

Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC be held in abeyance pending a final decision of Defendant's Motion.

The parties conducted additional discovery and procured deposition testimony from Plaintiff; Leola Burt, Admissions Coordinator for the Defendant's facility; Peggy Fields, case manager for Palmetto Health Baptist Hospital; and Wilda Boyd, Plaintiff's mother. Additionally, Defendant procured a sworn declaration from Ms. Fields that was submitted to this Court. After this additional discovery was completed, both parties submitted supplemental memoranda in support of their respective positions along with supporting exhibits and a second hearing was held on May 20, 2019. Eric Poulin was present for Plaintiff and Perry M. Buckner, IV was present for Defendants. After careful consideration of the arguments of counsel, the memoranda and exhibits submitted, and the record before the Court, the Court GRANTS Defendant's Motion to Compel Arbitration and Stay for the reasons set forth below.

FINDINGS OF FACT

Defendant THI of South Carolina at Magnolia Place at Greenville, LLC operates a skilled nursing facility located in Greenville County known as Magnolia Place. On June 30, 2016, Plaintiff James Boyd was admitted to Magnolia Place for skilled nursing care. Prior to Plaintiff's admission, Plaintiff was involved in a car accident leaving him injured. As a result of the accident, Plaintiff was hospitalized at Palmetto Baptist Hospital where he remained until he was transferred to Magnolia Place.

As part of the admissions process to Magnolia Place, certain admissions paperwork, including an Admission Agreement itself, is presented to the patient or a representative on the patient's behalf. Included within the admissions paperwork for Mr. Boyd's residency was a separate, stand-alone Arbitration Agreement. By its terms, the Arbitration Agreement was not a

precondition to admission to the Facility and Plaintiff or a representative on his behalf could choose to whether to accept or refuse it.

To facilitate the admissions process, the Admissions Coordinator for Magnolia Place, Leola Burt, contacted Peggy Fields, case manager at Palmetto Health Baptist to inquire who would be completing Plaintiff's admissions paperwork prior to his arrival at the Defendant's facility. Regarding her conversations with Ms. Fields, Ms. Burt testified as follows:

Q: Ms. Burt, in responding to a couple of plaintiff's counsel's questions about conversations with Ms. Fields at Palmetto Baptist, you had indicated that you spoke with Ms. Fields on a couple of occasions; is that correct?

A: Yes.

Q: Okay. And that one of those conversations or phone calls was a phone call that you initiated to her inquiring about who should handle James Boyd's admissions paperwork, correct?

A: Yes.

Q: And you testified that Ms. Fields got back to you and indicated that Wilda Boyd would be the person who would be handling it; is that correct?

A: Yes.

Q: All right. Do you know why you were informed that Wilda Boyd would be the person who would be doing it?

A: She had to check with James.

Q: Okay. And when you say she, you mean Ms. Fields had to check with James?

A: Yes.

Q: Okay. And is it your understanding that Mr. Boyd directed Ms. Fields to his mother for admissions paperwork to Magnolia Place?

A: Yes.

Q: Okay. And did Ms. Fields tell you that?

A: Yes.

Q: All right. Ms. Fields told you that James Boyd indicated that Wilda Boyd, his mother, would be the appropriate person to handle the admissions paperwork?

A: Yes.

Q: When Mr. Boyd -- and that conversation occurred while he was at Palmetto Baptist prior to June 30th, 2016?

A: Correct.

Q: And Mr. Boyd then comes to Magnolia Place, I believe, on by June 30th, 2016?

A: Yes.

After her initial conversation with Ms. Burt, Ms. Fields, per her sworn declaration and deposition testimony, confirmed that she spoke with Plaintiff, who directed her to his mother for the handling of all the admissions paperwork. After speaking with Plaintiff, Ms. Fields contacted Ms. Burt to inform her that Ms. Boyd would be handling the paperwork. In pertinent part, Ms. Fields testified as follows:

Q: Okay. Did Mr. Boyd ever make a representation to you that his Mother could handle the admission paperwork for Magnolia Place?

A: Yes.

Q: Okay. And what did he say?

A: Yes. Mother.

Q: He just said, yes, mother?

A: His mother.

Q: Okay. What did you ask him?

A: I asked him -- it is a requirement that a patient be signed in prior to the arrival to a facility. So in that case I asked him who would be that person that would be signing paperwork on his behalf...

Q: Did you tell Ms. Burt that she would need to contact James Boyd's mother?

A: Yes.

Q: Okay. Did you tell Ms. Burt that James Boyd's mother would be responsible for the admission paperwork?

A: We identified the mother as the responsible party.

Q: Okay. And you would have told Ms. Burt that she needed to contact Mr. Boyd's mother?

A: Yes. She would be his responsible party.

Q: Okay. And did you tell Ms. Burt that Mr. Boyd specifically told you that his mother would handle the paperwork?

A: Yes.

Q: Okay. Did you ever have a conversation with Ms. Boyd, who is Mr. Boyd's mother, about her signing the admission paperwork?

A: That was the – yes, that she had been identified.

Q: Okay. Did you tell Mr. Boyd that his mother would be filling out the admission paperwork for Magnolia Place?

A: He identified her as the contact for Magnolia Place.

Q: Did he know that his mother would be filling out the admission paperwork to Magnolia?

A: To the best of my knowledge.

After Ms. Burt spoke with Ms. Fields for a second time and confirmed that Ms. Boyd would be executing the admissions documents, Ms. Boyd executed the necessary admissions documents, including the Arbitration Agreement. Ms. Boyd testified she never gave Ms. Burt any reason to believe that she did not have the authority to sign the Arbitration Agreement. Ms. Boyd testified about her interaction with Ms. Burt as follows:

Q: And would you agree with me that you certainly gave Miss Coco Burt no indication that you couldn't sign [the arbitration agreement]?

A: No.

Q: [...] So you didn't say anything to Miss Burt that would make her believe that you lacked authority to sign [the arbitration agreement]?

A: No.

Q: All right. And as far as – and I realize that you can't put yourself entirely in her shoes, but as far as Miss Burt would have known based on this agreement you were authorized to enter it on your son's behalf?

A: I guess. Yeah...

Q: You represented to Magnolia Place of Greenville that you had the authority to enter into all admissions paperwork on behalf of your son, correct?

A: Yeah.

Ms. Burt even spoke with Plaintiff when he arrived at the Defendant's facility on June 30, 2016. According to Ms. Burt, Plaintiff knew his mother had executed the Arbitration Agreement on his behalf, did not object, and even authorized her to complete the remaining paperwork. Ms. Burt testified about this conversation with Plaintiff as follows:

Q: Okay. And during that conversation, I understood your testimony that you informed [Plaintiff] that his mother had already signed three separate agreements on his behalf, including the Arbitration Agreement, correct?

A: Yes.

Q: All right. At that time, on June 30th, 2016 when you were with him in person, did he raise any objection to her doing that?

A: No. He told me that she would finish the rest of it.

Further, Ms. Burt testified she had no doubt that Plaintiff authorized his mother to execute all of the admission paperwork, including the Arbitration Agreement and that she even provided the signed agreements to Mr. Boyd after his arrival to Magnolia Place.

Q: Okay. And what does that file include? And you can be comprehensive in telling me.

A: It includes the admission handbook, the resident's rights, channel guide, facility abuse policies, and all of the signed admissions paperwork.

Q: All right. And the signed admission paperwork includes the Arbitration Agreement?

A: Yes.

Q: Does it include the Admission Agreement?

A: Yes.

Q: And where – what do you do with that – the admissions file folder I'll call it for lack of a better term?

A: I give it to the resident.

Q: Okay. And in this case, that would be James Boyd?

A: Yes.

Q: So James Boyd was provided with a written copy of all of the agreements that his mother entered into on his behalf?

A: Yes.

Q: Okay. And you personally provided him with that file folder?

A: Yes.

Plaintiff filed the present action asserting claims for injuries he allegedly sustained while a resident at Defendant's Facility. Defendant filed the instant Motion maintaining that Plaintiff's claims must be submitted to arbitration pursuant to the Arbitration Agreement signed by Ms. Boyd. Defendant asserts that Ms. Boyd possessed the apparent authority to bind Plaintiff to the Arbitration Agreement. As set forth below, the Court agrees and finds that Ms. Boyd possessed the apparent authority to bind Plaintiff to the Arbitration Agreement.

DISCUSSION

Based on the above and a comprehensive review of all materials in the record before the Court, the Court finds that Wilda Boyd possessed the apparent authority to execute the Arbitration Agreement on Plaintiff's behalf. The doctrine of apparent authority provides that a principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation. *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996). Thus, the concept of apparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal. *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). While actual authority is that which is expressly conferred upon the agent by the principal, apparent authority is that which, though not actually granted, the principal knowingly permits the agent to exercise, or which the principal holds the agent out as possessing." *Id.* If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as his agent, "either **generally** or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances." *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000)(emphasis added).

Courts in South Carolina have found that even when an agent does not possess the actual authority to bind a principal, the agent can still possess the apparent authority to bind a principal based on a third party's reasonable interpretation of the agent's authority and its scope. *Horton v.*

Pyramid Masonry Contractors, Inc., No. 2008-UP-208, 2008 WL 9841237, at *6 (S.C. Ct. App. Mar. 27, 2008). An ancillary issue in *Horton* was whether an employee of a company who hired another employee had the apparent authority to negotiate company transportation as a specific condition of the other employee's employment. There, although the hiring employee did not have the actual authority to offer company transportation as a condition of employment, he expressly represented to the employee that company transportation would be provided with his position. The court found that while the hiring employee did not have the actual authority from the employer to offer company transportation as a term of employment, the employee reasonably believed the hiring employee had such authority. *Id.* at *6. Specifically, the court stated the following:

While [hiring employee's] offer of transportation may have exceeded the scope of the actual authority Employer conferred upon him, there is sufficient evidence in the record to support [employee's] belief that [hiring employee] had apparent authority to negotiate the terms of his employment, including Employer's provision of transportation. Employer is bound by [hiring employee's] representations to Employee concerning the conditions of his employment.

Id., at *6 (S.C. Ct. App. Mar. 27, 2008). Thus, while the hiring employee did not have the actual authority to make transportation a condition of employment specifically, the court found he had the broad authority to negotiate terms of employment. That broad authority necessarily encompassed the authority to make transportation a condition of employment.

In *Bookman v. Britthaven, Inc.*, a case involving facts substantially similar to the case at the bar, the North Carolina Court of Appeals found that there was sufficient evidence in the record to support a finding that a nursing home resident's representatives possessed the apparent authority to bind the resident to an arbitration agreement signed by the representatives upon the her admission to a nursing home. 233 N.C. App. 454, 460, 756 S.E.2d 890, 895 (2014). There, a

woman's husband, through his daughter, signed twelve documents, including an arbitration agreement on the woman's behalf prior to her admission to a nursing home *Id.*, at 455, 756 S.E.2d at 892. The admissions coordinator for the nursing home signed an affidavit averring that the husband and daughter presented themselves as having the authority to sign all documents needed on the woman's behalf prior to her admission. *Id.*

After the woman passed away, the daughter brought a wrongful death action against the nursing home. The nursing home filed a motion to compel arbitration and the trial court denied the motion finding that neither the daughter or father had the actual authority to sign the arbitration agreement on the woman's behalf. *Id.*, at 456, 756 S.E.2d at 892.

In reversing the trial court, the North Carolina Court of Appeals noted that the trial court failed to consider whether the woman conferred the authority to conduct the admissions process "in general" on her behalf and that the fact that the woman was admitted, showed "that at the very least, there may have been actual or apparent authority conferred on the husband or daughter to execute some or all of the contracts that were needed in order to complete the admissions process," including the arbitration agreement. *Id.* 233 N.C. App. at 460, 756 S.E.2d at 895. The court went on to note that under North Carolina law, a principal is liable "when the agent acts within the scope of his apparent authority, unless the third person has notice that the agent is exceeding his actual authority," and concluded that because the daughter and husband signed all of the admissions documents, including the arbitration agreement without objection or any indication to the admissions coordinator that their authority to sign the documents was limited in any way, there was evidence that the woman and daughter possessed the apparent authority to sign the arbitration agreement on her behalf. *Id.* at 460–61, 756 S.E.2d at 895 (2014).

Although *Bookman* is not controlling precedent, the Court finds it to be instructive and persuasive with regard to the case at bar.

Based on the record, including the testimony of Ms. Burt, Ms. Fields, and Ms. Boyd, the Court finds that Ms. Boyd possessed the apparent authority to execute the Arbitration Agreement on Mr. Boyd's behalf. The deposition testimony of and Peggy Fields and Leola Burt demonstrates that both reasonably understood that Plaintiff gave his mother the authority to sign all documents related to admission, including the Arbitration Agreement. Indeed, Ms. Burt's sworn testimony indicates that she inquired as to who should be executing the admissions paperwork, including the Arbitration Agreement, and Plaintiff explicitly confirmed to Ms. Fields and Ms. Burt that his mother would be responsible. In light of the near identical accounts offered by Ms. Fields and Ms. Burt, the Court is persuaded by their recollection of events as opposed to Plaintiff's more general denial about any and all conversations about admissions paperwork.

In effect, Plaintiff argues that Ms. Boyd possessed only the authority to execute to the other admissions paperwork but not the Arbitration Agreement. Plaintiff appears to conflate actual authority with apparent authority in that regard. As clearly indicated by authority from South Carolina and other states, apparent agency is derived from a principle's manifestations and a third party's reasonable understanding of those manifestations. When Plaintiff, the principal, authorized his mother to execute admissions paperwork on his behalf, he effectively placed her in a position where third parties, and in particular Ms. Burt, would believe she had authority to bind Plaintiff to all admissions documents, including the Arbitration Agreement. This belief was derived from Ms. Burt's conversations with Ms. Fields, Ms. Boyd, and ultimately Plaintiff himself.

While as in *Horton*, Ms. Boyd may not have possessed the actual authority to sign the arbitration agreement in particular, she possessed the apparent authority to complete and sign all necessary admissions paperwork, including the Arbitration Agreement. Furthermore, Plaintiff was expressly made aware that his mother signed the arbitration agreement on his behalf and like in *Bookman*, neither he nor his mother voiced any objection or indicated that his mother was not permitted to sign the Arbitration Agreement on his behalf as opposed to the other documents. Based on the record before the Court, Ms. Boyd possessed the apparent authority to sign the Arbitration Agreement on Plaintiff's behalf.

Because the court concludes that Ms. Boyd possessed the apparent authority to bind Mr. Boyd to the Arbitration Agreement, the Court declines to address whether Plaintiff subsequently ratified the Arbitration agreement.

Based on the foregoing, the Court finds that a valid arbitration agreement exists between the Plaintiff, Mr. Boyd, and Defendant Magnolia Place. As such, a stay of all state court proceedings is warranted until all arbitration proceedings are completed. This stay should not be limited solely to Defendant Magnolia Place and Plaintiff's claims against it. As asserted by Defendants Fundamental Clinical and Operational Services, LLC and Fundamental Administrative Services, LLC, § 3 of the Federal Arbitration Act ("FAA") provides that a stay of court proceedings can also be applicable to non-signatories who request such relief. 9 U.S.C. § 3; *Subway Equip. Leasing Corp. v. Forte*, 169 F.3d 324, 329 (5th Cir. 1999), citing *Kroll v. Doctor's Associates, Inc.*, 3 F.3d 1167, 1171 (7th Cir. 1993). This Court finds that these Defendants are similarly entitled to a stay under the above provisions of the FAA.

CONCLUSION

For the reasons set forth herein, Defendant Magnolia Place's Motion to Compel Arbitration and Stay Court Proceedings is hereby **GRANTED**. Defendants Fundamental Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC Motions to Stay are also **GRANTED** such that all state court proceedings in this case should be stayed until the arbitration between Plaintiff and Defendant Magnolia Place is completed.

IT IS SO ORDERED!

Honorable Perry H. Gravely
Presiding Judge

Greenville, South Carolina

August _____, 2019



Greenville Common Pleas

Case Caption: James Boyd Jr vs. THI Of South Carolina At Magnolia Place At
Greenville LLC, defendant, et al
Case Number: 2018CP2301934
Type: Order/Stay

So Ordered

s/ Honorable Perry H. Gravely, #2755