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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

Appellate Case No. 2025-002151

Javan Ennis as Personal Representative of the Estate of Michael Ennis, …….. Respondent

v.

Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center and Kellie Hiers. …….. Appellants.

INITIAL BRIEF OF RESPONDENT

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1. Whether a nursing home can bind a nursing home resident to an arbitration contract to which he did not assent.

2. Whether a nursing home resident received the "direct benefit" required to support equitable estoppel from an arbitration contract to which he never assented and which purported to take his right to a jury trial.

STATEMENT OF THE CASE

Javan Ennis, appointed as personal representative of the Estate of her ex-husband Michael Ennis, filed a Summons and Complaint in the Dorchester County Court of Common Pleas on April 17, 2024. (Compl. ¶ 1). The Complaint alleged wrongful death and survival claims against Appellant Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center ("the Facility") along with Kellie Hiers, the Facility's administrator. (Compl. ¶¶ 2-3).

Appellants moved to stay Ms. Ennis's suit and to compel arbitration on June 10, 2025. (Mot. to Compel Arb.). A hearing on the motions was held before the Honorable Maite Murphy on July 21, 2025. On September 23, 2025, the circuit court entered an order denying the motion to stay/compel arbitration. (Order, dated Sept. 23, 2025). Appellants served a notice of appeal on October 22, 2025.

STATEMENT OF THE FACTS

Michael Ennis was admitted to the Facility on February 17, 2020. (J. Ennis Aff. ¶ 4). On January 5, 2018, his ex-wife Javan Ennis was presented with two adhesion contracts at the Facility. (J. Ennis Aff. ¶ 5). The first contract was an "Admission Agreement" governing the type of care Michael would receive at the Facility and Michael's financial obligation to pay for those services. On the Admission Agreement's final page, labeled as "Page 12 of 12," there was an "Entire Agreement" provision indicating these 12 pages constituted "the entire agreement and understanding between the parties" concerning Michael's admission to the Facility. Ms. Ennis

signed the Admission Agreement on the "Representative" signature line. The Facility's representative did not ask Ms. Ennis for proof of authority to act on Michael's behalf, and Ms. Ennis had never been named Michael's power of attorney for non-healthcare matters or held any other legal authority to act on Michael's behalf. (J. Ennis Aff. ¶¶ 8-9).

On the same day, Ms. Ennis signed a contract called "Arbitration Agreement." This contract was not part of the 12 pages comprising the Admission Agreement but was its own separate contract (labeled "Page 1 of 1") with its own signature blocks. The Arbitration Agreement, purportedly a contract between the Facility and either Michael or Ms. Ennis, provided for alternative dispute resolution for any claim a party may bring against another arising out of Michael's admission in the Facility. Ms. Ennis signed the Arbitration Agreement on the line labeled "Resident/Representative Signature." Appellants admit agreeing to the Arbitration Agreement was not a condition or prerequisite to admission at the Facility. (App. Br at 9-10).

The Complaint alleges Michael received substandard care at the Facility which led him to suffer a fall on July 14, 2022, and to suffer a left femur fracture. (Compl. ¶ 29). The Complaint alleges the fall caused Michael substantial personal injury and contributed to his death. (Compl. ¶¶ 67-68). Relying on the Arbitration Agreement Michael did not sign, Appellants' motion to compel arbitration argued his estate must arbitrate rather than litigate its claims. (Facility Mem. in Supp. of Mot. to Compel. Arb.) The circuit court denied the motion, finding Ms. Ennis lacked authority to enter the Arbitration Agreement on Michael's behalf. (Order). Specifically, the circuit court found Michael's "Health Care Power of Attorney" did not authorize Ms. Ennis to waive Michael's right to a jury trial. Id. at 3-6. The circuit court went on to reject Appellants' argument that the Admission Agreement and Arbitration Agreement "merged" into a single contract. Id. at 6-7. This appeal followed.

STANDARD OF REVIEW

Appellate courts apply a *de novo* review to a circuit court's finding on whether a nonsignatory is bound to an arbitration contract. Wilson v. Willis, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019) (citing Aiken v. World Fin. Corp. of S.C., 373 S.C. 144, 148, 644 S.E.2d 705, 707 (2007) and Pearson v. Hilton Head Hosp., 400 S.C. 281, 286, 733 S.E.2d 597, 599 (Ct. App. 2012)). However, under a *de novo* review, the circuit court's factual findings will not be reversed so long as "any evidence reasonably supports those findings." Wilson, 426 S.C. at 335, 827 S.E.2d at 172. "There is . . . no public policy—federal or state—'favoring' arbitration." Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021); see also Lampo v. Amedisys Holding, Inc., 445 S.C. 305, 317, 914 S.E.2d 139, 146 (2025) ("remind[ing] our litigants and lower courts that we dispensed with this incorrect notion" of a pro-arbitration policy in Palmetto Construction Group) In fact, there is a presumption against arbitration when enforcement is sought against a non-signatory. Wilson, 426 S.C. at 335, 827 S.E.2d at 172.

ARGUMENT

Michael Ennis did not agree to arbitrate his legal claims against Appellants. The Facility never even asked him to. The Facility chose to present the Arbitration Agreement to Ms. Ennis, Michael's ex-wife, and she had no authority to act on his behalf. The circuit court correctly concluded the Arbitration Agreement is invalid because it lacks the core requirement of mutual assent to form a binding agreement. (Order at 3-9). The Facility's insistence that Ms. Ennis's signature means Michael's claims must be arbitrated is a serious distortion of contract law.

To challenge the circuit court's finding of no valid contract, Appellants rely on a series of unsupported assertions: (1) Ms. Ennis had some form of unspecified authority to sign a separate

Admission Agreement for Michael; (2) the Arbitration Agreement and Admission Agreement are really a single contract; and (3) Michael's estate is somehow estopped from opposing arbitration based on Ms. Ennis's unauthorized signature. Appellants' arguments would be flawed even if the issues were novel. But, South Carolina's appellate courts have been here before and repeatedly rejected the merger and estoppel theories Appellants need to prevail. Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014); Weaver v. Brookdale Senior Living, Inc., 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020); Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016). Crucially, this Court recently rejected those same theories in an appeal by the Facility's sister nursing home. Solesbee v. Fundamental Clinical & Operational Servs., LLC, 426 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).[1] Solesbee, which builds on a long-standing line of precedent, is controlling here because it ***addresses the exact same arguments regarding identical nursing home admission and arbitration contracts***. Following Solesbee, this Court has rejected the same arguments involving these same contracts time and time again. See e.g. Calloway v. Oakbrook Healthcare, LLC, Unpublished Op. No. 2026-UP-044 (S.C. Ct. App. Feb. 4, 2026)[2];

[1] Solesbee addressed an appeal related to a "Magnolia Manor" nursing home brought by several legal entities bearing the legal title of "Fundamental." Fundamental is a chain of nursing facilities with nearly twenty South Carolina locations including five homes branded with the "Magnolia Manor" moniker and many others bearing a variety of other names. "Healthcare Facility Locator," Fundamental Long Term Care, *available at* https://fundltc.com/Healthcare%20Facility%20Locator/Facility_Locator.aspx (hereafter "Facility Locator"). According to the U.S. Centers for Medicare and Medicaid Services, the Facility at issue here ("Hallmark Healthcare Center") is also part of the Fundamental chain. Nursing Home Compare for "Hallmark Healthcare Center," *available at* https://www.medicare.gov/care-compare/details/nursing-home/425326?id=9ed672c4-4d9e-41eb-bbfd-dacbbe39a519&state=SC

[2] Calloway involved "Oakbrook Health and Rehabilitation Center," another home the Facility Locator identifies as part of the Fundamental chain. That home uses the exact same form Admission Agreement and Arbitration Agreement that were interpreted in Solesbee, Walker, and that are at issue here.

Walker v. Hallmark Longterm Care, LLC, Unpublished Op. No. 2023-UP-400 (S.C. Ct. App. Dec. 13, 2023).

For the reasons discussed below, the Court should reject Appellants' attempts to distinguish this settled body of precedent and the multiple instances where they implicitly or explicitly ask the Court to overrule these cases. In the end, Appellants' pursuit of arbitration should fail for the same reason as the nursing homes in Coleman, Thompson, Hodge, Weaver, and Solesbee. Neither Michael nor anyone with legal authority to act on his behalf agreed to arbitration, and Respondent has taken no action that would prevent her from insisting on a judicial forum for their claims.

1. The Independently-Invalid Arbitration Agreement does not Merge with the Admission Agreement.

The Facility argues Michael's estate must arbitrate its claims against Appellants, but Michael never agreed to do so. Michael never signed or otherwise assented to the Arbitration Agreement on which the Facility relies to support its motion to compel arbitration of the estate's civil action. Ms. Ennis's signature on the Arbitration Agreement is ineffective because she did not have authority to bind Michael to a dispute resolution contract. Moreover, Michael's presence at the Facility does not estop the estate from contesting arbitration under South Carolina or federal equitable estoppel principles.

This appeal centers on core components of contract formation. Since the Facility points only to the Arbitration Agreement as a basis for dismissing Respondent's claims, it cannot prevail without first establishing the Arbitration Agreement is a properly formed, binding contract.[3]

[3] Appellants are wrong to claim the circuit court erred in finding they bore the burden to support their motion by proving a valid contract. (Appellants' Br. at 4-5). Arbitration is a contract matter which means Appellants' motion to compel arbitration was a motion to enforce a contract. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 553 S.E.2d 110 (2001). The party bringing a contract-based claim has the burden of proving an enforceable contract was formed. McCord v. Laurens Cnty. Health Care Sys., 429 S.C. 286, 292, 838 S.E.2d 220, 223 (Ct. App. 2020); see also

However, while the Facility offered the Arbitration Agreement as an alternative means for settling disputes, Michael never accepted that offer. Moreover, as established in South Carolina precedent, Ms. Ennis lacked authority to enter the Arbitration Agreement.

a. The Facility Cannot Show the Core Requirements to Form a Contract.

A contract is formed only when one party makes an offer, the other manifests acceptance, and the contract's promises are supported by valuable consideration. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). Acceptance requires an "objective manifestation of . . . assent at the time the contract was made." Laser Supply & Services, Inc. v. Orchard Park Assoc., 382 S.C. 326, 334, 676 S.E.2d 139, 143-44 (Ct. App. 2009). The Arbitration Agreement was not signed by Michael or even offered for his signature. Since Michael never personally assented to the Arbitration Agreement, the Facility argues the signature of his ex-wife (Ms. Ennis) assented on her behalf. However, the Facility presents nothing to show Ms. Ennis had authority to contract for Michael. Instead, the Facility argues that, even though no with authority signed the Arbitration Agreement, Michael's estate is estopped from opposing arbitration. The circuit court correctly refused this argument because it was rejected in Solesbee and in a number of other South Carolina appellate court opinions.

South Carolina's Adult Health Care Consent Act ("the Act") empowers designated family members of some vulnerable adults to sign a contract admitting the vulnerable adult to a skilled nursing facility and agreeing to pay the fees imposed by that facility for its services. S.C. Code Ann. § 44-66-60(A); Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 352, 755 S.E.2d 450, 453 (2014). But, since the Act is limited to "health care" decisions, it provides no authority for

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BVW Holding AG v. Hoowaki, Unpublished Op. No. 2024-UP-019 (S.C. Ct. App. Jan. 10, 2024) ("the circuit court here correctly held the party seeking arbitration had the burden of proving the existence of a valid agreement to arbitrate").

separate contracts like the Arbitration Agreement. Id. at 354, 755 S.E.2d at 454; Thompson v. Pruitt Corp., 416 S.C. 43, 51, 784 S.E.2d 679, 684 (Ct. App. 2016) (citing Coleman and agreeing an "Arbitration Agreement does not deal with healthcare decisions"). Additionally, a family member signing a nursing home admission contract pursuant to authority derived from the Act does not estop a later argument that the same family member lacked authority to sign a separate arbitration contract. Coleman, 407 S.C. at 354-56, 755 S.E.2d at 455; Thompson, 416 S.C. at 60, 784 S.E.2d at 688. The Act was never meant to affect anything other than "health care" decisions, and the Arbitration Agreement was not a health care decision because Michael could get all the health care services covered in the Admission Agreement without agreeing to arbitrate. (App. Br. at 9) ("the Arbitration Agreement is not necessary to the Admission Agreement").

Coleman did acknowledge the possibility that equitable estoppel could be invoked if the disputed arbitration language was actually or effectively part of the same admission contract. 407 S.C. at 355, 755 S.E.2d at 455. This narrow path to a successful estoppel argument requires several steps. Preliminarily, the Facility must establish the Act empowered Ms. Ennis to enter the Admission Agreement on Michael's behalf. See Hodge, 422 S.C. at 574, 813 S.E.2d at 308 (finding that there can be no estoppel argument where signatory family member lacked authority under Act to enter admission contract). Then, the Facility must meet multiple requirements to apply the contract law interpretation principle by which courts interpret multiple writings as a single contract. Coleman, 407 S.C. at 355, 755 S.E.2d at 455. This "merger" principle cannot apply unless the writings in question were executed "at the same time, by the same parties, for the same purpose, and in the course of the same transaction." Id. (quoting Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)). Even then, merger does not apply if there is "*anything* indicating a contrary intention." Id. (emphasis added). Thus,

simultaneously executed writings relating to the same general subject matter will not be viewed as a single or merged agreement if either their language or the circumstances even hint that the parties actually intended the writings to be distinct, separate contracts. Several nursing homes have previously attempted but failed to meet these robust requirements, and South Carolina's appellate courts have never applied merger to nursing home admission and arbitration contracts. See generally Coleman, Thompson, and Hodge.

b. The Admission Agreement and Arbitration Agreements Serve Different Purposes.

First, the Facility cannot show the Admission Agreement and Arbitration Agreement were executed for the same purpose. The Admission Agreement was formed because its "parties wish to admit [Michael] to" the Facility. (Admission Agreement at 1). That purpose is borne out in the Admission Agreement's twelve pages. The Facility agreed to "[f]urnish room, routine meals, nursing care, personal care, or custodial care" (Admission Agreement at 2, § (A)(3)) to Michael who, in turn, agreed to "[p]ay all fees and charges" for those skilled nursing services. Id. at 3, § (B)(4). The Admission Agreement's provisions referred to Medicaid eligibility, bed hold policies, late fees for unpaid service charges, etc. The Arbitration Agreement covers a completely different issue. It is solely devoted to directing an alternative dispute resolution method and purporting to eliminate its parties' right to seek relief through the courts. (Arbitration Agreement). These two contracts cannot have the same purpose because, as Appellants' counsel admits, the Arbitration Agreement was not a pre-condition for admission. (App. Br. at 9).

c. The Terms and Context Show the Parties Intended the Admission Agreement and Arbitration Agreement to be Separate Contracts.

Even if the Court were to find the prerequisites to merger were present, the Facility's argument fails because the language and circumstances of the Admission Agreement and Arbitration Agreement show the parties intended they be construed as separate contracts. Coleman,

Thompson, and Hodge are key precedent here because they illustrate the type of contract language or structure showing parties do not intend multiple agreements to be interpreted as one. For example, an arbitration contract does not merge with an admission contract in which a nursing home and its resident chose to insert an "entire agreement" or integration provision (aka "merger clause") limiting its parameters and excluding other writings. Coleman, 407 S.C. at 355, 755 S.E.2d at 455. Coleman held one such provision proved "on its face" that merger does not apply. Id. Also, admission and arbitration contracts cannot merge if they contain inconsistent terms, especially provisions related to how each contract may be terminated. Id.; Thompson, 416 S.C. at 53, 784 S.E.2d at 685. Moreover, courts look at the way the contracts are structured, finding it is unlikely parties intended two contracts to be treated as one if they chose separate titles, required separate signatures, and numbered each contract's pages differently. Thompson, 416 S.C. at 53 n. 1, 784 S.E.2d at 685 n. 1; Hodge, 422 S.C. at 562, 813 S.E.2d at 302. Finally, Hodge held a nursing home cannot argue for merger when it chose to separate arbitration and admission into two agreements while taking the position that agreeing to the former was not required to obtain the benefits of the latter. 422 S.C. at 562-63, 813 S.E.2d at 302.

The Facility preemptively dismisses all of these factors, arguing none of them suggest the parties intended the Admission Agreement and Arbitration Agreement not merge. Appellants' Br. at 8-12. However, by rejecting or discounting these factors, the Facility is arguing against well-established, recent precedent (Coleman, Thompson, and Hodge) without offering the Court any reason why it should so dramatically and quickly reverse course. All four of these examples apply to the Admission Agreement and Arbitration Agreement in this case and provide extensive evidence the contracts do not merge. In fact, Solesbee found each of the indicators of separateness

from Coleman and its progeny are present ***in the same form Admission Agreement and Arbitration Agreement at issue here***.

i. The Admission Agreement's "Entire Agreement" Provision

The Admission Agreement concludes with an "Entire Agreement" provision identifying the limited scope of that contract. (Admission Agreement at 12, § XVIII). Specifically, this provision states "this Agreement represents the entire . . . understanding between the parties." "Agreement" is capitalized because it is a defined term, which the Admission Agreement's opening line limits to "THIS ADMISSION AGREEMENT." (Admission Agreement at 1) (emphasis in original). Thus, the Admission Agreement's "Entire Agreement" provision is similar to the admission contracts in Coleman, Thompson, and Hodge. In fact, the Admission Agreement's "Entire Agreement" provision is just as probative against merger as those in earlier cases. It specifically limits the contract's interpretation to the "Agreement" and then defines that term narrowly in a way that does not include the Arbitration Agreement or any other writing. In this sense, the "Entire Agreement" provision is consistent with the fundamental purpose an integration provision serves in a contract. See Palmetto State Sav. Bank of S.C. v. Barr, 293 S.C. 252, 253-54, 359 S.E.2d 531, 532 (Ct. App. 1987) (finding purpose of integration provision is to create "strong implication the whole intentions of the parties has been expressed" in the writing containing the clause); Wilson v. Landstrom, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984) (citing Armour Fertilizer Works v. Hyman, 120 S.C. 375, 113 S.E. 330 (1922) (the terms of a completely integrated contract "cannot be varied or contradicted by parol evidence of prior or contemporaneous agreements not included in the writing")).

Plus, there is contract language here that tracks Coleman and progeny almost word for word. In Coleman, the court focused on the fact that the admission contract's "Entire Agreement"

provision referenced "[t]his Agreement . . . and the Arbitration Agreement." Referencing the two writings distinctly was "the admission agreement's recognition of the arbitration agreement as a separate document." Thompson, 416 S.C. at 52, 784 S.E.2d at 684 (citing Coleman, 407 S.C. at 355, 755 S.E.2d at 455). Hodge applied the same principle using language from an arbitration contract that referenced an admission contract in distinct terms. 422 S.C. at 562, 813 S.E.2d at 302. If an arbitration contract explains its scope extends to disputes arising from "this Agreement or the . . . Admission Agreement," then the parties "recognized a separateness" between the two contracts. Id. The Arbitration Agreement in this case does exactly what Coleman, Thompson, and Hodge identify as proof that defeats the Facility's merger argument. In describing its term, the Arbitration Agreement states that its effect will continue even after the termination of "this Agreement ***or the Admission Agreement***." (Arbitration Agreement) (emphasis added).

Finally, the Facility argues the "Entire Agreement" provision supports merger because it incorporates "other Admissions Materials." Appellants' Br. at 8 (quoting Admission Agreement at 12 § XVIII). To the extent the Facility implies the Arbitration Agreement was incorporated by reference into the Admission Agreement, the Facility has offered nothing in either contract to support this conclusion. "Admissions Materials" is not a defined term and there is nothing to suggest the Arbitration Agreement was intended to be included within it. Plus, since the Facility admits agreeing to arbitration was not required for admission, it would be counterintuitive to conclude the Arbitration Agreement was an "admissions material." Thompson rejected a similar argument when a nursing home argued its admission contract's "entire agreement" provision incorporated a separate arbitration contract by referring broadly to "exhibits." Since "exhibit" was undefined and not referenced elsewhere in either contract, the term was ambiguous and was

interpreted against the nursing home who drafted it. 416 S.C. at 53-54, 784 S.E.2d at 685 (citing Coleman, 407 S.C. at 355-56, 755 S.E.2d at 455).

ii. Inconsistent Termination Provisions

Two contracts executed at the same time do not merge if they contain inconsistent terms. The parties likely did not intend for the two be read as one if they chose to, for example, apply different substantive law to the two agreements. Hodge, 422 S.C. at 562, 813 S.E.2d at 302. Coleman, Thompson, and Hodge made special note of inconsistent provisions in admission and arbitration contracts regarding when each contract may be cancelled at the resident's urging. Coleman, 407 S.C. at 355, 755 S.E.2d at 455; Thompson, 416 S.C. at 53, 784 S.E.2d at 685; Hodge, 422 S.C. at 551, 813 S.E.2d at 296. In each instance, the arbitration contract allowed the resident to disclaim or revoke its provisions within thirty days but the admission contract did not include a similar right. Id.

The contracts' termination provisions are just as inconsistent here as in those cases. The Arbitration Agreement states that its effect on disputes between the parties would survive even if both the Admission Agreement and Arbitration Agreement are cancelled. (Arbitration Agreement). As structured by the Facility, there does not seem to be any means by which a resident could unilaterally cancel the Arbitration Agreement. The Admission Agreement is very different in that it allows a resident to unilaterally terminate that contract "at any time." (Admission Agreement at 6, § IV, ¶ 1). Thus, the way in which the contracts end is more evidence of separateness because the Arbitration Agreement and Admission Agreement have inconsistent termination provisions that rebut any argument the parties intended these two separate contracts merge into one. Solesbee, 438 S.C. at 649, 885 S.E.2d at 149 (finding the drafter of this Admission

Agreement and Arbitration Agreement "recognized the two documents were separate" as evidenced by the contracts' varying termination provisions).

iii. Contract Formatting and Structure

Thompson and Hodge prove it is not just specific contract language that shows a nursing home and its resident did not intend for admission and arbitration contracts to merge. Intent can be derived from the way a contract is formatted or structured. Rather than adding an arbitration provision to the admission contract or attaching that language as an exhibit, the nursing home in Thompson chose to place it in an entirely separate document with its own, distinct "Arbitration Agreement" label. 416 S.C. at 53 n. 1, 784 S.E.2d at 685 n. 1. That choice was in itself further proof of "the parties' intent for [the arbitration contract] to stand by itself as an independent contract." Id. The Facility did the same here, and the Arbitration Agreement announces itself as a distinctive contract from its very title. Hodge also noted the importance of formatting choices a nursing home makes when constructing its admission and arbitration contracts. 422 S.C. at 562, 813 S.E.2d at 302. An arbitration contract looks more and more like its own independent document if entering it requires a separate signature than the admission contract and the documents have separate pagination. Id.; Solesbee, 438 S.C. at 649, 885 S.E.2d at 149 (applying same principle to contracts at issue here). Here, the Arbitration Agreement required separate signatures. Plus, the Admission Agreement ran from "Page 1 of 12" to "Page 12 of 12," while the Arbitration Agreement was all on its own as "Page 1 of 1."

iv. Admission is not Dependent on Arbitration Agreement

The Facility's merger argument is also rebutted by its counsel's admissions. The purported interaction between two separate contracts can be judged not only by their language but also by how their parties treat each contract. An arbitration contract is far less likely to merge with an

admission contract if the nursing home admits arbitration is not required for admission. Thus, in Hodge, this Court cited as further evidence against merger an arbitration contract provision stating that arbitration was not a precondition to a resident's acceptance into the nursing home. 422 S.C. at 562-63, 813 S.E.2d at 302; Solesbee, 438 S.C. at 649, 885 S.E.2d at 149 (applying same principle to contracts at issue here). Similarly, the Facility does not treat the Admission Agreement and Arbitration Agreement as if they are interdependent or even as related to the same purpose. The Facility admits executing the Arbitration Agreement was not mandatory and not a precondition to admission. (App. Br. at 9).

In sum, the Arbitration Agreement and Admission Agreement have the same four indicators South Carolina courts have cited in the past to find the parties did not intend for simultaneously-executed contracts to merge into one. Moreover, contrary to the Facility's arguments, any uncertainty about these four indicators as applied to this case must be resolved in Respondent's favor, not to his detriment. The Facility argues merger is the default position and must be applied absent an affirmative showing of contrary intent. Appellants' Br. at 12. But, that argument overlooks two key holdings from Coleman. First, to the extent merger is a presumption, it is an easily rebuttable one because "***anything*** indicating a contrary intention" means a court will not apply merger. 407 S.C. at 355, 755 S.E.2d at 455 (quoting Klutts, 268 S.C. at 88, 232 S.E.2d at 24) (emphasis added). Thus, the Facility's task on appeal is not to successfully oppose one of the four indicators discussed above but to prove all four are absent here. Second, since the Facility drafted these form contracts of adhesion, any ambiguities must be construed against the Facility. Coleman, 407 S.C. at 355-56, 755 S.E.2d at 455. Coleman applied this rule to a nursing home's quibbles over the effect of an "entire agreement" clause, and Thompson used it to reject a nursing

home's argument that an arbitration contract was incorporated into an admission contract. Coleman, 407 S.C. at 355, 755 S.E.2d at 455; Thompson, 416 S.C. at 53-54; 784 S.E.2d at 685.

Accordingly, the Facility's merger argument is flawed not only in the specific ways described above but also in its very conception of when and how the merger doctrine operates. The circuit court properly applied extensive South Carolina law in this field and rejected the Facility's contention that the Arbitration Agreement and Admission Agreement merged.

2. Respondent is not Equitably Estopped from Opposing Arbitration.

Michael did not sign the Arbitration Agreement or authorize anyone to sign for. Yet, the Facility argues South Carolina Supreme Court precedent suggests Michael's estate is equitably estopped from opposing arbitration. Appellants' Br. at 37-41 (citing Wilson v. Willis, 426 S.C. 326, 827 S.E.2d 167 (2019)). However, the Facility does not even cite or attempt to apply the elements of equitable estoppel imposed by South Carolina law.[4] Plus, Wilson actually refused to compel arbitration against a non-signatory, holding there is a presumption *against* forcing someone to arbitrate based on a contract she did not sign. 426 S.C. at 338, 827 S.E.2d at 173. Wilson even

[4] As Wilson recognized, whether a non-signatory may be bound to an arbitration contract is a state law issue. 426 S.C. at 348, 827 S.E.2d at 174 (citing Arthur Andersen LLP v. Carlisle, 556 U.S. 624, 630-31 n. 5 (2009)). Under South Carolina law, equitable estoppel requires proof that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conducted be acted on by the other party; and (3) had actual or constructive knowledge of the real facts. Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; and (3) make a prejudicial change in position in reliance on conduct of the party to be estopped. Id. Wilson did not dismiss or eliminate this test for equitable estoppel but only found its application was an issue that had not been preserved for appellate review. The Facility argues Wilson concluded this test only applies to "non-arbitration cases." Appellants' Br. at 14 (citing Wilson, 426 S.C. at 340 n. 9, 827 S.E.2d at 175 n. 9). However, that could not have been Wilson's meaning because applying different rules to arbitration and non-arbitration contracts would violate the U.S. Supreme Court's equal-treatment principle. See Prima Paint Corp. v. Flood Conklin Mfg. Co., 388 U.S. 395, 404 n. 12 (1967) (finding intent of Federal Arbitration Act was "to make arbitration agreements as enforceable as other contracts, but not more so").

went on record to say equitable estoppel is rarely appropriate to force arbitration. Id. at 345, 827 S.E.2d at 177 (finding equitable estoppel "should be used sparingly"). Finally, the Facility cannot meet the "direct benefits" test considered in Wilson because Respondent's claims in no sense rely on the Arbitration Agreement's terms, and the Facility's argument to the contrary expressly links its estoppel claim to its fatally flawed merger argument.

The "direct benefits estoppel" discussed in Wilson could only apply if Respondent has "consistently maintained that other provisions of the same contract should be enforced to benefit" her. 426 S.C. at 340, 827 S.E.2d at 175 (quoting Pearson, 400 S.C. at 290, 733 S.E.2d at 601). When rejecting a "direct benefits" estoppel in the context of nursing home arbitration, this Court has held that the party asserting estoppel must make three distinction showings. Weaver v. Brookdale Sr. Living, Inc., 431 S.C. 223, 230, 847 S.E.2d 223 (Ct. App. 2020). Appellants would have to show (1) Michael's claim arose from a contractual relationship; (2) Michael "exploited" other parts of the contract by reaping its benefits; and (3) his claim "relies solely on the contract terms to impose liability." Id. (citing Wilson, 426 S.C. at 340-44, 827 S.E.2d at 175-77).

Applying these elements, Weaver found a nursing home's resident does not gain a "direct benefit" for estoppel purposes simply by accepting the services obtained upon admission to the home. 431 S.C. at 230-31, 847 S.E.2d at 272-73. The estate's personal injury claims also do not "arise from" the Admission Agreement. There is no breach of contract claim, and the Admission Agreement is not referenced at all in the Complaint. Id. at 231, 847 S.E.2d at 272 (finding "arising from" requirement is not met just because claim would not exist "but for" a contract's existence). Instead, the estate grounds its claims in duties arising from common law with no reference to any contract. Id. at 232, 847 S.E.2d at 273 (finding nursing home resident's claims "rely on general tort duties . . . not any provision of the residency agreement"). Under those circumstances, estoppel

cannot apply because the claims do not "arise from" a contract and certainly do not "rely solely" on a contract's terms. Id. at 232-33, 847 S.E.2d at 273 (citing Hodge as further support to show "direct benefit" estoppel does not apply to nursing home resident's common law tort claim). The Facility points to nothing to distinguish Weaver or to address its holding which forecloses the estoppel argument. Thus, Weaver is strong precedent against applying estoppel in this context.

Moreover, this Court rejected a nursing home's attempt to use direct benefits estoppel to compel a non-signatory nursing home resident to arbitrate even before Weaver. Thompson, 416 S.C. at 58-59, 784 S.E.2d at 687-88; see also Hodge, 422 S.C. at 556-57, 813 S.E.2d at 299-300 (applying Thompson). After surveying Pearson and Fourth Circuit cases, Thompson refused to apply this form of estoppel because it generally requires proof of some benefit to the party opposing estoppel in "*the contract that includes the arbitration provision*." 416 S.C. at 59, 784 S.E.2d at 688 (emphasis added). The Facility, therefore, cannot build an estoppel argument by citing supposed benefits Michael gained in the Admission Agreement. Thompson also rejected any effort to argue Michael gained a "direct benefit" from the Arbitration Agreement. Id. at 60, 784 S.E.2d at 688 ("any possible benefit emanating from the [Arbitration Agreement alone is offset by the [Arbitration Agreement's] requirement that Mother waive her right of access to the courts . . .").

Building on all of this case law, Solesbee rejected the precise same estoppel argument involving the contracts at issue here. 438 S.C. at 649, 885 S.E.2d at 149 ("like the Coleman and Hodge courts, we find there was no merger in this case and [the facility's] equitable estoppel argument was properly denied"). In any event, the Facility's estoppel claim is wholly dependent on a merger argument it cannot prove. Appellants' Br. at 20 (arguing estoppel applies because Admission Agreement and Arbitration Agreement merged). As discussed in Argument 1 above,

there is no merger here because the contracts were created for different purposes and there are many indications from the contracts' language they were not intended to be construed as one.

In sum, the circuit court correctly rejected the Facility's equitable estoppel argument because the Facility has not cited or applied the proper elements, cannot show Respondent obtained any "direct benefit," and bases its estoppel claim on its flawed merger argument. As it did in Solesbee, Thompson, and Hodge, this Court should reject Appellants' equitable estoppel argument.

CONCLUSION

Based on the arguments stated above, Respondent respectfully requests the Court affirm the circuit court's order. As this Court held in Solesbee, the merger doctrine does not apply to the form Arbitration Agreement and Admission Agreement offered by the Facility and other nursing homes owned and operated by Appellants. Similarly, the circuit court correctly applied this Court's precedent in Coleman, Thompson, Hodge, and Weaver in finding there is no estoppel to bar Respondent from opposing arbitration.

Respectfully submitted,

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