RECEIVED
Apr 23 2026
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. 2024-CP-18-00671
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 REPLY BRIEF OF APPELLANTS

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488

Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Defendants make the following points in reply to Plaintiff's brief.[1]

ARGUMENT IN REPLY

1. Coupled with the merger of the Admission Agreement and the Arbitration Agreement, equitable estoppel provides a workable theory for enforcement of an arbitration agreement against a nonsignatory, as indeed Plaintiff herself acknowledges.

As even Plaintiff acknowledges,[2] South Carolina law recognizes the potential for equitable estoppel to be successfully invoked to enforce an arbitration agreement against a nonsignatory. *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019) (observing that South Carolina has recognized a number of theories that could bind nonsignatories to arbitration agreements, including estoppel); *see also id.* at 340–45, 827 S.E.2d at 175–77 (favorably discussing the framework of the direct benefits test—which test this Court, following its earlier decision in *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), had applied in the decision that was before the *Wilson* Court on writ of certiorari, and under which test Defendants contend that Mr. Ennis, or, more precisely, his estate, i.e., Plaintiff, is estopped to deny the validity of the instant Arbitration Agreement where Mr. Ennis received direct benefits (in the form of room, board, various amenities/services, and the care/treatment he received at the Facility about which Plaintiff does not complain) from the Admission Agreement

---

[1] Shorthand references defined in Defendants' principal brief are continued in this reply brief (e.g., "Defendants" refers to Defendants/Appellants, Hallmark Longterm Care, LLC d/b/a Hallmark Healthcare Center (the "Facility") and Kellie Hiers, collectively; "Plaintiff" refers to Plaintiff/Respondent, Javan Ennis, as Personal Representative of the Estate of Michael Ennis ("Mr. Ennis"); and "Mrs. Ennis" refers to Javan Ennis in the capacity in which she signed the Admission Agreement and the Arbitration Agreement on Mr. Ennis's behalf).

[2] (*See* Br. of Respondent p. 7 ("Coleman [v. Mariner Health Care, Inc., 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014)] *did acknowledge the possibility equitable estoppel could be invoked if the disputed arbitration language was actually or effectively part of the same admission contract*.") (emphasis added).)

with which the Arbitration Agreement merged);[3] *id.* at 340, 827 S.E.2d at 175 n.6 (while expressing no opinion on the petitioner's alternative argument based on the application of the state's "traditional" six-factor test for estoppel, which the *Wilson* Court found unpreserved for review, observing nonetheless that that test, i.e., "[t]he traditional test referenced by [the] [p]etitioners," "has been analyzed most-often in *non*-arbitration cases") (emphasis added).[4]

2. It does not make sense that the Admission Agreement and the Arbitration Agreement would have been intended to be separate contracts.

(a) The fact that the Arbitration Agreement was not a condition of or prerequisite to Mr. Ennis's admission to the Facility lends no support to the idea that the Admission Agreement and the Arbitration Agreement did not merge—indeed, even Plaintiff herself implicitly recognizes the integrated nature of the Admission Agreement and the Arbitration Agreement.

Respectfully, this business about the Arbitration Agreement not being a requirement of admission to the Facility is a red herring. The merger question examines whether, "where instruments are executed at the same time, by the same parties, for the same purpose, and in the

---

[3] To deny his receipt of such benefits is illogical and objectively unreasonable, as it would require wholly discrediting the entirety of his residency: every night's stay, every meal, every amenity/service provided, every instance of care/treatment, essentially every moment at the Facility—even Plaintiff's complaint does not go nearly so far as that.

[4] Plaintiff incorrectly asserts that the *Wilson* Court could not have meant what it said when it concluded that the traditional six-factor test for estoppel applied in non-arbitration cases. (Br. of Respondent p. 15 n.4.) According to Plaintiff, applying different rules to arbitration and non-arbitration contracts would violate the FAA's equal treatment rule. (*Id.*) This is not so. What the FAA requires is for arbitration agreements be placed on at least equal footing with all other contracts under state law. This means that arbitration agreements cannot be singled out for *disfavored* treatment relative to other contracts; however, it does not mean that arbitration agreements cannot be *favored* relative to other contracts, which, indeed, they are. *See Doe v. TCSC, LLC*, 430 S.C. 602, 607, 846 S.E.2d 874, 877 (Ct. App. 2020) ("[A]rbitration agreements are presumed valid."); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.").

course of the same transaction,"[5] as indeed the Admission Agreement and the Arbitration Agreement were here, there is evidence to upset the *presumption in favor of merger*, i.e., the presumption that the instruments are to be considered and construed together as effectively one contract.

As a practical matter, if this presumption is to mean anything, upsetting it must require actual evidence of sufficient probity that, notwithstanding the concurrence of all the circumstances that must come together for the presumption of merger to even arise in the first place—i.e., same time, parties, purpose, and transaction—a reasonable, non-speculative inference can be drawn that the parties' possessed a contrary intention.

While it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true: the Admission Agreement is indeed necessary to the Arbitration Agreement. So, yes, the Admission Agreement *could* have stood on its own, without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with—but that is not what happened.

The Arbitration Agreement was in fact executed, of course, and it was executed under circumstances giving rise to a presumption of merger—again, same time, parties, purpose, and transaction. Unlike the Admission Agreement, however, which is capable of making sense either standing alone or, alternatively, together with the Arbitration Agreement, the Arbitration Agreement only makes sense together with the Admission Agreement, which is its (the Arbitration Agreement's) sole reason for being.

As explained in Defendants' principal brief, it matters not whether the Arbitration Agreement was a condition of admission, only that it was agreed to in conjunction with

---

[5] *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

admission; and, here, there can be no question that the Arbitration Agreement—once agreed upon—was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument, governing various interrelated aspects of Mr. Ennis's relationship with the Facility. (*See* Br. of Respondent pp. 1–2 (implicitly acknowledging the hand-in-glove relationship between the Admission Agreement and the Arbitration Agreement by acknowledging that the Admission Agreement "govern[ed] the type of care [Mr. Ennis] would receive at the Facility and [Mr. Ennis's] financial obligation to pay for those services," i.e., that it set forth the terms of Mr. Ennis's admission, while the Arbitration Agreement "provided for alternative dispute resolution for any claim a party may bring against another arising out of [Mr. Ennis's] admission in the Facility"—and thus implicitly acknowledging that the Admission Agreement and the Arbitration Agreement govern interrelated aspects of Mr. Ennis's relationship with the Facility such that the Arbitration Agreement, if signed, is inextricably tied to the Admission Agreement).)

(b) The formatting and structure of the Admission Agreement and the Arbitration Agreement provide no evidence of intention contrary to merger.

Essentially, Plaintiff's point here is that the mere fact that the Admission Agreement and the Arbitration Agreement were separate instruments evidences an intention contrary to merger. Respectfully, this reasoning is specious. As explained in Defendants' principal brief, for the issue of merger to even arise to begin with, there must be separate instruments. Obviously, such a self-defeating view of the doctrine of merger cannot be correct.

Moreover, the formatting/structure of the Admission Agreement and the Arbitration Agreement is indeed pro-merger. As explained in Defendants' principal brief, while the Admission Agreement does contain an "Entire Agreement" clause, it does not reference the

Arbitration Agreement as a separate contract, and indeed, it expressly contradicts the idea of its "separatedness" (in the parlance of the *Coleman* Court) by expressly stating that "other Admissions materials"—the Arbitration Agreement being among them—are made a part of it by reference. (*See, e.g.,* Br. of App. p. 11 (citing *Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019) ("The same day as Decedent's admission to White Oak, Stott, acting as Decedent's authorized representative, signed White Oak's admission documentation—including the Arbitration Agreement.") (emphasis added) (internal footnote omitted)).) And, again, as explained elsewhere, it does not make sense that the Admission Agreement and the Arbitration Agreement would have been intended to be separate contracts given that the Arbitration Agreement only makes sense together with the Admission Agreement, which is its (the Arbitration Agreement's) sole reason for being.

3. Plaintiff is wrong to assert that the Admission Agreement and the Arbitration Agreement were not executed for the same purpose.

As the *Coleman* Court expressly observed regarding the admission agreements and arbitration agreements before it (which *in this respect* are no different than the instant agreements—though that is not the case in regard to the material facts bearing on the question of merger), "the documents were [indeed] executed at the same time, by the same parties, *for the same purposes*, and in the course of the same transaction." 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

4. The survival of the Arbitration Agreement is no evidence of "separatedness" (in the parlance of the *Coleman* Court[6]).

Contrary to Plaintiff's contention, the Admission Agreement and the Arbitration Agreement do not have inconsistent termination provisions. As explained elsewhere, the only reason for the Arbitration Agreement is the Admission Agreement, i.e., the Arbitration Agreement covers disputes relating to/arising out of the Admission Agreement. So, yes, the Arbitration Agreement would remain in effect after termination of the Admission Agreement, but all this means is that any claims relating to/arising out of the Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still connected to the Admission Agreement even after the termination of the Admission Agreement. There is nothing inconsistent about this. This is simply how arbitration agreements work. *See Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582, 612–13 (D.S.C. 1998) ("Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.").

5. Contrary to Plaintiff's contention, the phrase "other Admissions materials" does not give rise to ambiguity.

In an effort to rebut Defendants' point that Arbitration Agreement is among the "other Admissions materials" that the "Entire Agreement" clause refers to as being deemed a part of the Admission Agreement, Plaintiff argues that "Admissions Materials" is not a defined term and is thus ambiguous. (Br. of Respondent pp. 11–12.) This is not so.

---

[6] 407 S.C. at 356, 755 S.E.2d at 455 (explaining how, in *Coleman*—unlike the instant case—the "Entire Agreement" clause expressly referred to a separate arbitration agreement and, thus, "recognize[d] the '*separatedness*' of the [arbitration agreement] and the admission agreement, not a merger of the two contracts.") (emphasis added).

It must be remembered that when all the requirements for the presumption of merger are present—as they are here—*merger is presumed to be what the parties intended* unless there is evidence of a contrary intention. *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455. The lack of a definition of "Admissions Materials" certainly says nothing of an intention contrary to merger; indeed, the only logical inference that can be derived from the "Entire Agreement" clause's express inclusion of other undefined material is *supportive* of merger. Again, in *Stott*, this Court expressly referred to an arbitration agreement as "admission documentation." 426 S.C. at 571–72, 828 S.E.2d at 84 ("The same day as Decedent's admission to White Oak, Stott, acting as Decedent's authorized representative, signed White Oak's *admission documentation—including the Arbitration Agreement*.") (emphasis added) (internal footnote omitted).

As explained elsewhere, to say that the Arbitration Agreement was not required for admission, which it was not, is not to say that it was not intended to be part of the admissions materials in the event it was agreed to, which it was, by Mrs. Ennis on Mr. Ennis's behalf. The hand-in-glove relationship between the Admission Agreement and the Arbitration Agreement is proof of the Arbitration Agreement's *connectedness* to the Admission Agreement. Though not a *condition* of admission, the Arbitration Agreement certainly was agreed to in *conjunction* with admission, whereupon, it was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument, governing various interrelated aspects of Mr. Ennis's relationship with the Facility. (*Compare* Admission Agreement (setting forth the terms of Mr. Ennis's admission) *with* Arbitration Agreement (providing for arbitration of disputes arising out of Mr. Ennis's admission).)

6. Despite Plaintiff's attempt to water down the standard for rebutting the merger presumption,[7] unless the merger doctrine is to be rendered meaningless, "anything indicating a contrary intention"[8] must be at least evidence capable of supporting a reasonable, non-speculative inference that the parties' intention was contrary to merger.

It must be remembered that the presumption of merger arises only where the four elements of time, parties, purpose, and transaction coincide—as they all do here. *Coleman*, 407 S.C. at 354–355, 755 S.E.2d at 455. If even one of these is lacking there is no merger. This is why, as explained in Defendants' principal brief, for the merger presumption to mean anything in practice, it cannot be upset based on mere conjecture, but only on actual evidence that—*notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)*—can nonetheless support a reasonable, non-speculative inference that the parties' intention was contrary to merger. *Cf. The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005) ("[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation."). The merger presumption is "earned," so to speak, by the fact that for it even to arise in the first place there must be, as there is here, a concurrence of particular circumstances (same time, parties, purpose, and transaction). It is the very rarity of this concurrence that both safeguards against the overzealous application of the merger doctrine and justifies ascribing to it (the concurrence) the presumptive intent of merger.

---

[7] (*See* Br. of Respondent pp. 7–8 ("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.") (emphasis added).)

[8] (Br. of Respondent p. 7 (original italics omitted).)

7. The direct benefits test endorsed by *Wilson*[9] does not require Plaintiff's claims to rely on the Admission Agreement's terms.

According to Plaintiff, "the Facility cannot meet the 'direct benefits' test considered in Wilson because [Plaintiff's] claims in no sense rely on the Arbitration Agreement's terms . . . ." (Br. of Respondent p. 16.) This is not so. As set forth in our Supreme Court's controlling decision in *Wilson*,[10] and consistent with this Court's decision in *Pearson*, 400 S.C. 281, 733 S.E.2d 597, which the *Wilson* Court favorably cites, the essence of the test for direct benefits estoppel is simply whether the nonsignatory has exploited other parts of the contract by reaping its benefits. And undoubtedly Mr. Ennis was a direct beneficiary of the Admission Agreement with which the Arbitration Agreement merged.

Under *Wilson*, the key to determining when direct benefits estoppel may be applied is not whether the claims at issue rely on contract terms to impose liability but whether benefits to the nonsignatory are direct or indirect. *Wilson*, 426 S.C. at 340–41, 827 S.E.2d at 175 ("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. 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. 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

---

[9] 426 S.C. 326, 827 S.E.2d 167.

[10] Plaintiff criticizes Defendants for not distinguishing *Weaver v. Brookdale Sr. Living, Inc.*, 431 S.C. 223, 847 S.E.2d 223 (Ct. App. 2020), but it is in fact the Supreme Court's decision in *Wilson* that controls here. Moreover, obviously unlike Plaintiff in the instant case, the plaintiff in *Weaver* was a complete stranger to any agreement with the defendant facility.

from the agreement . . . .") (internal citations/quotations and emphasis therein omitted); *id.* at 343, 827 S.E.2d at 176 ("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 simply recognizes, and remedies, the patent inequity that would result if a party were able to enjoy direct benefits under an agreement containing an arbitration clause (which is the case here because the Admission Agreement and the Arbitration Agreement merge) while at the same time denying that the arbitration clause is enforceable. *See Pearson*, 400 S.C. at 290, 733 S.E.2d at 601 ("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). It is not necessary for the nonsigner's claim to arise from the contractual relationship—though even if this were a requirement it is met here, as the Admission Agreement, i.e., the instrument with which the Arbitration Agreement merged, was essential to the establishment of the relationship between Defendants and Mr. Ennis out of which Plaintiff's claims against Defendants arise. Nor must the claim rely solely on the contract terms to impose liability. Indeed, to require this would be to invite the very sort of have-your-cake-and-eat-it-too inequity that the doctrine aims to prevent in the first place.

8. The "presumption *against*" arbitration[11] that Plaintiff cites violates the FAA's "equal footing" rule.

Plaintiff cites *Wilson* for the proposition that, under South Carolina law, there is a presumption *against* arbitration when enforcement is sought against a nonsignatory. (Br. of Respondent p. 15; *see also id.* at 3.) The FAA, however, requires arbitration agreements to be placed on equal footing with all other contracts under state law and prohibits courts from setting aside arbitration agreements based on state-law defenses "that apply only to arbitration or derive their meaning from the fact that an agreement to arbitrate is at issue." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Thus, under the FAA, there cannot be a presumption against enforcement of arbitration agreements against nonsignatories unless the same presumption also applies to enforcement of all other contracts against nonsignatories. Defendants are aware of no such general presumption under South Carolina law. Indeed, in recognizing "a presumption *against* arbitration . . . where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate," the *Wilson* Court cited authority, none of which was in fact South Carolina authority, that addressed arbitration in particular, not contracts generally. 426 S.C. at 337–38, 827 S.E.2d at 173 ("*Global Pac., LLC v. Kirkpatrick*, 88 N.E.3d 431, 435 (Ohio Ct. App. 2017) ('Because no party can be required to submit to arbitration when it has not first agreed to do so, in a case where the party resisting arbitration is not a signatory to any written agreement to arbitrate, a presumption against arbitration arises.'); *cf. Comer v. Micor, Inc.*, 436 F.3d 1098, 1103–04 (9th Cir. 2006) (noting 'the general rule that a nonsignatory is not bound by an arbitration clause')."). The presumption against arbitration that Plaintiff cites violates the FAA's equal footing rule and cannot be applied in this case.

Moreover, even assuming, *arguendo*, such a presumption properly applies, any

[11] (Br. of Respondent p. 15 (emphasis in original).)

presumption against enforcement of the Arbitration Agreement is overcome by the applicability of direct benefits estoppel under the circumstances.

CONCLUSION

For the foregoing additional reasons, Defendants ask this Honorable Court to reverse the circuit court and stay this action in favor of arbitration between Plaintiff and Defendants (or, alternatively, reverse the circuit court and remand the case to the circuit court with instructions that it stay this action in favor of arbitration between Plaintiff and Defendants).

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines

Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488
Attorneys for Appellants

Charleston, South Carolina

April 23, 2026