THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2025-001017

Sallie Wilson as Guardian for Gladys Sims …….. Respondent

v.

Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Northeast, Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC), and Karen Bowman, …….. Defendants.

Of whom Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC) and Karen Bowman are ……. Appellants.

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COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Whether the Facility failed to meet its burden to prove Daughter acted as Ms. Graham's agent when the evidence showed Ms. Graham, who was suffering from dementia, did not represent Daughter had authority to sign the Residency Agreement on her behalf.
2. Whether the circuit court correctly applied South Carolina precedent in ruling that Ms. Graham and Daughter's claims do not rely on the Residency Agreement, that they have done nothing to "exploit" the Residency Agreement, and Respondent is not, therefore, equitably estopped from opposing arbitration.

STATEMENT OF THE CASE

Respondent Sallie Wilson ("Daughter") filed this action on behalf of her mother Gladys Graham in the Richland County Court of Common Pleas on May 18, 2023, alleging Appellant Medical University Hospital Authority d/b/a MUSC Health Columbia Medical Center Northeast, Columbia AL Operations, LLC d/b/a Harmony Collection at Columbia (AL/MC) ("the Facility") and its administrator Appellant Karen Bowman provided Ms. Graham substandard nursing home care after Ms. Graham was admitted to the Facility on April 18, 2022. (See generally Compl.) Daughter filed suit in her role as Ms. Graham's guardian, a position Daughter was first appointed to in January 2023. (Am. Compl. at 1; Pla.'s Mem. in Opp. to Mot. to Compel Arb. at 2). The Complaint alleged causes of action for negligence, negligence per se, fraud/misrepresentation, and violation of the South Carolina Unfair Trade Practices Act. (Am. Compl. ¶¶ 67-96). These claims stemmed from a preventable fall Ms. Graham suffered while a Facility resident on April 18, 2022, which resulted in a fractured hip requiring surgical repair. (Am. Compl. ¶¶ 56-59). The suit alleged the Facility had insufficient and underqualified staff members assigned to Ms. Graham's care and that a lack of proper supervision proximately caused her fall. (Am. Compl. ¶¶ 69).

At the time of Ms. Graham's admission, the Facility presented Daughter a 29-page document entitled "Harmony at Columbia Assisted Living Residency Agreement ("Residency Agreement"). According to medical records presented by the Facility to the circuit court, Ms. Graham's mental capabilities were quite limited at the time of her admission. She had been diagnosed with "senile degeneration of brain," "dementia," and a "current history of occasional hallucinations/delusions." (Defs. Mem. in Supp. of Mot. to Compel Arb. Exh. 3 at 1; Defs. Mem. in Supp. of Mot. to Compel Arb. Exh. 6). On that date, Daughter had not yet been appointed Ms. Graham's guardian, and Daughter had no legal authority to act on Ms. Graham's behalf.

The Residency Agreement covered the Facility's obligation to provide assisted living services to Ms. Graham and Ms. Graham's obligation to pay for those services. (Residency Agreement 2-7). Buried on "Page 14 of 29" of the Residency Agreement, the Facility included an "Arbitration" provision purporting to bar litigation for claims between Ms. Graham and the Facility. (Residency Agreement at 14-15). On "Page 19 of 29," Daughter signed her name on a line designated for "Authorized Legal Representative." (Residency Agreement at 19). Daughter also signed Ms. Graham's name on the line for "Resident's Signature." Id. Beckie Cunningham signed on the Facility's behalf on a line labeled "Administrator/Designee's Signature." Id.

The Facility and Bowman initially filed a motion to compel arbitration and stay court proceedings on August 9, 2023. (Def.'s Mot. to Compel Arb.). That motion was later withdrawn and refiled on November 26, 2024. (Defs.' Renewed Mot. to Compel Arb.). Respondent filed a memorandum of law in opposition to the motion on March 5, 2025. (Pla.'s Mem. in Opp. to Mot. to Compel Arb.)[1] The Honorable Robert E. Hood heard oral arguments on March 6, 2025, and denied the motion in an order entered on March 26, 2025. (Order, entered Mar. 26, 2025). The order specifically found the Residency Agreement was not a valid arbitration contract because Daughter lacked authority to sign it on Ms. Graham's behalf. (Order at 4-8). The circuit court also rejected the Facility and Bowman's assertion that Respondent is equitably estopped from opposing arbitration. (Order at 9-11). Since there was no valid arbitration contract, the circuit court also denied the motion to stay proceedings. (Order at 13).

[1] Ms. Graham passed away on July 30, 2024, and Rabbani Abu Rashid Muhammad has since been appointed personal representative of her estate. This appeal was initiated before the caption could be updated to account for Ms. Graham's death and Mr. Muhammad's appointment. (Pla.'s Mem. in Opp. to Mot. to Compel Arb. at 2).

The Facility then filed a motion to alter or amend judgment on April 4, 2025, which the circuit court denied on April 23, 2025. (Def.'s Mot. to Alter/Amend Judgment; Order, entered Apr. 23, 2025). The Facility served its notice of appeal on May 23, 2025.

STANDARD OF REVIEW

Appellate courts apply a *de novo* review to a circuit court's finding on whether a nonsignatory is bound to an arbitration contract. Wilson v. Willis, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019) (citing Aiken v. World Fin. Corp. of S.C., 373 S.C. 144, 148, 644 S.E.2d 705, 707 (2007) and Pearson v. Hilton Head Hosp., 400 S.C. 281, 286, 733 S.E.2d 597, 599 (Ct. App. 2012)). However, under a *de novo* review, the circuit court's factual findings will not be reversed so long as "any evidence reasonably supports those findings." Wilson, 426 S.C. at 335, 827 S.E.2d at 172. There is no presumption in favor of arbitration under South Carolina law or the Federal Arbitration Act ("FAA") as to the "identity of the parties who may be bound to such an agreement." Id. at 337-38, 827 S.E.2d at 173.[2] In fact, there is a presumption *against* arbitration when enforcement is sought against a non-signatory. Id. Moreover, the FAA does not displace state law contract formation rules or generally applicable contract defenses. 9 U.S.C. § 2 (stating that arbitration contract is enforceable "save under such grounds as exist at law or in equity for the revocation of any contract").

[2] The circuit court did not find the FAA is inapplicable to the Residency Agreement's arbitration provision as the Facility claims. (Appellants' Br. at 4-6). The order says only that the FAA "does not mandate enforcement" of the arbitration provision. (Order at 12). That ruling is fully consistent with South Carolina precedent holding that "[t]here 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); see also Lampo v. Amedisys Holding, Inc., 445 S.C. 305, 317, 914 S.E.2d 139, 146 (2025) ("remind[ing] our litigants and lower courts that we dispensed with this incorrect notion" of a pro-arbitration policy in Palmetto Construction Group).

ARGUMENT

The Facility's motion sought to deny Respondent the constitutionally-guaranteed right to a jury trial without proving the existence of a valid arbitration agreement. Arbitration is a matter of contract and may be compelled only when the parties voluntary agree to it. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110 (2001). Here, Ms. Graham never signed the Residency Agreement or otherwise agreed to arbitration. The Facility also failed to produce sufficient evidence to show Daughter had the authority to bind Ms. Graham (or her estate) to the Residency Agreement's arbitration provision. South Carolina appellate courts have rejected both of the legal and equitable theories the Facility proposes to create a binding arbitration contract where there is not one. First, the notion that Daughter's signature and Ms. Graham's silence were sufficient to create an actual or apparent agency relationship was directly rejected in Thompson v. Pruitt Corp., 416 S.C. 43, 51, 784 S.E.2d 679, 684 (Ct. App. 2016). Second, the claim that Ms. Graham's residency at the Facility estops her estate from pursuing a negligence claim for poor care was considered and rejected five years ago in Weaver v. Brookdale Sr. Living, Inc., 431 S.C. 223, 230, 847 S.E.2d 223 (Ct. App. 2020. The Facility's brief does not confront these directly adverse precedents and cannot show any error in the circuit court's order denying the Facility's motion[3] to compel arbitration.

[3] Appellant Bowman is included in the Facility's motion, but she is not even a party to the purported arbitration contract the Facility attempts to enforce. (Residency Agreement at 1) (limiting Residency Agreement's purported parties to the Facility and Ms. Graham). Only parties are generally permitted to enforce a contract. Touchberry v. City of Florence, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988). Appellants cite no basis for Ms. Bowman to even attempt to enforce an arbitration contract here. For that reason, and for those reasons discussed below, the circuit court correctly denied Bowman's motion to compel arbitration.

1. **The Facility failed to prove an actual or apparent agency relationship between Ms. Graham and Daughter.**

The Facility argues it proved agency through the affidavit of a Facility representative and Ms. Graham's silence. However, the Facility's position stands at odds with the record and this Court's precedent. Ms. Cunningham's vague assertion that Ms. Graham must have approved of Daughter's signature on the Residency Agreement is contradicted by medical records in the Facility's own files showing Ms. Graham suffered from senility and disorientation that severely affected her ability to understand her surroundings. Moreover, this Court has ruled in multiple cases that apparent authority does not arise from the mere silent presence of a nursing home resident in the room when an arbitration contract is presented to a family member, especially when that resident's mental faculties have been compromised. Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); Thompson v. Pruitt Corp., 416 S.C. 43, 51, 784 S.E.2d 679, 684 (Ct. App. 2016).

Agency is a legal relationship allowing an individual (principal) to choose a trusted person (agent) to act in the principal's stead and to interact with third parties on the principal's behalf. Principals control agency. They decide when an agent is appointed and how far his/her authority extends. Fronberger v. Smith, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013) (holding that an agent is always "subject to the principal's control"). Even where the law recognizes apparent agency or apparent authority, the relationship cannot exist without the purported principal doing something intentional or knowing to sanction it.

The Facility fails to present sufficient evidence to show Ms. Graham appointed Daughter as her agent to sign away her jury trial rights. The Facility appears to rely on apparent authority, arguing Ms. Graham took some unspecified action at the time the Residency Agreement was presented to make the Facility believe Daughter was her agent. However, since the Facility never

specifies what action Ms. Graham supposedly took and provides insufficient evidence of Ms. Graham's mental capacity at the time the Residency Agreement was presented, the circuit court correctly concluded the Facility failed to meet its burden to establish a principal-agency relationship.

An agency relationship may be established with clear evidence of actual or apparent authority conferred by the purported principal on the purported agent. Cowburn v. Leventis, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is "expressly conferred upon the agent by the principal." Richardson v. PV, Inc., 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). Apparent authority is based on "representations made by the principal to the third party and reliance by the third party on those representations." Young v. S.C. Dep't of Disabilities & Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). To prove apparent authority, a party must show (1) the purported principal consciously or impliedly represented another to be his agent; (2) reliance on the representation by a third party; and (3) change in position by the third party in reliance on the representation. Cowburn, 366 S.C. at 39-40, 619 S.E.2d at 448. For apparent authority to exist, "[e]ither the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize his conduct is likely to create such belief." R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000).

The Facility cannot point to any actual agency relationship between Ms. Graham and Daughter as Ms. Graham had no power of attorney at the time of her admission to the Facility and Daughter had not yet been appointed Ms. Graham's guardian or conservator. (Order at 7). Accordingly, the Facility relies mostly on apparent agency and must prove how Ms. Graham's words or conduct knowingly represented Daughter as her agent to make decisions on possible

future legal claims. Hodge and Thompson rejected agency arguments to enforce arbitration contracts signed by a nursing home resident's family member, and these cases show the flaws in the Facility's arguments.

For one thing, a family member's act in signing an arbitration contract cannot alone create an agency relationship even if the contract specifically says the signer is representing herself to have legal authority. Hodge, 422 S.C. at 573-74, 813 S.E.2d at 308. Apparent authority cannot be based solely on representations of the purported agent. Cowburn, 366 S.C. at 39-40, 619 S.E.2d at 448. The Facility points to the fact that the Residency Agreement Daughter signed indicated she was Ms. Graham's "representative." Appellants' Br. at 8. However, the Facility cannot prevail by relying on what Daughter represented. Hodge, 422 S.C. at 573-74, 813 S.E.2d at 308; Cowburn, 366 S.C. at 39-40, 619 S.E.2d at 448; see also Solesbee v. Fundamental Clinical & Operational Servs., LLC, 426 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023) ("As the Thompson and Hodge courts noted, there was no evidence the resident being admitted to the nursing home took any action to create an agency relationship with the person who signed the arbitration agreement").

Beyond that, the Facility offers scant evidence of any supposed representations Ms. Graham made. Instead, the Facility asks the Court to draw the unsubstantiated inference Ms. Graham represented Daughter as her agent based on two asserted facts: (1) Ms. Graham was competent at the time of his admission; (2) Ms. Graham was present in the room when the Residency Agreement was presented to Daughter. (Appellant's Br. at 8-9). However, the Facility's argument on Ms. Graham's mental standing is not supported by the record. The Facility claims it is "uncontroverted that Ms. Graham was competent . . ." (Appellants' Br. at 8) when actually the medical evidence proves otherwise.

Records the Facility submitted to the circuit court show Ms. Graham's decreased mental faculties at the time of her admission. The "Resident Identification and Emergency Information Sheet" completed for Ms. Graham the same week she was admitted to the Facility noted her incoming diagnosis of "senile degeneration of brain." (Defs. Mem. in Supp. of Mot. to Compel Arb. Exh. 3 at 1). Ms. Graham's "Physician/Healthcare Provider History & Physical" form for this time period included a number of concerning indicators on her competency. Her medical problem list included "dementia" later specified as "Alzheimer's or dementia related diagnosis." (Defs. Mem. in Supp. of Mot. to Compel Arb. Exh. 6). What that meant in practice is that Ms. Graham's decision making abilities had substantially eroded. She had a "current history of occasional hallucinations/delusions," "difficulty remembering and using information," and "c[ould] not follow written instructions." Id. On a day to day basis, Ms. Graham had "occasional disorientation to person, place, time or situation even in familiar surroundings" which caused her to exhibit "frequent poor judgment" and make "unsafe or inappropriate decisions." Id.

Ms. Graham was not just moving into the Facility to live out her golden years, she had medical conditions that required "memory care." Id. This same document asked and answered a crucial question about Ms. Graham's condition: "Do you have difficulty concentrating, remembering or making decisions?" "Yes." Id. As this Court has previously ruled, a nursing home resident with dementia lacks the capacity to intentionally or unintentionally represent a family member as having authority to enter contracts on her behalf. Thompson, 416 S.C. at 55, 784 S.E.2d at (noting resident had dementia prior to admission and "her incapacity prevented her from consciously or impliedly representing another to be her agent"). Thus, the Facility is simply incorrect to conclude there is an "uncontroverted" record of Ms. Graham's competency, and a

resident with dementia cannot, as a matter of law, provide the kind of representations required to form an agency relationship.[4]

Plus, even if Ms. Graham did not suffer from dementia, Hodge rejected the notion that apparent authority may be inferred from the fact that a nursing home resident was competent at the time of admission. 422 S.C. at 573-74, 813 S.E.2d at 308 (rejecting apparent authority argument where "the Facility knew [the resident] was competent at the time of admission"). Claiming Ms. Graham was competent is the Facility's way of arguing Ms. Graham conveyed apparent authority for the Residency Agreement's arbitration provision simply because she allowed Daughter to procure her admission. (Appellants' Br. at 7-9). That precise argument was rejected in Hodge. Id. (affirming circuit court's rejection of argument claiming family member was authorized to sign arbitration contract because resident "allow[ed] him to procure her admission").

Moreover, the Facility errs in suggesting apparent authority should be presumed from Ms. Graham's presence when the Arbitration Agreement was presented. Agency must be "established by evidence." R&G Constr. Co., 343 S.C. at 432, 540 S.E.2d at 117). As this Court ruled in Hodge, a nursing home asserting an agency argument bears the burden of showing the agency relationship exists and that showing must be "clearly established by the facts." 422 S.C. at 565, 813 S.E.2d at 304 (quoting McCall v. Finley, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987)). It is not enough to simply point to a family member's signature on the contract or to ask a court to infer agency from a close familial relationship. Hodge, 422 S.C. at 565, 813 S.E.2d at 304 (citing Golinger v.

[4] Noting Ms. Graham's medical conditions is not to suggest Daughter's signature on the Residency Agreement could be valid under the Adult Health Care Consent Act ("the Act"). The Facility acknowledges it is not seeking to rely on the Act in this appeal. (Appellants' Br. at 11). Even if the Facility was pursuing that argument, it has not provided the certifications of two physicians required to invoke the Act's provisions. S.C. Code Ann. § 44-66-20(8).

AMS Props., Inc., 123 Cal. App. 4th 374 (2004) (finding no proof of agency without some evidence beyond a daughter merely signing contract on her mother's behalf); Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 242, 597 S.E.2d 165, 168 (Ct. App. 2004) (no presumption of agency arises from marital relationship). The Facility does not offer any substantive evidence to support the conclusion that Ms. Graham made express or implied representations that Daughter was her agent when she signed the Residency Agreement.[5]

The Facility relies heavily on R & G Construction (Appellants Br. at 7-8) but that case included evidence to support a finding of apparent authority that is not present here. There, the designated executive director of a regional transportation company entered a contract with a construction contractor for work on premises operated by the transportation company. 343 S.C. at 434, 540 S.E.2d at 118-19. The circuit court found there was some evidence the executive director had apparent authority to enter into contracts on the transportation company's behalf. Id. Unlike the Facility's arguments, the R & G Construction court found that the transportation company (i.e. the purported principal) "represented to others that [purported agent] had the authority to enter into the contract." Id. at 435, 540 S.E.2d at 119. The transportation company conceded that it expressly

[5] The Facility suggests that to require it to determine the existence and scope of Daughter's authority is an arbitration-specific rule barred by the FAA's equal treatment rule. (Appellants' Br. at 5) (citing AT&T Mobility, Inc. v. Concepcion, 563 U.S. 333, 339 (2011)). However, under generally applicable South Carolina law governing agency relationships, "[i]t 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 of Florence, Inc., 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996). Moreover, the generally applicable contract defense of equitable estoppel—which the Facility asks the Court to apply here—requires proof that the party asserting estoppel lacks knowledge and the means for learning the truth about the purported agent and her relationship to the principal she supposedly represents. Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). Thus, even for a contract unrelated to arbitration, the Facility would have to show due care in dealing with Daughter to prevail on an agency or equitable estoppel theory.

named the purported agent as the company's executive director and the transportation company's employee confirmed the executive director's position to the third party. Id.

The Facility also cite language from R & G Construction indicating apparent authority may be conferred "where the principal passively permits the agent to appear" to have authority. 343 S.C. at 434, 540 S.E.2d at 118. This language is taken from Genovese v. Bergeron, 327 S.C. 567, 490 S.E.2d 608 (Ct. App. 1997), which is also distinguishable from the present case. In Genovese, a tenant who failed to pay her rent argued that a property manager, acting with authority granted by the landlord, agreed to permit the tenant to terminate her lease without penalty. Id. at 571, 490 S.E.2d at 610. This Court found evidence of apparent authority since the parties agreed that the property manager was the landlord's agent. Id.

In conclusion, the Court should affirm the circuit court's ruling that the Facility failed to demonstrate Daughter had actual or apparent authority to act as Ms. Graham's agent when the Residency Agreement was presented for Daughter's signature. The circuit court correctly concluded the record evidence and pertinent precedent did not support the conclusion that Ms. Graham consciously or impliedly represented Daughter had authority to act on her behalf.

2. The Facility does not meet or even attempt to apply the elements for any form of equitable estoppel cited in support of the purported arbitration contract.

As discussed above, Ms. Graham did not sign the Residency Agreement or authorize anyone to sign for her. Yet, the Facility argues South Carolina Supreme Court precedent suggests Ms. Graham's estate is equitably estopped from opposing arbitration. Appellants' Br. at 10-15 (citing Wilson v. Willis, 426 S.C. 326, 827 S.E.2d 167 (2019)). However, the Facility does not even cite or attempt to apply the elements of equitable estoppel imposed by South Carolina law.[6]

[6] As Wilson recognized, whether a non-signatory may be bound to an arbitration contract is a state law issue. 426 S.C. at 348, 827 S.E.2d at 174 (citing Arthur Andersen LLP v. Carlisle, 556 U.S.

Plus, Wilson actually refused to compel arbitration against a non-signatory, holding there is a presumption *against* forcing someone to arbitrate based on a contract she did not sign. 426 S.C. at 338, 827 S.E.2d at 173. Wilson even went on record to say equitable estoppel is rarely appropriate to force arbitration. Id. at 345, 827 S.E.2d at 177 (finding equitable estoppel "should be used sparingly"). Finally, the Facility cannot meet the "direct benefits" test considered in Wilson because Respondent's claims in no sense rely on the Arbitration Agreement's terms.

The "direct benefits estoppel" discussed in Wilson could only apply if Respondent has "consistently maintained that other provisions of the same contract should be enforced to benefit" her. 426 S.C. at 340, 827 S.E.2d at 175 (quoting Pearson, 400 S.C. at 290, 733 S.E.2d at 601). What is most noticeable about the Facility's argument on this point is that it overlooks entirely the one South Carolina appellate opinion considering direct benefits estoppel in this factual context. Just a few years ago, this Court considered and rejected direct benefits estoppel as a means to bind a nursing home resident's estate to the arbitration provision in a residency agreement the resident did not sign. Weaver v. Brookdale Sr. Living, Inc., 431 S.C. 223, 230, 847 S.E.2d 223 (Ct. App. 2020).

624, 630-31 n. 5 (2009)). Under South Carolina law, equitable estoppel requires proof that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conducted be acted on by the other party; and (3) had actual or constructive knowledge of the real facts. Strickland, 375 S.C. at 84, 650 S.E.2d at 470. The party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; and (3) make a prejudicial change in position in reliance on conduct of the party to be estopped. Id. Wilson did not dismiss or eliminate this test for equitable estoppel but only found its application was an issue that had not been preserved for appellate review. The Facility argues Wilson concluded this test only applies to "non-arbitration cases." Appellants' Br. at 11 (citing Wilson, 426 S.C. at 340 n. 9, 827 S.E.2d at 175 n. 9). However, that could not have been Wilson's meaning because applying different rules to arbitration and non-arbitration contracts would violate the U.S. Supreme Court's equal-treatment principle. See Prima Paint Corp. v. Flood Conklin Mfg. Co., 388 U.S. 395, 404 n. 12 (1967) (finding intent of Federal Arbitration Act was "to make arbitration agreements as enforceable as other contracts, but not more so").

Weaver held the party asserting direct benefits estoppel must make three distinction showings. 431 S.C. at 230, 847 S.E.2d at 272. The Facility would have to show (1) Ms. Graham's claim arose from a contractual relationship; (2) Ms. Graham "exploited" other parts of the contract by reaping its benefits; and (3) her claim "relies solely on the contract terms to impose liability." Id. (citing Wilson, 426 S.C. at 340-44, 827 S.E.2d at 175-77). The Facility makes no attempt to satisfy any of these elements. Instead, the Facility argues Ms. Graham's alleged direct benefit was admission itself and the nursing home services she received while a Facility resident. Appellants' Br. at 14.

This Court has left no doubt that direct benefits estoppel does not apply in these circumstances. Weaver, 431 S.C. at 230, 847 S.E.2d at 272 (finding nursing home's direct benefit estoppel argument "easily scotched"). Applying the three elements listed above, Weaver found a nursing home's resident does not gain a "direct benefit" for estoppel purposes simply by accepting the services obtained upon admission to the home. 431 S.C. at 230-31, 847 S.E.2d at 272-73. Moreover, claims like the personal injury claims asserted here do not "arise from" the Residency Agreement. There is no breach of contract claim, and the Residency Agreement is not referenced at all in the Complaint. Id. at 231, 847 S.E.2d at 272 (finding "arising from" requirement is not met just because claim would not exist "but for" a contract's existence). Instead, the estate grounds its claims in duties arising from common law with no reference to any contract. Id. at 232, 847 S.E.2d at 273 (finding nursing home resident's claims "rely on general tort duties . . . not any provision of the residency agreement").

Under those circumstances, estoppel cannot apply because the claims do not "arise from" a contract and certainly do not "rely solely" on a contract's terms. Id. at 232-33, 847 S.E.2d at 273 (citing Hodge as further support to show direct benefit estoppel does not apply to nursing home

resident's common law tort claim). Finally, Weaver found that it strained credulity to assert that a deceased resident's daughter had "exploited" the nursing home's residency agreement simply by seeking compensation for poor care that lead her mother to be killed and dismembered by an alligator. 431 S.C. at 232, 847 S.E.2d at 273 (finding deceased nursing home resident and family could not be said to have "exploited" or "benefitted from" residency agreement "any more than a pedestrian run over by a truck has benefited from the contract for the purchase of the truck").

The Facility points to nothing to distinguish Weaver or to address its holding which forecloses the estoppel argument. Thus, Weaver is strong precedent against applying estoppel in this context. Moreover, this Court rejected a nursing home's attempt to use direct benefits estoppel to compel a non-signatory nursing home resident to arbitrate even before Weaver. Thompson, 416 S.C. at 58-59, 784 S.E.2d at 687-88; see also Hodge, 422 S.C. at 556-57, 813 S.E.2d at 299-300 (applying Thompson). Thompson rejected any effort to argue Ms. Graham gained a "direct benefit" from the Residency Agreement's arbitration provision. Id. at 60, 784 S.E.2d at 688 ("any possible benefit emanating from the [Arbitration Agreement] alone is offset by the [Arbitration Agreement's] requirement that Mother waive her right of access to the courts . . ."); see also Weaver, 431 S.C. at 233, 847 S.E.2d at 273 (citing Hodge, 422 S.C. at 563, 813 S.E.2d at 302) (concluding it would be "difficult to find" nursing home resident derived any benefit from her admission given that the deficient care provided there caused her death).

In sum, the circuit court correctly rejected the Facility's equitable estoppel argument because the Facility has not cited or applied the proper elements, cannot show Respondent obtained

any "direct benefit," and does not offer any explanation for how Ms. Graham or Daughter meet any of the elements recognized in Weaver.[7]

3. Since there is no valid arbitration contract, there are no grounds for staying litigation.

Finally, the Facility argues the circuit court erred in failing to enter a stay of litigation pending the outcome of arbitration proceedings. (Appellants' Br. at 16-17). The FAA's stay provision applies only if the legal issue in question is "referable to arbitration" under a valid arbitration contract. 9 U.S.C. § 3. Since there is no valid arbitration contract here, the circuit court correctly denied the Facility's motion for a stay. Solesbee, 438 S.C. at 651, 885 S.E.2d at 150 (holding that motion to stay is mooted when court finds there is no valid arbitration contract).

CONCLUSION

Based on the arguments above, Respondent respectfully requests the Court affirm the circuit court's order denying the Facility/Bowman's motions to compel arbitration and to stay litigation. The Facility's two main arguments in favor of arbitration have been rejected by recent precedent that the Facility does not and cannot refute. Pursuant to Thompson, the Facility cannot prove an actual or apparent agency relationship based on Daughter's signature and Ms. Graham's silence—especially given the dementia from which Ms. Graham was suffering at the time of her admission. Additionally, as the Court held in Weaver, the Estate's pursuit of personal injury claims related to Ms. Graham's death does not meet any of the elements required for the application of direct benefits estoppel.

[7] Since the Facility's agency and estoppel arguments are foreclosed by precedent, there is no need for the Court to consider any dispute as to whether the Estate's claims fall with the scope of the Residency Agreement's arbitration provision (Appellants' Br. at 6-7) or whether the Residency Agreement and arbitration provision constitute separate agreements (Appellants' Br. at 15-16). Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

Respectfully submitted,

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