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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

Case No. 2023-CP-20-00268

Court of Appeals Case No. 2024-000596
Unpublished Opinion No. 2026-UP-043 (S.C. Ct. App. filed February 4, 2026)

Supreme Court 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.

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

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By and through their undersigned counsel, the Facility[1] and the Other Defendants[2] (collectively, "Petitioners") submit this return in opposition to Plaintiff's[3] motion for the Court to dismiss the instant petition for a writ of certiorari as frivolous and sanction Petitioners for filing it (the "Subject Motion"). The Subject Motion follows three substantially identical unsuccessful motions to dismiss filed by the same counsel who represent Plaintiff here (*see* **Exhibits 1**, **2**, and **3**), including one motion already in this case (*see* **Ex. 2**), as well as another motion filed by other counsel in a fourth case (*see* **Exhibit 4**), that the Court of Appeals denied. (*See* **Exhibits 1.1**, **2.1**, **3.1**, and **4.1**). Respectfully, the Subject Motion should be denied, too, as explained below.

BACKGROUND

With the help of his mother, Minnie Gamble ("Ms. Gamble"), Mr. Lemon was admitted as a resident of the Facility on January 9, 2012. (R. pp. 149-160.) Ms. Gamble handled the paperwork in conjunction with the admission, and in doing so, she signed an Admission Agreement[4] and an Arbitration Agreement[5] on Mr. Lemon's behalf.

Plaintiff filed this wrongful death and survival action in the Fairfield County Court of Common Pleas on August 31, 2023, based on allegedly deficient care/treatment Mr. Lemon is supposed to have received during his residency at the Facility. (R. pp. 13-22.) The Facility timely answered on October 11, 2023, denying liability, raising numerous affirmative defenses, and expressly reserving its right to compel arbitration, which it also raised as an affirmative

[1] The "Facility" refers to Defendant/Appellant/Petitioner THI of South Carolina at Columbia, LLC d/b/a Midlands Health and Rehabilitation Center, which is the sole licensee and operator of the skilled nursing facility known as Midlands Health and Rehabilitation Center.

[2] The "Other Defendants" refers to Defendants/Appellants/Petitioners THI of South Carolina, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC, collectively.

[3] "Plaintiff" refers to Plaintiff/Respondent, Thomas D. Kilpatrick as Special Administrator for the Estate of Anthony Lemon ("Mr. Lemon").

[4] (R. pp. 149-159.)

[5] (R. p. 97.)

defense. (R. pp. 23-30.) The Other Defendants also timely answered on October 11, 2023, denying liability and raising numerous affirmative defenses. (R. pp. 31-59.)

On January 2, 2024, the Facility moved to compel Plaintiff's claims against it to arbitration based on the Arbitration Agreement Ms. Gamble signed on behalf of Mr. Lemon in conjunction with his admission (the "Motion to Compel Arbitration"). (R. pp. 95-96; R. pp. 107-148.)[6] At the same time, the Other Defendants moved to stay the litigation 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. 98-106.) Collectively, the Motion to Compel Arbitration and the Motions to Stay are referred to as the "Underlying Motions."

Following a hearing on February 29, 2024,[7] the circuit court, the Honorable Patrick C. Fant, III, presiding, denied the Underlying Motions by order filed March 14, 2024. (R. pp. 1-12.)

By notice served and filed April 12, 2024, this appeal timely followed. (R. pp. 305-312.) In due course, the appeal was briefed and made ready for decision and decided by the Court of Appeals without oral argument via opinion filed February 4, 2026, affirming the circuit court's denial of the Underlying Motions.

Petitioners timely petitioned the Court of Appeals for rehearing, and the Court of Appeals denied rehearing by order filed May 15, 2026.

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[6] 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 [Mr. Lemon's] stay at [the] Facility, or to the provisions of care or services to [Mr. Lemon] . . . ." (R. p. 97.) 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. 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.").

[7] (R. pp. 60-94.)

Petitioners timely petitioned this Court for a writ of certiorari to review the Court of Appeals' decision.

Plaintiffs served and filed the Subject Motion on July 9, 2026.

This return follows.

ARGUMENT

I. The Subject Motion should be denied because the instant petition for a writ of certiorari is not frivolous.

As fully set forth in the instant petition for a writ of certiorari and Petitioners' appellate briefs, which are hereby incorporated herein by reference, Petitioners contend that the circuit court erred in denying the Underlying Motions, and the Circuit Court erred in affirming that denial. For present purposes, the most noteworthy aspect of Petitioners' position is their contention that the circuit court (and, in turn, the Court of Appeals) erred in rejecting the Facility's merger/equitable estoppel argument, i.e., the argument that (1) the Admission Agreement and the Arbitration Agreement merged and (2), because Mr. Lemon effectively embraced and directly benefitted from the Admission Agreement, Plaintiff is estopped to deny the enforceability of the Admission Agreement and the Arbitration Agreement merged therewith. In particular, it is the merger prong of this argument that is the basis of the Subject Motion. (*See* Subject Motion p. 6 ("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 . . . ."); *id.* at p. 9 ("here the threshold, dispositive issue is whether the agreements merged in the first place").)

As this Court has explained, "South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing/alter ego, and (5) estoppel." *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019). And in *Coleman v. Mariner Health Care, Inc.*, even though it found against merger on the particular facts of the case, this Court nonetheless confirmed the validity of the general proposition of law on which the *Coleman* appellants based (and Petitioners base here) 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,
>
>> 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.
>
> *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977).
>
> 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. 346, 354-55, 755 S.E.2d 450, 455 (2014) (emphasis added).

Yet, according to Plaintiff, the instant petition is frivolous in view of the Court of Appeals' published decision in *Solesbee v. Fundamental Clinical and Operational Services,* *LLC*, 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023), a number of *unpublished* appellate decisions, and this Court's denial of a writ of certiorari in *Solesbee*.

The unpublished decisions to which Plaintiff refers include the following language atop the first page of each of them: "**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR**" (emphasis in original).[8] And besides being improper under Rule 268(d)(2), Plaintiff's reliance on these unpublished decisions in support of the Subject Motion is illogical. No precedential value means no precedential value, and just as the value of each of them is zero, the value of all of them adds up to zero. And naturally, where a decision of the Court of Appeals has no precedential value, no precedential value can be derived from this Court denial of a writ of certiorari to review such a decision. For that matter, given that "[a] writ of certiorari is not a matter of right, but of sound judicial discretion,"[9] the fact that this Court has declined to grant such a writ does not permit the drawing of any particular conclusion therefrom, even where the decision for which review was sought, as in the case of *Solesbee*, has precedential value. *Cf. U.S. v. Carver*, 260 U.S. 482, 490 (1923) ("The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times."). Accordingly, this leaves the Court of Appeals' decision in *Solesbee* as the sole basis of the Subject Motion.[10]

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[8] The only instance in which Rule 268(d)(2) allows citation to unpublished opinions is "in proceedings in which they are directly involved," and of course, this separate case is not such an instance.

[9] Rule 242(b), SCACR.

[10] Though mentioned only in passing, and without citation to authority, out of an abundance of caution, Petitioners note Plaintiff's assertion that "[b]oth 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." (Subject

Plaintiff incorrectly asserts that, in *Solesbee*, "*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." (Subject Motion p. 2 (emphasis added).)

As an initial matter, the *Solesbee* Court's ruling was nowhere near as broad as the blanket proposition ascribed to it by Plaintiff (that there can be no estoppel against the personal representative of an estate unless the arbitration agreement is either signed by the decedent or a person to authorized to sign on the decedent's behalf), which proposition is (a) illogical on its

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Motion p. 3.) Perhaps this is a reference to authority other than *Solesbee* in the form of this Court's decision in *Wilson*, 426 S.C. 326, 827 S.E.2d 167, and the Court of Appeals' decision in *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020). In Plaintiff's respondent's brief to the Court of Appeals, Plaintiff cites *Weaver* for the proposition that direct benefits estoppel is limited to situations where "(1) the nonsigner's claim arises from the contractual relationship, (2) the nonsigner has 'exploited' other parts of the contract by reaping its benefits, and (3) the claim relies solely on the contract terms to impose liability," and claims this precludes application of equitable estoppel here. (Final Brief of Respondent p. 17 (emphasis omitted) (quoting *Weaver*, 431 S.C. at 230, 847 S.E.2d at 272)). But the *Weaver* Court cites this Court's decision in *Wilson* for this proposition, and *Wilson*—which takes precedence, S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents."), does not actually support the proposition. Rather, as explained in Petitioners' reply brief to the Court of Appeals (Final Reply Brief pp. 4-7), and as set forth in *Wilson*, 426 S.C. at 340-41, 343, 827 S.E.2d at 175-176, and consistent with the Court of Appeals' decision in *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), which the *Wilson* Court and, indeed, the *Solesbee* Court itself, both favorably cite, the key to the applicability of direct benefits estoppel is simply whether the benefits to the nonsignatory are direct (as they were here, and in which case arbitration can be compelled) or indirect (in which case arbitration cannot be compelled). But in any event, at a minimum, Plaintiff's assertion in this regard cannot possibly support the grant of the Subject Motion, because, besides the fact that Plaintiff's position is conclusory and citationless and therefore in no way undermines Petitioners' position, much less proves it to be frivolous, Petitioners' position was not addressed by the Court of Appeals' in its decision (nor for that matter in *Solesbee* or in any of the unpublished decisions to which Plaintiff refers), and Petitioners have not yet even had a chance to be heard on it.

face (as there would be no need to look to estoppel where the agreement was signed by the decedent or a person authorized to sign for them) and (b), in any event, plainly at odds with the proposition, which the *Solesbee* Court itself cited, that "'South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing/alter ego, and (5) estoppel.'" *Solesbee*, 438 S.C. at 647, 885 S.E.2d at 148 (quoting *Wilson*, 426 S.C. at 338, 827 S.E.2d at 174)).[11]

And in any event, and as set forth at length in Petitioners' petition for a writ of certiorari and appellate briefs, most respectfully, *Solesbee* should not control the disposition of this case because the *Solesbee* Court (a) erred as to those aspects of the merger argument that it addressed and (b), in any event, did not actually address all material aspects of the argument, leaving gaps in the *Solesbee* decision through which the Facility's position still fits. (*See* Petition for a Writ of Certiorari pp. 4-17; Final Brief of Appellants pp. 19-28.) Plaintiff does not even recognize this, much less attempt to rebut it, in the Subject Motion, but simply asserts, in conclusory fashion, that "Petitioners cannot factually distinguish the presentation of the issue in this petition from the dozens of matters that have preceded"—without ever actually explaining why this is supposed to be so. (Subject Motion p. 9.)

[11] For that matter, the *Solesbee* Court expressly recognized the proposition that "[a] nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a direct benefit from a contract containing an arbitration clause.'" *Id.* (quoting *Pearson*, 400 S.C. at 290, 733 S.E.2d at 601 (quoting *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000))). To be clear, neither *Solesbee* nor the Court of Appeals in the instant case actually examines the equitable estoppel (direct benefits) prong of the merger/equitable estoppel analysis: these decisions turn on a finding contrary to merger, not a finding that direct benefits estoppel still would not apply even in the event of merger.

Plaintiff's assertion that "the Court of Appeals examined the substantive arguments Petitioners advance here and rejected them"[12] is simply incorrect. Indeed, at the hearing on the Underlying Motions, in accordance with his duty of candor to the Court, Petitioners' counsel brought the *Solesbee* decision to the attention of the circuit court and explained why it should not control the disposition of this case. (**Exhibit 5** pp. 9:6–17:17; *id.* at 27:17–29:13.) And contrary to the position Plaintiff now takes in the Subject Motion, Plaintiff's counsel actually conceded that South Carolina precedent "ha[s]n't maybe touched on the exact arguments of counsel." (**Exhibit 5** p. 21:7–12.) To concede that is to concede Petitioners' point.

The *Solesbee* Court's explanation of its finding against merger reads as follows:

> Here, [1] the Admission Agreement provides it is governed by South Carolina law, and the Arbitration Agreement provides it is governed by federal law.[[13]] [2] 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."[[14]] [3] The Arbitration Agreement is silent as to whether it could be revoked, but the Admission Agreement provides, "Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility."[[15]] [4] The Admission Agreement and Arbitration Agreement were separately paginated and had their

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12 (Subject Motion p. 2.)

13 As explained in Petitioners' petition for a writ of certiorari and appellate briefs—and never addressed, much less rejected, in any appellate decision of which Petitioners are aware—(a) it is not correct that the Admission Agreement provides it is governed by South Carolina law and the Arbitration Agreement provides that it is governed by federal law and (b) this supposed difference in governing law cannot reasonably support a nonspeculative finding contrary to merger in any event. (Petition for a Writ of Certiorari pp. 9-11; Final Brief of Appellants pp. 20-23.)

14 As explained in Petitioners' petition for a writ of certiorari and appellate briefs—and never addressed, much less rejected, in any appellate decision of which Petitioners are aware—this cannot reasonably support a nonspeculative finding contrary to merger in any event. (Petition for a Writ of Certiorari pp. 12-13; Final Brief of Appellants pp. 23-24.)

15 This factor was not cited by the Court of Appeals in finding against merger in the instant case, but as explained in Petitioners' appellate briefs—and never addressed, much less rejected, in any appellate decision of which Petitioners are aware—it cannot reasonably support a nonspeculative finding contrary to merger in any event. (Final Brief of Appellants pp. 24-25.)

> own signature pages.[16] [5] Magnolia's attorney admitted at the hearing that "[i]t's perfectly true that [Dover] did not have to sign the arbitration agreement to move forward with [Solesbee] being admitted. It was voluntary ...."[17] Thus, like the *Coleman*[18] and *Hodge*[19] courts, we find there was no merger in this case and Magnolia's equitable estoppel argument was properly denied.

Solesbee, 438 S.C. at 648–49, 885 S.E.2d at 149.

Most respectfully, as demonstrated in the merger analysis in Petitioners' petition for a writ of certiorari and appellate briefs, the *Solesbee* Court's explanation is not only erroneous but also incomplete, leaving unanswered material questions that Petitioners may now appropriately put to this Court,[20] along with good faith argument for the Court to revisit the *Solesbee* Court's

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[16] As explained in Petitioners' petition for a writ of certiorari and appellate briefs—and never addressed, much less rejected, in any appellate decision of which Petitioners are aware—this cannot reasonably support a nonspeculative finding contrary to merger in any event. (Petition for a Writ of Certiorari p. 12; Final Brief of Appellants p. 25.)

[17] As explained in Petitioners' petition for a writ of certiorari and appellate briefing—and never addressed, much less rejected, in any appellate decision of which Petitioners are aware—this cannot reasonably support a nonspeculative finding contrary to merger in any event. (Petition for a Writ of Certiorari pp. 13-16; Final Brief of Appellants pp. 16-19, 26-28.)

[18] *Coleman*, 407 S.C. 346, 755 S.E.2d 450.

[19] *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018).

[20] For instance, and, of course, without limitation, as further explained in Petitioners' petition for a writ of certiorari and appellate briefs, the *Solesbee* Court never dealt with the fact that, in this case, unlike in *Coleman*, *Hodge*, and *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), the "Entire Agreement" provision in the Admission Agreement expressly disclaims the idea of its "separatedness" (in the parlance of the *Coleman* Court) by stating that "other Admissions materials" are a part of it. 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 *admission documentation—including the Arbitration Agreement*.") (emphasis added) (internal footnote omitted); *Hodge*, 422 S.C. at 550, 813 S.E.2d at 295 ("Her husband . . . executed various documents *related to her admission*, *including an Arbitration Agreement* and an Admission Agreement.") (emphasis added)). But even if there were some ambiguity in this regard, the *Solesbee* decision (a) does not say so and (b) does not address the Facility's argument in this case that the language in *Coleman* about construing ambiguity against the drafter is, first off, *dicta* and, in any event, illogical and internally inconsistent with the *Coleman* Court's recognition that the instruments executed at the

reasoning. *See* Rule 3.1, RPC, Rule 407, SCACR ("A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.").

As an advocate, a lawyer is duty bound to "use the legal procedure for the fullest benefit of the client's cause" while at the same time "not absu[ing] legal procedure." Rule 3.1, RPC, Rule 407, SCACR, cmt. 1. The undersigned humbly submits that, in pursuing the instant petition, Petitioners' counsel honors both of these obligations and that the proof of this fact is in the pudding, i.e., Petitioners' petition for a writ of certiorari and appellate briefing, the argument set forth in which cannot reasonably be condemned as frivolous, as, indeed, the Court of Appeals itself, the Court that issued *Solesbee*, has already acknowledged. (*See* **Exs. 1.1**, **2.1**, **3.1**, and **4.1**.)

CONCLUSION

For the foregoing reasons, Appellants ask that the Court deny the Subject Motion.

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same time, by the same parties, for the same purpose, in the course of the same transaction (as, without question, the Admission Agreement and Arbitration Agreement here were) are presumed to merge absent evidence to support a nonspeculative conclusion to the contrary.

Respectfully submitted,

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