THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2025-000237

Joe Bryan, Respondent,

v.

THI of South Carolina at Charleston, LLC d/b/a
Riverside Health and Rehab, Appellant.

BRIEF OF RESPONDENT

CLAWSON FARGNOLI UTSEY, LLC

Samuel R. Clawson, Jr. (SC# 76065)
Christy R. Fargnoli (SC# 77528)
Bert G. Utsey, III (SC# 10093)
Laura Wilkes-D'Amato (SC# 104294)
The Presqu'ile House
2 Amherst Street
Charleston, South Carolina 29403
843.970.2700

Attorneys for Respondent

TABLE OF CONTENTS

AUTHORITIES CITED

Cases

Other Authorities

COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court err in finding that the subject Admission and Arbitration Agreements did not merge?

II. Did the Circuit Court err in finding that the doctrine of estoppel did not preclude Respondent from denying the validity of the Arbitration Agreement?

III. Did the Circuit Court err in stating that Facility employees "had" Respondent's son sign the subject admission and arbitration agreements?

STATEMENT OF THE CASE

This is a medical malpractice action arising from Respondent's treatment at Appellant's rehabilitation facility (the "Facility") following his hospitalization for a stroke in the summer of 2021. While Respondent was a resident at the Facility, he developed a pressure wound that resulted in an additional hospitalization and further treatment, including a surgical procedure.

Respondent's son, Michael Bryan ("Michael"), signed paperwork upon Respondent's admission to the Facility. This paperwork included a purported Arbitration Agreement (the "Agreement"). Based on the content of the Agreement, the Facility moved to stay or dismiss this action and for an order compelling arbitration on the basis that "[Respondent] entered into an Arbitration agreement with the Facility." Respondent did not sign this Agreement.

In support of its Motion to Compel, the Facility filed a memorandum arguing that the Federal Arbitration Act ("FAA") governed the arbitration agreement, that arbitration agreements are favored, that under state law arbitration agreements are required to be placed on equal footing with all other contracts, that the arbitration agreement was facially valid, and that Mr. Bryan's claims were within the scope of the Agreement. (R. pp. 57-61). The Facility also argued that even if the Agreement was invalid, it merged with the admission agreement such that Mr. Bryan should be estopped to deny the enforceability of both agreements. (R. pp. 62-82).

That Motion came before the Circuit Court on November 13, 2024. Following that hearing, the Circuit Court issued an Order denying Appellant's Motion. (R. pp. 1-7). The Order found that Michael lacked legal authority to sign the Agreement on Mr. Bryan's behalf, that Mr. Bryan could not be bound to the Agreement due to his status as a nonsignatory, and that the Facility failed to satisfy any of the five common law theories listed in *Malloy v. Thompson,* 409 S.C. 557, 561-62, 762 S.E.2d 690, 692 (Ct. App. 2014).

Appellant filed a Motion to Alter, Amend, and/or Reconsider the Court's decision, inexplicably focused on a case on which the Circuit Court did not explicitly rely – this Court's decision in *Estate of Solesbee v. Fundamental Clinical and Operational Services*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023) (R. pp. 97-120). The Circuit Court denied that Motion on January 9, 2025 (R. pp. 8-10). This Appeal followed. (R. pp. 121-127).

STANDARD OF REVIEW

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

STATEMENT OF FACTS

Mr. Bryan was admitted to Appellant's Facility on June 4, 2021. (R. p. 13, ¶ 12). Upon his admission, Facility staff noted that Mr. Bryan was at risk for skin breakdown. (R. p. 14, ¶ 17). While in the Facility's care, Mr. Bryan developed a large (5 cm x 9.8 cm x 3 cm) coccyx/sacral wound that was concerning for osteomyelitis (infection of the bone), with copious amounts of malodorous brown drainage and necrotic tissue. (R. p. 15, ¶ 30). This wound resulted in Mr. Bryan's hospitalization, during which he underwent a debridement procedure and flap repair before healing in February of 2022. (R. p. 15, ¶¶ 29, 31, 34).

Upon his admission to the Facility, Mr. Bryan's son Michael signed Admission and Arbitration Agreements. (R. p. 13, ¶ 13). The Circuit Court found that Michael lacked legal authority to sign the Agreement on Mr. Bryan's behalf. The Facility has not appealed that finding; it is, therefore, the law of the case.

The Agreement states all claims arising out of or relating to the Facility's admission agreement are to be resolved by arbitration and provides the governing law for the Agreement. (R. p. 49). The Agreement has its own separate signature page and is entitled "Facility – Resident/Representative Arbitration Agreement." (R. p. 49). The Facility has conceded that the Agreement is optional, contains no provision for medical, nursing, or healthcare services to be provided to residents, and requires no financial commitment to pay for such services. (R. p. 49). Because it is undisputed that Michael lacked authority to enter the Agreement on his father's behalf, this Court's analysis is confined to whether Mr. Bryan, as a nonsignatory to the Agreement, should be precluded from denying its validity under theories of merger and estoppel.

ARGUMENT

The Court should affirm the Circuit Court's December 13, 2024 and January 9, 2025 Orders (the "Orders"). This Court has already held that arbitration and admission agreements identical to the ones at issue here do not merge. This Court has also found that a nonsigner of these same agreements cannot be estopped from denying the validity of the arbitration agreement.

The Orders do not contain any legal errors and their factual conclusions are supported by the evidence in the record. This Court should re-affirm what it and the South Carolina Supreme Court have already conclusively determined on at least twenty (20) occasions since April 2022[1] and deny the instant Appeal.

---

[1] *See Estate of Richard Ladson v. THI of S.C. at Charleston*, 2022 S.C. App. Unpub. LEXIS 200, *cert. denied*, 2023 S.C. Unpub. LEXIS 31; *Estate of Solesbee v. Fundamental Clinical and Operational Services*, 438 S.C. 638, 885 S.E.2d 144, *cert. denied* (Apr. 16, 2024); *Nanney v. THI of S.C. at Spartanburg*, 2023 S.C. App. Unpub. LEXIS 350, *cert. denied*, 2024 S.C. Unpub. LEXIS 99; *Daniels v. THI of South Carolina at Columbia*, 2022 S.C. App. Unpub. LEXIS 392, *cert. denied*, 2023 S.C. Unpub. LEXIS 62; *Estate of Owens v. Fundamental Clinical & Operational Servs.*, 2023 S.C. App. Unpub. LEXIS 321, *cert. denied*, 2024 S.C. Unpub. LEXIS 30; *Greene v. Palmetto Prince George Operating*, 2023 S.C. App. Unpub. LEXIS 457, *cert. denied*, 2024 S.C. Unpub. LEXIS 123; *Tisdale v. Palmetto Lake City Operating*, 2024 S.C. App. Unpub. LEXIS 3, *cert. denied*, 2024 S.C. Unpub. LEXIS 119; *Walker v. Hallmark Longterm Care*, 2023 S.C. App. Unpub. LEXIS 461, *cert. denied*, 2024 S.C. Unpub. LEXIS 124; *White v. St. Matthews Healthcare*, 2023 S.C. App. Unpub. LEXIS 454, *cert. denied*, 2024 S.C. Unpub. LEXIS 128; *Dawkins v. Clinical*, 2023 S.C. App. Unpub. LEXIS 462, *cert. denied*, 2024 S.C. Unpub. LEXIS 118; *Stroud v. THI of South Carolina at Greenville*, 2024 S.C. App. Unpub 084, *cert. denied* (Oct. 30, 2024); *Pace v. Lake Emory Post Acute Care*, 2024 S.C. App. Unpub. LEXIS 263, *cert. denied*, 2025 S.C. Unpub. LEXIS 42; *Rahn v. Priority Home Care*, 2023 S.C. App. Unpub. LEXIS 453, *cert. denied*, 2024 S.C. Unpub. LEXIS 122; *China v. Palmetto Hallmark Operating*, 2023 S.C. App. Unpub. LEXIS 459, *cert. denied*, 2024 S.C. Unpub. LEXIS 129; *Lovett v. Fundamental Clinical and Operational Servs*, 2024 S.C. App. Unpub. LEXIS 85, *cert. denied*, 2024 S.C. Unpub. LEXIS 126; *Washington v. St. George Health Care*, 2024 S.C. App. Unpub. LEXIS 322, *cert. denied*, 2025 S.C. Unpub. LEXIS 55; *McCarson v. THI of S.C. at Magnolia Manor-Inman*, 2024 S.C. App. Unpub. LEXIS 320, *cert. denied*, 2025 S.C. Unpub. LEXIS 57; *Hutley v. THI of S.C. at Magnolia Manor Inman*, 2024 S.C. App. Unpub. LEXIS 396, *cert. denied* 2025 S.C. Unpub. LEXIS 81; *Hagood v. Palmetto Faith Operating*, 2024 S.C. App. Unpub. LEXIS 390, *cert. denied*, 2025 Unpub. LEXIS 74. Also, at present, Appellant has at least eight appeals pending before this Court on identical issues.

I. The Circuit Court did not Err in Rejecting Appellant's Merger/Equitable Estoppel Argument.

"[B]ecause arbitration, while favored, exists solely by agreement of the parties, a presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate." *Wilson*, 426 S.C. at 337-38, 827 S.E.2d at 173.

Appellant's Brief is largely premised on the Circuit Court's supposed reliance on *Solesbee*, despite the fact that that case was not mentioned in the Orders or during the hearing on Appellant's Motion to Compel.[2] In *Solesbee*, this Court affirmed the five common law theories for binding a nonsignatory to an arbitration agreement, as set forth in *Malloy v. Thompson,* 409 S.C. 557, 762 S.E.2d 690 (2014) – a case that **was** cited by the Circuit Court in its December 13 Order. (R. pp. 3-6). Those five theories are as follows: incorporation by reference, assumption, agency, veil piercing/alter ego, and estoppel. *Id.* at 561-62, 762 S.E.2d at 692; *Solesbee*, 438 S.C. at 647, 885 S.E.2d at 148.

In its December 13 Order, the Circuit Court correctly held that the incorporation by reference, assumption, and veil piercing/alter ego theories did not apply in this case. (R. p. 4). It also held that there was no express or implied agency between Mr. Bryan and Michael, noting that even if Michael had apparent authority to make health care decisions for Mr. Bryna, that authority would not extend to the ability to enter into an arbitration agreement under the ruling in *Thompson v. Pruitt Corp.,* 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016). Appellant does not raise any arguments regarding agency in this appeal. Thus, the only remaining argument on which the Facility can prevail is estoppel.

As outlined in *Solesbee*, a nonsignatory like Mr. Bryan may be estopped from denying the

[2] Pages 7-31 of the Facility's Brief appear to be substantially identical to pages 4-19 and 19-23 of its Motion for Reconsideration.

validity of an arbitration agreement when he receives a direct benefit from a contract containing an arbitration clause. *Solesbee*, 438 S.C. at 647, 885 S.E.2d at 148. In this case, the Agreement was not a clause within the admissions agreement, and Mr. Bryan has certainly not received any direct benefits from the Agreement. The Facility is thus forced to argue that, upon Michael's execution of the agreements, they merged, becoming a single contract, and that Mr. Bryan benefitted from the terms of the admissions agreement. While it is doubtful that Mr. Bryan benefited from his admission to the Facility given his negligent treatment there, it is clear that, even if he had benefitted from his admission, the agreements should not merge.

a. <u>The Circuit Court correctly concluded that the Arbitration Agreement and Admission Agreement did not merge.</u>

The language and formatting of the agreements at issue support the conclusion that they were intended to be separate documents, creating at a minimum an ambiguity regarding merger that must be construed against the Facility.

"The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents together. The theory is that the instruments are effectively one instrument or contract." *Coleman v. Mariner Health Care*, 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014). Ambiguity as to merger must be construed against the drafter – here, the Facility. *Id.*

However, as noted in the Court's December 13 Order, the courts in both *Coleman* and *Hodge v. UniHealth Post-Acute Care of Bamberg,* 422 S.C. 544, 813 S.E. 2d 292 (Ct. App. 2018), outlined several relevant factors for determining merger in the context of admission agreements and purported arbitration agreements – and those factors weigh heavily against merger in the present case. The factors include (1) whether the two agreements are governed by separate bodies

of law, (2) whether the language of the agreements recognizes the two agreements as separate, (3) whether the agreements contain different terms regarding revocation and termination, (4) whether the agreements are separately paginated and have their own signature pages, and (5) whether both agreements are required for the execution of the other, or whether one agreement is optional. *Hodge*, 422 S.C. at 562-64, 813 S.E. 2d at 302-03. As one may expect given the successive appeals filed by this Appellant in similar circumstances, this Court has already analyzed the exact same form agreements at issue here – and found that they do not merge.

That analysis occurred in the *Solesbee* case. First, as in *Solesbee*, the admission agreement and other admission paperwork here indicate they are governed by South Carolina law, while the Agreement states it is governed by the FAA. Because the agreements are not governed by the same bodies of law, the first factor weighs against Appellant.

Second, as in *Solesbee,* the Agreement also contains a separate reference to the admission agreement. In *Solesbee*, the Court held that such a reference "recognized the two documents were separate, stating the Arbitration Agreement 'shall survive any termination or breach of this Agreement or the Admission Agreement.'" *Solesbee*, 438 S.C. at 648-49, 885 S.E.2d at 149. Therefore, the Facility's argument regarding the second factor also fails.

Third, as this Court acknowledged in *Solesbee*, the Agreement contains no language indicating that it may be revoked or terminated, but the admission agreement provides that a resident may terminate the admission agreement at any time. *Id.* at 649, 885 S.E.2d at 149.

Fourth, the Agreement has its own signature line. This indicates the drafter's intent for the Agreement to stand by itself as an independent contract. *See Thompson*, 416 S.C. at 53 n.1, 784 S.E.2d at 685 n.1.

As to the fifth factor, the Court in *Solesbee* found that the Agreement is optional and

voluntary, while the admission agreement is required for admission. *Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149. The Facility does not dispute in this case that the Agreement is voluntary and optional.

Based on these factors, the Circuit Court correctly concluded that the admissions agreement, other admission paperwork, and the Agreement did not merge.

b. <u>Even if the Agreements merged, Respondent is not estopped from denying the validity of the Arbitration Agreement.</u>

Because there was no merger between the agreements, Plaintiff is not estopped from asserting that the lack of his signature precludes enforcement of the Agreement. This same rationale extends to any potential claim of equitable estoppel. *See Hodge*, 422 S.C. at 563, 813 S.E.2d at 302 (equitable estoppel arguments are also "premised on the[] contention that, under state law, the admission agreements and the arbitration agreements merged").

Assuming *arguendo* that the agreements did merge, however, the Facility cannot satisfy the requisite elements of the applicable test – the direct benefits test. Direct benefits estoppel precludes a nonsignatory from denying the validity of an arbitration provision of a contract if "(1) the nonsigner's claim arises from the contractual relationship, (2) the nonsigner has 'exploited' other parts of the contract by reaping its benefits, and (3) the claim relies solely on the contract terms to impose liability." *Weave*r, 431 S.C. at 230, 847 S.E.2d at 272.

The Facility asserts that because Mr. Bryan received benefits from the admission agreement, he is estopped from denying the validity of the Agreement. The Facility's argument ignores the fact that Mr. Bryan is not asserting a breach of contract claim; he brought the underlying suit to recover under a negligence theory, arising from common law duties. He is claiming that the Facility breached a duty owed by all healthcare providers, outside of any contractual agreements, to comply with the applicable standard of care. This claim does not rely

on any provision in the agreements, it relies on common law tort duties. Therefore, Mr. Bryan cannot be estopped from denying the validity of the Agreement based on the application of the direct benefits test.

For these reasons, the Court should affirm the Circuit Court's finding that, because there was no merger between the two agreements, Plaintiff is not estopped from asserting that the lack of his signature precludes enforcement of the Agreement.

c. <u>The Circuit Court did not err in stating that the Appellant's facility "had" Respondent's son sign the admission agreement and the Agreement. To the extent this word choice was an error, it was a harmless erorr that should be disregarded under SCRCP Rule 61.</u>

While recognizing "the [C]ircuit [C]ourt did not actually state that this is material to its reasoning," the Facility raises an argument that "out of an abundance of caution, to the extent that it might potentially be prejudicial to the Facility," the Circuit Court erred in its inclusion of a single word in two sentences in its December 13, 2024 Order. (Appellant's Br., p. 32). Specifically, the Facility objects to the phrase that Facility employees "had" Michael sign the admissions paperwork for his father. The Facility reads this phrase as an implication that Michael was forced to sign the Agreement against his will as a required condition of Mr. Bryan's admission to the Facility. As noted above, the Agreement is (technically) optional, so that could not have been the Circuit Court's intent. However, the Facility has failed to demonstrate it is prejudiced by the Circuit Court's word choice. To the extent the Circuit Court may have erred by using the phrase at issue, it was harmless error that does not affect the substantial rights of the Facility. This Court should disregard this issue pursuant to Rule 61 of the South Carolina Rules of Civil Procedure.

CONCLUSION

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

Respectfully submitted,

CLAWSON FARGNOLI UTSEY, LLC

/s/ Laura Wilkes-D'Amato

Samuel R. Clawson, Jr. (SC# 76065)
Christy R. Fargnoli (SC# 77528)
Bert G. Utsey, III (SC# 10093)
Laura Wilkes-D'Amato (SC# 104294)
The Presqu'ile House
2 Amherst Street
Charleston, South Carolina 29403
843.970.2700

Attorneys for Respondent

January 30, 2026
Charleston, South Carolina