

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Joshua Welch, individually and as Personal
Representative of the Estate of Judith Welch,

Plaintiff,

v.

Rehab Center of Cheraw, LLC d/b/a
Rehabilitation Center of Cheraw; THI of
South Carolina, LLC; Hunt Valley Holdings,
LLC a/k/a Fundamental Long Term Care
Holdings, LLC; THI of Baltimore, Inc.; and
Grace Villafranca,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Civil Action No.: 2024-CP-13-00863

**ORDER DENYING DEFENDANTS
REHAB CENTER OF CHERAW,
LLC D/B/A REHABILITATION
CENTER OF CHERAW AND
GRACE VILAFRANCA'S MOTION
TO STAY ACTION AND COMPEL
ARBITRATION****RECEIVED****Aug 17 2026****SC Court of Appeals**

Before the Court is Defendants Rehab Center of Cheraw, LLLC D/B/A Rehabilitation Center of Cheraw and Grace Villafranca's Motion to Stay Action and Compel Arbitration. This Court heard argument on the Motion on June 3, 2026. For the reasons set forth herein, Defendants' Motion is **DENIED**.

I. CASE BACKGROUND

Plaintiff filed this action on October 4, 2024, against Defendants, following Judith Welch's death, which Plaintiff alleges was caused by the repeated failures of Defendant Rehab Center of Cheraw, LLC ("Defendant Cheraw"), to provide proper care to Ms. Welch. *See* Complaint, at ¶¶ 7-13. Defendant Grace Villafranca ("Defendant Villafranca") was facility director of Defendant Cheraw at the time of Ms. Welch's residency and wrongful death. *Id.* at ¶ 8.

While a resident under Defendants' care, Ms. Welch developed an unstageable sacral decubitus ulcer. *See id.* at ¶ 65. Notably, the wound was already "necrotic, with eschar, and slough covered" upon the very first documentation of this wound in Ms. Welch's chart – which Plaintiff

alleges suggests that Defendant Cheraw had regularly failed to perform weekly skin checks and administer preventative measures. *See id.* at ¶¶ 62-65. Moreover, even once the wound was finally noted in Ms. Welch’s patient chart on January 5, 2023, Plaintiff alleges Defendants failed to follow the standard of care for treatment of the wound. *Id.* at ¶ 68.

Plaintiff alleges Defendants’ violations of the standards of care, Ms. Welch’s wound progressed past the point of treatment. *See id.* at ¶¶ 77-80. In her final hospitalization in April of 2023, Ms. Welch’s wound had advanced so far that the “notes indicate [a] chronically advanced decubitus ulcer with complete coccyx resorption.” *Id.* at ¶ 78. On April 30, 2023, Ms. Welch died from septic shock caused by the advanced, then-untreatable ulcer, which Plaintiff alleges formed while in Defendants’ care, and which Defendants failed to appropriately treat. *See id.* at ¶¶ 81-84.

Plaintiff further alleges prior to Ms. Welch’s death, Defendants failed to prevent, monitor, and provide sufficient care to her, instead allowing her “to form horrendous pressure related wounds that thereafter became severely infected, resulting in the breakdown of her coccyx, osteomyelitis, sepsis, and eventual death.” *Id.* at ¶ 86. Plaintiff initiated this action, alleging causes of action for negligence, gross negligence, negligence per se, corporate negligence, amalgamation of interests, wrongful death pursuant to S.C. Code Ann. § 15-51-10, and survival pursuant to S.C. Code Ann. § 15-5-90. *See id.* at ¶¶ 92-136.

In a Motion to Stay and Compel Arbitration filed on October 1, 2025, Defendants now assert that Mr. Welch and his mother’s estate are bound to an arbitration agreement that neither signed. Rather, the Arbitration Agreement was signed by Debra Jackson, an employee with Adult Protective Services South Carolina Department of Health and Human Services (“DSS”).¹ This

¹ Notably, Debra Jackson’s name appears only on the signature line of the Arbitration Agreement; the “Printed Name of the Resident/Representative” is blank. Additionally, the signature of the “Authorized Agent of Facility” is undated.

same representative signed a separate admission agreement, by which Ms. Welch was admitted to the facility. Notably, the Admission Agreement provides that it is the complete agreement between the parties relating to Ms. Welch's admission to the facility and the services provided thereunder. *See Ex. B to Plaintiff's Memorandum in Opposition* at Section XVIII. The Admission Agreement does not incorporate or refer to the Arbitration Agreement. It is undisputed that Ms. Welch signed neither the Admission Agreement nor Arbitration Agreement. In addition, there is no evidence in the record to suggest, nor has any such evidence been alleged by the Defendants, that Ms. Welch lacked the capacity to execute the document herself, and she was never deemed incompetent. In fact, Ms. Welch's admitting medical records indicate no cognitive impairment. *See Ex. C to Plaintiff's Memorandum in Opposition*.

Following her admission, Defendants did not cure or ratify the Admission Agreement or Arbitration Agreement by having Ms. Welch execute the documents. Defendants set forth no basis for why the alleged DSS representative who signed the arbitration agreement had any authority to do so other than filing with the Court the underlying family court orders. In addition, the first paragraph of the Arbitration Agreement enumerates a list of individuals presumably authorized to sign on behalf of the Resident as "Resident's Durable Power of Attorney for Health Care"/"Residents' Legal Guardian"/"Resident's Responsible Party[.]" Absent from the list are DSS representatives.

II. STANDARD

The Federal Arbitration Act (FAA) provides a federal district court with the authority to enforce an arbitration agreement by compelling parties to arbitrate their disputes. 9 U.S.C. § 4 ("A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court, which, save for such agreement would have jurisdiction under title 28... for an order directing that such arbitration

proceed in the manner provided for in such agreement.”).

While the United States Supreme Court has noted a strong federal policy favoring arbitration, *see e.g. Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983), “[t]he policy is to make arbitration agreements as enforceable as other contracts, but not more so.” *Morgan v. Sundance, Inc.*, 596 U.S. 411, 418 (2022) (internal citations omitted). “Accordingly, a court must hold a party to its arbitration contract just as the court would any other kind. But a court may not devise novel rules to favor arbitration over litigation.” *Id.* (internal citations omitted); *see also Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d 302, 305 (4th Cir. 2001) (“Congress did not intend for the FAA to force parties who did not agree to arbitrate into a non-judicial forum[.]”).

Section 2 of the FAA provides that an arbitration agreement “shall be...enforceable, save upon such other grounds as exist at law or in equity for the revocation of any contract.” *GE Energy Power Conversion Fr. SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432 (2020), quoting 9 U.S.C. § 2. The Court must apply principles of state law to determine whether an enforceable arbitration agreement exists. *Id.* at 437; *see also Arthur Andersen, LLP v. Carlisle*, 556 U.S. 624, 631 (2009) (“[S]tate law, therefore, is applicable to determine which contracts are binding under §2 and enforceable under §3[.]”) (internal citations omitted).

III. LAW/ANALYSIS

A. THE RECORD IS DEVOID OF FACTS AND CIRCUMSTANCES IN THIS CASE TO JUSTIFY BINDING A NONSIGNATORY TO AN AGREEMENT WAIVING HER CONSTITUTIONAL RIGHTS.

Defendants Cheraw and Villafranca contend that a DSS representative’s signature on an arbitration agreement binds the estate of Judith Welch to arbitrate her claims against Defendants.

A. No valid arbitration agreement exists between the parties, as the DSS Representative lacked authority to bind Ms. Welch to the Arbitration Agreement.

The South Carolina Supreme Court has explained that “[a]rbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 553 S.E.2d 110 (2001) (internal citations omitted); *see also Aiken v. World Fin. Corp. of S.C.*, 373 S.C. 144, 149, (2007); *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 171-72 (2007). While South Carolina recognizes a “[p]otent public policy favoring arbitration,” this policy is only deployed after “the court determines a valid agreement to arbitrate exists.” *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 229 (2020) (internal citations omitted); *see also Volt Info. Scis. Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989) (internal citations omitted) (holding that the choice to arbitrate, like any contract term, must be mutually agreed upon for the “FAA does not require parties to arbitrate when they have not agreed to do so.”). As such, the presumption in favor of arbitration only applies when the existence of the agreement is not in dispute. *Wilson v. Willis*, 426 S.C. 326, 337-38 (2019). In this case, no such presumption exists.

South Carolina law recognizes that a non-signatory to a contract that contains an arbitration clause may nevertheless be bound by the clause. *Weaver*, 431 S.C. at 230-31; *see also Malloy v. Thompson*, 409 S.C. 557, 561-62 (2014) (“The court of appeals has recognized that five theories ‘aris[ing] out of common law principles of contract and agency law’ could provide a basis ‘for binding nonsignatories to arbitration agreements: 1) incorporation by references; 2) assumption; 3) agency; 4) veil piercing/alter ego; and 5) estoppel.’”) (quoting *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288 (Ct. App. 2012)). Some courts also recognize that a third-party beneficiary of a contract containing an arbitration clause may be compelled to arbitrate as a non-signatory. *Malloy*, 409 S.C. at 562; *see also Bidas v. S.A.P.I.C. v. Gov’t of Turkmenistan*, 345 F.3d 347 (5th Cir. 2003).

- i. *The DSS Representative lacked actual authority to bind Ms. Welch to the Arbitration Agreement.*

In this case, Defendants Cheraw and Villafranca argue that they should be entitled to enforce an arbitration agreement against the Estate of Ms. Welch based upon the signature of a DSS representative. Defendants submitted the family court orders from the underlying action, but Defendants have failed to establish how those orders give this representative any authority to bind Ms. Welch to such a clause.

“Agency is the fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control.” *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 564 (Ct. App. 2018), quoting *Froneberger v. Smith*, 406 S.C. 37, 49 (Ct. App. 2013). The South Carolina Court of Appeals has explained that “actual authority is that which is expressly conferred upon the agent by the principal[.]” *Charleston v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). “A party asserting agency as a basis” for binding a nonsignatory to an agreement must “prove the existence of the agency, and the agency must be clearly established by the facts.” *Hodge*, 422 S.C. at 565, quoting *McCall v. Finley*, 294 S.C. 1, 6 (Ct. App. 1987). “The existence of an agency relationship is a question of fact to be determined by the relation, the situation, the conduct, and the declarations of the party sought to be charged as a principal.” *Langdale v. Harris Carpets*, 395 S.C. 194, 201 (Ct. App. 2011).

In *Pace v. Lake Emory Post Acute Care*, the South Carolina Court of Appeals considered whether DSS was vested with the authority to bind an adult non-signatory to an arbitration agreement. No. 2024-UP-261, 2024 LX 88680, at *3 (S.C. Ct. App. Jul. 17, 2024). As in the instant case, a DSS employee executed both an admission agreement and a separate arbitration agreement upon Mr. Pace’s admission to the defendant nursing facility. *Id.* at *1. The defendant facility

argued the definition of “protective services” in the Adult Protection Act vested it with such authority. *Id.* at *1, 7-8. The Court of Appeals disagreed. *Id.* at *12.

As the Court of Appeals explained:

[T]he plain reading of [the Act] provides that DSS is expected to arrange for living quarters, secure medical care, and hire an attorney for the vulnerable adult if one is needed. We do not believe that the statute grants the authority for any person employed by DSS to waive a constitutional right of a vulnerable adult.”

Id. at * 7. The Court of Appeals also found that the term “to perform legal services” did not include executing an arbitration agreement or waiving constitutional rights. *Id.*

Notably, South Carolina courts have denied the ability to bind nursing home patients to arbitration agreements upon admission to facilities, even when the signatory to the agreement held a power of authority and health care power of attorney. *See e.g., Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 73-74 (2021) (where the South Carolina Supreme Court reversed the Court of Appeal’s grant of a motion to compel arbitration, holding that a daughter lacked authority to execute an arbitration agreement upon her father’s admission to an assisted-living facility, even when the daughter held both a durable power of attorney and health care power of attorney).

Defendants Cheraw and Villafranca provide no context for Ms. Welch’s admission to the facility. From the available records, there is no inference that Ms. Welch or the family court conferred any authority on DSS to waive her right to a jury trial. Despite the underlying family court orders, the Court finds there is no factual basis to find that DSS had actual authority to sign the Arbitration Agreement.

ii. *The DSS Representative lacked apparent authority to bind Ms. Welch to the Arbitration Agreement.*

Defendants Cheraw and Villafranca similarly provide no information on which the Court could establish that DSS had apparent authority to execute the Arbitration Agreement.

In order “[t]o establish apparent authority, the proponent must show (1) “the purported principal consciously or impliedly represented another to be his agent;” (2) the proponent relied on the representation; and (3) “there was a change of position to the [proponent's] detriment.” *Thompson v. Pruitt Corp.*, 416 S.C. 43, 43 (Ct. App. 2016) (quoting *Froneberger v. Smith*, 406 S.C. 37, 47 (Ct. App. 2013)). As the South Carolina Court of Appeals has explained, “agency may not be established solely by the declarations and conduct of an alleged agent . . . [e]ither the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief.” *Frasier v. Palmetto Homes*, 323 S.C. 240, 245 (Ct. App. 1996) (internal citations omitted).²

The South Carolina Court of Appeals has noted that in determining enforceability of an arbitration agreement, courts may consider the competence of the patient at the time of execution of the arbitration agreement, when signed by a family member. *See Scott v. Heritage Healthcare of Estill, LLC*, No. 2014-UP-317, 2014 LEXIS 403, at *2 (S.C. Ct. App. Aug. 6, 2014). In cases where a patient’s competence is not in question, however, one may not merely assume agency. *See Hodge*, 422 S.C. at 574 (“[T]his court has held the authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial.”) (internal citations omitted).

Once again, the record does not support Defendants’ contention that Ms. Welch held out DSS as her agent. Given that Defendants Cheraw and Villafranca have failed to produce any evidence that DSS had apparent or actual authority to enter into the Arbitration Agreement on Ms.

² The South Carolina Court of Appeals has also clarified that “[t]o establish apparent agency, it is not enough simply to prove that the purported principal *by either affirmative conduct or conscious and voluntary inaction* has represented another to be his agent or servant.” *Frasier v. Palmetto Homes*, 323 S.C. at 245 (emphasis added) (internal citations omitted).

Welch's behalf. As a result, the Court finds no valid arbitration agreement exists under South Carolina law in this matter.

B. THE THEORIES OF EQUITABLE ESTOPPEL AND THIRD-PARTY BENEFICIARY DO NOT REQUIRE PLAINTIFF TO ARBITRATE THE ESTATE'S CLAIMS BECAUSE THE ADMISSION AGREEMENT AND ARBITRATION AGREEMENT DO NOT MERGE.

Under direct benefits estoppel, a nonsignatory may nevertheless be bound to an arbitration agreement. *Weaver*, 431 S.C. at 230. To demonstrate entitlement to direct benefits estoppel, the moving party must demonstrate that 1) the nonsignatory's claim arises under the agreement containing the arbitration clause; 2) the nonsignatory seeks to exploit or otherwise reap benefits from the agreement; and 3) the claim relies solely on the contract terms to impose liability. *Id.*; see also *Pearson*, 400 S.C. at 290 ("In the arbitration context, the doctrine of [equitable estoppel applies when] a party . . . has consistently maintained that other provisions of the *same contract* should be enforced to benefit him.") (emphasis added). Here, because Plaintiff does not seek to enforce the Arbitration Agreement, the theories of equitable estoppel and third-party beneficiary cannot apply.

In an analogous case, the South Carolina Court of Appeals explained that because a decedent "received no benefit from the Arbitration Agreement, equitable estoppel would only apply if the documents were merged." *Hodge*, 422 S.C. at 563. In *Hodge*, Mr. Hodge, acting as Personal Representative of his mother, Ms. Hodge, filed suit against a rehabilitation facility after his mother was rendered paraplegic following a weeks-long stay at the facility. *Id.* at 553. The facility sought to compel arbitration, arguing in part, that the Arbitration Agreement, which was signed by Ms. Hodge's husband while she was still competent, should be enforced under a theory of equitable estoppel. *Id.* In analyzing this argument, the South Carolina Court of Appeals explained:

The only agreement from which Respondents even arguably received a benefit was the Admission Agreement because [the mother] was admitted to the Facility as a result of it. However, because the Facility allegedly caused [the mother's] injuries that later led to her death, we find it difficult to find she benefited even from being admitted. Respondents are not seeking to enforce the Arbitration Agreement nor have they previously tried to do so. Further, even if the Admission Agreement and Arbitration Agreement merged, because Respondents are not suing for a breach of the Admission Agreement, they are not attempting to enforce that agreement. Therefore, the circuit court did not err in finding equitable estoppel did not bar Respondents' claims.

Id. at 563, 302.

In *Thompson*, a case in which a decedent's son signed an arbitration agreement upon the decedent's admission to a nursing facility, the South Carolina Court of Appeals found that the Arbitration Agreement did not merge with Admission Agreement, and "therefore, Appellants' assertion that [Plaintiff] received benefits under the Admission Agreement, i.e., being admitted to the facility and receiving medical care, is of no moment." *Thompson v. Pruitt Corp.*, 416 S.C. at 60. In finding non-merger, the Court explained:

The two agreements are independent of one another, as reflected in the language of the AA indicating its execution is not a condition for being admitted to the nursing home. Further, any possible benefit emanating from the AA alone is offset by the AA's requirement that Mother waive her right to access to the courts and her right to a jury trial. Therefore, equitable estoppel under federal substantive law has no application to the present case.

Id.

Here, the facility has both an Admission Agreement and an Arbitration Agreement. The Admission Agreement provides that it is the complete understanding between the parties. **Ex. B to Plaintiff's Memorandum in Opposition**, Section XVIII. Defendants therefore expressed their intent that the documents should not be construed together, and thus, no merger occurred. Plaintiff did not receive a benefit from the Arbitration Agreement, and therefore, Plaintiff cannot be equitably estopped from avoiding the terms of the Arbitration Agreement.

IV. CONCLUSION

Because Defendants have failed to demonstrate a valid Arbitration Agreement exists in this matter, and because Defendants have failed to meet their burden of demonstrating that an exception applies to bind a non-signatory to an agreement, Defendants' Motion to Stay this Action and Compel Arbitration is **DENIED**.

SO ORDERED.

Eugene P. Warr, Jr.
Circuit Court Judge



Chesterfield Common Pleas

Case Caption: Joshua Welch , plaintiff, et al VS Rehab Center Of Cheraw, Llc ,
defendant, et al
Case Number: 2024CP1300863
Type: Order/Other

So Ordered

Eugene P. Warr, Jr.
