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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2024-CP-10-03732
Appellate Case No. 2025-000237

Joe Bryan,

Respondent,

v.

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

Appellant.

FINAL REPLY BRIEF OF APPELLANT

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The Facility makes these points in reply to Mr. Bryan's brief.[1]

ARGUMENT IN REPLY

1. The unpublished opinions Mr. Bryan cites have no precedential value.

Citing a litany of unpublished opinions, Mr. Bryan urges the Court to "re-affirm what it . . . ha[s] already conclusively determined on at least twenty (20) occasions since April 2022 and deny the instant Appeal." (Mr. Bryan's Br. p. 10 (internal footnote omitted).) These unpublished decisions have no precedential value and, indeed, should not even be cited in this proceeding. Rule 268(d)(2), SCACR (providing that unpublished opinions "have no precedential value and should not be cited except in proceedings in which they are directly involved").

2. Mr. Bryan's reliance on *Solesbee*[2] is already amply refuted in the Facility's principal brief.

Despite criticizing the Facility's principal brief as "largely premised on the Circuit Court's supposed reliance on *Solesbee* . . . ,"[3] the essence of Mr. Bryan's argument for affirmance of the circuit court's finding against merger of the Admission Agreement and the Arbitration Agreement is simply to parrot the

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[1] Shorthand references already defined in the Facility's principal brief are continued in this reply brief (e.g., the "Facility" refers to Defendant/Appellant, THI of South Carolina at Charleston, LLC d/b/a Riverside Health and Rehab, and "Mr. Bryan" refers to Plaintiff/Respondent, Joe Bryan).

[2] *Solesbee v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).

[3] (Mr. Bryan's Br. p. 11.)

Solesbee Court's analysis. (Mr. Bryan's Br. pp. 13–14.)[4] As already amply explained in the Facility's principal brief, however, the *Solesbee* Court (a) erred as to those aspects of the merger argument that it addressed and (b), in any event, did not actually address all material aspects of the argument, leaving gaps in the *Solesbee* decision through which the Facility's position still fits. (Final Brief of Appellant pp. 18-26.) Mr. Bryan's brief does nothing to close these gaps.

3. Mr. Bryan's argument against the applicability of direct benefits estoppel is already amply refuted in the Facility's principal brief.

Mr. Bryan contends direct benefits estoppel does not apply simply because he is not asserting a claim that relies on contract terms to impose liability. (Mr. Bryan's Br. pp. 14–15.) As already amply explained in the Facility's principal brief, however, this argument is unavailing. (Final Brief of Appellant pp. 26–30.)

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[4] The Facility would note that, contrary to Mr. Bryan's assertion that it was not mentioned (Mr. Bryan's Br. p. 11), *Solesbee* was indeed addressed during the hearing on the Motion to Compel Arbitration. (R. pp. 29:13–37:1.) Additionally, while it is true that the circuit court's orders do not reference *Solesbee*, the circuit court's order denying the Motion to Compel Arbitration cites the authorities primarily relied upon by the *Solesbee* Court (*compare* R. pp. 3-4 (citing *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014) and *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E2d 292 (Ct. App. 2018)) *with Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149 ("Thus, like the *Coleman* and *Hodge* courts, we find there was no merger in this case and Magnolia's equitable estoppel argument was properly denied.").) And in any event, the very fact that *Solesbee* exists—i.e., the very fact that precedent exists that Mr. Bryan himself contends should control the disposition of this case—naturally calls for the Facility to argue that it should not.

CONCLUSION

For the foregoing additional reasons, the Facility asks that the Court reverse the circuit court's denial of the Motion to Compel Arbitration and compel Mr. Bryan's claims against the Facility to arbitration (or to remand this matter to the circuit court with instructions that it do so).

Respectfully submitted,

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APPELLANT'S CERTIFICATION FOR FINAL REPLY BRIEF

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I, Russell G. Hines, do hereby certify that the **Final Reply Brief of Appellant** complies with Rule 211(b), SCACR. Additionally, the undersigned hereby certifies that this filing complies with the Supreme Court order of April 15, 2014.

Respectfully submitted,

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