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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

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Appellate Case No. 2025-002125

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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.

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**APPELLANT'S INITIAL REPLY BRIEF**

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## ARGUMENT

### **I. The Mississippi law Respondent cites is inapplicable in light of South Carolina law, and actually supports compelling arbitration in this case.**

First, courts in South Carolina have determined in sufficiently analogous circumstances to this case when it is appropriate to enforce an arbitration agreement against a non-signatory. Under direct benefits estoppel, a non-signatory cannot avoid an arbitration clause in an agreement under which he or she receives direct benefits. *See Wilson v. Willis*, 426 S.C. 326, 340-41, 827 S.E.2d 167, 175 (2019), *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 295, 733 S.E.2d 597, 604 (Ct. App. 2012). Direct benefits estoppel is likewise implicated when the non-signatory's claims must be determined by reference to the contract or when the non-signatory invokes the contract to support claims while trying to disregard the arbitration provision. *See Wilson*, 439 S.C. at 343, 827 S.E.2d at 176; *Dixon v. Patee*, 442 S.C. 233, 257, 898 S.E.2d 158, 170 (Ct. App. 2023).

In *Pearson* this Court required a doctor to arbitrate claims even though he was not a signatory to an agreement between the hospital and staffing agency because he directly benefitted from that contract by being permitted to work at the hospital and he was invoking provisions in the contract in pursuit of damages. 400 S.C. at 296-97, 733 S.E.2d at 605. In *Dixon*, this Court compelled a homeowner plaintiff to arbitrate when the plaintiff was the home's second owner that sued the original builder for breach of warranty under the contract between the builder and first owner but attempted to avoid the arbitration provision in that same contract. 442 S.C. at 245, 898 S.E.2d at 164.

Here, comparable to *Pearson* and *Dixon*, Minor J.V. received direct benefits from the Lease Agreement, the claims must be determined with reference to the Lease Agreement, and Minor J.V. attempts to invoke other portions of the Lease Agreement. The direct benefit is housing and rights to amenities and common areas. The negligence claims must be determined with reference to the

Lease Agreement because it determines the status of Minor J.V. with respect to presence on the premises (i.e., invitee, licensee, trespasser), and governs use of the common areas where the incident occurred. Further, the Complaint invokes provisions of the Lease Agreement to support Minor J.V.'s claims—specifically dealing with animals on the property. *Compare Compl. ¶31 with Motion to Stay, Ex. 1 & 2 (p.8-9)*. This Court, exercising its *de novo* review and under South Carolina law, should reverse and compel arbitration because Minor J.V. received direct benefits of the Lease Agreement, makes claims that need to be determined by reference to the Lease Agreement, and invokes other provisions of the Lease Agreement to his benefit.

Second, the Mississippi case Respondent primarily relies on supports compelling arbitration. *Olshan* involved the claims of a father, mother, and adult daughter against a foundation contractor arising from allegedly defective foundation repair work to the family home. *Olshan Found. Repair Co. of Jackson, LLC v. Moore*, 251 So. 3d 725, 731 (Miss. 2018). The father signed the contract permitting the work that contained an arbitration clause, the mother and adult daughter did not. The family sued the contractor, with the father and mother requesting contract damages but the daughter claimed infliction of emotional distress. *Id.* at 727. The lower court compelled the mother and father to arbitration, but not the daughter.

Under Mississippi's direct benefits estoppel, a non-signatory cannot embrace the contract but then during litigation repudiate the arbitration clause. *Id.* at 731. A non-signatory "embraces" a contract by knowingly obtaining direct benefits, by seeking to enforce the terms of that contract, or asserting claims that must be determined by reference to the contract. *Id.* The court held the daughter could not be compelled to arbitrate because her infliction of emotional distress claim did not require reference to the contract for foundation repair and there was no evidence to suggest the daughter sought a direct benefit of the contract or embraced its terms. *Id.* at 731.

Under *Olshan*, this Court should compel arbitration because Minor J.V. embraced the Lease Agreement by receiving the direct benefit of housing and access to common areas, the claims must be determined by reference to the Lease Agreement, and Minor J.V. invokes terms of the Lease Agreement with respect to animals to assert claims. This Court could, however, easily distinguish the Mississippi case based on the same grounds, and that it did not involve a minor child. Indeed, it seems the majority view that minor children are required to arbitrate tort claims under agreements signed by their parents. See *Binding Nonsignatories to Arbitration—Beware of Foot in Door*, 127 Am. Jur. Trials 107, § 59 (2012).

### **CONCLUSION**

This Court should compel arbitration because the Lease Agreement directly benefitted Minor J.V. with housing and resident privileges, and Minor J.V.'s claims either invoke the Lease Agreement or must be determined by reference to the Lease Agreement.

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March 18, 2026.

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