

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
PAUL THOMAS CAPO, JR. AS)
NEXT FRIEND OF RYAN)
MCDERMOTT,)
Plaintiff,)
- vs -)
ACTIVE DAY, INC.,)
Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO: 2025-CP-10-06032

**ORDER DENYING MOTION TO STAY
ACTION AND COMPEL ARBITRATION**

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SC Court of Appeals

THIS MATTER comes before the Court on Defendant Active Day, Inc.'s Motion to Stay Action and Compel Arbitration. The Court held a hearing via WebEx on May 21, 2026, at which counsel for both parties presented oral argument. Having considered the motion, the parties' written submissions to the Court, the record, and the arguments of counsel, the Court makes the following findings and enters the following order:

FINDINGS¹

1. Failure of Formation — No Valid Agreement to Arbitrate

Ryan McDermott did not sign the enrollment agreement. Candace Capo signed without a power of attorney, guardianship, or any other legal authority to waive his rights. Notably, the portion of the agreement that asks for information on Ryan McDermott's POA or legal representative is left blank. The 'Responsible Party' designation identifies the party responsible for payment. It does not authorize execution of an arbitration agreement or waiver of a constitutional right. No valid agreement to arbitrate was formed. The cases Defendant cited as affirmative support — Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), and Coleman v. Mariner

¹ All findings of fact and conclusions of law indicated in this order are made for the purpose of ruling on this motion only.

Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014) — affirmed denial of arbitration on materially identical facts.

2. Arredondo Controls — Express Authority Required to Waive the Constitutional Right to a Jury Trial

Waiver of the constitutional right to trial by jury requires express authority from the person whose right is being waived. *Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 78, 856 S.E.2d 550, 556 (2021), cert. denied, No. 21-196 (U.S. Dec. 6, 2021). In *Arredondo*, the South Carolina Supreme Court held that even a formal, written power of attorney conferring general authority to manage a principal's affairs is insufficient to waive his right to a judicial forum. The authority deficit here is greater: the signatory in *Arredondo* held a formal POA; Candace Capo held no legal instrument of any kind. *Arredondo* independently requires denial.

3. Paragraph (q) Cannot Cure Defective Formation

Defendant contends that Paragraph (q), which designates the Member as an 'intended third-party beneficiary,' independently binds Ryan McDermott to the arbitration clause. The Court rejects this argument. A drafter cannot cure defective formation by writing a self-serving clause into its own form contract — the agreement's terms cannot bootstrap themselves into existence. *Thompson*, 416 S.C. at 55–57, 784 S.E.2d at 686–87. The third-party beneficiary doctrine additionally requires a validly formed contract; formation failed here, and there is no valid contract from which third-party obligations can arise. *Arredondo* further forecloses the argument that any unilateral contractual designation can supply the express constitutional authority South Carolina law requires.

4. Apparent Authority Is Not Established And Would Be Insufficient to Waive a Constitutional Right As Serious As The Right To Trial By Jury

Ryan McDermott did nothing to hold Candace Capo out as his authorized representative for purposes of executing legal instruments. Apparent authority, which by definition does not reach actual authority, cannot satisfy the express authorization standard that *Arredondo* requires — if a formal POA is insufficient, apparent authority cannot suffice. *Thompson* and *Coleman*

both rejected the apparent authority theory in materially identical care-facility arbitration contexts. Thompson, 416 S.C. at 52–55, 784 S.E.2d at 684–86; Coleman, 407 S.C. at 354–56, 755 S.E.2d at 454–55.

5. Direct Benefits Estoppel Does Not Apply

Equitable estoppel cannot operate on an agreement that was never validly formed — formation failure is prior to any estoppel analysis. Even apart from formation, Ryan McDermott's benefit flows from the service relationship, not from the arbitration clause; direct benefits estoppel requires that the benefit derive from the specific contractual provision at issue, not merely from the transaction at large. And estoppel based on knowing acceptance requires capacity. Ryan McDermott's undisputed cognitive disability forecloses any finding of knowing acceptance. Thompson, 416 S.C. at 55–57, 784 S.E.2d at 686–87.

6. The Sword-and-Shield Argument Is Rejected

Defendant re-emphasized at the close of the hearing that Plaintiff impermissibly invokes Ryan McDermott's incapacity as both the basis for next-friend standing and as a defense to the arbitration clause. The Court rejects this argument. The next-friend mechanism under Rule 17(c), SCRPC is a procedural vehicle enabling an incapacitated person to access the courts; it has no bearing on whether a separate contractual waiver was validly authorized before litigation began. The two inquiries are distinct. The fact that Ryan requires a next friend confirms — rather than contradicts — that he lacked capacity to authorize the waiver at enrollment. Thompson directly forecloses the argument: the estate of an incapacitated resident simultaneously challenged the arbitration agreement through a representative and pursued the underlying claims, and the Court of Appeals addressed authority on the merits without any suggestion of estoppel. Thompson, 416 S.C. at 50–57, 784 S.E.2d at 683–87.

ORDER

Based upon the foregoing findings and the controlling authority of Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016); Coleman v. Mariner Health Care, Inc., 407

S.C. 346, 755 S.E.2d 450 (2014); and Arredondo v. SNH SE Ashley River Tenant, LLC, 433 S.C. 69, 856 S.E.2d 550 (2021), it is hereby:

ORDERED that Defendant Active Day, Inc.'s Motion to Stay Action and Compel Arbitration is DENIED. No valid agreement to arbitrate was formed, and each alternative ground advanced by Defendant at the May 21, 2026 hearing independently fails for the reasons set forth in the findings above.

IT IS SO ORDERED.

The Honorable Dale Van Slambrook
Circuit Court Judge, Ninth Judicial Circuit
South Carolina Court of Common Pleas

Charleston, South Carolina



Charleston Common Pleas

Case Caption: Paul Thomas Capo Jr , plaintiff, et al VS Active Day Inc

Case Number: 2025CP1006032

Type: Order/Other

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge
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