

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Maite Murphy, Circuit Court Judge  
Case No.: 2025-CP-18-00458

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**Jan 07 2026**

**SC Court of Appeals**

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Appellate Case No. 2025-002125

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Kizzy Dolphin, as Parent and Natural Guardian of J.V., a minor,.....Respondent

v.

Somsee Rasamee and Mid-America Apartment Communities, Inc.,

of which Mid-America Apartment Communities, Inc., is the ..... Appellant.

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**APPELLANT'S INITIAL BRIEF**

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**STATEMENT OF ISSUE ON APPEAL**

- I. Did the Circuit Court err in refusing to stay the case and compel arbitration under a residential lease when, despite Minor J.V. not being a signatory to the lease, Minor J.V. gained direct benefits from the lease by being allowed to live in the apartment and is now seeking to enforce other provisions of that lease in this lawsuit and, therefore, should be estopped from asserting the lack of a signature precludes enforcing arbitration?

**STATEMENT OF THE CASE**

This appeal involves a personal injury action by an apartment tenant against another apartment tenant and the landlord in which the circuit court refused to stay proceedings and compel arbitration pursuant to an enforceable arbitration clause in a lease agreement because the injured minor did not sign the lease agreement. The only issue is whether the otherwise valid arbitration clause in the lease can be enforced against a non-signatory minor.

Respondent Kizzy Dolphin and Minor J.V. lived in Unit 12G of Colonial Village at Waters Edge, an apartment complex in Dorchester County, which they were permitted to rent under a Lease Agreement beginning March 31, 2022. **Mot. to Stay, Ex. 1 (Lease)**. Defendant Somsee Rasamee also resided at Colonial Village at Waters Edge with two dogs, pursuant to a Lease Agreement beginning January 14, 2022. **Mot. to Stay, Ex. 2; Compl. ¶7**.

Respondent's Lease Agreement notes at the top of the first page in **bold**, ALL CAPS, and underlined that the Lease was subject to arbitration. The Arbitration Provision is contained in Section 24.2, stating:

**ALL CLAIMS THAT ARISE BETWEEN YOU AND LANDLORD WILL BE RESOLVED THROUGH BINDING ARBITRATION IN ACCORDANCE WITH THE [Federal Arbitration Act, Title 9 of the United States Code] AND THE [Commercial Arbitration Rules of the American Arbitration Association]. YOU AND LANDLORD AGREE AND UNDERSTAND THAT WE MUTUALLY CHOOSE BINDING ARBITRATION INSTEAD OF LITIGATION TO RESOLVE ALL CLAIMS. THIS MEANS THAT UNLESS YOU OPT OUT OF THIS SECTION 24.2 (AGREEMENT TO ARBITRATE**

**DISPUTES), NEITHER YOU NOR THE LANDLORD WILL HAVE THE RIGHT TO LITIGATE A CLAIM IN COURT EXCEPT TO THE EXTENT PROVIDED HEREIN WITH RESPECT TO EXCLUDED CLAIMS.**

**Motion to Stay, Ex. 1 (p. 15).** Section 24.1 within the Arbitration Provision defines a claim, in pertinent part, as

any claim, dispute, action, proceeding, cause of action or controversy of every kind and nature, whether arising in contract, tort (including, but not limited to, personal injury, death or damage to property).

**Motion to Stay, Ex. 1 (p. 15).** The Arbitration Agreement does not apply to Excluded Claims, which are any claims where the aggregate amount of damages do not exceed \$10,000. **Motion to Stay, Ex. 1 (p. 15).** There is no dispute that the Lease Agreement was in place while Respondent and Minor J.V. were residents at Colonial Village at Waters Edge, and that the claim exceeds \$10,000.

Respondent claims that, on May 18, 2022, while Minor J.V. was on apartment complex grounds Defendant Rasamee’s dogs ran toward Minor J.V., causing Minor J.V. to fall to the ground and sustain injuries. **Compl. ¶¶ 8-9.** Respondent, as parent and natural guardian of minor J.V., sued Defendant Rasamee and Appellant Mid-America Apartments, L.P. (who is the landlord of Colonial Village at Waters Edge) for negligence.

Because the Lease Agreement Respondent signed contains a valid and enforceable arbitration clause, Appellant Mid-America Apartments answered the complaint and moved to stay and compel arbitration. After considering the motion, oral arguments, and supplemental briefing on the issue, on September 3, 2025, the circuit court denied Appellant’s motion to stay and compel arbitration because “Minor J.V. is not indicated as a party to the relevant agreement.” **9.23.25 Order.** Appellant asked the circuit court to reconsider its order, which it denied on

October 13, 2025. **10.13.25 Order.** Appellant timely noticed its appeal on October 17, 2025. **Notice of Appeal.** Appellant asks this Court to reverse the circuit court’s decision, staying the case and compelling Respondent to arbitrate Minor J.V.’s claims.

### STANDARD OF REVIEW

An appellate court reviews a circuit court’s decision on arbitrability de novo. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 47, 790 S.E.2d 1, 3 (2016). The circuit court’s factual findings, however, will not be reversed if any evidence reasonably supports the findings. *Id.* at 48, 790 S.E.2d at 3. “[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014) (quoting *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 91 (2000)).

### ARGUMENT

**I. This Court should reverse the circuit court and stay the case to compel arbitration because, although Minor J.V. did not sign the Lease, Minor J.V. received direct benefits of housing and resident privileges and should be estopped from denying the arbitration provision’s applicability.**

Courts must enforce and respect contractual agreements to arbitrate just as all other contractual provisions. *Palmetto Constr. Grp. v. Restoration Specialists, LLC*, 432 S.C. 622, 639, 856 S.E.2d 150, 153 (2021); *see also* S.C. Code Ann. § 15-48-10(a) (“[A] provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.”).

An arbitration provision is a contractual term, and general rules of contract interpretation must be applied to determine the clause’s applicability to a particular dispute. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999). When a contract is clear and unambiguous, the language alone determines the force and effect. *See Lewis v. Premium Inv.*

*Corp.*, 351 S.C. 167, 568 S.E.2d 361 (2002). A court must construe the language of a contract according to its plain, ordinary, and popular meaning. *Erie Ins. Co. v. Winter Const. Co.*, 393 S.C. 455, 713 S.E.2d 318 (Ct. App. 2011). “The court’s duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties’ failure to guard their rights carefully.” *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994).

Under certain circumstances, a litigant can be required to submit a dispute to arbitration under a contract with an arbitration provision despite being a nonsignatory to the contract. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012). “Whether an arbitration agreement may be enforced against nonsignatories, and under what circumstances, is an issue controlled by state law.” *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 173-74 (2019). In South Carolina, a nonsignatory can be bound to an arbitration clause “under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing/alter ego, and (5) estoppel. *Id.* at 338, 827 S.E.2d at 174.

“When ‘a signatory seeks to enforce an arbitration agreement against a non-signatory, the doctrine [of direct benefits estoppel] estops the non-signatory from claiming that he is not bound to the arbitration agreement when he receives a “direct benefit” from a contract containing an arbitration clause.’” *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 (quoting *Jackson v. Iris*, 524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007)). “Stated another way, ‘[u]nder the direct benefits theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory “knowingly exploits” the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement . . . .’” *Wilson*, 426 S.C. at 340-41, 827 S.E.2d at 175 (quoting *Belzberg v. Verus Invs. Holdings, Inc.*, 999 N.E.2d 1130, 1134 (2013)). When a claim must be determined by reference to the contract, direct-benefits estoppel is implicated. *Id.* at 343, 827

S.E.2d at 176. Allowing a party to claim a benefit of a contract while simultaneously avoiding its burden disregards equity. *Id.*; see also *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000) (applying equitable estoppel and holding the nonsignatory plaintiff could not bring claims to enforce the guarantees and warranties issued by the defendant in a contract with another party without complying with an arbitration provision contained in the same contract).

For example, in *Pearson* a doctor was estopped from avoiding an arbitration clause as a nonsignatory to a contract between the hospital at which he worked and a professional staffing company. 400 S.C. at 296-97, 733 S.E.2d at 605. The court found that the doctor received a benefit from the contract between the hospital and staffing company because it permitted him to work at the hospital and get paid for his work. *Id.* If that contract did not exist, the doctor would have been required to make separate arrangements to work at the hospital. *Id.* Because the doctor received direct benefits from the contract between the hospital and staffing company the doctor was estopped from disclaiming the arbitration clause and was forced to arbitrate. *Id.*

Also relevant is whether the nonsignatory is invoking provisions of the contract to support claims while simultaneously trying to avoid the arbitration provision in the same contract. For example, in *Dixon v. Patee* the court enforced an arbitration provision in a contract against a nonsignatory when the nonsignatory “maintained that other provisions of the same contract should be enforced to benefit him.” 442 S.C. 233, 257, 898 S.E.2d 158, 170 (Ct. App. 2023). The individual defendants contracted with Weekley Homes to build a home, and that contract contained warranties and an arbitration clause. *Id.* at 240-41, 898 S.E.2d at 162. Almost a decade later, the individual defendants sold the home to the plaintiffs. *Id.* On the one hand, the plaintiffs brought breach of warranty claims against Weekley Homes under the contract between Weekley Homes

and the individual defendants, but contended that they were not subject to the arbitration clause because they had not signed the agreement. *Id.* at 245, 898 S.E.2d at 164. The Court of Appeals found that the arbitration clauses were enforceable against the plaintiffs because their claims expressly relied on the agreements. *Id.* The *Pearson* court ruled similarly, noting the doctor was attempting to receive damages under the terms of the contract between the hospital and staffing company, or trying to hold the hospital responsible under the doctor's contract with the staffing company, and should be required to arbitrate. 400 S.C. at 297, 733 S.E.2d at 605.

Here, Minor J.V. received many direct benefits from the Lease Agreement. Minor J.V. received the right to housing because the Lease Agreement allowed Minor J.V. to reside in Unit 12G with his family. In addition, the Lease Agreement allowed Minor J.V. to access the common areas as well as the recreational facilities and amenities of the property. Notably, the subject incident occurred when Minor J.V. was freely about the property; his right and ability to do so is a direct benefit and result of the applicable Lease Agreement. **Compl. ¶ 8.** Because Minor J.V. received a direct benefit from the Lease Agreement, Plaintiff should be estopped from repudiating the arbitration clause simply because Minor J.V. is a nonsignatory.

Moreover, Minor J.V.'s claims necessarily rely upon certain provisions in the Lease Agreement. Although Respondent couches Minor J.V.'s claims against Defendant in terms of negligence, the minor's claims necessarily implicate the Lease Agreement. Respondent specifically alleges that Appellant was "careless, negligent, willful, wanton, and reckless" in failing to "evict, remove, and/or terminate the lease of Defendant Rasamee prior to the attack and actions of Defendant Rasamee's vicious dog or dogs." **Compl. ¶ 31.** Respondent further contends that Appellant failed to "enforce and or [sic] follow through on any notice and or police [sic] . . . against tenants'/residents'/visitors' having vicious dogs on the property." **Compl. ¶ 31.** In alleging

that Appellant owed Minor J.V. a duty to evict, remove, and/or terminate the lease of Defendant Rasamee or otherwise have the alleged vicious dogs removed from the property pursuant to Appellant's policy, Respondent is relying on Paragraphs 11.1.1 and 11.4 of the Lease Agreement. **See Motion to Stay, Ex. 1 & Ex. 2 (p. 8-9)** (detailing in Section 11 the responsibilities with respect to animals at the property and outlining remedies if a tenant is found in violation of the animal provisions). Because Minor J.V. is relying on provisions in the Lease Agreement with respect to animals to assert his claim against Appellant, he should be estopped from disclaiming the arbitration clause in the Lease Agreement.

Moreover, J.V.'s status as a minor does not affect application of direct benefits estoppel. No South Carolina court has addressed the issue, but Texas has considered it and found direct benefits estoppel applies to minors under contracts signed by parents. *See Taylor Morrison of Texas v. Ha*, 660 S.W.3d 529, 531-32 (Tex. 2023). In *Taylor*, a home purchaser, along with his wife and minor children, brought construction defect claims against the builder of their family home. *Id.* at 531. The father had signed the purchase contract with an arbitration clause, but the wife and children were not parties to the contract. *Id.* The court held that, "regardless of whether they asserted contract claims, [the wife] and the children are nevertheless bound to the arbitration provision through direct-benefits estoppel [because the wife] and the children lived in the home at issue." *Id.* at 533. "[T]heir occupancy of the home indicates that they accepted the benefits of [the father's] purchase agreement and therefore may be compelled to arbitrate along with [the father]." *Id.*

Applying direct-benefits estoppel to the children made sense considering the family home context and the nature of parent-child relationships. *Id.* "[A] family's *shared home* is something that will directly benefit the entire family." *Id.* The court also acknowledged that parents are

entrusted with caring and protecting their children, have a legal duty under Texas law to provide their children with shelter and necessities, and “common sense dictates that, when parents move their family into a new home, they are necessarily seeking direct benefits for their minor children.” *Id.* at 534.

South Carolina recognizes that parents are “charged with the welfare and education of their minor children.” S.C. Code Ann. § 63-5-30. Further, South Carolina law recognizes the voidability of contracts entered into by minors (S.C. Code Ann. § 63-5-320), which casts serious doubt on the circuit court’s analysis that the arbitration clause cannot be enforced because Minor J.V. did not sign the Lease Agreement. Stated differently, if Minor J.V. had signed the Lease Agreement then it’s enforceability would be questioned regardless.

Because common sense indicates that parents—who are charged with legal and equitable duties to care and provide for their minor children—obtain housing to directly benefit their minor children, Minor J.V. should be required to arbitrate claims despite not signing the Lease Agreement when Respondent’s signing the Lease Agreement permitted her and Minor J.V. to receive the direct benefit of living in the apartment.

### **CONCLUSION**

This Court should reverse the circuit court, compelling arbitration because, although Minor J.V. did not sign the Lease Agreement, Minor J.V.’s parent signed the Lease Agreement that directly benefitted Minor J.V. with housing and resident privileges. Further, Minor J.V. relies on certain contractual provisions in the Lease Agreements with respect to animals to assert claims against Appellant for not removing Rasamee’s dogs. This Court should not permit, and equity will not allow, Minor J.V. to use provisions in the Lease Agreement to support claims against

Respondent while simultaneously disclaiming the arbitration provision in the Lease Agreement.

Accordingly, this Court should reverse the circuit court, stay the case and compel arbitration.

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January 7, 2026.

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