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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2022-CP-10-00483

Court of Appeals Case No. 2025-000070
Unpublished Opinion No. 2026-UP-077 (S.C. Ct. App. filed February 18, 2026)

Supreme Court Case No. 2026-001305

Fernesha Mazyck,
as Personal Representative of The Estate of Ida Braggs,

Respondent,

v.

THI of South Carolina at Charleston, LLC
d/b/a Riverside Health and Rehab,

Petitioner.

PETITIONER'S RETURN TO RESPONDENT'S MOTION TO DISMISS THE PETITION FOR A WRIT OF CERTIORARI AND FOR SANCTION

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By and through its undersigned counsel, Petitioner[1] submits this return in opposition to Plaintiff's[2] motion for the Court to dismiss the instant petition for a writ of certiorari as frivolous and sanction Petitioner 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**), 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 Ms. Mazyck's help, Ms. Braggs was admitted as a resident of the Facility on August 6, 2010. (R. pp. 113–124.) Ms. Mazyck handled the admissions paperwork and, in so doing, signed an Admission Agreement[3] and an Arbitration Agreement[4] on Ms. Braggs's behalf.

Plaintiff filed this wrongful death and survival action in the Charleston County Court of Common Pleas on February 2, 2022, based on allegedly deficient care/treatment Ms. Braggs received at the Facility. (R. pp. 9–17.) Petitioner timely answered on April 6, 2022, denying liability, raising numerous affirmative defenses, and reserving the right to compel arbitration, which it also raised as an affirmative defense. (R. pp. 18–25.)

On March 6, 2023, Petitioner moved to compel Plaintiff's claims to arbitration based on the Arbitration Agreement Ms. Mazyck signed on behalf of Ms. Braggs in conjunction with her

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[1] "Petitioner" or the "Facility" refers to Defendant/Appellant/Petitioner, THI of South Carolina at Charleston, LLC d/b/a Riverside Health and Rehab. It is a skilled nursing facility.

[2] "Plaintiff" refers to Plaintiff/Respondent, Fernesha Mazyck ("Ms. Mazyck"), as Personal Representative of The Estate of Ida Braggs ("Ms. Braggs").

[3] (R. pp. 113–124.)

[4] (R. p. 57.)

admission to the Facility ("Petitioner's Motion to Compel Arbitration"). (R. pp. 55–57; *see also* R. pp. 71–124.)[5]

On May 2, 2023, Plaintiff moved to compel Petitioner to respond to her discovery requests ("Plaintiff's Motion to Compel Discovery"),[6] Petitioner having objected to the same based on Petitioner's Motion to Compel Arbitration, the grant of which would make discovery a subject to be addressed in arbitration, not the circuit court. (R. pp. 59–70.)

Following a hearing on January 10, 2024,[7] the circuit court, the Honorable J. Cordell Maddox, Jr., presiding, denied Petitioner's Motion to Compel Arbitration and granted Plaintiff's Motion to Compel Discovery by order filed November 15, 2024. (R. pp. 1–5.) Pursuant to Rule 59(e), SCRCP, on November 25, 2024, Petitioner timely moved the circuit court to alter, amend, and/or reconsider its decision. (R. pp. 127–148.) The circuit court denied that motion by order filed December 13, 2024. (R. pp. 6–8.)

By notice served and filed January 13, 2025, Petitioner timely appealed. (R. pp. 149–155.) 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 18, 2026, affirming the denial of Petitioner's Motion to Compel Arbitration and the grant of Plaintiff's Motion to Compel Discovery.

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[5] Without question, Plaintiff's claims against Petitioner 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. Braggs's] stay at [the] Facility, or to the provisions of care or services to [Ms. Braggs] . . . ." (R. p. 57.) 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.").

[6] (R. p. 57.)

[7] (R. pp. 26–54.)

Petitioner timely petitioned the Court of Appeals for rehearing, and the Court of Appeals denied rehearing by order filed May 14, 2026.

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

Plaintiff 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 Petitioner's appellate briefs, which are hereby incorporated herein by reference, Petitioner contends that the circuit court erred in denying Petitioner's Motion to Compel Arbitration and granting Plaintiff's Motion to Compel Discovery, and the Court of Appeals erred in affirming the same. For present purposes, the most noteworthy aspect of Petitioner's position is its contention that the circuit court (and, in turn, the Court of Appeals) erred in rejecting its merger/equitable estoppel argument, i.e., the argument that (1) the Admission Agreement and the Arbitration Agreement merged and (2), because Ms. Braggs 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 Petitioner may avail itself 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 Petitioner bases here) the 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's 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 drawing 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

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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.

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]

Plaintiff incorrectly asserts that, in *Solesbee*, "*the Court of Appeals examined the substantive arguments Petitioner advances 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).)

[10] Though mentioned only in passing, and without citation to authority, out of an abundance of caution, Petitioner notes 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 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. 16 (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 Petitioner's 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 Petitioner's position, much less proves it to be frivolous, Petitioner's 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 Petitioner has not yet even had a chance to be heard on it.

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 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 Petitioner's 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 Petitioner's position still fits. (*See* Petition for a Writ of Certiorari pp. 4–17; Final Brief of Appellant pp. 19–27.) Plaintiff does not even recognize this, much less attempt to rebut it, in the Subject Motion, but simply asserts, in conclusory fashion, that "Petitioner cannot factually distinguish the presentation of the issue in this petition from the

[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.

dozens of matters that have preceded"—without ever actually explaining why this is supposed to be so. (Subject Motion p. 9.)

Plaintiff's assertion that "the Court of Appeals examined the substantive arguments Petitioner advances here and rejected them"[12] is simply incorrect. Indeed, the same law firm that represents Plaintiff in this matter represents the plaintiffs/respondents in three other matters pending cert wherein they have made substantially identical motions to dismiss and for sanctions, including *Kilpatrick v. Pruitthealth-Ridgeway, LLC*, Supreme Court Case No. 2026-001309. At oral argument before the circuit court in *Kilpatrick*, in accordance with his duty of candor to the Court, Petitioner's counsel brought the *Solesbee* decision to the attention of the 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 Petitioner's 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

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12 (Subject Motion p. 2.)

13 As explained in Petitioner's petition for a writ of certiorari and appellate briefs—and never addressed, much less rejected, in any appellate decision of which Petitioner is 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. 10–12; Final Brief of Appellant pp. 20–22.)

> 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 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 Petitioner's 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 Petitioner 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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[14] As explained in Petitioner's petition for a writ of certiorari and appellate briefs—and never addressed, much less rejected, in any appellate decision of which Petitioner is aware—this cannot reasonably support a nonspeculative finding contrary to merger in any event. (Petition for a Writ of Certiorari pp. 13–14; Final Brief of Appellant 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 Petitioner's appellate briefs—and never addressed, much less rejected, in any appellate decision of which Petitioner is aware —it cannot reasonably support a nonspeculative finding contrary to merger in any event. (Final Brief of Appellant p. 24.)

[16] As explained in Petitioner's petition for a writ of certiorari and appellate briefs—and never addressed, much less rejected, in any appellate decision of which Petitioner is 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 Appellant p. 25.)

[17] As explained in Petitioner's petition for a writ of certiorari and appellate briefing—and never addressed, much less rejected, in any appellate decision of which Petitioner is aware—this cannot reasonably support a nonspeculative finding contrary to merger in any event. (Petition for a Writ of Certiorari pp. 14–17; Final Brief of Appellant pp. 16–18, 25–27.)

[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 Petitioner's 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

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, Petitioner's counsel honors both of these obligations and that the proof of this fact is in the pudding, i.e., Petitioner's 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**.)

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 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.

CONCLUSION

For the foregoing reasons, Petitioner asks that the Court deny the Subject Motion.

Respectfully submitted,

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