THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2024-000914

Kevin White,
as Personal Representative of the Estate of Mary Brisbon, ...Respondent,

v.

St. George Health Care, LLC, d/b/a St. George Healthcare Center and
Vicki Sides,..... Appellants.

FINAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether the Circuit Court erred in finding that the subject admission and arbitration agreements did not merge.

II. Whether the Circuit Court erred in finding that the doctrine of estoppel would not preclude Respondent from denying the validity of the arbitration agreement.

INTRODUCTION

At its core, this Appeal presents a narrow issue that this Court has conclusively determined on at least nineteen occasions in the recent past by the undersigned's last count: whether Appellants may bind a nonsignatory resident, or her estate, to an arbitration agreement when there is ambiguity as to whether the Appellants' arbitration agreement and a separate facility admission agreement ever merged. In January of 2023 in a reported Opinion this Court analyzed the exact same admission and arbitration agreements that are now presented to the Court by Appellants and held that the subject agreements did not merge and that the personal representative of a resident's estate would not be precluded by estoppel from denying the validity of the arbitration agreement if it was not signed by the decedent or a properly authorized representative. *See Estate of Solesbee by Bayne v. Fundamental Clinical and Operational Servs., LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).

The Court's, and the Supreme Court's, prior decisions have clearly set forth that in order for a healthcare facility to rely on estoppel doctrines to prevent an estate from arguing that it would not be bound by an arbitration agreement signed by a third party, the admission and arbitration agreements must avoid any ambiguity in their terms that would indicate an intention contrary to merger. If a healthcare facility purposefully muddies the water and makes such terms unclear, presumably so that it may conveniently argue, depending on the circumstances, that the agreements are alternatively separate or merged, it has created an ambiguity that must be construed against the healthcare facility as the drafter of the documents.

This exact scenario is presented by the subject agreements, and that is exactly why this Court has previously looked at these exact same agreements on numerous occasions and held that they do not merge, and that a resident (or her estate) as a nonsignatory of the agreements is not estopped from denying the arbitration agreement's validity. For these and the following reasons, the Circuit Court's Orders should be affirmed.

COUNTERSTATEMENT OF THE CASE

This action was commenced on November 18, 2022, by filing a Summons and Complaint in the Dorchester County Court of Common Pleas. (R. pp. 7-13). Respondent Kevin White, as Personal Representative of the Estate of Mary Brisbon ("the Estate"), alleged wrongful death and survival claims against Appellants St. George Health Care, LLC d/b/a St. George Healthcare Center and Vicki Sides ("the Facility") as a result of the care and treatment provided to the decedent, Mary Brisbon, while she was a resident at the Facility. (*Id.*). The Estate properly complied with the Notice of Intent and affidavit requirements of S.C. Code Ann. §§ 15-79-125 and 15-36-100 prior to filing suit.[1] The Facility Defendants individually answered the Complaint on March 20, 2023, and generally denied all allegations pertaining to any liability for the decedent's treatment while she was in the Facility's care. (R. pp. 17-30). The Facility Defendants raised as an affirmative defense the potential arbitrability of this action and reserved the right to file a motion to dismiss and compel arbitration. (R. pp. 19, 26).

[1] *White v. St. George Health Care LLC*, Case No. 2022-NI-18-00004.

That same day, the Facility Defendants filed Motions to Compel Arbitration, arguing that a valid and binding arbitration agreement had been entered between the parties. (R. pp. 60-62, 64-66). The Facility Defendants contended that the Federal Arbitration Act ("FAA"), as opposed to the South Carolina Uniform Arbitration Act, applied to the arbitration agreement.[2] (*Id.*). The Facility Defendants also requested that the Circuit Court stay all discovery, pretrial motions practice, and any requirements to file any responsive pleadings until their Motions could be resolved. (*Id.*).

The Facility's Motions were set for hearing by the Circuit Court on October 23, 2023. The Facility filed a supporting memorandum further arguing that the FAA governed the arbitration agreement, that arbitration agreements are favored and under state law are required to be placed on equal footing with all other contracts, that the arbitration agreement was not facially invalid or unconscionable, and that the Estate's claims were within the scope of the arbitration agreement. (R. pp. 67-76). In the alternative, the Facility argued that even if the arbitration agreement was not valid, that the arbitration agreement and admission agreement merged such that it would be inequitable for the Estate to be permitted to argue that the arbitration agreement was not valid. (R. pp. 84-106).

[2] The Circuit Court did not specifically find in its November 2, 2023 Order that the agreements involve or affect interstate commerce and are thus governed by the FAA. (R. pp. 1-3). Regardless, even if the FAA did govern the agreement, it does not give "the party seeking arbitration a leg up" in determining whether arbitration should be compelled. *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 229, 847 S.E.2d 268, 271 (Ct. App. 2020).

The Circuit Court denied the Facility's Motions by way of a form 4 Order filed November 2, 2023. (R. pp. 1-3). The Order finds that the Arbitration Agreement and Admission Agreement did not merge and that equitable estoppel would not apply to preclude the Estate's argument that the Arbitration Agreement was signed without authority. (R. pp. 1-3). The Facility filed a Motion for Reconsideration on November 13, 2023, to which the Estate filed a Memorandum in Opposition on November 14, 2023. (R. pp. 128-61). After a February 12, 2024 hearing, the Circuit Court denied the Motion for Reconsideration in a form 4 Order on May 2, 2024. (R. pp. 4-6). This Appeal followed. (R. pp.162-64).

STANDARD OF REVIEW

An appeal from an order denying a motion to compel arbitration is subject to de novo review. *Solesbee*, 438 S.C. at 645, 885 S.E.2d at 147. "Whether an arbitration agreement may be enforced against a nonsignatory to the agreement is a matter subject to de novo review by an appellate court" with no presumption in favor of arbitration. *Wilson v. Willis*, 426 S.C. 326, 335, 337, 827 S.E.2d 167, 172-73 (2019). Under de novo review, a circuit court's underlying factual findings will not be reversed on appeal if any evidence reasonably supports those findings. *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 228, 847 S.E.2d 268, 271 (Ct. App. 2020).

ARGUMENT

The Circuit Court's November 2, 2023 and May 2, 2024 Orders should be affirmed by the Court because they do not contain any clear legal errors, and the factual conclusions of the Circuit Court are reasonably supported by the evidence in the record. Under this Court's prior rulings, the exact same arbitration agreement

and admission agreement at issue have been found by this Court not to merge, and that a nonsignatory would not be precluded from denying the validity of the arbitration agreement. And since the Facility has not contested the Circuit Court's finding that the signatory did not have authority, either by way of the Adult Health Care Consent Act, a valid power of attorney, or common law agency principles, to enter the arbitration agreement, it is now the law of the case, and the Facility can only argue that the agreements merge such that the Estate should have been estopped from opposing arbitration. *See Atlantic Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case."). For these and the following reasons, the Circuit Court's Order denying the Facility's motions should be affirmed.

I. Statement of Facts.

On April 24, 2019, Mary Brisbon was admitted to Appellants' Facility, St. George Healthcare Center. (R. p. 10). At the time of her admission, the Facility noted that Ms. Brisbon had skin integrity issues, including deep tissue injuries to her left heel and left lower buttock. (*Id.*). Over the first four months that Ms. Brisbon was in the Facility's care, she suffered a stage IV sacral wound and a pressure ulcer on her left ischium, requiring her to be sent to Colleton Medical Center. (*Id.*). As a result of the Facility's care, Ms. Brisbon suffered numerous pressure sores, severe sepsis, dehydration, malnutrition, hypotension, and acute kidney injury. (*Id.*). After being readmitted to the Facility's care, Ms. Brisbon had to be admitted to Colleton Medical Center again for severe sepsis, two unstageable pressure injuries, a stage IV pressure

injury, and multiple wounds to her legs. (*Id.*). After again being readmitted to the Facility, Ms. Brisbon required another visit to the hospital with pneumonia, and within less than two months passed away. (R. pp. 10-11).

Upon admission, the Facility's admission and arbitration agreements were signed by Mr. Kevin White, Ms. Brisbon's son. (R. pp. 107-127; R. p. 63). The Facility has not appealed and did not ask for reconsideration of the Circuit Court's implicit finding that there was no evidence of any actual or apparent agency relationship between Ms. Brisbon and Mr. White, it has not appealed and did not ask for reconsideration of the Circuit Court's implicit finding that the Adult Health Care Consent Act did not grant authority to Mr. White to enter an arbitration agreement on behalf of Ms. Brisbon, and it has not appealed or asked for reconsideration of the Circuit Court's implicit finding that Mr. White had no authority to execute the arbitration agreement, so these finding are the law of the case.[3]

Mr. White signed the Facility's arbitration agreement and admission agreement on April 24, 2019. (R. pp. 63, 107-18). The admission agreement contains provisions regarding the Facility's obligations, Ms. Brisbon's obligations, and a financial agreement, as well as provisions regarding the termination of the admission agreement, governing law, and an entirety of agreement provision. (*Id.*). The admission agreement has its own signature page, is separately entitled "Admission Agreement – South Carolina", and is separately paginated as pages one through 12.

[3] The authority conveyed by a principal to an agent to make health care decisions or handle finances does not encompass executing an agreement to arbitrate. *Hodge v. UniHealth Post Acute Care of Bamberg, LLC*, 422 S.C. 544, 572, 813 S.E.2d 292, 307 (Ct. App. 2018).

(*Id.*). The admission agreement is accompanied by an acknowledgement of admissions materials received by Mr. White. (*Id.*). This list of admissions materials does not include the Facility's arbitration agreement. (*Id.*).

The arbitration agreement sets forth that all claims arising out of or relating to the Facility's admission agreement are to be resolved by arbitration and provides the governing law for the arbitration agreement. The arbitration agreement has its own separate signature page, is entitled "Facility – Resident/Representative Arbitration Agreement", and is paginated as "Page 1 of 1". (R. p. 63). The Facility has acknowledged that the arbitration agreement is optional, and it 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. Since it is undisputed that Mr. White did not have authority to enter the arbitration agreement, the Court's analysis is confined to whether the Estate should have been precluded from denying the validity of the arbitration agreement under a merger/estoppel theory.

II. The arbitration agreement and admission agreement did not merge because they are governed by separate bodies of law, the contract terms recognize them as separate documents, they have separate procedures for termination, they are separately paginated and have their own signature pages, and the arbitration agreement was optional and not a precondition to admission.

Because arbitration exists solely by agreement of the parties, a presumption against arbitration arises where the party resisting arbitration (the Estate) is a nonsignatory to the written agreement to arbitrate. *Wilson*, 426 S.C. at 337, 827 S.E.2d at 173. State law provides when an arbitration agreement may be enforced against a nonsignatory, and South Carolina permits a nonsignatory to be bound by

an arbitration agreement under several theories: incorporation by reference, assumption, agency, veil piercing/alter ego, and estoppel. *Solesbee*, 438 S.C. at 647, 885 S.E.2d at 148. Only two of these theories were at play before the Circuit Court, and the Facility has declined to appeal any issues concerning agency. Therefore, the Facility may only prevail if it can show there is no evidence reasonably supporting the Circuit Court's finding that the Estate was not estopped from denying the validity of the arbitration agreement.

A nonsignatory may be estopped from denying the validity of an arbitration agreement when it receives a direct benefit from a contract containing an arbitration clause. *Solesbee*, 438 S.C. at 647, 885 S.E.2d at 148. It is undisputed in this case that the Facility's arbitration agreement was not a clause in its admission agreement, and the Estate has not received any direct benefit from the arbitration agreement itself. The Facility thus argues that under a theory of merger, the arbitration agreement and the admission agreement became a unified contract once they were executed, and since Ms. Brisbon benefited from the terms of the admission agreement, her Estate (and its personal representative) are precluded from denying the validity of the arbitration agreement. However, the language and formatting of the agreements serve as evidence that the two agreements were intended to be separate documents, and at minimum, create an ambiguity as to merger that must be construed against the Facility.

> In South Carolina, "[t]he 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, 755 S.E.2d 450, 455 (2014) (emphasis added). Here, the terms of the agreements indicate an intent that the doctrine of merger would not apply to the agreements, and at minimum create an ambiguity as to merger. *See id.* at 355-56, 755 S.E.2d at 455 (stating that ambiguity as to merger must be construed against the drafter). The Facility makes an argument that there is a presumption of merger when documents are executed at the same time and for the same purpose, and that any ambiguity in the documents demonstrative of the drafter's intent therefore cannot be construed against the drafter.[4] This makes little sense and misrepresents the language of *Coleman*, as the rule makes clear that there is an exception to any presumption of merger when *anything* exists which would indicate a contrary intention. Ambiguity in the documents as to whether they merge is clearly *something* which could indicate contrary intent and cautions against a finding of merger.

In determining whether a health care facility's admission and arbitration agreements merge, this Court has looked to the following factors: (1) whether the two agreements are governed by separate bodies of law, (2) whether the language of the agreements recognizes the two agreements as separate, (3) whether the agreements contain different terms regarding revocation and termination, (4) whether the agreements are separately paginated and have their own signature pages, and (5)

[4] To be clear, South Carolina law has never stated that there is any sort of evidentiary presumption of merger.

whether both agreements are required for the execution of the other, or whether one agreement is optional. *Hodge*, 422 S.C. at 562-63, 813 S.E.2d at 302. This Court has previously analyzed the exact admission and arbitration agreements at issue here in *Solesbee* and found the agreements do not merge.

In *Solesbee*, the Court found that the admission agreement is governed by South Carolina law, while the arbitration agreement is governed by federal law. *Solesbee*, 438 S.C. at 648, 885 S.E.2d at 149. To be precise, the admission agreement is governed by "applicable Federal regulations" and South Carolina law. (R. p. 116). The arbitration agreement, on the other hand, purports to be governed by the FAA's statutes and specifically not by South Carolina law.[5] (R. p. 63). Therefore, the two agreements are not governed by identical spheres of law: one is subject to state law and the federal code of regulations, while the other claims to be only subject to the statutes contained within the FAA.

Second, the Court has previously found that the language of the agreements recognizes that they are separate: "The Arbitration Agreement recognized the two documents were separate, stating the Arbitration Agreement 'shall survive any termination or breach of this Agreement or the Admission Agreement.'" *Solesbee*, 438 S.C. at 648-49, 885 S.E.2d at 149. This language mirrors that addressed in *Coleman* and *Thompson*, in which the Supreme Court and this Court found such language to

[5] The Facility argues that both agreements are broadly governed by South Carolina and federal law; however, the arbitration agreement specifically states it will only be enforced under the FAA. To the extent that the arbitration agreement provides that the arbitration *proceedings* will be governed by the South Carolina Alternate Dispute Resolution/Mediation Rules, these Rules are not substantive, only govern any ADR proceedings, and are irrelevant to the enforcement of the arbitration agreement and the Court's determination of merger.

be proof that an admission agreement was separate and did not merge with an arbitration agreement:

> The court then explained the evidence of the parties' intent to keep the two agreements separate by highlighting the admission agreement's recognition of the arbitration agreement as a separate document, i.e., "This Agreement, including all Exhibits hereto, and the Arbitration Agreement . . . ."

Thompson v. Pruitt Corp., 416 S.C. 43, 52, 784 S.E.2d 679, 685 (Ct. App. 2016).

The Facility argues that the admission agreement's "Entire Agreement" clause contains language indicating that the agreements merged, specifically the statement that "[t]he undersigned further acknowledges that he/she has received and read the *Admission Handbook* and other Admissions materials and understand that these documents are made a part of this Agreement by reference *herein*." (R. p. 118) (emphasis added). Problematically, there is no reference to the arbitration agreement anywhere within the entire admission agreement. Regardless, even if there was some reference to the arbitration agreement within the admission agreement, when viewed alongside the other details of the agreements, there remains an ambiguity as to merger that at best must be construed against the Facility.

The Facility wholly relies on dicta from prior decisions of this Court discussing that arbitration agreements can be part of admissions documentation to support that its arbitration agreement was an "Admissions material" that was incorporated into its admission agreement, but those decisions have no evidentiary value to this Appeal. Additionally, the "Entire Agreement" provision purports to incorporate the Admissions materials by reference within the admission agreement itself, but

nowhere within the admission agreement, including the "Entire Agreement" provision, does it ever refer to the arbitration agreement. In short, there is no admissible evidence that the arbitration agreement and admission agreement were executed at the same time and in the course of the same transaction. The "Entire Agreement" provision creates at best an ambiguity as to merger when taken in context of the totality of the circumstances.

Third, the Court has found that the arbitration agreement contains no language indicating that it may be revoked or terminated, but the admission agreement provides that a resident may terminate the admission agreement at any time. *Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149. Fourth, the Court has found that the agreements at issue are separately paginated and have their own signature pages. *Id.* Since the arbitration and admission contracts have different pagination with different signature pages, and the arbitration contract is entitled "Arbitration Agreement" at the top of its first page, these factors further indicate the drafter's intent for the arbitration agreement to stand by itself as an independent contract, at least when it suits the Facility for it to do so. *See Thompson*, 416 S.C. at 53 n.1, 784 S.E.2d at 685 n.1 (noting that a separately labeled arbitration agreement indicates the drafter's intent for the agreement to stand by itself as an independent contract). Lastly, the Court has found that the arbitration agreement is optional and voluntary, while the admission agreement is required for admission. *Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149. The Facility does not dispute in this case that the arbitration agreement is voluntary and optional.

In this case, the text of the agreements constitutes "actual evidence" and at minimum creates ambiguity as to whether the agreements merged. The Facility misconstrues that there is a legal presumption of merger, and that the above-discussed factors are not sufficient to overcome this presumption. However, the language of *Coleman* never states that there is a presumption of merger in the context of health care facility arbitration agreements, or that one interpretation as to merger or the other is favored in any way, and in fact the Court's precedents state that *there is a presumption against arbitration, and therefore merger, when an arbitration agreement is attempted to be enforced against a nonsignatory*. *Wilson*, 426 S.C. at 337, 827 S.E.2d at 173. Instead, *Coleman* dictates that the Court can assume merger only if the agreements were made at the same time, by the same parties, for the same purpose, and in the course of the same transaction, so long as there is no language or other indication within the agreements of a contrary intent. The fact that there is ample evidence that the agreements were drafted in such a manner that they could, if necessary, be construed as separate contracts only strengthens the Circuit Court's reasoning and cautions against a finding of merger. The language, pagination, and formatting of the admission agreement and arbitration agreement evince an intent for the agreements to be considered separately, presumably when such a position would work to the advantage of the Facility.

The Facility argues that this evidence is not "actual evidence", and that the Circuit Court's and this Court's former decisions were based on speculation. This begs the question of what else was the Circuit Court supposed to rely on to determine if

there was an intent contrary to merger that could be gleaned from the agreements. Additionally, if the above-discussed evidence is not indicative of a contrary intent, and the Facility intended the documents to merge, then why hasn't it made the arbitration agreement a provision of the admission agreement, or merged the two documents with an explicit merger provision? Why make separate documents to begin with? The answer to these questions is that for certain purposes not relevant to this Appeal, the Facility wants the agreements to be separate. The language of the agreements purposefully creates an ambiguity that must be construed against the drafter and required the Circuit Court to find that in this instance there was no merger of the documents. This Court has repeatedly reached the same conclusion based on the same language and agreements. The Court should adhere to stare decisis and uphold its recent decision in *Solesbee* by affirming the Circuit Court's Order.

III. Even if the arbitration agreement and admission agreement did merge, the Estate would not be estopped from denying the validity of the arbitration agreement.

Equitable estoppel is "a theory designed to prevent injustice, and it should be used sparingly." *Wilson*, 426 S.C. at 345, 827 S.E.2d at 177. Equitable estoppel is only available when the party seeking to invoke the doctrine "was misled to his injury". *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 601, 799 S.E.2d 912, 916 (2017). The Estate would have been estopped from denying its validity only if the Facility could have proven the elements of estoppel to the Circuit Court. The Facility failed to do so.

A nonsignatory such as the Estate is estopped from refusing to comply with an arbitration clause "when it receives a direct benefit from a contract containing an arbitration clause." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012) (quoting *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416-17 (4th Cir. 2000)). The direct benefits test is frequently used to determine whether a theory of estoppel is applicable within the arbitration context. *Solesbee*, 438 S.C. at 647, 885 S.E.2d at 148. Here, the arbitration agreement is not a clause within the admission agreement, and the two agreements did not merge. However, even if the agreements were valid and did merge, the Facility cannot satisfy the remaining requirements of the direct benefits estoppel test.

Direct benefits estoppel precludes a nonsignatory from denying the validity of an arbitration *provision* of a contract if "(1) the nonsigner's claim arises from the contractual relationship, (2) the nonsigner has "exploited" other parts of the contract by reaping its benefits, *and (3) the claim relies solely on the contract terms to impose liability*. *Weaver*, 431 S.C. at 230, 847 S.E.2d at 272 (emphasis added). Thus, even if the arbitration agreement and admission agreement merged, the Facility would still have to demonstrate that the wrongful death and survival claims rely solely on the terms of the admission agreement to impose liability in order to benefit from a direct benefits estoppel theory.

The Estate has not asserted a breach of contract claim, or a violation of contractual duties, and instead has brought its lawsuit under a negligence theory arising from common law duties. *See Wilson*, 426 S.C. at 342, 827 S.E.2d at 176

(noting that a claim may rely on general principles of South Carolina law in addition to or to the exclusion of contractual rights). The Estate does not claim that the Facility breached a contractual duty created by the admission agreement, but that it breached a duty owed by all healthcare practitioners, regardless of any contractual agreements, not to negligently care for their patients. Any contractual duties between the decedent and the Facility are irrelevant as to whether the Facility breached common law tort duties owed to the decedent. The Estate's claims rely on common law tort duties owed by the Facility to anyone in its care and not solely on any provision of the admission agreement and as such, the claims do not rely solely on the contract terms to impose liability, and the Estate is not precluded by direct benefits estoppel from denying the validity of the arbitration agreement. *Weaver*, 431 S.C. at 232-33, 847 S.E.2d at 273-74.

Simply because the alleged conduct would not have arisen in the absence of the admission agreement (and Ms. Brisbon's admission to the Facility) does not mean that direct benefits estoppel is implicated.

> When a claim depends on the contract's existence and cannot stand independently – that is, the alleged liability "arises solely from the contract or must be determined by reference to it" – equity prevents a person from avoiding the arbitration clause that was part of that agreement. But "when the substance of the claim arises from general obligations imposed by state law, including statutes, torts, and other common law duties, or federal law," direct benefits estoppel is not implicated even if the claim refers to or relates to the contract *or would not have arisen "but for" the contract's existence*.

Wilson, 426 S.C. at 343, 827 S.E.2d at 176 (quoting *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 637 (Tex. 2018)). Therefore, just because Ms. Brisbon

benefited from the admission agreement by receiving "every night's stay, every meal, every amenity/service provided, every instance of care/treatment" as argued by the Facility, it does not mean that her Estate's and the wrongful death beneficiaries' tort claims against the Facility depend on the agreement's existence. This lawsuit is predicated on the breach of common law duties owed by the Facility to Ms. Brisbon and is justiciable even if there was never a valid admissions agreement to begin with.

Despite the Facility's contentions, the analysis does not stop and start with whether Ms. Brisbon, and thus her Estate, received any benefits from an admission agreement. There are other requirements that must be met before direct benefits estoppel is implicated. Here, direct benefits estoppel is not applicable because the Estate's and wrongful death beneficiaries' claims derive from common law duties and are not solely derived from contractual claims. The Circuit Court also correctly found that since the documents did not merge the Estate was not estopped from denying the arbitration agreement's validity. The Court should affirm the Circuit Court's finding that direct benefits estoppel is inapplicable under the facts of this case.

The fact that Mr. White signed the arbitration agreement in his individual capacity and is now a party to this action as a nonsignatory in his capacity as personal representative of the Estate does not bind the Estate to the arbitration agreement, at least as far as equitable estoppel is concerned. The Court addressed this concept in *Thompson*:

> Respondent is attempting to use equitable estoppel against [the patient's] estate based on actions that [patient's daughter] took in her individual capacity. The fact that [the patient's daughter] is now the personal representative for [the patient's] estate is of no moment; we

> will not hold this circumstance against [the patient's] estate. Simply put, [the patient's] estate is the plaintiff in this case, and Respondent has alleged no conduct on the part of [the patient's] estate, that has affected Respondent's position. This, too, is a necessary element of an equitable estoppel defense.

Thompson, 416 S.C. 43, 61, 784 S.E.2d 679, 689 (Ct. App. 2016). Likewise, there is no evidence in the record, nor were any arguments made to the Circuit Court, demonstrating that some conduct on the part of the Estate or Ms. Brisbon misled the Facility or affected the Facility's position in a detrimental manner, making estoppel inapplicable under these circumstances.

CONCLUSION

For the foregoing reasons, the Court should affirm the Circuit Court's Orders denying the Appellants' Motions to Compel Arbitration.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Respondent's Final Brief complies with Rule 211(b), SCACR.

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Vicki Sides,..... Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the Final Brief of Respondent and Certificate of Counsel has been served upon the following counsel of record by emailing a copy of the same 6th day of June 2025.

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