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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REPLY 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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ARGUMENT

South Carolina law is clear that "[a]n arbitration agreement, of course, is a contract," *Lampo v. Amedisys Holdings, LLC*, 445 S.C. 305, 311, 914 S.E.2d 139, 142 (2025), and that "courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions," *Palmetto Construction Group, LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021). *See also Parsons v. John Wieland Homes and Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 9, 791 S.E.2d 128, 132 (2016) ("Courts must place arbitration agreements on equal footing with other contracts, . . . and enforce them according to their terms[.]" (alterations in original) (quoting *AT&T Mobility, L.L.C. v. Concepcion*, 563 U.S. 333, 339 (2011))).

Respondent's initial brief ignored this standard and asked this Court to treat the Arbitration Agreement that she signed differently than this Court treats other contracts. Respondent conceded that she had authority to sign the Arbitration Agreement but argued that the Court should nevertheless refuse to enforce the Agreement largely because she purportedly did not understand what she was signing. If Respondent were contesting a rental agreement, service contract, or purchase agreement, this Court would require her to uphold her end of the bargain regardless of her level of understanding when she signed; this Court would not release her of her obligation to pay a rental, service, or purchase fee because she did not carefully read the fee provision or because the lessor, service provider, or seller did not explain the fee to her.

Respondent's other arguments were forlorn attempts to invalidate the Arbitration Agreement based on technicalities that are rejected in statutory and common law authority. The circuit court erred in failing to compel arbitration, and Respondent's arguments do not show otherwise. This Court should reverse.

I. The circuit court's orders are plainly appealable.

Respondent stated that the circuit court's ruling on jurisdictional discovery is not immediately appealable because discovery orders are interlocutory. (Resp't Br. pp. 34-36). Appellants appealed the Orders denying Appellants' Motions to Compel Arbitration, which is indisputably appealable. 9 U.S.C.A. § 16 (_____) (stating orders denying applications to compel arbitration are immediately appealable); *see also* S.C. Code Ann. § 15-48-200 (_____) (stating the same). This Court may review an interlocutory discovery order when the order contains an appealable issue that is properly before the Court, so it may consider the ruling on jurisdictional discovery in the present case. *Ferguson v. Charleston Lincoln/Mercury, Inc.*, 344 S.C. 502, 509, 544 S.E.2d 285, 289 (Ct. App. 2001), *aff'd as modified*, 564 S.C. 558, 564 S.E.2d 94 (2002).

Respondent further stated that Appellants' challenge to the jurisdictional discovery order is improper because they did not initiate any discovery before filing their Motions to Compel Arbitration. (Resp't Br. pp. 34-36). Respondent cannot reasonably have expected for Appellants to risk waiving their right to arbitration by engaging in discovery at the outset of the litigation. *See, e.g., Johnson v. Heritage Healthcare of Estill, LLC*, 416 S.C. 508, 788 S.E.2d 216 (2016) (finding a nursing home waived its right to arbitrate by participating in discovery before filing its motion to compel arbitration). Accordingly, this appeal is properly before the Court.

II. This Court should reject Respondent's argument that the Arbitration Agreement fails based on regulations in place to establish conditions of federal funding that do not affect the validity and enforceability of arbitration agreements in litigation.

Respondent attempted to use the plurality opinion in *Hickory Heights Health and Rehabilitation, LLC v. Watson*, 707 S.W.3d 499 (Ark. App. 2025), to negate the unanimous holding in *Northport Health Services of Arkansas, LLC v. U.S. Department of Health and Human Services*, 14 F.4th 856 (8th Cir. 2021), that courts cannot rely on section 483.70 of title 42 of the Code of

Federal Regulations ("the regulations") related to Medicare and/or Medicaid funding to invalidate and refuse to enforce an arbitration agreement. (Resp't Br. pp. 19-20).

First, *Hickory Heights* acknowledged the veracity and validity of *Northport*. 707 S.W.3d at 506-07 and did not overrule or reverse its finding that the regulations do not undermine the validity or enforceability of arbitration agreements when they come before a court. Second, *Hickory Heights* addressed only one requirement of the regulations in rendering the arbitration agreement in that matter unconscionable—the requirement that long term care facilities do not condition admission on signing arbitration agreements. *Id.* at 501-07. The Arbitration Agreement here did not condition admission on signing, and Respondent has not shown otherwise; she has only stated that she felt like/assumed that she had to sign. (Appellants' Mot. Ex. B pp. 36-40; Resp't Dep. 9:2-9:4). Moreover, the voluntariness of arbitration agreements can factor in unconscionability analyses independent of the regulations. *See, e.g. Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611, 437 S.E.2d 746, 754 (2022) (defining unconscionability as the absence of a meaningful choice). Respondent relies on section 483.70(m)(2)(i) to allege that Appellants should have explained the Arbitration Agreement better while not disputing or offering an explanation as to why she did not read, review, or ask questions about the Agreement. (Resp't Br. p. 19; Resp't Dep. 9:7-9:18, 20:25-21:2). *Northport* remains applicable to the facts of this case. *Hickory Heights* did not address Respondent's allegations related to the explanation of the Arbitration Agreement in the regulations.

Whether an arbitration agreement is required for admission into a long-term care facility is apparent from the arbitration agreement itself, but whether a long-term care facility explained an arbitration agreement according to the surveyor guidance from the Centers for Medicare and Medicaid Services ("CMS") is far less black and white and solely the role of CMS, not courts, to

investigate. Instead, courts should follow *Northport's* guidance and should not consider the regulations' explanation section in determining the validity and enforceability of arbitration agreements. Instead, they must rely on statutes and common law. Common law is clear that a party to an agreement who signs the agreement is presumed to have read the agreement 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)). Respondent's attempt to deflect from this long-standing common law rule fails. Respondent could have read the entire Arbitration Agreement or asked questions but voluntarily chose not to do so. (Resp't Dep. 9:7-9:18, 20:25-21:2). She admitted that she misrepresented that she had read and reviewed the Arbitration Agreement when she signed the same, which explicitly stated, "[R]esident's responsible party agree[s] and affirm[s] that they have reviewed and understand this agreement." (Id. 17:8-18:2; Appellants' Mot. Ex. B p. 39). Accordingly, the Arbitration Agreement is not invalid or unenforceable much less "illegal" due to Appellants' alleged inadequate explanation of the same.

III. Lack of a specified forum does not invalidate an arbitration agreement, so this Court should reject Respondent's argument that the Arbitration Agreement fails because the choice of forum provision was left blank.

Respondent asserted that the parties did not form an arbitration agreement because there was no "meeting of the minds" between them regarding an essential and material term of the agreement, specifically the choice of forum. (Resp't Br. pp. 11-14). The Arbitration Agreement stated,

> (b) **Procedure for Arbitration.** The Arbitration shall be administered by one of the entities identified below and mutually agreed upon and designated by the Parties:
>
> Option 1: Carolina Dispute Settlement Services; or
>
> Option 2: National Arbitration Forum
>
> If the options identified above are not mutually agreeable to the Parties, an alternate arbitration forum and/or qualified arbitrator may be mutually agreed upon and identified below:
>
> Option 3: _____
>
> We select Option _____

(Appellants' Mot. Ex. B p. 38 (blanks in original)). The Arbitration Agreement further called for "select[ion of] another neutral arbitration service, either from the list below or from another source" if an agreed upon arbitrator was unwilling or unavailable to serve. (Id.). Respondent stated that the parties could only use a mutually agreeable alternative entity "so long as it was identified in writing when the Arbitration Agreement was signed." (Resp't Br. p. 4). The Arbitration Agreement does not contain this or any other conditional language for using an alternate entity. (Appellants' Mot. Ex. B p. 38).

Respondent and Appellants agree that there must have been a meeting of the minds as to essential and material terms of the Arbitration Agreement. *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989). Respondent and Appellants further agree that choice of forum *can* be an essential and material term of an arbitration agreement if affirmatively designated therein. *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 131, 678 S.E.2d 435, 438-39 (2009). Otherwise, choice of forum is an ancillary logistical concern that cannot serve to invalidate an arbitration agreement. *Id.* Appellants and Respondent fundamentally disagree about whether a choice of forum provision left blank on an arbitration agreement constituted omission of an

essential and material term in violation of the meeting of the minds doctrine. Respondent stated it does, comparing this case to *Grant*.

The arbitration agreement in *Grant* stated, "Pursuant to the Federal Arbitration Act, any action, dispute, claim, or controversy of any kind . . . shall be resolved by binding arbitration administered by the National Health Lawyers Association (the 'NHLA')." 383 S.C. at 128, 678 S.E.2d at 436-37. The NHLA later became the American Health Lawyers Association ("AHLA"). *Id.* at 128 n.1, 678 S.E.2d at 437 n.1. By the time the respondent initiated an action, the AHLA had stopped arbitrating his type of claim. *Id.* The Supreme Court of South Carolina held that the forum provision was an integral part of the agreement because it reflected the parties' specific intent to arbitrate exclusively before the AHLA, and therefore the agreement was unenforceable. *Id.* at 131-32, 678 S.E.2d at 439.

This case is more like *Grant's* counterpart, *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 749 S.E.2d 139 (Ct. App. 2013), decided four years after *Grant*. In *York*, this Court rejected the appellants' argument that the arbitration agreement at issue was invalid because it did not contain a forum provision, holding that the lack of a specified forum is not an omission of a material term when the parties simply do not designate a specific forum within the agreement. *Id.* at 82-83, 749 S.E.2d at 146-47. This Court specifically noted that the *Grant* agreement did not specify an alternate forum or mechanism to select an alternate. *Id.* at 82, 749 S.E.2d at 147.

Here, if the arbitral forum was integral, material, and essential to the parties, the agreement would not have included more than one option. Moreover, the Arbitration Agreement specified a procedure for selecting an alternate forum if the arbitrator initially asked to serve was unwilling or unavailable, demonstrating the parties' intent to arbitrate regardless of the initially selected arbitrator's availability. (Appellants' Mot. Ex. B p. 38). Further, leaving the forum provision blank

automatically invokes the parties' option to choose an alternate arbitrator. Accordingly, as in *York*, the blank choice of forum provision was not an omission of an essential and material term precluding the requisite meeting of the minds.

IV. Wrongful death beneficiaries are bound by a decedent's arbitration contract, so this Court should reject Respondent's argument that the Arbitration Agreement is unenforceable against her individually.

Respondent stated that the Arbitration Agreement was not enforceable against wrongful death beneficiaries for several reasons, none of which suffice to render the Arbitration Agreement unenforceable against Respondent in her individual capacity as Mr. Zeigler's sole wrongful death beneficiary. (Resp't Br. pp. 20-33; Resp't Dep. 39:1-39:3). Specifically, Respondent argued that wrongful death claims are not dependent on/derivative of survival claims because South Carolina treats wrongful death and survival as separate causes of action, as demonstrated by the Legislature enacting separate statutes with different statutes of limitation. (Resp't Br. pp. 20-26). The issue in dispute is not whether wrongful death and survival claims are separate causes of action for different losses as Respondent suggested. They are. The issue is whether someone can bring a wrongful death action in a manner that the decedent could not have at the time of his death.

The wrongful death statute states,

> Whenever the death of a person shall be caused by the wrongful act, neglect or default of another *and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action* and recover damages in respect thereof, the person who would have been liable if death had not ensued, shall be liable to an action for damages . . . .

S.C. Code Ann. § 15-51-10 (emphasis added). South Carolina has expressly relied on the above-referenced statutory language to conclude that wrongful death claims are derivative in nature. *See Jolly v. Gen. Elec. Co.*, 435 S.C. 607, 667, 869 S.E.2d 819, 851 (Ct. App. 2021) ("Although a wrongful death claim is for the benefit of the decedent's family, South Carolina treats this claim

as derivative of the decedent's own personal claim during his lifetime."); *Est. of Stokes ex rel. Spell v. Pee Dee Fam. Physicians, L.L.P.*, 389 S.C. 343, 349, 699 S.E.2d 143, 146 (2010) ("[A] claim under the Wrongful Death Act lies in the decedent's estate only when the decedent possessed the right of recovery at his death."); *id.* (explaining that the separate statute of limitations was inconsequential because it did not serve to revive a previously barred claim and was triggered only when the decedent had a right of recovery at the time of death). Contrary to Respondent's argument, a claim can be derivative while being a separate claim. There are plenty of causes of action that depend on an underlying cause of action and are still separate, independent claims (i.e. vicarious liability depends on establishing the negligence or wrongful act of an employee and loss of consortium depends on establishing a tortious injury to a spouse). Respondent's suggestion that nursing homes must obtain signatures from each of a resident's beneficiaries regardless of how many there are, where they are located, and whether they have any involvement in the resident's life and/or care in order to enforce arbitration agreements against wrongful death beneficiaries not only disregards the plain language of the wrongful death statute but is also illogical and could not have possibly been the Legislature's intent in enacting the statute. (Resp't Br. p. 27). *See S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 8, 809 S.E.2d 223, 226 (2018) (explaining that courts look to statutes' plain language but will look beyond the plain language when applying the words literally would lead to an absurd result that the General Assembly could not have intended).

Here, there is no question that had Mr. Zeigler resolved issues relating to the events alleged to have occurred while he was a resident of the facility and released Appellants from further liability before he passed, then Mr. Zeigler could not have maintained an action against Appellants at the time of his death, meaning Respondent could not have sued Appellants for wrongful death. Similarly, had Mr. Zeigler lived for three more years after the alleged events and never brought an

action against Appellants, the statute of limitations would have barred any actions at the time of his death, and, again, Respondent could not have sued Appellants for wrongful death. It follows that the Wrongful Death Complaint that Respondent filed in circuit court is barred because Mr. Zeigler could not have maintained an action in circuit court at the time of his death due to the execution of a valid and enforceable Arbitration Agreement.

Respondent stated that Appellants did not offer evidence proving the applicability of any methods of enforcing a contract against a non-party such as estoppel. (Resp't Br. 20 ("A South Carolina contract may be enforced against a non-party only with proof of (1) incorporation by reference; (2) assumption; (3) agency; (4) veil piercing/alter ego; or (5) estoppel.")). This argument ignores Appellants' central point that the General Durable Power of Attorney gave Respondent the authority to execute the agreement, which falls squarely under agency and is the most reliable of the list of methods Respondent provided. Appellants had no reason to assert an alternative theory such as estoppel when Respondent's authority to sign the Arbitration Agreement is uncontested. (Tr. p. 20, lines 20-22).

Respondent noted other jurisdictions that have refused to compel arbitration of wrongful death claims based on a decedent's arbitration contract; however, Respondent failed to consider the many other jurisdictions that found the opposite and compelled arbitration of wrongful death claims based on a decedent's arbitration contract. *See, e.g., In re Labatt Food Serv., L.P.*, 279 S.W.3d 640, 642 (Tex. 2009) ("Under Texas law, wrongful death beneficiaries are generally bound by a decedent's pre-death contractual agreement."); *id.* (holding wrongful death beneficiaries were required to arbitrate their wrongful death claims even though they did not sign the agreement containing an arbitration provision); *Laizure v. Avante at Leesburg, Inc.*, 109 So.3d 752, 759-60 (Fla. 2013) ("Although Florida's Wrongful Death Act has 'long [been] characterized . . . as creating

a new and distinct right of action from the right of action the decedent had prior to death,' courts have also characterized wrongful death actions as derivative because they are dependent on a wrong committed against the decedent." (alterations in original) (citations omitted)); *id.* at 762 (holding the heirs were bound by the decedent's actions and contracts and therefore had to arbitrate their wrongful death claims against a nursing home under the arbitration agreement that the decedent signed); *Entrekin v. Internal Med. Assoc. of Dothan, P.A.*, 689 F.3d 1248 (11th Cir. 2012) (holding that the district court should have compelled arbitration of a wrongful death claim against a nursing home because the executor of the decedent's estate was bound by the decedent's arbitration agreement with the nursing home); *GGNSC Admin. Servs., LLC v. Schrader*, 140 N.E.3d 397, 407 (Mass. 2020) (holding that claims of statutory beneficiaries were derivative of the decedent's own cause of action, and therefore the decedent's arbitration agreement bound those beneficiaries). According to *GGNSC Administrative Services* and contrary to Respondent's claims, Appellants' position is the *majority* rule. *Id.* at 405-06.

Moreover, several of the wrongful death statutes in jurisdictions referenced by Respondent that declined to compel arbitration of wrongful death claims do not contain language similar to South Carolina's statute ("the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action"). *See, e.g.*, Md. Code Ann., Cts. & Jud. Proc. § 3-902 (_____) (containing no language requiring the decedent to have been able to maintain an action at the time of his death); 42 Pa. Stat. and Cons. Stat. Ann. § 8301 (_____) (same); Wash. Rev. Code Ann. § 4.20.010 (_____) (same); Idaho Code Ann. § 5-311 (_____) (same). Accordingly, the Arbitration Agreement applies to Plaintiff's wrongful death claim.

V. The parties clearly formed an arbitration agreement, so the circuit court should have delegated any issues regarding arbitrability to an arbitrator pursuant to the delegation clause.

Respondent stated that the circuit court was not required to delegate this matter to an arbitrator because she challenged the formation rather than the validity of the Arbitration Agreement. As stated above and herein below, the parties clearly formed an Arbitration Agreement. (Resp't Br. pp. 5-11). Respondent argued that formation is at issue for four reasons: (1) the lack of a specified forum in the Arbitration Agreement invalidated the Agreement; (2) Respondent did not form an agreement to arbitrate with Co-Appellants; (3) Respondent did not have a contract with the Appellants affiliated with Appellant facility, Carlyle Senior Care of Fountain Inn, LLC ("CSC Fountain Inn"); and (4) the Arbitration Agreement was illegal because it violated federal regulations. (Id. pp. 9-10).

As a preliminary matter, some or all these reasons do not pertain to formation. *Lampo*, 445 S.C. at 311, 914 S.E.2d at 142 (explaining that the elements necessary for the formation of a contract are offer, acceptance, and consideration). Nevertheless, Respondent's reasons neither negate formation of the Arbitration Agreement nor invalidate the Agreement. As to the first reason, Appellants have established that there was a meeting of the minds between the parties and that the arbitral forum was not a material and essential part of the Arbitration Agreement in question, and therefore the Agreement did not need a specific identified forum. *See supra* pp. 4-6. Similarly, Appellants have shown why the fourth reason—the alleged illegality of the Arbitration Agreement—fails per *Northport*. *See supra* pp. 2-4. The second reason does not apply to these Appellants, but Appellants would ask this Court to consider the points they made in their initial brief regarding the same. (Appellants' Initial Br. pp. 14-15).

As to Respondent's argument that the Arbitration Agreement did not extend to CSC Fountain Inn's affiliates, the plain language of the Arbitration Agreement extended to these affiliates where it stated that "facility" included employees, agents, subcontractors, and parent and affiliated companies as well as their employees and agents. (Id. p. 14; Appellants' Mot. Ex. B p. 36). *See Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 700, 869 S.E.2d 859, 864 (Ct. App. 2022) (explaining that when the language of a contract is clear and unambiguous, the language as understood in its plain, ordinary, and popular sense determines the contract's force and effect). Respondent has acknowledged the affiliations in question and even based her allegations against CSC Fountain Inn's affiliates on the same. (SA Compl. ¶¶ 2-4, 10; SA Compl. ¶¶ 2-4, 10). She cannot group Appellants together sometimes and separate them out at others depending on what benefits her. Respondent stated that the affiliates seeking to enforce the Arbitration Agreement raise issues of non-signatory rights, but there is no need to determine signatory versus non-signatory status or to analyze methods of binding non-signatories here. The Arbitration Agreement's plain language includes CSC Fountain Inn's affiliates, and the Court need only give effect to that language. (Resp't Br. p. 10).

Accordingly, there are no issues with formation as Respondent stated. Therefore, this Court should delegate any issues relating to arbitrability to an arbitrator if it does not reverse and remand for arbitration of the merits of Respondent's claims. Even if there was an issue of contract formation, Respondent overlooked that Appellants requested that this Court alternatively reverse and remand for the circuit court to determine arbitrability pursuant to section 4 of the Federal Arbitration Act. (Appellants' Initial Br. pp. 19-21).

CONCLUSION

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.

April 20, 2026

Respectfully submitted,

HALL BOOTH SMITH, P.C.

/s/ Ashley S. Heslop

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