THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2025-000296

Beverly Vaughn, as Personal Representative of the Estate of Loris Paris, …….Respondent,

v.

Saint Matthews Healthcare, LLC; Melissa Kizer; Melissa Davis; and Angela Smith Teliha, Defendants,

of which Saint Matthews Healthcare, LLC; Melissa Kizer; and Melissa Davis are the ……..…Appellants.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This is an appeal from an order denying a motion to compel arbitration in a case involving nursing home abuse and neglect that resulted in the death of Loris Paris.

On April 8, 2022, Respondent Beverly Vaughn, as Personal Representative of the Estate of Loris Paris, ("Vaughn") filed a complaint against Appellants Saint Matthews Healthcare, LLC, Melissa Kizer, and Melissa Davis, based on professional negligence and negligent hiring, training, retention, and supervision. (R. pp. 25-30). On May 16, 2022, Appellants each filed an answer to the Complaint. (R. pp. 31-48).

On August 9, 2022, Saint Matthews filed a motion to compel arbitration, and Appellants Kizer and Davis filed motions to stay pending the lower court's decision on that motion. (R. pp. 81-86). On January 3, 2023, Vaughn filed a memorandum in opposition to the motion, along with

a Durable Power of Attorney and the facility admission documents. That same day, Saint Matthews filed a memorandum in support of its motion to compel arbitration.

On January 17, 2023, the lower court continued the motions to allow for limited discovery on Ms. Paris's admission to the facility. (R. pp. 1-4). On February 6, 2024, Vaughn filed a supplemental memorandum in opposition to the motion to compel arbitration. (R. pp. 96-109).

After a hearing on June 6, 2024, the lower court denied the motion to compel arbitration on November 13, 2024. (R. pp. 5-19). On November 24, 2024, Appellants filed a motion to reconsider. (R. p. 313). On January 20, 2025, Respondent filed a memorandum in opposition to the motion to reconsider. (R. p. 347).

The lower court held a hearing on January 22, 2025, and filed an Order denying the motion on January 23, 2025. (R. pp. 20-22). On February 18, 2025, Appellants filed a notice of appeal. (R. pp. 351-52).

FACTS

Loris Paris ("Ms. Paris") was the mother of Beverly Vaughn and George Paris. On February 6, 2015, Ms. Paris signed a Durable Power of Attorney designating Beverly as her Attorney-in-Fact. (R. pp. 153-59).

In April 2019, Beverly lived in Connecticut, and Ms. Paris lived in Vance, South Carolina, with her adult son, George. (R. pp. 169, 265-66). That month, Ms. Paris was admitted to Orangeburg Regional Medical Center and then transferred to Calhoun Convalescent Center facility. (R. pp. 170, 177, 180). The facility is operated and licensed by Appellant Saint Matthews Healthcare, LLC. (R. pp. 25, 31-32). Beverly flew to South Carolina and, acting as her mother's power of attorney, initiated Ms. Paris's admission to the facility. (R. p. 180).

On April 11, 2019, Beverly signed at least 18 admission documents as her mother's legal representative under the Power of Attorney. (Supp. R. pp. 1-19). When she had to return to Connecticut before Ms. Paris's admission was complete, Beverly gave George "permission to have [Ms. Paris] admitted," for "admission to the nursing facility **only.**" (R. p. 177) (emphasis added). Beverly told him to go the facility to sign the "intake papers for [Ms. Paris] to be admitted in" to the facility. (R. p. 269). Beverly did not give him permission to sign anything optional, *i.e.*, anything not required for admission.

Cindy Reck was the admissions director for the facility. (R. p. 215). Beverly told Ms. Reck that she gave George "permission to sign her[Ms. Paris] in" to the facility, "permission to sign for her to be admitted to the facility." (R. pp. 178-79, 186). The Admission Agreement is one such document. The Admission Agreement stated George was "Resident's Durable Power of Attorney for Health Care/Resident's Legal Guardian/Resident's Responsible Party" even though the facility knew that Beverly was the power of attorney. (R. p. 243).

On April 12, 2019, Paris was admitted to the facility. (R. p. 26). That day, George signed the Admission Agreement and other documents on his mother's behalf. The admissions documentation process can take two hours, and George had to leave. (R. p. 239).

Mrs. Reck called George to come back and, when she could not get in touch with him, she called Beverly and asked her to have George come back "to complete the paperwork" because "there were still other forms that he **needed** to sign." (R. pp. 229-30, 236) (emphasis added). Mrs. Reck did not tell Beverly what the documents were and did not talk to her about arbitration. (R. pp. 236, 198).

George returned to the facility on April 15, 2019. Ms. Reck presented him with a "Facility – Resident/Representative Arbitration Agreement" as a document that he "needed" to sign to

complete the admissions paper work. George did not understand what an arbitration agreement was and said that no one explained it to him. (R. p. 274). If he had understood "that was one of the papers being signed, [he] would have definitely called Beverley" because he knew he was not supposed to sign that. (R. p. 274). Ms. Reck also did not understand the arbitration agreement. She testified that the facility assigns "an arbitrator from the facility to work between the two parties to come to an agreement. If that cannot be done, the Court will assign an arbitrator to work with the two parties to come to an agreement." (R. pp. 232-33). It actually says that the parties will select an arbitrator from a panel with experience in health care and, if they cannot agree, then the Court will select an arbitrator. (R. p. 83). Ms. Reck did not know how the arbitrator is paid, how much arbitration costs, where the arbitration takes place, or what the agreement means when it refers to selection of an arbitrator from a panel with experience in health care. (R. pp. 233-34).

Upon Ms. Paris's admission to the facility, Appellants specifically identified her as a moderate risk for developing pressure ulcers. (R. p. 26). In November 2019, Ms. Paris was admitted to the hospital for dehydration and multiple infected pressure ulcers. (R. p. 26). Six months later, in May 2020, Ms. Paris was again admitted to the hospital for dehydration and infected pressure ulcers, along with severe sepsis and malnutrition. (R. p. 26). On July 7, 2020, Ms. Paris was admitted to the hospital for a third time. (R. p. 26). Her medical conditions included pressure ulcers on four separate body parts, malnutrition, respiratory distress, and sepsis from a urinary tract infection. (R. p. 26). On July 17, 2020, Ms. Paris died.

On April 8, 2022, Vaughn filed this action against Saint Matthews Healthcare, LLC, Melissa Kizer, Melissa Davis, and Angela Smith Teliha, asserting causes of action for (1) professional negligence/gross negligence as to all defendants and (2) negligent hiring, training, retention, and supervision as to Saint Matthews. (R. pp. 27-29). In response, Saint Matthews filed

a motion to compel arbitration, and Defendants Kizer and Davis filed motions to stay pending a ruling on the motion to compel arbitration. (R. pp. 81-87).

Saint Matthews filed a memorandum in support of its motion to compel arbitration and included an alternative request for additional discovery on "the nature of Ms. Paris' agency relationship with her son and the circumstances surrounding the admission process." After taking the depositions of Beverly, George, and Mrs. Reck, the parties filed opposing memoranda. (R. pp. 96-152).

On June 6, 2024, the Honorable Maite Murphy held a hearing on the motion to compel arbitration and motions to stay. (R. p. 49). On November 13, 2024, the court entered an order denying the motions on numerous, independent grounds. (R. pp. 5-19). The court held that George did not have authority to sign the arbitration agreement because neither Ms. Paris nor Beverly authorized him to sign it. (R. pp. 8-9). George was given permission to sign only admissions paperwork required for Ms. Paris's admission to the facility and not to waive her right to a jury trial. (R. p. 10). George was not an agent for purposes of entering into an arbitration agreement but, instead, only for Ms. Paris's admission to the facility. (R. pp. 14-16). The court found it a disputed issue whether Ms. Paris had mental capacity to make decisions for herself but, regardless, held neither she nor Beverly instructed George to sign an arbitration agreement waiving her Seventh Amendment right to a jury trial. (R. p. 9).

The lower court found the arbitration agreement unconscionable based on a lack of meaningful choice and oppressive and one-sided terms. (R. pp. 16-13). The court also held the arbitration agreement lacked consideration, Ms. Paris is not a third-party beneficiary of the agreement, and that Ms. Paris is not estopped from denying it because she received no benefit from the arbitration agreement. (R. pp. 16-17).

On November 25, 2024, Appellants filed a motion to reconsider. (R. p. 313). On January 20, 2025, Vaughn filed a memorandum in opposition to the motion. (R. pp. 347-50). After a hearing on January 22, 2025, the lower court denied the motion to reconsider. (R. p. 20). On February 18, 2025, Appellants filed a notice of appeal. (R. p. 351).

STANDARD OF REVIEW

"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. Under de novo review, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings." *Wilson v. Willis*, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019) (internal citations omitted). "Arbitrability determinations are subject to de novo review." *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 47, 790 S.E.2d 1, 3 (2016). "However, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings." *Id.* at 48, 790 S.E.2d at 3.

"There is [] **no** public policy—federal or state—'favoring' arbitration." *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021) (emphasis added).

ARGUMENT

There are numerous, independent bases for the Court to affirm the lower court's decision to deny the motion to compel arbitration and motions to stay.[1]

[1] Appellants do not challenge the lower court's holding that Ms. Paris is not a third-party beneficiary of the arbitration agreement. (R. p. 17). Therefore, that is the law of the case. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance.").

First, as to whether a person given authority to sign only documents needed for admission to a skilled nursing facility also has authority to sign an optional arbitration agreement, the lower court correctly answered "no," and this Court should affirm.

Second, the arbitration agreement is unconscionable because Vaughn lacked a meaningful choice as to whether to sign it when Saint Matthews told George it was necessary for his mother's admission to the facility, and the terms of it are oppressive and one-sided with a confusing arbitration procedure and unfair panel from which to choose an arbitrator.

Third, the arbitration agreement lacked consideration where Vaughn, as the Resident, was asked to give up much more than Saint Matthews, as the facility.

Finally, under binding Supreme Court and Court of Appeals' precedent, there is no merger of the arbitration and admission agreements. At least four appellate opinions directly apply to this case and dictate that there is no merger. In the face of such clear authority, Appellants ask one panel of this Court to overrule the panel that decided *Estate of Solesbee v. Fundamental Clinical & Operational Services, LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023). *Solesbee* involved the same arbitration and admission agreements, yet Appellants ask for a different outcome in this case. The Court should follow its own, and the Supreme Court's, precedent, and affirm the lower court's holding that there is no merger. Consequently, Appellants' equitable estoppel argument also fails without the merger of the agreements.

For any one of these independent reasons, the Court should affirm and allow the case to continue as pled in circuit court.

I. THE LOWER COURT CORRECTLY HELD GEORGE DID NOT HAVE AUTHORITY TO SIGN THE ARBITRATION AGREEMENT

The lower court found that neither Ms. Paris nor Beverly gave George consent or authority to sign the arbitration agreement—Beverly "never directed her brother to sign the [arbitration]

agreement on his mother's behalf." (R. pp. 5, 9). Beverly only conferred upon George the authority to sign documents needed to admit Ms. Paris to the facility. (R. p. 10). The arbitration agreement was not necessary to admission. Therefore, as George could only have the authority conferred on him by Beverly, he signed the arbitration agreement without authority, and it is void. These holdings of the lower court are fully supported by the law and evidence, and this Court should affirm.

Appellants argue that George had actual or apparent authority to sign the arbitration agreement. (Br. of App. pp. 9-12). This is incorrect.

"While actual authority is expressly conferred upon the agent by the principal, apparent authority is when the principal knowingly permits the agent to exercise authority, or the principal holds the agent out as possessing such authority." *Roberson v. S. Fin. of S.C., Inc.*, 365 S.C. 6, 11, 615 S.E.2d 112, 115 (2005).

As to actual authority, the question is the scope of George's authority. It is not in dispute that he signed the admission agreement with actual authority. The question is whether he had actual authority to sign the arbitration agreement—a document not necessary for Ms. Paris's admission to the facility. *See Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 354, 755 S.E.2d 450, 454 (2014) ("The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between the Facility and Decedent or Sister should issues arise in the future.").

Beverly told Mrs. Reck that George could "sign in" Ms. Paris, and she "gave him permission to sign for her to be admitted to the facility." (R. p. 186). Arbitration is not a prerequisite to admission, and Beverly did not anticipate or have reason to know that an arbitration agreement waiving her mother's constitutional right to a jury trial was part of the admission

process. "It is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority." *Frasier v. Palmetto Homes*, 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996) (internal quotation marks omitted). Beverly never gave George all of her authority—she gave him authority only to sign paperwork needed to admit her mother to the facility.

When Mrs. Reck called Beverly to have George come back to the facility to sign more documents, she expressly said they were necessary documents to complete Ms. Paris's admission to the facility. She told Beverly that "we **had** to **complete** the remaining paperwork" and "I said, we **need** to **complete** the paperwork." (R. pp. 229-30) (emphasis added). That is what Beverly gave George permission and authority to do–sign paperwork needed for admission. He did not have actual (or apparent) authority to sign unnecessary paperwork. The arbitration agreement is optional and, therefore, was outside of his scope of authority.

As to apparent authority, "[t]o establish apparent authority, the proponent must show (1) the purported principal consciously or impliedly represented another to be his agent; (2) the proponent relied on the representation; and (3) there was a change of position to the proponent's detriment." *Thompson v. Pruitt Corp.*, 416 S.C. 43, 54, 784 S.E.2d 679, 685 (Ct. App. 2016) (internal quotation and alteration marks omitted). None of the elements are met here.

Appellants argue that "Ms. Reck believed Mr. Paris possessed the authority to execute *all admissions documents* on Ms. Paris's behalf, including the Arbitration Agreement." (Br. of App. p. 11) (emphasis in original). But they cite to nothing for that proposition. And there is **no evidence** to support it. Beverly only gave George permission to sign necessary admission paperwork, and that is what Mrs. Reck represented to Beverly that George was coming to sign on August 15, despite the fact that the arbitration is **not necessary**. *See Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 82, 856 S.E.2d 550, 557 (2021) ("[T]he characterization of an

arbitration agreement as either a mandatory condition to admission or an optional, collateral agreement often determines the authority issue when the agent holds a power of attorney empowering her to make necessary health care decisions."). Mrs. Reck had actual knowledge that Beverly did not know about the arbitration agreement because she did not tell Beverly that is what she wanted George to return and sign. Therefore, Mrs. Reck could not have relied on any alleged representation of Beverly.

Appellants argue that Mrs. Reck believed George "was in a position to accept or decline arbitration." (Br. of App. p. 11). They cite to no evidence for this assertion. Regardless, it is false. Beverly did not tell Mrs. Reck that George could choose to accept or decline optional contracts. She told her that he could sign their mother into the facility. That is all. Waiver of a constitutional right is not a part of signing someone into a skilled nursing facility.

Appellants argue that no one "repudiated the Arbitration Agreement." (Br. of App. pp. 11-12). That something did not occur after-the-fact is irrelevant to whether apparent authority existed when George signed the arbitration agreement.

Finally, the facility did not change a position based on the arbitration agreement. Ms. Paris was admitted as a resident regardless of whether the agreement was signed. None of the elements of apparent authority are met.

The law and evidence support the lower court's holdings that George did not have actual or apparent authority to sign the arbitration agreement. The Court should affirm on this basis alone without the need to address any further issue.

II. THE LOWER COURT CORRECTLY HELD THE ARBITRATION AGREEMENT IS UNCONSCIONABLE.

The law and evidence support the lower court's holding that the arbitration agreement is unconscionable and, therefore, invalid. *One Belle Hall Prop. Owners Ass'n v. Trammell Crow*

Residential Co., 418 S.C. 51, 60, 791 S.E.2d 286, 291 (Ct. App. 2016) ("[C]ourts may invalidate arbitration agreements on general state law contract defenses, such as fraud, duress, and unconscionability."). "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). Vaughn lacked a meaningful choice when George executed the arbitration agreement, and its terms are oppressive and one-sided.

A. Vaughn lacked a meaningful choice.

This Court must analyze the agreement with "considerable skepticism" as required by *Simpson*, 373 S.C. at 26, 644 S.E.2d at 669. In *Simpson*, this Court adopted a rationale that viewed "automobiles as a necessity and factor[ed] this characterization into a determination of whether a customer had a meaningful choice in negotiating the arbitration agreement." *Id.* (internal quotation marks omitted). Because the *Simpson* arbitration agreement "involved a vehicle intended for use as Simpson's primary transportation, which is critically important in modern day society", this Court analyzed the contract "with considerable skepticism." *Id.* at 27, 644 S.E.2d at 670. Similarly, this case involves a vulnerable adult in need of immediate medical care.

"In determining whether a contract was tainted by an absence of meaningful choice, courts should take into account [1] the nature of the injuries suffered by the plaintiff; [2] whether the plaintiff 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." *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (internal quotation marks and citation omitted). These elements weigh in

favor of finding an absence of meaningful choice, and the lower court correctly found that Vaughn lacked a meaningful choice. (R. pp. 11-13).

As to the nature of injuries suffered, Ms. Paris suffered numerous hospitalizations and, ultimately, death due to the negligent care of Appellants. Ms. Paris was not a substantial business concern to Saint Matthews and neither she, nor Beverly or George, had sophistication in contracts. That Saint Matthews told residents to choose another facility if they did not like the arbitration agreement shows that Ms. Paris was not a substantial business concern.

As to the disparity in the parties' bargaining power, there was a large disparity. The facility knew that Beverly was out-of-state without access to a way to get electronic copies of the admission documents. The facility told Beverly and George that the paperwork he came to sign on August 15 was necessary for their mother's admission to the facility, and that their mother was already admitted and needed immediate, skilled care.

There was an element of surprise in the inclusion of the arbitration agreement. Ms. Paris was admitted to the facility on April 12, 2019, and the arbitration agreement was signed three days later. When Mrs. Reck called Beverly to ask her to tell George to come back and sign more paperwork, Mrs. Reck specifically said the paperwork was needed for Ms. Paris's admission. (R. pp. 229-30). The facility never told Beverly about an optional arbitration agreement. George testified that Mrs. Reck told him "she needed [him] to sign the form for [his mother] to be admitted." (R. p. 274). George did not understand that he was signing a document that "would not allow a jury" and no one explained the agreement to him. (R. pp. 274, 280-81, 299). George would not have signed if he understood what it meant. (R. p. 275).

Finally, the arbitration agreement was not conspicuous because it was told to Beverly and presented to George as simply another document that must be signed for Ms. Paris's admission.

Appellants argue that, because the arbitration agreement says Ms. Paris could have chosen another facility, it is not unconscionable. (Br. of App. p. 13). That is inaccurate. Ms. Paris was **already admitted** when George signed the arbitration agreement. George was not in a position to cancel her admission and move her to another facility.

On appeal from a motion to compel arbitration, "a circuit court's factual findings will not be reversed . . . if ***any evidence*** reasonably supports the findings." *Smith*, 417 S.C. at 48, 790 S.E.2d at 3 (emphasis added). In this case, ample evidence supports the lower court's findings that Vaughn lacked a meaningful choice and George only signed the agreement because Saint Matthews told him it was required as part of the admission process. (R. pp. 11-13).

B. Oppressive and one-sided terms.

The terms of the arbitration provision, drafted solely by Saint Matthews, are "so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668. "[T]he cumulative effect of a number of oppressive and one-sided provisions contained within the entire" arbitration agreement may make it "wholly unconscionable and unenforceable." *Simpson*, 373 S.C. at 34-35, 644 S.E.2d at 674.

First, the arbitration process is unclear, unfair, and one-sided. It states: "The parties shall select an arbitrator from a panel having experience and knowledge of the health care industry" and, if they cannot agree, then the Court will pick an arbitrator. (R. p. 83). It does not state what "panel" is referred to or whether the Court must pick from such "panel." Mrs. Reck testified that the arbitrator would come "from the facility"—which is wholly one-sided and oppressive. (R. p. 232).

The arbitration agreement violates the rules and process by which it claims to be governed. It states that the parties' dispute "shall be resolved by arbitration, as provided by the South Carolina

Alternative Dispute Resolution/Mediation Rules." (R. p. 83). First, the ADR rules require either a certified arbitrator or, if non-certified, written consent from both parties "on a form approved by the Supreme Court or its designee." Rule 4(a), SCADR. The arbitration provision requires an arbitrator from an unidentified "panel" and does not specify if the person is certified or not. Second, the ADR rules have an arbitration process for only non-binding arbitration in Rule 12, SCADR. Saint Matthews acknowledged in its brief that the SCADR arbitration is non-binding unless otherwise agreed and, here, the arbitration agreement "calls for binding arbitration." (Br. of App. p. 15 n.15). However, Rule 12(d), SCADR, states that, after an arbitrator issues an award, a party "dissatisfied with an arbitrator's award may have a trial de novo of right," whereas the arbitration agreement says that the right to a jury trial is waived. Even if a person read the SCADR rules that apply to an arbitration, it would be inconsistent with the provisions of the arbitration agreement drafted by Saint Matthews.

The arbitration provision is irrevocable. (R. p. 83). It purports to apply to "any federal or state statutory or regulatory claim of any kind"—which could apply to complaints to administrative agencies such as SCDHEC. (R. p. 13). The agreement does not state where arbitration will occur or how much it will cost and who will pay such costs.

This arbitration agreement is oppressive, one-sided, and not geared towards an unbiased decision by a neutral decision-maker as it omits necessary information such that no person could read the provision and make a meaningful choice as to whether to agree to it. Because the arbitration agreement is not "geared towards achieving an unbiased decision by a neutral decision-maker," *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668, the Court should affirm the lower court's finding that the arbitration agreement is unconscionable and unenforceable.

III. THE LOWER COURT CORRECTLY HELD THE ARBITRATION AGREEMENT LACKED CONSIDERATION.

The lower court found the arbitration agreement unenforceable because "there is insufficient consideration" for it. (R. p. 17). The law and evidence support this holding.

Appellants argue that the parties' "mutual promises to arbitrate . . . constitute sufficient consideration." (Br. of App. p. 15). South Carolina courts have cited *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997), for the proposition that a "mutual promise to arbitrate constituted sufficient consideration to enforce an arbitration agreement." *Towles v. United Healthcare Corp.*, 338 S.C. 29, 40 n.4, 524 S.E.2d 839, 845 n.4 (Ct. App. 1999). The key is "mutual." Here, the promises are not mutual.

The language of the agreement shows that the Resident is being forced to promise more than the facility. It states the parties agree that they intend "to bind not only themselves, but also their successors, assigns, heirs, personal representatives, guardians or any persons deriving their claims through or on behalf of **Resident**." (R. p. 83) (emphasis added). The binding-of-others provision applies to the Resident and not the facility. It also states the executing party "represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident as well as the Representative" but does not have a corresponding representation for the facility. (R. p. 83). When read in totality, it is clear that Vaughn was asked to give up more than Saint Matthews.

Appellants also argue that, if this Court finds the arbitration and admission agreements merged, then the admission agreement provides for consideration. (Br. of App. p. 16). There is no merger in this case, as explained below.

The lower court correctly held there is not consideration where Saint Matthews maintained its rights while Vaughn was told to give up hers. The Court should affirm.

IV. THE ARBITRATION AND ADMISSION AGREEMENTS DID NOT MERGE

The lower court correctly rejected Appellants' argument that the arbitration and admission agreements merged. A simple application of binding Supreme Court precedent and this Court's precedent shows that there is no merger under the circumstances of this case. In *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014); *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); and *Est. of Solesbee v. Fundamental Clinical & Operational Servs., LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023), South Carolina appellate courts found an admission agreement and arbitration agreement did not merge under the same or similar facts as this case. Based on that precedent, the Court should find that there is no merger.

The general rule of merger is as follows:

> [I]n 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) (internal quotation marks omitted). There is no merger in this case because (1) the instruments do not meet the definition of merger and (2) even if they did, there is evidence of a contrary intention.

A. There is no presumption of merger.

The admission and arbitration agreements were not executed at the same time, for the same purpose, or in the course of the same transaction. The admission agreement was executed on April 12, 2019, and the arbitration agreement was executed three days later, on April 15, 2019. The admission agreement was executed for the purpose of admitting Ms. Paris to the facility. The arbitration agreement, according to Appellants, is not a necessary part of admission but, instead, is optional. (R. p. 231). The admission agreement was signed on the day of admission as part of

the intake transaction. The arbitration agreement was signed later, after admission, as part of a different transaction.

Appellants repeatedly state that these merger conditions are satisfied without ever explaining how they were satisfied in this case.

Because the circumstances of this case do not satisfy the general conditions for merger to apply, there is no presumption of merger. The Court may deny the entire merger argument solely on this basis.

B. There is ample evidence of an intention contrary to merger.

Even if the Court finds the general merger conditions satisfied, the circumstances indicate a contrary intention under binding precedent.

In *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014), the Supreme Court found a contrary intent based on an "Entirety of Agreement" clause in the admission agreement. *Id.* at 355, 755 S.E.2d at 455. It explained, "[o]n its face, this clause recognizes the 'separatedness' of the AA and the admission agreement, not the merger of the two contracts." *Id.*

In *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), this Court found a contrary intention to merger where the arbitration provision could be disclaimed in 30 days and the admission agreement could not. 416 S.C. at 53, 784 S.E.2d at 685. The arbitration agreement was not a condition precedent for admission to the nursing home. *Id.* The defendant argued the admission agreement incorporated by reference "exhibits" to the agreement and that the arbitration agreement was an exhibit. *Id.* This Court rejected that argument because the admission agreement did not define "exhibit" or list specific exhibits, and the arbitration agreement did not include a label or language indicating it was an exhibit to the admission agreement. *Id.*

In *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018), the Court of Appeals applied *Coleman* to find an admission agreement and arbitration agreement did not merge where the admission agreement was governed by South Carolina law and the arbitration agreement was governed by federal law, the arbitration agreement could be revoked within 30 days and the admission agreement could not, each was separately paginated with a separate signature page, and the arbitration agreement was not a precondition to admission. *Id.* at 562-63, 813 S.E.2d at 302.

In *Solesbee*, this Court addressed the same arbitration and admission agreements as in this case. It found there was no merger because

> [1] the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law. [2] 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." [3] The Arbitration Agreement is silent as to whether it could be revoked, but the Admission Agreement provides, "Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility." [4] The Admission Agreement and Arbitration Agreement were separately paginated and had their own signature pages. [5] [Facility]'s attorney admitted at the hearing that "[i]t's perfectly true that [the signatory] did not have to sign the arbitration agreement to move forward with [his mother] being admitted. It was voluntary . . . ."

Est. of Solesbee v. Fundamental Clinical & Operational Servs., LLC, 438 S.C. 638, 648-49, 885 S.E.2d 144, 149 (Ct. App. 2023).

The same result is warranted in this case as in *Coleman*, *Thompson*, *Hodge*, and *Solesbee*. Here, the admission agreement has an "Entire Agreement" provision that states, in part: "[T]his Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understandings or agreements, oral or written, between the parties and may not be amended except by written agreement of the parties." (R. p. 254, XVIII.). As in

Coleman, *Hodge*, and *Solesbee*, this provision recognizes the "separatedness" of the arbitration agreement and admission agreement, and shows an intention contrary to merger.

There are other provisions that make clear the "separatedness" of the two agreements. They are separately paginated with separate signature pages. The agreements have different termination provisions. The admission agreement may be terminated "at any time." (R. p. 248, IV.). The arbitration agreement "shall survive any termination or breach of this [arbitration] Agreement or the Admission Agreement." (R. p. 83). The arbitration agreement is governed by federal law, and the admission agreement is governed by South Carolina law. (R. pp. 83; 252, IX.).

The arbitration agreement says any dispute between the parties "shall be resolved by arbitration." (R. p. 83). But the admission agreement refers to when "suit is brought" for its "collection of sums due from and owed by Resident" (R. p. 247). These separate remedies evidence an intention contrary to merger.

The admission agreement refers to "Admission materials" that "are made a part of this Agreement by reference." (R. p. 254, XVIII.). It says that the signatory "acknowledges that he/she has received and read" such "Admission materials." (R. p. 254). When George signed the admission agreement, he had not received or read the arbitration agreement. Therefore, it is not part of the referenced "Admission materials." This exclusion also shows a contrary intention to merger.

Appellants argue that the term "Admission materials" "[w]ithout question . . . embrace[s] the Arbitration Agreement." (Br. of App. p. 21). This is incorrect. First, as explained above, the "Admission materials" must be given to the signatory before he or she signs the Admission Agreement. That did not happen in this case. Second, Saint Matthews admits that the arbitration agreement is **optional** and is not part of the admission process. (R. p. 231). If it is not needed for

admission, then it is not part of the "Admission materials." In *Thompson*, this Court rejected the argument that an incorporation-by-reference of "exhibits" to the admission agreement showed an intention to merge the admission agreement and arbitration agreement because "exhibits" was not defined and the arbitration agreement did not have a label or language that indicated it was an exhibit to the arbitration agreement. 416 S.C. at 53-54, 784 S.E.2d at 685. The same conclusion is warranted here where "Admission materials" is not defined and there is no language or label on the arbitration agreement indicating that it is part of the admission agreement.

Appellants argue that the arbitration agreement "only makes sense together with the Admission Agreement." (Br. of App. p. 22). This is an argument for merger as a matter of law in all situations where an arbitration agreement and admission (or other) agreement are executed. On the contrary, *Coleman* forecloses that argument as a matter of law. Whether an agreement "makes sense" standing on its own is not part of the merger analysis. Stated plainly, Saint Matthews drafted these agreements and presented them to Vaughn for execution. If it wanted the agreements to be merged, it could have made them one document or plainly stated that they were to be considered as one agreement. But it did not.

Even if this Court finds that there is "ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter," in this case, Appellants. *Coleman*, 407 S.C. at 355-56, 755 S.E.2d at 455. Appellants argue that because "merger is the default position," then construing ambiguity against the drafter "makes no sense." (Br. of App. p. 24). They cite to no law for this assertion, and it directly contradicts *Coleman*. Further, merger is not a "default." It is presumed *when certain conditions are met*, which, as explained above, are not met in this case. Appellants do not address that the admission and arbitration agreements were not signed at the same time.

A straightforward application of *Coleman*, *Thompson*, *Hodge*, and *Solesbee* warrants the conclusion that the arbitration agreement and admission agreement did not merge. The Court should follow precedent, and find that there is no merger.

V. THIS COURT CORRECTLY DECIDED *SOLESBEE*, AND THERE IS NO BASIS TO OVERTURN THAT DECISION IN THIS CASE.

Appellants ask this Court to overturn its decision in *Solesbee*, which Appellants acknowledge was based on the same arbitration agreement and admission agreement used in this case. As an initial matter, "a panel of this court cannot overrule a decision by another panel." *State v. Hall*, 437 S.C. 107, 125, 876 S.E.2d 328, 338 (Ct. App. 2022) (citing S.C. Code Ann. § 14-8-210 (2016)). Even if this Court could address *Solesbee*, Appellants make the same arguments that they made in the *Solesbee* petition for rehearing and petition for writ of certiorari that this Court and the Supreme Court already rejected. (Petitions on file with the Court). There is no basis to overturn *Solesbee* now.

Each of Appellants' specific criticisms are without merit. While each criticism is addressed below, it is important to note that they do not each stand alone but, rather, the Court must look at the indications of separatedness as a whole to ascertain whether the parties did or did not intend merger. Regardless of any specific provisions, it remains that Saint Matthews drafted these agreements. If it wanted them to be one agreement or construed as such, it could have easily drafted them to say so. It did not, and no amount of legal contortion can change that choice.

First, Appellants argue that the different governing law of the arbitration agreement and admission agreement do not indicate an intention contrary to merger because, even if the arbitration agreement had been made a provision within the admission agreement, it would still be governed by Federal Arbitration Act. (Br. of App. pp. 27-30). In *Hodge*, this Court already held that different governing law in this same circumstance indicates an intention contrary to merger.

422 at 562, 813 S.E.2d at 302. That the FAA applies to an arbitration agreement regarding interstate commerce does not change the holding in *Hodge*. Instead, it reinforces that these two agreements are separate and why. They have different purposes. The admission agreement governs the facility's obligation to provide room and board and medical care, and the resident's obligation to pay for it. The arbitration agreement is a separate, optional method for dispute resolution. The different governing laws support a conclusion that there is no intention to merge the agreements.

Second, Appellants argue *Solesbee* erred in finding an intention not to merge because the arbitration survives the admission agreement. (Br. of App. pp. 30-31). Appellants argue that the "Entire agreement" provision in the admission agreement shows an intent to merge because it says "other Admission materials" are part of the agreement. *Id.* Appellants fail to show any error in the *Solesbee* decision on this point. First, that the agreements have different termination provisions supports an intention not to merge. There is no law to the contrary. Second, as discussed above, the arbitration is **not** an "Admission material" that is made a part of the admission agreement. There is no definition of "Admission Materials," as in *Thompson*, where the admission agreement did not define "exhibit." 416 S.C. at 53-54, 784 S.E.2d at 685. Further, the admission agreement specifies that the "Admission materials" were received and read by the Resident before signing the agreement. (R. p. 254, XVIII.). Here, George did not receive or read the arbitration agreement before he signed the admission agreement. Appellants state that the arbitration agreement "was signed in conjunction with" the admission agreement. (Br. of App. p. 30). This is false. They were signed three days apart.

Third, *Solesbee* correctly found that the different revocation provisions support an intent not to merge the agreements. Appellants argue this is error because revocation is different from

termination, and a termination provision is what was at issue in *Coleman*, *Hodge*, and *Thompson*. (Br. of App. p. 31). The Court should reject this argument. Any alleged difference in revocation and termination is immaterial to the point that the two agreements have differing terms. The arbitration agreement has neither a revocation nor a termination procedure. The admission agreement says it may be terminated at any time. Similar to *Thompson*, this "indicates the parties' intent to keep the [arbitration agreement] separate from the Admission Agreement." 416 S.C. at 53, 784 S.E.2d at 685. There is no basis to overturn *Solesbee* on this point.

Fourth, *Solesbee* correctly considered the agreements' separate pagination and signature pages as evidence of an intention not to merge. Appellants argue that this "is really to do no more than to point out that the Admission Agreement and the Arbitration Agreement are separate instruments." (Br. of App. pp. 31-32). Exactly—they are **separate documents**. Saint Matthews, as the drafter, chose to make them separate. That is indicative of an intention not to merge the documents.

Fifth, *Solesbee* correctly found that the voluntariness of the arbitration agreement indicates an intention contrary to merger. Appellants argue that, even though the arbitration agreement was optional, that "does not mean that the Arbitration Agreement did not become a part of the admissions materials once it was signed." (Br. of App. p. 32). On the contrary, that is exactly what it means in this case. Appellants rely on their assertion that the agreements were signed at the "same time" and for the same purpose and transaction. (Br. of App. p. 33). As explained above, that is not true. They were not signed at the same time or for the same purpose or transaction. The admission of Ms. Paris to the facility was one transaction for one purpose. The arbitration agreement was signed three days later for the purpose of an optional dispute resolution unrelated to the actual admission. *See Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 354, 755 S.E.2d

450, 454 (2014) ("The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between the Facility and Decedent or Sister should issues arise in the future.").

Each of these indications of "separatedness" found in *Solesbee* are supported by the law and the evidence in that (and this) case. Considering them in totality, it cannot be disputed that the documents are intended to be separate. If Saint Matthews wanted a different result, the time to merge the documents was when it drafted or presented them. Having chosen not to do so, it is stuck with what it chose—two separate agreements.

The Court should reject Appellants' invitation to overturn or not apply *Solesbee* to this case that involved the same agreements.

VI. THERE IS NO BASIS TO APPLY EQUITABLE ESTOPPEL

If the Court finds that the admission and arbitrations agreements did not merge, then it does not need to reach the equitable estoppel issue because Appellants' estoppel argument is based on a finding of merger. (Br. of App. p. 34); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 563, 813 S.E.2d 292, 302 (Ct. App. 2018) ("[E]quitable estoppel would only apply if documents were merged."). In the event the Court finds that the arbitration agreement merged with the admission agreement, it should find that the equitable estoppel theory does not apply.

Equitable estoppel is one theory "that could bind nonsignatories to arbitration agreements." *Wilson v. Willis*, 426 S.C. 326, 339, 827 S.E.2d 167, 174 (2019). "This theory, known also as direct benefits estoppel in the arbitration realm, estops a nonsigner from refusing to comply with 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 v. Brookdale*

Senior Living, Inc., 431 S.C. 223, 230, 847 S.E.2d 268, 272 (Ct. App. 2020) (citing *Wilson*, 426 S.C. at 340-44, 827 S.E.2d at 175-77). None of those elements are met here.

Vaughn's claims do not arise from the contractual relationship—they arise from common law, regulatory, and statutory duties. (R. pp. 25-29). Vaughn neither relies on duties stated in the admission agreement as a basis for her claims nor asserts a breach of the admission agreement as a cause of action. *See Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 563, 813 S.E.2d 292, 302 (Ct. App. 2018) ("[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. Therefore, the circuit court did not err in finding equitable estoppel did not bar Respondents' claims.").

Vaughn has not exploited other parts of the contract by reaping its benefits. Here, the arbitration agreement was optional, so that Ms. Paris's admission to the facility was not a benefit of the contract. Further, because Ms. Paris was injured and, ultimately died, due to the facility's actions, she did not benefit from being admitted. *See Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 563, 813 S.E.2d 292, 302 (Ct. App. 2018) ("[B]ecause the Facility allegedly caused [plaintiff]'s injuries that later led to her death, we find it difficult to find she benefited even from being admitted.").

Finally, Vaughn's claims do not rely solely on the contract terms to impose liability. "[D]irect benefits estoppel is not implicated simply because a claim relates to or would not have arisen but for a contract's existence." *Weaver*, 431 S.C. at 230-31, 847 S.E.2d at 272 (internal quotation marks omitted). The claims rely on common law duties and not a term of the admission agreement.

"Equitable estoppel is, ultimately, a theory designed to prevent injustice, and it should be used sparingly." *Wilson v. Willis*, 426 S.C. 326, 345, 827 S.E.2d 167, 177 (2019). Because none of the three elements apply, the Court should find that equitable estoppel does not apply.

CONCLUSION

For any one of reasons, the Court should affirm the decision of the lower court to deny Appellants' motions to compel arbitration and to stay.

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November 13, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2025-000296

Beverly Vaughn, as Personal Representative of the Estate of Loris Paris, ……Respondent,

v.

Saint Matthews Healthcare, LLC; Melissa Kizer; Melissa Davis; and Angela Smith Teliha, Defendants,

of which Saint Matthews Healthcare, LLC; Melissa Kizer; and Melissa Davis are the ……..…Appellants.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR, and with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

November 13, 2025

Respectfully submitted,

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