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.

BRIEF OF APPELLANT

BURR & FORMAN LLP

s/ J. Bennett Crites, III
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May 22, 2026
Charleston, South Carolina

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INTRODUCTION

Appellant appeals the trial court's denial of a motion to compel arbitration raised in a medical malpractice civil action, which is alleged to arise from Mr. Harold Rice's ("Mr. Rice") care and treatment at Simpsonville Post Acute's skilled nursing facility in Greenville County, South Carolina ("Facility"). Respectfully, the trial court's order erroneously denies Appellant's Motion to Dismiss, Stay Litigation and Compel Arbitration (collectively "Motion to Compel Arbitration"). Instead, the trial court should have granted Appellant's Motion to Compel Arbitration pursuant to the Federal Arbitration Act.

Ashanti Rice Sullivan is the personal representative of her father, Mr. Rice's estate. Mrs. Sullivan executed the Arbitration Agreement during Mr. Rice's admission to the Facility. The Arbitration Agreement executed by Mrs. Sullivan on behalf of and for Mr. Rice clearly and unmistakably contains a delegation clause, which delegates, among other things, any questions of the making, validity, enforceability, and scope of the Arbitration Agreement to an arbitrator pursuant to the Federal Arbitration Act. As indicated within the four corners of the Arbitration Agreement, containing a delegation clause, the Parties' agreement to arbitrate sets forth a valid, binding contract. Any arguments raised by Respondent in opposition to the Motion to Compel Arbitration did not specifically and exclusively challenge the delegation clause or involved questions otherwise delegated to the arbitrator, such as the enforceability of the Arbitration Agreement.

Notwithstanding the existence of an Arbitration Agreement containing a valid delegation clause, the Arbitration Agreement merged with the Admission Agreement, which Mrs. Sullivan also executed at the time of Mr. Rice's admission to the Facility. The two agreements were signed by the parties, at the same time, for the same purpose, and as part of the same transaction. There

can be no intent contrary to merger either because the Arbitration Agreement includes a clause that states it "shall become part of the Admission Agreement" upon Mrs. Sullivan's execution. The Arbitration Agreement's plain language expressly intended that it merge with the Admission Agreement.

Considering the merger of the Admission Agreement and Arbitration Agreement, direct benefits estoppel precludes Respondent from refusing arbitration because Mr. Rice accepted the benefits of the agreement, including the provision of a residence, care, and treatment, following the agreements' execution and merger. Therefore, the Court should reverse the trial court's denial of Appellant's Motion to Compel Arbitration because the Arbitration Agreement's delegation clause requires an arbitrator to determine questions of enforceability and validity. In the alternative, the trial court's order should likewise be reversed on the basis that the Admission Agreement and Arbitration Agreement merged, and direct benefits estoppel precludes the Respondent from refusing to submit to arbitration.

ISSUES PRESENTED

I. Whether the trial court erred in denying Appellant's Motion to Compel Arbitration?

A. Whether the trial court erred by ruling that the delegation clause within the Arbitration Agreement was not valid under general state contract principles and that the remaining arguments raised by Respondent were not otherwise delegated to an arbitrator by the Parties?

i. Whether the Arbitration Agreement is one governed by the FAA involving interstate commerce?

ii. Whether the clear and unmistakable delegation clause within the Arbitration Agreement, which delegated questions of validity and enforceability of the agreement to an arbitrator, required the trial court to compel arbitration and allow the arbitrator to decide whether the Arbitration Agreement is a valid agreement or enforceable contract?

iii. Even considering validity, whether the four corners of the Arbitration Agreement, containing a delegation clause, is facially valid according to state law contract principles and required any further challenge to be decided by an arbitrator?

B. Whether the trial court erred by ruling that Respondent was not estopped from refusing to arbitrate by previously accepting and receiving direct benefits under the Arbitration Agreement, which merged with the Admission Agreement upon execution?

i. Whether the Arbitration Agreement and Admission Agreement merged?

a. Whether the court should abrogate its opinion in *Solesbee* because the Court's application of the doctrine of merger in that case inherently and necessarily destroys the possibility that any two documents may ever merge?

ii. Whether the trial court should have found that direct benefits equitable estoppel applies to prohibit Respondent from denying the enforceability of the Arbitration Agreement?

STATEMENT OF THE CASE

I. Introduction

This is the appeal of the trial court's orders denying Appellant's Motion to Dismiss, Stay Litigation and Proceedings, and Compel Arbitration and its subsequently filed Motion to Reconsider. (R. pp. 176-80.) The underlying action is a medical malpractice action. (*See* R. pp. 7-12.) Specifically, Respondent alleges Appellant breached the applicable standard of care during the time Harold Rice ("Mr. Rice") was admitted and resided at the facility managed by Appellant Simpsonville Community Healthcare d/b/a Simpsonville Post Acute ("Simpsonville Post Acute" or "Appellant"). (R. pp. 10-11.)

II. Background Facts

On July 29, 2013, Mr. Rice executed a South Carolina Health Care Power of Attorney ("HCPOA") and a Durable Financial Power of Attorney ("FPOA") wherein he appointed his daughter, Ashanti Rice Sullivan ("Mrs. Sullivan"), as his true and lawful attorney-in-fact with the express agency authority to act on his behalf. (R. pp. 63-69; 135-41.) The HCPOA and FPOA were each executed by Mr. Rice, each signed by two witnesses, and each notarized. (*Id.*) The HCPOA expressly grants Mrs. Sullivan the authority to "arbitrate" disputes on behalf of Mr. Rice:

> C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility or service.

(R. p. 66.) Additionally, the HCPOA executed by Mr. Rice is a "durable power of attorney" and states:

> In exercising this authority, my agent [Ashanti Sullivan] shall follow my desires as stated in this document or otherwise expressed by me or known to my agent.

(*Id.*) On December 23, 2021, Mr. Rice was admitted to Simpsonville Post Acute's skilled nursing facility ("Facility"). (R. p. 72.) During the admission process, Mrs. Sullivan executed

several documents for Mr. Rice including an arbitration agreement ("Arbitration Agreement"). (R. pp. 54-62.) Specifically, the Arbitration Agreement is "part of the Admission Agreement." (R. p. 55.) The Admission Agreement for Mr. Rice was signed by Mrs. Sullivan, which stated that she was the "Daughter" of the Resident. (R. p. 98.) The Admission Agreement includes certain attached documents, including the Arbitration Agreement and the South Carolina Community Long Term Care Consent Form for Mr. Rice that was signed by Mrs. Sullivan as "Daughter/POA." (R. pp. 54-62; 88-100.)

The Arbitration Agreement requires that any disputes be resolved through binding arbitration exclusively and pursuant to the Federal Arbitration Act ("FAA") and expressly provides it is an agreement that involves interstate commerce:

> 4.2 The Parties agree that the Facility bills Medicare, purchases supplies from out-of-state vendors, and engages in activities that affect interstate commerce and thus the Admission Agreement is connected to interstate commerce.
>
> 4.3 The Parties agree and intend that this Agreement, the Admission Agreement, and the Resident's stays at the Facility substantially involve interstate commerce, and stipulate that the Federal Arbitration Act ("FAA"), 9 U.S.C.A. § 1-16, *et seq.*, and applicable federal case law apply to this Agreement . . .

(R. p. 55.) The Arbitration Agreement was signed by Mrs. Sullivan as "legal representative as described in Section 2.2." (R. p. 62.) Section 2.2 of the Arbitration Agreement provides:

> 2.2 "Resident" shall refer to the person identified as the Resident in Section 1.0 of this Agreement and includes all persons entitled to bring a claim on behalf of the Resident, including the legal representative, responsible party, power of attorney, guardian, surrogate, executor, administrator, or agent of the Resident, including any person or heir who has signed this Agreement on behalf of the Resident.

(R. p. 54.) The Arbitration Agreement contains a delegation clause where the parties agreed to have certain "gateway" matters decided by an arbitrator:

> 7.4 Except as otherwise provided in this Agreement, the Parties agree that the Arbitrator has sole jurisdiction to decide and resolve all issues and disputes, including without limitation, any disputes about the making, validity, enforceability, scope, interpretation, void-ability, unconscionability, preemption, severability, waiver, and terms and conditions of this Agreement or Admission Agreement, as well as to resolve the Parties' underlying disputes, as it is the Parties' intent to avoid involving the court system. The Arbitrator shall also be responsible for resolving issues pertaining to procedure, discovery, admissibility of evidence, or any other matter of dispute between the Parties relating to the Arbitration.

(R. p. 57.) The Arbitration Agreement also expressly states that, once executed, it merges with the Admission Agreement:

> 4.1 Upon execution, this Agreement shall become part of the Admission Agreement.

(R. p. 55.) Mrs. Sullivan, as Personal Representative of the Estate of Harold Rice ("Respondent"), filed this wrongful death and survival action against Appellant, which is a medical malpractice action arising from Mr. Rice's residency, care and treatment from Appellant's facility. (*See* R. pp. 8-12.)

III. Procedural Posture

Respondent filed the underlying civil action on March 31, 2025. (*Id.*) Appellant filed a Motion to Dismiss, Stay Litigation and Discovery and Compel Arbitration on May 8, 2025 ("Motion to Compel Arbitration"). (R. pp. 52-53.) That same day, the Appellant filed a Motion for a Protective Order from discovery requirements while the Motion to Compel Arbitration was pending. (R. p. 70.) The Motion to Compel Arbitration was supported by memoranda of law by

Appellant and Respondent (collectively "Parties"). (R. pp. 71-86; 103-29; 144-51.) The trial court heard Appellant's Motion to Compel Arbitration on September 16, 2025. (R. pp. 15-51.)

On September 26, 2025, the trial court issued a Form-4 Order denying Appellant's Motion to Compel Arbitration but permitted the Parties to engage in thirty (30) days of limited jurisdictional discovery and otherwise ordered the following:

> After careful consideration of the arguments of the parties and the materials filed, Defendant's Motion to Dismiss, Stay Litigation, and Compel Arbitration is DENIED. The parties shall have 30 days to engage in limited jurisdictional discovery as to the validity of the Arbitration agreement. At the conclusion of those 30 days, this matter may be reset if deemed appropriate. Accordingly, Defendant's Motion for Protection from Discovery is DENIED
>
> It is so Ordered.

(R. pp. 1-3.) Appellant filed a Motion to Reconsider the trial court's September 26, 2025, Form-4 Order, for which all Parties filed supporting or opposing memoranda of law. (R. pp. 152-175.) On October 24, 2025, the trial court denied Appellant's Motion to Reconsider as follows:

> Defendant's Motion to Reconsider was filed with this Court on October 6, 2025. After careful consideration of the filings of counsel, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded, and further finds no error of law or fact not appropriately considered. Therefore, Defendant's Motion is DENIED. However, the Court will clarify the language contained in its Order dated September 26, 2025.
>
> In the Order, the Court used the term "reset." This term was meant to reflect the Court's intent to allow Defendants to refile their Motion to Compel Arbitration at the conclusion of limited jurisdictional discovery for a hearing on the merits.
>
> It is so Ordered.

(R. pp. 4-6.) On November 7, 2025, Appellant filed a Notice of Appeal of the trial court's September 26, 2025 order denying Appellant's Motion to Dismiss, Stay, and Compel Arbitration

and the trial court's October 24, 2025 order denying Appellant's Motion to Reconsider. (R. pp. 176-80.)

STANDARD OF REVIEW

The Federal Arbitration Act ("FAA") provides that "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Under the Federal Arbitration Act "[t]here is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration. This policy…requires courts to enforce the bargain of the parties to arbitrate." *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013) (internal citations omitted) (finding it was error for the lower court to refuse to compel arbitration).

A circuit court's determination of whether a claim is subject to arbitration is reviewed *de novo* on appeal. *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009). This includes *de novo* review of the determination of whether an arbitration agreement is enforceable against a non-signatory. *Wilson v. Willis*, 426 S.C. 326, 334, 827 S.E.2d 167, 172 (2019). "Under *de novo* review, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings." *Id*. Issues of law, however, are reviewed without any particular deference to the circuit court. *See, e.g., Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 782 S.E.2d 590 (2016).

LAW AND ANALYSIS

The FAA applies in state or federal court to any arbitration agreement involving interstate commerce, unless the parties contract otherwise. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). "A party seeking to compel arbitration under the FAA must establish that (1) there is a valid agreement and (2) the claims fall within the scope of the agreement." *Wilson*, at 326, 336, 827 S.E.2d at 173. As detailed below, the FAA applies to the Arbitration Agreement. The Arbitration Agreement clearly and unmistakably contains a delegation clause, which is validly formed under general state contract principles, and the delegation clause requires that an arbitrator decide any possible remaining issues, such as the Arbitration Agreement's scope and enforceability.

I. The Arbitration Agreement is Governed by the FAA because it Involves Interstate Commerce and the Parties Expressly Agreed the FAA Applies

The FAA applies to the Arbitration Agreement because the Parties agreed that the FAA governed the Arbitration Agreement and otherwise expressly and correctly agreed it involved interstate commerce. "Unless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz*, at 538, 542 S.E.2d at 363.

The Parties expressly agreed that the FAA applies and that the Arbitration Agreement and Mr. Rice's residency and treatment substantially involve interstate commerce. An entire section of the Arbitration Agreement, in capital and underlined letters, is entitled "FEDERAL ARBITRATION ACT" and that section states, in part, the following:

> The Parties agree and intend that this Agreement, the Admission Agreement, and the Resident's stays at the Facility substantially involve interstate commerce, and stipulate that the Federal

> Arbitration Act ("FAA"), 9 U.S.C.A. § 1-16, *et seq*., and applicable federal case law apply to this Agreement . . .

Accordingly, Respondent expressly agreed that the Arbitration Agreement executed in connection with Mr. Rice's admission and residency at the Facility involved interstate commerce, which triggers the application of the FAA. South Carolina has expressly recognized Arbitration Agreements that are signed in connection with the admission of a resident at a skilled nursing facility are contracts involving interstate commerce and subject to the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (arbitration agreements executed in connection with the admission of a resident at a skilled nursing facility implicate interstate commerce and thus, are governed by the FAA).

The Arbitration Agreement was executed for the admission of Mr. Rice at the Facility in conjunction with the Admission Agreement. The Facility is a skilled nursing facility, and contracts executed in connection to the Facility and its residents involve interstate commerce. The operation of the Facility involves billing health insurance companies, engaging out of state vendors for services, purchasing supplies, and other activities that implicate interstate commerce. The Parties agreed and otherwise acknowledged that the Arbitration Agreement and the underlying residency and treatment at the Facility involve interstate commerce. Therefore, the FAA applies to the Arbitration Agreement, which mandates compelling the underlying action to arbitration.

II. The Delegation Clause Contained in the Arbitration Agreement is Clear and Unmistakable and Binds Respondent to Delegate its Opposition to the Validity and Enforceability of the Arbitration Agreement to an Arbitrator

The trial court should have compelled the dispute to arbitration because the delegation clause within the Arbitration Agreement is valid and otherwise clearly and unmistakenly delegates any remaining, possible issues such as validity and enforceability to an arbitrator. "Due to the strong South Carolina and federal policy favoring arbitration, arbitration agreements are presumed

valid." *Doe v. TCSC, LLC*, 430 S.C. 602, 607, 846 S.E.2d 874, 876 (Ct. App. 2020). The United States Supreme Court has held that parties may delegate the issue of arbitrability and "courts must respect the parties' decision as embodied in the contract" – particularly where, as here, the delegation clause is clear and unmistakable. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 65, 139 S. Ct. 524, 528 (2019).

"The FAA presumes parties intend that the court, rather than an arbitrator, will decide 'gateway' issues related to arbitration, including whether the arbitration agreement is valid and enforceable and whether it covers the parties' dispute." *TCSC, LLC*, at 608, 846 S.E.2d at 877. "The parties may, of course, delegate these gateway issues to an arbitrator as long as there is 'clear and unmistakable' evidence of such delegation." *Id*. If such a delegation occurs, the court retains the right and duty to determine if the delegation is valid and enforceable "as long as the party resisting arbitration has made a direct and discrete challenge to the validity and enforceability of the delegation clause[.]" *Id*.; *see also Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 700, 869 S.E.2d 859, 864 (Ct. App. 2022) ("as long as the parties' agreement delegates the arbitrability question to an arbitrator by clear and unmistakable evidence, a court may not override the contract").

Here, the trial court erred in denying Appellant's motion to compel arbitration because the Arbitration Agreement contains a valid delegation clause and any and all remaining arguments in opposition to compelling arbitration should have been delegated to an arbitrator. The Arbitration Agreement clearly and unmistakably delegates any issues of the validity and enforcement of the agreement exclusively to an arbitrator:

> 7.4 Except as otherwise provided in this Agreement, the Parties agree that the Arbitrator has sole jurisdiction to decide and resolve all issues and disputes, including without limitation, any disputes about the making, validity, enforceability,

> scope, interpretation, void-ability, unconscionability, preemption, severability, waiver, and terms and conditions of this Agreement or Admission Agreement, as well as to resolve the Parties' underlying disputes, as it is the Parties' intent to avoid involving the court system. The Arbitrator shall also be responsible for resolving issues pertaining to procedure, discovery, admissibility of evidence, or any other matter of dispute between the Parties relating to the Arbitration.

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." *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70, 130 S. Ct. 2772, 2777-78 (2010).

A. The Validity of the Arbitration Agreement was Delegated to the Arbitrator

Respectfully, the trial court's order denying Appellant's Motion to Compel Arbitration is erroneous because all Respondent's underlying arguments opposing arbitration were delegated to an arbitrator. Specifically, here, the validity of the Arbitration Agreement was delegated to an arbitrator, and it was delegated clearly and unmistakably. The courts should only "consider whether [an arbitration agreement] is valid" when "the parties did not expressly delegate the gateway issue of the validity of the [arbitration agreement] to the arbitrator." *TCSC, LLC*, at 611, 846 S.E.2d at 878.

In *Doe v. TCSC, LLC*, the South Carolina Court of Appeals reversed the trial court's denial of a motion to compel arbitration. *Id*. at 618, 846 S.E.2d at 882. In that case, the plaintiff, Doe, sued a car dealer for its salesperson's revenge against an unwilling female buyer, which included "posting an ad posing as Doe on a sexually explicit website." *Id*. at 606, 846 S.E.2d at 876. Doe filed a lawsuit against the car dealer arising from the salesperson's conduct. *Id*. The car dealer moved to compel arbitration pursuant to the FAA and an arbitration agreement containing a

delegation clause. *Id*. The trial court denied the car dealer's motion to compel arbitration, and the car dealer appealed. *Id*. at 606-07, 846 S.E.2d at 876.

This Court reversed the trial court's decision and remanded the case, instructing the trial court to compel the underlying dispute to arbitration in order to allow the arbitrator to decide any remaining questions according to the terms of the delegation clause. *Id*. at 618, 846 S.E.2d at 882. The Court reasoned that the delegation clause contained in the parties' arbitration agreement clearly and unmistakably delegated matters involving the "interpretation and scope" and the "arbitrability of the claim or dispute" to an arbitrator. *Id*. at 608-09, 846 S.E.2d at 877. The Court therefore held that the plaintiff's arguments in opposition to arbitration were delegated to the extent that they concerned interpretation, scope, or the arbitrability of the claim. *Id*.

However, the Court in *Doe* only reviewed and considered the validity of the arbitration agreement because the delegation clause did not clearly and unmistakably delegate issues of validity of the arbitration agreement or the arbitrability of the agreement to an arbitrator. *Id*. at 610, 846 S.E.2d at 878. Instead, the Court reasoned that the parties did not expressly delegate the question of the "*arbitrability of the [a]greement*" itself but rather delegated the question of arbitrability only to the extent it concerned the question of whether the agreement "*applies to a particular type of controversy*." *Id*. (emphasis added). In doing so, the Court expressly held that it only "consider[ed] whether the agreement [was] valid" because "the parties did not expressly delegate the gateway issue of the validity of the Agreement." *Id*.

In the present case, however, the trial court erred in denying Appellant's Motion to Compel Arbitration because the delegation clause expressly delegated the question of the Arbitration Agreement's validity to an arbitrator as set forth in *Doe v. TCSC, LLC*. 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 making, validity, [and] enforceability . . . of this Agreement . . .” The Arbitration Agreement clearly and unmistakably presents the Court with the circumstance when the issue of the Arbitration Agreement’s validity should be delegated to an arbitrator. Therefore, the trial court’s order denying Appellant’s Motion to Compel Arbitration should be reversed to allow the arbitrator to decide the gateway issues raised by Respondent.

B. Notwithstanding the Above, the Arbitration Agreement’s Delegation Clause is Valid Under South Carolina Contract Principles and any Challenges to Enforceability of the Valid Agreement Should be Delegated to the Arbitrator

Notwithstanding or in waiver to the above, the trial court erred by not compelling the underlying dispute to arbitration because the four corners of the arbitration agreement clearly and unmistakably indicate that the delegation clause was valid, and any other challenge to the Arbitration Agreement as a whole, with or without the consideration of parol evidence, should have been left to the arbitrator. The delegation clause within the Arbitration Agreement is valid because on its face, it was formed by an offer, acceptance, and consideration. “An arbitration agreement, of course, is a contract.” *Lampo v. Amedisys Holding, LLC*, 445 S.C. 305, 311, 914 S.E.2d 139, 142 (2025). A party seeking to compel arbitration must demonstrate the existence of a valid contract to arbitrate by establishing three elements. *Id*. In South Carolina, “[t]he necessary elements of a contract are an [1] offer, [2] acceptance, and [3] valuable consideration.” *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003).

1. The Delegation Clause, Included in the Arbitration Agreement, was Supported by a Valid Offer and Valid Consideration

A valid offer and valid consideration exist. An “offer” is the manifestation by one party of their willingness to enter a bargain, made so as to justify another person in understanding that his assent to that bargain is invited. Restatement (Second) of Contracts § 24. The offer identifies its subject, i.e. the bargained-for-exchange, and also creates a power of acceptance in the offeree.

Restatement (Second) of Contracts § 29. Finally, "valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. A forbearance to exercise a legal right is valuable consideration." *Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 206, 687 S.E.2d 714, 718 (Ct. App. 2009) (internal citations omitted).

Here, a valid offer exists. The Arbitration Agreement was signed by Lynda Denise Knight, the Facility Representative and duly authorized agent of Simpsonville Post Acute. Her signature on the Arbitration Agreement for Appellant Simpsonville Post Acute manifests a willingness to bind the Facility to the terms of the Arbitration Agreement. Next, consideration exists. The mutual agreement to arbitrate is valid consideration. *Lampo*, 445 S.C. at 313, 914 S.E.2d at 144. Therefore, a valid offer and valid consideration exist. The satisfaction of these elements does not seem to be contested by the Respondent.

2. The Delegation Clause, Included in the Arbitration Agreement, was Supported by a Valid Acceptance

"Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." *Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004). "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). "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Id.*

Here, a valid acceptance exists because the Arbitration Agreement was signed by Mrs. Sullivan for the Resident Mr. Rice, as his "legal representative" and "power of attorney" by its express terms. Respondent's remaining arguments to challenge acceptance are otherwise delegated

to an arbitrator. The Arbitration Agreement was signed on behalf of Mr. Rice as his "legal representative, responsible party, power of attorney . . . or agent." Accordingly, the Arbitration Agreement itself expresses that it was accepted and executed by Mrs. Sullivan for Mr. Rice with the requisite authority to do so. In other words, the four corners of the Arbitration Agreement clearly and unambiguously indicate a validly formed contract under South Carolina law, and any other challenge to Mrs. Sullivan's authority to bind Mr. Rice are matters delegated to the Arbitrator.

While Respondent submitted an affidavit of Ashanti Rice Sullivan, the personal representative in this lawsuit and the party who signed the Arbitration Agreement on behalf of Mr. Rice, this is parol evidence, which was improper and irrelevant for the trial court to consider. First, the Arbitration Agreement's delegation clause and terms indicating offer, acceptance, and consideration were unambiguous, and parol evidence should not have been considered by the trial court before compelling the underlying dispute to an arbitrator according to the delegation clause.

Second, and most importantly, the issue of Mrs. Sullivan's capacity in executing the Arbitration Agreement is one of enforceability and the Parties' delegated questions of enforceability of the Arbitration Agreement. Moreover, the issue of what capacity Mrs. Sullivan signed the agreement in (individual or legal representative/agent) presents an issue of enforceability, not validity or contract formation. Her signature on the Arbitration Agreement, whether individually or as a legal representative, constitutes an acceptance and the last step to the formation of a valid contract. Respondent offers Mrs. Sullivan's affidavit to provide, in part, that Mrs. Sullivan signed the Arbitration Agreement without the authority to do so and that she "never purposefully represented to Simpsonville Post Acute that [she] had the authority to consent to arbitration for [her] father or his estate." (R. p. 143.) Even assuming, *in arguendo*, the Arbitration

Agreement was executed by Mrs. Sullivan in her individual capacity, however denied, it still formed a valid contract. Mrs. Sullivan is still the personal representative in this lawsuit and represents the Estate of Harold Rice.

Moreover, Mrs. Sullivan initialed every page of the Arbitration Agreement and fully signed her name on the last page of the Arbitration Agreement. Her full signature appears directly above "Resident's Legal Representative as described in 2.2"; additionally, her full name is printed directly below that statement. Section 2.2 of the Arbitration Agreement signed by Mrs. Sullivan states she was signing the Arbitration Agreement as the legal representative, power of attorney, or agent of the Resident who was Mr. Rice. The same page containing Mrs. Sullivan's full signature sets forth the following terms:

> If signed by a Legal Representative (or an individual purporting to be a Legal Representative) for the Resident, then such individual hereby represents, warrants and certifies to the Facility that the Facility may reasonably rely upon the validity of such individual's signature, and that such individual has actual, implied or apparent legal authority to execute this Agreement as granted by the Resident. *Such individual also agrees that any claims or disputes arising between such individual, in their individual or any representative or derivative capacity*, and the Facility, including without limitation any agents, employees, and affiliates thereof, shall be resolved solely pursuant to the dispute resolution and other terms and conditions of this Agreement, as though such individual were entering into this agreement in his or her individual capacity.

(R. p. 62.) (emphasis added). "One who is capable of reading and understanding but fails to read a contract before signing is bound by the terms thereof." *Sims v. Tyler*, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981). "It is the policy of the courts not only to discourage fraud, but also to discourage negligence and inattention to one's own interests." *King v. Oxford*, 282 S.C. 307, 312, 318 S.E.2d 125, 128 (Ct.App.1984). "Courts do not sit for the purpose of relieving parties who

refuse to exercise reasonable diligence or discretion to protect their own interests." *DeHart v. Dodge City of Spartanburg, Inc.*, 311 S.C. 135, 139, 427 S.E.2d 720, 722 (Ct. App. 1993).

Whether or not Mrs. Sullivan signed the Arbitration Agreement, containing a delegation clause, in her individual or representative capacity, she still formed a valid contract. It is supported by an offer, acceptance, and consideration, which is apparently undisputed. Moreover, Ashanti Rice Sullivan is the personal representative of Mr. Rice's Estate, the Plaintiff in the underlying lawsuit and presently opposing arbitration. Mrs. Sullivan executed the Arbitration Agreement regardless of whether it was in her individual or representative capacity. In doing so, she agreed to the terms of the Arbitration Agreement. One of those terms she agreed to sets forth that she was the legal representative and agent of Mr. Rice when she executed the Arbitration Agreement and that she had the authority to execute the Arbitration Agreement on his behalf.

More importantly, another term Mrs. 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, Mr. Rice, she was bound to submit any and all claims to arbitration. With that said, Respondent's argument challenging the capacity Mrs. Sullivan in signing the Arbitration Agreement raises the issue of enforceability, not validity. The Arbitration Agreement is otherwise apparently undisputed to be valid and as having been supported by an offer, acceptance, and consideration. Respondent's arguments raise the question of whether the Arbitration Agreement is enforceable against the Parties. The delegation clause requires an arbitrator to decide issues of enforceability. Therefore, the trial court's order is erroneous because the Arbitration Agreement is valid under South Carolina contract law, and the arguments made in opposition to arbitration presented the court with questions of enforceability, which were expressly delegated to an arbitrator.

While Respondent cites to the United States Supreme Court's opinion in *Granite Rock* to oppose the enforcement of the delegation clause, the Court's opinion in *Granite Rock* doesn't concern the issue of a delegation clause however mentioning its general role in the context of FAA governed arbitration agreements. *See Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 299, 130 S. Ct. 2847, 2857 (2010). The issue of "formation and validity" were conceded by the opposing party and not before the Court in that case. *Id*. at 297, 130 S. Ct. at 2856. The issue before the Court in *Granite Rock* was the enforceability and scope of the arbitration agreement concerning that case, which was not stated to have been delegated to an arbitrator. *Id*.

Granite Rock nevertheless expressly states the parties may delegate questions of enforceability to an arbitrator. *Id*. at 299, 130 S. Ct. at 2857. Respondent partially quotes the following excerpt from *Granite Rock*:

> The language and holdings on which Local and the Court of Appeals rely cannot be divorced from the first principle that underscores all of our arbitration decisions: Arbitration is strictly "a matter of consent, and thus is a way to resolve those disputes—*but only those disputes*—that the parties have agreed to submit to arbitration," Applying this principle, our precedents hold that courts should order arbitration of a dispute only where the court is satisfied that neither the formation of the parties' arbitration agreement nor (absent a valid provision specifically committing such disputes to an arbitrator) its enforceability or applicability to the dispute is in issue. Where a party contests either or both matters, "the court" must resolve the disagreement.

Id. (*emphasis added by court*) (emphasis added by Appellant). With that said, *Granite Rock* does not stand for the proposition that the enforceability of the present Arbitration Agreement was an issue that the trial court could have properly considered. Additionally, Respondent's reference to *Alemayehu* and the Second Circuit Court of Appeals' application of Colorado and Connecticut contract law in that case don't apply here either and that court's opinion is relied on by Respondent

to no different extent than Respondent's reliance on *Granite Rock*. *See Doctor's Assocs., Inc. v. Alemayehu*, 934 F.3d 245, 251 (2d Cir. 2019).

C. A Valid Delegation Clause within the Arbitration Agreement Exists and any Remaining Issues were Clearly and Unmistakably Delegated to an Arbitrator and/or Challenged the Arbitration Agreement Instead of the Delegation Clause

Here, the Court should reverse the trial court's order denying Appellant's Motion to Compel Arbitration because a valid delegation clause within the Arbitration Agreement exists, which is clear and unmistakable. The delegation clause contained in the Arbitration Agreement leaves all arguments raised by Respondent in opposition to arbitration to an arbitrator, including the making, validity, enforceability, scope and any other issue raised by Respondent as it pertains to the Arbitration Agreement. Unless a party challenges the "delegation clause itself (rather than the arbitration agreement generally), a court must treat the delegation clause as valid . . . leaving any challenge to the validity of the Agreement as a whole for the arbitrator." *TCSC, LLC*, at 608, 846 S.E.2d at 877 (emphasis added).

III. Notwithstanding and Without Waiver to the Above, the Trial Court's Order is Erroneous because the Arbitration Agreement Merged with the Admission Agreement and Respondent is Estopped from Refusing to Arbitrate

Notwithstanding or in waiver to the fact that the delegation clause requires an arbitrator to decide Respondent's arguments opposing arbitration, Respondent is nevertheless estopped from denying the enforceability of the Arbitration Agreement upon Mrs. Sullivan's execution of it. That is because when Mrs. Sullivan executed the Arbitration Agreement, it merged with the Admission Agreement, and Mr. Rice subsequently accepted direct benefits from the merged agreement. Having accepted the direct benefits from certain terms of the merged agreement, Respondent is estopped from denying her obligation to submit the underlying claim to arbitration.

At the outset, the Court should acknowledge that any of Respondent's arguments pertaining to whether Mrs. Sullivan had the requisite agency or other legal authority to bind Mr. Rice to the Arbitration Agreement are not probative to determine the question of whether Respondent is precluded from refusing to arbitrate according to the merger/estoppel theory as set forth in more detail below. In other words, the question of whether Mrs. Sullivan was legally authorized by Mr. Rice to sign the Arbitration Agreement is not, in any way, relevant or outcome determinative to the merger of the Admission Agreement and Arbitration Agreement or to the application of equitable estoppel. No element of the doctrine of merger and no element of direct benefits estoppel depend on any showing that Mrs. Sullivan possessed actual, apparent, or any other form of agency authority.

Instead, the application of the doctrine of merger and direct benefits estoppel collectively constitute a stand-alone argument warranting the Court's reversal of the trial court's order denying Appellant's Motion to Compel Arbitration. Specifically, Mrs. Sullivan signed both the Admission Agreement and the Arbitration Agreement at the time of Mr. Rice's admission and for his care, treatment, and residency at the Facility. By Mr. Rice's subsequent admission to the Facility, and his receiving of care, treatment, and a residence at the facility, Mr. Rice accepted the benefits of the Admission Agreement, which the Arbitration Agreement merged with by its very express terms.

A. The Trial Court's Order is Erroneous to the Extent that it Ruled the Admission Agreement and Arbitration Agreement did not Merge

The Admission Agreement and the Arbitration Agreement merged and must be construed together, as one contract, because they were executed at the same time, by the same parties, for the same purpose, and as part of the same transaction.

Courts in South Carolina construe contemporaneous instruments together; if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties so that the whole agreement as actually made may be effectuated. *Klutts Resort Realty, Inc. v. Down'Round Development Corp*., 268 S.C. 80, 232 S.E.2d 20 (1977). "In the absence of anything indicating a contrary intention, where instruments are executed [1] at the same time, [2] by the same parties, [3] for the same purpose, and [4] in the course of the same transaction, courts will consider and construe the instruments together." *Id*.; *See also Saro Investments v. Ocean Holiday Partnership*, 314 S.C. 116, 441 S.E.2d 835 (Ct. App. 1994) (holding that promissory notes and a mortgage agreement executed contemporaneously on the same date, must be construed together). Here, the Arbitration Agreement and Admission Agreement merged because they were signed at the same time, by the same parties, for the same purpose, and as part of the same transaction.

It's hardly disputed that the Admission Agreement and Arbitration Agreement were signed at the same time. The Admission Agreement was signed by Mrs. Sullivan at 11:11 a.m. on December 23, 2021. The Arbitration Agreement was signed by Mrs. Sullivan at 11:14 a.m on December 23, 2021. They were signed three (3) minutes apart. Multiple other documents were signed by Mrs. Sullivan that also merged with the Admission Agreement, such as the South Carolina Community Long Term Consent Form ("LTCF").

The instruments were signed by the same parties. Appellant undisputedly signed the Admission Agreement and the Arbitration Agreement. Mrs. Sullivan signed the Admission Agreement and Arbitration Agreement. Her name was also included in printed letters in each of the agreements. The capacity that Mrs. Sullivan signed those agreements in, whether individually

or as an agent and on behalf of Mr. Rice, is not a factor that affects the satisfaction of this required element in any way.

Next, the instruments were executed for the same purpose. The Admission Agreement and Arbitration Agreement were executed for purposes of establishing Mr. Rice's residency at the Facility operated and managed by Appellant. Moreover, the purpose of the Admission Agreement and the Arbitration Agreement was to establish the terms and conditions of Mr. Rice's residency, treatment, and the provision of care all to be provided by Appellant at the Facility.

Lastly, the instruments were executed as part of the same transaction. Specifically, the Admission Agreement and Arbitration Agreement were executed during and for Mr. Rice's initial admission at Appellant's facility where he was intended to and did so become a resident of the Facility and where he would be provided and did so receive the daily provision of food, bedding, care and medical treatment from Appellant. The Arbitration Agreement and the Admission Agreement were both signed by Mrs. Sullivan, as representative on behalf of her father on the same day, at the same time, and related to the same subject matter, which was Mr. Rice's admission to Appellant's facility and Appellant's provision of care and treatment to him.

There is no intent contrary to the merger of the Admission Agreement and Arbitration Agreement either. The Arbitration Agreement expressly provides that "[u]pon execution, this Agreement shall become part of the Admission Agreement." While the Respondent alleged the existence of evidence showing the contrary, the Arbitration Agreement clearly and specifically states that it "shall become part of the Admission Agreement" upon execution. Therefore, the Admission Agreement and the Arbitration Agreement merged once the Arbitration Agreement was executed.

1. *Coleman, Thompson, Solesbee,* and *Hodge* are Distinguishable

The trial court erred in relying on certain cases offered by Respondent to oppose the merger of the Admission Agreement and the Arbitration Agreement, including *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"); *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); *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); and *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). Moreover, the Respondent may argue that those cases preclude merger of the present Admission Agreement and Arbitration Agreement. This case is distinguishable.

Hodge, *Coleman, Solesbee*, and *Thompson*, disclaimed merger on the basis of evidence supporting an intent contrary to merger, which those courts found within the terms of the admission agreements and arbitration agreements in those respective cases. Unlike the terms within the admissions agreements and arbitration agreements in those cases, the terms within the Admission Agreement and Arbitration Agreement concerning this matter do not indicate a "separateness" for

purposes of denying merger. There is no indicia of an intent contrary to merger contained in the terms of the Admission Agreement or Arbitration Agreement subject to this dispute. Rather, the intent is clear; the Arbitration Agreement and Admission Agreement *shall* merge. *See Klutts Resort Realty, Inc.*, at 88, 232 S.E.2d at 24 ("In the absence of anything indicating a contrary intention, where instruments are executed [1] at the same time, [2] by the same parties, [3] for the same purpose, and [4] in the course of the same transaction, courts will consider and construe the instruments together.") (emphasis added).

Here, the Arbitration Agreement states that it "shall become part of the Admission Agreement" upon execution. Respondent cannot create ambiguity to support an intent to the contrary of this clear and unmistakable statement. *See Silver v. Aabstract Pools & Spas, Inc*., 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) ("In determining as a matter of law whether a contract is ambiguous, the court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways: 'one may not, by pointing out a single sentence or clause, create an ambiguity.'").

Additionally, unlike the admissions agreements and the arbitration agreements in the cases cited by Respondent, the Arbitration Agreement and Admission Agreement here do not apply different laws. Instead, the Arbitration Agreement applies the FAA and any applicable law that is not preempted or inconsistent with it. The Admission Agreement is governed by and construed in accordance with any laws in which the Appellant's Facility is located. While the Arbitration Agreement was voluntary, it matters not whether the Arbitration Agreement was a condition of admission, only that it was in fact agreed to in conjunction with admission. Here, there can be no question that the Arbitration Agreement, once agreed upon, was intended by the parties to be construed together with the Admission Agreement. Its express terms require it. Therefore, the

Court should find that the delegation clause is a valid and enforceable provision because the Arbitration Agreement merged upon execution with the Admission Agreement and Respondent is equitably estopped from refusing arbitration, as set forth more particularly below.

2. *Coleman, Thompson, Solesbee,* and *Hodge* are Nevertheless Erroneous and Invalidate the Very Rule they Apply

Coleman, *Thompson*, *Solesbee*, and *Hodge* are erroneous and should be overruled to the extent that they held an intent contrary to merger existed and prevented an admission agreement and arbitration agreement from merging. The evidence used by those courts to support that finding necessarily make the rule of merger itself useless and impossible to satisfy in any circumstance. *Est. of Solesbee*, at 648, 885 S.E.2d at 149.

Most troubling, the courts in those cases found evidence indicating a contrary intent to merger when "each document had its own signature page." *Id*. However, one of the main elements to prove merger requires that each of the documents be "executed . . . by the same parties." *Id*. With this in mind, it seems impossible for any two documents to merge according to those four cases because one element of the rule requires the documents to be separately signed and, another element included in the same rule, the absence of an intent contrary to merger, prohibits the documents from being separately signed. Respectfully, those cases would appear nullify the rule of merger. *See id*. Therefore, they should not be considered to the extent they concern the analysis of the doctrine of merger.

Next, this Court in *Hodge* and *Solesbee* found against merger on the basis that the admission agreement in that case "provide[d] it [was] governed by federal law, and the [a]rbitration [a]greement provid[ed] it [was] governed by federal law." Both the Admission Agreement and the Arbitration Agreement in the present case apply South Carolina law, with only the exception that the FAA applies, which is of course a federal law. To the extent the trial court found that *Hodge*

and *Solesbee* supported finding an intent contrary to merger on the basis that the FAA is a federal law governing the Arbitration Agreement and the Admission Agreement provided only the choice of South Carolina law, the trial court's order should be reversed.

Moreover, this logic of the *Hodge* and *Solesbee* Courts to support finding an intent contrary to merger violates the FAA. "[C]ourts must place arbitration agreements on an equal footing with other contracts." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 131 S. Ct. 1740, 1742 (2011); *see also Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 229, 847 S.E.2d 268, 272 (Ct. App. 2020) ("The FAA ensures the even-handed enforcement of arbitration agreements implicating interstate commerce. . ."). Under the logic of *Hodge* and *Solesbee,* the trial court would have merged the Admission Agreement and the Arbitration Agreement but for the application of the FAA. For instance, if the trial court was presented with an arbitration agreement governed by South Carolina's Uniform Arbitration Act, it would not have ruled against merger. Therefore, the trial court's use of the FAA to find an intent contrary to merger inherently discriminates against the application of the FAA and necessarily violates the FAA by failing to place the Arbitration Agreement on an equal footing as any other contract.

The fact that the Admission Agreement and the Arbitration Agreement have their own titles and are separately paginated, provides no reasonable inference of an intent contrary to merger, in this case, where parties have explicitly agreed to merge the Agreements. Instead, all it does is point out that the Admission Agreement and the Arbitration Agreement are different instruments, which does not actually suggest anything about the intent of the parties on whether they should be construed together. The question of merger does not even arise unless there are multiple, different instruments involved. The very nature of merger is to merge separate documents. Take for instance the brief being read at this very moment. It contains sections containing different titles. It also

contains different sets of page numbers. Just like most any other brief submitted to the Court, it contains two signature blocks. Should the Court consider Appellant's brief as two separate documents too?

B. Respondent is Equitably Estopped from Refusing to Arbitrate

"Equitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity." *Int'l Paper Co. v. Schwabedissen Maschinen & Anlaeen GMBH*, 206 F.3d 411, 417-18 (4th Cir. 2000) (citation and internal quotation marks omitted). "A non-signatory is estopped from refusing to comply with an arbitration clause 'when it receives a direct benefit from a contract containing an arbitration clause."' *Id*. (quoting *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999)); *see also Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290–297, 733 S.E.2d 597, 601–605 (Ct. App. 2012) (applying the direct benefits test as set forth in *International Paper Co*. to reverse the circuit court's denial of a motion to compel arbitration); *Wilson*, 426 S.C.at 339–345, 827 S.E.2d at 174–177 (discussing direct benefits test).

Because the Admission Agreement merged with the Arbitration Agreement, equitable estoppel is properly applied in this case. The Fourth Circuit has held that "no party suing on a contract should be able to enforce certain contract provisions while simultaneously attempting to avoid the terms of an arbitration provision therein." *United States v. Bankers Ins. Co.*, 245 F.3d 315, 323 (4th Cir. 2001). "Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract." *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates. S.A.S.*, 269 F.3d 187, 200 (3d Cir. 2001)(citing

Am. Bureau of Shipping, 170 F.3d at 353 (finding non-signatory derived benefit from contract and could not avoid the arbitration clause contained therein)).

In the present case, Mr. Rice embraced all aspects of the Admission Agreement with the Facility in receiving a residence, care, and treatment. It would be inequitable to permit a party to claim the other is liable in tort based upon a contractual relationship, while at the same time allowing that same party to avoid the arbitration provision of the contract upon which the party's claims arise. In other words, Respondent cannot have it both ways. Respondent cannot rely upon certain terms of the merged agreement when it works to her advantage and repudiate other terms of the merged agreement, including the agreement to arbitrate, when it works to her disadvantage.

Accordingly, direct benefits estoppel precludes Respondent from asserting claims against Appellant based upon certain terms of the merged agreement while repudiating its equally binding terms on arbitration. She should be equitably estopped from doing so. No professional duty of care would have been exercised by Appellant's skilled nursing staff absent the execution of the Admission Agreement, which merged with the Arbitration Agreement. That duty was only undertaken as a result of the execution Admission Agreement, which merged with the Arbitration Agreement upon its subsequent execution. Numerous courts hold that where a plaintiff receives the benefits of the contract, which Respondent certainly did, the non-signatory is estopped from denying an arbitration agreement merely because he did not sign the contract under and pursuant to which he received all the benefits.

CONCLUSION

For these 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 Mr. Rice's acceptance of direct benefits from that merged agreement.

Respectfully submitted this 22nd day of May, 2026.

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