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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case No. 2022-CP-38-00525
Appellate Case No. 2025-000296

Beverly Vaughn,
as Personal Representative of the Estate of Loris Paris,

Respondent,

v.

Saint Matthews Healthcare, LLC; Melissa Kizer;
Melissa Davis; and Angela Smith Teliha,

Defendants,

Of which Saint Matthews Healthcare, LLC;
Melissa Kizer; and Melissa Davis, are the

Appellants.

APPELLANTS' PETITION FOR REHEARING

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By and through their undersigned counsel, pursuant to Rule 221(a), SCACR, the Facility[1] and the Other Appellants'[2] hereby petition this Honorable Court for rehearing of this matter, which it decided via opinion filed June 3, 2026 (the "Subject Opinion"), affirming the circuit court's denial of the Facility's motion to compel arbitration of Plaintiff's[3] claims and the Other Appellants' corresponding motions for a stay. As explained below, Appellants most respectfully contend that the Court misapprehended or overlooked a number of material points.

BACKGROUND

A. Procedural History

Plaintiff filed this action in the Orangeburg County Court of Common Pleas on April 8, 2022, based on allegedly deficient care/treatment Ms. Paris received at the Facility. (R. pp. 23-30.)

On August 9, 2022, the Facility moved to compel Plaintiff's claims to arbitration based on an Arbitration Agreement that Mr. Paris had signed on behalf of Ms. Paris in conjunction with her admission to the Facility (the "Motion to Compel Arbitration"). (R. pp. 81-82; R. pp. 111-311, 83.)[4]

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1 The "Facility" refers to Defendant/Appellant Saint Matthews Healthcare, LLC, which is the sole licensee and operator of the skilled nursing facility known as Calhoun Convalescent Center.

2 The "Other Appellants" refers to Defendants/Appellants Melissa Kizer ("Kizer") and Melissa Davis ("Davis"), collectively. Together, the Facility and the Other Appellants are referred to collectively as "Appellants."

3 "Plaintiff" refers to Plaintiff/Respondent, Beverly Vaughn ("Ms. Vaughn"), as Personal Representative of the Estate of Loris Paris ("Ms. Paris"). "Mr. Paris" refers to George Paris, Ms. Paris's son, who executed the Admission Agreement and Arbitration Agreement on Ms. Paris's behalf.

4 Without question, Plaintiff's claims against the Facility are within the scope of the Arbitration Agreement, the plain language of which calls for arbitration of "any controversy or dispute between the parties arising out of or relating to [the] Facility's Admission Agreement, or breach thereof, or relating in any way to [Ms. Paris's] stay at [the] Facility, or to the provisions of care or services to [Ms. Paris] . . . ." (R. p. 83.) But even if there were "any doubts concerning the scope of arbitrable issues[,] [they] should be resolved in favor of arbitration . . . ." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); *see also Zabinski v.*

At the same time, the Other Appellants moved to stay the litigation against them pending the outcome of the Motion to Compel Arbitration and any resulting arbitration between Plaintiff and the Facility (collectively, the "Motions to Stay"). (R. pp. 84-95.) Collectively, the Motion to Compel Arbitration and the Motions to Stay are referred to as the "Underlying Motions."

By order filed January 17, 2023, the circuit court, the Honorable Maité Murphy presiding, continued the hearing of the Underlying Motions to allow for limited discovery (without the Facility risking any waiver of any arbitration rights it may have by engaging in such discovery), specifically, the depositions of Ms. Vaughn, Mr. Paris, and the Facility's former Admissions Director Cindy Reck ("Ms. Reck"), with the scope of such depositions being limited to matters relevant to the question of arbitrability. (R. pp. 1-4.)

Following the aforementioned depositions and a hearing on June 6, 2024,[5] the circuit court, the Honorable Maité Murphy again presiding, denied the Underlying Motions by order filed November 13, 2024. (R. pp. 5-19.) Following another hearing on January 22, 2025,[6] the circuit court denied Appellants' timely Rule 59(e), SCRCP, motion[7] by order filed January 23, 2025. (R. pp. 20-22.)

By notice served and filed February 18, 2025, this appeal timely followed. (R. pp. 351-356.) In due course, the appeal was briefed and made ready for decision and decided without oral argument via the Subject Opinion, filed June 3, 2026.

This petition for rehearing timely follows.

Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.").

[5] (R. pp. 49-70.)

[6] (R. pp. 71-80.)

[7] (R. pp. 313-346.)

B. Factual Background

With the help of both Ms. Vaughn and Mr. Paris, Ms. Paris was admitted as a resident of the Facility in April of 2019. In conjunction with Ms. Paris's admission, Mr. Paris signed an Admission Agreement[8] and an Arbitration Agreement[9] on Ms. Paris's behalf.

At the time of her admission, Ms. Paris was no longer able to care for herself. (R. pp. 175:22–176:15.) According to Mr. Paris, by the time Ms. Paris went to the Facility, he was no longer able to have a conversation with her: "it was no more speaking or talking or anything like that." (R. pp. 270:18–271:6; *see also* R. p. 188:4–11 (referring to Ms. Paris's status with respect to communication at the time of her admission to the Facility: "She would not. She wasn't talking.").) Medical records from the time reflect that Ms. Paris was suffering from dementia; an inability to recall the current season, staff names/faces, the location of her room, or that she was in a nursing home; impaired mental status; disorganized thinking; altered level of consciousness; difficulty speaking, and an inability to provide consent regarding health care decisions as defined by the South Carolina Adult Health Care Consent Act, S.C. Code Ann. §§ 44-66-10 to -80 (the "AHCCA"). (R. pp. 305, 310-311.)

Years earlier, on February 6, 2015, Ms. Paris had executed a Durable Power of Attorney (the "power of attorney"), naming Ms. Vaughn as her attorney-in-fact. (R. pp. 153-159.) In broad and unlimited terms, the power of attorney granted Ms. Vaughn authority "to do and perform all acts, deeds, matters, and necessary and advisable . . . as fully and effectual for all intents and purposes as [Ms. Paris] could do if personally present and acting" and expressly granted Ms. Vaughn authority to "arbitrate" on behalf of Ms. Paris. (R. pp. 153, 157) Ms. Vaughn herself understood that the power of attorney allowed her to "handle whatever needed to be handled" on her

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8 (R. pp. 243-254.)

9 (R. p. 83.)

mother's behalf as if she "acted as Loris Paris." (R. p. 168:12–22.) Specifically, she understood that the power of attorney gave her the authority to execute legally binding documents on behalf of her mother. (R. p. 199:4–8.)

When Ms. Paris was admitted to the Facility, Ms. Vaughn was living out of state and could not be present. Ms. Vaughn contacted the Facility and spoke with Ms. Reck concerning her mother's admission. (R. p. 217:11–18.) Ms. Reck offered to send Ms. Vaughn the admission paperwork, but Ms. Vaughn declined to sign the documents herself. (R. p. 217:9–21.) Instead, Ms. Vaughn had Mr. Paris complete the paperwork. (R. p. 217:9–21.) Ms. Vaughn told Ms. Reck specifically that Mr. Paris could complete the admissions paperwork. (R. p. 235:12–16, p. 236:1–14.) She also told Ms. Reck that she was her mother's "power of attorney" and that Mr. Paris had permission to sign paperwork for Ms. Paris to be admitted to the Facility. (R. p. 186:1-15; Rr. p. 236:1–15). When she was deposed, Ms. Vaughn was unable to recall telling Ms. Reck that there was any limitation on the type of paperwork that Mr. Paris was authorized to sign for Mr. Paris. (R. pp. 186:17–188:8.)

Mr. Paris met with Ms. Reck at Facility and signed the Admission Agreement on April 12, 2019. (R. p. 254.) According to Ms. Reck, Mr. Paris said he could not stay to complete the remaining paperwork and left the Facility after signing the Admission Agreement, but at the request of Ms. Reck and Ms. Vaughn, Mr. Paris returned to complete the remaining paperwork, including the Arbitration Agreement and certain authorization, consents, and acknowledgements, relating to his mother's care on April 15, 2019. (R. pp. 226:19–232:2; R. p. 83; R. pp. 255-260.)

Ms. Reck explained to Mr. Paris what the Arbitration Agreement was and told him it was optional. (R. p. 231:21–22, p. 232:3–10.) She also asked him to read the Arbitration Agreement before signing it. (R. p. 233:8–10.) During their meeting, Mr. Paris had the opportunity to read any of the documents, including the Arbitration Agreement, he was signing. Ms. Reck was also there to answer any questions he may have had. (R p. 283:17–20, p. 284:15–17.)

Through her conversations with Ms. Vaughn, Ms. Reck understood that Mr. Paris had the authority to sign the admission paperwork, including the Arbitration Agreement. (R. p. 238:6–10.) Neither Mr. Paris nor Ms. Vaughn ever explained to her that Mr. Paris was only authorized to sign the Admission Agreement and not the Arbitration Agreement. (R. p. 238:11–16.) In fact, Ms. Reck testified she would not have presented Mr. Paris with the Arbitration Agreement, had she known he was not authorized to sign. (R. p. 238:17–21.)

STANDARD OF REVIEW

A circuit court's determination of whether a claim is subject to arbitration is reviewed de novo on appeal. *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009). This includes de novo review of the determination of whether an arbitration agreement is enforceable against a nonsignatory. *Wilson v. Willis*, 426 S.C. 326, 334, 827 S.E.2d 167, 172 (2019). "Under de novo review, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings." *Id.* Issues of law, however, are reviewed without any particular deference to the circuit court. *See, e.g., Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 782 S.E.2d 590 (2016). Even where a ruling is on a matter within circuit court's discretion, if the ruling is based on a misunderstanding of the law, rather than upon the exercise of discretion, the question presented on appeal is one of law. *See Bain v. Self Mem'l Hosp.*, 281 S.C. 138, 152, 314 S.E.2d 603, 611 (Ct. App. 1984).

ARGUMENT

I. Most respectfully, the Court erred in affirming the circuit court's denial of the Motion to Compel Arbitration and, in turn, the Motions to Stay.

The relationship between the Motion to Compel Arbitration and the Motions to Stay is such that the denial of the former mooted the latter. Accordingly, to show, as, most respectfully, the Facility has, that the circuit court erred in denying the Motion to Compel Arbitration is also to show that the circuit court erred in denying the corresponding Motions to Stay, which should have been granted. *See* 9 U.S.C. § 3; *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002); *see also Episcopal Housing Corp. v. Federal Ins. Co.*, 269 S.C. 631, 641, 239 S.E.2d 647, 652 (1977).

A. The Court erred in affirming the circuit court on the basis that Mr. Paris did not have authority to sign the Arbitration Agreement for Ms. Paris under principles of agency law.

"A power of attorney is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal." *Watson v. Underwood*, 407 S.C. 443, 454, 756 S.E.2d 155, 161 (Ct. App. 2014) (quoting *In re Thames*, 344 S.C. 564, 569, 544 S.E.2d 854, 856 (Ct. App. 2001)) (internal quotation marks omitted). "[T]he holder of [the] power of attorney steps into the shoes of the grantor and is basically the alter ego of the grantor." *Bennett v. Carter*, 421 S.C. 374, 382, 807 S.E.2d 197, 201 (2017).

The Court erred in finding that Mr. Paris "did not have actual authority." (Subject Opinion.) In so doing, the Court mistakenly focused on Ms. Paris's representations (or the lack thereof) to the Facility. (Subject Opinion ("A review of the record does not establish how Loris represented to Appellants that George was her agent.").)

Mr. Paris possessed the *actual* authority to execute the Arbitration Agreement in addition to the other admissions paperwork he signed for his mother. The power of attorney permitted Ms. Vaughn as attorney-in-fact to "do and perform all acts, deeds, matters . . . as [Ms. Paris] could do if personally present and acting." (R. p. 153.) Commensurate with this broad authority, Ms. Vaughn was expressly permitted to "appoint agents…upon such terms and conditions and at such compensation as [Ms. Vaughn] shall deem proper in the exercise of the powers herein granted." (R. p. 157.) Ms. Vaughn also possessed the authority arbitrate disputes on her mother's behalf. (R. p. 157. ("On my behalf and in my name or the name of my Attorney, to institute, prosecute, appear in, defend, compromise, *arbitrate* . . . any legal, equitable, or administrative hearings actions, suits…to which I am or may become a party or in which I have any interest.") (emphasis added).) There can be no dispute that Ms. Vaughn, acting as her mother's attorney-in-fact, appointed Mr. Paris as her representative to execute admission paperwork. The record contains no indication that Ms. Paris ever expressly limited Mr. Paris's authority to specifically exclude the authority to sign arbitration agreements.

The Court acknowledges that "there was testimony that [Ms.] Vaughn gave [Mr. Paris] permission to execute the documents required for [Ms. Paris's] admission into the facility . . . ," but erroneously finds that Ms. Vaughn's "authority to bind [Ms. Paris] did not spring into effect until [Ms. Paris] was deemed incompetent, which did not occur until the day after George signed the Arbitration Agreement." (Subject Opinion.)

While the power of attorney was a springing power, i.e., it did not become effective until Ms. Paris was mentally incompetent or incapacitated, the record shows that Ms. Paris was indeed mentally incompetent/incapacitated when she was admitted to the Facility. Moreover, in response to questioning from Plaintiff's own counsel about whether she "w[as] the person that should be signing documents for [Ms. Paris]" at the time of her admission, Plaintiff herself testified, "Absolutely." (R. pp. 191:18–192:1.) In other words, Plaintiff herself clearly takes the position that any conditions precedent to her ability to act as Ms. Paris's attorney-in-fact had come to pass by the time Ms. Paris was admitted to the Facility. Further still, the power of attorney does not define incompetent/incapacitated or establish any particular procedure for determining when this has occurred. This reflects an intent to prioritize flexibility and functionality so that Ms. Vaughn was able to seamlessly step in to protect Ms. Paris's interests when Ms. Vaughn believes such action is warranted—and clearly, given all of her admitted actions as attorney-in-fact at the relevant time, Ms. Vaughn believed such action was warranted when Ms. Paris was admitted to the Facility. Indeed, the power of attorney expressly gives third parties, like the Facility, the right to rely on the actions Ms. Vaughn took as attorney-in-fact "without inquiring" as to their propriety. (R. p. 158 ("Without limiting in any way the right of third parties to rely on actions by my Attorney-in-Fact without inquiring as to the property [sic] of such actions, I do hereby declare as between me and my Attorney-in-Fact a fiduciary relationship exist . . . .").)

The Subject Opinion does not address these points, but simply states—apparently based on the Physician Certification Regarding Ability to Consent dated April 16, 2019, which is a requirement of the AHCCA, not the power of attorney[10]—that Ms. Paris was not "deemed incompetent" until April 16, 2019,[11] even though, as explained above and the Facility's prior briefing, (a) the power of attorney did not require Ms. Paris to be formally "deemed incompetent;" (b) clinical records from at least April 12, 2019, show that Ms. Paris was, in fact, already incompetent, as she was suffering from dementia (R. p. 305), "AMS" (i.e., altered mental status) (R. p. 306), impaired decision making (R. p. 310), disorganized thinking (R. p. 310), and altered level of

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[10] (R. p. 311.)

[11] (Subject Opinion.)

consciousness (R. p. 310), had no ability to recall the current season, staff names/faces, the location of her room, or that she was in a nursing home (R. p. 306); and (c) by the time the Mr. Paris signed the Arbitration Agreement, Ms. Vaughn herself was already acting if Ms. Paris was incompetent and the power of attorney was effective. (R. pp. 191:18–192:1.)

Mr. Paris also possessed the *apparent* authority to execute the Arbitration Agreement. At all relevant times Ms. Vaughn stood in Ms. Paris's shoes as her attorney-in-fact, i.e., Ms. Vaughn was the principal, and Ms. Vaughn clearly held Mr. Paris out as her agent to sign admission paperwork for their mother, with no indication to the contrary. Based on Ms. Vaughn's (and Mr. Paris's) conduct and representations during the admissions process, Ms. Reck believed Mr. Paris possessed the authority to execute *<u>all admissions documents</u>* on Ms. Paris's behalf, including the Arbitration Agreement. Neither of the siblings ever communicated to Ms. Reck that Mr. Paris specifically did not have the authority to sign the Arbitration Agreement. Ms. Reck understood Mr. Paris had the authority to sign any admissions paperwork, including the Arbitration Agreement. She presented him with Arbitration Agreement based on the understanding he was in a position to accept or decline arbitration. She would not have presented the agreement to him, had she known he lacked the ability to make such a decision. *See R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000) (If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as his agent, "either *generally* or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances") (emphasis added).

A holding to the contrary contradicts the fundamental concept of apparent agency: *an agency relationship is based on a third party's understanding of a principal's manifestations and* *a reasonable belief that the agent has been authorized to act*. By telling Ms. Reck that Mr. Paris was authorized to sign admissions paperwork, Ms. Vaughn cloaked Mr. Paris with the authority to execute the admissions paperwork, including the Arbitration Agreement. Further, no family member ever repudiated or invalidated Mr. Paris's actions. Instead, Ms. Vaughn allowed her mother to remain at the Facility and receive skilled nursing care and services, thereby ratifying her brother's actions. Because no one attempted to repudiate the Arbitration Agreement or even question it, Ms. Reck and the Facility were further justified in believing Mr. Paris had been authorized to execute it. It is clear that an apparent agency relationship existed such that the Arbitration Agreement should be deemed enforceable.

Accordingly, this Court erred in not finding that the circuit court should have found that the Arbitration Agreement was valid because Mr. Paris had authority to sign it for Ms. Paris under principles of agency law.

B. The Court erred in affirming the circuit court on the basis that the Admission Agreement and the Arbitration Agreement did not merge.[12]

Appellants' merger/equitable estoppel argument is a standalone argument. It does not depend on any showing of authority (actual or apparent or otherwise) on the part of Mr. Paris or otherwise on the existence of any valid agreement per se. *See Wilson*, 426 S.C. at 338, 827 S.E.2d at 174 ("South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including . . . estoppel."); *see also Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 354–55, 755 S.E.2d 450, 455 (2014) (acknowledging the possibility of enforcing an arbitration agreement against a nonsignatory via merger and equitable estoppel); *id.* (explaining that "Appellants' equitable

[12] (Subject Opinion ("[W]e hold the Admission Agreement and the Arbitration Agreement did not merge.").)

estoppel argument," which "[wa]s premised on [Appellants'] contention that, under state law, the admission agreements and the [arbitration agreements] merged," as follows: "Appellants contend that even if Sister lacked capacity to execute the [arbitration agreement] . . . , she is nevertheless *equitably estopped to deny the [arbitration agreement's] enforceability*.") (emphasis added).

Conceptually, Defendant's merger/equitable estoppel argument is *not* an argument *for the enforceability* of the Admission Agreement/Arbitration Agreement *but rather* an argument *for Ms. Paris, and, in turn, Plaintiff (Ms. Paris's estate), to be estopped to deny the enforceability* of the Admission Agreement/Arbitration Agreement. In short, the idea is that the Admission Agreement and the Arbitration Agreement merged, and Ms. Paris having effectively embraced and directly benefitted from the Admission Agreement, Plaintiff (who stands in her shoes) is now estopped to deny the enforceability of not only the Admission Agreement but also the Arbitration Agreement merged therewith. And by its very nature, i.e., because the Facility's argument in favor of direct benefits estoppel is based on the direct benefits Ms. Paris received under the Admission Agreement (with which the Arbitration Agreement merged), this argument applies with equal force to estop Plaintiff, i.e., Ms. Paris' estate, from denying the enforceability of the Admission Agreement and the Arbitration Agreement merged therewith.

Accordingly, as to the Facility's merger/equitable estoppel argument, any contrary analysis regarding the Admission Agreement/Arbitration Agreement's supposed lack of validity—e.g., that Mr. Paris lacked authority to sign the Admission Agreement/Arbitration Agreement on behalf of Ms. Paris under the law of agency and/or under the AHCCA, and/or because Mr. Paris lacked power of attorney over Ms. Paris—is beside the point and unavailing to refute the Facility's merger/equitable estoppel argument, which, again, turns not on the question of whether the Admission Agreement/Arbitration Agreement is enforceable per se but whether Ms. Paris, and, in turn, Plaintiff (her estate), is estopped to deny its enforceability.

In *Coleman*, even though our Supreme Court found against merger on the particular *facts* of the case, it nonetheless confirmed the validity of the general proposition of *law* on which the *Coleman* appellants based their merger/equitable estoppel argument:

> Appellants contend that even if Sister lacked capacity to execute the [arbitration agreement] under the [AHCCA], she is nevertheless equitably estopped to deny the [arbitration agreement's] enforceability. The circuit court held there was no estoppel here, and we agree.
>
> Appellants' equitable estoppel argument is premised on their contention that, under state law, the admission agreements and the [arbitration agreements] merged. In South Carolina,
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> > The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents together. The theory is that the instruments are effectively one instrument or contract.
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> *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977).
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> Here, *the documents were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction*. *<u>Unless</u> there is a contrary intention, <u>appellants are correct</u> that <u>there was a merger</u>.*

407 S.C. at 354–355, 755 S.E.2d at 455 (emphasis added).

Here, like the circuit court, this Court has erred in rejecting the Facility's merger argument, failing to recognize material differences between the facts and arguments involved in the instant case and those that controlled (or were simply not addressed in) *Coleman* and its progeny (which likewise found against merger) *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784

S.E.2d 679 (Ct. App. 2016), *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018), and *Solesbee v. Fundamental Clinical and Operational Services, LLC*, 438 S.C. 638, 885 S.E. 2d 144 (Ct. App. 2023), concluding:

> Here, as in *Solesbee*[13] and *Hodge*[14], (1) the two agreements were governed by different bodies of law because the Admission Agreement was governed by state law and the Arbitration Agreement was governed by federal law; (2) each document was separately labeled, numbered, and contained its own signature page; (3) the Arbitration Agreement recognized the two documents were separate, stating the Arbitration Agreement "shall survive any termination or breach of this Agreement or the Admission Agreement"; and (4) the Facility acknowledged that signing the Arbitration Agreement was not a prerequisite to admission to the Facility.

(Subject Opinion.)

The Subject Opinion erroneously concludes that the Admission Agreement and the Arbitration Agreement are separate contracts that do not merge. The merger question examines whether, "where instruments are executed at the same time, by the same parties, for the same

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[13] In affirming the circuit court's denial of the motion to compel arbitration at issue in *Solesbee*, the *Solesbee* Court likened that case to *Coleman* and *Hodge* and found that the circuit court had correctly determined that there was no merger of the admission agreement and the arbitration agreement and, in turn, had properly denied the equitable estoppel argument. *Solesbee*, 438 S.C. at 649, 885 S.E.2d at 149 ("Thus, like the *Coleman* and *Hodge* courts, we find there was no merger in this case and [the Facility's] equitable estoppel argument was properly denied.").) While Appellants concede that the Arbitration Agreement and Admission Agreement in issue in the instant case are the same form documents as in *Solesbee*, most respectfully, as addressed below, the merger analysis in *Solesbee* is erroneous and incomplete and should not control the disposition of this case.

[14] To be clear, as explained in Appellants' prior briefing and herein, the admission agreement and arbitration agreement in *Hodge* were materially different from the instant Admission Agreement and Arbitration Agreement. Moreover, the plain language of *Hodge* makes clear that its finding against merger is based on its assessment of a multitude of particular factors taken together, 422 S.C. at 563, 813 S.E.2d at 302 ("*Based on all of this*, we find the Admissions Agreement and Arbitration Agreement did not merge.") (emphasis added)), and does not support the view that any of the cited factors standing alone—without regard to their context or the impact of other factors—can support a reasonable, non-speculative finding against merger.

purpose, and in the course of the same transaction,"[15] as undoubtedly the Admission Agreement and the Arbitration Agreement were here,[16] there is evidence to upset the *presumption in favor of merger*, i.e., the presumption that the instruments were intended to be construed together as effectively one contract. This is a question of intention. *Id.* at 355, 755 S.E.2d at 455 ("in the absence of anything indicating a contrary *intention* . . .") (emphasis added). And "in attempting to ascertain th[e] [parties'] intention," our courts "endeavor to determine the situation of the parties, as well as their purposes, at the time the contract was entered into." *Klutts*, 268 S.C. at 89, 232 S.E.2d at 25.

To be clear, although, as the Subject Opinion notes, the Arbitration Agreement and the Admission Agreement were signed by Mr. Paris days apart, they still should be considered executed at the same time as (a) they were both executed as part of the same admissions process[17] and (b) they were both countersigned by the Facility on the same date: April 15, 2019. (R. pp. 83, 254.)

It must be remembered that, where, as here, the instruments in question were executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, merger is *presumed*. For the merger presumption to mean anything in practice it cannot be upset based on mere conjecture, but only by actual evidence that—notwithstanding the concurrence of all

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[15] *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455.

[16] To be clear, *Coleman* confirms that the instant Admission Agreement and Arbitration Agreement were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction. As the *Coleman* Court expressly observed regarding the admission and arbitration agreements before it (which in *this* respect—but not in respect of the material facts bearing on the question of whether the presumption of merger is rebutted—are no different from the instant agreements), "the documents *were* executed at *the same time, by the same parties, for the same purposes, and in the course of the same transaction*." 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

[17] As explained above and in Appellants' prior briefing, the reason Mr. Paris signed the Admission Agreement on April 12, 2019, and the Arbitration Agreement on April 15, 2019, was simply because abruptly left in the middle of the admissions process, on April 12, 2019, and did not return to complete the process until April 15, 2019. (R. pp. 226:19–232:2; R. p. 83; R. pp. 255-260.)

the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties' intention was contrary to merger. *Cf. The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 126, 130 (Ct. App. 2005) ("[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation."). No such inference can be drawn here. Indeed, under the circumstances, the very idea that there would have been an intention contrary to merger does not make sense.

Unlike the arbitration agreements at issue in *Coleman*, *Thompson*, and *Hodge*, all of which contained a provision allowing them to be disclaimed or revoked within 30 days of signing while the corresponding admission agreements did not, the instant Arbitration Agreement has no disclaimer/revocation provision. (R. p. 83.) Moreover, while the instant Admission Agreement does contain an "Entire Agreement" clause, it does not reference the Arbitration Agreement as a separate contract. (R. p. 254.) Indeed, directly contradicting the idea of "separatedness" (in the parlance of the *Coleman* Court[18]), the "Entire Agreement" clause in the instant Admission Agreement expressly states that "other Admissions materials" are part of the Admission Agreement, thereby expressly disclaiming any "separatedness." (R. p. 254.) Without question, the plain and ordinary meaning of the language "other Admissions materials" is such as to embrace the Arbitration Agreement. *See Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 571–72, 828 S.E.2d 82, 84 (Ct. App. 2019) ("The same day as Decedent's admission to White Oak, Stott, acting as Decedent's authorized representative, signed White Oak's <u>*admission*</u> *documentation—including the* <u>*Arbitration Agreement*</u>.") (emphasis added) (internal footnote omitted); *Hodge*, 422 S.C. at 550, 813

[18] 407 S.C. at 356, 755 S.E.2d at 455 (explaining how, in *Coleman*—unlike the instant case—the "Entire Agreement" clause expressly referred to a separate arbitration agreement and, thus, "recognize[d] the '*separatedness*' of the [arbitration agreement] and the admission agreement, not a merger of the two contracts.") (emphasis added).

S.E.2d at 295 ("Her husband . . . executed various documents *related to her admission*, including an *Arbitration Agreement* and an *Admission Agreement*.") (emphasis added)).[19]

Like the *Solesbee* Court (and, for that matter, the *Hodge* Court, even though, again, different admission and arbitration agreements were at issue in *Hodge*), the Court erred in finding against merger on the basis that the Admission Agreement and the Arbitration Agreement were governed by different bodies of law "because the Admission Agreement was governed by state law and the Arbitration Agreement was governed by federal law." (Subject Opinion.)

As an initial matter, the Court's assertion about state law governing one instrument (the Admission Agreement) while federal law governs the other (the Arbitration Agreement) is simply incorrect. Regarding governing law, the Admission Agreement states, "This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which the Facility is located." (R. p. 252.) And the Arbitration Agreement states:

> The parties acknowledge and agree that, because the services and reimbursement thereof effects a transaction that

[19] To be clear, the point here is not that the holding of either *Stott* or *Hodge* established a legal standard for what counts as admissions paperwork, but rather that the very fact that the language that the *Stott* and *Hodge* Courts used in discussing the facts of the cases so readily made the natural and logical connection between arbitration agreements signed in conjunction with admission and "admission documentation" / "documents related to . . . admission" that it illustrates that, in its plain, ordinary, and popular sense, "Admissions materials" includes the Arbitration Agreement. *See Beaufort Cnty. Sch. Dist. v. United Nat'l Ins. Co.*, 392 S.C. 506, 516, 709 S.E.2d 85, 90 (Ct. App. 2011) ("If the contract's language is clear and unambiguous, the language alone, understood in its plain, ordinary, and popular sense, determines the contract's force and effect."). Moreover, this connection between the Admission Agreement and the Arbitration Agreement (with the Arbitration Agreement being understood in the plain, ordinary, and popular sense as included in the term "Admissions materials") is underscored by the *Coleman* Court's recognition that an admission agreement and arbitration agreement signed in conjunction with resident's admission to a nursing facility are indeed "executed at the same time, by the same parties, *for the same purposes, and in the course of the same transaction*." 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).

> involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any contrary provision of this Agreement or contrary state law.

(R. p. 83.) Accordingly, the provisions of the Admission Agreement and the Arbitration Agreement regarding governing law are not to the effect that state law governs one instrument and federal law the other, but rather that South Carolina law applies to both except where displaced by federal law.

Moreover, the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. (the "FAA"), applies to the Arbitration Agreement, as it does to "to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001); *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 268 (1995) (holding that the reach of the FAA extends to the broadest permissible exercise of Congress's power under the Commerce Clause); *Allied-Bruce*, 513 U.S. at 273–77 (explaining that, unless the parties specifically contract otherwise, the FAA applies whenever an arbitration agreement involves interstate commerce). And our Supreme Court has expressly held that skilled nursing facility admission agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381–82, 759 S.E.2d 727, 732–33 (2014).

The rule that the FAA applies whenever an arbitration agreement involves interstate commerce of course applies even where an arbitration clause is included in a single instrument that is otherwise governed by South Carolina law. *See Southland Corp. v. Keating*, 465 U.S. 1, 12 (1984) (The FAA "create[d] a body of federal substantive law," which is "applicable in state and federal courts."); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006)

("[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract."); *see also Allied-Bruce*, 513 U.S. 265, 270–77. Moreover, even under the FAA, the general state law of contracts continues to apply. *Allied-Bruce*, 513 U.S. at 281 ("States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause 'upon such grounds as exist at law or in equity for the revocation of any contract.' What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes any such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal 'footing,' directly contrary to the Act's language and Congress' intent.") (emphasis added) (internal citations omitted). Further still, the Arbitration Agreement expressly calls for the arbitration proceedings to be conducted pursuant to the South Carolina ADR Rules. (R. p. 83.)

Essentially, the provisions of the Admission Agreement and the Arbitration Agreement regarding governing law are to the effect that South Carolina law applies to both except where displaced by federal law, and indeed, even if the Arbitration Agreement had been included as a provision within the Admission Agreement itself, the FAA would still apply separately to the Arbitration Agreement. In other words, any difference between the governing law as to the Arbitration Agreement and the governing law as to the Admission Agreement would still exist even if the Arbitration Agreement had been included as a provision within the Admission Agreement itself. Thus, the supposed difference in the governing law cannot support any reasonable inference of an intent contrary to merger.

Like the *Hodge* and *Solesbee* Courts, the Court erred in finding against merger on the basis that "each document was separately labeled, numbered, and contained its own signature page." (Subject Opinion.) The fact that the Admission Agreement and the Arbitration Agreement have their own titles, are separately paginated, and are separately signed provides no reasonable inference of an intent contrary to merger. Respectfully, to point to such things is really to do no more than to point out that the Admission Agreement and the Arbitration Agreement are separate instruments, a fact which does not actually suggest anything probative about the intent of the contracting parties as to whether they should be construed together. Indeed, the question of merger will not arise in the first place unless there are multiple instruments involved. Obviously, it cannot be the case that the mere existence of the necessary factual predicate for the question of merger to arise, i.e., separate instruments, shows an intention contrary to merger. The very nature of *merger* is to *merge* separate documents.

Like the *Solesbee* Court (and, for that matter, the *Hodge* Court, even though, again, different admission and arbitration agreements were at issue in *Hodge*), the Court erred in finding against merger on the basis that "the Arbitration Agreement recognized the two documents were separate, stating the Arbitration Agreement 'shall survive any termination or breach of this Agreement or the Admission Agreement.'" (Subject Opinion.) Unlike in *Hodge*, and, for that matter, *Coleman*, and unaddressed by the *Solesbee* Court, the supposed textual recognition of the Admission Agreement as being separate from the Arbitration Agreement is not included in the "Entire Agreement" provision. Rather, the "Entire Agreement" provision of the Admission Agreement expressly states, "other Admissions materials . . . are made a part of this Agreement by reference." (R. p. 254.) And again, the Arbitration Agreement was signed in conjunction with Ms. Paris's admission and is clearly among these "other Admissions materials." Moreover, that the Arbitration Agreement "shall survive any termination or breach of this Agreement or the Admission Agreement" just means that any claims relating to/arising out of the

Admission Agreement would still have to be arbitrated even if they are not asserted until after termination of the Admission Agreement. In other words, the Arbitration Agreement is still connected to the Admission Agreement even after the termination of the Admission Agreement. This is simply how arbitration agreements work—and would be the same *even were the agreement to arbitrate in the form of a clause included within a single instrument*—so this cannot logically provide probative evidence of an intent contrary to merger. *See Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582, 612–13 (D.S.C. 1998) ("Under South Carolina arbitration law, the duty to arbitrate under an arbitration clause in a contract survives termination of the contract.").

Like the *Hodge* and *Solesbee* Courts, the Court erred in finding against merger on the basis of the voluntariness of the Arbitration Agreement, i.e., in relying on the fact "that signing the Arbitration Agreement was not a prerequisite to admission to the Facility"[20] as evidence of intention contrary to merger. To be sure, the Arbitration Agreement was indeed optional, i.e., agreeing to arbitration is not required to gain admission to the Facility. But all that this means is that it did not have to be agreed to for Ms. Paris to be admitted, i.e., the Arbitration Agreement did not have to be executed at all. It does not mean that the Arbitration Agreement did not become a part of the admissions materials once it was in fact executed. Indeed, the fact that the Arbitration Agreement was not required for admission underscores its *connectedness* to the Admission Agreement. The two go together hand in glove. Without the hand (the Admission Agreement), there is no reason for the glove (the Arbitration Agreement).

While it is true that the Arbitration Agreement is not necessary to the Admission Agreement, the converse is not true: the Admission Agreement *is* necessary to the Arbitration

[20] (Subject Opinion.)

Agreement. That is, the Admission Agreement *could* have stood on its own, i.e., without the Arbitration Agreement ever having been executed, in which case no question of merger would have even arisen to begin with—but that is not what happened. The Arbitration Agreement was in fact executed, and it was executed under the particular circumstances that give rise to the presumption of merger—same time, parties, purpose, and transaction—but unlike the Admission Agreement, which is capable of making sense either standing alone or together with the Arbitration Agreement, *the Arbitration Agreement only makes sense together with the Admission Agreement*, which is its (the Arbitration Agreement's) sole reason for being. (*See* R. p. 83 (providing for arbitration of "any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident . . . ."); *id.* ("This [Arbitration] Agreement shall remain in effect for all care rendered at Facility . . . .").)

Even though the Arbitration Agreement was not a *condition* of admission, it was agreed to in *conjunction* with admission, whereupon it was intended to be considered and construed together with the Admission Agreement, such that the two were effectively one instrument governing various interrelated aspects of Ms. Paris's relationship with the Facility: the Admission Agreement setting forth the terms of her admission, the Arbitration Agreement providing for arbitration of disputes arising out of her admission. (*Compare* R. pp. 243-254 (setting forth the terms of Ms. Paris's admission to the Facility) *with* p. 83 (providing for arbitration of disputes arising out of Ms. Paris's admission to the Facility).)

And to be clear—besides the fact that there is no ambiguity in regard to the merger of the Admission Agreement and the Arbitration Agreement—to fall back on any notion that any ambiguity in this regard must be construed against the Facility as the drafter makes no sense in this context. It must be remembered that *merger is the default position*, i.e., it is presumed, and that this presumption arises only upon the occurrence of a specific set of circumstances, those being, as stated in the above-quoted passage from *Coleman*, where, as here, the instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction. When all these align—same time, same parties, same purpose, same transaction—our courts will consider and construe the documents together *unless* there is evidence of a contrary intention.

The plain language of the rule endorsed in *Coleman* is to the effect that to upset the merger presumption requires evidence "indicating [(i.e., affirmatively showing)] a contrary intention." 407 S.C. at 355, 755 S.E.2d at 455. While it is true that the *Coleman* Court also cited the rule that ambiguity is construed against the drafter,[21] (a) it did so in dicta[22] and (b) it never addressed the logical inconsistency—which thus remains fair game as an argument in this case[23]—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. *See S.C. Dep't*

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

[22] *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).

[23] To be clear, none of *Coleman's* progeny has addressed this either.

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.") (emphasis added).

Respectfully, like the circuit court's, this Court's finding against merger relies on speculation, not evidence from which a reliable conclusion can reasonably be drawn regarding the contracting parties' intent. It must be remembered that the presumption of merger arises only where the four elements of time, parties, purpose, and transaction coincide—as the all do here. *Coleman*, 407 S.C. at 354–355, 755 S.E.2d at 455. If one of these is lacking there is no merger. This is why, for the merger presumption to mean anything in practice, it cannot be upset based on mere conjecture, but only on actual evidence that—notwithstanding the concurrence of all the particular circumstances necessary for the presumption to even arise in the first place (same time, parties, purpose, and transaction)—can nonetheless support a reasonable, non-speculative inference that the parties' intention was contrary to merger. *Cf. Huffines*, 365 S.C. at 188, 617 S.E.2d at 130 ("[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation."). The merger presumption is "earned," so to speak, by the fact that for it even to arise in the first place there must be, as there is here, a concurrence of particular circumstances (same time, parties, purpose, and transaction). It is the very rarity of this concurrence that both safeguards against the overzealous application of the merger doctrine and justifies ascribing to it (the concurrence) the presumptive intent of merger.

Respectfully, like the circuit court, this Court should have found that the Arbitration Agreement merged with the Admission Agreement. The instruments were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction, the whole of which related to Ms. Paris's admission to the Facility and would not have been done at all but for her admission to the Facility. Any finding against merger improperly relies on speculation, not evidence from which a reliable conclusion can reasonably be drawn regarding intent.

C. The Court erred in not reaching Appellants' remaining arguments, including, without limitation, Appellants' arguments regarding unconscionability, consideration, equitable estoppel, and the Motions to Stay.

As explained in the Subject Opinion, the Court did not reach Appellants' remaining arguments because of its finding that the Arbitration Agreement and the Admission Agreement did not merge. (Subject Opinion ("Because we find the documents did not merge, a controlling consideration of whether the Arbitration Agreement bound Loris, we decline to reach Appellants' remaining arguments.").) Therefore, for the same reasons that the Court erred in affirming the circuit court's finding that these instruments did not merge (and, for that matter, for the same reasons it erred rejecting Appellants' agency argument), it likewise erred in not reaching Appellants' remaining arguments.

D. Had it reached Appellants' remaining arguments, including, without limitation, Appellants' arguments regarding unconscionability, consideration, equitable estoppel, and the Motions to Stay, as, respectfully, it should have, the Court should have found that the circuit court erred in denying the Underlying Motions.

All of these issues/arguments are already addressed in Appellants' briefs, the entirety of which are adopted and incorporated herein by reference.

CONCLUSION

For the foregoing reasons, along with any other or further reason(s) set forth in their appellate briefs already on file, the entirety of which they hereby adopt and incorporate herein by reference and reiterate/reassert in support hereof, Appellants ask this Honorable Court to grant the instant petition, to rehear this matter, to withdraw the Subject Opinion, and to decide this appeal anew via an opinion that reverses the circuit court's denial of Underlying Motions and compels Plaintiff's claims against the Facility to arbitration while staying this litigation as to the Other Appellants pending the outcome of arbitration between Plaintiff and the Facility (or, alternatively, that remands this matter to the circuit court with instructions that it do so).

Respectfully submitted,

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July 21, 2026

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case No. 2022-CP-38-00525
Appellate Case No. 2025-000296

Beverly Vaughn,
as Personal Representative of the Estate of Loris Paris,

Respondent,

v.

Saint Matthews Healthcare, LLC; Melissa Kizer;
Melissa Davis; and Angela Smith Teliha,

Defendants,

Of which Saint Matthews Healthcare, LLC;
Melissa Kizer; and Melissa Davis, are the

Appellants.

PROOF OF SERVICE

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I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that **APPELLANTS' PETITION FOR REHEARING** was served on Respondent on July 21, 2026, by emailing (see attached email) a copy of the same to Respondent's counsel of record:

Joshua P. Cantwell, Esquire
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Attorney for Respondent

Respectfully submitted,

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July 21, 2026

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Jul 21 2026
SC Court of Appeals

Hines, Russell

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Attached for service in the above-referenced matter please find **Appellants' Petition for Rehearing**.

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