C. Bar No. 69397)
Simmons Law Firm, LLC
1711 Pickens Street
Columbia, SC 29201
Tel: (803) 779-4600

John B. White, Jr. (S.C. Bar No. 5996)
Marghretta H. Shisko (S.C. Bar No. 100106)
Griffin L. Lynch (S.C. Bar No. 72518)
P.O. Box 2465 (29304)
291 S. Pine St.
Spartanburg, SC 29302
Tel: (864) 594-5988

Attorneys for Respondents

RESTATED QUESTIONS PRESENTED

1. Under South Carolina law, a party seeking to compel arbitration must establish the elements of a valid contract between the parties. Contracts are generally unenforceable against non-signatories, but equitable estoppel can apply when a non-signatory receives a direct benefit from the contract and sues to enforce it. Here, Respondent Samuel Owens ("Mr. Owens") never saw the contract with the arbitration provision before this lawsuit, did not receive any benefit from that contract, and did not sue for breach of the contract. Did the Court of Appeals correctly conclude that Mr. Owens could not be compelled to arbitrate under a theory of equitable estoppel?

2. There is no policy under state or federal law elevating arbitration. Instead, courts must hold parties to their arbitration agreements just like they would enforce any other contract. Although Mr. Owens brought claims as a named plaintiff on behalf of a putative class, the contractual language relied on by Petitioners expressly prohibits the arbitrator from conducting arbitration on a class basis. Is the Court of Appeals' interpretation that this language did not apply to Mr. Owens's claims in this case supported by the language of the arbitration agreement?

3. Orders denying motions to dismiss are interlocutory and generally are not immediately appealable. Petitioners appealed the denials of their motions to dismiss as to the three named plaintiffs, along with the denial of their motion to compel arbitration as to only one of the named plaintiffs. Did the Court of Appeals properly decline to review the trial court's Rule 12(b)(6) denials?

INTRODUCTION

South Carolina law is clear that arbitration is a matter of contract, and courts should resolve questions of contract validity—including the question of who may be bound by the agreement—by applying traditional principles of state contract and agency law.

The Court of Appeals' decision in this case, affirming the Circuit Court, correctly applied these principles and concluded that, under the circumstances of the case, a non-signatory to a contract containing an arbitration provision could not be compelled to arbitrate his claims against the defendants. And having reached that conclusion, the Court of Appeals properly declined to review the trial court's interlocutory rulings.

One of the Court of Appeals judges dissented, but the dissent was based on disagreement over the application of the facts in the case to the law of equitable estoppel, which is an inherently fact-specific inquiry, and not any disagreement over the law to be applied.

The Court of Appeals' resolution of this case turned on its application of longstanding South Carolina contract law principles, and the opinion does not contain any legal errors or unsupported factual findings that require correction. This Court should decline to review its decision.

COUNTER-STATEMENT OF THE CASE

This case arises from Petitioners' business practice of identifying accident victims who received medical treatment at their facilities and seeking payment from those patients directly, thereby depriving insured patients of their health insurance. (R. p. 64, ¶¶ 4–8.) Plaintiffs allege that Petitioners, as a standard business practice, knew that patients had valid health insurance and refused to bill their insurance for medical treatment if Petitioners' screening identified a patient as potentially having the ability to recover from a third party.[1]

Plaintiff Jo Ann Blackwell ("Ms. Blackwell") originally filed the lawsuit as a putative class action asserting claims for tortious interference with class members' contractual relationships with their health insurance carriers and unjust enrichment and seeking damages, an injunction, and other relief. (R. p. 23, 31–39.) The trial court later permitted Ms. Blackwell to file an amended class action complaint, which added Mr. Owens and Michelene Brooks ("Ms. Brooks") as named

[1] The Amended Complaint alleges that Petitioners Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital ("Mary Black"), CHSPSC, LLC ("CHSPSC"), and Professional Account Services, Inc. ("PASI") are related entities that all engaged in the challenged billing and collections practices. (R. p. 66–67, ¶¶ 15–19.) Mary Black is a hospital, and CHSPSC and PASI are related billing and collection entities that "exercise control over policies and procedures enacted and implemented by Mary Black." (R. p. 66, ¶ 18.)

plaintiffs to represent the class members. (R. p. 15–17, 63.) The amended complaint asserted the same claims and sought the same relief on behalf of a class on individuals affected by Petitioners' business practice. (R. p. 72–79.)

Each named plaintiff received medical treatment at Mary Black Hospital in Spartanburg, South Carolina after being injured in an automobile accident,[2] and each named plaintiff had valid health insurance that they allege would have covered the costs of their treatment.[3] (R. p. 69–72.) Despite knowing these patients were insured, Petitioners refused to bill their health insurance and instead attempted to collect payment from patients—i.e., by asserting liens against potential third party tort recovery or seeking payment directly from patients or automobile insurers. (R. p. 68.) Through this lawsuit, the named plaintiffs sought to represent a class of all similarly situated individuals who were covered by health insurance and were affected by Petitioners' business practice (collectively, "Plaintiffs"). (R. p. 72.)

Plaintiffs allege that Petitioners' "refusal to bill" practice violated their rights under South Carolina law by depriving them of the benefits of their health insurance. (R. p. 75, ¶¶ 64–67.) More specifically, Plaintiffs allege that, in doing so, Petitioners tortiously interfered with Plaintiffs' own contractual relationships with their insurers and were unjustly enriched because:

1) Plaintiffs "had a valid business expectancy and/or contractual relationship with their own health insurance providers" (R. p. 75, ¶ 64), and Plaintiffs paid premiums to receive health insurance coverage (R. p. 76, ¶ 67);

---

[2] Ms. Blackwell was struck by a vehicle while walking across the street. (R. p. 69, ¶ 35.) Ms. Brooks and Mr. Owens were injured in motor vehicle accidents. (R. p. 70, ¶ 41; R. p. 71, ¶ 47.)

[3] The named plaintiffs alleged that they each had valid health insurance coverage when they received medical treatment at Mary Black Hospital—Ms. Blackwell had employer-based health insurance coverage through MedCost (R. p. 69); Ms. Brooks had coverage through Medicare (R. p. 70); and Mr. Owens had health insurance through CIGNA (R. p. 71).

2) Petitioners screened patients at admission and "knew or should have known" that Plaintiffs had valid health insurance coverage and, therefore, had valid "business expectancies and/or contractual relationships" with their own health insurance carriers (R. p. 64, ¶¶ 4–5; R. p. 67, ¶¶ 22–23; R. p. 75, ¶ 65);

3) Despite knowing this, Petitioners intentionally deprived Plaintiffs of the benefits of their health insurance contracts by refusing to bill Plaintiffs' health insurance carriers,[4] meaning the carriers did not pay for Plaintiffs' medical expenses even though they would have covered Plaintiffs' medical treatment if they had been billed (R. p. 64, ¶¶ 5–8; R. p. 68, ¶ 27; R. p. 70, ¶¶ 39, 44; R. p. 71, ¶ 50; R. p. 75, ¶ 66; R. p. 76, ¶¶ 70–73);

4) Petitioners' interference with Plaintiffs' health insurance coverage was not justified or motivated by some legitimate business purpose because Petitioners negotiated separate agreements with Plaintiffs' health insurance carriers to bill the carriers at discounted rates, and Petitioners improperly sought to increase their profits through their wrongful business practice by ignoring those agreements.(R. p. 65, ¶ 9; R. p. 67, ¶ 24; R. p. 68–69, ¶¶ 28–32; R. p. 75, ¶ 66; R. p. 76, ¶¶ 70–71); and

5) Plaintiffs suffered damages as a result (R. p. 75–76, ¶¶ 66–8; R. p. 76, ¶¶ 70–74).

The trial court determined that Plaintiffs' allegations were sufficient to state causes of action for tortious interference and unjust enrichment. (R. p. 11–13.) It likewise rejected various other arguments raised in Petitioners' Rule 12(b)(6) motions, though noting that its denial "decides no issue on its merits." (*Id.*)

In addition to seeking dismissal under Rule 12(b)(6), Petitioners also sought to compel one of the three named plaintiffs, Mr. Owens, to arbitrate his claims against them. According to

---

[4] *See generally Kirven v. Cent. States Health & Life Co.*, 409 S.C. 30, 34–35, 760 S.E.2d 794, 796–97 (2014) (explaining that "ordinary health insurance policies" pay benefits on behalf of policyholders to healthcare providers and "the fundamental purpose of *ordinary* health insurance coverage is to indemnify against loss from disease or illness" by covering the policyholder's medical expenses); *Cock-N-Bull Steak House v. Generali Ins. Co.*, 321 S.C. 1, 6, 466 S.E.2d 727, 730 (1996) (recognizing that an insurer has an obligation to pay benefits to or on behalf of its insured under a mutually binding insurance contract).

Petitioners, Mr. Owens was seeking "to enforce the billing and payment terms of the Hospital Services Agreement between his alleged insurance provider (CIGNA) and Mary Black," and the arbitration agreement within that agreement (the "CIGNA Agreement") required him to individually arbitrate his claims. (R. p. 157; R. p. 163–64; R. p. 171.)

The trial court disagreed. The trial court denied Petitioners' request to stay the litigation and compel arbitration based on its review of the CIGNA Agreement and its conclusion that the Agreement was not enforceable against Mr. Owens and did not require mandatory arbitration of his claims. (R. p. 12.) In so concluding, the trial court found that: (1) the CIGNA Agreement's arbitration appeared to be discretionary, not mandatory, because it uses the words "may" and "if"; (2) Mr. Owens was maybe a "participant," but was not a "party" to the Agreement; (3) language appeared to make arbitration the parties' exclusive remedy, but language in the same provision stated it "does not apply to third parties and does not apply to 'class' matters"; and (4) it did not have sufficient information to determine whether or not the Agreement had expired before Mr. Owens's claims accrued. (*Id.*) The trial court thereafter denied Petitioners' motion to reconsider, finding "it significant that Plaintiff Owens is not a party to the CIGNA agreement" and applying *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019), and *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020), to conclude "[n]either direct benefits estoppel nor equitable estoppel apply to this case."[5] (R. p. 3.)

Petitioners appealed the denial of their motion to compel arbitration as to Mr. Owens, and

[5] In their opposition to Petitioners' motion to reconsider, Plaintiffs argued that equitable estoppel did not apply, and the terms of the arbitration provision did not encompass Mr. Owens's claims. (R. p. 216.) In support of their argument, Plaintiffs noted that Petitioners had not established the elements of equitable estoppel because Mr. Owens never received any benefit from the CIGNA Agreement, he never misled or caused Petitioners any injury, and his tortious interference and unjust enrichment claims did not seek to enforce the CIGNA Agreement. (R. p. 216–19.)

they also sought review of the denial of their motions to dismiss. *Blackwell v. Mary Black Health Sys., LLC*, Op. No. 6088 (S.C. Ct. App. filed Sept. 18, 2024) ("*Blackwell* Op."). Although Petitioners argued that Mr. Owens sought to enforce and derive benefits from the CIGNA Agreement, the Court of Appeals disagreed, concluding that equitable estoppel did not apply to make the arbitration agreement enforceable against Mr. Owens. (*Id.* at 6, 8–10.) The Court based its conclusion on the allegations and causes of action pled in the amended complaint—Mr. Owens alleged that he did not receive a direct benefit from the CIGNA Agreement or have any actual knowledge of the Agreement before this litigation, and his tortious interference and unjust enrichment claims were based on general obligations that exist independently of the Agreement. (*See id.*) Additionally, the Court of Appeals concluded that the request for injunctive relief did not require arbitration, and the arbitration agreement did not apply to Mr. Owens's claims. (*Id.* at 10.) The Court of Appeals therefore affirmed the arbitration denial and declined to address the issues raised in the Rule 12(b)(6) motions. (*Id.* at 10–12.)

Petitioners filed a petition for rehearing and a suggestion for rehearing *en banc*. Two of the three judges on the *Blackwell* panel found no basis for granting rehearing,[6] and no Court of Appeals judge called for or requested a vote on the suggestion for rehearing *en banc*. *See* Rule 219(b), SCACR. Petitioners now seek to have this Court grant a writ of certiorari to review the Court of Appeals' decision in this case.

ARGUMENTS

A writ of certiorari should only be granted where there are special and important reasons. *See* Rule 242(b), SCACR. Although there is a dissent in the *Blackwell* decision, there are no other

[6] Judge Geathers, who dissented from the *Blackwell* opinion, would have granted the petition for rehearing.

special or important reasons to justify this Court's review. When stripped of its hyperbole, assertions of illusory conflicts, and improper attempts to elevate arbitration to special status, the Petition merely reflects Petitioners' disagreement with how the Court of Appeals applied the facts in this case to well-established South Carolina legal principles. Petitioners' disagreement with the Court of Appeals, however, does not give rise to any special and important reasons warranting a writ of certiorari. This Court should deny the Petition.

I. The Court of Appeals correctly applied South Carolina contract law principles to conclude that equitable estoppel did not apply.

The decision of the Court of Appeals in *Blackwell* acknowledged and applied South Carolina contract law principles to evaluate the trial court's arbitration ruling. Its conclusion that the arbitration agreement was not enforceable as to Mr. Owens in this case turned on the facts alleged in the complaint and the causes of action asserted. That Petitioners and the dissent disagree with how the decision applied those principles does not require this Court's review. Similarly, Petitioners are incorrect that the *Blackwell* decision somehow conflicts with the same panel's decision in *Bennett v. ACS Primary Care Physicians-Se. P.C.*, 444 S.C. 458, 908 S.E.2d 110 (Ct. App. 2024), and risks rewarding "gamesmanship."

A. An arbitration agreement cannot be enforced against a non-signatory who did not receive a direct benefit from a contract and who is not suing to enforce that contract.

Arbitration is a matter of contract, and "[a] party seeking to compel arbitration must demonstrate the existence of a valid contract to arbitrate by establishing" the three necessary elements for contract formation—"(1) an offer, (2) acceptance of the offer, and (3) the mutual exchange of benefits the law calls 'consideration.'" *Lampo v. Amedisys Holding, LLC*, Op. No. 28265, 2025 S.C. LEXIS 31, at *5 (S.C. Mar. 5, 2025).[7] Arbitration must be "predicated on an

[7] The *Lampo* case was remitted to the circuit court on March 21, 2025.

agreement to arbitrate because parties are waiving their fundamental right to access to the courts." *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019). Because "a party cannot be required to submit to arbitration any dispute which he has not agreed to submit," *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001), an arbitration agreement is generally not enforceable against a nonsignatory, and "a presumption *against* arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate, *Wilson*, 426 S.C. at 337–38, 827 S.E.2d at 173. *See generally Lampo*, 2025 S.C. LEXIS 31, at *9 ("In an arbitration agreement, the parties necessarily exchange mutual promises to take any dispute to an arbitrator.").

The doctrine of equitable estoppel is a general principle of contract law that provides an exception to the general rule. *Id.* at 338, 827 S.E.2d at 174; *see Malloy v. Thompson*, 409 S.C. 557, 561–62, 762 S.E.2d 690, 692 (2014). "In its broadest sense, equitable estoppel is a means of preventing a party for asserting a legal claim or defense that is contrary or inconsistent with his or her prior conduct." *Mac Papers, Inc. v. Genesis Press, Inc.*, 426 S.C. 393, 403, 826 S.E.2d 874, 880 (Ct. App. 2019). The doctrine examines the conduct of both parties:

> Elements of equitable estoppel as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. Essential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position.

Zabinski, 346 S.C. at 589, 553 S.E.2d at 114 (citation omitted); *see also Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 558–59, 813 S.E.2d 292, 300 (Ct. App. 2018) (listing elements of equitable estoppel). "'Estoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other.'" *Zabinski*, 346 S.C. at 589, 553 S.E.2d at 114 (quoting *Evins v. Richland Cnty. Historic Preservation Comm'n*, 341 S.C. 15, 15, 532 S.E.2d 876,

878 (2000)). As the elements demonstrate, "equitable estoppel is based on affirmative conduct between the parties." *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007).

Under certain circumstances, equitable estoppel allows an arbitration agreement to be enforced against a nonsignatory by finding that the nonsignatory manifested his assent to resolve disputes through arbitration because of conduct evidencing such an intent. *See Wilson*, 426 S.C. at 340–41, 827 S.E.2d at 175 (affirming denial of arbitration by trial court where insureds never embraced the agreement containing the arbitration provision and it was undisputed they were never aware of the existence of the contract until they brought their tort actions against the insurers); *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 230–31, 847 S.E.2d 268, 272 (Ct. App. 2020) (declining to apply direct benefits estoppel where decedent's granddaughter never exploited or otherwise sought to enforce or benefit from residency agreement). Conduct evidencing an intent to be bound by an arbitration agreement can exist as a matter of equity where a nonsignatory "receives a direct benefit from a contract containing an arbitration clause" and seeks to enforce the contract in his favor. *Wilson*, 426 S.C. at 340–43, 827 S.E.2d at 175–76. But "direct benefits estoppel is not implicated simply because a claim relates to or would not have arisen 'but for' a contract's existence." *Id.* at 343, 827 S.E.2d at 176. Further, equitable estoppel "should be used sparingly" because it is an equitable doctrine "designed to prevent injustice." *Id.* at 345, 827 S.E.2d at 177.

The Court of Appeals correctly declined to apply equitable estoppel to the facts of this case. Mr. Owens was not a party to the CIGNA Agreement, and the complaint does not allege any conduct indicating his intent to be bound to the Agreement or its dispute resolution provisions. Instead, the complaint alleges that he did not receive any benefit under any agreement between Mary Black and his health insurance carrier. Mr. Owens likewise is not attempting to enforce the

CIGNA Agreement because the complaint does not plead a breach of contract claim. *Cf. Hodge*, 422 S.C. at 563, 813 S.E.2d at 302 ("[E]ven if the Admission Agreement and Arbitration Agreement merged, because Respondents are not suing for a breach of the Admission Agreement, they are not attempting to enforce that agreement."). Because the elements of equitable estoppel do not exist as to Mr. Owens, they cannot exist as to Petitioners—Mr. Owens did not engage in any conduct on which Petitioners could have detrimentally relied. *See Zabinski*, 346 S.C. at 589-90, 553 S.E.2d at 114–15; *see also Weaver*, 431 S.C. at 233, 847 S.E.2d at 274 ("Born of equity, the heart of the theory 'is that the party entitled to invoke the principle was misled to his injury.'" (quoting *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 602, 799 S.E.2d 912, 916 (2017))).

Petitioners make much of the fact that the amended complaint alleges that Mary Black had agreements with health insurance carriers to bill the carriers at discounted rates, contending that Mr. Owens is actually suing to enforce the CIGNA Agreement (despite not asserting a breach of contract claim) and arguing that any duty owed to him derives from the Agreement. But Petitioners ignore that Plaintiffs' tortious interference and unjust enrichment claims are, as the Court of Appeals concluded, predicated on a general duty not to unlawfully interfere with patients' contractual relationships with their *own* insurers. *Cf. Weaver*, 431 S.C. at 232, 847 S.E.2d at 273 ("Weaver's claims rely on general tort duties owed by Appellants to everyone, not any provisions of the residency agreement."). *See generally Gecy v. S.C. Bank & Trust*, 422 S.C. 509, 520–21, 812 S.E.2d 750, 756 (Ct. App. 2018) ("'[A]n action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties." (alteration in original)).

This Court rejected a similar argument in *Malloy v. Thompson*, where a potential beneficiary sued on a theory of intentional interference with inheritance, alleging Merrill Lynch

assisted in diverting the decedent's assets and disrupting his estate plan. 409 S.C. at 559–60, 762 S.E.2d at 691. Merrill Lynch sought to compel arbitration under client relationship agreements ("CRAs") it had with the decedent:

> Merrill Lynch's argument that a derivate "duty" from the CRAs binds Malloy, a non-signatory to the CRAs, conflates the duties created by the CRA contracts and general tort duties. Malloy does not claim that Merrill Lynch breached a duty created by the CRAs, but rather that it breached the duty owed by all persons not to interfere with another's expected inheritance. The contractual duties between Decedent and Merrill Lynch are irrelevant to whether Merrill Lynch intentionally interfered with Malloy's expected inheritance. Accordingly, we find that Malloy is not bound by the CRA's arbitration agreements . . . .

Id. at 561–62, 762 S.E.2d 690, 692–93 (2014); *see also Douglass v. Boyce*, 344 S.C. 5, 7 & n.4, 542 S.E.2d 715, 717 & n.4 (2001) (observing that "the tort of intentional interference with inheritance" has not been adopted but is "closely analogous" to the "tort of intentional interference with prospective contractual relations"). Here, too, this Court should reject Petitioners' attempts to misconstrue Mr. Owens's claims as relying on the CIGNA Agreement to establish a duty when in fact those claims arise from tort law and common law obligations that exist independent of that contract.

B. The decisions in *Blackwell* and in *Bennett* are not inconsistent.

The Court of Appeals' decision in the *Bennett* case held that the plaintiff-insureds were equitably estopped from avoiding arbitration provisions contained in agreements between their health insurance carriers and healthcare providers, but that decision and the *Blackwell* opinion can be reconciled because of differences in how the plaintiffs pled their cases. *See Bennett*, 444 S.C. at 467, 908 S.E.2d at 114.

The panel in *Bennett* concluded that equitable estoppel applied because the plaintiffs' allegations established that their claims for relief all arose solely from the provider agreements. *Id.* at 472, 908 S.E.2d at 117 ("Bennett pled all of her claims as being based on an alleged duty arising

solely from the terms of the Provider Agreement."); *id.* at 473, 908 S.E.2d at 117 ("[A]ll of Gasser's claims were pled as being based on an alleged duty arising *solely* from the Provider Agreement.")). Additionally, the Court concluded that the plaintiffs were equitably estopped because "admissions in their respective complaints that they received direct benefits from the Provider Agreements preclude them from avoiding the arbitration provisions in these agreements." *Id.* at 474, 908 S.E.2d at 118. The concurring opinion in *Bennett* further emphasized that its outcome turned on how the case was pled. *Id.* at 488, 908 S.E.2d at 126. Thus, just like the *Blackwell* opinion, the Court reached its decision in the *Bennett* case after thoroughly analyzing the allegations in the plaintiffs' complaints. *See id.* at 467–68, 471–74, 908 S.E.2d at 114–15, 117–18.

That the panel in *Bennett* reached a different conclusion about the application of the equitable estoppel doctrine than the same panel in *Blackwell* under similar facts does not mean that the decisions conflict or cannot be reconciled. The different outcomes result from differences in how the plaintiffs framed their cases in the pleadings, and it is well established that plaintiffs are the "architects of their own complaint." *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144, 146 (2015); *see also Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 615, 879 S.E.2d 746, 757 (2022) ("[T]he plaintiff is the master of his own complaint . . . ."). After all, equitable estoppel is an equitable doctrine "designed to prevent injustice," and its application depends on the circumstances and equitable considerations, even in the arbitration context. *Wilson*, 426 S.C. at 345, 827 S.E.2d at 177. Because of this, courts that have addressed the doctrine in reviewing arbitration orders unsurprisingly have reached different conclusions about its application based on the facts and the claims set forth in the pleadings. *See id.* at 342–45, 827 S.E.2d at 176–77; *Weaver*, 431 S.C. at 230–32, 847 S.E.2d at 272–73; *Pearson v. Hilton Head*

Hosp., 400 S.C. 281, 296–97, 733 S.E.2d 597, 605 (Ct. App. 2012).

Although Petitioners argue that *Blackwell* and *Bennett* have the same "core allegations," they cherry pick allegations from the complaints and ignore that here (unlike in *Bennett*) Mr. Owens did not allege he directly benefited from the CIGNA Agreement, and his claims do not arise *solely* from that contract. (*Blackwell* Op. at 8.) Instead, the Complaint alleges that Petitioners' challenged business practice deprived the plaintiffs of the benefit of their own insurance contracts and alleges claims arising out of South Carolina tort law. (*See id.* at 8–9; R. p. 75–76). That Petitioners disagree with the conclusion reached in this case does not mean the decisions are "conflicting and irreconcilable" or that there is "an immediate conflict in the law of equitable estoppel." Courts addressing the doctrine in future cases are well-equipped to conduct the circumstance-specific analysis that was performed in both *Blackwell* and *Bennett*. This Court should decline Petitioners' hyperbolic attempt to create a conflict where none in fact exists.

C. Illusory concerns about "artful pleading" and "gamesmanship" do not justify review.

Petitioners' assertions that the *Blackwell* opinion will sow confusion and represent an endorsement of "artful pleading" and "gamesmanship" to avoid arbitration are entirely overblown. The idea that "artful pleading"—i.e., a well-pleaded complaint—should be avoided contravenes the pleading requirements, the rules for evaluating the legal sufficiency of a complaint, and the long-acknowledged truth that writing is one of the lawyer's most critical skills. *See* Rule 8(e)(1), SCRCP; *Morrow Crane Co. v. T.R. Tucker Constr. Co.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988) (stating a court "must presume all well pled facts to be true"). In fact, our courts have long recognized the critical importance of artful pleading, disparaged here by Petitioners. *Cf. Layne v. Int'l Brotherhood of Elec. Workers*, 271 S.C. 346, 349, 247 S.E.2d 346, 351 (1978) (holding that while the Plaintiff's complaint "*suffers from a lack of artful pleading*," such deficiency would not be viewed as fatal to Plaintiff's claims (emphasis added)); *Dunlap v. Lindau*

Chems., C.A. No. 3:17-cv-0504-CMC-TER (D.S.C. Apr. 26, 2017) (concluding that although plaintiff's allegations were "*perhaps not the most artfully pleaded*," they were still sufficient to state a claim for violation (emphasis added)).

The allegation that the *Blackwell* opinion will encourage or promote gamesmanship by encouraging future litigants seeking to avoid arbitration "to strategically omit undeniable allegations from their complaints" and "allege multiple non-arbitrable claims, even if those extra non-arbitrable claims lack merit," (Pet. at 10–12), similarly does not warrant review. For one, there is nothing wrong with litigants wanting to avoid arbitrating claims when they never agreed to arbitrate their disputes. Arbitration is, after all, a matter of contract, and it does not enjoy any special status. *See Lampo*, 2025 SC LEXIS 31, at *5, *16. Additionally, the trial courts, not the appellate courts, are best positioned to address gamesmanship in pleadings (and other litigation misconduct).[8]

II. The Court of Appeals' interpretation of the arbitration provision is consistent with its language.

An arbitration agreement subject to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1–16, is enforceable "upon the same footing as other contracts." *Morgan v. Sundance, Inc.*, 596 U.S. 411, 418 (2022) (quoting *Granite Rock Co. v. Teamsters*, 561 U.S. 287, 302 (2010)). "[T]he FAA's 'policy favoring arbitration' . . . is to make 'arbitration agreements as enforceable as other contracts, but not more so.'" *Id.* (quoting *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n.12 (1967)). In other words, the FAA's "federal policy is about treating arbitration

[8] Petitioners include matters outside the Record on Appeal in their Petition. (*See* Pet. at 21 n.5). To the extent this Court elects to consider these matters, Plaintiffs respectfully submit that the trial court's orders that were entered after Petitioners filed this appeal provide a comprehensive history of this litigation, its challenges, and Petitioners' own "gamesmanship" and misconduct.

contracts like all others, not about fostering arbitration," *id.*, and courts should generally interpret arbitration agreements "according to their terms," *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018). The Court of Appeals' alternate holding based on the language of the CIGNA agreement's arbitration provision did precisely that.

The dispute resolution provisions in the CIGNA Agreement provide that "[a]ny disputes between the parties arising with respect to the performing or interpretation of the Agreement shall" be resolved according to CIGNA's "Internal Dispute Resolution Process" outlined therein. (R. p. 275, § 6.2.1.) The Agreement further provides that "either party may initiate arbitration by providing written notice to the other party" if the dispute cannot be resolved, and there are specific requirements that "Hospital" must follow to arbitrate any dispute with CIGNA regarding payment or termination. (*Id.*) The CIGNA Agreement's arbitration provision applies "[i]f a party initiates arbitration as provided above," and it contains the rules and rights of the parties in conducting arbitration. (R. p. 275–76, § 6.2.2.) Within the arbitration provision, the parties: (i) expressed their intent for "this alternative dispute resolution procedure to be a private undertaking"; (ii) agreed not to consolidate "an arbitration conducted under this provision" with "an arbitration involving other hospitals or third parties"; and (iii) agreed "that the arbitrator shall be without power to conduct an arbitration on a class basis." (R. p. 276, § 6.2.2.)

The Court of Appeals interpreted the CIGNA Agreement's dispute resolution language as not applying to Mr. Owens's claims, which were brought on behalf of a putative class. (*Blackwell* Op. at 10.) A plain reading of the language supports this interpretation. Mr. Owens is not a "party" who could invoke the Agreement's dispute resolution processes.[9] Additionally, the Agreement

[9] Petitioners acknowledge that Mr. Owens is not a party or signatory to the CIGNA Agreement, instead asserting that the parties to that agreement are Mary Black Hospital and CIGNA insurance. (*See* Appellant's Br. 9.)

unequivocally provides that, in "an arbitration conducted under this provision," the arbitrator has no authority to conduct class-wide arbitration. The Court of Appeals was correct in finding that "the language of the arbitration provision, interpreted in its natural and ordinary sense" did not apply under the circumstances.

The U.S. Supreme Court's decision in *Epic Systems Corp. v. Lewis* is distinguishable. For one, the plaintiffs were former employees who entered agreements with their employers that provided for arbitration of any disputes that might arise between them. 584 U.S. at 502–03. Those agreements also specified that the parties agreed to "individualized arbitration, with claims 'pertaining to different [e]mployees [to] be heard in separate proceedings.'" *Id.* at 503 (alterations in original). Even though they had contracted for arbitration and "indicat[ed] their intention to use individualized rather than class or collective action procedures," the employees argued that the agreements were unenforceable because they required bilateral arbitration procedures. *Id.* at 505, 508–10. The Supreme Court disagreed, concluding that the terms of the parties' agreements must be interpreted as written, and neither the FAA's savings clause nor the National Labor Relations Act invalidated those agreements. *Id.* at 510, 524.

Here, in contrast, Mr. Owens did not have an employee/employer relationship with Petitioners, and he neither contracted for arbitration nor agreed to any rules for conducting arbitration since he was admittedly not a party or signatory to the CIGNA Agreement.

In sum, the Court of Appeals enforced the arbitration provisions in the CIGNA Agreement according to their terms and concluded those provisions do not apply to Mr. Owens's claims brought on behalf of a putative class. This conclusion is consistent with both the language of the Agreement and precedents requiring courts to interpret and enforce arbitration agreements just like they would any other contract.

III. The Court of Appeals properly declined to review the trial court's interlocutory rulings.

The denial of a motion to compel arbitration is immediately appealable, but denials of motions to dismiss ordinarily are not. *See Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995). Appellate courts will at times, however, review a non-appealable, interlocutory order when it has "a sufficient nexus or companionship" with an appealable order "to justify [the] exercise of immediate appellate review." *Brown v. Cnty. of Berkeley*, 336 S.C. 354, 362 n.5, 622 S.E.2d 533, 538 n.5 (2005). But the decision whether to do so is discretionary.

After determining that the trial court properly refused to compel Mr. Owens to arbitrate his claims, the Court of Appeals declined Petitioners' invitation to also review the denials of Petitioners' motions to dismiss the claims of all three named plaintiffs. In doing so, the Court of Appeals explained, "Here, the only immediately appealable issue is the denial of Providers' motion to compel arbitration against Owens. Further, we believe the issues raised by Providers' Rule 12(b)(6) motions would benefit from further factual development." (*Blackwell* Op. at 11.)

Declining to review interlocutory orders is a proper exercise of an appellate court's discretion, and Petitioners do not argue otherwise. Instead, in asking this Court to grant certiorari review, Petitioners raise merits arguments[10] under the guise of "judicial economy" in an attempt

---

[10] For example, Petitioners argue that "a close analysis of whether Plaintiffs stated a claim for tortious interference with a contract would have aided the majority's estoppel analysis." (Petition 20.) In so arguing, Petitioners incorrectly state that the amended complaint doesn't "allege *any* breach of the alleged contract between themselves and their insurers, much less that Defendants intentionally procured any such brief." (*Id.*) Petitioners' argument not only mischaracterizes the allegations in the complaint, but it also ignores the rules for evaluating a motion to dismiss. *See Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 149, 714 S.E.2d 537, 539 (2011); *Doe v. Oconee Mem. Hosp.*, 437 S.C. 574, 581, 878 S.E.2d 920, 925 (Ct. App. 2022); *Morrow Crane Co. v. T.R. Tucker Constr. Co.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988).

to have this Court second guess the trial court's conclusions that the amended complaint pleaded sufficient facts to support the causes of action asserted. Respectfully, the Court should similarly decline to endorse such an approach.

CONCLUSION

The Court of Appeals' decision in this case does not conflict with any precedent, does not involve any novel issues, and does not present any other special or important reasons for this Court to grant discretionary review of that decision. This Court should decline to issue a writ of certiorari.

Respectfully submitted,

John S. Simmons (S.C. Bar No. 10260)
Rachel G. Peavy (S.C. Bar No. 69397)
Simmons Law Firm, LLC
1711 Pickens Street
Columbia, SC 29201
(803) 779-4600
jsimmons@simmonslawfirm.com
rpeavy@simmonslawfirm.com

John B. White, Jr. (S.C. Bar No. 5996)
Marghretta Shisko (S.C. Bar No. 100106)
Griffin L. Lynch (S.C. Bar No. 72518)
291 S. Pine St.
Spartanburg SC 29302
(864) 594-5988
jwhite@johnbwhitelaw.com
mshisko@johnbwhitelaw.com
glynch@johnbwhitelaw.com

Attorneys for Respondents

April 7, 2025