

|                                 |   |                                    |
|---------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA         | ) | IN THE COURT OF COMMON PLEAS       |
|                                 | ) |                                    |
| COUNTY OF COLLETON              | ) | CIVIL ACTION NO.: 2021-CP-15-00516 |
|                                 | ) |                                    |
| FERNESHA MAZYCK, AS PERSONAL    | ) |                                    |
| REPRESENTATIVE OF THE ESTATE OF | ) |                                    |
| IDA BRAGGS,                     | ) |                                    |
|                                 | ) |                                    |
| Plaintiff,                      | ) | <b>ORDER</b>                       |
|                                 | ) |                                    |
| v.                              | ) |                                    |
|                                 | ) |                                    |
| THI OF SOUTH CAROLINA AT        | ) |                                    |
| CHARLESTON, LLC d/b/a RIVERSIDE | ) |                                    |
| HEALTH AND REHAB,               | ) |                                    |
|                                 | ) |                                    |
| Defendants.                     | ) |                                    |

**RECEIVED**  
**Jan 13 2025**  
**SC Court of Appeals**

This matter came before the Court on January 10, 2024, on a Motion to Compel discovery responses filed by Plaintiff and a Motion to Compel Arbitration filed by Defendant THI of South Carolina at Charleston, LLC d/b/a Riverside Health and Rehab pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* and Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. Present at the hearing and arguing on behalf of Defendant was Russell G. Hines. Appearing and arguing on behalf of Plaintiff was Grahame E. Holmes. After reviewing the submissions of the parties, the pleadings, and hearing the arguments of counsel, the Court denies Defendant’s Motion to Compel Arbitration and grants Plaintiff’s Motion to Compel for the reasons set forth below.

Plaintiff filed this action in the Charleston County Court of Common Pleas alleging Ida Braggs (“Decedent”) received substandard care at Defendant’s nursing home facility. Plaintiff has alleged wrongful death and survival claims as a result of the care and treatment provided to decedent.

Decedent was admitted to Defendant's facility on August 6, 2010. Plaintiff signed an Admission Agreement on August 6, 2010. That same day, she also signed the subject Arbitration Agreement. At the time the Arbitration Agreement was signed, Plaintiff did not have any form of power of attorney for Decedent. Plaintiff alleges that Decedent was suffering from schizophrenia at the time she was admitted to Defendant's facility.

1. South Carolina Adult Health Care Consent Act S.C. Code Ann. § 44-66-10 *et seq.*

In an affidavit signed by Plaintiff and filed in opposition to Defendant's Motion to Compel Arbitration, Plaintiff attested that at the time the Admission Agreement was signed, Decedent had three living children. A majority of Decedent's three children did not sign the Admissions Agreement as required by § 44-66-10 *et seq.* and there is no evidence that a majority of Decedent's three children were consulted regarding the Admissions Agreement. Therefore, based on the evidence before the Court, it appears Plaintiff did not have authority to make health care decisions on behalf of Decedent at the time of admission, much less the authority to waive her estate's right to a jury trial.

Even if Plaintiff had authority under the Act to enter the Admission Agreement as an act in furtherance of Decedent's health care needs, it does not necessarily follow that she had authority to enter a separate Arbitration Agreement under the Act. The authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial. *Solesbee v. Clinical*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023). Therefore, even if Plaintiff had authority to act on behalf of Decedent under the South Carolina Adult Health Care Consent Act, this authority does not extend to an Arbitration Agreement.

## 2. Merger.

Defendant argues that because the Admission Agreement and Arbitration Agreement were signed at the same time and in the course of Decedent's admission, the Admission Agreement and Arbitration Agreement merge into one agreement.

In determining whether an arbitration agreement and admission agreement are separate, stand alone agreements or if they merge, our courts have considered whether the agreements are separately paginated, whether they are both controlled by state or federal law, whether they contain similar conditions for termination, and whether they are addressed as one document. *Solesbee v. Clinical*, 438 S.C. 638, 885 S.E.2d 144 (Ct.App. 2023); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018); *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014).

Here, the Arbitration Agreement and Admission Agreement are separately paginated. The Arbitration Agreement is controlled by federal law while the Admission Agreement is controlled by state law. The resident may terminate the Admission Agreement but cannot terminate the Arbitration Agreement. The agreements are referred to as separate agreements: "This Agreement shall remain in effect for all care rendered at Facility and shall survive any termination or breach of this Agreement or the Admission Agreement." Therefore, the Admission Agreement and the Arbitration Agreement are separate agreements that shall not be merged.

## 3. Estoppel.

Defendant argues that even if Plaintiff did not have authority to enter into the Arbitration agreement through the South Carolina Adult Health Care Consent Act or a valid power of attorney, Plaintiff should be estopped from asserting the Arbitration Agreement is unenforceable.

Defendant has not met its burden to establish these elements of estoppel. As to the person to be estopped, the focus is on the intentional actions of the principal, ie. Decedent. The only evidence put forth as to Decedent's condition at the time of her admission is that she was suffering from schizophrenia. Defendant has put forth no evidence as to any intentional actions of Decedent, much less intentional, calculated actions made with knowledge of the real facts.

4. Apparent Authority.

The legal consequences of an agent's actions can only be attributed to the principal when the agent has actual or apparent authority. *Charleston Registry v. Young Clement*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). South Carolina law requires that to prove apparent authority, the defendant must show that the purported principal consciously or impliedly represented another to be his agent. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). As stated above, Defendant has offered no evidence of any actions taken by Decedent, consciously or impliedly, to represent Plaintiff to be her agent and has failed to prove Plaintiff had apparent authority to act on Decedent's behalf. Therefore, Defendant's Motion to Compel Arbitration is denied.

As Defendant's Motion to Compel Arbitration is denied, Plaintiff's Motion to Compel discovery responses is granted. Defendant shall provide full and complete responses to Plaintiff's discovery requests within 45 days of the date of this Order.

**IT IS SO ORDERED.**

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The Honorable J. Cordell Maddox, Jr.  
Presiding Judge  
Ninth Judicial Circuit

\_\_\_\_\_, 2024  
Anderson, South Carolina



Charleston Common Pleas

**Case Caption:** Fernesha Mazyck , plaintiff, et al VS Thi Of South Carolina At  
Charleston Llc , defendant, et al

**Case Number:** 2022CP1000483

**Type:** Order/Other

So Ordered

s/ J. Cordell Maddox Jr.