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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2022-CP-10-00483
Appellate Case No. 2025-000070

Fernesha Mazyck,
as Personal Representative of The Estate of Ida Braggs,

Respondent,

v.

THI of South Carolina a Charleston, LLC
d/b/a Riverside Health and Rehab,

Appellant.

FINAL REPLY BRIEF OF APPELLANT

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Believing that Plaintiff's counterarguments are already amply rebutted by the analysis set forth in its principal brief, Defendant would underscore the following points in reply to Plaintiff's brief.¹

ARGUMENT IN REPLY

- 1. While Defendant maintains that there is no ambiguity in regard to the merger of the Admission Agreement and the Arbitration Agreement, Defendant would point out that Plaintiff's admission that "there is ambiguity" as to whether the Admission Agreement and the Arbitration Agreement merged² is tantamount to an admission that it is reasonable to conclude they did.**

Even Plaintiff admits that there is at least ambiguity as to whether the Admission Agreement and the Arbitration Agreement merged. (Br. of Respondent p. 2 ("At its core, this Appeal presents a narrow issue . . . : whether [Defendant] may bind a nonsignatory resident, or her estate, to an arbitration agreement *when there is ambiguity* as to whether [Defendant's] arbitration agreement and a separate facility admission agreement ever merged.") (emphasis added); *see also id.* at pp. 2–3 (asserting, albeit without any evidence, that Defendant purposefully "created an ambiguity" in this regard); *id.* at p. 15 (again asserting, albeit without any evidence, that Defendant purposefully "creates an ambiguity" in this regard).)

¹ Shorthand references already defined in Defendant's principal brief are continued in this reply brief (e.g., "Defendant" refers to Defendant/Appellant, THI of South Carolina at Charleston, LLC d/b/a Riverside Health and Rehab, and "Plaintiff" refers to Plaintiff/Respondent, Fernesha Mazyck ("Ms. Mazyck"), as Personal Representative of The Estate of Ida Braggs ("Ms. Braggs").)

² (Br. of Respondent p. 2.)

Of course, as explained in its principal brief, Defendant denies that there is any ambiguity in regard to the merger of the Admission Agreement and the Arbitration Agreement, and adamantly maintains that—given the concurrence of all the particular circumstances necessary for the merger presumption even to arise in the first place (i.e., same time, parties, purpose, and transaction)—the circuit court’s finding against merger relies on improper speculation, not evidence from which a reasonable, non-speculative inference can be drawn that there was an intention contrary to merger.

But Defendant would point out that, by admitting there is (in Plaintiff’s view) ambiguity as to whether the Admission Agreement and the Arbitration Agreement merged, Plaintiff has effectively admitted that it is indeed reasonable to conclude they did. *See S.C. Dep’t of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001) (“A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation.”).

This is notable because, as explained in Defendant’s principal brief, to fall back on the idea that any ambiguity in regard to merger must be construed against merger makes no sense in this context. The *Coleman* Court clearly endorsed the rule of law that a presumption of merger arises where, as here, multiple instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction and that upsetting this

presumption requires evidence “indicating [(i.e., affirmatively showing)] a contrary intention.” *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014). While it is true that the *Coleman* Court also cited the rule that ambiguity is construed against the drafter,³ (a) it did so in dicta⁴ and (b) it never addressed the logical inconsistency—which thus remains fair game as an argument in this case⁵—in recognizing a rule of law creating a presumption in favor of merger (i.e., in recognizing the occurrence of a set of circumstances (same time, parties, purpose, and transaction) as sufficiently probative to affirmatively tip the scales in favor of merger) while at the same time allowing that presumption to be completely overturned by evidence that is merely ambiguous, i.e., that does not even go so far as to clearly indicate a contrary intention and, indeed, is actually still susceptible to a reasonable conclusion in favor of merger—as, again, Plaintiff herself concedes is the case here.

³ *Id.* at 407 S.C. at 355–56, 755 S.E.2d at 455.

⁴ *Id.* at 407 S.C. at 355–56, 755 S.E.2d at 455 (“By their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply. *Even if* the ‘Entirety’ clause creates an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter, in this case, appellants.”) (emphasis added) (internal citation omitted); *see Nash v. Tindall Corp.*, 375 S.C. 36, 40–41, 650 S.E.2d 81, 83 (Ct. App. 2007) (“Judicial dicta is not essential to the decision. Dicta . . . is a statement on a matter not necessarily involved in the case, and is not binding as authority.”) (internal citations and quotations marks omitted).

⁵ To be clear, none of *Coleman*’s progeny has addressed this either.

2. Plaintiff’s—and, indeed, the *Weaver* Court’s—view of direct benefits estoppel is erroneous.

Citing this Court’s decision in *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020), Plaintiff contends direct benefits estoppel is limited to situations where ““(1) the nonsigner’s claim arises from the contractual relationship, (2) the nonsigner has ‘exploited’ other parts of the contract by reaping its benefits, and (3) the claim relies solely on the contract terms to impose liability.”” (Br. of Respondent p. 16 (emphasis omitted) (quoting *Weaver*, 431 S.C. at 230, 847 S.E.2d at 272).). The *Weaver* Court itself cites our Supreme Court’s decision in *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019), for this proposition, specifically, *Wilson*, 426 S.C. at 340–44, 827 S.E.2d at 175–77. But *Wilson*—which is binding on this Court as precedent⁶—does not actually support the proposition.

The *Weaver* Court cites *Wilson* as establishing the above-quoted three-part test for direct benefits estoppel, but *Wilson* simply does not do so. Rather, as explained in Defendant’s principal brief, 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

⁶ S.C. Const. art. V, § 9 (“The decisions of the Supreme Court shall bind the Court of Appeals as precedents.”).

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 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 v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012) (“To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.”) (citation and internal quotation marks omitted).

As set forth in our Supreme Court’s controlling decision in *Wilson*, and consistent with this Court’s decision in *Pearson*, which the *Wilson* Court favorably cites, the essence of the test for direct benefits estoppel is simply number (2) quoted above (that “the nonsigner has ‘exploited’ other parts of the contract by reaping its benefits”), and neither number (1) (that “the nonsigner’s claim arises from the contractual relationship”) nor number (3) (that “the claim relies solely on the contract terms to impose liability”) is required. Indeed, to require more than number (2)—especially to require number (3)⁷—is to invite the very sort of have-your-cake-and-eat-it-too inequity that the doctrine aims to prevent in the first place. In other words, to find against direct benefits estoppel for want of number (3) even where, as here, numbers (1) and (2) are plainly satisfied, is affirmatively to allow a plaintiff to exploit and enjoy the direct benefits of an agreement containing an arbitration clause while simultaneously avoiding the obligation to

⁷ Number (1) is plainly satisfied here in any event, as the Admission Agreement, i.e., the instrument with which the Admission Agreement merged, was essential to the establishment of the relationship between Defendant and Ms. Braggs out of which Plaintiff’s claims against Defendant arise.

arbitrate so long as the plaintiff sues for something other than breach of contract. Neither *Wilson* nor this Court's decision in *Pearson* nor general notions of equity countenance,⁸ much less call for, such a result.

CONCLUSION

For the foregoing additional reasons, Defendant asks that the Court reverse the circuit court's denial of Defendant's Motion to Compel Arbitration, and, in turn, reverse the circuit court's grant of Plaintiff's Motion to Compel Discovery, and compel Plaintiff's claims against Defendant to arbitration (or to remand this matter to the circuit court with instructions that it do so).

<SIGNED ON THE FOLLOWING PAGE>

⁸ See *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) ("Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.").

Respectfully submitted,
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v.

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Appellant.

CERTIFICATION FOR FINAL REPLY BRIEF OF APPELLANT

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Attorneys for Appellant

I, Russell G. Hines, do hereby certify that the **Final Reply Brief of Appellant** complies with Rule 211(b), SCACR. Additionally, the undersigned hereby certifies that this filing complies with the Supreme Court order of April 15, 2014.

Respectfully submitted,
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I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellant, hereby certify that the **FINAL REPLY BRIEF OF APPELLANT** and **CERTIFICATION FOR FINAL REPLY BRIEF OF APPELLANT** was served on Respondent on August 25, 2025, by emailing (see attached email) a copy of the same to Respondent's counsel of record:

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August 25, 2025

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Sent: Monday, August 25, 2025 1:23 PM
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Cc: Hines, Russell; Justman, Aimee
Subject: Mazyck v. THI; Appellate Case No. 2025-000070 (CR 211023)
Attachments: Final Brief of Appellant.pdf; Final Reply Brief of Appellant.pdf; Certification - Final Brief.pdf; Certification - Final Reply Brief.pdf

Enclosed please find the following for service upon you in the above-referenced matter:

1. Final Brief of Appellant;
2. Certification for Final Brief of Appellant;
3. Final Reply Brief of Appellant; and
4. Certification for Final Reply Brief of Appellant.

Thank you,

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