

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

Case No. 2025-CP-10-06032

Paul Thomas Capo, Jr. as Next Friend of Ryan McDermott,Respondent,

v.

Active Day, Inc.,Appellant,

NOTICE OF APPEAL

Appellant Active Day, Inc. appeals from the order of the Charleston County Circuit Court denying its Motion to Compel Arbitration, entered by the Honorable Dale E. Van Slambrook. The Court issued a short-form order denying the Motion to Compel Arbitration on May 26, 2026, and a final written order on May 26, 2026. Appellant thereafter moved to reconsider pursuant to Rule 59(e), SCRCP, and the Court denied that motion by short-form order dated July 7, 2026. Copies of all three orders are attached and provided to the Court of Appeals with this Notice.

Respectfully submitted this 10th day of July 2026.

s/Tyler A. Adams

Philip P. Cristaldi, III, Bar No.: 102219

Tyler A. Adams, Bar No.: 107842

Ross & Cristaldi, LLC

765 Long Point Rd., Ste. 101

Mt. Pleasant, South Carolina 29464

Phone: (843) 329-4040

Email: pcristaldi@rclawsc.com

tadams@rclawsc.com

Attorneys for Appellant Active Day, Inc.

Other Counsel of Record:

Victoria N. Smith, Esq.

Victoria Smith Law Firm, LLC

520 Folly Road, Ste. 25

Post Office Box 334

Charleston, South Carolina 29412

Phone: (843) 800-0365

Email: Victoria@victoriasmithlegal.com

AND

Rhett D. Klok, Esq.

Klok Law Firm, LLC

1002 Anna Knapp Blvd., Suite 103

Mount Pleasant, South Carolina 29464

Phone: (843) 216-8860

Email: rklok@kloklaw.com

Attorneys for the Respondent Plaintiff

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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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
#2781

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE
CASE NO. 2025CP1006032

Paul Thomas Capo, Jr et al
PLAINTIFF(S)

Active Day Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter was before the Court via WebEx on May 21, 2026, on Plaintiff Motion to Compel Discovery. Attorney Victoria Smith appeared on behalf of Plaintiff; Attorney Tyler Adams appeared on behalf of Defendant. The parties agreed that discovery had been held in abeyance pending the resolution of the arbitration issue. By separate Order, the Court has denied the request to compel arbitration.

Accordingly, discovery shall now proceed. Defendant shall have thirty (30) days to respond to Plaintiff's outstanding discovery requests.

AND IT IS SO ORDERED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/24/2026 .

Ryan Mcdermott

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

EEEDOTRONICALYFIEED 2020/04/20 9:20 AM OGA REES ON COMMON PLEAS CASE#2020CP006632



Charleston Common Pleas

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

Case Number: 2025CP1006032

Type: Order/Electronic Form 4

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge
#2781

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP1006032

Paul Thomas Capo, Jr et al
PLAINTIFF(S)

Active Day Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **STAYED DUE TO BANKRUPTCY**
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☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on the Defendant Motion to Alter, Amend, and/or Reconsider, filed on June 1, 2026. The Defendant asks the Court to Reconsider its Order, filed on May 26, 2026, denying Defendant Motion to Stay and Compel Arbitration. The Court timely received a copy of the Motion for Reconsideration; a Memorandum in Opposition was filed by Plaintiff. This motion is disposed of without the necessity of a hearing and decided on the record and briefs.

-CONTINUED-

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/07/2026 .

Ryan Mcdermott

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172,420 S.E.2d 834,842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dept. of Transp., 361 S.C. 9,24, 602 S.E.2d 772, 780 (2004)(emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc., v. Hagen, 313 S.C. 389, 434S.E.2d 268 (1993; See also Arnold v. State, 309 S.C. 157, 172-173, 420 S.E.2d 834,842 (1992).

After consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, the Defendant Motion to Alter, Amend, and/or Reconsider is heard and on the basis of the rationale set forth in the Plaintiff Memorandum in Opposition is respectfully DENIED. The issues raised in Plaintiff Memorandum that were not before the Court (quash subpoena and protective order) are not addressed by this Order.

AND IT IS SO ORDERED



Charleston Common Pleas

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

Case Number: 2025CP1006032

Type: Order/Electronic Form 4

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge
#2781

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

Case No. 2025-CP-10-06032

Paul Thomas Capo, Jr. as Next Friend of Ryan McDermott,Respondent,

v.

Active Day, Inc.,Appellant,

CERTIFICATE OF SERVICE AND FILING

I certify that I served the notice of appeal by depositing a copy of it on the date shown below in the United States Mail, postage prepaid, addressed as follows:

Victoria N. Smith, Esq.
Victoria Smith Law Firm, LLC
520 Folly Road, Ste. 25
Post Office Box 334
Charleston, South Carolina 29412
Phone: (843) 800-0365
Email: Victoria@victoriasmithlegal.com

AND

Rhett D. Klok, Esq.
Klok Law Firm, LLC
1002 Anna Knapp Blvd., Suite 103
Mount Pleasant, South Carolina 29464
Phone: (843) 216-8860
Email: rklok@kloklaw.com

Attorneys for the Respondent Plaintiff

This the 10th day of July 2026.

[SIGNATURE PAGE TO FOLLOW]

Active Day Notice of Appeal
Case No.: 2025-CP-10-06032

Mount Pleasant, South Carolina
July 10, 2026

s/Tyler A. Adams
Philip P. Cristaldi, III, Bar No.: 102219
Tyler A. Adams, Bar No.: 107842
Ross & Cristaldi, LLC
765 Long Point Rd., Ste. 101
Mt. Pleasant, South Carolina 29464
Phone: (843) 329-4040
Email: pcristaldi@rclawsc.com
tadams@rclawsc.com
Attorneys for Appellant Active Day, Inc.