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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Case No. 2025-CP-07-01983
Appellate Case No. 2026-001313

Anthony Cambria as Personal Representative of the Estate of Justine Noreen Cambria, Anthony Cambria in his individual capacity, Michael Cambria, and Christina Cambria, Respondents,

v.

National Healthcare Corporation, NHC Healthcare/Bluffton, LLC, and Jennifer Myers, Appellants.

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STATEMENT OF ISSUES ON APPEAL

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VI. Whether the circuit court erred in recognizing the "outrageous torts" exception.

VII. Whether the circuit court erred in applying the "outrageous torts" exception to the facts of this case.

VIII. Whether the circuit court erred in failing to address the arbitrability of Respondent's claims for negligence and breach of contract.

STATEMENT OF THE CASE

This case is about the circuit court's decision to deny Appellants' Motion to Compel Arbitration ("Motion") of a valid and enforceable Arbitration Agreement based on a scarcely used "outrageous torts" exception to the general requirement that courts must compel arbitration when a valid agreement exists.

On November 14, 2023, Respondent Anthony Cambria, on behalf of Justine Cambria, entered into a Preadmission Agreement and Admission Agreement to admit Justine Cambria to Appellant NHC Healthcare/Bluffton ("NHC Bluffton"), a skilled nursing facility. (Mot. Ex. B.) The Preadmission Agreement included a binding Agreement to Arbitrate and Waive Jury Trial ("Arbitration Agreement"), which Anthony Cambria signed. (Id. pp. 5-9.) Justine Cambria had appointed Anthony Cambria as her Durable Power of Attorney ("DPOA") on December 9, 2019, and recorded said DPOA on May 17, 2021. (Mot. Ex. A.) The DPOA stated in part:

> My agent may perform for me and in my name and on my behalf any act in the management, supervision, and care of my estate and affairs that I personally have authority to perform. My agent may exercise for me and in my name and on my behalf the powers enumerated below, which are intended to illustrate, and not to limit, the scope of this power. . . .
>
> My agent may . . . contest, compromise, settle, or abandon claims in my favor or against me; give receipts, releases, and discharges; commence, pursue[,] or oppose any action, suit, or legal proceeding

related to any matter in which I am or may hereafter be interested; and compromise settle or submit to judgment any such action or proceeding.

(Appellants' Mot. Ex. A pp. 1-2.) The Arbitration Agreement stated in part:

> **VOLUNTARY AGREEMENT OT ARBITRATE AND WAIVE JURY TRIAL** . . .
>
> Of Course, the Center also agrees to be bound by the arbitrator's decision. . . .
>
> This is an Agreement to arbitrate disagreements (also called a "Claim" in this Agreement) that might arise between Justine Cambria ("Patient") and NHC Healthcare/Bluffton, LLC ("Center"). (The Patient or the Patient's Authorized Legal Representative, together with the Patient's heirs and wrongful death beneficiaries, may be referred to together as the "Patient." The Center and the Patient may be referred to together as the "Parties" or separately as a "Party"). . . .
>
> [T]he Parties shall submit to binding arbitration all Claims against each other and their employees . . . arising out of or in any way related or connected to the Patient's stay and the care provided at the Center, including but not limited to any Claims . . . based on contract, tort or statute . . . .
>
> The Federal Arbitration Act shall apply to this Agreement. . . . The arbitrator's fees and expenses will be paid by the Center . . . .
> The Patient understands, agrees, and acknowledges that: (i) he or she has the right to consult with an attorney prior to signing this Agreement; (ii) he or she has reviewed this Agreement and has had an opportunity to ask Center personnel questions about the Agreement; (iii) the Agreement has been explained to the Patient and his or her representative in a form and manner that he or she understands, including in a language the resident and his or her representative understands; (iv) he/she understands the Agreement; (v) that neither the Patient nor his or her representative is required to sign an agreement for binding arbitration as a condition of admission to, or as a requirement to continue to receive care at, the Center; . . . and (vii) this Agreement shall not limit the right of the Patient or anyone else to communicate with federal, state, or local officials . . . .
>
> **The Patient and/or Patient's Legal Representative may rescind this Agreement by signing the revocation provision below**

> **during normal business hours or by other written notice within thirty (30) calendar days of signing this Agreement. . . .**
>
> The Parties intend this Agreement to bind all persons whose claim is derived through or on behalf of the Patient, including that of any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Patient. . . .

(Id. Ex. B pp. 5-8 (emphases in original).)

Justine Cambria was admitted to NHC Bluffton on November 16, 2026, with hospice services. (Am. Compl. ¶¶ 9-10.) On November 24, 2023, during the dark and early morning hours, Respondent Michael Cambria drove to NHC Bluffton. (Id. ¶ 16.) Notably, Anthony Cambria, not Michael Cambria, was Justine Cambria's emergency contact and power of attorney. When Michael Cambria arrived, NHC Bluffton staff did not grant him access to the building. (Id. ¶ 20; Myers Answer ¶ 7.) Appellant Jennifer Myers, RN called 911 at 4:21 a.m. out of concern for NHC Bluffton's residents and staff, including herself. (Am Compl. ¶ 22; Myers Answer ¶ 9; Mot. Recons. Ex. B.) She specifically reported that there was an "unk[nown] male pacing back [a]n[d] forth . . . trying to get into [the] facility . . . w[hite] m[ale] late 50's . . . unk[nown] weapons . . . male kept asking if mother is residing at this loc[ation] . . . could not give correct name. (Mot. Recons. Ex. B.) The Beaufort County Sheriff's Office did not instruct Myers to allow Michael Cambria in the building. (Am. Compl. ¶ 24.) Sadly, Justine Cambria had passed away by 5:15 a.m. (Id. ¶ 26.) Respondents have spun these events to manufacture a claim for intentional infliction of emotional distress, claiming Appellants' conduct barring Michael Cambria from her during her final hours was extreme and outrageous, causing emotional distress so severe that no reasonable person could be expected to endure it. (Am. Compl. ¶¶ 30-36.)

Respondents do not dispute that Anthony Cambria was Justine Cambria's power of attorney and signed the Arbitration Agreement in said capacity. (Resp't Mem. pp. 1-2.) Nevertheless, when

Respondents asserted claims based on the above-referenced events that occurred while Justine Cambria was a resident of the facility, they filed a lawsuit for (1) intentional infliction of emotional distress, (2) negligence, and (3) breach of contract. (Am. Compl.) Appellants moved to compel arbitration on the same day and before they answered the original Complaint. (Appellants' Mot.)

Respondents opposed the Motion, claiming that the dispute was not arbitrable pursuant to an outrageous torts exception. (Resp't Mem. pp. 16-17.) Respondents further argued that the Arbitration Agreement was unenforceable because it lacked consideration and mutuality, did not contain necessary terms, and was unconscionable; that the Federal Arbitration Act ("FAA") did not apply to the Arbitration Agreement; and that the Arbitration Agreement was inapplicable to the wrongful death beneficiaries. (Id. pp. 6-15, 17-19.)

The circuit court denied the Motion based solely on the outrageous torts exception because the exception rendered Respondents' claims "not within the scope of the agreement." (Mar. 11, 2026, Order.) Appellants filed a Motion for Reconsideration, in which they requested that the circuit court reconsider its ruling denying their Motion in part because the outrageous torts exception is inconsistent with applicable law. (Mot. Recons. pp. 3-7.) Appellants also requested rulings on whether the Arbitration Agreement was a valid and enforceable contract subject to the FAA, whether Respondents' negligence and breach of contract claims were subject to the Arbitration Agreement, and whether the Arbitration Agreement bound the wrongful death beneficiaries. (Id. pp. 7-11.) The circuit court denied the Motion for Reconsideration without making any additional rulings and still based solely on the outrageous torts exception, stating that "the alleged conduct was unforeseeable to the parties and outrageous in nature." (May 11, 2026, Order.)

STANDARD OF REVIEW

This Court has de novo review over arbitrability determinations. *Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 74, 856 S.E.2d 550, 553 (2021).

ARGUMENTS

There are three reasons why this Court should reverse.

First, the circuit court erred in denying the Motion because the Arbitration Agreement was valid and enforceable and covered Respondents' claims. The FAA, which absolutely governs this Arbitration Agreement, requires courts to order arbitration under such circumstances. Nevertheless, the circuit court disregarded the FAA and denied arbitration based on an exception that violates the Supremacy Clause and that the Supreme Court of South Carolina has cast serious doubt on.

Second, even if the exception was legitimate, it would only apply under outrageous and unforeseeable circumstances, which are not present here because Appellants acted in good faith and in a reasonable manner to protect residents and staff. Moreover, said protection had a significant relationship to the contract for Justine Cambria's admission to NHC Bluffton, which also renders the exception inapplicable.

Third, the outrageous torts exception, if legitimate, would only apply to Respondents' cause of action for intentional infliction of emotional distress; it would not apply to their negligence or breach of contract causes of action. Nevertheless, the circuit court seemingly relied on the exception to deny the Motion and Appellants' right to arbitrate completely.

I. The circuit court erred in denying Appellants' Motion to Compel Arbitration because the Arbitration Agreement was valid and enforceable pursuant to the FAA and covered Respondents' claims.

a. The FAA governed the Arbitration Agreement.

Briefly, as a preliminary matter, the circuit court did not confirm that the FAA applied, even after Appellants requested confirmation of the same in their Motion for Reconsideration. (Mot. Recons. P. 7.) It does. Not only did the Arbitration Agreement expressly state that the FAA shall apply (Appellants' Mot. Ex. B p. 6,) but South Carolina law is clear that contracts for nursing home services involve providing food and medical services from out-of-state vendors as well as health care, which is generally an activity subject to federal control, and therefore implicate interstate commerce and trigger the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 380-81, 759 S.E.2d 727, 732-33 (2014). The holding in *Dean* is consistent with the broad reach of the FAA to apply to all contracts "evidencing a transaction involving commerce." 9 U.S.C. § 2; *see also Towles v. United HealthCare Corp.*, 338 S.C. 29, 36, 524 S.E.2d 839, 843 (Ct. App. 1999) ("The terms 'involving commerce' amount to the functional equivalent of 'affecting commerce' and signal 'an intent to exercise Congress' commerce clause power to the full.'" (quoting *Allied-Bruce Terminix Co. v. Dobson*, 513 U.S. 265, 277 (1995))).

b. The Arbitration Agreement was valid and enforceable and covered Respondents' claims.

Courts should compel arbitration pursuant to an arbitration agreement when "(1) there is a valid agreement, and (2) the claims fall within the scope of the agreement." *Wilson v. Willis*, 426 S.C. 326, 336, 827 S.E.2d 167, 173 (2019).

Beginning with the latter, the plain language of an arbitration agreement dictates whether claims fall within the agreement's scope. *See, e.g., Towles*, 338 S.C. at 42, 524 S.E.2d at 844 ("The agreement's plain language covers [the] claims . . . . Consequently, we hold the arbitration

agreement covers [the] claims."). The subject Arbitration Agreement specifically stated that it applied to "all Claims," including any claims based on contract or tort, without exclusions. (Appellants' Mot. Ex. B p. 6.) Respondents' Amended Complaint included causes of action for contract and tort, falling squarely within the scope of the Arbitration Agreement. (Am. Compl. ¶¶ 30-44) The Arbitration Agreement also expressly included wrongful death beneficiaries where it clearly defined that "Patient" referred to the actual patient, her representative, and her "heirs and wrongful death beneficiaries" as well as where it stated that the parties intended for the Arbitration Agreement to "bind all persons whose claim is derived through or on behalf of the Patient, including that of any spouse, child, guardian, executor, administrator, legal representative, or heir of the Patient." (Appellants' Mot. Ex. B pp. 5-6.) South Carolina law is clear that arbitration agreements can bind wrongful death beneficiaries. *See Dean*, 408 S.C. at 378 n.3, 759 S.E.2d at 731 (noting that courts cannot refuse to compel arbitration simply because a wrongful death claim is involved). Therefore, the Arbitration Agreement covered all the parties and claims in this matter.

As to validity, an arbitration agreement is valid if the parties thereto had authority to execute it and did so in accordance with general contract principles. When an arbitration agreement is executed by an agent pursuant to a power of attorney, the agent's authority to bind the principal to arbitration depends on whether the language of the power of attorney grants said authority, either in a provision specifically granting the authority or in a broad provision that encompasses the authority. *See Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 577, 828 S.E.2d 82, 87 (Ct. App. 2019) (explaining the plain language of a power of attorney determines the authority granted thereunder); *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 581 U.S. 246, 254-56 (2017) (establishing that an agent can execute an arbitration agreement pursuant to a power of attorney if it contains language granting broad authority that encompasses the authority to execute arbitration agreements

regardless of whether there is express language to that effect); *Arredondo*, 433 S.C. at 80, 856 S.E.2d at 556 (acknowledging the same).

The DPOA here contained both an express provision granting Anthony Cambria authority to handle legal claims in which Justine Cambria was interested and a catch-all provision granting broad authority to perform any act in furtherance of Justine Cambria's estate and affairs. (Appellants' Mot. Ex. A pp. 1-2.) Further, Respondents have acknowledged that Anthony Cambria was Justine Cambria's power of attorney and signed the Arbitration Agreement in said capacity. (Resp't Mem. pp. 1-2.)

A person with legal authority to execute an arbitration agreement enters a contract to arbitrate the same way he would enter any other type of contract—by accepting an offer established with consideration. *Lampo v. Amedisys Holdings, LLC*, 445 S.C. 305, 311, 914 S.E.2d 139, 142 (2015) ("An arbitration agreement, of course, is a contract. The elements necessary for the formation of any contract are (1) an offer, (2) acceptance of the offer, and (3) the mutual exchange of benefits the law calls 'consideration.' A party seeking to compel arbitration must demonstrate the existence of a valid contract to arbitrate by establishing these three elements."). Signing an arbitration agreement constitutes acceptance thereof. *See id.* at 311, 914 S.E.2d at 143 ("The typical action an offeree takes to accept an offer is to sign a writing that sets forth the offer . . . ."). The mutual obligation to arbitrate and/or some sacrifice by the offeree constitute consideration. *See Boyd v. Liberty Life Ins. Co.*, 399 S.C. 401, 407, 732 S.E.2d 180, 183 (Ct. App. 2012) ("Valuable consideration for a contract may consist of some forbearance given or detriment suffered." (quoting *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 304, 468 S.E.2d 292, 300 (1996))); *O'Niel v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997) ("A mutual promise to arbitrate constitutes

sufficient consideration for [an] arbitration agreement.") (citing *Rickborn*, 321 S.C. 291, 468 S.E.2d 292)).

Here, NHC Bluffton communicated the offer of the Arbitration Agreement by presenting it to Anthony Cambria, and Anthony Cambria accepted the offer by signing the same. The mutual obligation to forego a trial and be bound by the arbitrator's decision therein established consideration, as did NHC Bluffton's agreement to bear all fees and expenses of the arbitration.

c. Nothing invalidated the Arbitration Agreement.

Finally, no "missing terms" or "unconscionability" invalidated the Arbitration Agreement. Missing terms can only serve to invalidate arbitration agreements when said terms are material. *See Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 130-32, 678 S.E.2d 435, 438-39 (2009) (explaining that arbitration agreements should reflect a meeting of the minds regarding material terms and distinguishing between material terms and "ancillary logistical concerns"); *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 82-83, 749 S.E.2d 139, 146-47 (Ct. App. 2013) (refusing to invalidate an arbitration because it did not omit material terms). None of the terms Respondents raised in their Memorandum in Opposition to Appellants' Motion constitute material terms within the meaning of *Grant* and *York*. (Resp't Mem. pp. 9-11, 14-15.) Further, the Arbitration Agreement was voluntary, applied equally to all parties, and provided the opportunity to ask questions and/or consult with legal counsel and the right to rescind. (Appellants' Mot. Ex. B p. 6.) These factors illustrate the clear meaningful choice that Anthony Cambria had when NHC Bluffton offered him the Arbitration Agreement. *See York*, 406 S.C. at 85, 749 S.E.2d at 148 (explaining that there must be an absence of a meaningful choice for an agreement to be unconscionable).

II. The circuit court erred in recognizing the "outrageous torts" exception because the FAA preempts the exception.

The FAA establishes that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C.A. § 2. Accordingly, general applicable contract defenses can invalidate an arbitration agreement but "defenses that apply only to arbitration or derive their meaning from the fact that an agreement to arbitrate is at issue" cannot. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Disputes involving sexual harassment or sexual assault are the only exception. 9 U.S.C.A. § 402 (stating arbitration agreements in said cases are not valid or enforceable). State laws that place arbitration agreements on an unequal footing with other types of contracts are preempted by the FAA. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 364 (2001).

The *Aiken v. World Finance Corporation of South Carolina* case that the circuit court relied on to recognize the outrageous torts exception is fundamentally incompatible with the FAA's mandate. 373 S.C. 144, 644 S.E.2d 705 (2007). There, the Supreme Court of South Carolina held that it would "refuse to interpret any *arbitration agreement* as applying to outrageous torts that are unforeseeable." *Id.* at 151, 644 S.E.2d at 709 (emphasis added). The exception has only been applied twice since its inception in *Aiken*. *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 644 S.E.2d 718 (2007); *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 689 S.E.2d 602 (2010). The Supreme Court of South Carolina decided *Aiken*, *Chassereau*, *and Partain* in 2007, 2007, and 2010, respectively, all *prior* to the Supreme Court of the United States emphasizing the importance of treating arbitration agreements the same as other contracts in *Concepcion* in 2011. South Carolina appellate courts have not invalidated *any* arbitration agreements based on the outrageous torts exception since *Concepcion*. When the Supreme Court of South Carolina had an opportunity

to consider the exception post-*Concepcion*, Justice Pleicones, writing for the majority, raised concerns that cast serious doubt on the exception's viability. *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 791 S.E.2d 128 (2016). Justice Pleicones examined *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47 (2015), in which the Supreme Court of the United States found that California state courts failed to meet the requirements it had set forth in *Concepcion* when they denied a motion to compel arbitration based on considerations that were "unique" and "restricted" to arbitration rather than on general contract principles and opined that the outrageous torts exception was similarly unlawful:

> Analogous to *DIRECTV*, the application of the outrageous torts exception in South Carolina is "unique" and "restricted" to the field of arbitration. . . . [T]he language of every outrageous torts exception case published by this Court has focused explicitly on arbitration. . . . [T]his Court has never used the terminology associated with, or applied the principle of, the outrageous torts exception outside the context of arbitration enforcement. Because the outrageous torts exception is not a general contract principle, but instead one that has been applied only to arbitration clauses, I find the exception inconsistent with *Concepcion* and its supporting federal jurisprudence. Accordingly, to the extent South Carolina cases apply the outrageous torts exception, I would now overrule those cases and find the trial court erred by determining the exception precluded enforcement of the arbitration clause.

Parsons, 418 S.C. at 11-12, 791 S.E.2d at 133-34.

The fact that Congress enacted a narrow statutory exception to its mandate that arbitration agreements shall be valid and enforceable absent any applicable contract defenses in sexual assault and sexual harassment disputes is further proof that a separate general, undefined exception for outrageous torts was unintended. *See Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 157, 135 S.E.2d 841, 844 (1964) ("Where there is an express exception in a statute, all other exceptions which are not expressly set forth are e[x]cluded. The inclusion of one exception amounts to an affirmation of the applicability of the statute's provision to all other cases which are not

excepted."); *Pa. Nat. Mut. Cas. Ins. v. Parker*, 282 S.C. 546, 554-55, 320 S.E.2d 458, 463 (Ct. App. 1984) ("A well-established rule of statutory construction is 'expressio unius est exclusion alterius,' which means that the enumeration of particular things excludes the idea of something else not mentioned. Under the rule, exceptions made in a statute give rise to a strong inference that no other exceptions were intended.")

Based on the foregoing, this Court should now officially resolve Justice Pleicones' opinion in *Parson's* and overrule the exception to bring South Carolina courts in compliance with federal law as is required of state courts. *See DIRECTV,* 577 U.S. at 53 (2015) ("[T]he 'Supremacy Clause forbids state courts to dissociate themselves from federal law . . . .' The Federal Arbitration Act is a law of the United States, and *Concepcion* is an authoritative interpretation of that Act. Consequently, the judges of every State must follow it." (quoting *Howlett v. Rose*, 496 U.S. 356, 371 (1990))).

III. The circuit court erred in applying the "outrageous torts" exception to the facts of this case.

a. Denying access to the building was not outrageous within the meaning of the exception.

South Carolina has adopted section 46 of the Restatement Second of Torts relating to intentional infliction of emotional distress, otherwise known as outrage, which forms the basis for the outrageous torts exception. *Ford v. Hutson*, 276 S.C. 157, 162, 276, S.E.2d 776, 778 (1981). For a plaintiff to prevail on a claim for intentional infliction of emotional distress, the defendant's conduct must have been "'extreme or outrageous' as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community.'" *Id.* (quoting Restatement (Second) of Torts § 46 cmt. d (Am. L. Inst. 1965)). Conduct amounting to intentional infliction of emotional distress "arouse[s] . . . resentment against the actor, and lead[s the average

member of the community] to exclaim, 'Outrageous!'" Restatement (Second) of Torts § 46 cmt. d. Conduct that is extremely insensitive does not necessarily establish a claim for intentional infliction of emotional distress. *See Roberts v. Dunbar Funeral Home*, 288 S.C. 48, 51, 339 S.E.2d 517, 519 (Ct. App. 1986) ("The facts of this case, while showing extreme insensitivity on the part of [the respondent], nevertheless do not establish the tort of outrage."). "[T]he South Carolina appellate courts have declared that th[e] tort of outrage should not become a 'panacea for wounded feelings,' and that a court should review the conduct to decide whether it can reasonably be regarded as outrageous." *In re Thomas*, 254 B.R. 879, 884 (D.S.C. 1999) (quoting *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 171, 321 S.E.2d 602, 611 (1984), *rev'd on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985)).

Two South Carolina cases illustrate that actions taken "in good faith and in a reasonable manner . . . cannot be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community." 30 S.C. Jur. *Torts* § 12. First, in *Manley v. Manley*, the respondents had the appellant involuntarily committed to a psychiatric facility based on the appellant threatening to take her own life and the life of one of the respondents. 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987). The appellant was found not to be mentally ill after said commitment and sued the respondents for outrage among other things. *Id.* This Court examined whether the respondents' conduct was outrageous and held that their conduct did not approach the standard in *Ford* and section 46 of the Restatement (Second) of Torts because they "acted in good faith and in a reasonable manner." *Id.* at 329-30, 353 S.E.2d at 314. Second, in *Hawkins v. Greene*, the appellant sued the respondent physician for intentional infliction of emotional distress because the respondent erroneously told the appellant that her baby had passed away. 311 S.C. 88, 427 S.E.2d 692 (Ct. App. 1993). This Court, relying on *Ford* and *Manley*, found

that summary judgment was proper because the respondent had a "good faith belief that the baby was incapable of sustaining life on his own and that death was imminent" when he delivered the news. *Id.* at 90, 427 S.E.2d at 693.

Here, the circuit court ruled that Appellants' conduct denying Michael Cambria access to the building was "outrageous in nature." (May 11, 2026, Order.) Even a cursory examination of the facts illustrates it was not. Respondent Michael Cambria, who was not Justine Cambria's emergency contact or power of attorney, arrived at NHC Bluffton during the dark and early morning hours, around 4:30 a.m. and was pacing back and forth outside trying to get into the facility. (Am Compl. ¶ 16; Mot. Recons. Ex. B.) He could not give the correct name, and Myers could not determine whether he had any weapons. (Mot. Recons. Ex. B.) Clearly, Appellants had a good faith belief that Michael Cambria could be dangerous, and they acted reasonably in not granting access to the building and in calling 911 to protect everyone inside. The aggravating factor that Justine Cambria unfortunately was in her final hours during that time does not negate Myers' fear for her and her residents' safety at the time and could only render the denial insensitive at most, which is not sufficient to establish outrageous conduct. The average member of the community would not claim that denying access was outrageous under these circumstances. On the contrary, other residents and their families would likely find it outrageous to let an unknown potentially dangerous person in the building and risk their or their loved ones' safety. The circuit court should have reviewed the conduct and decided that it could not reasonably be regarded as outrageous.

b. Claims based on denying access to the building bear a significant relationship to the NHC Bluffton admission.

"To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad

arbitration clause, regardless of the label assigned to the claim." *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." *Id.* "A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a 'significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained." *Id.* (quoting *Long v. Silver*, 248 F.3d 309 (4th Cir. 2001)).

In *Landers v. Federal Deposit Insurance Corporation*, the respondent sued the appellants for intentional infliction of emotional distress and breach of contract among other things. 402 S.C. 100, 739 S.E.2d 209 (2021). The appellants moved to compel arbitration based on the claims against them arising out of an employment agreement containing an arbitration provision that applied to all disputes "arising out of or related to" the employment agreement. *Id*. at 104, 739 S.E.2d at 211. The circuit court only ordered arbitration of the claim for breach of contract, determining that the intentional infliction of emotional distress and other claims were outside the scope of the arbitration provision. *Id.* at 107, 739 S.E.2d at 213. The Supreme Court of South Carolina reversed, reasoning that the "arising out of or relating to" language was capable of an expansive reach and that the intentional infliction of emotional distress claim bore a significant relationship to the employment agreement because the alleged conduct that formed the basis of said claim was aimed at rendering respondent unable to perform his job. *Id.* at 109-12, 739 S.E.2d at 213-15. In *Parsons*, which involved a home buyer's claim of fraud against the seller for failing to disclose the presence of hazardous waste on the property, Justice Hearn wrote in a concurring opinion that the correct inquiry was whether the alleged fraud was significantly related to the sales contract and arbitration provision therein. 418 S.C. at 15, 791 S.E.2d at 135. She opined that it was

because "the [buyers] could not bring their claim against [the seller] absent the sales contract, as the claim [was] entirely reliant on the parties' statuses under the contract" and "absent the sales contract, [the seller] would be under no duty to disclose the[] particular defects with the property to the [buyers] or any other third party." *Id.* at 15, 791 S.E.2d at 136. She concluded that she would therefore not apply the outrageous torts exception because the exception only sought to distinguish outrageous torts that were "legally distinct from the contractual relationship between the parties." *Id.* at 15-16, 791 S.E.2d at 135-36 (quoting *Aiken*, 373 S.C. at 152, 644 S.E.2d at 709).

Here, the "significant relationship" test is not necessary because, as stated above, the Arbitration Agreement expressly covered all torts, which would necessarily include "outrageous" torts. (Appellants' Mot. Ex. B p. 6.) Nevertheless, even if the plain language did not cover Appellants denying access to the building, claims based on the same are arbitrable under the significant relationship test. Like the arbitration provision in *Landers*, the Arbitration Agreement contains sweeping language where it states that it applies to claims "in any way related or connected to the Patient's stay and the care provided at the Center," thereby invoking the significant relationship test. (Appellants' Mot. Ex. B. p. 6.) Justine Cambria's stay and the care provided at NHC Bluffton were the subject of the Preadmission Agreement, which stated that NHC Bluffton would provide services "in accordance with the standards of the industry." (Id. p. 2.) It goes without saying that the industry standards of nursing homes include protecting residents. Further, South Carolina's Standards for Licensing Nursing Homes contain multiple references to the safety of residents. *See, e.g.* S.C. Code Ann. Regs. 60-17 § 101.PP. (defining "neglect" and "[t]he failure or omission of a direct care staff member . . . to maintain the health or *safety* of a resident (emphasis added)); *Id.* § 402 (stating the classifications of violations of the regulation, which include violations that "present an imminent danger to the health and *safety* of the persons

in the facility" and violations "determine[d] to have a negative impact on the health and *safety* of persons in the facility" (emphases added)). Regulation 60-17 also sets out standards relating to visitors. *See, e.g., id.* § 2604.D ("Any conduct of the visitors which may have an adverse effect on the residents and/or facility must be promptly and prudently handled."). Denying access to the building was a clear safety decision made "in accordance with the standards of the industry" and therefore bore a significant relationship to the Preadmission Agreement that included the Arbitration Agreement. Like the parties in *Parsons*, Respondents would have no claim to assert against Appellants whatsoever absent the Preadmission Agreement; these events would be completely nonexistent but for Justine Cambria's status as a resident at NHC Bluffton. Had the circuit court examined "whether the factual allegations underlying the claim[s were] within the scope of the broad arbitration clause, regardless of the label assigned to the claim," it could not have reasonably found that the Arbitration Agreement was "not susceptible to an interpretation that cover[ed] the dispute." *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118; s*ee also Landers*, 402 S.C. at 112, 739 S.E.2d at 215 ("Even assuming the arbitrability of the claims was in doubt, which it is not, we cannot say with positive assurance that the arbitration clause is not susceptible of an interpretation that Landers' slander and intentional infliction of emotional distress claims are covered by the clause. Thus, we reverse the trial court's order denying Appellants' motion to compel . . . .")

IV. The circuit court erred in failing to address the arbitrability of Respondent's claims for negligence and breach of contract.

Even if, for argument's sake, the outrageous torts exception renders Plaintiff's cause of action for intentional infliction of emotional distress non-arbitrable, that exception is undeniably inapplicable to the causes of action for negligence and breach of contract. The Supreme Court of the United States has held that courts should compel arbitration of arbitrable claims even when

non-arbitrable claims remain pending in court. In *Dean Witter Reynolds, Inc. v. Byrd*, the Supreme Court of the United States explained that the preeminent concern of Congress in passing the FAA was to enforce arbitration agreements of arbitrable claims even if doing so resulted in bifurcated proceedings or piecemeal litigation when reviewing a case in which the appellant filed a motion to compel arbitration of all but one of the respondent's claims against him. 470 U.S. 213, 216-21 (1985). The Supreme Court of the United States expanded upon *Dean Witter Reynolds* in *KPMG LLP v. Cocchi*. 565 U.S. 18 (2011). There, the Florida state appellate court denied the appellant's motion to compel arbitration because two of the four claims were non-arbitrable. 565 U.S. 18 (2011). The Supreme Court of the United States reversed, stating, "By not addressing the other two claims in the complaint, the Court of Appeal failed to give effect to the plain meaning of the Act and to the holding of *Dean Witter*." *Id.* at 22. The opinion specifically states,

> The [FAA] has been interpreted to require that if a dispute presents multiple claims, some arbitrable and some not, the former must be sent to arbitration even if this will lead to piecemeal litigation. From this it follows that state and federal courts must examine with care the complaints seeking to invoke their jurisdiction in order to separate arbitrable from nonarbitrable claims. A court may not issue a blanket refusal to compel arbitration merely on the grounds that some of the claims could be resolved by the court without arbitration.

Id. at 19 (citations omitted). The Supreme Court of South Carolina has appropriately separated arbitrable from non-arbitrable claims before. For example, *Zabinski* involved claims arising out of a partnership agreement that contained an arbitration provision and attorney malpractice claims against an attorney involved in preparing the partnership agreement, and the Supreme Court of South Carolina affirmed the circuit court's order denying arbitration of the attorney malpractice claims but reversed the circuit court's order denying arbitration of the remaining claims, requiring

the parties to arbitrate them despite the concurrent non-arbitrable claims 346 S.C. at 603, 553 S.E.2d at 122.

Here, the circuit court denied Appellants' Motion to Compel Arbitration because the outrageous torts exception rendered Respondents' claims "not within the scope of the agreement." (Mar. 11, 2026, Order.) Once again, the Arbitration Agreement expressly covered all claims "based on contract [or] tort," and therefore expressly covered Respondents' claims for negligence and breach of contract. (Appellants' Mot. Ex. B p. 6.) If the outrageous torts exception applied to any of Respondents' claims, it applied only to their claim for intentional infliction of emotional distress. Respondents' negligence and breach of contract claims are within the scope of the Arbitration Agreement and should be arbitrated even if the remaining claim for intentional infliction of emotional distress is not. Judicial economy cannot take priority over arbitrating claims that are arbitrable.

CONCLUSION

This Court should reverse and remand for arbitration of each of Respondents' claims. Alternatively, this Court should reverse and remand for arbitration Respondents' negligence and breach of contract claims.

SIGNATURE ON FOLLOWING PAGE

September 16, 2026

Respectfully submitted,

HALL BOOTH SMITH, P.C.

/s/ Ashley S. Heslop

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