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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Appellate Case No.: 2026-001309

Thomas D. Kilpatrick
as Special Administrator for the Estate of Anthony Lemon,......................Respondent,

v.

Pruitthealth-Ridgeway, LLC f/k/a Unihealth Post-Acute Care-Tanglewood, LLC, United Health Services of South Carolina, Inc., Pruitthealth Consulting Services, Inc., Pruitthealth Therapy Services, Inc. f/k/a United Rehab, Inc., Pruitthealth, Inc., Neil Pruitt, Jr., THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC, Fundamental Long Term Care Holdings, Inc., Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC,.. Defendants,

Of which THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC are the .... Petitioners.

RESPONDENT'S MOTION TO DISMISS THE PETITION FOR A WRIT OF CERTIORARI AND FOR SANCTIONS

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ATTORNEYS FOR RESPONDENT

Respondent Thomas D. Kilpatrick, as Special Administrator of the Estate of Anthony Lemon ("Respondent"), respectfully moves this Court pursuant to Rule 269, SCACR, for an order denying the petition for a writ of certiorari, dismissing this appeal, and imposing sanctions on Petitioners. The appeal should be dismissed and sanctions imposed because the petition is frivolous, has been taken solely for the purpose of delay, and is entirely unsupported by any South Carolina precedent substantiating Petitioners' arguments concerning the purported merger of Petitioners' arbitration and admission agreements and the application of direct benefits estoppel.

The petition presents an issue that has already been repeatedly and conclusively resolved: whether a skilled nursing facility may compel arbitration against a resident, or the resident's estate, based on an arbitration agreement executed by a third party who lacked legal authority to bind the resident or his estate at the time of admission. The Court of Appeals has addressed that question on these identical agreements again and again, and has reached the same result every time. Most prominently, in *Estate of Solesbee by Bayne v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023), the Court of Appeals examined the substantive arguments Petitioners advance here and rejected them, holding that in wrongful death and survival actions grounded in the common law, a personal representative of an estate is not estopped from denying the validity of an arbitration agreement where the agreement was not executed by the decedent or a person possessing lawful authority to act on the decedent's behalf.

The governing law is therefore settled. Both the Court of Appeals and this Court have made clear that equitable estoppel may bind a nonsignatory resident or estate to an arbitration provision contained within an admission agreement only when the nonsignatory seeks to enforce other provisions of the admission agreement within the litigation. When a plaintiff's claims arise independently under the common law, as in wrongful death and survival actions, direct benefits estoppel does not apply merely because a facility included an arbitration agreement with a merger provision in its admission paperwork. The rule announced in *Solesbee* did not create a new doctrine specific to the arbitration context. It applied long standing principles of contract and estoppel to the precise circumstances presented here and presented again now.

Notwithstanding this settled precedent, Petitioners ask this Court to grant certiorari, reverse the courts below, and overrule numerous binding decisions, based on arguments that have already been presented to, and rejected by, the appellate courts of this State numerous times. Petitioners do not identify any intervening authority, change in law, or factual distinction that would justify revisiting those decisions. Instead, Petitioners ask the Court to disregard controlling precedent and adopt a rule that would allow skilled nursing facilities to bind residents to arbitration regardless of whether the individual who executed the admission documents possessed any legal authority to do so or whether the resident's estate is attempting to enforce other provisions of the admission agreement while denying the validity of an arbitration provision. Petitioners' position is not merely inconsistent with existing precedent. It is foreclosed by it. As such, Petitioners could not reasonably expect this Court to reach a different outcome, particularly where this Court has already declined to disturb *Solesbee* and its progeny on certiorari review numerous times under identical circumstances.

The petition must also be viewed in the broader procedural context in which it arises. Under South Carolina law, orders denying motions to compel arbitration are immediately appealable. The Fundamental entities have increasingly exploited and abused that procedural mechanism by filing interlocutory appeals, and then certiorari petitions, raising arguments that have already been rejected time and again, and asking for the maximum amount of time extensions at every procedural juncture where they are required to take any action. The predictable effect is to halt proceedings in the circuit court and delay the adjudication of wrongful death and survival claims for years while the appellate process unfolds, all to the Fundamental entities' advantage. Counsel for Respondent has now defended against numerous such appeals presenting the same arguments rejected in *Solesbee* and the other decisions of the Court of Appeals. In each instance, the appeal has produced substantial delay while the appellate process runs its course, only for the order below to be affirmed under controlling precedent and for certiorari to be denied. The pattern is unmistakable. These interlocutory arbitration appeals and certiorari petitions are being used not as a legitimate vehicle for resolving unsettled legal questions or unusual circumstances of fact, but as a mechanism to postpone the litigation of claims brought by the families of deceased residents in an effort to exhaust them into submission.

When a party pursues appellate review that is directly contrary to settled law and offers no good faith basis for modification or reversal of that law, the proceeding is frivolous. Continued tolerance of such filings invites the routine misuse of the appellate process, burdens the courts with issues already conclusively resolved, and imposes unnecessary delay on litigants seeking resolution of claims arising from the deaths of their mothers, fathers, and siblings. For these reasons, and as set forth more fully below, the Court should dismiss this appeal and impose sanctions sufficient to deter the recurrence of this conduct.

FACTUAL AND PROCEDURAL BACKGROUND

This action arises from the wrongful death and survival claims of Anthony Lemon, a 57-year-old resident with multiple sclerosis who suffered numerous pressure injuries, sepsis, aspiration events, dehydration, tachycardia, and hypotension while in Petitioner's care. (Ex. 1, Initial Br. of Resp't at 7). Respondent commenced this action in the Fairfield County Court of Common Pleas, alleging negligence and gross negligence in the care and treatment provided to Anthony Lemon. (*Id.* at 3). The Estate has asserted only common law tort claims. (*Id.*). It has not asserted any claim for breach of contract.

The Facility moved to dismiss and compel arbitration. (*Id.* at 4). The circuit court denied that motion by order filed March 14, 2024, finding that the arbitration agreement and admission agreement did not merge and that Petitioners' direct benefits estoppel arguments failed. (*Id.* at 5). The Court of Appeals affirmed in an unpublished decision, 2026-UP-043, filed February 4, 2026. Petitioners now seek a writ of certiorari from this Court.

Petitioners are part of a constellation of entities that operate, own, and profit from scores of skilled nursing, assisted living, and rehabilitation facilities located in a number of states, including South Carolina, Indiana, Maryland, Nevada, New Mexico, Texas, and Wisconsin.[1] The petition, and the related appeals discussed below, essentially revolve around a single focused, dispositive issue: whether the Fundamental entities' admission agreement and arbitration agreement, which have remained identical since at least 2019, merge such that Petitioners may avail themselves of a direct benefits estoppel argument to preclude Respondent, and other individuals representing the interests of vulnerable, elderly residents of the Fundamental entities' facilities, from denying that the subject arbitration agreement was signed by someone with actual or apparent authority at the time of admission.[2]

The scope of the Fundamental entities' litigation of this single issue is staggering. At the time Petitioners filed the instant petition, the Court of Appeals had reviewed and rejected their position on these identical agreements *twenty-five*

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[1]This group ("the Fundamental entities") includes Petitioners and numerous affiliated THI, Palmetto, Hallmark, and related entities, among others. The Fundamental entities are believed to own and/or operate at least 20 facilities within South Carolina. *See In re Fundamental Long Term Care, Inc.*, 569 B.R. 904 (Bankr. M.D. Fla. 2016) (reciting the history of the Fundamental entities and their business activities).

[2]It is a foregone legal conclusion that authority bestowed upon a family member to act on a resident's behalf under the Adult Health Care Consent Act does not include authority to enter an arbitration agreement. *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014).

times, in twenty-four unpublished decisions and one published opinion, *Solesbee*. Each of those decisions reviewed the exact same admission agreement and arbitration agreement now before the Court and entailed an analysis of the exact same applicable South Carolina law and general contract principles.[3]

More importantly, this Court has already declined to disturb those decisions. As of the filing of this motion, this Court has denied petitions for a writ of certiorari raising this very issue, on these very agreements, *nineteen times*, including its denial of certiorari to review the published decision in *Solesbee*, and including a mass denial of *nine such petitions on a single day, October 30, 2024.* (Ex. 2, Table). Not one petition raising this issue has ever been granted. The Court of Appeals has since continued to issue decisions affirming that the subject agreements do not merge, and additional matters presenting the identical issue remain pending before that court awaiting the same predictable outcome.

All told, the Fundamental entities have now asked the Court of Appeals and this Court to review the merger and estoppel effect of these same two documents dozens of times over a span of more than five years, without a single successful result. These protracted appeals, which to a legal certainty are destined for failure, typically delay the underlying litigation for multiple years and needlessly consume the parties', the Court of Appeals', and this Court's resources and time.

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[3]The merger analysis focuses solely on the language of the agreements that have purportedly merged. *See Solesbee*, 438 S.C. at 648, 885 S.E.2d at 149 ("[B]y their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply."). The figures stated in this motion reflect the status of these matters as of the date of filing. Counsel will update them at argument if the Court requires.

ARGUMENT

I. The petition should be denied and the appeal dismissed as frivolous and taken solely for delay.

Rule 269, SCACR, sets forth this Court's discretionary authority to impose sanctions for frivolous appeals:

> Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

Rule 269, SCACR. "An appeal is frivolous if the result is obvious or the arguments of error are wholly without merit." *Coghlan v. Starkey*, 852 F.2d 806, 811 (5th Cir. 1988). The dispositive argument raised in this petition is whether the circuit court and the Court of Appeals erred in finding that the subject agreements did not merge pursuant to *Solesbee* and the numerous other decisions of the Court of Appeals affirming *Solesbee*. Those results were not merely likely. They were obvious. Petitioners identify no intervening authority, no change in the controlling law, and no factual distinction setting this matter apart from the dozens that preceded it. Their arguments are not merely inconsistent with precedent, they are foreclosed by it.

Petitioners are likely to take the position that, until this Court publishes an opinion affirming the reasoning of *Solesbee*, any repetitive petition on the merger issue is not frivolous and retains some chance of success. That position ignores that, by repeatedly denying certiorari to review the outcome of *Solesbee* (a binding, published opinion), this Court has already conveyed that, under these identical facts and agreements, it does not perceive a clear legal error that necessitates reversal or an issue of sufficient importance to warrant the Court's review. After denying certiorari on this issue nineteen times, it is no longer reasonable or realistic to expect a different result on the next go-round.

Although Petitioners' arguments may also invoke the doctrine of equitable estoppel, which would ordinarily require weighing the attendant circumstances and equities unique to each case, here the threshold, dispositive issue is whether the agreements merged in the first place. Without merger, the Fundamental entities are deprived of the ability to use the estoppel doctrine offensively as a sword against their residents, and the merger analysis in this petition and in every other matter that has come before the appellate courts has been identical in every respect, predicated solely on verbiage contained in the same two documents. *See Solesbee*, 438 S.C. at 646-48, 885 S.E.2d at 148-49.

As to merger, Petitioners cannot factually distinguish the presentation of the issue in this petition from the dozens of matters that have preceded it. It should be patently obvious to the Petitioners, to this Court, and to any other observer of these matters that the merger issue is settled and that Petitioners' arguments are wholly without merit. The frivolousness of the petition is established on the face of the controlling precedent alone. Petitioners' motive in pressing it anyway is addressed in Section II below.

Appellate courts possess inherent power to dismiss appeals that are "manifestly and palpably frivolous and without merit." *Johnson v. St. Paul City Ry.*

Co., 68 Minn. 408, 409, 71 N.W. 619 (Minn. 1897); *Buckner v. Jenkins*, 122 Okla. 105, 251 P. 81 (Okla. 1926); *MacArthur v. San Juan Cnty.*, 495 F.3d 1157, 1161 (10th Cir. 2007). Rule 269, SCACR, grants this Court broad and sweeping authority to impose any sanctions called for by the circumstances of the case and necessary to deter further frivolous appeals. *See also Walker v. Health Int'l Corp.*, 845 F.3d 1148, 1157 (Fed. Cir. 2017) (explaining that sanctions are awarded to compensate the victimized party for the burden of continued litigation in what was long ago a settled matter and to discourage frivolous appeals that unnecessarily clog the docket).

II. The Fundamental entities' documented pattern of exploiting the appellate process solely for delay independently warrants sanctions.

Beyond the obvious lack of merit, the record of the Fundamental entities' conduct supplies an independent basis for sanctions. Orders denying motions to compel arbitration are immediately appealable in South Carolina, and the Fundamental entities have systematically exploited that procedural mechanism. Time after time, they have filed interlocutory appeals, and when those appeals fail, petitions for certiorari, advancing the identical merger and direct benefits estoppel arguments on the identical admission and arbitration agreements, knowing that each filing halts the underlying litigation for years regardless of its ultimate fate.

The numbers leave no room for a benign explanation. The Court of Appeals has rejected these arguments on these agreements in a published opinion and in two dozen unpublished decisions, and this Court has denied certiorari nineteen times without granting review even once, including a single day denial of nine such petitions. The merger analysis in this petition is identical in every respect to the analysis in every matter that has come before. It is predicated solely on the contents of the same two documents, and Petitioners cannot factually distinguish it from the others. *See Solesbee*, 438 S.C. at 646-48, 885 S.E.2d at 148-49. When a litigant relitigates a settled, dispositive issue dozens of times without a single success and without identifying any change in law or fact, the only reasonable inference is that the filings are not made in a good faith belief in a favorable outcome, but are designed to delay, frustrate, and demoralize the residents and families who bring tort claims into submission, without regard for the resulting waste of judicial resources.

That inference is reinforced by the toll this conduct exacts. These protracted appeals, which to a legal certainty are destined for failure, typically delay the underlying litigation for multiple years and needlessly consume the parties', the Court of Appeals', and this Court's resources and time. The affected respondents, families seeking resolution of claims arising from the deaths of their loved ones, have collectively had their right to a speedy resolution of their claims delayed by years. Continued tolerance of this conduct invites its repetition and rewards the very strategy of attrition the Fundamental entities have pursued. Sanctions are therefore warranted not only because this particular petition is frivolous, but to deter the established pattern of which it is the latest example. It should not escape the Court's attention that on the same date that this petition was filed, the Fundamental entities filed three other petitions making the exact same purely legal arguments.

III. Denial of the petition is the appropriate threshold sanction.

Under these circumstances, denial of the petition and dismissal of this appeal is plainly appropriate. There is no need for further briefing, oral argument, or a written opinion on a dispositive issue that has already been ruled upon by the Court of Appeals dozens of times under factually identical circumstances and on which this Court has already denied certiorari nineteen times. *See McKinzy v. Kansas City Power & Light Co.*, 367 F. App'x 912, 913 (10th Cir. 2010) (dismissing as frivolous where the court had already considered and rejected the same arguments and the appellant made no attempt to distinguish those decisions). This Court should not be required to set aside its limited resources, grant certiorari, require the parties to further brief an issue that has already been argued dozens of times, hold oral argument, and draft a published opinion to put an end to the Fundamental entities' willful abuse of the appellate courts and the Rules.

IV. A monetary sanction and fine are warranted to deter continued abuse.

While denial and dismissal are called for here, Respondent expects they will not, standing alone, deter Petitioners' and the Fundamental entities' future conduct. Respondents in the related matters have thus far been eligible to seek attorney's fees and costs pursuant to Rule 222, SCACR, after remittitur. The looming taxation of costs under Rule 222, however, has done nothing to discourage the Fundamental entities' exploitation and abuse of the appealability rules, and in the meantime the affected respondents have collectively had their right to a speedy resolution of their claims delayed by years.

A stronger sanction is warranted. This Court should award attorney's fees and costs to Respondent, without the cap imposed by Rule 222, to compensate Respondent for the burden of participating in this frivolous appeal. The Court should further treble the attorney's fees and costs to serve as a deterrent to the further vexatious appeals that are certain to follow if Petitioner and the remaining Fundamental entities are permitted to continue appealing from every order denying their motions to compel arbitration based on the merger issue, which has already been adequately addressed by *Solesbee*.

Finally, the Court should order Petitioners to pay a reasonable fine to the Court. These appeals have likely cost the appellate courts hundreds of hours of unnecessary work that could and should have been devoted to matters with some likelihood of success, and they have surely added considerable strain to this Court's and the Court of Appeals' busy dockets. Not only have Respondent's and the courts' time and resources been wasted, but the parties to other, unrelated matters have had the resolution of their cases unreasonably delayed by the burden Petitioners and the Fundamental entities have placed on the appellate system.

CONCLUSION

Petitioners' and the other Fundamental entities' continuous pattern of appealing the dispositive merger issue is, in reality, no different than if a losing party petitioned this Court for rehearing on the same legal issue, based on the same facts, dozens of times in a row. For the foregoing reasons, Respondent respectfully requests that the Court dismiss this appeal and impose pecuniary sanctions on Petitioners.

Respondent also requests that the Court hold any remaining briefing deadlines in abeyance until the Court has ruled on this motion.

Respectfully submitted,

By: _s/John E. Parker, Jr.____________________

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