THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-01757
Case No. 2025-CP-23-01759
Appellate Case No. 2025-002264

Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Respondent,

v.

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; LARK of Fountain Inn, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC, Appellants,

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INITIAL BRIEF OF APPELLANTS CARLYLE SENIOR CARE OF FOUNTAIN INN, LLC; CARLYLE SENIOR CARE MANAGEMENT COMPANY, INC.; NEW DAY HEALTH VENTURES, LLC; AND LARK OF FOUNTAIN INN, LLC

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STATEMENT OF THE CASE

This case is about the circuit court's inconsistent decision to deny Appellants' Motion to Compel Arbitration of a valid and enforceable Arbitration Agreement without ruling on the merits and simultaneously grant jurisdictional discovery to resolve questions of arbitrability for consideration of a subsequent motion.

On December 22, 2022, Kimberly Haag ("Respondent"), on behalf of Raymond Zeigler, entered into an Admission Agreement to admit Mr. Zeigler to Appellant Carlyle Senior Care of Fountain Inn, LLC ("CSC Fountain Inn"), a skilled nursing facility affiliated with Appellants Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, and LARK of Fountain Inn, LLC (collectively, "Appellants"). (Appellants' Mot. Ex. B). The Admission Agreement contained a Mediation and Binding Arbitration Agreement, which Respondent also signed. (Id. pp. 36-40). Zeigler appointed Respondent in a General Durable Power of Attorney ("GDPOA") on May 8, 2018, and recorded said GDPOA on May 10, 2018. (Appellants' Mot. Ex. A). The GDPOA stated in part:

> My Attorney-in-Fact may . . . arbitrate . . . any and all legal, equitable, judicial, or administrative hearings, actions, suits, or proceedings involving me in any way. This authority includes, but is not limited to, claims by or against me arising out of . . . personal

> injury suffered by or caused by me or under circumstances such that the resulting loss may be imposed on me. . . .
>
> My Attorney-in-Fact may enter into, execute, modify, alter, or amend any contract or agreement (for example, a Caregiver Agreement or Personal Services Contract) pertaining to my medical, personal, or general care that I may require at my residence, assisted living facility, nursing facility, or in another's residence on my behalf. . . .
>
> This General Durable Power of Attorney is a general power of attorney and should be interpreted as granting my Attorney-in-Fact all general powers permitted under South Carolina law. The description of specific powers is not intended to, nor does it, limit or restrict any of the general powers granted to my Attorney-in-Fact.

(Id. Ex. A pp. 7, 14, 22). The Arbitration Agreement stated in part:

> **"Resident" "you" and "your"** refers to the Resident identified above who is being admitted to the Facility. Resident also includes Resident's legally Designated Representative(s), Resident's Responsible Party, Resident's family, and anyone situated in such a manner so as to assert a Claim against the Facility.
>
> **"Resident's Legally Designated Representative"** refers to the person who possesses actual legal authority to conduct affairs and make decisions on behalf of the Resident. This person includes, but is not limited to, the person who has been appointed as Guardian for the resident, and/or the person who possesses a Power of Attorney executed by the Resident.
>
> **"Resident's Responsible Party**" refers to . . . the person identified as the Resident's Responsible Party in the Admission materials executed by Resident and/or Resident's Legally Designated Representative, and who has agreed to serve as the primary point of contact for communications between the Facility and the Resident's family.
>
> **"Facility"** refers to the Facility identified above, and includes the Facility's employees, agents, subcontractors, and parent and affiliated companies . . . and their employees and agents.
>
> **"Parties"** and **"party"** refers to persons and entities defined within the scope of "Resident" and "Facility. . . .

Intent of the Parties. The Parties expressly intend that all matters be resolved by arbitration, including, but not limited to, resolving any questions regarding the applicability and/or enforceability of this Agreement as well as resolving all Claims, existing presently or in the future, between the parties without regard for whether such Claims are presently known or unknown.

Scope of Agreement: . . . [T]he Parties expressly intend that the binding arbitration provisions of this Agreement apply to any and all Claims arising out of the relationship between the Parties, without regard for the nature of the Claim(s), the facts alleged to support or refute the Claim(s), or circumstances from which the alleged Claim(s) arose. This means that neither the Facility nor the Resident will be able to file a lawsuit in court to resolve any Claim(s) against the other. It also means that both the Facility and the Resident are relinquishing their right to a trial by judge and/or jury to resolve any Claim(s) against the other. The Parties freely choose arbitration, and the Parties understand that the arbitrator's decision is final and binding. . . .

Involvement of Interstate Commerce: The Facility expressly represents and provides notice to the Resident that the Facility must and will engage in interstate commerce in the course of its relationship with Resident. The Resident is aware of this fact, acknowledges this fact, and explicitly expects that interstate commerce will be involved in the course of the relationship between the parties. The resident agrees that (s)he could specifically seek residency at a different facility if Resident expected and/or desired to reside in a facility that did not and would not engage in interstate commerce in the course of the relationship between the parties, which includes, but is not limited to, the provision of care to the Resident. Therefore, it is the express intent and expectation of the Parties that the care provided by the Facility to the Resident will and does involve, implicate, and affect interstate commerce. . . .

Exclusion from Arbitration. The Parties expressly agree to exclude the following Claim(s) from binding arbitration: (1) guardianship proceedings resulting from the alleged incapacity of the Resident; (2) Claim(s) involving less than Five Thousand Dollars ($5,000.00); (3) Claim(s) brought after the expiration of the applicable statute of limitations; and (4) any Claim that the Parties mutually agree to resolve in a manner not entertaining binding arbitration, either as set forth at the time the Parties execute this Agreement, or as later mutually agreed upon in writing by both Parties. . . .

> **Right to Legal Counsel.** . . . Because this Agreement addresses important legal rights, the Facility encourages and recommends that the Resident obtain the advice and assistance of legal counsel to review the legal significance of this binding arbitration provision either prior to signing this Agreement, or subsequent to signing but within the recission period. Should any Party fail to obtain legal counsel at any point, they do so willingly and voluntarily. . . .
>
> **Limited Right to Rescind this Agreement.** Resident or, in the event of Resident's incapacity, Resident's Legally Designated Representative, has the right to rescind this Agreement by notifying the Facility in writing within thirty (30) days of the date set forth above. . . .
>
> **Entire Agreement**. . . . This agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, personal representatives, successors, purchasers and assigns.

(Id. Ex. B pp. 36-40).

During Mr. Zeigler's admission, Co-Appellant Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute ("Post Acute") assumed continued operations of the facility pursuant to a Management Operations Transfer Agreement ("OTA"). (Co-Appellants' Mem. Ex. C). The OTA included routine provisions for the transfer of the state license, Medicare provider agreement, employee agreements, and the transfer of resident information, i.e. admission agreements, billing information, insurance information and medical records from CSC Fountain Inn to Post Acute, giving Post Acute immediate access to all necessary information and stated in part:

> In order to facilitate transition of operational and financial responsibilities from Licensee to New Operator in a manner in which will ensure the continued operation of the Facility after the Operations Transfer Date in compliance with applicable law and in a manner which does not jeopardize the health and welfare of the residents of the Facility, Licensee and New Operator desire to document the terms and conditions on which New Operator will manage the Facility . . . .
>
> New Operator shall reasonably cooperate, participate in and be responsible for any survey, inspection, or site investigation conducted by a Governmental Authority or . . . entity . . . . If the

> survey, inspection, or site investigation is related to operations prior to the Operations Transfer Date, New Operator shall reasonably cooperate and participate in such events, but Licensee shall remain responsible for the survey.
>
> New Operator shall not assume any claims, lawsuits, liabilities . . . of Licensee . . . relating to, occurring or arising out of, . . . the operation of the Facility that . . . occurred or arose prior to the Operations Transfer Date, even if it is not asserted until after the Operations Transfer Date . . . .

(Id.).

Respondent has acknowledged that she was Mr. Zeigler's power of attorney and had authorization to sign the Arbitration Agreement. (Tr. p. 20, lines 20-22). Nevertheless, when Respondent asserted claims against Appellants and Co-Appellants surrounding events alleged to have occurred while Mr. Zeigler was a resident of the facility, she filed survival and wrongful death lawsuits instead of submitting her claims to arbitration. (SA Compl.; WD Compl.). Appellants moved to compel arbitration on the same day and before they answered the Complaint. (Appellants' Mot.).

Respondent opposed the motion, claiming that the Arbitration Agreement was in a larger stack of documents with additional places for her to sign and that Appellants never explained the Agreement to her, which allegedly violated federal regulation. (Resp't Aff.; Resp't Mem. pp. 10-14). Appellants and their Co-Appellants explained to the circuit court that the regulation upon which Respondent relied pertains to Medicare and Medicaid eligibility and offers guidance to surveyors evaluating long-term care facilities that accept Medicare and Medicaid payments but does not override basic contract law. (Tr. p. 10, lines 20-25; p. 11, lines 1-25; p. 12, lines 1-9; p. 17, lines 9-24). Respondent further argued that the Arbitration Agreement was unenforceable because no arbitration forum and/or arbitrator was designated; that it was unenforceable as to the

wrongful death beneficiary, solely Respondent; and that it was inapplicable to all Defendants. (Resp't Mem.; Resp't Dep. 39:1-39:3).

The circuit court *denied* Appellants' motion in a form order without addressing the parties' specific arguments on the merits but also *granted* the parties thirty days to engage in jurisdictional discovery and ruled that the matter could be "reset" if appropriate thereafter. (Sept. 22, 2025, Orders). Appellants filed a Motion for Reconsideration, in which they requested that the circuit court reconsider its ruling denying their Motion to Compel Arbitration in part because it was inconsistent with the ruling granting jurisdictional discovery. (Appellants' Mot. Recons.). Appellants also requested additional time for the jurisdictional discovery. (Id.). Appellants and Co-Appellants took Respondent's deposition in the meantime as part of said jurisdictional discovery, in which Respondent testified that she did not read, review, or ask any questions about the Arbitration Agreement even though she was not prevented from doing the same nor did she recall what she was told about the documents she signed. (Resp't Dep. 9:7-9:18; 20:25 - 21:2; c.f. Resp't Aff. ¶ 6-7). In response to Appellants' Motion for Reconsideration, the circuit court granted an additional forty-five days for jurisdictional discovery and clarified that "reset" meant Appellants could refile their Motion to Compel Arbitration at the conclusion of jurisdictional discovery for a hearing on the merits but did not otherwise alter its previous ruling. (Oct. 24, 2025, Orders). Accordingly, the Motion to Compel Arbitration remains denied despite the circuit court never issuing a ruling on the merits.

STANDARD OF REVIEW

This Court has de novo review over arbitrability determinations. *Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 74, 856 S.E.2d 550, 553 (2021).

ARGUMENTS

There are two reasons why this Court should reverse.

First, the circuit court erred in denying Appellants' Motion to Compel Arbitration because the Arbitration Agreement was valid and enforceable and covered Respondent's claims. Both the Federal Arbitration Act ("FAA") and the South Carolina Uniform Arbitration Act ("SCUAA") require courts to order arbitration when a valid arbitration agreement that covers the claims asserted exists.[1] There is no serious dispute that Respondent was presented with the Arbitration Agreement and signed the same. Nevertheless, it appears that the circuit court may have improperly disregarded the plain language of the Arbitration Agreement. The law is clear that courts should interpret contracts according to the plain meaning of the language used therein and that a contracting party has no obligation to explain the contents of a contract to the other contracting party because all parties to a contract have a duty to read its contents before signing.

Second, even if some aspect of arbitrability was in issue, the circuit court erred in deciding to reset Appellants' Motion to Compel Arbitration after jurisdictional discovery because (1) there was a delegation clause in the Arbitration Agreement that clearly and unmistakably evidenced that an arbitrator rather than the circuit court was to resolve all matters, including questions regarding the applicability and/or enforceability of the Agreement, which the circuit court was required to

[1] While the Arbitration Agreement is enforceable under either the FAA or SCUUA, the FAA applies here because the parties' relationship involved interstate commerce. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 287, 733 S.E.2d 597, 600 (Ct. App. 2012) ("[T]he [FAA] applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce . . . ." (quoting *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001))); *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381-82, 759 S.E.2d 717, 732-33 (2014) (holding the terms of a residency agreement for a skilled nursing facility implicated interstate commerce because the facility was contractually required to provide meals and medical supplies, which are instrumentalities of interstate commerce). The parties agreed to as much. (Appellants' Mot. Ex. B p. 37).

honor and (2) the circuit court was alternatively required to continue its ruling on the Motion until after the completion of jurisdictional discovery then proceed to a trial on any unresolved issues of arbitrability. The Court should reverse and remand for arbitration of Respondent's claims. Alternatively, this Court should remand for an arbitrator to determine arbitrability or, if not, reverse and remand for the circuit court to decide arbitrability after limited discovery and proceed to a trial on arbitrability of the remaining issues, if any.

I. The circuit court erred in denying Appellants' Motion to Compel Arbitration.

a. The Arbitration Agreement was valid and enforceable and covered Respondent's claims.

Courts should compel arbitration pursuant to an arbitration agreement when "(1) there is a valid agreement, and (2) the claims fall within the scope of the agreement." *Wilson v. Willis*, 426 S.C. 326, 336, 827 S.E.2d 167, 173 (2019). Beginning with the latter, the plain language of an arbitration agreement dictates whether claims fall within the agreement's scope. *See, e.g.*, *Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839, 844 (Ct. App. 1999) ("The agreement's plain language covers [the] claims . . . . Consequently, we hold the arbitration agreement covers [the] claims."). The subject Arbitration Agreement specifically stated that it applies to "any and all Claims arising out of the relationship between the Parties, without regard for the nature of the Claim(s), the facts alleged to support or refute the Claim(s), or circumstances from which the alleged Claim(s) arose." (Appellants' Mot. Ex. B p. 37). The only excluded claims were "(1) guardianship proceedings resulting from the alleged incapacity of the Resident; (2) Claim(s) involving less than Five Thousand Dollars ($5,000.00); (3) Claim(s) brought after the expiration of the applicable statute of limitations; and (4) any Claim that the Parties mutually agree to resolve in a manner not entertaining binding arbitration." (Id. p. 39). None of these exclusions apply here, so the Arbitration Agreement clearly encompassed Respondent's claims.

As to validity, an arbitration agreement is valid if the parties thereto had authority to execute it and did so in accordance with general contract principles. When an arbitration agreement is executed by an agent pursuant to a power of attorney, the agent's authority to bind the principal to arbitration depends on whether the language of the power of attorney grants said authority, either in a provision specifically granting the authority or in a broad provision that encompasses the authority. *See Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 577, 828 S.E.2d 82, 87 (Ct. App. 2019) (explaining the plain language of a power of attorney determines the authority granted thereunder); *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 581 U.S. 246, 254-56 (2017) (establishing that an agent can execute an arbitration agreement pursuant to a power of attorney if it contains language granting broad general authority that encompasses the authority to execute arbitration agreements regardless of whether there is express language to that effect); *Arredondo*, 433 S.C. at 80, 856 S.E.2d at 556 (acknowledging the same).

The GDPOA here states, "My Attorney-in-Fact may . . . arbitrate . . . any and all legal, equitable, judicial, or administrative hearings, actions, suits, or proceedings involving me in any way." (Appellants' Mot. Ex. A p. 7). The GDPOA further states, "My Attorney-in-Fact may enter into, execute, modify, alter, or amend any contract or agreement . . . pertaining to my medical, personal, or general care that I may require at my . . . nursing facility" as well as, "The [GDPOA] is a general power of attorney and should be interpreted as granting my Attorney-in-Fact all general powers permitted under South Carolina law. The description of specific powers is not intended to, nor does it, limit or restrict any of the general powers granted." (Id. p. 14, 22). Therefore, the language in the GDPOA granted Respondent both express and broad authority to execute the Arbitration Agreement. Further and more importantly, Respondent has acknowledged and does not dispute that she possessed this authority. (Tr. p. 20, lines 20-22).

A person with legal authority to execute an arbitration agreement enters a contract to arbitrate the same way she would enter any other type of contract—by accepting an offer established with consideration. *Lampo v. Amedisys Holdings*, LLC, 445 S.C. 305, 311, 914 S.E.2d 139, 142 (2025) ("An arbitration agreement, of course, is a contract. The elements necessary for the formation of any contract are (1) an offer, (2) acceptance of the offer, and (3) the mutual exchange of benefits the law calls 'consideration.' A party seeking to compel arbitration must demonstrate the existence of a valid contract to arbitrate by establishing these three elements."). Signing an arbitration agreement constitutes acceptance thereof. *See id.* at 311, 914 S.E.2d at 143 ("The typical action an offeree takes to accept an offer is to sign a writing that sets forth the offer . . . ."). The mutual obligation to arbitrate constitutes consideration. *See Boyd v. Liberty Life Ins. Co.*, 399 S.C. 401, 407, 732 S.E.2d 180, 183 (Ct. App. 2012) ("Valuable consideration for a contract may consist of some forbearance given or detriment suffered." (quoting *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 304, 468 S.E.2d 292, 300 (1996))); *O'Niel v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997) ("A mutual promise to arbitrate constitutes sufficient consideration for [an] arbitration agreement.") (citing *Rickborn*, 321 S.C. 291, 468 S.E.2d 292)).

Here, Appellants communicated the offer of the Arbitration Agreement by presenting it to Respondent, and Respondent accepted the offer by signing the same. The mutual obligation to arbitrate therein established consideration. Therefore, Respondent and Appellants made a valid Arbitration Agreement.

b. Respondent's representations and arguments did not justify invalidating the Arbitration Agreement for any reason or as to any party or claim.

Because the circuit court did not provide a ruling on the merits, it is unclear what the Court considered in its ruling. Based on Plaintiff's arguments, the circuit court may have considered contract defenses such as fraud, duress, or unconscionability based on Respondent's affidavit and

regulatory argument. (Resp't Aff.; Resp't Mem. pp. 10-14). However, such considerations are inconsequential in this context.

A party who signs an agreement is presumed to have read the document and understood its contents and therefore cannot escape the obligations therein by claiming that she was unaware of them. *See Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986) ("[E]very contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it." (internal citations omitted)); *First Baptist Church of Timmonsville v. George A. Creed & Son, Inc.*, 276 S.C. 597, 599, 281 S.E.2d 121, 123 (1981) ("[I]n the absence of a showing of fraud, mistake, unfair dealing or the like, a party to a contract incorporating an arbitration provision cannot escape the obligation of such provision by simply declaring: 'But I did not read the whole agreement.'").

In *Towles*, the respondent opposing arbitration claimed that he never received notice of the subject arbitration provisions, so he could not have assented to arbitration. 338 S.C. at 37, 524 S.E.2d at 844. In reversing the circuit court's order denying the appellants' motion to compel arbitration, the South Carolina Court of Appeals stated that the respondent could not legitimately claim lack of notice because he could have learned of the arbitration provisions by simply reading the document containing said provisions. *Id.* at 39-40, 524 S.E.2d at 845. Accordingly, the making of a valid, binding agreement was not an issue. *Id.* at 37-40, 524 S.E.2d at 843-46; *see also Hackworth v. Bayview Manor, LLC,* No. 2019-001536, 2023 WL 2519244, at *3 (S.C. Ct. App. Mar. 15, 2023) (unpublished) (reversing an order denying arbitration and remanding for arbitration when there was no bona fide dispute of fact regarding whether the respondent manifested an intent to be bound by an arbitration provision of a nursing home admission agreement because her

signature thereon and the absence of a mark in the arbitration provision's opt-out box demonstrated assent, and therefore the making of an arbitration agreement was not in issue); *Parsons v. John Wieland Homes and Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 791 S.E.2d 128 (2016) ("Courts must place arbitration agreements on equal footing with other contracts, . . . and enforce them according to their terms."); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (explaining that arbitration cannot be invalidated by defenses that apply solely to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue); *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47 (2015) (affirming the *Concepcion* decision).

Contrary to Respondent's assertions, Section 483.70 of Title 42 of the Code of Federal Regulations does not change the fundamental principles of contract law and the principles consistently affirmed by the Supreme Court in *Kindred*, *Concepcion*, and *DIRECTV*. (Resp't Mem. pp. 10-14). This regulation establishes certain conditions of long-term care facilities' receipt of Medicare and/or Medicaid funding, including arbitration agreement-related conditions. 42 C.F.R. § 483.70 (_____). While there do not appear to be South Carolina or Fourth Circuit cases interpreting the relevant subsection, the United States District Court for the Western District of Arkansas examined it at length when several long-term care facilities moved to set it aside in *Northport Health Services of Arkansas, LLC v. United States Department of Health and Human Services*. 438 F. Supp. 956 (W.D. Ark. 2020). There, although the court upheld the regulation itself, it did so in part because the regulation *did not undermine the validity or enforceability of arbitration agreements when they came before a court* but rather only established conditions of the receipt of federal funding. *Id*. at 966-67 ("Here, . . . the [regulation] places requirements on the use of arbitration agreements that do not undermine the validity or enforceability of the agreement when it comes before a court. Instead, the Rule only establishes conditions of the facility's receipt

of federal subsidies. . . . [T]he nursing home's violation of the [regulation] would *not* prevent enforcement. Since the failure to comply with the [regulation's] requirements does not prevent the enforcement of arbitration agreements between an LTC facility and a resident, the Court finds no conflict with the FAA." (emphasis in original)). The court specifically found that the regulation's conditions would conflict with the FAA if they were a basis for holding an agreement to arbitrate invalid and unenforceable. *Id*. at 966.

In the present case, the circuit court needed to look no further than Respondent's signature on the Arbitration Agreement to determine that Respondent assented thereto. Whether the Arbitration Agreement was in a larger stack of documents with additional places for Plaintiff to sign and how Appellants presented the documents and the Agreement to Respondent is of no consequence. She cannot establish fraud or duress and escape the obligations of the Arbitration Agreement by claiming she did not understand what she was signing when she could have reached such an understanding by simply reading, reviewing, or asking questions about the Agreement. She did not even though no one prevented her. (Resp't Dep. 9:7-9:18; 20:25-21:2). Her reliance on the above-referenced regulation in an attempt to alter existing contract law regarding the enforceability of arbitration agreements fails as a matter of law. Nor can Respondent claim that the Arbitration Agreement is unconscionable. It was voluntary, applied equally to all parties, and provided Respondent with the opportunity to consult with legal counsel and the right to rescind. (Appellants' Mot. Ex. B pp. 37, 39-40). *See York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 85, 749 S.E.2d 139, 148 (Ct. App. 2013) (explaining that unconscionability is the absence of a meaningful choice due to one-sided contract provisions and oppressive terms that no one would reasonably make or accept).

Respondent further asserted that the Arbitration Agreement did not (1) apply to CSC Fountain Inn's affiliates and (2) if CSC Fountain Inn assigned the Agreement to Post Acute, CSC Fountain Inn's right to enforce the Agreement was terminated. (Resp't Mem. pp. 14-16, 29-31). As to the former, the plain language of the Arbitration Agreement shows that it applied to CSC Fountain Inn's affiliates. The Agreement expressly included "the Facility's employees, agents, subcontractors, and parent and affiliated companies . . . and their employees and agents." (Appellants' Mot. Ex. B p. 36). Respondent herself asserted that Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, and LARK of Fountain Inn, LLC are affiliated in her Complaints. (SA Compl. ¶¶ 2-4, 10; WD Compl. ¶¶ 2-4, 10).

As to the latter assertion, CSC Fountain Inn chose to transfer the operation of the facility to Post Acute on or around March 14, 2023. (Co-Appellants' Mem. Ex. C). The parties entered into the OTA to "ensure the continued operation of the Facility after the Operations Transfer Date in compliance with applicable law and in a manner which does not jeopardize the health and welfare of the residents." (Id. p. 1). The OTA included routine provisions for the transfer of the state license, Medicare provider agreement, employee agreements, and the transfer of resident information, i.e. admission agreements, billing information, insurance information and medical records from CSC Fountain Inn to Post Acute, giving Post Acute immediate access to all necessary information. (Id.). Respondent wrongly attempted to categorize these transitions as an irrevocable assignment more akin to selling a car when the sale is final. Respondent argued that the transfer of operations terminated CSC Fountain Inn's rights under the Arbitration Agreement—the Agreement CSC Fountain Inn was an original signatory to. (Resp't Mem. pp. 14-16) Such a claim is preposterous when looking at the transaction as a whole in the healthcare setting. Nursing homes are required to have resident records available at all times for patients, their responsible parties

and/or guardians, and for state and federal agencies. The OTA is replete with provisions detailing each party's obligations *to continue to* cooperate with each other and with outside entities to continue to operate the facility pursuant to law. For example, the OTA states,

> [Post Acute] shall reasonably cooperate, participate in and be responsible for any survey, inspection, or site investigation conducted by a Governmental Authority or . . . entity . . . . If the survey, inspection, or site investigation is related to operations prior to the Operations Transfer Date, [Post Acute] shall reasonably cooperate and participate in such events, but [CSC Fountain Inn] shall remain responsible for the survey.

(Co-Appellants' Mem. Ex. C p. 5). Accordingly, it would have been wholly improper and against state and federal law for CSC Fountain Inn to have refused to transfer resident information to Post Acute as part of the transaction. Additionally, the OTA included a provision stating,

> [Post Acute] shall not assume any claims, lawsuits, liabilities . . . of [CSC Fountain Inn] . . . relating to, occurring or arising out of, . . . the operation of the Facility that . . . occurred or arose prior to the Operations Transfer Date, even if it is not asserted until after the Operations Transfer Date.

(Id. pp. 16-17). It is contrary to common sense that CSC Fountain Inn could be responsible for defending itself after the transfer of operations against claims that arose during its operation of the Facility but could not avail itself of the terms of its Arbitration Agreement because it entered the OTA. When reviewing the OTA as a whole, it is abundantly clear that the terms are unique to the nursing home industry with the primary purpose being a seamless transition from one operator to the next.

Next, Respondent claimed that the Arbitration Agreement did not apply to her wrongful death claim. (Resp't Mem. pp. 16-29). Again, the plain language of the Arbitration Agreement shows otherwise where it applied to "all claims" and specifically included, "Resident's legally Designated Representative(s), Resident's Responsible Party, Resident's family, and anyone

situated in such a manner so as to assert a Claim against the Facility" and that it was "binding upon and inure[d] to the benefit of the Parties [t]hereto, their respective heirs, personal representatives, successors, purchasers and assigns." (Appellants' Mot. Ex. B pp. 36-37, 40). South Carolina law is clear that wrongful death beneficiaries can be bound to arbitration agreements. *See Dean*, 408 S.C. at 378 n.3, 759 S.E.2d at 731 n.3 ("We note that courts may not refuse to compel arbitration simply because a wrongful death claim is involved."). This notion should be particularly true when the signatory was the sole beneficiary as Respondent was here. (Resp't Dep. 39:1-39:3).

Finally, Respondent argued that there was no meeting of the minds as to the terms of the Agreement, and therefore the Arbitration Agreement was unenforceable because no arbitration forum and/or arbitrator was designated. The circuit court should have rejected this argument because the lack of a specified arbitration forum and/or arbitrator is not an omission of a *material* term. *See Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 230, 678 S.E.2d 435, 438 (2009) (explaining arbitration agreements should reflect a meeting of the minds regarding material terms); *York*, 406 S.C. at 83, 749 S.E.2d at 147 ("the lack of a specified arbitrator is not an omission of a material term."). To the extent this Court finds it persuasive, the circuit court rejected these arguments as well as several of Respondent's other arguments and compelled arbitration in a separate matter with the same Agreement involving the same counsel for Appellants and Respondent, and Appellants provided the order therefrom to the circuit court in the present case. (Woods Order; Tr. p. 19, lines 16-25; p. 20, lines 1-9). *See Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 554-56, 813 S.E.2d 292, 298 (Ct. App. 2018) (explaining that the circuit court did not commit reversible error in considering as persuasive an unpublished opinion involving the same defendant, represented by the same lawyer, making the same argument because it fell close to the exception in Rule 268(d)(2) of the South Carolina Appellate Court Rules that

allows citation to memorandum opinions and unpublished orders in proceedings in which they are directly involved).

Therefore, Respondent's defenses are insufficient to invalidate the Arbitration Agreement or render it inapplicable to any party or any claim, and Appellants respectfully ask this Court to reverse the circuit court's orders denying their Motion to Compel Arbitration and remand for arbitration of Respondent's claims. *See* 9 U.S.C.A. § 4 (_____) (providing that courts should proceed to arbitration if the making of the arbitration agreement and/or the failure to comply therewith is not an issue); *see also* S.C. Code Ann. § 15-48-20 (_____) (providing the same).

II. The circuit court erred in failing to delegate questions of arbitrability to an arbitrator pursuant to the delegation clause.

Parties may delegate issues of validity and enforceability to an arbitrator if there is clear and unmistakable evidence of such delegation. *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020). When such clear and unmistakable evidence of delegation exists, the circuit court is limited to determining whether the delegation is valid and enforceable and only if the party resisting arbitration makes a "direct and discrete challenge to the validity and enforceability of the delegation clause specifically, rather than the arbitration agreement as a whole." *Id.*

Doe involved an arbitration agreement that stated, "Any claim or dispute . . . including the interpretation and scope of this Arbitration Agreement, and the arbitrability of the claim or dispute . . . shall at your or our election, be resolved by neutral, binding arbitration." *Id.* at 605, 846 S.E.2d at 876. This Court determined that this clause clearly and unmistakably delegated disputes over the scope of the arbitration agreement to an arbitrator and therefore remanded the matter to the circuit court for it to grant the appellant's motion to compel arbitration so an arbitrator could rule upon whether the respondent's claims were subject to the agreement. *Id.* at 609, 616, 846 S.E.2d

at 877, 881. This Court further acknowledged that disputes over enforceability can be similarly delegated. *Id.* (explaining that the parties only delegated the decision of whether the arbitration agreement covered the claims and not the decision of whether the arbitration agreement was enforceable but that such delegations can occur (citing *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68 (2010) (involving a delegation clause that delegated disputes over enforceability))); *see also Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 869 S.E.2d 859 (Ct. App. 2022) (instructing the circuit court to send certain claims to the arbitrator to decide whether they were arbitrable pursuant to a delegation clause).

Here, the Arbitration Agreement clearly stated that the parties "expressly intend that all matters be resolved by arbitration, including, but not limited to, resolving any questions regarding the applicability and/or enforceability of this Agreement." (Appellants' Mot. Ex. B p. 37). This language constituted clear and unmistakable evidence that the parties delegated disputes relating to the Arbitration Agreement. Further Plaintiff did not challenge the delegation specifically as required by *Doe*. Accordingly, if this Court declines to remand for arbitration of Plaintiff's claims, Appellants respectfully request that it reverse and remand for enforcement of the delegation clause directing an arbitrator to determine whether the Arbitration Agreement is applicable and/or enforceable.

III. The circuit court erred in denying Appellants' Motion to Compel Arbitration but allowing jurisdictional discovery.

Orders denying applications to compel arbitration are immediately appealable. 9 U.S.C.A. § 16 (_____) (stating the FAA's provisions for appeals); *see also* S.C. Code Ann. § 15-48-200 (_____) (stating the SCUAA's provisions for appeals).

Case law has expanded on these statutes and reached the conclusion that denials of motions to compel arbitration are immediately appealable regardless of whether the circuit court will revisit its decision after jurisdictional discovery. For example, in *Towles*, the circuit court denied the appellants' motion to compel arbitration "with leave to refile it after completing discovery in this action," and this Court concluded the circuit court's order was appealable. 338 S.C. at 34-35, 524 S.E.2d at 842-43. Likewise, in *Snowden v. CheckPoint Check Cashing*, the United States Court of Appeals for the Fourth Circuit held that an appeal of an order denying a motion to compel arbitration, which stated that the court would revisit the decision later was not premature because the express language of the FAA imparted appellate jurisdiction. 290 F.3d 631, 635-36 (4th Cir. 2002).

Here, denying the Motion but allowing jurisdictional discovery for purposes of said Motion were at odds with each other and placed Appellants in a confounding situation in which they feared waiving their right to an appeal and were, therefore, forced to file the present appeal. The path forward would have been clearer had the circuit court simply continued its ruling on the Motion until after the completion of jurisdictional discovery. Appellants respectfully request that this Court reverse and remand for the same if the Court declines to grant either form of relief requested above.

IV. The circuit court erred in failing to proceed to a trial on the issues of applicability and/or enforceability of the Arbitration Agreement pursuant to the Federal Arbitration Act.

When the making of an arbitration agreement and/or the failure to comply therewith is in issue, the FAA requires courts to proceed to a trial on said issue(s). 9 U.S.C.A. § 4 (_____); *see also* S.C. Code Ann. § 15-48-20 (_____) (directing courts to stay cases to try bona fide dispute(s) relating to whether an agreement to arbitrate exists).

In *Berkeley County School District v. Hub International Limited*, the appellants moved to compel arbitration based on several agreements containing arbitration clauses, and the United States District Court for the District of South Carolina denied appellants' motion despite factual disputes concerning the respondent's knowledge of the agreements and whether its representative possessed authority to approve them. 944 F.3d 225, 228-33 (4th Cir. 2019). The United States Court of Appeals for the Fourth Circuit vacated the denial order and remanded for further proceedings because the district court failed to follow the mandate in section 4 of the FAA to proceed summarily to a trial on issues relating to the making of arbitration agreements. *Id.* at 234-42; *see also Jin v. Parsons Corp.*, 966 F.3d 821, 826-27 (D.C. Cir. 2020) (citing *Berkeley Cnty. Sch. Dist.*, 944 F.3d at 241) (holding that once the district court concluded that a genuine dispute of material fact existed as to whether the respondent assented to the subject arbitration agreement, the district court should have proceeded to try the issue of arbitrability rather than deny the appellant's motion to compel arbitration). The same outcome would result under the SCUAA. *See Bennett v. ACS Primary Care Physicians-Southeast P.C.*, 444 S.C. 458, 479, 908 S.E.2d 110, 121 (Ct. App. 2024) (calling section 4 of the FAA comparable to section 15-48-20 of the SCUAA); *see also Hackworth*, 2023 WL 2519244, at *3 (unpublished) (applying both provisions in the same manner).

Here, we can only presume that the circuit court thought there was a genuine issue as to the Arbitration Agreement. As explained above, there was not; however, the court impermissibly circumvented the FAA when it handled this "issue" by denying Appellants' Motion to Compel Arbitration and deciding it could reset the matter for another motion later. Instead, the circuit court should have allowed for the completion of jurisdictional discovery then proceeded to try any unresolved issues. Accordingly, if this Court declines to grant any of the previously requested

forms of relief, Appellants respectfully request that the Court reverse and remand for a trial on arbitrability.

CONCLUSION

For the foregoing reasons, this Court should (1) reverse and remand for arbitration of Plaintiff's claims. Alternatively, this Court should (2) reverse and remand for an arbitrator to determine arbitrability in accordance with the delegation clause or, if not, (3) reverse and remand for the circuit court to decide Appellants' Motion after limited discovery and proceed to a trial on arbitrability of the remaining claims at issue, if any.

February 6, 2026

Respectfully submitted,

HALL BOOTH SMITH, P.C.

/s/ Ashley S. Heslop

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