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SC Court of Appeals

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

Appellate Case No. 2025-002125

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.

RESPONDENT'S INITIAL BRIEF

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TABLE OF AUTHORITIES

CASES

Aiken vs. World Fin. Corp. of S.C.
373 S.C. 1444, 644 S.E.2d 705 (2007)

Hirsch vs. Amper Fin. Servs., LLC
215 N.J. 174, 71 A.3d 849 (2013)

Lewis vs. Lewis
392 S.C. 381, 709 S.E.2d 650, (2011).

Olshan Foundation Repair Company of Jackson, LLC d/b/a Olshan Foundation Solutions and Wayne Brown vs. Gloria Moore, Phillip R. Moore and Katelyn A. Moore
2017-CA-00138-SCT

Rein v. Benchmark Construction Company
865 So.2d 1134 (Miss. 2004)

STATEMENT OF ISSUE ON APPEAL

1. Did the Circuit Court err in denying Appellant's Motion to Stay and Compel Arbitration when the Appellant failed to show Minor J.V. received a direct benefit merely because of his position as a non-signatory child of the tenant and that Minor J.V.'s benefit was at most indirect or incidental under the "direct benefit analysis test"?

STATEMENT OF THE CASE

Appellant's statement of the case is primarily accurate except for Respondent would disagree as to the validity and enforceability of the arbitration clause of the Lease.

STANDARD OF REVIEW

"In an action at equity, tried by a judge alone, this Court's standard of review is de novo". *Lewis vs. Lewis*, 392 S.C. 381, 385-86, 709 S.E.2d 650, 651-52 (2011).

"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". *Aiken vs. World Fin. Corp. of S.C.*, 373 S.C. 1444, 148, 644 S.E.2d 705, 505 (2007).

ARGUMENT

- I. **This Court should affirm the circuit court's decision to deny the Appellant's Motion to Stay and Compel Arbitration because Minor J.V. is a non-signatory and did not directly benefit from the Lease; therefore, he is not bound by the arbitration clause.**

Under the direct benefits theory of estoppel, a non-signatory 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 contract.

Here, in this case, Minor J.V. was 12 years old at the time the Lease was executed by his mother, the Respondent. We would argue he could not have knowingly exploited the benefits of the lease simply because he was not of age and maturity to even comprehend the benefit he derived from the lease. Therefore, as to the first prong of the “direct benefits” analysis, Minor J.V. is unable to exploit a benefit he is not knowingly aware of.

In addition to knowing exploitation, a non-signatory must also obtain a direct benefit from the agreement/Lease. It is undisputed that Minor J.V. lived in the apartment complex referenced in the Lease. However, Minor J.V. is only there because Respondent has custody of him. It is undisputed that there is no provision in the Lease Agreement that grants Minor J.V. a specific and direct benefit. The minor’s incidental benefit only flows from his custodial relationship with his mother, the Respondent, and not because of specific provisions and language in the Lease that grants him a direct benefit.

While the particular facts are not entirely analogous with the facts in this case, it is important to discuss the *Olshan* case. In *Olshan Foundation Repair Company of Jackson, LLC vs. Gloria Moore, Phillip R. Moore, and Katelyn A. Moore*, the facts involve a repair of the foundation of Gloria and Phillip Moore’s home. Katelyn Moore was the daughter of Gloria and Phillip Moore. Although there were several issues raised on appeal, the issue and ruling regarding her beneficiary status is pertinent to the current discussion and analysis.

The Mississippi Supreme Court held the trial court was correct in finding that Katelyn Moore was not a direct beneficiary. See *Olshan Foundation Repair Company of Jackson, LLC vs. Gloria Moore, Phillip R. Moore, and Katelyn A. Moore at ¶ 11 (Miss. 2018)*. “The fact that Katelyn resides in the home makes her an incidental, not direct beneficiary of the construction work performed by Olshan”. See *Rein v. Benchmark Construction Company*, 865 So.2d 1134

(Miss. 2004); *Simmons Housing Inc. v. Shelton ex rel. Shelton*, 36 So.2d 1283 (Miss. 2010)

CONCLUSION

Accordingly, this Court should uphold the Circuit Court's decision to deny Appellant's Motion to Compel Arbitration. It is well noted and fundamental in contract theory that non-signatories are not bound to a contract. Therefore, the foundational factors in contract law should be considered in addition to the aforementioned discussion of the direct benefits analysis.

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