THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable William C. McMaster, III, Circuit Court Judge

Appellate Case No. 2025-002259
Case No. 2025-CP-23-02077

Ashanti Sullivan, as Personal Representative of the Estate of Harold Rice, Respondent,

v.

Simpsonville Community Healthcare, LLC d/b/a Simpsonville Post Acute, Appellant.

INITIAL REPLY BRIEF OF APPELLANT

BURR & FORMAN LLP

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April 6, 2026
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I. Bases for Appellate Review

In her initial brief, Respondent presents the Court with a 30,000-foot view of this appeal to indirectly suggest to the Court it is "frivolous."[1] (*See* Resp. Init. Br.; p. 1-3.) Respondent generically applies all prior case-law concerning motions to compel arbitration involving different arbitration agreements and different admissions agreements for skilled nursing facilities to formulate her own answer to her own issue on appeal: "whether a skilled nursing facility may compel arbitration against a resident, or the resident's estate, based on an agreement executed by a third party who lacked legal authority to bind the resident or his estate at the time of admission?" (*Id*., p. 1.) In doing so, Respondent concludes that the "governing law is well settled" and that Appellant has not offered "any intervening authority, change in law, or factual distinction that would justify revisiting the Court's prior decisions." (*Id*., p. 1, 3.)

Not so fast. Respondent neglects to mention certain key, underlying facts, which undermine the credibility of this bold position.[2] Specifically, those key, underlying facts are material to this appeal and the reversal of the trial court's order denying the underlying motion to compel arbitration. Additionally, these material facts and legal theories distinguish this appeal from the prior opinions upon which Respondent hangs her hat and raise issues that have not been

[1] While acknowledging that a denial of a motion to compel arbitration is immediately appealable, Respondent contends "[s]killed nursing facilities have increasingly exploited and abused that procedural mechanism by filing interlocutory appeals raising arguments that have already been rejected by this Court[.]" (Resp. Init. Br., p. 2.)

[2] Respondent represents that "[t]he Facility did not engage in any discovery on the issue of agency or any other topics related to the arbitration agreement within the allotted period." (Resp. Init. Br., p. 2.) However, Appellant issued a subpoena duces tecum to a third-party provider on October 10, 2025, which was within the allotted period. (*See* App. Subpoena, p.1-7; R. ____).

conclusively resolved by any binding precedent, much less have they been "repeatedly and conclusively resolved by this Court." (Resp. Init. Br., p. 1.)

For example, under the merger and estoppel argument, Respondent has not addressed the most important and key distinction between the facts of this case and the facts of every single published and *unpublished* opinion upon which Respondent relies. In this case, the Arbitration Agreement subject to this dispute states: "Upon execution, this Agreement *shall* become part of the Admission Agreement." (Def. Mot. Compel, Ex. A p. 2; R. ___.) (emphasis added). The basis for this appeal is premised, in part, on the argument that the Arbitration Agreement and Admission Agreement merged, and that direct benefits estoppel precludes the Respondent from refusing to arbitrate the underlying dispute. This argument is primarily based on the fact that the Arbitration Agreement in this case states that it "shall become part of" the Admission Agreement. (*Id.*) Respondent has not offered one example from the "numerous binding decisions" she refers to where this argument has "been presented to, and rejected by, this Court." (Resp. Init. Br., p. 2.)[3] Instead, it is just the first of several "factual distinction[s] that would justify revisiting the Court's prior decisions." (*See Id.*)

Second, even if the Arbitration Agreement and Admission Agreement subject to this dispute did not include such explicit and express language supporting merger, the Arbitration Agreement and Admission Agreement in this case are documents that are materially different than the agreements involved in the cases cited to by the Respondent. Appellant has also raised arguments regarding the inapplicability of certain precedent that Respondent uses to support the trial court's denial of the underlying motion to compel arbitration. (App. Init. Br., p. 24-27)

[3] Respondent states that the inverse scenario would warrant finding merger to the extent she states the "Facility could have included express language in the admission agreement indicating that the arbitration agreement would merge with it upon execution . . ." (Resp. Init. Br., p. 27-28.)

Appellant has set forth specific reasons, supported by law and fact, as to why those cases either offend the Federal Arbitration Act ("FAA") 9 U.S.C. § 4 or how they otherwise render common law doctrines meaningless. *See* Rule 407, SCACR ("Permission of the appellate court shall not be required to argue against precedent in the brief.").

Respondent found it necessary to dedicate the remaining twenty-one (21) pages of her initial brief to oppose the issues implicated in this appeal which she characterizes as "well settled." Indeed, South Carolina courts have expressly acknowledged the potential for a party to be bound to arbitrate a dispute against a nursing home upon the merger of an admission and arbitration agreement. *See e.g. Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 563, 813 S.E.2d 292, 302 (Ct. App. 2018) ("equitable estoppel would only apply if [the admission agreement and arbitration agreement] were merged"); *see also e.g. Coleman v. Mariner Health Care, Inc*., 407 S.C. 346, 356, 755 S.E.2d 450, 455–56 (2014) ("the predicate for appellants' argument for application of the doctrine of equitable estoppel, that the [arbitration agreement] and the admission agreement were merged, is not present here").

As an advocate, a lawyer is duty bound to "use the legal procedure for the fullest benefit of the client's cause" while at the same time "not abus[ing] legal procedure." Rule 3.1, RPC; Rule 407, SCACR, cmt. 1. Appellant exercised its statutory right to appeal the underlying trial court order denying arbitration pursuant to 9 U.S.C. § 16. Appellant respectfully submits to the Court that Appellant has exercised this right in good faith, based on legal and factual arguments that are not well settled under binding precedent, and that the appeal warrants the Court's reversal of the underlying order as set forth more particularly in its briefs.

II. Delegation Clause

"When one party challenges another party's right to invoke an arbitration provision, the gateway question sometimes becomes: Does the court or the arbitrator decide whether the dispute is arbitrable?" *Sanders v. Savannah Highway Auto. Co*., 440 S.C. 377, 383, 892 S.E.2d 112, 115 (2023). An "agreement to arbitrate a gateway issue" such as the issues here, including validity, enforceability, and scope, by way of a delegation clause is "simply an additional, antecedent agreement," and "the FAA operates on this additional arbitration agreement just as it does any other." *Doe v. TCSC, LLC*, 430 S.C. 602, 610, 846 S.E.2d 874, 878 (Ct. App. 2020) (citing *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70-72, 130 S. Ct. 2772, 2777-78 (2010)).

In the present case the delegation clause expressly delegates the question of the Arbitration Agreement's validity to an arbitrator, which is a question the South Carolina Court of Appeals, in *Doe v. TCSC, LLC*, acknowledged it may pass off to an arbitrator through a delegation clause. 430 S.C. 602, 616, 846 S.E.2d at 881. Moreover, the delegation clause states that the arbitrator has sole jurisdiction to decide and resolve all issues and disputes, including without limitation, any disputes about the validity, scope, and enforceability of the Arbitration Agreement. Here, the delegation clause clearly and unmistakably presents the Court with the circumstance when the issue of the Arbitration Agreement's validity should be delegated to an arbitrator.

Appellant acknowledges that the Court may deem it necessary to determine the issue of formation; however, Respondent offers a sweeping view as to this preliminary determination that encompasses more than what is otherwise allowable or required for the court to determine contract formation. *See Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 577, 762 S.E.2d 694, 701 (2014) ("When a writing, upon its face . . . contains thereon all that is necessary to constitute a contract, it is presumed that the parties have introduced into it every material item

and term, and parol evidence is not admissible") (internal citations and quotations omitted").

Instead, the four corners of the Arbitration Agreement presented to the Court unambiguously express that Sullivan possessed the requisite authority to bind Rice to arbitration. The terms of the Arbitration Agreement set forth that Sullivan was authorized to execute the Arbitration Agreement for and on behalf of the resident, Rice, because she signed it as "legal representative" and "power of attorney" by its express terms. (Def. Mot. Compel, Ex. A, p.9; R.___.) More importantly, another term Sullivan agreed to in the Arbitration Agreement was that if she ever brought a lawsuit as a personal representative or on behalf of the resident, Rice, she was bound to submit any and all claims to arbitration. (Def. Mot. Compel, Ex. A, p.9; R. ___.) Her signature constitutes an acceptance. With that said, Respondent's argument challenging the Mrs. Sullivan's capacity in signing the Arbitration Agreement raises the issue of the enforceability, not one of formation. The four corners of the Arbitration Agreement unambiguously express that Sullivan had the authority to bind the resident, here Rice, and that she agreed to arbitrate, as well as delegate specified gateway issues, in the event she ever brought a lawsuit as a personal representative of the estate.

Accordingly, the issue of formation should be considered a question of law without the consideration of any extrinsic or parol evidence, which includes the Affidavit of Ashanti Rice Sullivan. *See Stevens & Wilkinson of S.C., Inc.*, at 577, 762 S.E.2d at 70. Any further questions raised by Respondent that challenge the Arbitration Agreement's enforceability or validity, including those relying on parol evidence, should be delegated to an arbitrator. Without showing an ambiguity, any exception to the parol evidence rule that may be raised by Respondent constitutes a generally applicable contract defense such as fraud and mistake; however, the agreement is unambiguous and those general contract defenses that apply to the agreement as a

whole should be left for the arbitrator to determine pursuant to the delegation clause.

The Arbitration Agreement itself unambiguously provides it is supported by an offer, acceptance and consideration because the terms of the Arbitration Agreement itself present the Court with an unambiguous, valid signature of Sullivan that was signed with the requisite authority to bind Respondent according to the express terms of the agreement itself. Any remaining arguments impermissibly challenge the Arbitration Agreement as a whole and not the delegation clause exclusively or are otherwise questions of validity, scope and enforceability that have been delegated to an arbitrator.

III. Merger and Estoppel

At the outset, it is apparent that Respondent has put the cart before the horse. Respondent opposes Appellant's direct benefits estoppel argument before addressing the Appellant's merger argument. However, Appellant's direct benefits estoppel argument is inextricably premised on the merger of the Admission Agreement and the Arbitration Agreement. *See e.g. Hodge*, at 563, 813 S.E.2d at 302 ("equitable estoppel would only apply if [the admission agreement and arbitration agreement] were merged"); *see also e.g. Coleman*, at 356, 755 S.E.2d at 455–56 ("the predicate for appellants' argument for application of the doctrine of equitable estoppel, that the [arbitration agreement] and the admission agreement were merged, is not present here").

A. Merger

Respondent fails to acknowledge or mention that the Arbitration Agreement states that "[u]pon execution, this Agreement shall become part of the Admission Agreement." (*See generally* Resp. Init. Br.) In fact, it appears Respondent's initial brief is devoid of the word "shall." (*Id.*) The terms of the Arbitration Agreement and Admission Agreement express an intent that they merge,

and neither agreement is ambiguous to that end.[4] *See Ellie, Inc. v. Miccichi*, 358 S.C. 78, 94, 594 S.E.2d 485, 493 (Ct. App. 2004) ("A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear.").

Despite not acknowledging that the Arbitration Agreement and Admission Agreement's provisions express a clear intent of merger, Respondent provides examples of when she believes an admission agreement and arbitration agreement would merge and states that "the Facility could have included express language in the admission agreement indicating that the arbitration agreement would merge with it upon execution . . ." (Resp. Init. Br., p. 27-28.) This inherently begs the question of why merger would not exist when the inverse is true, such as here, where the arbitration agreement indicates that it "would merge" with the admission agreement "upon execution."

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Heins v. Heins,* 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001).

As explained in Appellant's initial brief, Appellant denies that there is any ambiguity as to the merger of the Admission Agreement and Arbitration Agreement. Respondent primarily contends that the Arbitration Agreement and Admission Agreement express an intent contrary to

[4] In addition to the expressed intent of merger contained within the Arbitration Agreement, the Admission Agreement provides that "This Agreement, together with all exhibits hereto, Resident's application form and Resident's nursing records constitute the entire contract between Facility and Resident with respect to the subject matter hereof." (Def. Mem. Supp. Mot. Compel, Ex. C, p. 10; R. ___.)

merger, and Respondent does not otherwise seem to challenge that the primary four (4) elements of merger exist and that the Arbitration Agreement and Admission Agreement were executed by the same parties, at the same time, for the same purpose, and as part of the same transaction. *See Klutts Resort Realty, Inc. v. Down'Round Dev. Corp*., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977) ("The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together. The theory is that the instruments are effectively one instrument or contract.").

In scavenging cases for a contrary intent, Respondent spends approximately four (4) pages attempting to draw similarities between the agreements in *Hodge*,[5] *Solesbee*,[6] *Thompson*,[7] and *Coleman*[8] and the agreements subject to the present dispute. (See Resp. Init. Br., p. 23-28.) However, none of the arbitration agreements in those cases included a provision unambiguously providing that the Arbitration Agreement "shall become part of the Admission Agreement" such as here. The fact that the agreements may have different page numbers, titles, or other qualities as provided by Respondent does not negate the fact that the Arbitration Agreement in the present case

[5] *Hodge v. UniHealth Post-Acute Care of Bamberg*, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018) (holding that merger did not exist when (a) arbitration agreement was governed by federal law and admission agreement was governed by state law and (b) when the documents referenced the two agreements collectively with an "or" such as "admission agreement or arbitration agreement").

[6] *Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC*, 438 S.C. 638, 648, 885 S.E.2d 144, 149 (Ct. App. 2023), *abrogated on other grounds*, *Lampo v. Amedisys Holding, LLC*, 445 S.C. 305, 914 S.E.2d 139 (2025) (holding substantially the same) (abrogated to the limited extent of the general standard of review for FAA governed arbitration agreements).

[7] *Thompson v. Pruitt Corp*., 416 S.C. 43, 784 S.E.2d 769 (Ct. App. 2016) (holding no merger when there was a thirty (30) day disclaimer in arbitration agreement and no specific reference connecting arbitration agreement and admission agreement).

[8] *Coleman v. Mariner Health Care, Inc*., 407 S.C. 346, 350, 755 S.E.2d 450, 452 (2014) (holding no merger when there was a thirty (30) day disclaimer in arbitration agreement and no specific reference connecting arbitration agreement and admission agreement).

specifically and clearly expresses the intent that it merge with the Admission Agreement. *Ellie, Inc*., at 94, 594 S.E.2d at 493. ("To discover the intention of a contract, the court must first look to its language—if the language is perfectly plain and capable of legal construction, it alone determines the documents force and effect."). Therefore, the Court should find the Arbitration Agreement and Admission Agreement merged because they unambiguously and expressly provide that they be merged, and the remaining, primary four elements of merger are otherwise satisfied.

B. Estoppel

Having merged with the Admission Agreement, the Respondent is precluded by the doctrine of direct benefits estoppel from refusing to arbitrate the underlying dispute. Under direct benefits estoppel, "[a] nonsignatory is estopped from refusing to comply with an arbitration clause when it receives a direct benefit from a contract containing an arbitration clause." *Wilson v. Willis*, 426 S.C. 326, 340, 827 S.E.2d 167, 175 (2019) (internal citations omitted). "In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him." *Id*. "Stated another way, '[u]nder the direct benefits theory of estoppel, a nonsignatory 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 agreement ....'" *Id*., at 340-41, 827 S.E.2d at 175 (quoting *Belzberg v. Verus Invs. Holdings Inc*., 21 N.Y.3d 626, 977 N.Y.S.2d 685 (2013)).

Here, the Mr. Rice received direct benefits flowing directly from the merged agreement, having embraced all aspects of his admission at the Facility and in receiving residency, care, and treatment. Respondent's argument is misplaced to the extent she alleges that the duty implicated

by her allegations of medical malpractice are independent of the merged agreement. Appellant's duty of care arises directly from the merged agreement because it is a duty undertaken according to and limited to the terms and conditions set forth in the Admission Agreement. "Generally, there is no common law duty to act." *Jensen v. Anderson Cnty. Dep't of Soc. Servs*., 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991). "An affirmative legal duty, however, may be created by statute, *contract relationship*, status, property interest, or some other special circumstance." *Id*. (emphasis added).

Assuming, *in arguendo*, a duty exists for Appellant, no such duty of care would have been exercised by Appellant, or its skilled nursing staff, *absent* the execution of the Admission Agreement, which subsequently merged with the Arbitration Agreement. Appellant did not voluntarily undertake a duty of care for the admission and subsequent care and treatment of Mr. Rice at the Facility. He underwent an admission process whereby the Admission Agreement, which merged with the Arbitration Agreement. *See Wilson*, at 343, 827 S.E.2d at 176 ("When a claim depends on the contract's existence and cannot stand independently—that is, the alleged liability 'arises solely from the contract or must be determined by reference to it'—equity prevents a person from avoiding the arbitration clause that was part of that agreement."). Any alleged duty owed by Appellant would have been undertaken pursuant to and arising from the Respondent's executed Admission Agreement, which merged with the Arbitration Agreement upon its execution.

Accordingly, Respondent cannot rely upon certain terms of the merged agreement when it works to her advantage and repudiate other terms of the merged agreement thereafter when it supposedly works to her disadvantage, such as the agreement to arbitrate. Direct benefits estoppel precludes Respondent from having it both ways. Therefore, the Court should find that Respondent

is estopped from refusing to arbitrate the present dispute because Rice accepted and received direct benefits from the Admission Agreement, which merged with the Arbitration Agreement.

Citing to the Court's decision in *Weaver*, the Respondent contends that direct benefits estoppel is limited to situations where "(1) the nonsigner's claim arises from the contractual relationship, (2) the nonsigner has 'exploited' other parts of the contract by reaping its benefits, and (3) the claim relies solely on the contract terms to impose liability." (Resp. Init. Br., p. 20 (quoting *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 230, 847 S.E.2d 268, 272 (Ct. App. 2020).) While the Court in *Weaver* set out this three-part rule, the Court specifically bases it on the Supreme Court of South Carolina's opinion in *Wilson*. *See id*. However, the Court in *Wilson* did not confine the theory of direct benefits estoppel to a rigid, elemental three-part test however. Instead, *Wilson* recognized that direct benefits estoppel, like its name suggests, requires the Court to weigh considerations of equity to "prevent[] a person from avoiding the arbitration clause that was part of the agreement" which that person direct benefits from. *See Wilson*, at 343-45, 827 S.E.2d at 176-77 ("It is important to distinguish direct benefits from indirect benefits because when the benefits to a nonsignatory are merely indirect, arbitration cannot be compelled. A benefit is direct if it flows directly from the agreement. In contrast, any benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.") (internal citations omitted).

Direct benefits estoppel recognizes, and remedies, inequity that would result by permitting a party to enjoy direct benefits under an agreement containing an arbitration clause, such as the merged agreement here, but while at the same time allowing that same party to deny that the arbitration provision in that same agreement is enforceable. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012) ("To allow [a plaintiff] to claim the benefit

of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.") (citation and internal quotation marks omitted). While the first and second element to *Weaver's* three-part rule are consistent with *Wilson*, the third element, that "the claim relies solely on the contract terms to impose liability," is inconsistent with *Wilson*. *See Wilson*, at 343, 827 S.E.2d at 175 ("the alleged liability arises solely from the contract *or must be determined by reference to it*") (internal citations omitted) (emphasis added). However, here, Respondent's theory arises from the merged agreement because the underlying tort duty Respondent alleges arises from the agreement itself and is only derived by reference to it; in other words, any duty owed was undertaken pursuant to the merged agreement and not voluntarily. Having accepted and received direct benefits from the merged agreement, equitable estoppel precludes Respondent from asserting claims against Appellant that directly arise from the merged agreement while repudiating its equally binding terms on arbitration.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that trial court's order denying the Motion to Compel Arbitration be reversed, and that an order be entered compelling all Respondent's claims in the underlying action to arbitration in accordance with the Arbitration Agreement, containing a valid delegation clause, or alternatively, in accordance with the Arbitration Agreement's merger with the Admission Agreement and Rice's acceptance of direct benefits from that merged agreement.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted this 6th day of April, 2026.

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